

Divorce Cases Triggered By Online Infidelity (Emotional Affair) In Indonesian Law

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ABSTRACT

This research aims to analyze the phenomenon of divorce triggered by online infidelity (cyber infidelity) or emotional involvement (emotional affairs) within the framework of positive law and Islamic law in Indonesia. In the era of digital disruption, the paradigm of domestic betrayal has shifted from mere physical relations to cyber interactions that violate the principle of loyalty. The research method used is normative legal research with a qualitative approach through library research. The results indicate that although online infidelity often does not reach the stage of physical adultery (intercourse), judges tend to interpret it as a form of continuous dispute and disagreement as regulated in Article 116 letter (f) of the Compilation of Islamic Law (KHI) and Article 19 letter (f) of Government Regulation No. 9 of 1975. The validity of digital evidence, such as WhatsApp screenshots and social media activity, is recognized as legitimate legal evidence under the ITE Law, provided it is not obtained through illegal wiretapping. Regarding the legal implications, online infidelity can influence the determination of child custody (hadhanah) in the best interest of the child; however, it generally does not automatically alter the division of marital property unless there is proof of asset misappropriation for the sake of the affair. This research concludes that there is a need for more specific regulations regarding digital evidentiary procedures in family cases to maintain family resilience in the digital age.

INTRODUCTION

According to Law Number 1 of 1974 concerning Marriage, marriage is viewed as a physical and spiritual bond that holds a sacred value, rather than a mere civil contract. The objective of this institution is to build a happy and eternal family grounded in divine values. However, the foundation of marriage faces increasingly complex new challenges amidst the onslaught of the digital disruption era. One such challenge is the phenomenon of online infidelity (cyber infidelity), which frequently manifests in the form of emotional affairs. This phenomenon has shifted the conventional paradigm of marital betrayal, which was previously associated with physical relations or biological adultery, but has now expanded into the boundless realm of cyberspace. (Agung Pramudita, Rohmat 2026)

Non-physical infidelity has emerged as a result of using social media and instant messaging applications in social interactions. Emotional infidelity on the internet is just as damaging as physical adultery, even though it does not involve sexual intercourse. This has sparked debates within the Indonesian legal sphere regarding how to interpret divorce articles to remain relevant to social changes. Today, judges in the Religious Courts must be extremely cautious when determining whether digital interactions can be considered a breach of marital obligations that legitimizes the dissolution of the marriage bond. (Hermes Aura Azkiyah, Samsudin 2025)



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LITERATURE REVIEW

A. *Cyber-Infidelity and Emotional Affairs from the Perspective of Legal Sociology*

The sociology of law perspective utilizes Zygmunt Bauman's theoretical frameworks of liquid modernity and liquid love. Bauman argues that in a liquid modern society, traditional social institutions such as marriage lose their permanence and are replaced by relationships that are flexible yet fragile. The internet acts as a giant commercial catalog where searching for a partner is analogous to online shopping. Individuals tend to treat prospective partners as commodities that can be assembled from measurable characteristics, ignoring the complete essence of their humanity. Because relationships are maintained purely for individual satisfaction, commitment becomes highly fluid; when other options deemed more satisfying emerge in the digital catalog, old relationships are easily terminated unilaterally, creating a constant fear of abandonment among modern couples. (Zygmunt Bauman 2003)

In line with this, sociologist Anthony Giddens proposed the theory of the disembedding and re-embedding of social institutions. In the context of marital breakdown, individuals experiencing emotional dysfunction or social stigmatization due to divorce often disengage from physical social interactions and re-embed their existence within virtual spaces. In the cyber world, they engage in selective self-disclosure to build new intimacies free from the structural burdens of conventional morality. Giddens identifies this phenomenon as a component of confluent love, an active, conditional, and temporal form of love that exists only as long as both parties derive equal emotional satisfaction. Within the morality of the modern social contract, the values of goodness are no longer absolute but rather conventional and relative, where loyalty is renegotiated for the sake of personal comfort, ultimately weakening family resilience.

