

ANALISIS TEORI TUJUAN HUKUM DAN *MAQAŞID AL-SYARIAH*
TENTANG REKONSTRUKSI PERJUDIAN ONLINE SEBAGAI
KEJAHATAN LUAR BIASA
ANALYSIS OF LEGAL PURPOSE THEORY AND MAQAŞID AL-SYARIAH
ON THE RECONSTRUCTION OF ONLINE GAMBLING AS AN
EXTRAORDINARY CRIME

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ABSTRAK

Perkembangan teknologi informasi telah memicu peningkatan signifikan praktik judi online yang tidak hanya menimbulkan dampak ekonomi, sosial, dan moral, tetapi juga menghadirkan permasalahan hukum yang kompleks, khususnya terkait karakter lintas negara, anonimitas pelaku, serta keterbatasan instrumen penegakan hukum konvensional. Permasalahan utama dalam penelitian ini adalah belum optimalnya konstruksi hukum yang mampu mengkualifikasikan judi online sebagai kejahatan yang memiliki dampak sistemik dan terorganisir. Penelitian ini bertujuan untuk menganalisis rekonstruksi judi online sebagai *extraordinary crime* melalui perspektif teori tujuan hukum dan *maqāşid al-syarī'ah*. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan dan konseptual. Hasil penelitian menunjukkan bahwa meskipun pengaturan mengenai judi online telah diakomodasi dalam KUHP dan Undang-Undang ITE, penegakan hukumnya belum efektif karena sifat kejahatan yang berbasis teknologi dan berskala transnasional. Dari perspektif teori tujuan hukum, judi online bertentangan dengan nilai keadilan, kemanfaatan, dan kepastian hukum. Sementara itu, dalam perspektif *maqāşid al-syarī'ah*, praktik ini merusak perlindungan terhadap agama, jiwa, akal, keturunan dan harta. Implikasi hukum dari rekonstruksi ini adalah perlunya penguatan kebijakan kriminal melalui pengakuan judi online sebagai *extraordinary crime* yang memungkinkan penerapan instrumen hukum khusus, seperti pendekatan *follow the money*, perluasan yurisdiksi, perampasan aset, serta peningkatan kerja sama internasional. Dengan demikian, rekonstruksi tersebut diharapkan mampu meningkatkan efektivitas penegakan hukum sekaligus memberikan perlindungan yang lebih optimal terhadap kepentingan masyarakat.

Kata Kunci: Extraordinary Crime, Judi Online, *Maqāşid al-Syarī'ah*, Tujuan Hukum

ABSTRACT

The advancement of information technology has significantly increased the prevalence of online gambling, which not only causes economic, social, and moral harm but also raises complex legal issues, particularly related to its transnational nature, anonymity of perpetrators, and the limitations of conventional law enforcement mechanisms. The main problem addressed in this study is the inadequacy of the current legal framework in classifying online gambling as a systemic and organized crime. This study aims to analyze the reconstruction of online gambling as an extraordinary crime through the perspectives of legal purpose theory and maqāṣid al-syarī'ah. This research employs normative legal methods with statutory and conceptual approaches. The findings indicate that although online gambling has been regulated under the Criminal Code and the ITE Law, law enforcement remains ineffective due to the technological and cross-border characteristics of the crime. From the perspective of legal purpose theory, online gambling contradicts the principles of justice, utility, and legal certainty. Meanwhile, from the maqāṣid al-syarī'ah perspective, it undermines the protection of religion, life, intellect, lineage, and property. The legal implications of this reconstruction highlight the necessity of strengthening criminal policy by recognizing online gambling as an extraordinary crime, thereby enabling the application of special legal instruments such as the follow the money approach, extended jurisdiction, asset forfeiture, and enhanced international cooperation. This reconstruction is expected to improve the effectiveness of law enforcement and provide stronger protection for public interests.

Keywords: *Extraordinary Crime, Online Gambling, Maqāṣid al-Syarī'ah, Legal Purpose*

A. INTRODUCTION

Online gambling is a betting activity that uses money as a medium, with game rules and nominal values determined by organizers through electronic devices and internet networks. Fundamentally, it shares addictive characteristics with conventional gambling, often beginning with small wins that stimulate psychological impulses to increase bets in pursuit of greater profits. In Indonesia, gambling constitutes a criminal offense, commonly conducted through specialized online platforms with deposit mechanisms. However, such practices generate uncertainty, psychological pressure and both material and immaterial losses affecting not only perpetrators but also their families. From a philosophical and juridical perspective, these conditions reflect a deviation from the ideals of justice and social welfare within the legal system.

