

## The Right to Receive Family Maintenance (*Nafaqah*) from Online Gambling Proceeds: A *Kaidah Fiqhiyah* Perspective

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**Abstract:** Islam prohibits gambling, whether conducted directly or online. Consequently, income derived from gambling is also considered *haram*. For this reason, a husband, as the primary breadwinner, is required to avoid gambling activities. However, if a husband is unable to refrain from such acts, providing gambling proceeds to his wife may still be considered permissible, as the wife has the right to receive *nafaqah* resulting from online gambling activities. This study aims to analyze the wife's right to receive *nafaqah* from online gambling proceeds earned by her husband from the perspective of *kaidah fiqhiyah*. This research employs normative legal research using a *kaidah fiqhiyah* approach as the analytical framework. The findings of this study indicate that there are two forms of a wife's right to receive *nafaqah* from online gambling proceeds. First, the right to refuse such *nafaqah* if her primary needs can be fulfilled from other lawful sources. Second, the right to receive *nafaqah* when no other source of income is available, in accordance with the *kaidah fiqhiyah* stating that "emergency conditions permit what is prohibited." Nevertheless, this permissibility is limited by another *kaidah fiqhiyah* which states that "what is permitted due to emergency must be limited to the extent of that emergency." The implication of this study is to provide an understanding for wives and children, as recipients of *nafaqah*, regarding *nafaqah* provided by husbands derived from online gambling proceeds.

**Keywords:** Right; *Nafaqah*; Online Gambling; *Kaidah Fiqhiyah*.

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### Introduction

In 2022, online gambling transactions involving Indonesian citizens reached their highest recorded level. According to data compiled by the Financial Transaction Reports and Analysis Center (PPATK), online gambling transactions conducted by Indonesian citizens amounted to IDR 327 trillion in 2023, representing a significant increase of 213% compared to IDR 104.41 trillion in 2022. This figure far exceeded previous records. It can therefore be concluded that online gambling transactions among the Indonesian population have increased by 8,136.77% over the past five years, rising from only IDR 3.97 trillion in 2018. Furthermore, PPATK reported that approximately 2.76 million users were responsible for transactions worth hundreds of trillions of rupiah. These online gambling players predominantly came from low-income groups, including students, university students, laborers, farmers, housewives, and private-sector employees<sup>1</sup>.

In relation to marriage, online gambling can significantly affect the economic condition and stability of a family. Several online mass media outlets have reported that online gambling is one of the contributing factors to divorce. As stated by Hakam Alghivari, out of 3,169 divorce cases recorded in Bojonegoro, 961 cases (30.3%) were caused by online gambling<sup>2</sup>.

These divorce factors are closely related to a husband's primary duty toward his family in fulfilling the obligation of *nafaqah*. Various traditions, religious laws, and civilizations have long emphasized this concept. Over the years, *nafaqah* has been defined as the fulfillment of a wife's and family's daily needs, encompassing both material and non-material aspects. In many cultures, including within Islamic law, *nafaqah* is regarded as a fundamental component of a husband's moral and legal obligations toward his wife and children. According to Ahmad, a husband's *nafaqah* must cover basic living necessities such as food, clothing, and shelter, as well as expenses for healthcare, education, and appropriate recreation in accordance with the family's social and economic status. This concept considers not only financial obligations but also the emotional and spiritual support required within

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<sup>1</sup> Zefanya Aprilia, *5 Tahun Terakhir Transaksi Judi Online Warga RI Melonjak 8.136,77%*, n.d., accessed June 11, 2024, <https://www.cnbcindonesia.com/market/20240506193944-17-536198/5-tahun-terakhir-transaksi-judi-online-warga-ri-melonjak-813677>.

<sup>2</sup> Hakam Alghivari, *Kecanduan Judi Online: Rumah Tangga Berantakan*, n.d., accessed June 13, 2024, <https://radarbojonegoro.jawapos.com/daerah/714088290/kecanduan-judi-online-rumah-tangga-berantakan?page=2>.

