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## Dynamics of Syiqaq and Divorce in Border Regions: A Socio-Legal Analysis at the Nunukan Religious Court

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**Abstract:** National border regions constitute liminal spaces where social norms and morality are contested. This article analyzes the dynamics of syiqaq (persistent marital disputes) and divorce in Nunukan Regency, North Kalimantan, a border area experiencing the erosion of family resilience due to digital transformation. This study aims to explore the shifting causality of divorce, judicial discretion in interpreting syiqaq, and the effectiveness of mediation. Employing a qualitative socio-legal approach within a post-positivist paradigm, the study integrates analysis of court verdicts from 2022-2024 with in-depth interviews with judges, mediators, and litigants. Data were analyzed using the Miles and Huberman interactive model with source triangulation. Findings reveal a fundamental shift in divorce causality from economic factors toward the dominance of a digital morality crisis, particularly online gambling and social media-facilitated infidelity. Judges exercised progressive *ijtihad* by expanding the interpretation of syiqaq to accommodate new social pathologies, further guided by the administrative framework of SEMA No. 3 of 2023. However, mediation proved systemically ineffective in morally driven cases due to formalistic approaches that fail to address psychological trauma. It is concluded that family resilience in border areas requires a comprehensive revitalization of social ethics beyond formal legal intervention.

**Keywords:** Syiqaq, Divorce, Border Region, Religious Court, Online Gambling

### INTRODUCTION

In the discourse of legal sociology and Islamic theology, the family is positioned as the fundamental unit sustaining the stability of human civilization. It functions not merely as a biological reproductive institution but also as a moral fortress that maintains social cohesion against various external disruptions that threaten individual and societal integrity (Hanafi et al., 2025). However, in the contemporary era characterized by the phenomenon of “the death of distance” resulting from the information and communication technology revolution, the family institution faces unprecedented existential threats. The previously sacred private boundaries of the family have become increasingly permeable, as uncontrollable flows of digital information and interaction have penetrated them (Thomas et al., 2022).

This vulnerability becomes particularly acute, urgent, and complex in border regions (borderlands), which inherently possess fluid, transient sociological characteristics and are susceptible to foreign cultural infiltration and cross-border social pathologies. Nunukan Regency, as the frontline of Indonesian sovereignty directly bordering Sabah, Malaysia, represents a microcosm of this structural vulnerability. As a primary transit route for Indonesian migrant workers and a cross-border trade hub, the Nunukan community lives in a dual reality in which national identity, economy, and social structures are continuously renegotiated in daily life (Azwar et al., 2024). Empirical data from the Nunukan Religious Court reveal an alarming trend: throughout 2024, 260 divorce cases were adjudicated, a significant number for the region's population, indicating profound social instability.

Previous studies on divorce in border regions have predominantly adopted a single narrative focusing on the economic pressures of migration or physical absence (Graham et al., 2012; Fresnoza-Flot, 2021). This conventional approach tends to overlook the dimension of sexual ethics erosion that has now become the primary determinant of marital breakdown. More strikingly, the period 2022-2024 demonstrates a drastic surge in cases triggered by new morality crises, including online gambling addiction, social media-facilitated infidelity, and the phenomenon of married by accident (child marriage dispensation) among adolescents (Pirdaus et al., 2024). Research by Wardle et al. (2024) in The Lancet Public Health Commission on Gambling confirms that gambling-related harms extend beyond the individual gambler to impact family structures severely. Similarly, Jones and Aftab (2023) in the Oxford Journal of Law and Religion have highlighted the problematic nature of compulsory mediation in Indonesian Religious Courts, particularly in domestic violence contexts. However, the intersection of digital pathology and *syiqaq* interpretation remains underexplored.

A significant gap exists in the literature regarding how Islamic family law operationalized through Religious Courts epistemologically and practically responds to *syiqaq* driven by digital addictive behavior. The concept of *syiqaq* in classical *fiqh* literature and the Compilation of Islamic Law (KHI) has traditionally been understood as escalated disputes characterized by overt physical or verbal altercation. However, a fundamental question arises: how does the law respond when the primary source of *syiqaq* is digital addictive behavior, such as online gambling, that is not fully addressed by effective criminal mechanisms in positive law, yet devastates the economic and psychological foundations of the family? (Anindita et al., 2025). Furthermore, studies consistently demonstrate that mediation success rates in Indonesian divorce cases remain extremely low, often below 5-10% in some regions (Alkaff et al., 2021; Hadiati & Aprilia, 2020; Sumner & Lindsey, 2011). This failure becomes more pronounced in cases of severe moral betrayal, where the psychological wounds inflicted are considered to have violated the *mitsaqan ghalizan* (solemn covenant), which cannot be restored through formal reconciliation procedures (Harry & Putri, 2025).