Roscoe Pound's sociological jurisprudence perspective regarding the distinction between law as written in official codifications (law in books) and law as it actually lives within societal dynamics (law in action) becomes highly relevant when analyzing the regulation of infidelity in Indonesia. Within the realm of *law in books*, Indonesian positive law exhibits rigid limitations in responding to the advancement of information technology. Both the old Criminal Code (KUHP) and the new Criminal Code (Law Number 1 of 2023) strictly define the offenses of adultery (*overspel*) and cohabitation (*kumpul kebo*) by requiring actual physical sexual penetration or biological intercourse. Consequently, cyber and emotional infidelity that does not involve physical contact falls into a gray area or experiences a vacuum in substantive criminal law (*penal vacuum*).

However, within the dimension of "law in action," sociological reality demonstrates the exact opposite. Although criminal law disregards non-physical infidelity, society empirically views these digital activities as a severe violation of the marital contract. The public's legal awareness, influenced by affective and volitional aspects, rejects such physical limitations. In Religious Courts, evidence of cyber infidelity is consistently presented as the primary trigger for irreconcilable differences, serving as the legal basis for granting divorce petitions. This tension illustrates a cultural lag between written criminal law, which is slow to transform, and the dynamic evolution of public legal awareness in tandem with advancements in information technology. Consequently, civil procedural law and digital ethics are forced to adapt to protect the rights of spouses aggrieved by such cyber activities.

B. *Divorce Regulation in Indonesia and the Ground of "Continuous Disputes"*

Indonesia adopts a dual judicial system in resolving divorce cases, which is based on the principle of the religious personality of the parties at the time the marriage was solemnized. For Muslim citizens, marriages are registered at the Office of Religious Affairs (KUA), and the resolution of their divorce falls under the absolute competence of the Religious Courts, pursuant to Law Number 7 of 1989 concerning Religious Judicature and the Compilation of Islamic Law. Meanwhile, for adherents of religions other than Islam (non-Muslims), marriages are registered at the Civil Registry Office, and the resolution of their divorce is within the authority of the District Courts, based on the Civil Code. This jurisdictional distinction impacts not only the substantive legal basis applied but also gives rise to fundamental differences in procedural aspects, the determination of legal domicile, the standing of the parties, and the mechanisms for enforcing judgments.

Court administrative procedures also establish strict requirements for certain professions. Civil servants (PNS), members of the Indonesian National Armed Forces (TNI), and members of the Indonesian National Police (Polri) who wish to file for divorce are required to attach a written Divorce Permit from their superior or the authorized official before the case can be processed further in court.

The dynamics of family law in Indonesia also regulate the post-divorce implications regarding the opportunity for reconciliation. If a marriage is dissolved through *talak* divorce (repudiation) and the 90-day

waiting period (*iddah*) has not yet expired, the husband and wife can directly reconcile without the need to solemnize a new marriage contract. However, if the *iddah* period has lapsed or if the divorce occurs through a divorce lawsuit (*cerai gugat*), the parties wishing to restore their marital relationship must officially solemnize a new marriage contract at the Religious Affairs Office (KUA). (Saepuddin 2023)

The court also strictly applies the principle of orderly proceedings, including the application of the *ne bis in idem* principle. Pursuant to Supreme Court Jurisprudence Number 110/K/KG/1992, a divorce lawsuit cannot be re-examined if the object, the parties, and the core substance of the grounds are identical to a previous case that has been resolved by a final and binding legally enforceable decision, unless new facts of dispute have arisen after the decision in the previous case was rendered.