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marriage. To protect women's rights within marital relationships, the principle of *nafaqah* is explicitly regulated in the civil laws of several countries, including Indonesia. The purpose of such legal regulation is to ensure that husbands fulfill their responsibility to safeguard the family's economic well-being, while family members hold the right to receive *nafaqah* provided by the husband. Therefore, this issue becomes a significant point of concern for researchers, particularly in examining the family's right to receive *nafaqah* derived from online gambling proceeds.

Several previous studies have employed various methods to examine this subject. For instance, a study conducted by Smith (2018) indicates that online gambling has become both a source of supplementary income and a primary source of livelihood for many individuals in various countries. The study demonstrates that, despite the risks associated with the volatility of gambling, most online gambling players are able to generate significant income. In contrast, research conducted by Jones et al. (2020) reveals the adverse effects of dependence on online gambling on household financial stability. Their findings show that although online gambling may generate income, its long-term effects can lead to more serious financial problems, as individuals are unable to control their spending and consequently accumulate greater levels of debt<sup>3</sup>.

Previous studies have tended to emphasize the husband's obligation to provide *nafaqah* to the family as the head of the household. In contrast, this study seeks to explore more deeply the right to receive *nafaqah* provided by the husband as the head of the family when such *nafaqah* is derived from online gambling proceeds. Accordingly, this research aims to provide understanding for the Indonesian Muslim community, particularly in addressing the issue of the right to receive *nafaqah* originating from online gambling, so that it may serve as a useful reference in family decision-making regarding the acceptance of such *nafaqah*.

## Methodology

This study employs normative legal research using a *kaidah fiqhiyah* approach as the analytical framework. The focus of this research is the family's right to receive *nafaqah* derived from online gambling proceeds. In normative legal research, data are obtained from secondary sources. These secondary data consist of primary, secondary, and tertiary legal materials. To

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<sup>3</sup> Emma Jones, *The Financial Implications of Online Gambling Addiction: A Household Perspective*, Petter Brown (Academic Press, 2020).

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obtain relevant information through library research, the researcher collects, analyzes, and organizes sources from academic articles, books, and previous studies related to the research topic. The collected data are then processed and presented as research findings by citing relevant references. Furthermore, the data are analyzed to ensure completeness and subsequently interpreted to generate the knowledge required for drawing conclusions. In this study, the author examines library sources related to online gambling and the obligation of *nafaqah*. These sources are compiled as primary and secondary reference materials, and the research findings are subsequently processed through systematic referencing. Finally, the results of the study are analyzed using *kaidah fiqhiyah* to produce reasoned conclusions regarding the family's right to receive *nafaqah* derived from online gambling activities.

### Results and Discussion

This study requires several conceptual frameworks related to the research issues discussed above. The following sections outline several key concepts relevant to the topic under examination:

#### The Rights and Obligations of Husbands and Wives in Islam Regarding Family Maintenance (*Nafaqah*)

In Islam, the rights and obligations of husbands and wives are reciprocal in nature: the rights of the wife constitute the obligations of the husband, and conversely, the obligations of the husband constitute the rights of the wife. Sayyid Sabiq, in his work, explains that the rights and obligations of spouses are classified into three categories: the wife's rights over the husband, the husband's rights over the wife, and the shared rights of both husband and wife<sup>4</sup>. *Nafaqah*, clothing, and housing are among the wife's rights and simultaneously represent the husband's obligations toward his wife after the payment of *mahr*. This principle is affirmed in the Qur'an, Surah Al-Baqarah (2:233), which states:

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُبْرِئَ الرِّضَاعَةَ- وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ  
وَكَسْوَتُهُنَّ بِالْمَعْرُوفِ- لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا

“Mothers shall breastfeed their children for two complete years, for those who wish to complete the period of breastfeeding. The father is

<sup>4</sup> Sayyid Sabiq, *Fikih Sunnah*, 3rd ed. (Cakrawala Publishing, 2008).407.

