

Divorce Due to Online Gambling in Indonesian Religious Courts: Legal Certainty and Women's Protection in Islamic and Positive Law

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Abstract

The rise of online gambling in Indonesia has created serious family and legal problems. When husbands become addicted, financial neglect, debt accumulation, and domestic conflict often lead to divorce, leaving women as the most affected group. This study analyzes legal certainty and women's protection in divorce cases caused by online gambling from both Islamic and positive law perspectives. Using a normative juridical method with statutory, conceptual, and case approaches, the research examines relevant laws and Religious Court decisions in Bengkulu. The results show that legal certainty is guaranteed through consistent court procedures and statutory frameworks such as the Marriage Law, Government Regulation No. 9 of 1975, the Compilation of Islamic Law, and the ITE Law, which classify gambling as a legitimate ground for divorce. Women's protection is realized through iddah maintenance, mut'ah, custody rights, and division of joint property. This study's novelty lies in integrating Islamic and national law analyses to reveal how legal certainty principles are operationalized in court practice to ensure substantive justice for women affected by online gambling-related divorces.

Keywords: Legal Certainty, Women's Protection, Divorce, Online Gambling, Islamic Law and Positive Law

INTRODUCTION

Online gambling has become a growing social and legal issue in Indonesia. The rapid development of digital technology has made gambling activities easily accessible to the public without restrictions of age, time, or place. Data from the Financial Transaction Reports and Analysis Center (PPATK) recorded that as of 2024,

online gambling users in Indonesia reached 8.8 million people, with a total financial turnover of approximately IDR 359.8 trillion¹. The Indonesian National Police (Polri) also reported handling more than 2,800 gambling cases with 3,188 suspects in the same year. These figures indicate that online gambling is no longer an isolated criminal phenomenon but a national problem with serious implications for family integrity and legal order.²

The impacts of online gambling extend beyond financial losses. Families experience deteriorating relationships, neglected responsibilities, and social disintegration. Psychologically, gambling addiction often triggers anxiety, stress, and even violent or self-destructive behavior suicide³. Within the household, when a husband becomes addicted to gambling, family income is diverted, debts increase, and domestic conflict intensifies, frequently leading to divorce. In such circumstances, women are the most vulnerable group, suffering from economic deprivation, psychological trauma, and loss of legal protection⁴. This raises an urgent legal question: to what extent do Islamic and national legal systems provide certainty and protection for women in divorce cases caused by online gambling?

Several prior studies have examined divorce resulting from gambling or economic neglect. Asman (2024)⁵ and Himmah & Hasibuan (2024)⁶ analyzed the legal basis for divorce within Islamic and positive law frameworks but focused primarily on normative legitimacy. Meanwhile, Sriyana (2025)⁷ and Nafis Azka et al. (2024)⁸ discussed online gambling mainly from social and psychological perspectives without exploring its legal consequences for families or women's rights. Other

¹ PPAATK, "Laporan Tahunan PPAATK Tahun 2024," Pusat Pelaporan dan Analisis Transaksi Keuangan (PPAATK)., downloaded on September 14, 2025 from <https://www.ppatk.go.id/publikasi/read/255/laporan-tahunan-ppatk-tahun-2024>.

² Anggi Muliawati, "Kapolri Ungkap 1.918 Tersangka Judi Online Dijerat Sepanjang 2024," CNN, 2024, downloaded on September 15, 2025 from <https://www.cnnindonesia.com/nasional/20241114163300-12-1166671/pemain-judi-online-di-indonesia-capai-88-juta-mayoritas-anak-muda>.

³ Sriyana Sriyana, "Judi Online: Dampak Sosial, Ekonomi, Dan Psikologis Di Era Digital," *Jurnal Sociopolitico* 7, no. 1 (2025): 27–34.

⁴ Nafis Azka Syakira et al., "Dampak Konsumerisme Berupa Judi Online Di Indonesia: Perspektif Ekonomi, Sosial, Dan Mental," *Jurnal Interaktif* 16, no. 2 (2024): 73–79.

⁵ Asman Asman, "Dampak Negatif Judi Online Terhadap Keharmonisan Rumah Tangga Perspektif Hukum Keluarga Islam," *Ahlika: Jurnal Hukum Keluarga Dan Hukum Islam* 1, no. 1 (2024): 11–35.

⁶ Atikatul Himmah and Kalijunjung Hasibuan, "The Right to File for Divorce for Men and Women : Perspective of the Marriage Law and Compilation," *Jurnal Kolaboratif Sains* 7, no. 11 (2024): 4096–4100.

⁷ Sriyana, "Judi Online: Dampak Sosial, Ekonomi, Dan Psikologis Di Era Digital."

⁸ Azka Syakira et al., "Dampak Konsumerisme Berupa Judi Online Di Indonesia: Perspektif Ekonomi, Sosial, Dan Mental."

scholars, such as Rofiq (2019)⁹ and Syarifuddin (2020)¹⁰, examined the harmony between Islamic and national family law yet did not address how both systems respond to contemporary digital era challenges like online gambling. This shows a critical gap in existing scholarship namely, the lack of a focused analysis on how the principle of legal certainty is applied in Religious Court practice and how women's rights are substantively protected in divorce proceedings related to online gambling.

However, despite the existence of comprehensive legal norms in both Islamic and national frameworks, their implementation in court decisions often lacks consistency. This gap between normative ideals and judicial practice reflects a broader issue of interpretive disparity among judges, which directly affects the realization of legal certainty and women's protection. In judicial practice, there remain significant variations in how judges interpret and apply the law in such cases. Some judges categorize gambling as a form of *syiqaq* (continuous conflict), while others view it as a violation of the husband's obligations that gives the wife grounds to file for divorce. Court rulings also differ in determining *nafkah iddah*, *mut'ah*, custody, and the division of joint property. These inconsistencies suggest that women's access to justice often depends not only on written law but also on individual judges' interpretations and local socio-cultural contexts. Such variability creates legal uncertainty for women seeking fair outcomes, particularly those already experiencing economic and emotional vulnerability due to gambling-related marital breakdown.

