THE LEGAL VALIDITYOF ELECTRONIC DIVORCE UNDER UAE LAW

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Abstract - The proliferation of modern means of communication and people's reliance on technology in their daily lives have facilitated many transactions that can now be conducted electronically. Over the past few decades, the world has witnessed remarkable progress in information and communication technology, leading to a shift in many human interactions from traditional to electronic methods. Therefore, this study focuses on examining the legal and religious validity of electronic divorce. To achieve the objectives of this study, a descriptive-analytical approach was adopted, based on an analysis of legal texts related to electronic transactions and personal status matters, in order to assess their applicability to electronic divorce. The study reached a number of conclusions, the most important of which is that there is no legal justification for rejecting an electronic divorce merely because it is issued in electronic form. The fundamental requirement for electronic divorce is a clear and unequivocal expression of intent. Consequently, this study recommends raising awareness among all members of society regarding the risks of using electronic means to issue divorce decrees, particularly in moments of anger, as this is of utmost importance given the potential for severe legal and social consequences resulting from such actions**.**

Keywords - Divorce, Electronic Divorce, Legal Validity

I. INTRODUCTION

The widespread use of modern means of communication, people's reliance on technology in their daily lives, and the shift of many transactions to electronic formats, all of this calls upon Islamic jurists, legal scholars, and judges to pay attention to electronic means and give them their due consideration and scrutiny. Indeed, there is scarcely any aspect of life that technology has not penetrated, resulting in a proliferation of issues and a multitude of challenges, and the number of cases has increased. Among the most important issues requiring study and careful consideration is the issue of electronic evidence. Since issues of evidence in general are numerous and complex and have been the subject of lengthy debate among Islamic jurists and a source of disagreement among legal schools, it is not surprising that all these complexities extend to electronic evidence. This necessitates giving it the attention it deserves through study, and conducting further research, seminars, and conferences to build a body of knowledge we can be proud ofone we can refer to when issuing rulings and when drafting or reviewing regulations.

Over the past few decades, the world has witnessed remarkable progress in information and communication technology, leading to a shift in many human interactions from traditional (or in-person) methods to electronic (or remote) ones. This shift from traditional (commercial and administrative) methods to electronic ones also applies to personal status matters such as marriage and divorce. As a result, numerous new legal and jurisprudential issues have emerged regarding the validity of procedures conducted electronically, particularly concerning sensitive matters such as divorce.

Divorce has significant legal implications for families and society as a whole. Given the increasing use of modern communication technologies such as text messages, email, and apps, a new type of divorce has emerged known as "electronic divorce," which can be initiated and finalized electronically without either spouse being physically present.

In line with legislative developments in the United Arab Emirates, laws on electronic transactions have been enacted. These laws contribute to enhancing the admissibility of electronic evidence in various types of proceedings, with specific requirements regarding the reliability of the medium and the verification of the identity of the creator of the original electronic evidence. The updated legal framework governing trust services and electronic signatures also promotes the recognition of digital transactions. It is clear that the legal validity of e-divorce under UAE law will require consideration of both technological advancements and the need to preserve family unity.

1.1 Problem of Study

This study examines the legal and religious validity of electronic divorce and, consequently, the admissibility of electronic records as evidence of a divorce that has taken place. There are challenges in

determining whether electronic communications or digital media can be used as evidence in court because they can be altered or hacked, and it may be difficult to prove that the intention was indeed to obtain a divorce. It has been observed that this problem is becoming increasingly acute as a result of the proliferation of divorces conducted via modern technology. Therefore, sound laws must be established to protect the rights of individuals and prevent the exploitation of technological advances to dissolve marriages.

1.2 The Importance of Study

The academic significance of this study lies in its focus on a contemporary topic that bridges law and technology, thereby providing the Arab legal community with valuable insights into the conditions governing e-divorce. Given the scarcity of studies addressing this legal field in Arabic, there remains ample scope for further research and analysis. Therefore, this research contributes to clarifying the theoretical framework regarding the admissibility of electronic evidence and linking it to practical applications in personal status law, thereby improving the legal understanding of this evolving field.

The practical importance also lies in providing a clear and unambiguous legal basis to assist judges in making decisions regarding the resolution of disputes related to e-divorce and to help lawyers build their defenses. Therefore, legislators must ensure they keep pace with technological developments, and individuals must be aware of their rights and responsibilities when using technological tools to complete divorce proceedings electronically.

1.3 Methodology

This study employs a number of scientific methodologies, including the descriptive-analytical approach, to analyze legal texts in the United Arab Emirates pertaining to electronic transactions and personal status matters, with the aim of assessing their applicability to e-divorce.