Etymologically, the term *syiqaq* is derived from the Arabic word *as-syiqun*, which means "side." This refers to a condition where each party in a marriage stands on opposing sides without any common ground. Terminologically, *syiqaq* is defined as a rift, intense quarreling, and deep-seated hostility between husband and wife. This ground for divorce is normatively regulated under Article 19, letter f of Government Regulation Number 9 of 1975 *jo.* (in conjunction with) Article 116 letter f of the Compilation of Islamic Law, which stipulates that a divorce may occur if continuous disputes and arguments arise between the husband and wife, leaving no hope for harmony in the household. This ground has become the most dominant reason utilized in divorce cases in Indonesia due to its high flexibility in evidentiary standards, its lack of a rigid definition, and its heavy reliance on the judge's subjective assessment based on their legal conviction.

In a socio-legal reality, this prolonged dispute rarely stands alone; it is generally triggered by various complex determinants and root causes, such as economic factors, early marriage, religious conversion (apostasy), the involvement of a third party, domestic violence, gambling, alcohol addiction, as well as physical and psychological neglect that further accelerate the breakdown of the marriage.

The development of judicial practice in Indonesia shows a paradigm shift from a fault-based approach (*fault-based principle / matrimonial guilt*) toward a breakdown of marriage approach (*no-fault principle / broken marriage doctrine*). Through the Constitutional Court Decision Number 38/PUU-IX/2011, the Court affirmed the constitutionality of the phrase "continuous disputes and quarrels." The judicial review petitioned at that time by Halimah argued that the phrase was too vague and susceptible to abuse by husbands to easily divorce their wives without protecting women's rights. However, the Constitutional Court rejected this argument and asserted that if a marital relationship has objectively broken down and cannot be restored, forcing the retention of such a bond precisely violates an individual's constitutional right to live peacefully and free from psychological suffering. This shift is further reinforced by a series of Supreme Court jurisprudences that disregard the determination of the parties' fault and focus instead on the destruction of the essence of marriage.

RESEARCH METHOD

This study employs a qualitative approach with a library research method, utilizing literature materials as data sources. Data collection was conducted by gathering primary sources derived from Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 concerning Marriage and the Compilation of Islamic Law. Meanwhile, secondary sources were obtained from several scientific articles published in journals discussing marriage. This study utilizes a normative research methodology. To determine which laws apply to a specific situation, researchers frequently use normative research techniques involving a careful reading of relevant statutes, case law, and other legal writings. (Soerjono Soekanto 2001)

RESULTS AND DISCUSSION

1. The Normative Dimension Between Physical Adultery and Emotional Infidelity

Within the framework of Indonesian positive law, there is a clear yet often overlapping distinction between the terms adultery (*overspel*) and infidelity (*infidelity*). Adultery is traditionally regulated under criminal law (Article 284 of the old Criminal Code/KUHP), which requires sexual intercourse between a man and a woman where one or both are bound by a valid marriage. Law Number 1 of 2023 on the Criminal Code, which will take effect in the future, also maintains this essence in Article 411, imposing criminal penalties on those who engage in sexual intercourse outside the bonds of marriage. (Hawina Romli Rahayu Subekti 2024)

However, online infidelity often does not escalate to physical intercourse. It encompasses exclusive emotional activities, such as warm and intense conversations with another person, as well as the digital transmission of obscene content, also known as sexting. Because it violates the principles of loyalty and marital honor, this type of infidelity is considered to be linked to adultery. In Islamic family law, this act is regarded as



nusyuz (marital disobedience) or a breach of marital commitment, as it violates the principle of *mitsaqan ghalizhan*, which represents a profoundly solemn covenant.

National legislation does not provide a standardized definition of 'infidelity,' thereby allowing judges to formulate legal interpretations based on the facts presented in court. Judges frequently view internet infidelity as the root cause of continuous disputes and quarrels, a ground that is legally recognized under Article 19 letter (f) of Government Regulation Number 9 of 1975 in conjunction with Article 116 letter (f) of the Compilation of Islamic Law (KHI). (Agung Pramudita, Rohmat 2026)

2. Divorce Mechanism Due to Online Infidelity

In Indonesia, divorce caused by online infidelity is processed in accordance with the applicable civil procedural law in both general and religious courts. Article 116 of the Compilation of Islamic Law (KHI) outlines the grounds for divorce within the Muslim community, with point (f) covering continuous disputes with no hope of reconciliation. Although point (a) regarding adultery is far more complex than proving constant arguing, some judges still apply a broad interpretation.