Murtadha Muthahhari's philosophical thought on sexual ethics, emphasizing the concepts of *iffah* (self-restraint) and *ghayrah* (sacred jealousy/moral protection) as foundations for family continuity, is highly relevant to a deep analysis of this phenomenon (Putra & Rahmaditha, 2024). Muthahhari prophetically argued that when sexual instinct and pleasure-seeking are released from ethical constraints, as facilitated by social media and pornography in the digital era, society loses its social immunity, ultimately leading to family unit disintegration. Combined with Satjipto Rahardjo's Progressive Law theory, which asserts that law exists for humanity rather than humanity for law (Faisal, 2023), this study provides a comprehensive theoretical framework for analyzing judicial discretion in accommodating new social pathologies within the existing legal framework.

This research addresses this literary void by conducting a comprehensive socio-legal analysis of divorce dynamics in Nunukan. Specifically, this study aims to answer three research questions: (1) How has the map of divorce causality factors in Nunukan Regency shifted during

2022-2024, and what are the sociological implications of the dominance of new moral crises replacing traditional economic factors? (2) How do Nunukan Religious Court judges exercise judicial discretion and *ijtihad* in interpreting *syiqaq* in cases involving digital pathology and sexual ethics violations not rigidly regulated by law? (3) Why does mediation tend to fail in restoring marital integrity in cases rooted in moral crises, and what alternative approaches are needed to improve reconciliation success?

The urgency of this study lies in its significant contribution to developing Islamic Family Law that is responsive and adaptive to social change in the digital era, particularly in border areas that serve as showcases of a nation's moral sovereignty and social resilience. This article is structured as follows: the introduction presents the research background and objectives; the method section describes the qualitative socio-legal research design; the results section presents empirical findings on divorce causality transformation, judicial interpretation of *syiqaq*, and mediation effectiveness; the discussion section analyzes these findings through the theoretical frameworks of Muthahhari's Sexual Ethics and Rahardjo's Progressive Law; and the conclusion offers theoretical implications and practical recommendations.

## METHOD

This study employed an empirical legal research method (socio-legal research) with a qualitative-phenomenological approach. This methodological choice was based on the need not merely to test the normative-dogmatic application of legal rules, but to examine how law operates within the living social reality of the Nunukan border community (Lestarini, 2023). A post-positivist paradigm was adopted to capture the intersubjective meaning behind divorce statistics and understand the cognitive constructions of judges, mediators, and litigants in interpreting justice and marital breakdown.

The research was conducted at the Nunukan Religious Court, North Kalimantan Province. The selection of this location was based on Nunukan's strategic significance as a border area with high social complexity, cultural heterogeneity, and consistently high divorce trends, making it an ideal social laboratory for this study (Azwar et al., 2024). Research subjects (informants) were selected using purposive sampling to ensure information-rich cases, comprising: Nunukan Religious Court judges as key informants to explore the ratio decidendi, their interpretation of *syiqaq*, and application of discretion in online gambling/moral cases; mediators (both judges and non-judges) to evaluate the mediation process, obstacles, and strategies; court clerks and Religious Affairs Office (KUA) staff as sources of administrative data on marriage dispensation trends; and litigants (particularly wives) who filed for divorce due to online gambling or infidelity to obtain the victim's perspective on the real impact of moral crises on their lives.

Data were collected through triangulation of three primary methods. First, a documentary study involving in-depth analysis of court verdicts with permanent legal force (*inkracht*) from the period 2022-2024, the Nunukan Religious Court Annual Reports, and marriage dispensation applications, focusing on judges' legal reasoning in constructing trial facts into divorce grounds (Rahmadini & Santoso, 2025). Second, in-depth semi-structured interviews were conducted using interview guides to explore personal narratives and the psychological and sociological dynamics behind divorce petitions. Third, field observations were conducted to examine divorce case proceedings and the interaction dynamics of parties in the courtroom waiting area, capturing emotional nuances not recorded in written documents.

