

Reconstructing the Concept of *Khalwat Sahihah* in the Digital Era: An Analysis of Scholars' Legal Perspectives

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Abstract

The digital era has opened up the possibility of long-distance sexual relations for married couples, commonly known as cybersex. This article aims to examine the relevance of cybersex between married couples with the debated concept of *khalwat sahihah* in the interpretations of various Islamic legal schools. Can long-distance sexual relations, such as cybersex, be categorized as *khalwat sahihah* with legal implications for dowry (mahar) and waiting period (*iddah*)? Then what are the legal consequences for dowry and *iddah*? Data on cybersex is collected from websites, and online articles about cybersex, as well as from research on cybersex that has been conducted. On the other hand, data regarding the debates among scholars from various Islamic legal schools (*mazhab*) about *khalwat sahihah* is gathered from books on comparative jurisprudence authored by Wahbah Zuhaily and Abdurrahman al-Jaziri. The data is then analyzed using content analysis and examined through the lens of the theory of *maslahah*. The research findings suggest that cybersex between husband and wife cannot be equated in terms of legal status with physical sexual intercourse, as cybersex entirely precludes physical contact. Cybersex is more relevant to the concept of *khalwat sahihah*, the law of which is being debated by school scholars. Cybersex is more relevant to the concept of *khalwat sahihah*, which remains a debated issue among scholars from different Islamic legal schools (*mazhab*). According to the

viewpoints of the Shafi'i and Maliki schools, cybersex between a husband and wife results in an obligation to pay only half of the dowry (*mabar*). In the Shafi'i school, divorce following the occurrence of cybersex does not obligate the wife to observe the waiting period (*iddah*). However, according to the Maliki school, the wife is still obligated to observe the waiting period (*iddah*). In the Hanafi and Hanbali schools, cybersex obligates the husband to pay half of the dowry (*mabar*) and requires the wife to observe a waiting period (*iddah*) similar to that after a divorce (*iddah talak bain*). To fulfill the sexual needs of LDR (Long Distance Relationship) couples, cybersex has *maslahah* value depending on the condition of each individual's sexual needs. Cybersex is only a means (*wasā'il*) that can change in realizing the goal (*abdāf*) of building a marital relationship that is *sakinah*, *mawaddah* and *rahmah*.

Keywords: *Khalwat shabihab*; cybersex in the digital era; *maslahah*; legal thought of Islamic school scholars

Introduction

The current social world is perturbed by the emergence of a new realm that immediately alters the way humans interact and perform various daily activities. The advancements in information and communication technology have introduced an alternate space to the physical world, and this new realm is commonly referred to as the virtual world or cyberspace. The virtual world, originally utilized as a channel for global-scale information exchange among humans, has now transformed into a vast space where individuals engage in various activities, including economic, political, cultural, and even sexual interactions among themselves. For instance, a survey conducted by MSNBC, cited by Budi Irwanto, revealed that in the year 2000 alone, 60 percent of internet visits had a sexual orientation.¹

Human sexual activities in the virtual world, often referred to as cybersex, computer sex, Internet sex, or net sex, are described by Arthur Kroker, as quoted by Budi Irwanto, with a rather provocative phrase: "sex without secretions," meaning sexual interactions that occur in a digital realm without the physical release of bodily fluids. Satisfying sexual desires in the virtual world is considered the safest way to do so because there is no physical exchange of bodily fluids, which eliminates the risk of sexually transmitted diseases, pregnancy, abortion, and the emotional distress of being left by a

¹ Yasraf Amir Piliang, *Dunia Yang Berlari, Mencari Tuhan-Tuhan Digital* (Jakarta: PT. Grasindo, 2004), 124–26.

partner. It is not surprising that many surveys show astonishing figures for the weekly visits to adult websites by the public.²

Sexual activities in the virtual world, when used as a means to fulfill the sexual needs of married couples, raise legal issues. One of the family law issues related to the cybersex activities of married couples is the concept of *kehalwat ṣaḥīḥah*. In Islamic jurisprudence (Fikih), *kehalwat ṣaḥīḥah* refers to a situation where there are no barriers to sexual relations between a husband and wife when they are together in a room. The issue that sparks debate among scholars of different Islamic jurisprudential schools (mazhabs) is whether, the occurrence of *kehalwat ṣaḥīḥah*, it is considered to involve sexual relations to the extent that it obligates the husband to pay the dowry (mahar)? Additionally, in cases where divorce occurs after *kehalwat ṣaḥīḥah*, there is a debate regarding whether the wife must observe the waiting period (iddah)? Cybersex, which is widely practiced within online communities today, raises the question of whether, when engaged in by a married couple, it can be equated with the debated concept of *kehalwat ṣaḥīḥah* among scholars of various Islamic jurisprudential schools (mazhabs)? This research aims to examine the relevance of cybersex to the ongoing debates among scholars regarding the concept of *kehalwat ṣaḥīḥah* and the legal aspects of fulfilling the sexual needs of married couples through virtual means.

Data regarding cybersex is collected from various websites that explain human sexual activities in the virtual world, as well as from existing literature and research on the topic. Meanwhile, data on the concept of *kehalwat ṣaḥīḥah* is sourced from comparative jurisprudence books by authors such as Wahbah Zuhaily and Abdurrahman al Jaziri. The reality of cybersex in the virtual world and the concepts of the scholars of different jurisprudential schools (mazhabs) regarding *kehalwat ṣaḥīḥah* are analyzed using content analysis. Subsequently, the relevance of the cybersex reality is examined with the ongoing debates among scholars regarding *kehalwat ṣaḥīḥah* to determine its legal implications concerning dowry (mahar) and the waiting period (iddah).

Using content analysis, the richness of the textual content is qualitatively examined, and symbols are interpreted to gain an understanding of what cybersex and *kehalwat ṣaḥīḥah* entail. This analytical technique begins by initially coding the terms or the usage of words and sentences that are relevant and most frequently occurring within the documents under study. In the process of coding, it is also noted in what context the terms or phrases appear, and then classification is carried out based on the coding that has been performed. The classification is done by assessing the extent to which the units of meaning are related to the research objectives. This classification is intended to construct

² Budi Irawanto, "Mereguk Kenikmatan di Dunia Maya: Virtualitas dan Penubuhan dalam Cybersex," *Jurnal Kawistara* 7, no. 1 (October 5, 2017): 31, <https://doi.org/10.22146/kawistara.23728>.

categories for each classification. Subsequently, units of meaning and categories are analyzed, and their interrelationships are explored to uncover the meaning, significance, and purpose of the textual content presented within the documents.³

The study of cyberculture, including aspects like cybersex, revolves around six main themes. The first theme pertains to cybercrime, which can be exemplified by the work of M.E. Fuady, who discusses various forms of cybercrimes in the virtual world and their characteristics,⁴ Lita Sari Marita explores the application of cyber law in combating cybercrime in Indonesia.⁵ Meanwhile, Yuni Fitriani and Roida Pakpahan delve into the misuse of social media platforms for disseminating cybercrime.⁶ Rasalinda Elsina Latumahina conducts research on the legal aspects of personal data protection in Indonesia compared to other countries,⁷ Warsiman examines the legal aspects of online prostitution from the perspective of the Information and Electronic Transactions Law (UU ITE) in Indonesia,⁸ Alfitra and colleagues discuss the challenges in enforcing the law on online prostitution in Indonesia.⁹

The second theme centers on issues related to the governance of the virtual world, as discussed by authors like Riski Dian Nursita who explores both the positive and negative impacts of the internet and the need for new governance to address the significant negative consequences,¹⁰ Indra Cahyadi examines the enforcement of sovereignty in the virtual world and the importance of international cooperation,¹¹ On the other hand, Hidayat Chusnul

³ Bayu Indra Pratama, *Etnografi Dunia Maya Internet* (Malang: UB Media, 2017), 85–88.

⁴ Muhammad E. Fuady, “Cybercrime’: Fenomena Kejahatan melalui Internet di Indonesia,” *Mediator: Jurnal Komunikasi* 6, no. 2 (December 19, 2005): 256–58, <https://doi.org/10.29313/mediator.v6i2.1194.111>

⁵ Lita Sari Marita, “Cyber Crime Dan Penerapan Cyber Law Dalam Pemberantasan Cyber Law Di Indonesia,” *Cakrawala - Jurnal Humaniora* 15, no. 2 (2015), <https://doi.org/10.31294/jc.v15i2.4901>.

⁶ Yuni Fitriani and Roida Pakpahan, “Analisa Penyalahgunaan Media Sosial Untuk Penyebaran Cybercrime Di Dunia Maya Atau Cyberspace,” *Cakrawala - Jurnal Humaniora* 20, no. 1 (May 7, 2020): 21–27, <https://doi.org/10.31294/jc.v20i1.6446>.

⁷ Nurcholis, “Cyberpornography (Pornografi Di Dunia Maya) Dalam Perspektif Hukum Positif Dan Hukum Islam” (Jakarta, UIN Syarif Hidayatullah, 2015).

⁸ Warsiman, “Tinjauan Hukum Terhadap Pelacuran Dalam Dunia Maya (Cyber Prostitution) Menurut Undang-Undang No. 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik” Vol. 3, No. 1 (June 2014).