Considered a social fact, digital infidelity disrupts marital harmony. In certain cases, such as the Probolinggo Religious Court Decision Number 140/Pdt.G/2025/PA. Prob, the judge granted the divorce petition (*cerai talak*) due to proven emotional affairs via social media, which led to a loss of trust, physical separation, and a severe breakdown of the marriage. Research indicates that the petitioner's behavior violated the obligations of *amanah* (trustworthiness) and *iffah* (chastity/moral purity), which are crucial components in maintaining marital sustainability.

Currently, judges' interpretation of 'continuous disputes' encompasses psychological tension caused by a partner's online relationship behaviors, in addition to physical or verbal altercations. One can consider phenomena such as harboring resentment toward a spouse triggered by their preoccupation with a third party on social media, for instance, as a form of internal suffering that allows the neglected party to file for divorce. (Ahmad Rifai 2024)

3. The Status and Validity of Digital Evidence (WhatsApp and Social Media)

Law Number 11 of 2008 concerning Electronic Information and Transactions (the ITE Law), as amended by Law Number 19 of 2016, allows the use of digital evidence in divorce proceedings. According to Article 5 of the ITE Law, electronic information and/or electronic documents, along with their printouts, constitute valid legal evidence. This represents an expansion of the evidence regulated under conventional civil procedural law, as stipulated in Article 1866 of the Indonesian Civil Code (KUH Perdata). (Lisasih 2026)

However, the probative value of social media screenshots or WhatsApp chats is not automatically binding. Judges possess the freedom of evidence to assess such proof based on its consistency with other trial facts. Electronic evidence is typically utilized as *prima facie* evidence or presumptive evidence, which is further reinforced by witness testimony to establish the judge's conviction.

The prohibition of wiretapping or illegal interception is a crucial issue. Under Article 31 of the ITE Law (Information and Electronic Transactions Law), everyone is prohibited from intercepting electronic information within a system belonging to another person without authorization. If someone taps their partner's phone without permission to obtain evidence of an affair, they not only risk a prison sentence of up to ten years, but the evidence may also be deemed inadmissible in court because it was obtained illegally. Therefore, legal experts propose using confessions in court or witness testimonies from individuals who directly witnessed the suspicious behavior, alongside digital evidence.

4. Implications for Child Custody (Hadhanah)

Divorce caused by online infidelity significantly influences the determination of *hadhanah* or child custody. The fundamental principle of Islamic law, as accommodated by the Compilation of Islamic Law (KHI), dictates that a mother holds a preferential custody right over a child who is not yet *mumayyiz* (under 12 years old). However, this right is not absolute. The primary parameter utilized by judges when deciding custody cases is the best interests of the child.

Transferring child custody to another party, including the father, can be prompted by open emotional infidelity or the neglect of parenting responsibilities. Infidelity is considered a poor representation of morality, which raises concerns regarding its potential impact on the child's mental and spiritual development. The Religious Court may revoke the *hadhanah* (custody) rights of the mother or the primary custodian if it is proven that they exhibit bad behavior or are unable to guarantee the child's moral safety. (M. Yahya Harahap 1975)

Trauma, uncertainty, and loyalty conflicts are the most common psychological effects of parental infidelity on their children. Therefore, the law dictates that both the father and mother must cooperate in co-parenting to safeguard the child's mental health after a divorce, even if the divorce was caused by infidelity. To

guarantee the child's economic rights, the judge can also *ex officio* determine child support, as was done in the Probolinggo Religious Court Decision.

5. Impact on the Division of Marital Property

One of the most frequently debated legal issues is the division of marital property (commonly known as *gono-gini*) following a divorce caused by infidelity. Generally, Article 35 Paragraph (1) of Law No. 1/1974 and Article 97 of the Compilation of Islamic Law (KHI) stipulate that if a divorce occurs, property acquired during the marriage is considered joint property and must be divided proportionally between the husband and wife. Regardless of who made the greater financial contribution during the marriage, this principle remains applicable.