This is part of a comparative analysis aimed at exploring legal or jurisprudential trends relevant to the subject of the study. An additional approach is deductive reasoning, which involves deriving specific legal rulings regarding the issue of e-divorce based on general legislative authority. Previous legal research and studies, along with relevant official documents, were also used in analyzing the data for this study.

II. THE NATURE OF ELECTRONIC DIVORCE

The issue of e-divorce, which is primarily attributed to technological and communications advancements, has become a major topic of discussion and debate in legal circles. E-divorce occurs when a marriage is dissolved using modern means of communication (such as text messages, email, and social media apps) without the physical presence of the spouses. E-divorce has raised legal and jurisprudential questions regarding the types of divorce, its legitimacy, and its effects on society, particularly since e-divorce methods differ from traditional methods in divorce law (Al-Qadi, 2024, p. 201).

To obtain a divorce in accordance with Islamic law, the husband must express his desire for divorce verbally. Under Islamic law, a written divorce is treated the same as a verbal divorce. A written divorce is a modern form that can be conducted electronically; therefore, an electronic divorce is also valid if it includes an unequivocal expression of the intention to divorce. Scholars agree that if the husband's written declaration of divorce is unequivocal in form and content, and its authenticity is verified from a reliable source, it is valid according to Islamic law. However, if there are any doubts regarding the source of the written declaration (for example, whether the message was sent from the husband's phone or not), the written declaration is not valid, because the presence of doubt negates certainty.

Contemporary jurists differ in their views on the classification of electronic divorce; while some scholars consider it valid when its essential elements and conditions are met, others disagree, arguing that it is not valid until it has been verified and documented, given the risks of manipulation or unintentional errors associated with the use of electronic means. Accordingly, from a jurisprudential perspective, e-divorce is viewed as a form of written divorce (whether explicit or implicit), and its legal status depends on the clarity of the expression of intent (Darwish, 2023).

The UAE Personal Status Law No. 28 of 2005 (hereinafter referred to as "the Law") stipulates that divorce is the termination of a valid marriage contract, whether verbal, written, or by any other means that indicates the intention to divorce. Accordingly, in principle, an electronic divorce may be considered a written divorce under the Law. However, UAE law does not consider this alone to be conclusive evidence of divorce. For a divorce to be legally valid, both parties must obtain a notarized judgment from a competent court confirming the dissolution of their marriage.

The United Arab Emirates' use of electronic divorce highlights a problem with it, which lies not in the validity of the electronic divorce itself, but in proving it. Specifically, the law requires proof of the identity of the person to whom the husband (male) sent the divorce request, and that the divorce was carried out via the electronic message. None of the effects of the divorce (such as alimony, the waiting period, and

child custody) are recognized until it is registered with the court. Therefore, e-divorce is considered a final legal procedure and does not take effect until the necessary legal procedures are completed (Al-Muttalib, 2022).

The electronic aspect of divorce involves two principles: the validity of the act, based on whether it meets certain conditions, and its incompleteness in the eyes of the law (i.e., until the court registers it), which exemplifies the interaction between Islamic Sharia and current law—one is recognized as valid but is subject to restrictions imposed by the law designed to protect people and minimize disputes.

III. THE LEGAL VALIDITY OF ELECTRONIC COMMERCE

The term "e-divorce" refers to divorce proceedings conducted electronically, which raises two key questions regarding their validity as legal documents: (1) How will courts view e-divorce as an admissible document in evidence, and (2) to what extent will the legal consequences of e-divorce (such as property division, child custody awards, etc.) be enforceable? Since e-divorce is a relatively new phenomenon and relies on technology that may be susceptible to tampering or corruption, the validity of an e-divorce must be verified before it becomes legally enforceable.

According to Islamic law, an electronic divorce is valid if it is established that the husband issued it with the intention of divorcing his wife. Most Islamic jurists consider electronic divorce to be valid because it is a form of written divorce. For it to be valid, it must be proven that the message was sent by the husband and that there is no doubt as to its source. The reason for this is the impact that the declaration of divorce has on the family; therefore, Islamic law stipulates that certainty is the sole criterion for establishing divorce.

Personal Status Law No. 28 of 2005 in the United Arab Emirates governs the legal procedures for divorce. This law permits divorce to be finalized in writing, thereby allowing an electronic divorce to be considered valid; however, it is important to note that UAE law does not grant it absolute legal validity, as it must be proven before the competent court. The judge does not accept an email as proof alone; rather, the judge verifies that it was sent by the spouse, confirms the spouse's intent to obtain a divorce, and determines whether the email has been tampered with, altered, or forged.