⁹ Alfitra Alfitra et al., “Decency Norms in Law Enforcement to Online Prostitution in Indonesia: An Islamic Law Perspective,” *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (May 23, 2023): 194–214, <https://doi.org/10.29240/jhi.v8i1.7044>.

¹⁰ Rizki Dian Nursita, “Cyberspace: Perdebatan, Problematika, Serta Pendekatan Baru Dalam Tata Kelola Global,” *Daulyah Journal of Islamic and International Affairs* 4, no. 1 (February 25, 2019): 80–99, <https://doi.org/10.21111/daulyah.v4i1.2934>.

¹¹ Indra Cahyadi, “Tata Kelola Dunia Maya dan Ancaman Kedaulatan Nasional,” *Jurnal Politika Dinamika Masalah Politik Negeri dan Hubungan Internasional* 7, no. 2 (October 23, 2018): 210–32, <https://doi.org/10.22212/jp.v7i2.1134>.

Chotimah investigates the role of the National Cyber and Cryptography Agency (Badan Siber dan Sandi Negara) in conducting cyber diplomacy for Indonesia.¹²

The third theme revolves around politics in the cyber world, as explored in works such as those by Jerry Indrawan who explores cyberpolitics as a new way of political campaigning in the future.¹³ Additionally, Ibrahim R discusses the jurisdiction in the virtual world and provides critical insights into the draft of the Information and Electronic Transactions Bill (RUU ITE).¹⁴

The fourth theme delves into the digital era and its impact on social change, as examined in works like those by Yasraf Amir Piliang who delves into the significant changes brought about by cyberspace on individuals, interpersonal dynamics, and communities.¹⁵ Piliang also writes about changes in reality and the impact of cyberspace on human sexual culture.¹⁶ Meanwhile, Budi Irawanto writes about the virtuality dimension and the emergence of cybersex,¹⁷ Galih Akbar Prabowo discusses the presence of the internet as a sexual gratification tool,¹⁸ Satria Ajie Pribadi and Dona Eka Putri empirically examine the differences in students' attitudes towards cybersex based on gender.¹⁹

The fifth theme explores society's addiction to activities like cybersex, as discussed in works such as those by Aline Wery dkk. They test the effectiveness of the s-IAT-sex tool in its French version to measure the addiction levels of their respondents.²⁰ Aline Wery and her colleague, J. Billieux, also investigate the

¹² Hidayat Chusnul Chotimah, "Tata Kelola Keamanan Siber dan Diplomasi Siber Indonesia di Bawah Kelembagaan Badan Siber dan Sandi Negara [Cyber Security Governance and Indonesian Cyber Diplomacy by National Cyber and Encryption Agency]," *Jurnal Politika Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional* 10, no. 2 (November 25, 2019): 113–28, <https://doi.org/10.22212/jp.v10i2.1447>.

¹³ Jerry Indrawan, "Cyberpolitics Sebagai Perspektif Baru Memahami Politik di Era Siber [Cyberpolitics as A New Perspective in Understanding Politics in The Cyber Era]," *Jurnal Politika Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional* 10, no. 1 (May 31, 2019): 1–15, <https://doi.org/10.22212/jp.v10i1.1315>.

¹⁴ Ibrahim R, "Jurisdiksi Dunia Maya (Cyberspace) Dalam Sistem Hukum Nasional Abad XXI," *Jurnal Hukum IUS QULA IUSTUM* 10, no. 24 (2003): 119–27, <https://doi.org/10.20885/iustum.vol10.iss24.art10>.

¹⁵ Yasraf Amir Piliang, "Masyarakat Informasi dan Digital: Teknologi Informasi dan Perubahan Sosial," *Jurnal Sositologi* 11, no. 27 (Desember 1, 2012): 143–56.

¹⁶ Yasraf Amir Piliang, *Sebuah Dunia Yang Dilipat* (Bandung: Mizan, 1998).

¹⁷ Budi Irawanto, "Mereguk Kenikmatan di Dunia Maya: Virtualitas dan Penubuhan dalam Cybersex," *Jurnal Kawistara*, vol. 7, no. 1 (2017), pp. 30–40.

¹⁸ Galih Akbar Prabowo, "Cyber Sex Sebagai Implikasi Perkembangan Teknologi Komunikasi," *Journal of Communication Studies* 1, no. 2 (December 29, 2021): 81–95, <https://doi.org/10.37680/jcs.v1i2.850>.

¹⁹ Satria Ajie Pribadi and Dona Eka Putri, "Perbedaan Sikap Terhadap Seks Dunia Maya Pada Mahasiswa Ditinjau Dari Jenis Kelamin", *Proceeding PESAT (Psikologi, Ekonomi, Sastra, Arsitektur dan Sipil)*, vol. 3 (2009), p. 5.

²⁰ Aline Wéry et al., "The Short French Internet Addiction Test Adapted to Online Sexual Activities: Validation and Links With Online Sexual Preferences and Addiction

dysfunctions, disorders, or abnormalities resulting from sexual activities in the virtual world.²¹ Aline Wery and her colleague, J. Billieux, also investigate the dysfunctions, disorders, or abnormalities resulting from sexual activities in the virtual world. The study of online sexual addiction in India is conducted by Satyanarayana Reddy Alla and Ambujam G.²² Meanwhile, Kristian Daneback and colleagues examine the online sexual activities of the Swedish population.²³ Christiani Juditha conducts a survey involving 168 individuals from twelve major cities in Indonesia to explore the cybersex behaviors of the millennial generation.²⁴ Denisa Sukolova and Ivan Sarmany Schuller focus their research on the involvement of women in Online Sexual Activities (OSA).²⁵ Meanwhile, Hijrotul Zulfa and colleagues examine the relationship between religiosity and cybersex behavior among adolescents in Aceh.²⁶ Ratna Kusuma Hening conducts a comparative analysis of the responses of Indonesian and German teenagers regarding cybering activities if they continue in the future.²⁷ Additionally, Anna Lilja Steensig and Jacob Westh investigate the role of teledildonics in maintaining intimacy for long-distance couples.²⁸

The sixth theme investigates Islamic law in its relation to the realities of the cyber world, as demonstrated in works like those by Husnul Muttaqin who discusses "fikih" in the era of cyberspace, explaining the reality of human interactions in the virtual world and the necessity of changes in "fikih" (Islamic jurisprudence).²⁹ discusses "fikih" in the era of cyberspace, explaining the reality

Symptoms," *The Journal of Sex Research* 53, no. 6 (July 23, 2016): 1–10, <https://doi.org/10.1080/00224499.2015.1051213>.

²¹ A. Wéry and J. Billieux, "Problematic Cybersex: Conceptualization, Assessment, and Treatment," *Addictive Behaviors* 64 (January 1, 2017): 1–9, <https://doi.org/10.1016/j.addbeh.2015.11.007>.

²² Satyanarayana Reddy Alla, "Prevalence Of Cybersex in India," *Texila International Journal of Academic Research* 8, no. 4 (October 30, 2021): 1–7, <https://doi.org/10.21522/TIJAR.2014.08.04.Art005>.

²³ Kristian Daneback, Al Cooper, and Sven-Axel Månsson, "An Internet Study of Cybersex Participants," *Archives of Sexual Behavior* 34, no. 3 (June 1, 2005): 321, <https://doi.org/10.1007/s10508-005-3120-z>.

²⁴ Christiany Juditha, "Cybersex Behavior in Millennial Generation," *Jurnal Pekommas* 5, no. 1 (April 24, 2020): 51, <https://doi.org/10.30818/jpkm.2020.2050106>.

²⁵ Denisa Šukolová and Ivan Sarmany-Schuller, "Online Sexual Activities and Cybersex: A Study From Slovakia with Focus on Women'S Behaviour," 2013, 267–83.

²⁶ Hijrotul Zulfa et al., "Hubungan Antara Religiusitas Dengan Perilaku Cybersex Pada Remaja Di Aceh," *Journal of Community Mental Health and Public Policy*, Vol. No.2 2022, 95, <https://cmhp.lenterakaji.org/index.php/cmhp/article/view/71>.

²⁷ Ratna Kusuma Hening, "Cybering's Future Acceptance In Germany and Indonesia," *Jurnal Penelitian dan Pengembangan Komunikasi dan Informatika* 6, no. 2 (2015): 41, <https://jurnal.kominfo.go.id/index.php/jppki/article/view/593>.

²⁸ Anna Lilja Steensig and Jacob Øhrgaard Westh, "Intimate Sensory Technology in Long Distance Relationships," 2016, 1.