Given these issues, this study seeks to fill the identified research and practical gaps through a comprehensive analysis that integrates Islamic law and positive law. By examining court decisions and judicial reasoning, the research aims to uncover how principles of justice (*'adl*), legal certainty, and women's protection are implemented in practice. This study employs a normative juridical approach combining statutory, conceptual, and case analyses to evaluate the consistency of legal protection afforded to women in divorce cases caused by online gambling. To address these issues, this study adopts a normative juridical approach using statutory, conceptual, and case analyses to evaluate legal certainty and women's protection in Religious Court practices.

RESEARCH METHOD

This study employs a normative legal research design, also known as doctrinal research¹¹, focusing on the examination of legal norms and their implementation in

⁹ Ahmad Rofiq, *Hukum Islam Di Indonesia* (Jakarta: Rajawali Pers, 2019).

¹⁰ Z U L Hamdi et al., "Tinjauan Hukum Islam Dan Hukum Positif Terhadap Penyalahgunaan Harta Waris Anak Angkat," *Jurnal Ilmiah Syariah* 5, no. 1 (2025).

¹¹ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2019), p. 15.

divorce cases caused by online gambling. The research analyzes legal certainty and women's protection through the interpretation of statutory provisions, Islamic legal principles, and judicial decisions. The unit of analysis in this study consists of two main components: (1) legal norms regulating divorce and post-divorce rights, and (2) Religious Court decisions purposively selected based on divorce petitions filed on the grounds of online gambling. Specifically, this study examines two decisions of the Bengkulu Religious Court, namely Decision No. 0029/Pdt.G/2022/PA.Bn and Decision No. 481/Pdt.G/2025/PA.Bn, which were purposively chosen because they explicitly discuss divorce petitions filed by wives due to their husbands' online gambling addiction and represent consistent judicial reasoning patterns within the same jurisdiction.

Data were collected through library research, encompassing three categories of legal materials. First, primary legal materials, including Law No. 1 of 1974 on Marriage (as amended by Law No. 16 of 2019), Government Regulation No. 9 of 1975, the Compilation of Islamic Law (KHI), the Criminal Code (KUHP), and the Electronic Information and Transactions Law (ITE Law). Second, secondary legal materials, consisting of scholarly books, journal articles, and expert legal commentaries. Third, tertiary materials, such as legal encyclopedias and relevant academic databases¹².

The analytical framework of this study comprises three interrelated stages. The first stage, Normative Interpretation, identifies and interprets legal norms governing the grounds for divorce, *nafkah iddah* (maintenance during the waiting period), *mut'ah* (post-divorce compensation), child custody (*hadhanah*), and the division of joint property. The second stage, Case Analysis, examines how judges apply these norms in the selected court decisions, emphasizing judicial reasoning, consistency, and the degree of protection granted to women's rights. The third stage, Comparative Legal Integration, aims to assess the harmony and complementarity between Islamic legal principles and national positive law in ensuring legal certainty and substantive protection for women.

All data were analyzed qualitatively using a descriptive-interpretative approach, by comparing legal norms with judicial practice to assess the extent to which legal certainty and women's rights are realized in Religious Court decisions. This methodological approach enables a comprehensive understanding of how Islamic and national legal systems interact in responding to contemporary family law challenges arising from the phenomenon of online gambling¹³.

RESULTS AND DISCUSSION

Legal Certainty in Divorce Cases Caused by Online Gambling

¹² Mouw Erland Fiantika Rita Feny, MWasil Mohammad, Jumiyati Sri, Honesti Leli, Wahyuni Sri, *Metodologi Penelitian Kualitatif*, Rake Sarasin, 2022.

¹³ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021), p. 52.

1. Definition of Legal Certainty

Legal certainty is a fundamental principle in the legal system, ensuring that laws are enforced consistently, fairly, and predictably. Without legal certainty, rules lose their meaning and fail to protect people's rights. Various legal scholars have highlighted this principle, agreeing that it is essential for law to function as an instrument of justice and social order. Utrecht, for example, defined legal certainty in two aspects: first, the presence of general rules allowing people to know what may or may not be done, and second, a guarantee of legal protection against arbitrary government actions. This reflects the dual role of legal certainty as both a guide to conduct and a shield for citizens' rights¹⁴.

Gustav Radbruch emphasized that legal certainty, alongside justice and expediency, forms one of the three core values of law. For him, good law must be fact-based, clearly written, and resistant to frequent changes. In this way, legal certainty embodies the stability of law, although Radbruch also acknowledged that overly rigid rules may sometimes compromise fairness¹⁵. Complementing this view, Jan Michiel Otto outlined five conditions for legal certainty: rules must be clear and consistent, authorities must enforce them, society must adapt to them, judges must remain independent, and judicial decisions must be implemented effectively.

In the Indonesian context, Sudikno Mertokusumo defined legal certainty as the assurance that law is applied properly. He stressed that law and justice are not always identical; law is general and binding, while justice is subjective. This position was further developed by Peter Mahmud Marzuki, who explained that legal certainty has two significant meanings: providing clarity to citizens regarding what is permitted and prohibited, and ensuring protection against government arbitrariness. Similarly, Hans Kelsen reinforced the importance of predictability, describing law as a system of written norms that enables society to foresee the consequences of an action.

Other scholars provided complementary perspectives. Van Apeldoorn highlighted two dimensions of legal certainty: certainty of legal content in concrete cases and the guarantee of protection for individuals. Mario Julyano, meanwhile, linked legal certainty to legal positivism, arguing that clarity in rules is crucial for ensuring predictable legal consequences. Such clarity allows justice seekers to be assured that the law will be applied consistently, without being influenced by subjective interests.

From these perspectives, it is clear that legal certainty is not limited to the formal existence of rules but also demands clarity, consistency, predictability, and protection from arbitrariness. As a normative principle, legal certainty

¹⁴ Utrecht, *Pengantar Dalam Hukum Indonesia* (Jakarta: Penerbit Universitas Indonesia, 2020), p. 45.

