

## ENFORCEMENT OF LAW AGAINST ONLINE GAMBLING OFFENDERS BASED ON THE THEORY OF DIGNIFIED JUSTICE

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### ABSTRACT

*Generally, gambling is an activity that contradicts religious principles, decency, and the moral code of Pancasila, and can be detrimental to society, the nation, and its continued existence. Gambling is categorized under criminal law as a form of offense against morality, leading to moral and psychological harm, particularly among the younger generation. The advancement of information technology has not only facilitated the creation of a global world but has also expanded the scope of new life spaces for society, notably the virtual community. A cybercommunity refers to a society that cannot be directly perceived by human senses but can be experienced and observed as a form of reality. The rapid development of technology and information, if not accompanied by proper reasoning and awareness, can lead to harm, such as in the case of gambling. Gambling has shifted to online platforms, which are more convenient and seemingly safer. Online gambling has become increasingly prevalent in society, influencing various groups, including the youth and even adults. Gambling has significant repercussions on the social and economic aspects of society.*

*Keywords:* Criminal Offenses, Online Gambling, Theory Of Justice

### INTRODUCTION

Gambling is a form of criminal activity that occurs within society. In Indonesia, gambling has a long history. Over time, the prevalence of gambling in Indonesia has grown rapidly. Gambling refers to a deliberate bet, where an individual wagers something of value while being aware of the risks and speculative hopes associated with games, competitions, races, or events whose outcomes are uncertain. This practice is not limited to traditional forms such as card games, animal betting, or number guessing; it has evolved in various other ways.

Kartini Kartono defines gambling as a deliberate wager, where an individual risks something of value, with the awareness of certain risks and expectations linked to events, games, matches, races, and occurrences with uncertain outcomes.

Generally, gambling is considered an action that contradicts religious beliefs, societal norms, and the moral principles of Pancasila. It can also be harmful to society, the nation, and the sustainability of the nation's future. Gambling is categorized as a criminal offense under the law, as it constitutes a violation of decency. It leads to moral and psychological harm, particularly affecting the younger generation.

The development of information technology has not only created a globalized world but also fostered the emergence of a new space for societal life, referred to as the virtual community. A cyber community represents a human society that cannot be directly perceived by human senses but can be experienced and observed as a form of reality.

Technological and informational advancements, when not accompanied by proper mental frameworks, can result in detrimental effects, one of which is gambling. Gambling has shifted to online platforms, which offer a more convenient and secure environment. Online gambling has become increasingly prevalent in society, influencing various segments, including both young people and adults.

Gambling has significant impacts on society, both economically and socially. The concept of online gambling is a relatively new phenomenon. Under criminal law, online gambling can be categorized as a specific crime, particularly as a violation of Information and Electronic Transactions Law (ITE) or cybercrime. Lottery gambling (togel) is a criminal act involving monetary bets. The lottery ticket contains numbers that are wagered with money.

Togel is a form of dark toto gambling, where money is bet by guessing the numbers that will be drawn. The online togel gambling process involves registration at a trusted togel agent. Before completing the registration, all requirements must be met. Afterward, funds are deposited through a bank to engage in the online gambling activity.

Regulations concerning conventional gambling are found in Articles 303(1) to (3) and Article 303 bis (1) and (2) of the Indonesian Penal Code. Law No. 7 of 1974 regulates the control of gambling activities. As for online gambling, it is regulated under Articles 27(1) and (2) of Law No. 11 of 2008 concerning Electronic Information and Transactions, as amended by Law No. 19 of 2016 on the Amendment to Law No. 11 of 2008.

In the interpretation of the Indonesian Penal Code (KUHP), gambling is understood as a game, which should be broadly interpreted to include all forms of betting on the outcome of horse races or other competitions, or any type of wager in races held between two individuals who do not participate in the race themselves, such as those involving a totalisator and other similar activities.