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obliged to provide for them and clothe them in a proper manner. No person is burdened beyond his capacity.”

The verse instructs, a father as the head of the family to provide family maintenance in a *ma'rūf* (proper and appropriate) manner. This obligation to provide *nafaqah* is also regulated in Indonesian positive law through the Compilation of Islamic Law (*Kompilasi Hukum Islam / KHI*). According to Article 80 paragraph (4) and Article 80 paragraph (2) of the Compilation of Islamic Law, a husband is legally obligated to provide *nafaqah* for his wife<sup>5</sup>.

### Article 80

- 1) The husband is the leader and guide of his wife and household; however, matters concerning essential household affairs shall be decided jointly by the husband and wife.
- 2) The husband is obliged to protect his wife and to provide all necessities of married life in accordance with his ability.
- 3) The husband is obligated to provide religious education to his wife and to give her the opportunity to pursue beneficial knowledge that is useful for religion, society, and the nation.
- 4) In accordance with his income, the husband shall bear responsibility for:
  - a. *nafaqah*, clothing (*kiswah*), and residence for the wife;
  - b. household expenses, maintenance, and medical expenses for the wife and children;
  - c. educational expenses for the children.
- 5) The husband's obligations toward his wife as referred to in paragraph (4) points (a) and (b) shall take effect after the wife has given full *tamkīn*.
- 6) The wife may release her husband from his obligations toward her as referred to in paragraph (4) points (a) and (b).
- 7) The husband's obligations as referred to in paragraph (5) shall lapse if the wife is in a state of *nushūz*.

Therefore, a husband must have a source of income through lawful work in order to fulfill the family's needs, such as clothing, housing, household living expenses, and healthcare for his family and descendants, including the fulfillment of children's educational expenses. In addition, the husband is obliged to provide peace of mind for his wife and to meet all household needs in accordance with his financial capacity, as well as to fulfill his obligation to provide *nafaqah*.

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<sup>5</sup> Hazarul Aswat and Arif Rahman, "Kewajiban Suami Memberi Nafkah Dalam Kompilasi Hukum Islam" 5, no. 1 (2021).

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All scholars of the Islamic legal schools (*madhāhib*) agree that the husband is responsible for providing *nafaqah* for the family. However, if a husband fails to fulfill this obligation without a legitimate reason, the unpaid *nafaqah* becomes a debt owed to his wife, unless the wife willingly relinquishes her right to it. Traditionally, men are regarded as occupying the public sphere, while women are associated with the domestic sphere; consequently, the obligation of *nafaqah* is placed upon the husband. This distribution of roles is based on the assumption that men generally possess greater capacity than women. Nevertheless, in situations where the husband is expected to provide *nafaqah* while the wife is more capable, more skilled, and more productive economically, questions of justice arise when the husband is unable to fulfill his obligation. The division of roles within the household creates a relationship of mutual dependence, wherein the wife holds the right to *nafaqah* and the husband holds marital rights. When a wife goes outside the home to earn a livelihood with the consent of her husband, this arrangement is considered reasonable and acceptable. Consequently, if the wife is unable or unwilling to fulfill certain marital obligations under such circumstances, the husband is also expected to accept this condition as part of the mutual agreement within the marriage<sup>6</sup>.

A husband is obligated to provide *nafaqah* to his wife, unless the wife voluntarily waives her right to be maintained or is in a state of *nushūz*, in which case the husband is no longer required to provide *nafaqah*. Both the Qur'an and the Hadith do not stipulate a fixed or specific amount of *nafaqah* that must be provided by a husband. Rather, the Qur'anic verses and Prophetic traditions offer only general guidance regarding the obligation, leaving its determination to be adjusted according to circumstances<sup>7</sup>. *Nafaqah* may be provided in the form of food, side dishes, clothing, or other specific necessities. In addition, *nafaqah* may also be given in the form of a sum of money as a substitute for the cost of goods required by the wife. Such provision may be made on an annual, monthly, weekly, or even daily basis, in accordance with the husband's financial capacity<sup>8</sup>. Any circumstances that prevent the fulfillment of a husband's obligation to provide *nafaqah* to his wife may result in the

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<sup>6</sup> Wardah Nuroniyah, Ilham Bustomi, and Ahmad Nurfadilah, "Kewajiban Nafkah Dalam Keluarga Perspektif Husein Muhammad" 4, no. 1 (2019): 107–20.

