

## JURIDICAL REVIEW OF PERPETRATORS WHO USE ARTIST PHOTOS FOR ONLINE GAMBLING PROMOTION WITHOUT PERMISSION IF THEY ARE ASSOCIATED WITH HUMAN RIGHTS IN INDONESIA

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### Abstract

Technological developments have a significant impact on social life, creating new opportunities and challenges. One of the negative impacts is cybercrime which increases risks and vulnerabilities. Effective law enforcement is necessary to protect individual rights and ensure digital security. The research method used in this study involves a juridical-normative approach to analyze the implementation of laws related to the use of artist photos for the promotion of unlicensed online gambling in Indonesia. Implementation of the ITE Law and PDP Law is important in dealing with cybercrime. Law enforcement through the ITE Law and the PDP Law is a crucial instrument in tackling this kind of *cybercrime*, but there are still challenges in the effectiveness and relevance of the two laws. Continuous efforts are needed to strengthen law enforcement, increase public awareness, and pay greater attention to victim recovery as part of Indonesia's commitment to ensuring the protection of human rights in the digital era. Synergy between law enforcement officials, the private sector and the community is needed for prevention, law enforcement and recovery of victims. Protection of individual rights, including artists who are victims of photo misuse, must be a priority with a holistic and collaborative approach. Indonesia can maintain and strengthen human rights principles in the digital era, while ensuring that perpetrators of cybercrimes that violate the law can be dealt with firmly and fairly.

## 1. INTRODUCTION

Based on the opinion of Mochtar Kusumaatmadja, law is a series of principles and rules that govern human interaction in the context of society. In the discussion panel V of the Indonesian Law Council, he explained that the law includes not only the norms that govern human social life, but also involves institutions, structure, and the processes that ensure the practical implementation of these rules in people's lives.<sup>1</sup>

Law enforcement is an effort or step taken to ensure that the rule of law is enforced, and it involves various institutions and agencies that have authority, such as the police,

<sup>1</sup> Umar Said Sugiarto, *Pengantar Hukum Indonesia* (Jakarta: Sinar Grafika, 2018), 8.

prosecutors, and judges. This shows that the law is not just a written document, but also involves implementation and real actions. The success of a law can be judged by the level of honesty and prudence in the enforcement process. The rapid change of the times in the current era forces individuals to adapt to changes, both in culture, behavior, and technology.

The term "modern" refers to the current, the latest, or in accordance with the needs and developments of the times. Meanwhile, "modernization" refers to the process of changing people's attitudes and mindsets to suit the demands of the current era.<sup>2</sup> The rapid growth of technology requires the law to continue to adapt to these developments. Therefore, it is important to have rules that can regulate and provide certain limits so that human life as a social creature can run smoothly according to the demands of the times.

With the advancement of technology and the emergence of new digital media, people's behavior in using these media has also changed. In 2019, the Ministry of Communication and Information Technology (*Kementerian Komunikasi dan Informatika/KemKominfo*) recorded high complaints of negative content. Specifically, there were 244,738 complaints of pornographic content, followed by 59,984 complaints of defamatory content, and 53,455 complaints of content that disturbed the public. In addition, there were 19,970 complaints of gambling-related content and 18,845 complaints of fraudulent content. In addition to these problems, KemKominfo also receives complaints about content related to issues of SARA (*suku, agama, ras, dan antargolongan* or ethnicity, religion, race and intergroup), terrorism, violence against children, and drug abuse.<sup>3</sup>

One of the acts of abuse is the practice of gambling. Gambling has been a known game since ancient times and is still popular today. Nonetheless, gambling is considered a disease of society and is a crime. The impact can damage the social structure of society, and in religion like Islam, gambling is considered a sin or an unlawful act. Online gambling is increasingly widespread through the internet, it is difficult to suppress, especially with the different types of online gambling available through advertisements on various websites.

The practice of endorsements for online gambling sites is increasing, not only through hidden websites, but also through platforms like YouTube overtly. However, in Indonesia, the laws governing gambling, including online gambling, are regulated in Article 303 of the Criminal Code (*Kitab Undang-Undang Hukum Pidana/KUHP*) and are also regulated in the Electronic Information and Transaction Law (ITE Law).