The formulation of Articles 303, paragraphs (1) to (3) can be stated as follows:

- Section (1) : Anyone who commits the act without permission shall be subject to a penalty of imprisonment for up to ten years or a fine not exceeding twenty-five million rupiahs.
1. Intentionally offering or providing opportunities for gambling activities and making it a primary pursuit, or deliberately engaging in a business venture related to it.

2. Deliberately offering or providing opportunities for the general public to engage in gambling, or intentionally participating in activities that facilitate such enterprises, regardless of whether specific conditions or procedures are met.
3. Participating in gambling can be seen as a form of pursuit.

Section (2) : It is stated that if the individual found guilty of committing a crime during the course of their search, their right to continue the search may be revoked.

Section (3) : Gambling games are those games in which the likelihood of winning generally depends on chance, but also on the skill or experience of the player. This includes any form of betting related to outcomes, races, or other games that do not involve direct competition between the participants, as well as any other form of wager.

Article 303 bis, paragraphs (1) and (2), also outlines the following provisions in paragraph (1): the offense is punishable by imprisonment for up to four years or a fine of up to ten million rupiah.

1. Anyone who participates in gambling organized in violation of Article 303 regulations;
2. Anyone who engages in gambling in public roads, along public streets, or in places accessible to the public, unless authorized by the relevant authorities to permit such gambling activities.

Section (2): If a violation occurs within two years of a final conviction resulting from one of the offenses mentioned, the individual may be sentenced to a prison term of up to six years or a fine of up to fifteen million Rupiah.

Under the Electronic Information and Transactions Law, online gambling is regulated under Article 27, Paragraph (2) of the Electronic Information and Transactions Law, which states: Any person who intentionally and without authorization distributes, transmits, or makes accessible electronic information or documents containing gambling material is in violation of the law.

The penalties for this violation are outlined in Article 45, Paragraph (2) of Law Number 19 of 2016. Any individual who intentionally and without authorization distributes, transmits, or makes accessible electronic information or documents containing gambling material as stated in Article 27, Paragraph (2) is subject to a sentence of up to six years in prison or a fine of up to one billion Rupiah.

Gambling is generally undertaken with the intent to gain profit. When a bet wins, the higher the stake, the greater the potential return in terms of money or goods. Online lottery gambling (togel) is also popular and has detrimental effects on society. The consequences of online gambling include harm to the moral, material, and mental well-being of individuals.

One of the conveniences of online lottery gambling is its accessibility, allowing individuals to play anytime and anywhere. There is no need to visit a specific location to participate, as online gambling platforms are available 24/7 across the internet. Furthermore, online lottery games can be played in internet cafes or public Wi-Fi areas, using mobile phones or computers. Transactions for payments are made through online methods, such as SMS banking. Online gamblers exploit information and communication technology (ICT) as a modern tool for gambling.

Information and communication technology has significantly transformed human behavior and global civilization. The development of information technology has made the world more interconnected, leading to rapid social changes. With the widespread use of computers and large-scale networks, online gambling offers a significant advantage over conventional forms of gambling, making it more attractive.

ICT contributes to the advancement and well-being of humanity. The rapid progress in telecommunications, media, and information technology (telematics) has revolutionized human activities. However, while ICT has many positive impacts, it also presents opportunities for new forms of crime, such as cybercrime, necessitating protective measures. These efforts are reflected in Article 27, paragraph (2) of the Indonesian Law No. 11 of 2008 on Information and Electronic Transactions in conjunction with Article 55, paragraph (1), section 1 of the Criminal Code.

The advancement of information technology and its benefits also come with negative consequences. These advancements make it easier for criminals to carry out activities that increasingly disturb society. An example of such negative consequences is online lottery gambling.

Online gambling is a form of cybercrime committed by individuals to gain profit, often at the expense of others. As a cybercrime, online gambling involves unauthorized access to or use of computer facilities or networks, which may be illegal but does not necessarily result in alterations or damage to the accessed or used computer systems. This criminal activity relies on computers as a medium, supported by telecommunication systems such as dial-up, telephone lines, or wireless networks that use specialized antennas.