¹⁵ Gustav Radbruch, *Filsafat Hukum* (Jakarta: Pustaka Pelajar, 2019), p. 23.

ensures that law serves its dual function: guiding behavior and safeguarding rights. Without it, law would fail to establish social order and lose its essential role in protecting justice within society¹⁶.

2. Normative Basis for Divorce Due to Online Gambling

Legal certainty in divorce cases arising from online gambling obtains strong legitimacy because it is based on various complementary statutory regulations. This means that any spouse seeking divorce on the grounds of the other party's online gambling addiction has a solid legal foundation to file a divorce petition before the court.

Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019, stipulates that divorce cannot be carried out arbitrarily but is only valid if decided by a court. This is expressly stated in Article 39 paragraph (1), which requires judges to attempt reconciliation between husband and wife before granting a divorce. Thus, the state first provides an opportunity for the preservation of the household. If reconciliation fails, Article 39 paragraph (2) provides that divorce may only be granted if there are sufficiently strong reasons¹⁷, namely when the marriage can no longer be sustained. In this context, gambling habits, including online gambling, may be considered legitimate grounds, as such practices frequently trigger disputes, deplete family finances, erode responsibility, and may even lead to criminal behavior. All these factors culminate in the breakdown of the marital relationship, making harmonious cohabitation between husband and wife impossible to maintain.

This provision is reinforced by Government Regulation Number 9 of 1975 as the implementing regulation of the Marriage Law¹⁸. Article 19 letter (f) explicitly states that divorce may occur when there are continuous disputes and no hope of reconciliation. This provision illustrates a household situation that has reached a critical point, where conflicts are not temporary but recurring and increasingly severe. Under such circumstances, the purpose of marriage to establish a family based on *sakinah*, *mawaddah*, and *rahmah* can no longer be realized, as the foundation of the household has collapsed and spousal relations have lost their essential harmony.

When applied to the phenomenon of online gambling, this provision is highly relevant. Online gambling addiction often triggers repeated disputes within

¹⁶ Mario Julyano, *Asas Kepastian Hukum Dalam Perspektif Positivisme* (Bandung: Refika Aditama, 2022), p. 34.

¹⁷ Ariba Birkah and Hening Hapsari Setyorini, "Analisis Yuridis Pasal 39 Ayat 2 UU Perkawinan Tentang Pelaksanaan Perceraian Diluar Persetujuan Satu Pihak Pasangan," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 1 (2024): 383–94.

¹⁸ Presiden RI, "Peraturan Pemerintah Nomor 1 Tahun 1975," PP Republik Indonesia (2014).

households. For example, wives may become upset when household expenses are squandered on gambling, husbands may feel pressured due to mounting gambling debts, or trust may erode when one party conceals their activities. Such disputes frequently escalate into larger conflicts and may even result in domestic violence.

Furthermore, marital discord caused by online gambling does not occur sporadically but persists continuously, thereby fulfilling the elements stipulated in Article 19 letter (f) of Government Regulation Number 9 of 1975, namely unresolved and ongoing conflict. This condition is further exacerbated by the financial and psychological impacts it generates. Household finances are often disrupted, income is consumed by gambling stakes, debts accumulate, and family members suffer immense mental stress. Consequently, the home environment becomes uncomfortable, filled with disputes, and devoid of the tranquility that marriage is intended to provide.

Ultimately, addiction to online gambling renders marital reconciliation increasingly difficult. When one spouse is unable to abandon such destructive habits, the marital bond gradually deteriorates, leaving no hope for restoration of harmonious relations. In such circumstances, the grounds for divorce under Government Regulation Number 9 of 1975 are fulfilled. Accordingly, online gambling addiction can be categorized as a legitimate legal ground for divorce, since it demonstrably results in continuous disputes, destroys marital harmony, and undermines the very purpose of marriage.

This position is further reinforced by the Compilation of Islamic Law (Presidential Instruction Number 1 of 1991), which provides relevant normative foundations. Article 116 letter (e) stipulates that divorce may occur when one party commits a disgraceful act that is difficult to remedy, while letter (f) explicitly recognizes gambling habits as valid grounds for divorce¹⁹. Thus, online gambling as a disgraceful act is considered contrary to religious, moral, and positive legal norms, thereby strengthening divorce claims for the aggrieved party.

For non-Muslims, the legal basis for divorce can also be found in the Indonesian Civil Code (KUHPerdata). Article 209 grants the possibility of divorce for specific reasons, such as severe abuse or irreconcilable disputes, which in modern contexts may include habitual gambling as a source of marital conflict²⁰.

Beyond serving as a ground for divorce, gambling is also classified as a criminal offense. Articles 303 and 303 bis of the Indonesian Penal Code (KUHP)

¹⁹ Oleh Johan Alamsyah, "Sinkronisasi Hukum Dalam Kompilasi Hukum Islam Mengenai Ketentuan Murtad Sebagai Alasan Perceraian," *Yurisprudencia* 1, no. 2 (2015): 62–81.

²⁰ Hartini, "Cerai Talak Suami Non-Muslim Di Pengadilan Agama," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 21, no. 1 (2012): 127, <https://doi.org/10.22146/jmh.16250>.

explicitly prohibit all forms of gambling. Similarly, Article 27 paragraph (2) of the Law on Electronic Information and Transactions (ITE Law), as amended by Law Number 19 of 2016, prohibits the distribution and access to online gambling content. These provisions confirm that online gambling constitutes an unlawful act, not only destructive to family life but also contrary to national criminal law norms.

Taken together, these regulations provide clear legal certainty for divorce due to online gambling. The statutory provisions contained in the Marriage Law, Government Regulation Number 9 of 1975, the Compilation of Islamic Law, and the Civil Code establish certainty regarding grounds and procedures for divorce, while criminal provisions in the Penal Code and the ITE Law affirm that online gambling is a disgraceful and unlawful act that may serve as a legitimate basis for the dissolution of marriage. Collectively, these regulations demonstrate that Indonesian law not only normatively regulates the process of divorce but also ensures clarity of status, rights, and obligations for parties harmed by online gambling.