The application of laws related to this case includes the Information and Electronic Transactions Law (ITE Law) and the Personal Data Protection Law (PDP Law), which provide a legal basis to handle cybercrimes like this. However, law enforcement and enforcement on the ground often face obstacles such as a lack of awareness about the importance of data privacy and cybercrime, as well as limited resources and technical expertise in law enforcement agencies. The special case mentioned about the artist Raffi Ahmad whose photos were used for the promotion of online gambling without permission illustrates the complexity in law enforcement. In addition to the technical issues in tracking and prosecuting perpetrators, there are also ethical and legal considerations related to privacy rights and personal data protection that must be considered.

In the context of human rights in Indonesia, law enforcement must ensure that all individuals, including artists who are victims of the misuse of their images for online

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<sup>2</sup> Kamus Pusat Bahasa, *Kamus Bahasa Indonesia* (Jakarta: Pusat Bahasa, 2008), 358.

<sup>3</sup> Laily Indrianingsih and Budiarsih, "Analisis Hukum Konten Negatif di Platform Youtube di Indonesia," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 2, no. 3 (December 2022): 892–916, <https://doi.org/10.53363/bureau.v2i3.71>.

gambling promotions, are protected from exploitation and invasion of privacy. It emphasizes the importance of harmonization between law enforcement, privacy protection, and compliance with human rights principles in handling such cases.

## 2. METHOD

The research method used in this study involves a juridical-normative approach to analyze the implementation of laws related to the use of artist photos for the promotion of unlicensed online gambling in Indonesia. This approach will examine in detail the application of the ITE Law and the PDP Law in the context of the case. In addition, the research will also pay attention to cases related to similar cybercrimes to understand law enforcement trends and obstacles faced. Data will be collected through analysis of legal documents, case studies, and related literature, as well as interviews with legal experts and representatives of law enforcement agencies. With this approach, it is hoped that it can provide a comprehensive understanding of this issue as well as provide recommendations for improving the law enforcement system to be more effective in handling similar cases in the future. The approach method used in this study includes the Statute Approach, which involves a thorough analysis of all legal rules and regulations relevant to the issue under study. This approach aims to explore existing legal rules and other regulations that are still relevant to the problem being investigated. In addition, this study also uses a conceptual approach, which aims to identify relevant legal ideas and principles as a basis for formulating legal problem solving. With this approach, research seeks to find the value of truth and fair solutions in accordance with the principles of justice. The sources and types of legal materials used include primary legal materials such as legal regulations, secondary legal materials such as research journals, and tertiary legal materials as additional references such as dictionaries, encyclopaedias, and reading materials relevant to the research topic.

## 3. RESULTS AND DISCUSSION

### 3.1 The Application of ITE Law and PDP Law Against Perpetrators of Cybercrime in Indonesia

The development of technology is a certainty in human social life.<sup>4</sup> This is due to the natural human impulse to continue to evolve along with the changing times.<sup>5</sup> Technological developments have two main impacts, namely positive impacts and negative impacts.<sup>6</sup> Its positive impact can be seen in its contribution to various aspects of human life and its influence on daily lifestyles that tend to be modern, fashionable, efficient, and innovative in taking advantage of the available opportunities.<sup>7</sup> In addition, technological developments have also opened up wider and more flexible work opportunities for humans, allowing

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<sup>4</sup> Roger Brownsword and Han Somsen, "Law, Innovation and Technology: Fast Forward to 2021," *Law, Innovation and Technology* 13, no. 1 (March 2021): 8, <https://doi.org/10.1080/17579961.2021.1898298>.

<sup>5</sup> Rehna Gul and Abdallah Mohamed Othman El Nofely, "The Future of Law from the Jurisprudence Perspective for Example: The Influence of Science & Technology to Law, AI Law," *Equity of Law and Government* 1, no. 1 (September 2021): 80, <https://doi.org/10.22225/scj.4.2.2021.99-104>.

<sup>6</sup> Tri Harnowo, "Law as Technological Control of the Infringement of Intellectual Property Rights in the Digital Era," *Corporate and Trade Law Review (CTLR)* 2, no. 1 (July 2022): 65-79, <https://doi.org/10.21632/ctrl.2.1.65-79>.

<sup>7</sup> Andrew Harding, "Theories of Law and Development," *Asian Journal of Social Science* 46, no. 4-5 (September 2018): 421-44, <https://doi.org/10.1163/15685314-04604003>.

them to work more creatively and without the limitations of available space, time, or equipment.