Data analysis was conducted using the Miles, Huberman, and Saldaña interactive analysis model, comprising the data condensation, data display, and conclusion-drawing/verification stages. Data validity was tested through source and method triangulation to ensure the trustworthiness, transferability, and confirmability of research findings. The

researcher’s presence as a key instrument in the field deepened data exploration through direct observation and interaction with research subjects over the study period.

## RESULTS

### Transformation of the Divorce Landscape at the Border

Comprehensive data collected from the Nunukan Religious Court reveals a striking transitional phenomenon in the divorce patterns of the border community during the 2022-2024 period. Although quantitatively the divorce numbers appeared relatively stable (274 cases in 2022, rising to 280 in 2023, and slightly decreasing to 260 in 2024), qualitative analysis of the *causa prima* (primary causes) shows a tectonic shift in the community’s social structure. Table 1 illustrates this shift in the dominant divorce-causality factors over the three years.

**Table 1. Transformation of Dominant Divorce Factors at Nunukan Religious Court (2022-2024)**

Year	Cases	Dominant Factor	Sociological Context
2022	274	Economic Abandonment	& Post-pandemic structural crisis; restricted border mobility; basic livelihood difficulties
2023	280	Continuous Disputes, DV, Social Media	Transitional period; emerging digital interaction conflicts; social media as a destabilizing variable
2024	260	Moral Crisis: Infidelity, Online Gambling, and Underage Marriage	Digital morality crisis dominance; increased prevalence of technology-facilitated social challenges; shifting ethical and value orientations

Source: Nunukan Religious Court Annual Reports (2022-2024), processed by the author.

The data reveal that in 2022, divorce in Nunukan was predominantly driven by classic economic factors: poverty, husband’s failure to provide maintenance, and physical abandonment due to labor migration to Malaysia. By 2024, the landscape had fundamentally transformed online gambling, and social media-facilitated infidelity emerged as the primary trigger for marital discord, replacing traditional economic conflicts. Online gambling, in particular, had metamorphosed into a silent killer for family harmony at the border, creating instant economic devastation, triggering domestic violence, and generating emotional abuse culminating in *syiqaq* sharp, peaked, and continuous disputes.

### Judicial Interpretation of Syiqaq and Progressive Ijtihad

In responding to new waves of divorce triggered by the digital morality crisis, the judges of the Nunukan Religious Court demonstrated a progressive socio-legal approach in their reasoning. This progressive approach manifested in several key areas. Judges used the construction of *syiqaq* as a flexible legal umbrella to encompass destructive new behaviors not specifically regulated in the Marriage Law. In cases where husbands were addicted to online gambling, judges qualified the resulting economic devastation, domestic violence, and loss of trust as forms of *syiqaq* that could no longer be reconciled, even though the term “online gambling” does not explicitly appear in Article 19 of Government Regulation No. 9/1975 or Article 116 of the KHI.

The issuance of SEMA No. 3 of 2023, which establishes a six-month separation period as an indicator of *syiqaq*, provided additional legitimacy for judges’ decisions. This provision functions as a double-edged instrument: on one hand, it provides legal certainty and objective parameters for judges; on the other, for victims of domestic violence or impoverished wives trapped in the cycle of online gambling violence without the financial means or relatives to physically separate, the six-month requirement could impede swift access to justice. Field findings, however, indicate that Nunukan judges circumvent this constraint by thoroughly examining testimony from family witnesses (*familie raad*) to substantiate the severity of the

life-threatening conflict, thereby granting divorce on urgent grounds (dharurat) even when the separation duration requirement has not been strictly met.

In adjudicating marriage dispensation petitions based on “married by accident” (MBA), judges found themselves caught between enforcing state law (a minimum marriage age of 19 years) and social reality (an existing pregnancy). Using the lens of Maqashid Syariah, particularly the principles of hifz nasab (protection of lineage) and hifz al-irdh (protection of honor), judges tended to grant dispensation petitions on emergency (dharuriyat) grounds. While legally justified as an exception, sociologically, this decision confirms the existence of a cycle of poverty and mental unpreparedness, potentially triggering future divorce.