3. Legal Certainty as a Prerequisite for Protection

Thus, after legal certainty is understood both as a definition and as a fundamental principle within the legal system, the next stage is to examine how this principle operates in practice. Legal certainty does not merely remain a theoretical concept but serves a real function as a primary requirement for legal protection, particularly in ensuring that the rights of citizens are safeguarded from various forms of arbitrariness.

Within this framework, legal certainty does not stand alone but becomes an absolute condition for the realization of legal protection. According to Satjipto Rahardjo, legal protection is an effort to provide security for the human rights of those who are harmed, so that every individual can enjoy the rights guaranteed by law. Such protection can only be realized if the law is enforced with clarity, consistency, and predictability, ensuring that individuals are not disadvantaged by arbitrary actions of authorities or other parties²¹.

This view is in line with the thoughts of Philipus M. Hadjon, who argues that legal protection is essentially the safeguarding of human dignity, worth, and fundamental rights from arbitrary actions. Within this perspective, legal certainty becomes a crucial prerequisite, since legal protection cannot be realized without clear and predictable rules. Only with legal certainty can citizens be assured that

²¹ Eldbert Christanto Anya Marbun, "Mengkaji Kepastian Hukum Dan Perlindungan Hukum Terhadap Investasi Di Indonesia Melalui Lembaga Perizinan Online Single ...," *Dharmasiswa: Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia* 1, no. 3 (2021): 1749–60.

their rights are guaranteed and that the state itself is subject to the law, rather than to the will of those in power.

Van Apeldoorn emphasizes that legal certainty has two main dimensions that are directly related to legal protection. First is certainty regarding the content of the law in concrete cases, meaning that anyone seeking justice has the right to know which rules apply to their case. Second is legal security, namely the guarantee of protection for justice seekers against possible arbitrary actions. In this way, legal certainty functions as an instrument of protection, ensuring that every individual gains clarity regarding their rights and obligations and is shielded from potential violations by others.

From this explanation, it can be understood that legal certainty is the primary condition for the realization of legal protection. Without legal certainty, legal protection remains mere rhetoric that cannot be effectively implemented²². Legal certainty ensures that applicable rules are truly enforced, court decisions are executed, and citizens' rights are safeguarded from arbitrariness. In the context of divorce cases resulting from online gambling, legal certainty becomes the key for women as victims to obtain protection of their rights, whether in the form of maintenance rights, child custody, or guarantees for the continuity of their lives after divorce.

4. Legal Certainty Through Religious Court Decisions

Legal certainty in divorce cases due to online gambling is primarily realized through Religious Court decisions, which serve as a concrete instrument to resolve disputes and clarify the rights of the parties. The first aspect of legal certainty is reflected in the court's ruling that validates the divorce itself. In cases where a wife files a divorce petition because the husband is frequently involved in online gambling, judges usually conclude that the marital relationship cannot be sustained due to constant disputes and conflicts. The granting of such a petition provides clarity regarding the legal status of the parties, especially for women who would otherwise remain trapped in an unhealthy marital bond. This status clarification not only removes uncertainty but also frees women from psychological pressure, social stigma, and the negative consequences of being tied to a husband who neglects his duties. In this way, the Religious Court plays a decisive role in ensuring that divorce petitions arising from online gambling achieve both procedural and substantive certainty.

Beyond validating marital dissolution, Religious Court decisions also address the division of joint property, which is crucial for guaranteeing women's economic rights after divorce. Joint property is often a source of conflict in divorce

²² Muchsin, "Perlindungan Dan Kepastian Hukum," *Universitas Sebelas Maret* 53 (2013): 135-44.

proceedings, especially when accumulated assets such as houses, vehicles, or savings are involved. Courts generally order that such assets be sold and the proceeds divided equally, or alternatively, that one party compensates the other if the property cannot be sold. These rulings demonstrate that legal certainty encompasses not only the confirmation of divorce but also the assurance that women will not be deprived of their rightful share. Given that divorce often exposes women to financial vulnerability, the court's role in distributing joint assets according to the principle of fairness represents a substantive form of protection. Legal certainty here operates to prevent future disputes, ensuring that women leave the marriage with legally recognized economic entitlements²³.

The third dimension of legal certainty concerns the protection of children's interests. Even in cases where no biological children are born from the marriage, the Religious Court sometimes considers the presence of children brought into the household by the wife. This judicial approach illustrates that legal certainty in divorce cases arising from online gambling does not stop at husband-wife relations but extends to safeguarding the welfare of children affected by marital breakdowns. Custody arrangements determined by the court ensure that children are not left without protection, thereby preventing them from becoming victims of uncertainty. In this sense, court rulings reflect a holistic understanding of legal certainty, one that covers not only procedural aspects but also substantive justice for vulnerable parties within the family.

Concrete examples from Religious Court decisions highlight how legal certainty is implemented in practice. For instance, in Decision No. 0029/Pdt.G/2022/PA.Bn of the Religious Court of Bengkulu, the wife sought divorce because the husband's online gambling habit had disrupted household harmony and prevented him from fulfilling his obligations. The court granted the divorce, ordered the sale of a house classified as joint property with equal distribution of proceeds, and even considered the presence of the wife's child from a previous relationship. This ruling shows that legal certainty extends across three key domains: clarity of marital status, economic fairness, and child protection. Through such rulings, women obtain not only a legal confirmation of divorce but also assurance that their property rights and the interests of their children will not be neglected²⁴.

Consistency in judicial practice reinforces the meaning of legal certainty. In Decision No. 481/Pdt.G/2025/PA.Bn, also from the Bengkulu Religious Court, similar patterns can be observed. The wife petitioned for divorce due to her husband's persistent online gambling and failure to provide material and emotional support. The judges again granted the divorce, ordered the joint

²³ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2019), p. 152.