Although technological developments bring various benefits, they also have a negative impact in the form of an increase in crimes related to technology and information systems, known as cybercrime. In general, cybercrime occurs through the media that emerges from the advancement of technological and information systems, taking place in a virtual sphere to distinguish it from conventional crime in the real world. In response to this challenge, Indonesia has regulated cybercrime through various laws and regulations, including Law Number 11 of 2008 on Electronic Information and Transactions (ITE Law) and its amendments, Law Number 19 of 2016 on Amendments to Law Number 11 of 2008 on Electronic Information and Transactions, and Law Number 27 of 2022 concerning Personal Data Protection (PDP Law). The focus of this research is the application of the concept of restorative justice in the context of cybercrime, especially in supporting victims of cybercrime.

The Criminal Code does not include aspects of cybercrime. The government, namely the President and the House of Representatives, started the process of forming the ITE Law in 2008 which was then updated through amendments to the ITE Law in 2016.<sup>8</sup> The ITE Law has not yet provided adequate guarantees for legal protection against cybercrime. However, the ITE Law has a positive impact in establishing several forms of cybercrime to answer the legal needs of the community. As a responsive measure to further legal needs, the government also passed the PDP Law in 2022 in the hope of preventing and tackling cybercrimes, especially those related to personal data breaches.<sup>9</sup>

The presence of the ITE Law and the PDP Law and its amendments are intended to face the challenges arising from cybercrime, which tends to occur at a higher speed and intensity than conventional crimes in terms of their implementation time.<sup>10</sup> This difference is due to the nature of cybercrimes that can occur without time limits, continuing to last 24 hours a day, so that everyone has the potential to become a victim.<sup>11</sup> As a result, the potential losses experienced by victims of cybercrimes are greater because these incidents can occur at any time and with a high level of activity.

According to Muladi, cybercrimes that are micro in nature with a personal orientation have a higher risk qualitatively and quantitatively due to several factors.<sup>12</sup> *First*, the variety of perpetrators in such criminal acts makes efforts to prevent and crack down on perpetrators difficult because their identification becomes increasingly complicated, allowing them to escape legal responsibility. *Second*, the variety of cybercrimes that occur

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<sup>8</sup> Trisno Muldani, "Implikasi Awal Penerbitan SKB UU ITE Pasal 27 ayat (3)," *MUKASI: Jurnal Ilmu Komunikasi* 1, no. 2 (May 2022): 148–163, <https://doi.org/10.54259/mukasi.v1i2.857>.

<sup>9</sup> Albert Lodewyk Sentosa Siahaan, "Urgensi Perlindungan Data Pribadi Di Platform Marketplace Terhadap Kemajuan Teknologi," *Majalah Hukum Nasional* 52, no. 2 (2022): 209–223, <https://doi.org/10.33331/mhn.v52i2.169>.

<sup>10</sup> The PDP Law was passed on October 17, 2022. For more information, please see M Julnis Firmansyah, "UU PDP Disahkan, Pemalsu Data Pribadi Diancam Denda Hingga Rp6 Miliar," *Tempo*, October 19, 2022, <https://www.tempo.co/hukum/uu-pdp-disahkan-pemalsu-data-pribadi-diancam-denda-hingga-rp6-miliar-271543>.

<sup>11</sup> Sufmi Dasco Ahmad, "Cybercrime In The Context Of Criminal Defamation In Indonesia," *Webology* 19, no. 2 (2022): 803–813, <https://www.webology.org/abstract.php?id=1238>.

<sup>12</sup> Putri Wahyu Widayanti, "Tindak Pidana Pencurian Data Nasabah Dalam Bidang Perbankan Sebagai Cyber Crime," *Legacy: Jurnal Hukum dan Perundang-Undangan* 2, no. 2 (2022): 4, <https://doi.org/10.21274/legacy.2022.2.2.1-21>.

creates holistic challenges and is difficult to anticipate because they take advantage of technological advances in various ways, causing widespread incidents in line with the times.<sup>13</sup> *Third*, victims of cybercrimes are often in an inferior legal position, because they are caught in a dilemma between seeking legal justice which is difficult to do because it is difficult to identify the perpetrator, and difficulty in seeking compensation because the perpetrator is difficult to identify, so they feel confused in demanding their rights.<sup>14</sup>

Keeping in mind the vulnerable position of victims in cybercrime, substantial legal protection is essential to ensure that their rights are fully met. These rights should be guaranteed constitutionally, as affirmed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that every citizen has the right to fair treatment according to the law.<sup>15</sup> This article has great relevance in the context of criminal law, especially in understanding the concept of restorative justice which focuses on the rehabilitation of victims. The principle of restorative justice is a modern approach in the criminal law system that focuses on the recovery of victims.<sup>16</sup> This approach is relevant in dealing with cybercrime because it focuses on victim recovery efforts as the main focus, with an emphasis on fulfilling their rights.