The legal validity of a divorce is a prerequisite for any divorce and forms the basis for all matters related to its consequences, such as the mandatory waiting period before remarriage, alimony, child custody, and the division of financial rights after divorce. Therefore, unless a divorce is legally recognized in accordance with the law, none of these matters can be enforced under UAE law. An online divorce alone is not sufficient for enforcement without proof of a legally valid divorce (Al-Mutlak, 2022).

Based on this, it can be concluded that e-divorce is relative rather than absolute in terms of its legal validity. While an electronic divorce may have a valid basis, for it to be legally enforced, evidence and official documents must be submitted to the court. In this regard, UAE legislation has sought to strike an optimal balance between looking toward the future and embracing modernity on the one hand, and supporting the stability of family relationships and preserving family rights on the other, through the approach of electronic divorce in matters of family law.

IV. CONCLUSION

In short, this study confirms that e-divorce is a contemporary issue that has arisen as a result of rapid digital development; these developments affect various aspects of legal systems, particularly with regard to personal status, and this impact cannot be ignored. These developments also provide individuals with new ways to express their intentions (in writing or electronically). Among these methods, important questions arise regarding the legal validity of e-divorce, the conditions necessary for its recognition, and whether its objectives can be achieved using Islamic law or civil legal systems, as is the case in the United Arab Emirates.

This study reached several other conclusions, including that there is no justification for rejecting an electronic divorce simply because it is issued in electronic form. The fundamental requirement for an electronic divorce to prove the failure of a traditional marriage is a clear and unequivocal expression of intent, along with proof that the electronic divorce was initiated by the person seeking to have children through the divorce. Furthermore, although judicial documents are not the sole source of proof of divorce, their existence provides a solid foundation for proving the divorce and its consequences and even protects the rights of the spouses and the children of the marriage. The use of electronic evidence as a legitimate form of proof has grown in importance; however, its legal significance depends heavily on the surrounding circumstances, as well as on how the evidence was obtained and whether it has been altered or tampered with.

In divorce cases, communication tools—such as text messaging apps and email—may be used as circumstantial evidence. However, it must be proven that the person in question is the one who wrote those

messages (i.e., their authenticity). This requires specialized expertise to establish. Thus, while e-divorce presents a challenge for judges and attorneys in balancing the protection of family privacy with the use of digital options—given the need for speed and flexibility, it also poses real challenges regarding achieving the necessary balance when accessing this information through the digital world.

Based on these findings, measures are proposed to develop a legal and practical framework for this issue. Specifically, it is proposed that specific legislation be enacted to clearly define the conditions and consequences of electronic divorce petitions; it is also proposed that rigorous technical verification of digital messages/conversations be required before they are considered evidence in family law cases, thereby ensuring their reliability. Furthermore, a unified procedural guide for courts should be developed that includes mechanisms for examining and evaluating digital evidence in divorce cases. This would support uniform judicial interpretation and promote justice. Additionally, raising public awareness of the risks of using electronic means to issue divorce rulings—especially in moments of anger—is of critical importance given the potential for severe legal and social consequences. In conclusion, the research highlights the need to improve cooperation between courts handling personal status cases and experts in digital evidence, with the aim of integrating legal and technical aspects in emerging cases.

To resolve the issue of e-divorce in a way that preserves family integrity and ensures fair access to justice, there must be integration between established legal principles and the current state of digital communications.

REFERENCES

[1] Abu Dhabi University. (2023). Electronic Documents and Their Evidentiary Value in Emirati Law.
[2] Al-Shab, Abdulaziz bin Ibrahim. (2024). Electronic Evidence in Marriage and Divorce. Imam Muhammad bin Saud Islamic University.
[3] Al-Mutlaq, Abdullah bin Muhammad. (2022). Rulings Specific to Online Divorce.
[4] Al-Qadi, Abdullah bin Abdulaziz. 2024. The Arab Journal of Islamic and Sharia Studies 29: 201-226.
[5] Darwish, Taha Nadi. 2023. Journal of Sharia and Law 41: 577-641.
[6] Personal Status Law of the United Arab Emirates No. 28 of 2005.
[7] Sharjah Police. (n.d.). The Evidentiary Value of Electronic Signatures
[8] United Arab Emirates. (2002). Federal Law No. (2) of 2002 on Electronic Transactions and Commerce.
[9] United Arab Emirates. (2021). Decree-Law on Electronic Transactions and Trust Services.

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