However, there is a debate regarding whether the 'guilty' party, such as one who committed infidelity or adultery, is still entitled to an equal share. According to Article 86, paragraph (1) of the Compilation of Islamic Law (KHI), a party proven to have committed adultery or severe infidelity may forfeit their rights to marital property. This does not occur automatically; rather, it must be formally requested from the court. To provide a sense of justice to the aggrieved party, the judge may consider the breach of marital commitment as a ground to reduce the distribution share for the guilty party, for instance, to a 60:40 ratio or even less. (Mahkamah Agung Republik Indonesia 2013)

Recent trends in jurisprudence, as demonstrated in the West Jakarta Religious Court Decision Number 1622/Pdt.G/2023/PA.JB indicates that despite the possibility of a reduction in shares, judges still tend to award a 50:50 division of marital property even in cases of adultery. The primary consideration is that the right to joint marital property is an economic right, which is distinct from moral punishment. Instead of being used to revoke property rights earned jointly during the marriage, adultery is utilized as a basis for determining *iddah* maintenance (waiting period alimony), *mut'ah* (compensation), and child custody. In most cases, a reduction in marital property can only be executed if there is solid evidence that one party intentionally transferred or squandered joint assets for the benefit of their affair partner without the legitimate spouse's knowledge.

6. The "Walkaway Wife" Phenomenon and Family Resilience: A Socio-Legal Perspective

The dynamics of divorce caused by online infidelity are part of the socio-psychological dynamics of contemporary couples. In judicial practice, Walkaway Wife Syndrome is a phenomenon where a wife experiences severe emotional exhaustion because her emotional needs have been unmet for years. In such situations, social media often becomes an instant means to seek validation and appreciation that cannot be obtained at home, which subsequently leads to emotional infidelity.

The main factors that cause a marriage to collapse are neglecting a partner's needs and a lack of effective communication. Furthermore, technological advancements have made cyber cheating easier, often starting with a simple conversation but ending in moral and emotional betrayal. Behaviors once considered inappropriate can now be carried out behind electronic screens, leaving today's digital society to face issues as the boundaries between private and public spaces become blurred. (John M. Gottman 2015)

Courts in Indonesia strive to act as an instrument of social engineering by protecting individual dignity and family stability. However, when cases of infidelity become widespread on social media or go viral, significant issues arise. This can complicate the divorce proceedings and potentially lead to counter-reports regarding alleged defamation and violations of the Information and Electronic Transactions (ITE) Law. Judges are required to remain reliant solely on valid legal facts during the trial and to disregard public opinion.

CONCLUSION

Divorce cases in Indonesia resulting from online infidelity reflect a shift in values and legal challenges in the internet era. Legally, one of the primary grounds for dissolving a marriage is emotional infidelity conducted through digital platforms, which, akin to physical adultery, can dismantle the marital structure. To address the phenomenon of internet infidelity, Indonesian judges have adapted the interpretation of the article concerning continuous disputes and quarrels.

Because the ITE Law provides a solid legal basis for using electronic chats and data as admissible evidence, the court still takes data security and evidence collection methods into consideration. Privacy must not be violated through unauthorized wiretapping. The parents' behavior becomes a crucial factor in civil implications, where child custody always prioritizes the best interests of the child. However, unless it is proven that the infidelity caused material loss to family assets, the division of marital property will typically remain 50:50.

To avoid disparity in court decisions, more specific regulations must be established regarding the procedures for using digital evidence in family cases. To maintain the resilience of Indonesian families against



the threats of cyber disruption, enhancing digital literacy within households and optimizing mediation through a psychological-spiritual approach are crucial. Law enforcement must not only possess the capability to resolve disputes but also the capacity to safeguard the dignity and honor of every member of the sacred institution of marriage.

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