²⁹ Husnul Muttaqin, "Urgensi Pembaharuan Fiqh Era Cyberspace," *Jurnal Hukum Islam Kopertais Wilayah IV Surabaya* Vol. 01, No. 01, Maret 2009. (n.d.): 28–33.

of human interactions in the virtual world and the necessity of changes in "fikih" (Islamic jurisprudence),³⁰ and Ita Musarrofa and colleagues examine shared property in the digital age.³¹ Additionally, Ahmad Ropei and Ramdani Wahyu Sururie discuss the practice of "talak" (divorce) via WhatsApp.³²

Based on the author's knowledge, research on the relevance of cybersex to the concept of *kebahwat saḥīḥah* in Islamic family law has not been conducted. This study is significant in addressing this gap. Furthermore, within the discipline of Islamic family law, this study provides a normative explanation of the issues related to sexual matters between couples that occur in the virtual space. This research also offers legal arguments for practitioners in Sharia Courts when dealing with cases related to the sexual culture of married couples in the digital age.

Discussion

Cybersex and Solutions for Long-Distance Intimacy

There are numerous terms often used interchangeably with cybersex, such as computer sex, internet sex, netsex, or in informal everyday language, it's known as cybering. Gareth Branwyn, the editor of Wired magazine, as quoted by Budi Irwanto, predominantly uses the term compu-sex as a shortened form of online computer sex.³³ Until 2002, the term cybersex was also equated with OSA (Online Sexual Activities). Cooper and Griffin-Shelley included this term as a sub-category of activities that use the internet for sexual gratification.³⁴ Sexual activities within this category encompass a wide range, from viewing images to engaging in erotic conversations, often accompanied by masturbation.³⁵ So, OSA refers to the use of the internet (including text, audio, video, and graphic files) for various activities that involve human sexuality. This includes engaging in sexual conversations, seeking or participating in webcam sex, viewing pornography, or attempting to find romantic partners.

³⁰ Ita Musarrofa, "Dowry Trends in the Digital Age (Sociology of Law Review of the Use of Digital Dowry in the Cyber World Community)," *Jurnal Hukum Islam* 19, no. 1 (June 4, 2021): 151–74, <https://doi.org/10.28918/jhi.v19i1.3754>.

³¹ Ita Musarrofa et al., "Sociological-Normative Analysis of The Provision of Joint Property in The Cyber Era | Indonesian Journal of Interdisciplinary Islamic Studies," May 31, 2022, <https://ijis.or.id/index.php/ijis/article/view/96>.

³² Ahmad Ropei and Ramdani Wahyu Sururie, "Dinamika Penjatuhan Talak Melalui Whatsapp Dalam Paradigma Pembaharuan Hukum Keluarga Islam," *AL-HUKAMA: The Indonesian Journal of Islamic Family Law* 11, no. 1 (June 20, 2021): 160–84, <https://doi.org/10.15642/alhukama.2021.11.1.160-184>.

³³ Irawanto, "Mereguk Kenikmatan di Dunia Maya," October 5, 2017, 31–32.

³⁴ Šukolová and Sarmany-Schuller, "Online Sexual Activities and Cybersex," 4.

³⁵ Daneback, Cooper, and Månsson, "An Internet Study of Cybersex Participants,"

Brett Lanceford, a researcher from the University of South Alabama, broadly divides cybersex into three forms of activities. The first is textual/image-based virtual sex, which involves sending sexual messages to others through words designed to arouse sexual desire. Among adolescents, this activity is known as sexting, which involves sending explicit images and erotic conversations through chat with the aim of sexual arousal. This activity can be traced back to the love letters and phone calls that were common among previous generations. However, what sets it apart from cybersex is the anonymity in interacting with others who also seek similar sexual stimulation. Perpetrators can use various identities without being recognized by others.³⁶

The second, according to Brett Lanceford, is mechanical virtual sex. This involves watching pornography while using sex toys such as dildos, vibrators, or sex dolls. In this model of cybersex, the individual essentially tricks their body into thinking they are engaging in sexual activity by using devices and pornography. This activity can be considered a form of enhanced technological masturbation.³⁷

The third, according to Brett Lanceford, is interface-driven virtual sex. This activity represents an advancement from the second type mentioned earlier. Sexual devices like dildos, vibrators, and synthetic vaginas are connected to the internet, allowing them to be controlled remotely. Due to the remote control aspect, there is no anonymity in this activity, unlike the previous two activities.³⁸

One form of interface-driven virtual sex is teledildonics. The term teledildonics was first used by Howard Rheingold in his book *Virtual Reality* in 1991. The word teledildonic itself was borrowed by Rheingold from Theodor Nelson, who was the first to create a device capable of converting sound into a tactile stimulator in 1974. Teledildonics consists of two words, telepresence and dildonic. Telepresence refers to the ability to be present across electronic and regional boundaries, while dildonic refers to a self-operating machine or an automatic electronic haptic device.

When these two elements are combined, they result in a unique cybernetic effect.³⁹ Rheingold himself, as quoted by Anna Lilja Steensig and Jacob Westh, states that through the marriage of Virtual Reality (VR) technology with

³⁶ Brett Luncford, "Virtual Sex," in *Encyclopedia of Gender in Media*, ed. Kosut Mary (Thousand Oaks, CA: Sage, 2012), 425.

³⁷ Luncford, 426.

³⁸ Luncford, 426.

³⁹ Aaron Siegel, "Datadreamer - Sexual Evolution: Social Implications of Teledildonic Adoption," 1, accessed June 3, 2023, <https://www.datadreamer.com/item/teledildonics>.

communication networks, we will be able to reach and touch someone, even entire populations, in ways that humans have never experienced before.⁴⁰

If defined, teledildonics refers to how people can experience sensations and vibrations through a worldwide internet connection using devices such as vibrators, via smartphones, tablets, or computers. In brief, teledildonics can be described as a sex toy or sexual device connected to the internet, allowing it to be used by two individuals who are separated.⁴¹ One key aspect of the power of teledildonics is its ability to facilitate communication. Nevertheless, ultimately, it is employed for engaging in sexual activities with individuals who are geographically distant. Howard Rheingold predicted this in his 1991 book titled *Virtual Reality*.⁴²

In telephone sex, the range of activities individuals can engage in during long-distance sexual encounters is limited to descriptive chat sessions where they express desires, emotions, and actions by self-stimulation, without any direct physical communication. In the early stages of cybersex, people began to use two-way video, audio, and text communication. In this context, individuals acted as if they were experiencing sexual activities in the real world, which was a step further compared to telephone sex because it provided anonymity for the users.⁴³ The sexual experiences offered by these media are perceived as lacking in terms of physical intimacy because none of them integrate physical contact into communication. This is the issue that teledildonics aims to address and solve.

The initial function of teledildonics was for communication devices. It differs in its ability to transmit neurological signals, allowing not only sexual stimulation signals but also gestures like kisses, hand-holding, hugs, and other physical touches to be sent.⁴⁴ The existing teledildonics systems, such as Kiiroo, Interactive Couples Set, and Lovense Bluetooth Sex Toy, were developed by the adult industry to enable interaction for pornography consumers. These devices were also created to maintain intimacy for long-distance couples. The system comprises hardware in the form of sex toys for both men and women, which are connected to a computer, Wi-Fi, and Bluetooth.

Teledildonics transmits haptic data that allows couples to experience physical sensations like vibrations, contractions, and other movements during virtual sexual activities. Most teledildonics systems also include online communication platforms, such as Skype, which enable couples to engage in

⁴⁰ Steensig and Westh, "Intimate Sensory Technology in Long Distance Relationships," 7.

⁴¹ Steensig and Westh, 7.

⁴² Siegel, "Datadreamer - Sexual Evolution: Social Implications of Teledildonic Adoption," 1.

⁴³ Siegel, 1.

⁴⁴ Siegel, 4.

video chats while using these devices for virtual sexual activities.⁴⁵ Virtual sex equipment is openly available for purchase, for example, on websites like <https://teledildonics.co>.⁴⁶

The advancement of IoT (Internet of Things) technology and the needs of long-distance couples have given rise to the idea of creating remote sexual aids that can be used by couples engaging in online intimacy. A prominent condom company from Australia, with substantial sales in the United States, has developed underwear for both women and men with built-in vibrators connected to the internet. These garments can be remotely controlled through mobile applications on each partner's phone, allowing them to create vibrations and sensations from a distance.⁴⁷ Another example is the kissenger or kiss messenger, a device designed to send remote kisses to one's partner. When the lips are placed on the device, the partner will feel the sensation of kissing their significant other who is also using the device.⁴⁸

Another example is the hug shirt, which is a shirt equipped with Bluetooth sensors and a hugging-sending application. When wearing this shirt, long-distance partners can feel the sensation of being hugged through the Bluetooth sensors embedded in the garment.⁴⁹ In addition to these devices, a couple of applications can be installed on the smartphones of long-distance partners. Through these applications, couples can have a dedicated space to share intimate thoughts and messages, helping them maintain a sense of closeness despite the physical distance.

***Maṣlahah* In Classical and Contemporary Concepts**

In the process of reforming Islamic family law, a crucial and essential framework to consider is the concept of *maqāṣid al-sharīah*. *Maqāṣid al-sharīah* refers to what Allah intended when establishing the laws, what Allah aims to achieve through these laws, and what Allah seeks to accomplish in the enactment of a particular law.⁵⁰ The purpose of Allah in establishing laws is to

⁴⁵ Urszula Pruchniewska, "Teledildonics in the Media: A Voyant Analysis of Journalism on Virtual Sex Toys – Loretta C. Duckworth Scholars Studio," June 17, 2019, <https://sites.temple.edu/tudsc/2019/06/17/teledildonics-in-the-media-a-voyant-analysis-of-journalism-on-virtual-sex-toys/>.