In principle, cybercrime encompasses all criminal acts related to information systems, the systems themselves, and communication systems that serve as tools for transmitting or exchanging information. Computers are used as tools for data collection and storage, which can then be employed for committing traditional crimes. However, with the advent of the internet, computer crimes have evolved and are now increasingly based online. The rapid development and advancement of information technology have transformed various aspects of human life, leading to the emergence of new forms of legal violations.

The discussion above highlights that the presence of advanced technology and the internet has had a significant impact on society, both positively and negatively. Online gambling is one such negative consequence, representing a form of cybercrime. This type of cybercrime, specifically online gambling, must be prevented or eradicated. Law enforcement efforts are essential to curb and eliminate this crime to prevent its further proliferation. Conceptually, law enforcement involves the activity of harmonizing the relationship between the values embodied in legal norms. Since gambling transactions occur through electronic devices, cybercrime laws are necessary to address internet-based gambling as a form of cybercrime, requiring robust enforcement of cyber laws.

Here is a brief presentation of a case concerning the criminal offense of online lottery gambling as a result of a legal discovery. The case is included in the decision of a criminal case with a regular examination procedure at the first instance level,

case number 65/Pid.Sus/2014/PN Kbr. The defendant in this case is named Oki Eka Putra Pgl, also known as Oky, aged 30. He is recognized as an entrepreneur (a brick maker).

The online lottery gambling case above was prosecuted by the Public Prosecutor (JPU) under Article 27 paragraph (2) of Law Number 19 of 2016, which amends Law Number 11 of 2008 on Electronic Information and Transactions, in conjunction with Article 55 paragraph (1) point 1 of the Penal Code, and Law Number 8 of 1981 concerning the Criminal Procedure Code. The above-mentioned articles contain the elements of the criminal offense, which declare the defendant, Oky Eka Putra Pgl., guilty of engaging in online lottery gambling. This study is conducted to provide a comprehensive overview of online lottery gambling as a cybercrime in theoretical perspective.

## RESEARCH METHOD

The type of research employed in this study is normative legal research. Normative legal research relies on library materials, which serve as the primary data in legal studies and are classified as secondary data. This type of research focuses on doctrines and principles within the field of law. The purpose of legal principles is to identify the legal foundations or positive legal doctrines applicable to online gambling crimes.

## DISCUSSION

### Enforcement of Online Gambling Criminal Law in the Perspective of the Theory of Dignified Justice

Online gambling is a socially and economically detrimental act, and law enforcement against its perpetrators must be carried out with attention to the perspective of the theory of dignified justice. The growing popularity of online gambling, which offers various games with promises of financial gain, has led to its widespread use. Time and again, this activity has been participated in by children, students, and university students who use their allowances for online gambling. Perpetrators often use smartphones and small amounts of money in an attempt to try their luck. However, over time, online gambling can become addictive and may potentially lead to criminal behavior that harms the surrounding community. Therefore, it is crucial to combat the widespread crime of online gambling today to prevent discomfort within society.

Online gambling is a prevalent form of cybercrime in Indonesia. According to data from the Financial Transaction Reports and Analysis Centre (PPATK), approximately 157 million online gambling transactions occurred in Indonesia between 2017 and 2022, with a total monetary value amounting to IDR 190 trillion. This online gambling issue not only causes financial harm to individuals but also has a negative impact on the social and economic order of the nation.