### **Mediation Effectiveness in Moral Violation Cases**

Mediation, mandated by PERMA No. 1 of 2016 as a compulsory procedure before the merits of the case are heard, reflects a bleak reality at the Nunukan Religious Court. Empirical data and observation indicate that mediation effectiveness in morally-motivated divorce cases (infidelity/adultery and online gambling) is extremely low, with an estimated success rate for reconciliation below 5-10%, consistent with national trends (Alkaff et al., 2021; Hadiati & Aprilia, 2020). The systemic failure can be attributed to several interrelated socio-psychological and structural dimensions: infidelity and gambling addiction are perceived by wives as fundamental violations of the solemn marriage covenant (mitsaqan ghalizan), creating betrayal trauma that 1-2 brief mediation sessions cannot therapeutically address; wives no longer trust husbands’ promises to reform due to recurring relapse patterns; majority of mediators are case-examining judges with heavy caseloads and insufficient specialized training in addiction-based and sexual trauma conflict counseling; and the pragmatic, solution-oriented border community culture views the court as a place to finalize divorce rather than to resolve problems.

## **DISCUSSION**

### **Answering Research Questions Through Theoretical Frameworks**

Regarding the first research question on the transformation of divorce causality, the findings confirm a fundamental paradigmatic shift from economic deficit to moral deficit. This finding extends the existing literature on border divorce that has predominantly focused on economic migration factors (Graham et al., 2012; Fresnoza-Flot, 2021; Rismayanti et al., 2022). The emergence of online gambling as a primary trigger for divorce in border regions represents a new contribution that has not been adequately explored in previous studies. The exponential growth of online gambling transactions in Indonesia, reaching unprecedented levels by 2023 (Pirdaus et al., 2024), corroborates the finding that digital accessibility without mature digital literacy creates vulnerability to negative content eroding marital sanctity values. This finding is consistent with the Lancet Public Health Commission on Gambling (Wardle et al., 2024), which identifies gambling-related harms as extending beyond financial loss to encompass family breakdown and intergenerational transmission of disadvantage. Furthermore, Blaszczynski and Nower’s (2002) pathways model of problem gambling helps explain how different trajectories of gambling engagement, behavioral, emotional, and biological, manifest differently in the border context where economic pressures and limited social support compound the risks.

When viewed through Muthahhari’s Sexual Ethics framework, this phenomenon represents the collapse of iffah (self-restraint/chastity) and ghayrah (sacred jealousy/moral protection) as foundations of family resilience (Putra & Rahmaditha, 2024). Muthahhari argued that when sexual instinct and pleasure-seeking are released from ethical constraints as facilitated by social media, pornography, and gambling in the digital era, society loses its social immunity, ultimately leading to family unit disintegration. The Nunukan case illustrates and

lends empirical support to this thesis: online gambling destroys not only family assets but also the gamblers' mental health, creating a vicious cycle of violence and poverty that is difficult to break (Sidiq et al., 2024). The parallel with international findings from Suomi et al. (2023), who found that gambling-related harm to family members includes financial hardship, emotional distress, and relationship deterioration, is striking and confirms the universality of this destructive pattern across cultural contexts.

Regarding the second research question on judicial discretion, the finding that judges exercise "progressive *ijtihad*" by expanding the interpretation of *syiqaq* aligns with and empirically demonstrates Satjipto Rahardjo's Progressive Law theory. Rahardjo's assertion that "law is for humanity, not humanity for law" (Faisal, 2023) is given concrete expression in judges' willingness to look beyond the formal legal text to capture the sociological and psychological impacts (*kemudaratan*) suffered by wives and children, rather than fixating on formal legality alone. This finding contributes to the growing body of literature on judicial activism in Indonesian Religious Courts (Anandya et al., 2025; Syam et al., 2025; Khairina et al., 2024). The application of SEMA No. 3 of 2023 regarding the six-month separation period, while providing legal certainty, introduces a structural tension that mirrors similar challenges identified by Jones and Aftab (2023) in their analysis of compulsory mediation in Indonesian Religious Courts, where procedural requirements may inadvertently impede access to justice for vulnerable populations.

The *contra legem* reasoning employed by judges in granting divorces, even when the six-month separation requirement has not been strictly met, represents a significant finding for Islamic family law jurisprudence. This echoes the *Maqasid al-Sharia* principle of *daf' al-mafsada* (removal of harm), in which judges prioritize substantive justice over procedural compliance (Saputra, 2025; Wianto & Melati, 2026). This judicial behavior confirms what Cammack (2007) described as the Indonesian Religious Courts' pragmatic approach to accommodating social realities within the Islamic legal framework, now extended to the digital context.