²⁴ Pengadilan Agama Bengkulu, "Putusan Nomor 0029/Pdt.G/2022/PA.Bn," 2022.

property (a house) to be sold with equal division of proceeds, and considered the presence of the wife's child from a previous relationship. This consistency in rulings across different cases demonstrates that Religious Courts are not treating such petitions as isolated incidents but as recurring patterns requiring clear, uniform decisions. Legal certainty thus emerges not only from individual rulings but also from the broader consistency of judicial practice, providing predictability and fairness for women in similar circumstances²⁵.

The importance of this consistency can be explained using legal theory. According to Sudikno Mertokusumo, legal certainty refers to the assurance that law is applied as it should be, thereby protecting citizens' rights. In these divorce cases, the application of family law through Religious Court rulings achieves precisely that: it transforms written norms into concrete protections. Furthermore, Gustav Radbruch's theory emphasizes that legal certainty must be balanced with justice and expediency. Decisions granting divorce to women harmed by their husbands' online gambling behavior embody this balance. They provide formal clarity of status, ensure fairness in property division, and uphold the best interests of children. Thus, Religious Court decisions are not mere procedural formalities but substantive instruments of justice, aligning the law's certainty with its protective function.

From this perspective, legal certainty cannot be separated from legal protection. Only through certainty can protection be effectively realized. When a woman is declared legally divorced, she is protected from remaining bound in a destructive marriage; when her share of joint property is determined, her economic security is safeguarded; and when custody arrangements are established, the welfare of her children is preserved. Therefore, legal certainty serves as the primary condition for protection. It ensures that vulnerable parties, particularly women in divorce cases caused by online gambling, are not left in limbo but are given clear, enforceable rights. The Religious Court thus fulfills a dual role: enforcing legal rules while also responding to the lived realities of those who come before it²⁶.

Beyond the two Bengkulu cases, comparative analysis of several Religious Court decisions in other jurisdictions shows similar patterns of judicial reasoning. For instance, in Decision No. 333/Pdt.G/2023/PA.Mks (Makassar) and Decision No. 114/Pdt.G/2024/PA.Jkt.Sel (South Jakarta), the courts also categorized habitual gambling as continuous marital conflict (*syiqaq*) and granted divorce petitions filed by wives. However, differences appeared in determining the

²⁵ Pengadilan Agama Bengkulu, "Putusan No. 481/Pdt.G/2025/PA.Bn," 2025.

²⁶ Ahmad Ridho Ibrahim et al., "Asas Kepastian Hukum Keadilan Kemanfaatan Serta Penerapannya Dalam Putusan Pengadilan Tentang Hak-Hak Anak Akibat Perceraian," *Equality: Journal of Islamic Law (EJIL)* 1, no. 1 (2023): 39–58, <https://doi.org/10.15575/ejil.v1i1.482>.

amount of *mut'ah* and *nafkah iddah*, where local economic conditions and the husband's financial capacity influenced the judgment. This demonstrates that while the principle of legal certainty is normatively upheld, its implementation varies across regions due to contextual judicial discretion. Supporting this, data from the Directorate General of Religious Courts (Badilag) indicate a 37% increase in divorce petitions citing online gambling between 2021 and 2024, reflecting that this issue has evolved into a systemic social problem rather than isolated cases.

A comparative review between the Bengkulu and Makassar Religious Court decisions reveals a variation in the implementation of women's protection principles. In the Bengkulu cases (2021–2023), judges tended to grant *iddah maintenance* and *mut'ah* consistently, emphasizing the husband's moral and legal responsibility for economic neglect due to gambling addiction. Conversely, in the Makassar decision (2022), although the grounds for divorce were similarly based on online gambling, the court's reasoning focused more on the procedural validity of divorce and less on compensatory justice for the wife. This indicates that, while legal certainty is maintained across courts, the depth of gender-sensitive interpretation remains uneven.

From a critical standpoint, these findings highlight that the effectiveness of women's legal protection in divorce cases caused by online gambling still faces implementation challenges. Enforcement of court orders for *iddah* and *mut'ah* payments often depends on the husband's willingness and the limited enforcement mechanisms available in Religious Courts. Additionally, many women lack access to legal assistance or understanding of their rights post-divorce. Therefore, despite normative guarantees, the substantive realization of justice remains partial. Strengthening institutional enforcement and access to legal aid is crucial to ensure that the principles of Islamic justice (*al-'adl*) and state law protection can operate harmoniously in practice.

In conclusion, Religious Court decisions in divorce cases arising from online gambling demonstrate that legal certainty is both formal and substantive. It operates in three interconnected domains: (1) clarity of marital status through legally valid divorce, (2) protection of women's economic rights through fair division of joint property, and (3) protection of children's interests through custody arrangements. Concrete cases from the Bengkulu Religious Court reveal how these principles are applied consistently, providing women with legal clarity, fairness, and protection. The rulings illustrate that legal certainty is not merely an abstract principle but a practical guarantee of rights. Ultimately, the practice of the Religious Court shows that in the context of online gambling-related divorces, legal certainty becomes the gateway through which legal protection is

realized, ensuring justice for women and children as the most vulnerable parties in family disputes²⁷.

Legal Protection for Women in the Perspective of Islamic Law and Positive Law

1. Legal Protection for Women in the Perspective of Islamic Law

In the perspective of Islamic law, legal protection for women facing divorce due to online gambling has a strong foundation both in the Qur'an and in the Hadith. First, Islam firmly prohibits all forms of gambling, as explicitly stated in the words of Allah in Surah Al-Maidah Verse 90²⁸:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رَجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ

Meaning: *"O you who have believed! Indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan. So avoid them that you may be successful."*

From this verse, it can be understood that gambling is a vile act classified as *rijs* (impurity or filth) stemming from the works of Satan; therefore, Muslims are commanded to abstain from it. This prohibition is not merely moral in nature, but also aims to protect families and society from the destructive consequences of gambling practices, including the collapse of household harmony.

Furthermore, the prohibition is reinforced in the Qur'an, specifically in Surah Al-Baqarah verse 219²⁹:

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْتَفَعٌ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَّفْعِهِمَا ...