The understanding of restorative justice as an approach in the contemporary legal system involves three main principles. *First*, the importance of ensuring that victims' rights are met, especially when it comes to recovery and compensation.<sup>17</sup> In the current context of criminal law, the main concern is not on punishment as retaliation, but on the recovery of the victim, which puts the victim at the center of attention and provides full support.<sup>18</sup> *Second*, restorative justice seeks to maintain social balance in society after the occurrence of a crime. It emphasizes the importance of community participation in the process to restore social harmony.<sup>19</sup> *Third*, the restorative justice approach aims to stimulate awareness and change in the behavior of criminals, so that they do not repeat their mistakes in the future. Apart from focusing on law enforcement and victim recovery, this approach also focuses on preventive efforts to change the behavior of perpetrators and integrate them back into

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<sup>13</sup> Andi Widiatno and Ganiviantara Pratama, "Cyberporn Dalam Pasar Digital Non-Fungible Tokens: Prespektif Undang-Undang Informasi Transaksi Elektronik Dan Pornografi," *Journal Justiciabelen* 2, no. 2 (2022): 91, <https://doi.org/10.35194/jj.v2i2.2110>.

<sup>14</sup> Rili Windiasih Angkasa and Ogiandhafiz Juanda, "Efektivitas Rancangan Undang-Undang Penghapusan Kekerasan Seksual Sebagai Hukum Positif Dalam Perspektif Viktimologi," *Jurnal Usm Law Review* 4, no. 1 (June 2021): 117, <https://doi.org/10.26623/julr.v4i1.2696>.

<sup>15</sup> Kornelius Benuf, Siti Mahmudah, and Ery Agus Priyono, "Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology di Indonesia," *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 2 (August 2019): 145–60, <https://doi.org/10.24246/jrh.2019.v3.i2.p145-160>.

<sup>16</sup> Norjihana Ab Aziz, Nurah Sabahiah Mohamed, Nasimah Hussin, and Najaa Syahirah Samsudin, "Restorative Justice in the Child Justice System: Implementation in Other Jurisdictions," *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 7, no. 6 (January 2022): 1–13, <https://doi.org/10.47405/mjssh.v7i6.1561>.

<sup>17</sup> Sukardi and Hadi Rahmat Purnama, "Restorative Justice Principles in Law Enforcement and Democracy," *Journal of Indonesian Legal Studies* 7, no. 1 (2022): 155–90, <https://doi.org/10.15294/jils.v7i1.53057>.

<sup>18</sup> Triantonno and Muhammad Marizal, "Konsep Moderasi Pidana Mati RKUHP Dalam Perspektif HAM dan Kepentingan Negara," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, no. 1 (2022): 111–27, <https://doi.org/10.24090/volksgeist.v5i1.6399>.

<sup>19</sup> Nefa Claudia Meliala, "Rechterlijk Pardon (Pemaafan Hakim): Suatu Upaya Menuju Sistem Peradilan Pidana Dengan Paradigma Keadilan Restoratif," *Jurnal IUS Kajian Hukum dan Keadilan* 8, no. 3 (2020): 551, <https://doi.org/10.29303/ius.v8i3.820>.

society.<sup>20</sup> Overall, the principles of restorative justice are considered relevant and in accordance with the current evolution of criminal law.<sup>21</sup>

The existence of the idea of restorative justice in the context of cybercrime is very significant because in its implementation, both in the Criminal Code and the ITE Law, there has been no specific effort to recover victims of cybercrimes. This results in law enforcement related to cybercrime being more inclined to prosecute the perpetrators, without paying adequate attention to recovery for victims. The restorative justice approach in this study emphasizes the need to pay attention to efforts to recover victims of cybercrimes, such as improving cyber systems or returning personal data that has been disrupted by cybercrime. The findings of previous research conducted by Muslih et al. (2021),<sup>22</sup> Ju and Nurisman (2022),<sup>23</sup> and Fery (2022)<sup>24</sup> regarding cybercrime also support this argument by highlighting the urgency of recovery for victims as an integral part of a comprehensive law enforcement process.