<sup>7</sup> Irgi Fahrezi, "Kewajiban Suami Dalam Pemberian Nafkah Istri," *Jurnal El-Thawalib* 3, no. 3 (2022): 399–409, <https://doi.org/10.24952/el-thawalib.v3i3.5639>.

<sup>8</sup> Ibnu Rozali, "Konsep Memberi Nafkah bagi Keluarga dalam Islam," *Jurnal Intelektualita: Keislaman, Sosial dan Sains* 6, no. 2 (2017): 189–202, <https://doi.org/10.19109/intelektualita.v6i2.1605>.

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forfeiture or suspension of the wife's right to receive *nafaqah*. Conversely, if such inhibiting factors originate from the husband, the wife remains entitled to receive *nafaqah* from him.<sup>9</sup>

The foregoing discussion demonstrates that a wife who is in a state of *nushūz* is not entitled to receive *nafaqah* from her husband. However, a wife remains entitled to receive *nafaqah* if the husband fails to obey the commands of Allah SWT and engages in acts that are prohibited by Him. With regard to the provision of family *nafaqah*, it is incumbent upon the husband to provide *nafaqah* that is good and lawful (*halal*) as part of his effort to protect his family from the Fire of Hell. This obligation is in accordance with the Qur'an, Surah At-Tahrim (66:6), which states:

يَا أَيُّهَا الَّذِينَ آمَنُوا قُوا أَنْفُسَكُمْ وَأَهْلِيكُمْ نَارًا وَ فُؤُودَهَا النَّاسُ وَ الْحِجَارَةُ عَلَيْهَا مَلَائِكَةٌ غِلَاظٌ شِدَادٌ لَا يَعْصُونَ اللَّهَ مَا أَمَرَهُمْ وَ يَفْعَلُونَ مَا يُؤْمَرُونَ

“O you who believe, protect yourselves and your families from a Fire whose fuel is people and stones, over which are angels, stern and severe, who do not disobey Allah in what He commands them, but carry out whatever they are commanded.”

## Online Gambling from an Islamic Law Perspective

Shaykh al-Islām Ibn Taymiyyah states that gambling encompasses all types of games in which a person places a wager in order to gain profit from another party. Such games are prohibited under Islamic law because they contain elements of injustice (*ẓulm*) and involve the unlawful appropriation of another person's wealth. In Islam, gambling is referred to as *maysir*, which is explicitly mentioned in the Qur'an, particularly in Surah Al-Mā'idah (5:90–91):

إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلامُ رَجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمْ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ فَهَلْ أَنْتُمْ مُنْتَهُونَ

“O you who believe, intoxicants, gambling, (sacrificing to) idols, and divining arrows are abominations of Satan's handiwork. So avoid them that you may be successful. Indeed, Satan seeks only to incite enmity

<sup>9</sup> Abdul Fatakh, “Nafkah Rumah Tangga Dalam Perspektif Hukum Islam,” *INKLUSIF Vol 3. No. 1 Juni 2018* 3, no. 1 (2018).

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and hatred among you through intoxicants and gambling, and to divert you from the remembrance of Allah and from prayer. So will you desist?” (Surah Al-Mā'idah 5:90).

This command from Allah indicates that gambling is *haram* in Islam, as it is considered an act of Satan. Furthermore, in Surah Al-Baqarah (2:219), it is also mentioned that gambling is an act whose sin outweighs its benefit.