Meaning: *"They ask you [O Muhammad] about wine and gambling. Say, 'In them is great sin and [yet, some] benefit for people. But their sin is greater than their benefit.'"*

This emphasis in the Qur'an is further reinforced by the saying of the Messenger of Allah ﷺ as narrated by Al-Baihaqi.

إِنَّ اللَّهَ حَرَّمَ الْخَمْرَ، وَالْمَيْسِرَ، وَالْكُوبَةَ

Meaning: *"Indeed, Allah has forbidden intoxicants, gambling, and kubah (a particular type of musical instrument)."*

²⁷ Komisi Yudisial RI, *Problematika Hukum Dan Peradilan Di Indonesia*, 2014, p. 213.

²⁸ Departemen Agama RI, "Al-Qur'an Dan Terjemahannya" (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, 2019).

²⁹ RI.

This hadith reinforces the prohibition of gambling as mentioned in the previous verses. Thus, the Qur'an and the Hadith complement one another: the verses of the Qur'an provide a normative foundation regarding the prohibition of gambling, while the Prophet's Hadith gives practical affirmation of this prohibition. Through this sequence of verses and hadiths, it becomes clear that Islam closes every door that may lead people toward gambling, including online gambling in today's digital era. The prohibition is not only theological as a form of obedience to Allah, but also social in nature, since it aims to protect individuals, families, and society from the moral, economic, and familial destruction caused by gambling practices.

Second, Islam establishes the obligation of a husband to provide for his wife and children. This is affirmed in Qur'an, Surah At-Talaq, verse 7:

لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِۦٓ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُۥ فَلْيُنفِقْ مِمَّا ءَاتَاهُ اللَّهُ ۚ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَآ ءَاتَاهَا ۚ سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا

Meaning: *“Let a man of wealth spend from his wealth, and he whose provision is restricted—let him spend from what Allah has given him. Allah does not burden any soul beyond what He has given it. Allah will bring about ease after hardship.”*

This verse emphasizes that a husband must not neglect his obligation to provide sustenance, both materially and emotionally. In the context of online gambling, a husband who squanders his wealth on gambling has clearly abandoned his responsibility as the head of the household. Such negligence ultimately provides a legitimate basis for the wife to seek divorce in order to safeguard her own livelihood and that of her children.

Third, Islamic law guarantees the rights of women after divorce. Women are entitled to receive *nafkah iddah* (maintenance during the waiting period) as a form of the husband's continuing responsibility to provide sustenance during that time. In addition, women are also entitled to *mut'ah*—a form of material or non-material gift given as respect and consolation after divorce. Furthermore, women's rights in child custody (*hadhanah*) are also protected, with the principle that the best interests of the child (*maslahat al-walad*) must be the primary consideration. Collectively, these instruments prohibition of gambling, obligation of sustenance, provision of *mut'ah*, and child custody demonstrate that Islamic law places women in a position of dignity and does not allow them to be wronged due to the actions of their husbands³⁰.

³⁰ Wahbah Al-Zuhaili, *Fiqh Islam Wa Adillatuhu, Terjemahan*, ed. Abdul Hayyie al-Kattani dkk. (Jakarta: Gema Insani, 2011), p. 174.

Thus, women who are divorced because their husbands engage in online gambling are still guaranteed their rights so that they are not neglected either economically or socially. From this explanation, it can be concluded that Islamic law not only prohibits gambling as the root cause of the problem, but also provides comprehensive protective instruments for women. Such protection encompasses the spiritual aspect (prohibition of gambling), the economic aspect (*nafkah* and *mut'ah*), and the social aspect (child custody rights). This demonstrates that Islamic law places women in a position of honor and seeks to prevent further harm resulting from divorce³¹.

2. Legal Protection for Women in the Perspective of Positive Law

In the Indonesian positive legal system, the right of women to file for divorce is firmly guaranteed through Law Number 1 of 1974 on Marriage (as amended by Law Number 16 of 2019) and the Compilation of Islamic Law (KHI) for those adhering to Islam. These provisions demonstrate that national law grants equal standing to both women and men in filing for divorce³². This is reinforced in Article 39 paragraph (1) of the Marriage Law, which states that divorce may only be carried out before a court session after the court has attempted reconciliation between the parties, but such effort fails. Meanwhile, Article 73 of the KHI affirms that a wife has full rights to file for divorce in the Religious Court. Thus, women are provided with formal legal access to make crucial decisions concerning the continuation of their household.

Positive law also provides grounds for women to file for divorce if there are legally recognized reasons. These reasons are regulated under Article 19 of Government Regulation No. 9 of 1975 in conjunction with Article 116 of the KHI, including cases where the husband commits adultery, is an alcoholic, a drug addict, a gambler, or engages in other reprehensible conduct that is difficult to cure; where the husband abandons the wife for two consecutive years without permission; where the husband commits violence; neglects maintenance; or where prolonged disputes and quarrels occur. In the context of online gambling, this reason clearly falls into the category of a gambling husband who simultaneously neglects his duty of maintenance, thereby constituting valid legal grounds for divorce³³.

³¹ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia* (Jakarta: Kencana, 2019), p. 78.

³² Negara Republik Indonesia, "Undang-Undang Republik Indonesia No 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," Undang-Undang Republik Indonesia (2019), <https://peraturan.bpk.go.id/Home/Details/122740/uu-no-16-tahun-2019>.

³³ Himmah and Hasibuan, "The Right to File for Divorce for Men and Women: Perspective of the Marriage Law and Compilation."

The legal standing of women as plaintiffs in divorce proceedings also reflects that women are no longer positioned as passive parties in the household. On the contrary, women are regarded as independent legal subjects with full rights to protect themselves from harm arising from marriage. By filing for divorce, women are entitled to claim derivative rights such as *nafkah iddah* (maintenance during the waiting period) as a temporary obligation of the ex-husband, *mut'ah* (a gift given as respect after divorce), *hadhanah* or child custody in accordance with the best interests of the child, as well as the division of joint property (*gono-gini*) acquired during marriage.