The concept of restorative justice has become relevant in efforts to ensure that the rights of victims of cybercrimes are guaranteed, and this can be seen from two perspectives. First, from the perspective of victims of cybercrimes, restorative justice aims to provide various efforts and steps to recover victims affected by cybercrime. This is important because the impact of cybercrimes is often virtual or occurs within the scope of computer systems, so it is not always visible in person. However, cybercrime can also cause real harm to victims, such as moral losses due to hate speech on social media or financial losses due to online fraud. Therefore, victim recovery is the main focus in the perspective of restorative justice, beyond efforts to prosecute the perpetrators of cybercrimes.

From the perspective of law enforcement, finding the perpetrators of cybercrimes is also considered more difficult than finding the perpetrators of conventional crimes. Because these crimes occur within the scope of the digital system (cyber system), even though law enforcement officials are equipped with advanced equipment and technology, there are still challenges in catching cybercrime perpetrators because they often use various strategies to evade law enforcement. Therefore, rather than focusing on catching perpetrators who are difficult and have not provided adequate guarantees for victims, it is more relevant and important to pay attention to the recovery of victims of cybercrimes through support, facilitation, and compensation. This confirms that the concept of restorative justice has important relevance in ensuring that the rights of victims of cybercrimes are guaranteed.

In the context of the application of the law against cybercrime perpetrators in Indonesia, the role of the ITE Law and the PDP Law is becoming increasingly important.

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<sup>20</sup> Mutanda Darlington and Cheryl Hendricks, "Restorative Justice in Zimbabwe's Reconciliation Process: Some Considerations," *Peace and Conflict: Journal of Peace Psychology* 28, no. 4 (2022): 493, <https://doi.org/10.1037/pac0000599>.

<sup>21</sup> Gerry Johnstone, "Restorative Justice and the Culture of Control," *The Howard Journal of Crime and Justice* 61, no. 1 (2022): 25, <http://dx.doi.org/10.1111/hojo.12461>.

<sup>22</sup> Sodik Muslih, Mutiara Ramadhani, Diyah Ayu Riyanti, and Muhammad Marizal, "Implementasi Restorative Justice Pada Penyelesaian Kasus Pencemaran Nama Baik Dalam UU ITE," *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum* 3, no. 2 (2021): 100, <https://doi.org/10.37631/widyapranata.v3i2.443>.

<sup>23</sup> Ade Borami Ju and Eko Nurisman, "Cyberbullying: Pertanggungjawaban Pidana Anak Atas Hilangnya Nyawa Seseorang Ditinjau Berdasarkan Keadilan Restoratif," *Sasana* 8, no. 1 (2022): 177, <http://dx.doi.org/10.31599/sasana.v8i1.1262>.

<sup>24</sup> Muhammad Solikhin Fery, "Pendekatan Keadilan Restoratif Dalam Penegakan Hukum Tindak Pidana Siber di Polda Jatim," *Kawruh Abiyasa* 2, no. 2 (2022): 169, <https://jurnalkawruh.id/index.php/kwa/article/view/48>.

Nonetheless, there is still a need to improve the effectiveness and relevance of both laws in tackling cybercrime. It is important to continue to review and update existing regulations in order to accommodate technological developments and ensure adequate protection for victims of cybercrime. In addition, there is a need for synergy between law enforcement agencies, the private sector, and the public in efforts to prevent, enforce, and recover victims of cybercrime to create a safer and more reliable digital environment for all stakeholders.

As such, concrete steps need to be taken to strengthen law enforcement capacity, increase public awareness of the risks of cybercrime, and pay greater attention to victim recovery. In addition, it is also important to continue to encourage innovation in legal regulations that can keep up with technological developments and the dynamics of cybercrime. Only with a holistic and collaborative approach can Indonesia effectively address the challenges faced in the realm of cybercrime and ensure security and justice for all individuals in the digital ecosystem.

### **3.2 Implementation of Law Enforcement on the Case of Artist Raffi Ahmad whose photo was used for the promotion of online gambling without permission**

Technological developments, while bringing various positive advances, also have negative impacts that need to be considered, especially related to the misuse of technology for criminal activities such as cybercrime. The case of promoting online gambling without a license involving Raffi Ahmad is a clear example of how technological developments, especially deepfake technology, can be used unethically by irresponsible parties. The use of deepfakes to falsify video or audio content in a very convincing way can mislead and deceive the public, leading to the spread of hoaxes and false information that harms many parties, including victims whose names are misused in the content. In addition, this phenomenon also highlights the vulnerability of personal data security and individual reputation in an increasingly connected digital era. Therefore, while continuing to pay attention to technological innovations, we also need to increase awareness of the risks and dangers associated with the misuse of technology, as well as develop effective protection mechanisms to address the threat of cybercrime. That technological developments have a more positive and safe impact on society as a whole.