⁴⁶ "Interactive Platforms Archives | Teledildonics," accessed June 3, 2023, <https://teledildonics.co/interactive-platforms>.

⁴⁷ Kompas Cyber Media, "Pakaian Dalam dengan Vibrator dari Durex," KOMPAS.com, May 2, 2013, ~Relationship~Seks.

⁴⁸ I. D. N. Times and M. Tarmizi Murdianto, "Cocok Buat Kamu yang LDR-an, 7 Teknologi Ini Bisa Bantu Melepas Rindu!," IDN Times, accessed August 29, 2022, <https://www.idntimes.com/tech/trend/m-tarmizi-murdianto/kumpulan-teknologi-yang-memfasilitasi-hubungan-jarak-jauh-ldr>.

⁴⁹ Times and Murdianto.

⁵⁰ Amir Syarifuddin, *Ushul Fikih, Jilid II*, cet. 7 (Jakarta: Kencana Prenadamedia Group, 2014), 232.

provide welfare and benefit to humanity in their worldly lives and their preparation for the hereafter. Maqasid al-Shariah represents the very essence of well-being itself.

A simple illustration of *maqāṣid al-sharīah*, as explained by Jasser Auda, can be likened to a curious child's series of "why" questions. For instance, when a child asks, "Why do we have to stop at a red light?" The parent might answer, "Because the police will issue a ticket." Unsatisfied, the child continues with, "Why is it that running a red light results in a ticket?" The parent responds, "Because such an action can endanger others." The child persists with another question, "Why aren't we allowed to endanger others?" To which the parent replies, "Because our fellow human beings are like our brothers and sisters, and we should love and care for others just as we love and care for ourselves." When the child continues with the question, "Why should we love others as we love ourselves?" the parent is prepared with the answer, "Because Allah is Most Just, and His justice includes creating us all as equals with equal rights. Allah has created the world based on justice."⁵¹

The illustrated conversation between the parent and child above demonstrates that questions about *al-maqāṣid* are inquiries into the ultimate objectives to be achieved through concrete, everyday actions. These objectives are fundamentally centered on creating well-being for all, emphasizing the broader purpose and principles behind specific actions and rules.

The term *maqāṣid* is of Arabic origin and is the plural form of the word *maksad*, which means intent, target, intention, purpose, or ultimate goal. In the context of Islamic law, *maqāṣid* refers to the objectives or purposes behind the laws. Scholars often use this term interchangeably with *maṣlaḥah*. For instance, Al-Juwaini sometimes uses the term *al-maṣālib al-'āmmah* interchangeably with *maqāṣid*. Abu Hamid al-Ghazali uses the term *al-maṣālib al-mursalah*, which refers to benefits or well-being not explicitly mentioned in religious texts, and this terminology was later followed by scholars like Fakhruddin ar-Razi and al-Amidi.⁵²

There are several interpretations of *al-maqāṣid*, namely: first, as the wisdom behind Islamic Sharia rules, such as zakat, which has the wisdom of strengthening the social structure and the economic well-being of the community, as well as prayer and other rituals to improve the quality of one's self. Second, *al-maqāṣid* is also understood as a set of noble objectives pursued by Islamic law through permitting or prohibiting various actions. For example, preserving human life is an objective that leads to the prohibition of murder, or safeguarding property is an objective that results in the prohibition of theft.

⁵¹ Jasser Auda, *Al-Maqasid Untuk Pemula* (Yogyakarta: Suka Press, 2013), 2.

⁵² Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*, diterj. Rosidin dan Ali Abd el-Mun'im (Bandung: Mizan, 2015), 32-33.

Third, *al-maqāṣid* is also seen as a set of divine goals and ethical concepts that underlie the application of law based on Islamic Sharia. This includes principles of justice, human dignity, free will, purity, solidarity, and other similar concepts.⁵³ These goals and principles are what will bridge Islamic law with the evolving realities of the digital era.

The classic version of Al-Maqasid classifies human needs into three levels: *darūriyat* (necessities), *hājjiyāt* (needs), and *tahsīniyāt* (luxuries). The *daruriyat* level is further classified into five necessities, which are: *hifẓ ad-dīn* (preservation of religion), *hifẓ an-nafs* (preservation of life), *hifẓ al-māl* (preservation of wealth), *hifẓ al-'aql* (preservation of intellect), and *hifẓ an-nasl* (preservation of lineage). Preserving these five necessities is obligatory because if any of them are disrupted, it will disrupt human survival. This is why actions like killing, stealing, consuming alcohol, and committing adultery are prohibited because they disrupt the basic needs for human existence.⁵⁴

The level of *hājjiyāt* is understood as a level of needs that are less critical, meaning that these needs are not related to life or death, for example, the need to get married, the necessity of transportation, trade, and so on. Meanwhile, *tahsīniyāt* (luxuries) are related to enhancing life, such as having a beautiful house, a car, and perfumes are considered a sign of God's blessings to humans. The *tahsīniyāt* level is not intended by scholars to be given more attention than the two preceding levels: *darūriyat* and *tahsīniyāt*.⁵⁵

The three levels of classical *al-maqāṣid* have been criticized by contemporary maqasid scholars in the 20th century. In their critique, they pointed out several weaknesses in the classical *maqāṣid*. First, the scope of classical *al-maqāṣid* encompasses the entire Sharia. *Al-maqāṣid* does not include specific objectives of a particular law or text that govern specific topics. Second, the classification of classical *al-maqāṣid* is directed only toward individuals rather than families, communities, or humanity as a whole. Third, classical *al-maqasid* do not encompass the most fundamental values that are universally recognized, such as justice, freedom, brotherhood, and others. Fourth, classical *al-maqasid* are deduced from the literature of the legal traditions (mazhab) rather than from the sacred texts (Qur'an and Hadith).⁵⁶

To overcome the weaknesses of classical *al-maqāṣid*, contemporary scholars have proposed changes in the following areas: First, an expansion of the scope of the law covered by *al-maqāṣid* into three categories, namely general *al-maqāṣid*, specific *al-maqasid*, and partial *al-maqasid*. Second, a broadening of the

⁵³ Auda, *Al-Maqasid Untuk Pemula*, 5.

⁵⁴ Auda, 5.

⁵⁵ Auda, 10-11.

⁵⁶ Auda, 12-13.

individualistic orientation of classical *al-maqāṣid* to encompass society, nations, and even humanity as a whole. Third, the direct deduction of *al-maqāṣid* from the sacred texts of the Quran and Hadith.⁵⁷

The key difference in the changing understanding of *al-maqāṣid*, between the classical and contemporary approaches, lies in the paradigm used. While classical *al-maqāṣid* places greater emphasis on protection, preservation, and guardianship, contemporary *al-maqāṣid* focus more on development and rights.⁵⁸

Maqasidi reasoning has become an important method for addressing emerging issues in the digital era. In the process of reform and renewal, this method enables adjustments without departing from the authentic roots of Islamic teachings. One such application is using maqasid to distinguish between means (*wasā'il*) and ends (*ahdāf*). Several Islamic scholars, such as Muhammad al Ghazali, Yusuf Qardawi, and Taha Jabir Al Alwani, emphasize the importance of distinguishing between means and ends in the process of renewing Islamic law.⁵⁹ Means are flexible and may change, while the ends are constants that must be achieved. The initial determination of the start of the fasting month (awal bulan puasa) is considered the objective (tujuan), while moon sighting (rukyat) is the means (sarana). The means (sarana) can be replaced with calculation (hisab) if it is deemed to be more accurate. Similarly, the hijab is a means to achieve the goal of modesty. The form and appearance of the hijab may vary, but the goal of maintaining modesty must always be upheld.

***Khalwat Ṣaḥīḥah* In the Thought of Scholars of the School of Thought**

Scholars from various Islamic jurisprudential schools hold different opinions regarding *kehalwat ṣaḥīḥah* and its legal consequences. The term *kehalwat ṣaḥīḥah* refers to the seclusion of a husband and wife in a closed space that allows them to engage in sexual relations without any barriers, typically in a private location with doors and windows closed. If they meet in public places, mosques, or other open settings, it does not qualify as *kehalwat ṣaḥīḥah*.⁶⁰

Scholars detail the barriers to sexual intercourse into three categories: physical, natural, legal, or religious.⁶¹ Among the physical barriers to sexual intercourse are circumstances such as the closure of the vaginal opening, the presence of an obstruction or bone within the vagina. In men, issues such as impotence (the inability to achieve or maintain an erection) or castration

⁵⁷ Auda, 13-16.

⁵⁸ Amin Abdullah, 'Epistemologi Keilmuan kalam dan Fikih dalam merespon perubahan di Era Negara-Bangsa dan Globalisasi (Pemikiran Filsafat Keilmuan Agama Islam Jasser Audah)', dalam *Jurnal Media Syariah*, Vol. XIV. No. 2, Juli-Desember, 2012, 146.