In Law No. 1 of 2023 concerning the Criminal Code (KUHP), gambling is defined as any game based on hope and luck, not organized directly by the participants. Indonesia has legally regulated gambling through Article 303 bis

paragraph (1) of the Criminal Code, which threatens perpetrators with imprisonment or fines. Furthermore, the legal system provides arrangements via Article 27 paragraph (2) and Article 45 paragraph (3) of Law No. 1 of 2024 (ITE Law) regarding the distribution of gambling content. Normatively, the Indonesian legal system is a pluralistic one, influenced by civil law, customary law and Islamic law as protected by Article 18B and Article 29 of the 1945 Constitution.¹ This juridical foundation is essential to ensure legal certainty and human rights protection.

Previous studies have generally examined online gambling from various perspectives. Rodhiyah, et al., emphasized the accountability of perpetrators of online gambling crimes in Indonesia.² Meanwhile, Lailiyah, et al., analyzed the socio-economic impacts of online gambling within the *maqāṣid al-syarī'ah* framework. Other studies also highlight the organized and transnational characteristics of online gambling networks. However, these studies have not comprehensively examined the reconstruction of online gambling as an extraordinary crime through an integrative approach combining legal purpose theory and *maqāṣid al-syarī'ah*. This indicates a research gap and at the same time confirms the novelty of this study.

Law is an independent variable in society and its development is determined by socio-cultural values. According to Gustav Radbruch, a good law must contain three basic values: justice (*Gerechtigkeit*), utility (*Zweckmabigkeit*) and legal certainty (*Rechtssicherheit*).³ Justice is subjective and individualistic, but in law enforcement, it must be balanced with utility and certainty to prevent the law from becoming a tool of oppression.⁴ The ideal of law (*idee des recht*) demands that these three elements manifest in society, although finding a balanced compromise is often challenging.⁵ Law enforcement in Indonesia must realize these values to achieve

¹ Indonesia, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*.

² Isyatur Rodhiyah, Ifahda Pratama Hapsari dan Hardian Iskandar Iskandar, *Accountability of Perpetrators of Online Gambling Crimes in Indonesia*, Al-Manhaj: Journal of Islamic Law and Social Institutions, Vol.4, No.2 (Desember 2022), p.591.

³ Sahat Maruli Tua Situmeang, *The Indonesian Legal System: Components of Legal and Institutional Substance of Criminal Justice*, Logoz Publishing, Bandung, 2020, p.2.

⁴ Supriyono, *The Creation of a Sense of Justice, Certainty and Usefulness in People's Life*, Scientific Journal of Phenomena, Vol.14, No.2 (2016), p.1569.

⁵ Fence M. Wantu, *The Role of Judges in Realizing Legal Certainty, Justice and Utility in Civil Justice*, Journal of Law and Justice, Vol.6, No.3 (Juni 2017), p.367.

community welfare and order.⁶ Legal certainty ensures that the law does not deviate from established norms, providing protection against arbitrary actions.⁷

The harmonization of justice, utility and legal certainty will realize law enforcement that functions as a protection of human interests.⁸ Online gambling has become a systematic and organized crime that transcends national borders, causing severe economic and moral damage. Therefore, qualifying online gambling as an *extraordinary crime* requires an in-depth analysis. In general, *extraordinary crime* refers to a category of crimes that have systemic, widespread and severe impacts on society, often involving organized networks and posing significant threats to public welfare and state stability. Such crimes typically require special legal measures beyond ordinary criminal law, including enhanced investigative powers, asset tracing and international cooperation.

What distinguishes *extraordinary crimes* from conventional crimes lies in their characteristics. Conventional crimes are generally individual, localized and can be addressed through standard legal procedures. In contrast, extraordinary crimes are transnational in nature, organized systematically, produce massive socio-economic impacts and demand exceptional legal responses. Crimes such as corruption, terrorism and narcotics trafficking are commonly categorized as extraordinary crimes due to these features.

From a fairness standpoint, it exploits vulnerable groups through algorithmic manipulation.⁹ In terms of utility, online gambling is empirically more detrimental than profitable, contradicting the legal goal of providing benefits for the many. Therefore, eradicating online gambling through an extraordinary legal approach is very important to restore the balance of social justice and protect the public interest.

Based on the background described above, the problems to be discussed in this research are formulated as follows:

⁶ Hasaziduhu Moho, *Law Enforcement in Indonesia According to Aspects of Legal Certainty, Justice and Utility*, Warta Dharmawangsa Scientific Magazine, Vol.13, No.1 (Januari 2019), p.59.