Reporting from the news portal *Bisnis.com* that the Executive Director of the Indonesia ICT Institute, Heru Sutadi, highlighted the use of deepfake technology to promote online gambling by involving well-known figures such as Najwa Shihab, Raffi Ahmad, and Atta Halilintar. Although the Ministry of Communication and Information Technology (*Kementerian Komunikasi dan Informasi/Kemenkominfo*) has banned such activities, perpetrators continue to strive to promote online gambling openly. In the case of a viral video featuring Najwa Shihab, Raffi Ahmad, and Atta Halilintar promoting online gambling, the results of the investigation showed that the voice in the video was the result of deepfake. Heru emphasized the importance of confirmation from the figures concerned to explain the truth of the video to the public, so that their fans are not affected by this illegal promotion. Meanwhile, the Ministry of Communication and Information continues to strive to eradicate online gambling, with reports of public losses from one online gambling site alone reaching Rp27 trillion.<sup>25</sup>

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<sup>25</sup> Crysania Suhartanto, "Promosi Judi Online Disebut Makin Nekat, Pakai Deepfake Raffi Ahmad," *Bisnis.com*, January 18, 2024, <https://teknologi.bisnis.com/read/20240118/84/1733364/promosi-judi-online-disebut-makin-nekat-pakai-deepfake-raffi-ahmad>.

This is detrimental to the parties involved, one of which is Raffi Ahmad in the cybercrime of promoting online gambling without a license. The case of promoting unlicensed online gambling involving Raffi Ahmad highlights the seriousness of the circulation of hoaxes and false information that associates celebrities with illegal activities. A video transcript of an interview uploaded by one of the Facebook accounts shows Raffi Ahmad claiming to open an online slot site as a charity field for the community, by offering guaranteed payments and maximum profits in a short time. However, the Fact Check Liputan6.com denied the claim and emphasized that the video was a hoax.<sup>26</sup> This incident shows the need to be vigilant in responding to information circulating on social media and the importance of verifying facts before spreading or believing it. In addition, this case also highlights the importance of celebrities' role in maintaining their reputation and integrity, as well as their responsibility as public figures in conveying accurate and responsible information to the public.

In the case of Raffi Ahmad, he is a victim of cybercrime that must be followed up by the law. Victims of cybercrime have the right to receive fair legal treatment and ensure legal certainty during the handling of cybercrime cases. This includes the right to support and assistance for victims who have suffered losses, both materially and non-materially due to digital crime.<sup>27</sup> In addition, victims are entitled to compensation in accordance with the losses they have suffered. Regarding fair legal process and legal certainty in cybercrime cases, victims have the right to request information regarding the development of their case and the steps that have been taken by law enforcement.<sup>28</sup> This right includes aspects of legal procedures and practices implemented by law enforcement officials.

The right to assistance and assistance for victims of cybercrime reflects the active and responsive involvement of the state in providing support to victims.<sup>29</sup> The assistance and assistance must be adjusted to the type and level of cybercrime experienced by the victim. For example, if the victim experiences insults or defamation on social media, the mentoring can focus on the psychological aspect to strengthen the victim's mentality.<sup>30</sup> However, if cybercrime involves an attack on personal or confidential data, the state must work to recover and protect the victim's data.

The next right for victims of cybercrime is the right to receive compensation in accordance with the losses suffered, especially material losses. If the victim suffers losses, especially in material terms, they have the right to demand compensation from the perpetrator of the cybercrime. However, because it is often difficult to identify the perpetrators, the state can temporarily be liable for material compensation for the victims while the investigation process takes place. In this situation, there are two reasons why the

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<sup>26</sup> Pebrianto Eko Wicaksono, "Raffi Ahmad Dijadikan Bahan Hoaks, dari Judi Online Sampai Bagikan Hadiah," *Liputan6.com*, September 30, 2024, <https://www.liputan6.com/cek-fakta/read/5491326/raffi-ahmad-dijadikan-bahan-hoaks-dari-judi-online-sampai-bagikan-hadiah>.