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ ۖ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنَافِعُ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِن نَّفْعِهِمَا

“They ask you about intoxicants and gambling. Say: ‘In both there is great sin and some benefit for people, but the sin of both is greater than their benefit.’” (Surah Al-Baqarah 2:219)

Similarly, in the Hadith, Prophet Muhammad SAW stated that even the act of inviting others to gamble is considered sinful and must be atoned for through charity (*sadaqah*). From Abu Hurairah (radhiyallahu 'anhu), the Rasulullah SAW said:

مَنْ قَالَ لِصَاحِبِهِ تَعَالَ أَقَامِرُكَ، فَلْيَتَصَدَّقْ

“Whoever says to his companion, ‘Let us gamble,’ should give charity (*sadaqah*).” (Narrated by Bukhari and Muslim)<sup>10</sup>.

Furthermore, Rasulullah SAW also emphasized that games containing elements of gambling are considered *haram* and are likened to something impure (*najis*) in Islam. From Abdullah ibn Umar (radhiyallahu 'anhuma), Rasulullah SAW said:

مَنْ لَعِبَ بِالنَّرْدِ شَبِيرَهُ، فَكَأَنَّمَا صَبَغَ يَدَهُ فِي لَحْمِ خَنْزِيرٍ وَدَمِهِ

“Whoever plays dice, it is as if he has dipped his hand into the flesh and blood of a pig.” (Narrated by Muslim)<sup>11</sup>.

From a philosophical perspective, gambling not only undermines an individual's morality and financial stability but also damages society as a whole. Gambling is prohibited in Islam due to its psychological and social

<sup>10</sup> Imam Abi 'Abdillah Muhammad bin Isma'il Al Bukhari, *Shahih Bukhari* (Dar Ibnu Jauzi Mesir, n.d.).

<sup>11</sup> Imam Abul Husain Muslim bin al-Hajjaj bin Muslim Al-Qusyairi An Naisaburi, *Shahih Muslim* (Addarul Alamiyyah, n.d.).

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consequences, as well as the financial losses it causes. It can lead to addiction, criminal behavior, deterioration of social relationships, and poverty.

### Islamic Legal Analysis on Receiving *Nafaqah* from the Proceeds of Online Gambling

The results of the literature review above indicate that gambling is one of the acts prohibited in Islam, as it is considered an act of Satan. Meanwhile, the provision of *nafaqah* is an obligation of the husband toward his family, which simultaneously constitutes the family's right to receive it. In this case, the prohibition of gambling and the obligation to provide *nafaqah* exist side by side. Therefore, in determining the ruling, it must be based on primary sources of Islamic law, namely the Qur'an and Hadith, while also taking into account Islamic legal principles and *kaidah fiqhiyah*.

From a holistic perspective, Islam considers the purity of the heart, economic stability, and social harmony as the objectives of the Sharia (*maqāṣid al-sharī'ah*)<sup>12</sup>. Therefore, nothing should disrupt these objectives, including gambling. If an act threatens the objectives of the Sharia, it is considered prohibited in Islam. The following explains how gambling undermines the purposes of Sharia:

#### 1. Preservation of Islamic Faith (*Hifẓ al-Dīn*).

A person who engages in gambling is unable to remember Allah and perform acts of worship. This aligns with what Allah states in Surah Al-Mā'idah (5:91), where Satan uses gambling to divert people from the remembrance of Allah and from performing prayer.

إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ فَهَلْ أَنْتُمْ مُنْتَهُونَ

“Indeed, Satan only intends to cause enmity and hatred among you through intoxicants and gambling and to divert you from the remembrance of Allah and from performing prayer. So, will you desist?” (Surah Al-Mā'idah 5:91)

#### 2. Preservation of Life (*Hifẓ al-Nafs*)

Gambling can lead to addiction, which is detrimental to a person's mental and psychological health. Those who engage in it often experience depression, stress, and other mental disorders.