⁵⁹ Auda, *Al-Maqasid Untuk Pemula*, 75-82.

⁶⁰ Wahbah al-Zuhaili, *Al-Fiqh Al-Islamy Wa Adillatuhu*, Cet. 2, vol. 7 (Damaskus: Dar Al-Fikr, 1985), 321-22.

⁶¹ al-Zuhaili, 7:322.

(removal of the testicles) are also considered physical barriers that can prevent sexual intercourse. According to the Hanafi school of thought, the illness of either the husband or wife can also be considered a physical barrier that might prevent sexual intercourse. This is because when a person is ill, especially when their general health is significantly compromised, their sexual desire may decrease or even disappear. Even if the person is physically capable of having sexual intercourse, their reduced sexual desire due to illness can be a barrier to sexual relations within a marriage.⁶² While the Hanafi school of thought may consider certain conditions such as a decrease in sexual desire, laziness in engaging in sexual intercourse, impotence, or the absence of the male organ as not constituting a barrier to sexual relations, this is specific to the Hanafi school's interpretation. According to this view, the key factor in determining *khalwat sahīhah* (privacy suitable for sexual relations) is the ability to physically engage in sexual intercourse, even if it requires the use of one's fingers.⁶³

Natural barriers to sexual intercourse can include the presence of a third person in the room, even if that person is blind, asleep, or immature child. In these situations, it is generally considered inappropriate or undesirable to engage in sexual relations. As for legal or religious barriers, they pertain to situations where engaging in sexual intercourse is prohibited or discouraged by Islamic law (Sharia). For instance, sexual intercourse is not permitted while fasting during the month of Ramadan, during the state of *ihram* while on the Hajj pilgrimage, while a woman is in a state of menstruation (*haid*) or post-childbirth bleeding (*nifas*), or while an individual is engaged in obligatory prayers (*salat fardhu*).⁶⁴ Being alone together in a room during voluntary fasting (*sunna fasting*) or while performing voluntary prayers (*sunna prayers*) would generally not constitute *khalwat sahīhah*.⁶⁵

When there is an obstacle present that would likely prevent sexual intercourse, then the situation would be considered *khalwat fāsīdah*. On the contrary, if a husband and wife are alone in a closed room without the presence of the three obstructions, then scholars would rule it as *khalwat ṣahīḥah*, which has legal consequences, particularly in matters concerning the dowry (*mahar*) and the waiting period (*iddah*) in the event of divorce.

According to the Maliki school of thought and the *qaul jadīd* (new opinion) within the Shafi'i school, *khalwat ṣahīḥah* does not obligate the husband to pay the full dowry (*mahar*) in the event of divorce.⁶⁶ the husband is only

⁶² Abdul-Rahman Al-Jaziri, *Kitab Al fiqh ala Al-madẓāhib Al Arba'ah* (Beirut Libanon: Dar Al-Kutub Al-Ilmiyah, 2003), 103.

⁶³ Al-Jaziri, 103.

⁶⁴ al-Zuhaili, *Al Fiqh Al Islami*, 7:322.

⁶⁵ Al-Jaziri, *Kitab Al fiqh ala Al-madẓāhib Al Arba'ah*, 104.

⁶⁶ Dalam qaul qadimnya, Imam Syafi'i menyatakan bahwa *khalwat sahīhah* itu seperti persetubuhan dalam hal penetapan *mahar* Al-Jaziri, 101.

obligated to pay half of the specified dowry (mahar) or offer mut'a. This interpretation is based on Quranic verse Q.S. Al-Baqarah (2): 237.⁶⁷

In the Maliki school of thought, they hold that *khalwat ṣaḥīḥah* has two legal consequences. First, there is an obligation for the waiting period (iddah) for the wife, even if the husband and wife claim that no sexual intercourse took place. According to the Maliki view, iddah is considered a right given by Allah and is not contingent on the husband and wife's mutual agreement or denial. Secondly, in cases of dispute between the husband and wife regarding whether sexual intercourse occurred during a *khalwat ṣaḥīḥah*, the Maliki school of thought tends to give credibility to the wife's claim that intercourse did occur.⁶⁸ If the wife refuses to take an oath, she is entitled to half of the dowry (mahar). However, if the husband refuses to take an oath, he must surrender the entire dowry.⁶⁹

In the Hanafi and Hanbali schools of thought, *khalwat ṣaḥīḥah*, like sexual intercourse, results in the obligation of the full dowry (mahar). In the Hanbali school of thought, physical contact and kissing with sexual desire are deemed equivalent to sexual intercourse. Consequently, divorce following a *khalwat ṣaḥīḥah* has specific legal implications, which include: the husband is obligated to pay the full dowry (mahar), the child's lineage remains with the husband if the wife gives birth after six months of marriage, the wife is obliged to observe the waiting period (iddah), the husband is required to provide financial support during the iddah period. Furthermore, another legal consequence is the prohibition for the husband to marry a fifth wife while the fourth wife from the *khalwat ṣaḥīḥah* is still observing her iddah. Additionally, the husband is obliged to divorce the wife in a state of purity.⁷⁰

The legal basis used by the Hanafi and Hanbali schools for the aforementioned opinions is the Quranic verse from Surah An-Nisa', verses 20-21, which forbids husbands from taking back the dowry (mahar) once they have cohabited or consummated the marriage (*ijḏā*). Unlike the Maliki school, which interprets the term *ijḏā* as sexual intercourse, the Hanafi and Hanbali schools interpret *ijḏā* as seclusion (*khalwat*), without regard to whether sexual intercourse has occurred or not. Both of these schools also rely on a hadith of the Prophet which states that if a husband uncovers his wife's body and looks at her, he is obliged to pay her dowry, whether he has sexual intercourse with her or not.⁷¹

⁶⁷ al-Zuhaili, *Al Fiqh Al Islami*, 7:323.

⁶⁸ Al-Jaziri, *Kitab Al fiqh ala Al-madzhab Al Arba'ah*, 102.

⁶⁹ al-Zuhaili, *Al Fiqh Al Islami*, 7:323.

⁷⁰ al-Zuhaili, 7:323.

⁷¹ al-Zuhaili, 7:323.

Furthermore, the Hanafi and Hambali schools also base their opinions on a narration, where the righteous caliphs (*khulafā' al-rāshidīn*) ruled that if the curtains and doors had been closed, then in the case of divorce, the wife is entitled to receive her full dowry and must observe the waiting period (iddah), whether or not she had sexual relations during that time. This opinion is reasonable because in the situation of valid *khalwat ṣahīḥah*, the wife has placed herself in a compromising position, and therefore, she is entitled to receive her full dowry.⁷²

According to the Hanafi and Hanbali schools, valid *khalwat ṣahīḥah* has the same legal consequences as sexual intercourse concerning the issues of dowry and iddah. However, it is not treated the same as sexual intercourse in the following matters:⁷³

1. Valid *khalwat ṣahīḥah* does not grant the status of muḥṣan to the husband and wife, which means they cannot be subjected to stoning punishment (rajm) if they commit adultery after engaging in valid *khalwat ṣahīḥah*.
2. Valid *khalwat ṣahīḥah* does not require the husband and wife to perform ritual bathing (ghusl). Ghusl is obligatory only in the case of actual sexual intercourse (persetubuhan).
3. Valid *khalwat ṣahīḥah* does not render it prohibited for the husband to marry the daughter of the wife from a previous marriage. After the wife's divorce and the occurrence of a valid *khalwat ṣahīḥah*, the daughter from her previous marriage can be married.
4. A valid *khalwat ṣahīḥah* with a second husband does not make it permissible for a wife to return to her first husband who has pronounced three divorces. The validity of returning to the first husband in such cases typically requires consummation (intercourse) with the second husband.
5. A valid *khalwat ṣahīḥah* cannot be considered as a form of reconciliation between a husband and wife. Only consummation (intercourse) can be regarded as a form of reconciliation by the husband to the wife.
6. Divorce that occurs after a valid *khalwat ṣahīḥah* is considered talak bain (irrevocable divorce), not raj'i. This is because only consummation (intercourse) can lead to a raj'i divorce. Therefore, if a couple wishes to reconcile after a divorce that occurred following a valid *khalwat ṣahīḥah*, it would require a new marriage contract (akad) and a new dowry (mahar).
7. If one of the spouses passes away while the wife is observing the iddah period following a divorce that occurred after a valid *khalwat ṣahīḥah*, there is no inheritance relationship between the husband and wife.

⁷² al-Zuhaili, 7:323–24.

⁷³ Al-Jaziri, *Kitab Al fiqh ala Al-madzahib Al Arba'ah*, 105.