<sup>27</sup> Muhammad Kamran and Maskun, "Penipuan Dalam Jual Beli Online: Perspektif Hukum Telematika," *Balobe Law Journal* 1, no. 1 (April 2021): 41–56, <https://doi.org/10.47268/balobe.v1i1.501>.

<sup>28</sup> Asep Saepudin Jahar, Raju Moh Hazmi, and Nurul Adhha, "Construction of Legal Justice, Certainty, and Benefits in the Supreme Court Decision Number 46P/HUM/2018," *Cita Hukum* 9, no. 1 (2021): 162, <https://doi.org/10.15408/jch.v9i1.11583>.

<sup>29</sup> Myroslav Kryshtanovych et al., "State Management of the Development of National Cybersecurity Systems," *International Journal of Computer Science and Network Security* 22, no. 5 (2022): 11–16, <https://doi.org/10.22937/ijcsns.2022.22.5.3>.

<sup>30</sup> Okta Lestari Br. Ginting, Abdul Razak Nasution, and Saiful Azmi Hasibuan, "Juridical Review of Social Media Defamation," *International Journal of Economic, Technology and Social Sciences* 3, no. 1 (May 2022): 190–94, <https://doi.org/10.53695/injects.v3i1.753>.



state should bear temporary material compensation for victims of cybercrime until the perpetrator is exposed. *First*, victims of cybercrime are often in a weaker legal position than perpetrators. With the perpetrator not yet identified, victims cannot get definitive compensation, which further aggravates their burden. Therefore, the state should take steps to help victims by providing temporary compensation.

*Second*, the state has a responsibility to protect and guarantee legal certainty for the community, especially for victims of cybercrime. In addition to providing compensation to victims, the state must also regulate a mechanism for providing compensation for them to enforce legal certainty. Providing a focus on compensation for victims of cybercrime is part of a restorative justice approach. In this context, restorative justice aims to recover victims from losses suffered due to cybercrime. This approach is considered progressive because, pending the identification of cyber criminals which could take time, compensating victims is a top priority for the state. In addition to concern for victims, the concept of restorative justice also encourages community participation in efforts to prevent cybercrime, minimizing the potential for these crimes to occur preventively.<sup>31</sup>

Prior to the PDP Law, the implementation of the concept of restorative justice that focuses on compensation and recovery of victims of cybercrime still faced several obstacles. The two main obstacles are regulatory issues and the professionalism of law enforcement. Regulatory issues include the absence of a legal framework that supports the implementation of the concept of restorative justice in the context of compensation and recovery of victims of cybercrime. Existing laws tend to focus more on punishing cyber criminals. Meanwhile, obstacles related to the professionalism of law enforcement arise due to the gap between technological advances and law enforcement skills in dealing with cybercrime, which generally still uses conventional approaches. The application of the concept of restorative justice in terms of compensation and recovery of cybercrime victims can be more effective after the PDP Law is passed, along with the improvement of law enforcement professionalism in dealing with cybercrime.

One of the important aspects of the role of the state in the context of restorative justice related to the protection of victims of cybercrime is the establishment of regulations that regulate compensation for victims. Although cybercrimes are generally regulated in the ITE Law and its amendments, as well as the PDP Law, the ITE Law and its amendments are more likely to prioritize criminal sanctions as the main solution. This has led to a lack of application of the principle of restorative justice in handling cybercrime cases.<sup>32</sup> The main focus of the ITE Law and its amendments on criminal sanctions does not fully reflect the need to protect and fulfil the rights of victims after cybercrime. Therefore, there has been no adequate effort from the ITE Law and its amendments to provide appropriate compensation for victims, in accordance with the principle of restorative justice.

Article 12 paragraph (1) of the PDP Law states that data subjects have the right to seek compensation for losses caused by cybercrime acts involving personal data. Article 12 paragraph (2) of the PDP Law provides a directive that details regarding compensation for victims of crimes related to personal data must be regulated through Government Regulations. However, despite the requirement to regulate compensation for victims in this

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<sup>31</sup> Sukardi and Purnama, "Restorative Justice Principles in Law Enforcement And Democracy."

<sup>32</sup> Defi Sri Sunardi Ramadhani, Setiawan Noerdajasakti, and Faizin Sulistio, "Kedudukan Surat Keputusan Bersama Sebagai Pedoman Implementasi Pasal Penghinaan dan Pencemaran Nama Baik Dalam UU ITE," *Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 7, no. 2 (2022): 308, <https://journal2.um.ac.id/index.php/jppk/article/view/27008>.

regard, the shortcoming in the PDP Law is the absence of a time limit set for the establishment of regulations by the government regarding such compensation.