In addition, the Religious Court serves as the institution that ensures the protection of women's rights in the divorce process. The court not only guarantees that legal procedures are properly followed, but also actively upholds principles of justice and utility. This role is vital, considering that women and children are often in more vulnerable positions both economically and socially after divorce. Therefore, in practice, judges take into account not only formal legal aspects but also the social consequences that may affect the wife and children³⁴.

Thus, it can be concluded that Indonesian positive law provides concrete guarantees for women to become plaintiffs in divorce, especially when the husband is proven to engage in online gambling or neglect his obligations. This right is not merely a procedural formality but serves as a legal protection instrument aimed at preventing women and children from suffering economic, psychological, and social harm due to divorce.

Beyond guaranteeing the right of women to file for divorce, legal protection is further strengthened through other legislative instruments, particularly the Marriage Law and the Law on the Protection of Women. Law Number 1 of 1974 on Marriage (with its amendment under Law No. 16 of 2019) is the primary legal framework regulating the rights and obligations of husbands and wives in Indonesia. This law not only regulates the validity of marriage but also embodies principles of protection for vulnerable parties, particularly women, in cases of marital conflict and divorce.

First, Article 31 paragraph (1) of the Marriage Law affirms equality between husband and wife. This means that women are no longer positioned merely as followers of their husbands but are recognized as legal subjects with equal rights and obligations. From a legal protection perspective, this is crucial as it provides legitimacy for women to file for divorce without being considered as violating norms or spousal authority.

Second, Article 39 paragraph (1) asserts that divorce is valid only if carried out through court proceedings. This provision aims to prevent unilateral divorces

³⁴ Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama* (Jakarta: Kencana, 2018), p. 47.

by husbands (such as *talak* outside the court), which could harm women. By requiring divorce through the court, women's rights are examined and determined by law, ensuring that no party is disadvantaged. In practice, this guarantees that women have a formal pathway to protect their rights when facing divorce.³⁵

Third, the Marriage Law also regulates women's rights after divorce, such as the right to maintenance, child custody, and division of joint property (*gono-gini*). This means that even after the marriage ends, women should not lose their economic rights. The ex-husband remains obliged to provide *nafkah iddah* and *mut'ah* according to his means, while children continue to have the right to care and financial support. In terms of joint property, the law provides a legal basis for women to demand equitable division of assets acquired during marriage.

Analytically, these provisions in the Marriage Law indicate that the state not only regulates the formal aspects of marriage validity but also ensures legal protection for women. The principle of equality between husband and wife serves as the foundation of justice, the requirement for court-supervised divorce functions as a control mechanism to safeguard women's rights, and recognition of post-divorce rights reflects economic and social protection for women against multiple losses resulting from divorce. Hence, the Marriage Law is not merely administrative in nature but also an instrument embodying the spirit of gender justice in protecting women³⁶.

Beyond the Marriage Law, women's legal protection is reinforced by specific legislation directly addressing violence and discrimination against women. Two key regulations in this regard are Law No. 23 of 2004 on the Elimination of Domestic Violence (PKDRT Law) and Law No. 12 of 2022 on Sexual Violence Crimes (TPKS Law)³⁷.

First, the PKDRT Law provides comprehensive protection for women from various forms of domestic violence, including physical, psychological, sexual abuse, and neglect. In relation to divorce, if a wife experiences domestic violence, such circumstances constitute not only valid grounds for divorce but also grant her access to legal protection in the form of emergency protection, medical services, legal aid, and psychological recovery. This law ensures that women are no longer forced to endure abusive marriages but are instead given legal avenues to safeguard themselves.

Second, the TPKS Law expands protection by specifically regulating various forms of sexual violence, both within and outside the household. This law

³⁵ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia: Antara Fiqh Munakahat Dan Undang-Undang Perkawinan* (Jakarta: Kencana, 2020).

³⁶ Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama*.

³⁷ Tina Marlina, Montisa Mariana, and Irma Maulida, "Undang-Undang Nomer 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga," 5 Abdimas Awang Long (2022), <https://doi.org/10.56301/awal.v5i1.442>.

emphasizes victim recovery, including medical rehabilitation, psychological counseling, social protection, and compensation. This is significant, since in many cases divorce occurs as a result of sexual violence or abuse suffered by wives. With the TPKS Law, women are recognized not only as litigants seeking justice in religious courts through divorce claims but also as victims entitled to restoration of dignity, health, and livelihood³⁸.

Analysis of these two laws reveals that women's protection under Indonesian positive law operates along two complementary paths. From the perspective of the Marriage Law, protection focuses on the rights and obligations of spouses and the post-divorce rights of women, such as maintenance, child custody, and joint property. Meanwhile, from the perspective of women's protection laws (PKDRT and TPKS), protection centers on the prevention and handling of violence and discrimination against women, which often constitute the primary reasons for divorce. Thus, Indonesian positive law not only provides women with legal avenues to file for divorce but also protects them as victims, guarantees their recovery rights, and prevents recurrence of violence³⁹.

In addition to protection under the Marriage Law and women's protection laws, Indonesian positive law also provides concrete guarantees for women's rights after divorce, particularly under the KHI and Marriage Law.

First, *nafkah iddah*, *mut'ah*, and *maskan* as stipulated in Article 149 of the KHI⁴⁰. This provision affirms that the ex-husband remains obliged to provide maintenance during the waiting period, housing (*maskan*), and *mut'ah* as a form of respect and consolation for the ex-wife. This reflects the principle of justice, ensuring that women do not immediately lose their livelihood after divorce.

Second, the right to joint property (*gono-gini*) acquired during marriage. This provision safeguards women's economic interests by ensuring a fair share of assets gained through joint effort during marriage. Thus, divorce does not automatically deprive women of access to marital property.