8. The legal status of a woman who is divorced after a valid *khalwat ṣaḥīḥah* is the same as that of a woman who is still a virgin because, essentially, she remains a virgin.⁷⁴

The Relevance of Cybersex to *Khalwat Ṣaḥīḥah*

Can cybersex be considered genuine or real sex? This question needs to be answered first to assess its relevance to the concept of *khalwat ṣaḥīḥah*. In interactive cybersex activities involving teledildonics, it's challenging to assert that sexual activities through cybersex are not real. All aspects of sexual activities in the physical world have their online equivalents readily available. If physical-world sex is preceded by sweet whispers and gentle gazes, those can be replicated by couples through video calls. Similarly, if real-world sex involves kissing and hugging, these activities also have their online substitutes. Couples can send the sensation of a kiss akin to the physical world through devices like kissenger and experience the sensation of a hug through a hug shirt. Each partner can also send physical stimulation to their respective genitalia using synthetic penises and vaginas that are connected to the internet. The only aspect that cannot be replicated through cybersex is the sense of smell. Currently, there are no teledildonics devices capable of transmitting the scent of one's partner during the sexual intercourse process.

Up to this point, information and communication technology capabilities have not been able to fully replicate the experience of face-to-face sex, as real sexual experiences are embodied experiences. The pleasure experienced in sexual activities is an interactive pleasure between two physical bodies. The meeting of two genitalia and two physical bodies is what scholars regulate because it has serious effects on human life and gives rise to the concept of lineage (*nasab*) as it can lead to pregnancy.

Nevertheless, it does not mean that cybersex can be considered non-existent and devoid of any legal consequences. In reality, couples engaging in cybersex can experience orgasm even without physical body interaction. This issue raises ontological questions about whether sex in the virtual world is real and has legal consequences similar to physical intercourse in the real world.

Cybersex, as it entirely lacks the possibility of physical body interaction, and even the presumption of such interaction is absent, cannot be equated legally with physical intercourse. However, it is more relevant when connected to the concept of *Ṣaḥīḥah Khalwat*, which is a subject of debate among scholars of different schools of thought. *Khalwat ṣaḥīḥah* is a concept developed by scholars in determining the legal consequences for the suspicion of the possibility of sexual intercourse occurring between a husband and wife, even if the actual sexual relationship has not taken place. The likelihood of engaging in

⁷⁴ al-Zuhaily, *Al Fiqh Al Islamy*, 7:324–25.

sexual relations in this context carries legal implications for the dowry (mahar) and waiting period (iddah) in the event of divorce after the occurrence of *ṣaḥīḥah khalwat*. If a husband and wife, following their marriage contract, only engage in virtual sexual activities as seen in the cybersex activities discussed above, can they be considered to have entered into a *khalwat ṣaḥīḥah*, thus obliging them to dowry (mahar) and waiting period (iddah) in the event of divorce thereafter?

By using teledildonics equipped with Skype applications, couples engaging in cybersex can expose their intimate parts, see each other, and provide physical stimulation over the internet. Although they are physically separated, they can experience the physical sensation of stimulation through teledildonics devices and provide reciprocal responses to their partners, ultimately achieving sexual satisfaction. Similarly, cybersex conducted through erotic conversations between partners allows each of them to exchange erotic descriptions of their bodies and sexual activities using words and images until both parties reach satisfaction.⁷⁵

The virtual sexual activities mentioned above are indeed not carried out through physical bodily contact. However, when a couple engages in virtual sexual intercourse, they are certainly in a state of *khalwat ṣaḥīḥah*, engaging in intimate and amorous interaction even though it occurs through the internet. Due to the impossibility of physical bodily interaction but still allowing for the display of each other's bodies and the establishment of intimacy, the level of reality presented by cybersex can be equated with *khalwat ṣaḥīḥah*. The laws applied to cybersex can be aligned with the laws of *khalwat ṣaḥīḥah*, rather than those about actual physical intercourse

In Islam, sexual relations serve not only as a means of fulfilling desires for pleasure (recreation) but also for procreation, to continue the lineage and increase the community of believers. The functions of sex for both procreation and recreation are expounded upon by Banagiano and Maurizio Mori in their article. Societies in various countries may have differing perspectives on the functions of sex in this regard. European societies tend to view sex more as a recreational function rather than primarily for procreation, whereas in Asia, sex is often considered more for procreation rather than recreation.⁷⁶ With this definition, the type of sex that scholars from different schools of thought refer to is sex that can satisfy desires by providing pleasure while also having the potential to give birth to offspring. Sex in the virtual world is solely oriented toward practical pleasure, allowing for pleasure even when the physical body is

⁷⁵ Stahl Stenslie, "Cybersex," in *The Oxford Handbook of Virtuality*, ed. Mark Grimshaw, Chapter 18 (Oxford University Press, n.d.).

⁷⁶ Giuseppe Benagiano and Maurizio Mori, "The Origins of Human Sexuality: Procreation or Recreation?" *Reproductive BioMedicine Online* 18 (January 1, 2009): 50–51, [https://doi.org/10.1016/S1472-6483\(10\)60116-2](https://doi.org/10.1016/S1472-6483(10)60116-2).

absent. However, the procreative function in cybersex is absent because cybersex is "sex without secretion," a sexual activity carried out without bodily fluid exchange. The recreational aspect of cybersex is what can be equated with the suspicion of sexual intercourse having occurred between a husband and wife who have engaged in *khalwat ṣaḥīḥah*.

In the Shafi'i school of thought, based on their *qaul jadid* (revised opinion), the ruling for *khalwat ṣaḥīḥah* is not the same as that for physical intercourse. According to the Shafi'i school, if a couple divorces after *khalwat ṣaḥīḥah*, the husband is obligated to pay half of the agreed-upon dowry (mahar musamma) or mut'ah to the wife, and there is no requirement for the wife to observe iddah.

The Maliki school shares a similar opinion with the Shafi'i school regarding the impact of *khalwat ṣaḥīḥah* on the dowry (mahar). However, they differ in their stance on the impact of *khalwat ṣaḥīḥah* on iddah. According to the Maliki school, the wife must still observe iddah after *khalwat ṣaḥīḥah*, even if the husband and wife mutually agree that there was no physical intercourse. In cases of dispute between husband and wife regarding whether sexual intercourse occurred or not, the wife's testimony is considered. Based on the Shafi'i school's opinion mentioned earlier, cybersex may not result in the obligation to pay the full dowry (mahar) to the wife. Instead, it may lead to the payment of half of the dowry or mut'ah. Furthermore, there might be no requirement for the wife to observe iddah after engaging in cybersex. In accordance with the Maliki school's perspective, the wife may only be entitled to half of the dowry if she is divorced after engaging in cybersex. However, regarding iddah, the wife is still obligated to observe it in the event of divorce after cybersex.

In contrast to the opinions of the Shafi'i and Maliki schools, the Hanafi and Hanbali schools assert that *khalwat ṣaḥīḥah* obligates the husband to pay the full dowry (mahar musamma) and necessitates the wife to observe iddah. Following the Hanafi and Hanbali perspectives, if a couple engages in cybersex, the wife is obligated to observe iddah, and the husband is required to pay the full dowry.

The Hanafi and Hanbali schools base their opinions on Qur'an, Surah An-Nisa (4:20-21), which prohibits husbands from taking back the dowry (mahar) after having been with their wives (*ijḏā*). In the context of these two schools, *ijḏā* is understood as *khalwat*. Even if no physical intercourse takes place, if the husband and wife have engaged in *khalwat ṣaḥīḥah*, the obligation to pay the full dowry is considered to be in effect. Additionally, besides the aforementioned Quranic verse, the Hanafi and Hanbali schools also base their opinions on a Hadith of the Prophet (peace be upon him), which states that if a husband uncovers his wife's body and looks at her, he is obligated to give the dowry (mahar). Cybersex can be equated with non-intimate seclusion (*khalwat*)

without physical intercourse because it inherently lacks the potential for physical contact that could lead to pregnancy. According to the opinions of the Hanafi and Hanbali schools of thought, cybersex would trigger the husband's obligation to pay the full stipulated dowry (*mahar musamma*).

In terms of determining the obligation of *iddah* (waiting period) after *khalwat ṣaḥīḥah*, the Hanafi and Hanbali schools follow a specific narration where the Rightly Guided Caliphs stated that when the curtain and door have been closed if divorce occurs, the wife is entitled to the full dowry and must observe the *iddah* period, regardless of whether sexual intercourse took place or not. So, the determination of the obligation of *iddah* is not based on whether sexual intercourse occurred, but merely on the act of seclusion (*khalwat*), as per the viewpoints of these two schools. Therefore, according to the opinions of the Hanafi and Hanbali schools, engaging in cybersex by a husband and wife would, if leading to divorce, obligate the observance of the *iddah* period.

Maslahah Analysis on the Fulfillment of Husband and Wife's Sexual Needs Through Cybersex

In a family, a husband is duty-bound to treat his wife with kindness, including the preservation of her purity and engaging in conjugal relations. Scholars have varying opinions on the legal aspects of engaging in sexual intercourse with one's wife. The Maliki school of thought maintains that sexual intercourse is obligatory for a husband towards his wife unless there are valid reasons for abstaining. In contrast, according to the Shafi'i school, obligatory intercourse should only occur once, as marital relations, according to the Shafi'i school, are the husband's right; he can exercise this right or choose to abstain from it.⁷⁷

Differing from the two aforementioned schools of thought, scholars from the Hanbali school contend that marital intercourse is obligatory for the husband towards his wife every four months, provided there are no impediments. This viewpoint is based on the reasoning that if intercourse were not an obligation, there would be no specified time frame for "*ila*" (a period of abstinence). The obligation of intercourse is established to prevent the husband and wife from the potential harm of desire. Therefore, intercourse is considered a right for both parties, not just one.⁷⁸

The consequence of the Hanbali school's view mentioned above is that if four months have passed since marriage without consummation of the marriage without any valid reason, both parties should be separated just as they would be in the case of "*ila*." The annulment of a marriage due to the non-fulfillment of sexual intercourse, according to the Hanbali school, is considered

⁷⁷ Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, trans. Abdul Hayyie Al Kattani dkk., vol. 9 (Jakarta: Gema Insani, 2011), 296.