Gambling has been regulated by law for a long time, as stipulated in Article 1 of Law No. 7 of 1974 on the Regulation of Gambling, which states that all forms of gambling are prohibited by law. Nowadays, gambling has moved into the online realm, necessitating updates to legal frameworks to ensure relevance in the current digital age. Online gambling cases are particularly scrutinized, with regulations outlined in Articles 303 and 303 bis of the Penal Code (KUHP), as well as in Article 27 Paragraph (2) of Law No. 11 of 2008 on Information and Electronic Transactions (ITE), amended by Law No. 19 of 2016. These actions are categorized as unlawful and may be punished with up to 10 years of imprisonment and/or a fine of up to IDR 20,000,000. Furthermore, Article 45 Paragraph (2) of the latest ITE Law states that any individual who intentionally and without authorization disseminates, sends, or creates electronic information and/or documents containing gambling may be punished with up to 6 years of imprisonment and/or a fine of up to IDR 1,000,000,000.

Online gambling can be categorized into two main types based on the transaction process. First, online gambling with direct transaction systems involves activities conducted online through game applications similar to conventional gambling. These applications, though primarily designed for entertainment, cannot be stopped by authorities because they are deemed entertainment platforms without clear gambling elements. Games meant to be recreational are often misused for gambling activities, with casino applications being one of the most commonly used. This phenomenon began spreading in early 2008, initially attracting only a small group of people, but over time, public interest surged, turning it into a large industry supported by online gambling operators. This online gambling has flourished alongside the development of the internet. The second category includes online gambling with deposit systems that has been evolving since 2010, which does not involve real money but virtual currency. Players transfer funds into an admin's account, which is then converted into virtual currency within the game. This system has gained popularity because it is specifically designed for gambling activities. The systematic nature of this gambling allows players to feel safer, as they use transaction methods developed with the cooperation of banks and online gambling administrators.

The current growth of online gambling is accompanied by rapid advances in information technology, transforming gambling into a cybercrime issue. With the sophistication of technology, various modern crimes, including online gambling, have a greater impact than conventional crimes. This development requires the involvement of various parties with differing territorial, temporal, national, governmental, and legal system jurisdictions, raising the question of whether these cases can be resolved at the national level or whether changes are needed in international conventions to address legal violations. Cybercrimes, including fraud, cheating, theft, and gambling, are carried out directly by exploiting technological tools. To address this issue, the Indonesian National Police has made efforts to take firm action against the rampant cases of online gambling.

In the context of the theory of dignified justice, this theory is a branch of legal science. The scope of this theory can be observed in the layers of legal knowledge, including the philosophy of law at the first level, legal theory at the second level, jurisprudence at the third, and law and legal practice at the fourth. The goal of law in this theory emphasizes justice, which is understood as achieving a legal system that humanizes individuals. Justice, in this sense, is about fostering awareness that humans are creations of God and are worthy of dignity, contrasting with Western views, such as that of Thomas Hobbes, who considered humans as animals, political animals, wolves, ready to prey on each other in various aspects of life, including politics, economics, and society.

Law enforcement in online gambling cases must prioritize the principle of proportionality, meaning that the punishment should be commensurate with the severity of the offense. The law applied must not be too lenient or too severe for the perpetrators of these violations. According to Databoks (2023), there were 157 million online gambling transactions in Indonesia, with a total

financial turnover of IDR 190 trillion. This data was based on an analysis of 887 entities involved in online gambling. This highlights the difficulty in eradicating online gambling due to the networks of gambling operators and the misuse of technology by irresponsible individuals.

Furthermore, law enforcement must aim to protect society from the negative impacts of online gambling by implementing strict regulations and educating the public about the associated risks. However, it is also crucial that law enforcement respects the human rights of offenders, including their right to fair treatment in the judicial process and the opportunity for rehabilitation. In this way, a law enforcement approach based on the theory of dignified justice will result in effective and fair law enforcement, balancing strict enforcement with respect for human dignity.

Although the scientific aspects of the theory of dignified justice may seem clearly separated, the various layers of legal knowledge form an integrated, systemic unity, interacting and functioning within a shared system. This entire system connects, collaborates, and significantly contributes to a cohesive whole. In this context, the theory of dignified justice serves as a tool to uphold human dignity before the law. In the era of scientific and technological development, tools are often equated with digitalization. The theory of dignified justice, as a tool, is a human creation designed to elevate human dignity, integrating legality and ethics, such as values and morality, into the applicable legal norms within the system.