⁷ *Ibid.*, p.60.

⁸ Isyatur Rodhiyah, Ifahda Pratama Hapsari dan Hardian Iskandar Iskandar, *Accountability of Perpetrators of Online Gambling Crimes in Indonesia*, p.591.

⁹ Indonesia, *Undang-Undang tentang Kitab Undang-Undang Hukum Pidana*, UU No.1 Tahun 2023, LN Tahun 2023 No.1, TLN No.6842.

1. How is the reconstruction of online gambling as an extraordinary crime justified from the perspective of legal objectives and *maqasid al-syari'ah*?
2. What are the legal implications of this reconstruction for law enforcement and the protection of human interests in Indonesia?

These problems will be answered in the discussion section and summarized in the conclusion to ensure a consistent and comprehensive legal analysis.

B. DISCUSSION

1. Analysis of Legal Purpose Theory on Online Gambling as an Extraordinary Crime

From the perspective of the idea of law (*idee des recht*), Gustav Radbruch asserted that an ideal legal system must simultaneously embody three inseparable fundamental values: justice (*Gerechtigkeit*), utility (*Zweckmäßigkeit*) and legal certainty (*Rechtssicherheit*). These values are interdependent and must be balanced in law enforcement practice. Radbruch emphasized that a legal system that prioritizes certainty alone, without justice, risks becoming an instrument of oppression.

In this context, it is necessary to first establish an operational definition of *extraordinary crime*. Conceptually, extraordinary crimes refer to criminal acts that possess systemic, organized and large-scale characteristics, causing significant harm to society and requiring special legal measures beyond ordinary criminal law mechanisms. These crimes are typically transnational, involve complex networks, and have broad socio-economic impacts, thus justifying exceptional legal responses such as special investigative techniques, asset recovery and international cooperation.

In the Indonesian legal context, crimes such as corruption, terrorism, and narcotics trafficking have been categorized as extraordinary crimes. Corruption is considered extraordinary due to its systemic impact on state finances and governance structures. Terrorism is classified as extraordinary because it threatens national security and public safety. Similarly, narcotics crimes are treated as extraordinary due to their organized networks and destructive impact on human resources. Compared to these crimes, online gambling increasingly demonstrates

similar characteristics, particularly in terms of organization, transnational operations and socio-economic consequences.

To determine whether online gambling can be qualified as an extraordinary crime, several key indicators can be identified. First, the systematic and organized nature of the crime, where online gambling is often operated by structured syndicates using digital platforms. Second, its transnational dimension, as servers, operators and financial transactions frequently cross national borders. Third, the massive socio-economic impact, including financial losses, addiction, and social disintegration affecting a wide segment of society. Fourth, the use of advanced technology, which complicates detection and law enforcement. Fifth, the difficulty of enforcement under conventional legal mechanisms, which indicates the need for extraordinary legal approaches.

When analyzed through Radbruch's framework, the qualification of online gambling as an extraordinary crime must be tested against the balance between justice and legal certainty within Indonesian law. From the perspective of legal certainty, Indonesia has already regulated gambling through Law No.1 of 2023 concerning the Criminal Code and Law No. 1 of 2024 concerning Electronic Information and Transactions. However, these regulations primarily reflect a conventional criminal law approach, which tends to be limited in addressing the evolving and transnational nature of online gambling. This creates a gap between normative regulation and empirical reality.

From the perspective of justice, the current legal framework has not fully protected victims, particularly vulnerable groups who are systematically targeted through algorithmic manipulation and digital addiction mechanisms. The imbalance between perpetrators often organized and technologically advanced and victims reflects a substantive injustice that cannot be adequately addressed through ordinary criminal law enforcement. In this regard, prioritizing legal certainty alone, without adapting the legal framework to achieve substantive justice, may lead to ineffective law enforcement.

From the perspective of utility, the widespread negative impacts of online gambling such as economic losses, social instability, and moral degradation clearly outweigh any potential benefits. This contradicts the fundamental purpose of law

as a means to achieve the greatest benefit for society. Therefore, the application of an extraordinary legal approach becomes necessary to restore social balance and protect public interests.

Based on this analysis, the reconstruction of online gambling as an extraordinary crime can be justified within the framework of legal purpose theory. Such reconstruction does not negate existing legal norms but rather strengthens them by providing a more adaptive and effective legal response. By integrating justice, utility and legal certainty, the classification of online gambling as an extraordinary crime can serve as a foundation for progressive legal policies in Indonesia.