Regarding the third research question on mediation effectiveness, the findings reveal a systemic failure of the mediation mechanism in responding to morally motivated divorce cases. The extremely low success rate (below 5-10%) is consistent with national trends documented in previous studies (Alkaff et al., 2021; Hadiati & Aprilia, 2020) and aligns with Sumner and Lindsey's (2011) findings on the broader challenges of court-annexed mediation in Indonesia. The analysis reveals that the current mediation system remains trapped in a purely quantitative success metric (number of reconciliation agreements). In contrast, in severe moral crisis cases, mediation success should also be measured by the mediator's ability to facilitate a "divorce with dignity" or achieve post-divorce agreements (such as child custody and *iddah/mut'ah* maintenance) that are fair and minimize continued conflict.

The critique of mediation formalism is supported by international literature. Boyle (2017) has argued that effectiveness in mediation requires reconceptualization beyond settlement rates to include process quality and participant satisfaction. Similarly, the problem-solving approach advocated by Harry and Putri (2025) resonates with the Islamic concept of *Islah*, which encompasses a broad spectrum, including facilitating a good (*ma'ruf*) separation if *syiqaq* is irreparable. This aligns with Muthahhari's view that maintaining a toxic bond full of sinfulness actually contradicts the noble purpose of marriage itself (Putra & Rahmaditha, 2024). The implication is clear: a paradigm shift in mediation is needed, moving from forced reconciliation to substantive problem resolution through a problem-solving approach that acknowledges the depth of psychological trauma in cases of moral betrayal.

## Contribution to the Development of Islamic Family Law Science

This study offers several novel contributions to the body of knowledge in Islamic family law and educational management. First, it provides empirical evidence for the emergence of “digital morality crisis” as a new category of divorce causality in Indonesian border regions, extending the conventional economic and migration-based frameworks. Second, it documents and analyzes the phenomenon of “progressive *ijtihad*” by Religious Court judges in accommodating digital-era social pathologies within the classical *syiqaq* framework, contributing to an understanding of how Islamic legal institutions adapt to technological change. Third, it offers a critical evaluation of the mediation mechanism’s failure in morally-driven cases, providing evidence-based recommendations for a paradigm shift from formalistic reconciliation to substantive problem-solving mediation. Fourth, it demonstrates the continued relevance of Muthahhari’s Sexual Ethics framework and Rahardjo’s Progressive Law theory in analyzing contemporary family law challenges in the digital era, bridging Islamic philosophical thought with modern socio-legal analysis.

## CONCLUSION

This comprehensive socio-legal study concludes that the dynamics of *syiqaq* and divorce in the Nunukan border region have undergone a serious metamorphosis, reflecting the social vulnerability of border communities in the digital era. A fundamental shift has occurred in divorce causality, from purely economic factors (2022) to the dominance of a digital morality crisis (2024), in which online gambling and social media-facilitated infidelity have become the primary predators of family resilience. This finding confirms that the threat at the border is no longer solely about economic livelihood but about values and ethics.

Nunukan Religious Court judges respond to this phenomenon with a progressive socio-legal approach, using the construction of *syiqaq* as a flexible legal umbrella to address destructive new behaviors not specifically regulated in the Marriage Law. The application of SEMA No. 3 of 2023 on the six-month separation period serves as a primary means of proving permanent marital breakdown, providing legal certainty amid social complexity. The existing mediation mechanism proves systemically ineffective in responding to the complexity of morally-motivated cases, with formalistic and administrative approaches unable to address the root psychological trauma of betrayal and gambling addiction.

These findings reinforce the relevance of Muthahhari’s thought in the modern context, confirming that without *iffah* (self-restraint) and robust sexual ethics, technological advancement becomes a destructive instrument that accelerates social disintegration. The study also confirms Rahardjo’s Progressive Law theory, which holds that substantive justice for women and children in border areas can be achieved only when judges transcend formal legal texts and rely on conscience to protect victims from toxic family structures. Recommendations include the formulation of specialized mediation guidelines for addiction and infidelity cases involving professional counselors; total revitalization of marriage counseling programs in border areas enriched with family digital literacy; strict enforcement and blocking of online gambling access proven to be the upstream source of social problems; and further research on the long-term impacts of gambling-induced divorce on child well-being in border regions..

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