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<sup>12</sup> Ahmad Alamuddin Yasin, *Transformaasi Nafkah Keluarga Muslim Dalam Perspektif Maqashid Syariah Dan Sustainable Development Goals* (CV Brimedia Global, 2024).

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### 3. Preservation of Intellect (*Hifz al- 'Aql*)

Gambling disrupts a person's sound reasoning. Due to the desire for immediate wins and large sums of money, individuals who gamble often fail to make rational decisions.

### 4. Preservation of Lineage (*Hifz an-Nasl*)

Gambling damages family relationships. Many families are destroyed when one of their members becomes addicted to gambling, leading to financial and emotional instability within the household.

### 5. Preservation of Wealth (*Hifz al-Māl*)

Exploiting and taking the property of others constitutes a form of gambling. The principle of lawful and just ownership of wealth is highly valued in Islam. Gambling undermines this principle by acquiring wealth unjustly, thereby causing harm to others.

Based on these objectives of Sharia, gambling can disrupt all five of them, particularly within the household, where it may cause financial and emotional instability, thereby undermining the Sharia objective of preserving lineage (*hifz an-nasl*). However, in cases where a husband provides *nafaqah* from the proceeds of online gambling, the family's right to receive *nafaqah* depends on the financial and economic condition of the family.

One of the *kaidah fiqhiyah* states that:

الضرورة تبيح المحظورات

“Emergency conditions can permit something that is otherwise prohibited”<sup>13</sup>

This *kaidah fiqhiyah* can be applied by considering the impact and consequences it brings to the surrounding environment. Therefore, if it affects the deterioration of family life due to the absence of other sources of income, the family is entitled to receive *nafaqah* according to the *kaidah fiqhiyah*. However, this permissibility has a limit regarding the acceptance of *nafaqah* from the proceeds of online gambling, which should correspond to the needs necessary to fulfill the Sharia objectives, particularly the preservation of life (*hifz al-nafs*). This is in accordance with another *kaidah fiqhiyah* which states that such permissibility is inherently limited according to the level of the emergency.

ما أُبيح للضرورة يقدر بقدرها

<sup>13</sup> Duski Ibrahim, *Al-Qawa`Id Al-Fiqhiyah (Kaidah-Kaidah Fiqih)*, 1st ed. (Palembang: Noerfikri, 2019).

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“Something that is permitted due to an emergency is measured according to the level of the emergency”.<sup>14</sup>

This *kaidah* concludes that permissibility arising from an urgent matter is strictly limited and measured according to specific conditions. It also illustrates the extent of permissibility or legal leniency regarding the provision of *nafaqah* from the proceeds of online gambling. On this basis, it can be understood that a person in a state of urgent need for sustenance is only permitted to receive *nafaqah* from online gambling to satisfy basic needs and hunger. Excessive use is not allowed, because if the family’s needs are already adequately met, the justification for receiving *nafaqah* from gambling no longer applies.

### Conclusion

The conclusion of the discussion above indicates that there are two rights of the wife regarding the acceptance of *nafaqah* from the proceeds of online gambling. First, the right to refuse if primary needs can be fulfilled from other sources. Second, the right to receive such *nafaqah* if no other sources of income are available, in accordance with the *kaidah fiqh*: “Emergency conditions can permit something that is otherwise prohibited.” However, this permissibility is naturally limited according to another *kaidah fiqh*: “Something that is permitted due to an emergency is measured according to the level of the emergency”. In meeting the needs and *nafaqah* of the family, the husband should not seek it through actions that are prohibited in Islamic law. A wife may assist her husband in fulfilling family needs by engaging in lawful (*halal*) work. Within a household, decisions should ideally be made through mutual consultation, good communication, and advising one another toward goodness.

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<sup>14</sup> Ibrahim, *AL-QAWA’ID AL-FIQHIYAH (KAIDAH-KAIDAH FIQIH)*.

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