The absence of a deadline for the establishment of implementing regulations for the PDP Law is important to ensure that the compensation mechanism for victims can be implemented efficiently and quickly. Without the time limit set for the establishment of technical rules by the government based on the PDP Law, the implementation of the concept of compensation for victims of cybercrimes related to personal data is still not possible. Although Article 64 of the PDP Law directs restorative dispute resolution by providing the option of using courts, arbitration, or alternative dispute resolution, there is no clear time limit for applying the concept in practice. Therefore, the opportunity to implement the principle of restorative justice in compensating victims of cybercrimes is still wide open.

Based on this explanation, the protection of the rights of victims of cybercrimes oriented towards restorative justice can be strengthened through the revision of the ITE Law and its amendments by including the principle of restorative justice as the first step to protect the rights of victims. Revision is also needed in the PDP Law, especially with the addition of provisions that regulate the time limit for the formation of implementing regulations related to the compensation mechanism. Although the compensation mechanism has been regulated, the absence of implementing regulations makes its implementation not optimal because it cannot be implemented without clear regulations. Therefore, the revision of the PDP Law to set a deadline for the formation of implementing regulations is very important. In addition, the President can accelerate the ratification of government regulations that regulate technical compensation for cybercrimes, especially those related to personal data protection.

After the revelation of a case involving Raffi Ahmad in the promotion of unlicensed online gambling using deepfake technology, law enforcement must immediately take further action to deal with this problem firmly and fairly. The first step that needs to be taken is an in-depth investigation to identify the perpetrators behind the spread of the deepfake content. The investigation must involve digital forensics and technology experts to gather enough evidence to take legal action against the perpetrators.

Furthermore, law enforcement officials need to work with the Ministry of Communication and Information Technology (*Kemenkominfo*) to monitor and block illegal online gambling sites that continue to be rampant. This step is important to protect the public from the threat of cybercrime and reduce the potential victims who can be harmed by such illegal practices. In addition, it is important for the Ministry of Communication and Information to conduct more intensive socialization about the dangers of illegal online gambling and the misuse of deepfake technology. Public education on how to identify fake content and how to protect yourself from online fraud should be improved to prevent the spread of harmful false information.

In this case, the role of the mass media is also very important to report this case objectively and provide a better understanding to the public about the dangers of cybercrime and the importance of caution in online activities.

In addition, it is necessary to carry out strict law enforcement against cyber criminals, including those involved in the creation and dissemination of illegal deepfake content. Appropriate punishment must be given as a form of learning so that this kind of crime does not repeat in the future. In addition to law enforcement measures, authorities must also work closely with social media platforms and internet service providers to develop technical solutions that can detect and remove deepfake content quickly and efficiently.

Finally, legal protection for victims like Raffi Ahmad must be a priority, including providing legal assistance and supporting a fair legal process. Victims must feel heard and protected by the legal system, so that public trust in justice can be restored. With these steps, it is hoped that law enforcement against cases involving Raffi Ahmad and other victims involved in cybercrimes can be carried out effectively, thereby providing a deterrent effect for perpetrators and increasing public awareness of the importance of cyber security.

#### 4. CONCLUSION

Juridically, the case of using artists' photos for the promotion of unlicensed online gambling, especially when involving deepfake technology, raises deep questions about human rights in Indonesia. Law enforcement through the ITE Law and the PDP Law is a crucial instrument in tackling this kind of cybercrime, but there are still challenges in the effectiveness and relevance of the two laws. Continuous efforts are needed to strengthen law enforcement, increase public awareness, and pay greater attention to victim recovery as part of Indonesia's commitment to ensuring the protection of human rights in the digital era. In this context, synergy between law enforcement agencies, the government, the private sector, and the active participation of the community is key in creating a safer, more reliable, and fairer digital environment for all individuals. Concrete measures such as in-depth investigations, monitoring of illegal online gambling sites, and intensive socialization about the dangers of cybercrime and deepfake technology must continue to be fought. In addition, stronger legal protection for victims and the development of technical solutions to detect and remove deepfake content are important steps in tackling the threat. Thus, Indonesia can maintain and strengthen human rights principles in the digital era, while ensuring that perpetrators of cybercrimes that violate the law can be dealt with firmly and fairly.

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