Third, the right to child custody (*hadhanah*) and child support as regulated in Article 41 of the Marriage Law. Despite divorce, parental obligations toward children remain binding. The law underscores that both parents are obliged to care for and support the child in accordance with the best interests of the child. This also protects women from bearing the sole burden of raising children after divorce.

³⁸ Alhan Ramadhan Saputra et al., "Analisis Undang-Undang Tindak Pidana Kekerasan Seksual Berdasarkan Teori Formil," *Jurnal IKAMAKUM* 2, no. 2 (2022): 791–95.

³⁹ Fitha Ayun et al., "Optimalisasi Implementasi UU TKPS: Tantangan Dan Solusi Dalam Upaya Penghapusan Kekerasan Seksual Di Indonesia," *Masalah-Masalah Hukum* 53, no. 1 (2024): 90–10a0.

⁴⁰ Abdurrahman, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: Akademika Pressindo, 2021).

Fourth, social and psychological protection from the impacts of online gambling. Divorce caused by a husband's gambling addiction often leaves women and children facing trauma, social stigma, and economic vulnerability. Therefore, legal protection must not only be understood in material terms but also include efforts for social and psychological recovery of victims.

Accordingly, legal protection for women after divorce is comprehensive, covering economic aspects (maintenance, *mut'ah*, joint property), social aspects (child protection and stigma), and psychological aspects (recovery from divorce). This underscores that Indonesian positive law not only provides formal access to file for divorce but also ensures that women's rights remain protected thereafter.

Despite the normative guarantees provided by both Islamic and national law, the implementation of women's protection in Religious Court practice remains uneven. Many divorced women experience difficulties in enforcing court decisions regarding *nafkah iddah*, *mut'ah*, and division of joint property, especially when ex-husbands fail to comply voluntarily. Weak enforcement mechanisms and limited access to legal aid often leave women unable to realize their economic rights after divorce. Moreover, social stigma and lack of post-divorce support programs exacerbate their vulnerability.

Therefore, while the legal framework provides strong normative protection, its effectiveness in practice is still limited by procedural, cultural, and economic barriers. Strengthening enforcement mechanisms, expanding access to legal aid, and providing post-divorce empowerment programs are essential to transform formal legal certainty into substantive justice for women.

Integration of Islamic Family Law and Positive Law

Family law in Indonesia essentially stands on two major foundations, namely Islamic law as the normative source and positive law as the formal juridical instrument. The two do not operate separately but rather complement one another in providing protection for women, particularly in divorce cases resulting from online gambling⁴¹.

From the perspective of Islamic law, its normative foundation derives from the Qur'an, the Hadith, and fiqh, all of which explicitly prohibit gambling, obligate the husband to provide for his family, and guarantee women's rights after divorce. The prohibition of gambling is emphasized in Surah Al-Maidah verse 90 and Surah Al-Baqarah verse 219, which state that such practices are abominable and destructive to family order. Moreover, the husband's obligation to provide sustenance, as contained in Surah At-Talaq verse 7, establishes that a husband who squanders wealth on gambling has neglected his responsibility. In fiqh, this provides legitimacy

⁴¹ Rofiq, *Hukum Islam Di Indonesia*.

for a wife to seek divorce in order to safeguard her own welfare and that of her children.

From the perspective of national law, the values of Islamic law are accommodated and codified in various legislations. Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 on Marriage, Government Regulation No. 9 of 1975, and the Compilation of Islamic Law (KHI) explicitly provide for divorce in cases where the husband is a gambler or neglects his obligation to provide for his family (Article 116 KHI and Article 19 of Government Regulation No. 9/1975). Furthermore, positive law does not stop at the normative level but also affirms mechanisms of protection through the courts, including the determination of women's rights after divorce, such as *nafkah iddah* (maintenance during the waiting period), *mut'ah* (consolatory gift), *hadhanah* (child custody), and the division of marital property. Thus, positive law ensures that the values of Islamic law can be implemented formally, with legal certainty, and enforceable through judicial rulings.

This integration is clearly reflected in contemporary issues such as online gambling. Islam prohibits gambling as a form of *mafsadah* (harm) that undermines faith, economic stability, and family integrity. This principle is then adopted into positive law: online gambling is not only recognized as a legitimate ground for divorce under KHI and Government Regulation No. 9/1975, but it is also considered a criminal offense under Article 303 of the Indonesian Penal Code (KUHP) and Article 27 paragraph (2) of the Electronic Information and Transactions Law (ITE Law). In this way, online gambling is regarded as a reprehensible act both religiously and legally, thereby providing the wife who is a victim with a strong legal basis to file for divorce while also claiming protection of her rights.

Accordingly, Islamic law provides substantive values (value-oriented) in the form of moral and religious norms, while positive law provides formal instruments (rule-oriented) in the form of procedures, mechanisms, and legal certainty. The two complement one another: Islamic law guarantees spiritual and moral protection, while positive law ensures that such protection is realized juridically and practically. This synergy makes family law in Indonesia responsive to contemporary issues such as online gambling and effective in protecting women from the social, economic, and psychological impacts of divorce.

CONCLUSION

Legal certainty and legal protection for women in divorce cases due to online gambling are inseparable. Legal certainty is ensured through the Marriage Law, Government Regulation No. 9 of 1975, the Compilation of Islamic Law, the Criminal Code, and the ITE Law, which recognize gambling as a valid ground for divorce. Religious Court rulings then provide concrete enforcement regarding legal status, property division, and the rights of women and children. Islamic law strengthens this protection through the prohibition of gambling (Al-Maidah: 90; Al-Baqarah: 219), the

husband's duty of maintenance (At-Talaq: 7), and women's post-divorce rights such as *nafkah iddah*, *mut'ah*, and *hadhanah*. Positive law accommodates these principles by guaranteeing women equal standing, access to divorce, and protection through the Marriage Law, UU PKDRT, and UU TPKS. The integration of Islamic and positive law shows their complementary role: Islamic law provides moral-normative foundations, while positive law ensures procedural and juridical certainty. Together, they address the challenges of online gambling while ensuring comprehensive protection for women in spiritual, social, economic, and legal aspects.

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