The use of the theory of dignified justice is evident in the formation of legislation, judicial decisions, and legal doctrines within the Indonesian legal system, as this theory seeks to understand legal justice as the right to freedom for individuals to determine their actions, as long as they do not infringe upon the rights of others. The purpose of this theory is not only for the creator's use but also for the benefit of others. As a concrete system, the theory of dignified justice serves to align legal principles with human rights, incorporating values that are universally recognized both nationally and internationally.

The Indonesian legal system is seen as a unified entity comprising various elements that interact and collaborate to achieve overall goals, thus embodying a dignified legal system. Although solutions to legal problems are inherently contained within the system itself, this system is considered open and tolerant. The theory of dignified justice views Indonesia's positive legal system as tolerant of the five major legal systems and traditions developed by humanity. Given its tolerance for these diverse legal traditions, Indonesia's legal system is seen as complex and expansive.

## **CONCLUSION AND SUGGESTION**

### **A. Conclusion**

Based on the findings presented above, several conclusions can be drawn as follows:

Online gambling offenses represent a complex challenge within the law enforcement system in Indonesia due to their detrimental economic and social impact, including their prevalence among students and young adults. Consequently, law enforcement must consider the principles of dignified justice, which is rooted in legal foundations such as the Information and Electronic Transactions Law (UU ITE) and the Criminal Code (KUHP). In its implementation, law enforcement must be both firm and fair, while respecting the human rights of the perpetrators by providing opportunities for rehabilitation and proportional case management. It requires cross-sectoral and international collaboration, as well as the advancement of information technology in this digital era. By doing so, law enforcement can be grounded in dignified justice, resulting in an effective, fair, and sustainable legal process.

Efforts to enforce laws against online gambling offenses face several challenges, both internal and external. Internal obstacles include the limited availability of human resources with expertise in cybercrime, insufficient advanced technological tools, and weaknesses in the internal cybersecurity monitoring system. External challenges include the evolving nature of online gambling crimes, the constraints of international cooperation due to differing legal systems and political frameworks, and the risks associated with the perpetrators regarding arrest and punishment. To overcome these challenges, an integrated and cross-sectoral law enforcement strategy, as well as international collaboration, is essential.

Law enforcement against online gambling crimes involves a series of efforts by enforcement agencies to address various internal and external barriers. To address these, efforts must focus on enhancing human resources, acquiring cutting-edge technology, strengthening internal monitoring systems, boosting international cooperation, and implementing strict law enforcement policies. Through these comprehensive measures, it is expected that online gambling law enforcement will become more optimal with cross-sectoral and international collaboration, resulting in a more effective and efficient approach to enforcing stringent actions against online gambling perpetrators, all while adhering to the principles of dignified justice.

### **B. Suggestion**

The following are the recommendations provided by the author based on the findings of the conducted research:

1. Investing in specialized training and skill development is essential to address cybercrime in response to the prevalence of online gambling. The recruitment of more technology experts and the development of training programs aligned with the latest technological advancements can enhance law enforcement agencies' ability to handle online gambling. This strategy is expected to address the complexities of investigation and law enforcement in the online gambling domain, thereby improving the competence of law enforcement agencies in fulfilling their responsibilities.
2. Investment in Information Technology is a critical step in enforcing online gambling laws. Adequate funding is required for the acquisition of advanced information technology tools that will enhance the ability to track and monitor online activities. Furthermore, increasing collaboration with the private sector to access and utilize the latest technology is crucial for combating online gambling crimes, along with improving the ability to track and monitor activities in cyberspace.
3. Strengthening international cooperation in information exchange and operational coordination is vital for enforcing online gambling laws. Concrete measures can be taken through the establishment of bilateral or multilateral agreements, as well as enhancing diplomacy and communication between countries. These efforts are essential for creating an efficient and effective working environment to address global challenges.

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