⁷⁸ Az-Zuhaili, 9:296.

more significant than the annulment due to non-fulfillment of financial support.⁷⁹

The obligation to engage in sexual relations with one's wife, as stipulated by scholars from these schools of thought, is connected to the definition of marriage as a contract conferring the authority to enjoy and take pleasure in one another's bodies and sexual organs. Scholars within the Shafi'i school hold differing opinions on whether this authority belongs solely to the husband or is shared by both the husband and wife. For those who adhere to the viewpoint that this authority belongs solely to the husband, the wife may not demand sexual relations from her husband. However, for those who believe that the authority to enjoy belongs to both the husband and wife, the wife may request sexual relations from her husband, as this right belongs to both of them.

Meanwhile, scholars of the Hanafi school maintain the viewpoint that the authority to enjoy and take pleasure in sexual relations belongs to the husband, not the wife. Therefore, the husband can compel his wife to engage in sexual intercourse.⁸⁰ In the Hanafi school, a woman cannot force her husband to have sexual intercourse except once. Nevertheless, according to the Hanafi school, men must protect the honor of women to prevent any harm to their morality.

In cases where a husband and wife are separated due to certain circumstances, the husband may not be able to fulfill his obligation to have sexual relations with his wife. The viewpoint of scholars from various schools of thought regarding the obligation of a husband to have sexual relations with his wife is related to the concept of sexual pleasure, aiming to channel the sexual desires of both the husband and wife in a manner permissible by Islamic law, thus preserving the morality and ethics of both parties.

If, during his absence from his wife, the husband continues to provide sexual pleasure through virtual means, then the husband's obligation is considered fulfilled, even if this is done through cybersex, because cybersex can achieve the goal of providing sexual pleasure. In this case, the husband cannot be sued for divorce on the grounds of not fulfilling his obligation to have sexual relations with his wife because he has fulfilled it through virtual means.

Sexual needs are a fundamental human requirement that Islam addresses through marriage. Islam strongly prohibits the fulfillment of these sexual needs outside of marriage. The fulfillment of these sexual needs can vary significantly from one individual to another. For someone with a high sexual drive, fulfilling their sexual needs becomes a necessary (*darur*) matter to prevent them from committing adultery. However, for others, their sexual needs might be

⁷⁹ Az-Zuhaili, 9:296.

⁸⁰ Al-Jaziri, *Kitab Al-fiqh ala Al-Madżabib Al-Arba'ah*, 9.

categorized as desirable (*ḥājīyah*) or even optional (*taḥsīniyah*), meaning that not fulfilling these needs may not lead them to commit adultery.

Fulfilling the sexual needs of a couple through cybersex can greatly depend on the individual circumstances of the couple. As a means, it can be considered a necessary (*darūriyah*), desirable (*ḥājīyah*), or even optional (*taḥsīniyah*) need, depending on the sexual requirements of each partner when they are separated from each other. Cybersex, in this context, is merely a tool that can adapt to achieve the goal of maintaining the intimacy between husband and wife. Sex itself is also a tool that can vary, with the ultimate goal being to create a marital relationship that is "sakinah" (tranquility), "mawaddah" (love), and "rahmah" (mercy). This goal is what is sought, even though the means can take various forms.

Conclusion

Cybersex, which is currently popular among online communities, cannot be equated with actual sexual intercourse in terms of legal regulations. Cybersex is conducted without physical contact, making it entirely impossible for pregnancy to occur. In other words, there are no issues related to lineage (*nasab*) in the context of cybersex activities. If sexual activity within a marriage serves both a procreative and recreational function, then cybersex primarily fulfills the recreational aspect. Therefore, cybersex is more relevant to the concept of *kebalwat ṣaḥīḥah*, which is debated for its impact on marital rights and obligations, including mahar (dowry) and iddah (waiting period), by scholars from various schools of thought.

According to the Shafi'i school of thought, a valid *kebalwat ṣaḥīḥah* between a husband and wife obligates the husband to pay half of the dowry (mahar), and it does not result in any waiting period (iddah) for the wife. In contrast, the Maliki school holds that in the case of a valid *kebalwat ṣaḥīḥah*, the wife is obligated to observe a waiting period (iddah), while the husband is only required to pay half of the dowry (mahar). According to the Hanafi and Hanbali schools of thought, after a valid *kebalwat ṣaḥīḥah* has occurred, the husband is obliged to pay the full stipulated dowry (mahar), and the wife is required to observe a waiting period (iddah) similar to that following a divorce (iddah talak bain). Since cybersex can be considered one form of *kebalwat ṣaḥīḥah*, the rulings established by these scholars would also apply when a married couple engages in cybersex and subsequently divorces.

Cybersex engaged in by couples in a Long-Distance Relationship (LDR) can serve as a solution to maintain intimacy despite the physical distance. Its importance can vary, being a necessary (*darūriyah*), desirable (*ḥājīyah*), or even optional (*taḥsīniyah*) need, depending on the specific sexual requirements and circumstances of each individual in the relationship. The fulfillment of sexual needs through cybersex is merely a means (*wasāil*) with its primary goal (*ahdāf*)

being the realization of a harmonious and loving marital relationship that is *sakinah*, *mawaddah*, and *rahmah*. Meeting the sexual needs of a couple can adapt to the tools available in the digital age, such as cybersex. Nevertheless, the enduring objective that must be achieved is a lasting and happy family ("keluarga sakinah").

References

- Alfitra, Alfitra, Afwan Faizin, Ali Mansur, and Muhammad Harfin Zuhdi. "Decency Norms in Law Enforcement to Online Prostitution in Indonesia: An Islamic Law Perspective." *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (May 23, 2023): 194–214. <https://doi.org/10.29240/jhi.v8i1.7044>.
- Al-Jaziri, Abdul-Rahman. *Kitab Al fiqh ala Al-madzahib Al Arba'ah*. Beirut Libanon: Dar Al-Kutub Al-Ilmiyah, 2003.
- Alla, Satyanarayana Reddy. "Prevalence Of Cybersex in India." *Texila International Journal of Academic Research* 8, no. 4 (October 30, 2021): 42–48. <https://doi.org/10.21522/TIJAR.2014.08.04.Art005>.
- Auda, Jasser. *Al-Maqasid Untuk Pemula*. Yogyakarta: Suka Press, 2013.
- Az-Zuhaili, Wahbah. *Fiqih Islam Wa Adillatuhu*. Translated by Abdul Hayyie Al Kattani dkk. Vol. 9. Jakarta: Gema Insani, 2011.
- Benagiano, Giuseppe, and Maurizio Mori. "The Origins of Human Sexuality: Procreation or Recreation?" *Reproductive BioMedicine Online* 18 (January 1, 2009): 50–59. [https://doi.org/10.1016/S1472-6483\(10\)60116-2](https://doi.org/10.1016/S1472-6483(10)60116-2).
- Cahyadi, Indra. "Tata Kelola Dunia Maya dan Ancaman Kedaulatan Nasional." *Jurnal Politika Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional* 7, no. 2 (October 23, 2018). <https://doi.org/10.22212/jp.v7i2.1134>.
- Chotimah, Hidayat Chusnul. "Tata Kelola Keamanan Siber dan Diplomasi Siber Indonesia di Bawah Kelembagaan Badan Siber dan Sandi Negara [Cyber Security Governance and Indonesian Cyber Diplomacy by National Cyber and Encryption Agency]." *Jurnal Politika Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional* 10, no. 2 (November 25, 2019): 113–28. <https://doi.org/10.22212/jp.v10i2.1447>.
- Daneback, Kristian, Al Cooper, and Sven-Axel Månsson. "An Internet Study of Cybersex Participants." *Archives of Sexual Behavior* 34, no. 3 (June 1, 2005): 321–28. <https://doi.org/10.1007/s10508-005-3120-z>.
- Fitriani, Yuni, and Roida Pakpahan. "Analisa Penyalahgunaan Media Sosial Untuk Penyebaran Cybercrime Di Dunia Maya Atau Cyberspace." *Cakrawala - Jurnal Humaniora* 20, no. 1 (May 7, 2020): 21–27. <https://doi.org/10.31294/jc.v20i1.6446>.
- Fuady, Muhammad E. "Cybercrime': Fenomena Kejahatan melalui Internet di Indonesia." *Mediator: Jurnal Komunikasi* 6, no. 2 (December 19, 2005): 255–64. <https://doi.org/10.29313/mediator.v6i2.1194>.

- Hening, Ratna Kusuma. "Cybering's Future Acceptance In Germany and Indonesia." *Jurnal Penelitian dan Pengembangan Komunikasi dan Informatika* 6, no. 2 (2015). <https://jurnal.kominfo.go.id/index.php/jppki/article/view/593>.
- Indra Pratama, Bayu. *Etnografi Dunia Maya Internet*. Malang: UB Media, 2017.
- Indrawan, Jerry. "Cyberpolitics Sebagai Perspektif Baru Memahami Politik di Era Siber [Cyberpolitics as A New Perspective in Understanding Politics in The Cyber Era]." *Jurnal Politika Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional* 10, no. 1 (May 31, 2019): 1–16. <https://doi.org/10.22212/jp.v10i1.1315>.
- "Interactive Platforms Archives | Teledildonics." Accessed June 3, 2023. <https://teledildonics.co/interactive-platforms>.
- Irawanto, Budi. "Mereguk Kenikmatan di Dunia Maya: Virtualitas dan Penubuhan dalam Cybersex." *Jurnal Kawistara* 7, no. 1 (October 5, 2017): 30–40. <https://doi.org/10.22146/kawistara.23728>.
- . "Mereguk Kenikmatan di Dunia Maya: Virtualitas dan Penubuhan dalam Cybersex." *Jurnal Kawistara* 7, no. 1 (October 5, 2017): 30–40. <https://doi.org/10.22146/kawistara.23728>.
- Juditha, Christiany. "Cybersex Behavior in Millenial Generation." *Jurnal Pekommas* 5, no. 1 (April 24, 2020): 47–58. <https://doi.org/10.30818/jpkm.2020.2050106>.
- Latumahina, Rosalinda Elsin. "Aspek Hukum Perlindungan Data Pribadi di Dunia Maya," December 1, 2014. <http://dspace.uphsurabaya.ac.id:8080/xmlui/handle/123456789/92>.
- Lunceford, Brett. "Virtual Sex." In *Encyclopedia of Gender in Media*, edited by Kosut Mary. Thousand Oaks, CA: Sage, 2012.
- Marita, Lita Sari. "Cyber Crime Dan Penerapan Cyber Law Dalam Pemberantasan Cyber Law Di Indonesia." *Cakrawala - Jurnal Humaniora* 15, no. 2 (2015). <https://doi.org/10.31294/jc.v15i2.4901>.
- Media, Kompas Cyber. "Pakaian Dalam dengan Vibrator dari Durex." KOMPAS.com, May 2, 2013. ~Relationship~Seks.
- Musarrofa, Ita. "Dowry Trends in the Digital Age (Sociology of Law Review of the Use of Digital Dowry in the Cyber World Community)." *Jurnal Hukum Islam* 19, no. 1 (June 4, 2021): 151–74. <https://doi.org/10.28918/jhi.v19i1.3754>.
- Musarrofa, Ita, Sofiatun Nisak, Mochammad Rofyal Muzakki, and Aulia Avan Rachman. "Sociological-Normative Analysis of The Provision of Joint Property in The Cyber Era | Indonesian Journal of Interdisciplinary Islamic Studies," May 31, 2022. <https://ijis.or.id/index.php/ijis/article/view/96>.
- Muttaqin, Husnul. "Urgensi Pembaharuan Fiqh Era Cyberspace." *Jurnal Hukum Islam Kopertais Wilayah IV Surabaya* Vol. 01, No. 01, Maret 2009. (n.d.).
- Nurcholis. "Cyberpornography (Pornografi Di Dunia Maya) Dalam Perspektif Hukum Positif Dan Hukum Islam." UIN Syarif Hidayatullah, 2015.

- Nursita, Rizki Dian. "Cyberspace: Perdebatan, Problematika, Serta Pendekatan Baru Dalam Tata Kelola Global." *Dauliyah Journal of Islamic and International Affairs* 4, no. 1 (February 25, 2019): 80–99. <https://doi.org/10.21111/dauliyah.v4i1.2934>.
- Piliang, Yasraf Amir. *Dunia Yang Berlari, Mencari Tuban-Tuban Digital*. Jakarta: PT. Grasindo, 2004.
- . *Post Realitas: Realitas Kebudayaan Di Era Post-Metafisika*. Yogyakarta: Jalasutra, 2010.
- . *Sebuah Dunia Yang Dilipat*. Bandung: Mizan, 1998.
- Piliang, Yasraf Amir. "Masyarakat Informasi Dan Digital: Teknologi Informasi Dan Perubahan Sosial." *Jurnal Sosioteknologi* 11, no. 27 (December 1, 2012): 143–55. <http://journals.itb.ac.id/index.php/sostek/article/view/1098>.
- Prabowo, Galih Akbar. "Cyber Sex Sebagai Implikasi Perkembangan Teknologi Komunikasi." *Journal of Communication Studies* 1, no. 2 (December 29, 2021): 81–95. <https://doi.org/10.37680/jcs.v1i2.850>.
- Pribadi, Satria Ajie, and Dona Eka Putri. "Perbedaan Sikap Terhadap Seks Dunia Maya Pada Mahasiswa Ditinjau dari Jenis Kelamin." *Proceeding PESAT (Psikologi, Ekonomi, Sastra, Arsitektur, & Sipil)* 3 (2009): 5.
- Pruchniewska, Urszula. "Teledildonics in the Media: A Voyant Analysis of Journalism on Virtual Sex Toys – Loretta C. Duckworth Scholars Studio," June 17, 2019. <https://sites.temple.edu/tudsc/2019/06/17/teledildonics-in-the-media-a-voyant-analysis-of-journalism-on-virtual-sex-toys/>.
- R, Ibrahim. "Jurisdiksi Dunia Maya (Cyberspace) Dalam Sistem Hukum Nasional Abad XXI." *Jurnal Hukum IUS QUILA IUSTUM* 10, no. 24 (2003): 119–27. <https://doi.org/10.20885/iustum.vol10.iss24.art10>.
- Ropei, Ahmad, and Ramdani Wahyu Sururie. "Dinamika Penjatuhan Talak Melalui Whatsapp Dalam Paradigma Pembaharuan Hukum Keluarga Islam." *AL-HUKAMA: The Indonesian Journal of Islamic Family Law* 11, no. 1 (June 20, 2021): 160–84. <https://doi.org/10.15642/alhukama.2021.11.1.160-184>.
- Siegel, Aaron. "Datadreamer - Sexual Evolution: Social Implications of Teledildonic Adoption." Accessed June 3, 2023. <https://www.datadreamer.com/item/teledildonics>.
- Steensig, Anna Lilja, and Jacob Øhrgaard Westh. "Intimate Sensory Technology in Long Distance Relationships," 2016.
- Stenslie, Stahl. "Cybersex." In *The Oxford Handbook of Virtuality*, edited by Mark Grimshaw. Chapter 18. Oxford University Press, n.d.
- Šukolová, Denisa, and Ivan Sarmany-Schuller. "Online Sexual Activities and Cybersex: A Study From Slovakia with Focus on Women'S Behaviour," 267–83, 2013.
- Times, I. D. N., and M. Tarmizi Mardianto. "Cocok Buat Kamu yang LDR-an, 7 Teknologi Ini Bisa Bantu Melepas Rindu!" IDN Times. Accessed August 29,

2022. <https://www.idntimes.com/tech/trend/m-tarmizi-murdianto/kumpulan-teknologi-yang-memfasilitasi-hubungan-jarak-jauh-ldr>.
- Warsiman. “Tinjauan Hukum Terhadap Pelacuran Dalam Dunia Maya (Cyber Prostitution) Menurut Undang-Undang No. 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik” Vol. 3, No. 1 (June 2014).
- Wéry, A., and J. Billieux. “Problematic Cybersex: Conceptualization, Assessment, and Treatment.” *Addictive Behaviors* 64 (January 1, 2017): 238–46. <https://doi.org/10.1016/j.addbeh.2015.11.007>.
- Wéry, Aline, and J. Billieux. “Online Sexual Activities: An Exploratory Study of Problematic and Non-Problematic Usage Patterns in a Sample of Men.” *Computers in Human Behavior* 56 (March 1, 2016): 257–66. <https://doi.org/10.1016/j.chb.2015.11.046>.
- Wéry, Aline, Jonathan Burnay, Laurent Karila, and Joël Billieux. “The Short French Internet Addiction Test Adapted to Online Sexual Activities: Validation and Links With Online Sexual Preferences and Addiction Symptoms.” *The Journal of Sex Research* 53, no. 6 (July 23, 2016): 701–10. <https://doi.org/10.1080/00224499.2015.1051213>.
- Zuhaily, Wahbah al-. *Al Fiqh Al Islamy Wa Adillatuhu*. Cet. 2. Vol. 7. Damaskus: Dar Al-Fikr, 1985.
- Zulfa, Hijratul, Maya Khairani, Risana Rachmatan, and Zaujatul Amna. “Hubungan Antara Religiusitas Dengan Perilaku Cybersex Pada Remaja Di Aceh.” *Journal of Community Mental Health and Public Policy*, Vol. No.2 2022. <https://cmhp.lenterakaji.org/index.php/cmhp/article/view/71>.