From a fairness standpoint, online gambling creates a huge gap between operators and the public as victims. Online gambling operators make huge profits through algorithmic mechanisms and psychological manipulations that exploit the economic vulnerability and digital literacy of people, especially vulnerable groups. The impact is seen in the form of damaged family relationships and deterioration of social values. In the context of substantive justice, this suggests that it is not enough to simply apply a simple criminal law approach. Regarding the value of utility, Radbruch's theory in Indonesia emphasizes:

“...that the rule of law must be useful, functional, and appropriate to achieve concrete social goals such as community welfare, public order, and governance effectiveness. Law enforcement has a beneficial purpose that not only aims to retaliate or replace a criminal act, but also has a beneficial purpose. Here, utility means happiness and good law brings happiness to many.”¹⁰

Online gambling has been empirically shown to be more detrimental than beneficial. Data from the Indonesian Financial Transaction Reports and Analysis Center (PPATK) indicate that the circulation of funds related to online gambling has reached hundreds of trillions of rupiah in recent years, reflecting the massive scale of financial losses experienced by the public and the potential leakage of national economic resources.¹¹ In addition, reports from the Ministry of

¹⁰ Hasaziduhu Moho, *Law Enforcement in Indonesia According to Aspects of Legal Certainty, Justice and Utility*, p.59.

¹¹ Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), *Laporan Hasil Analisis Transaksi Keuangan Terkait Judi Online*, diakses dari <https://www.ppatk.go.id/publikasi/read/255/laporan-tahunan-ppatk-tahun-2024>.

Communication and Digital (Kominfo) show that millions of online gambling contents have been blocked annually, yet the number continues to increase due to the rapid regeneration of digital platforms.¹² These conditions demonstrate that online gambling not only causes significant economic losses for families but also creates a substantial social and regulatory burden for the state.

From a legal practice perspective, several law enforcement cases reveal the complexity of prosecuting online gambling crimes, particularly due to the involvement of transnational networks and digital financial systems. Court decisions in Indonesia have generally relied on Article 303 of the Criminal Code and Article 27 paragraph (2) of the ITE Law, which primarily target individual perpetrators rather than dismantling organized networks.¹³ This indicates a limitation of the conventional legal framework in addressing the structural nature of online gambling.

Furthermore, in terms of legal certainty, online gambling is normatively prohibited under Law No.1 of 2023 (Criminal Code) and Law No.1 of 2024 (ITE Law). However, law enforcement still faces significant obstacles due to the technology-based and cross-border nature of the crime. In this context, classifying online gambling as an extraordinary crime can strengthen legal certainty by providing a stronger legal basis for the state to adopt progressive legal policies, such as the follow the money approach and asset confiscation.¹⁴

2. *Maqāṣid al-Syari'ah* Perspective on the Reconstruction of Online Gambling

In the Indonesian legal system, religious values function not only as moral guidance but also as a substantive source in the development of national law. One of the most relevant frameworks is the theory of *maqāṣid al-syarī'ah*, systematically developed by Imam al-Shatibi, which emphasizes that the ultimate

¹² Kementerian Komunikasi dan Informatika Republik Indonesia, *Penanganan Konten Judi Online di Indonesia*, diakses dari <https://www.komdigi.go.id/berita/siaran-pers/detail/siaran-pers-no-01hmkominfo012024-tentang-penanganan-konten-judi-online>, diakses pada 18 April 2026..

¹³ Isyatur Rodhiyah, Ifahda Pratama Hapsari dan Hardian Iskandar Iskandar, *Accountability of Perpetrators of Online Gambling Crimes in Indonesia*, p.591.

¹⁴ Indonesia, *Undang-Undang Republik Indonesia tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (UU ITE)*, UU Nomor 1 Tahun 2024, LN Tahun 2024 No.1, TLN No.6905.

objective of law is the realization of human welfare (*maslahah*) and the prevention of harm (*mafsadah*).¹⁵ In this sense, *maqāṣid al-syarī'ah* can be positioned not merely as a theological doctrine, but as a normative-analytical framework for legal policy formulation.

Within this framework, online gambling is not only prohibited as *maysir*, but more importantly, it represents a structural threat to the five fundamental protections (*al-kulliyāt al-khamsah*). Therefore, the analysis must move beyond normative prohibition toward its function as a basis for legal reconstruction and policy justification.

From the perspective of *ḥifẓ al-dīn* (protection of religion), the prohibition of gambling reflects a normative boundary that aims to prevent moral degradation. However, in the context of state law, this principle can be translated into a legal policy that protects public morality and social order, which are also recognized as legitimate interests within the Indonesian legal system. Thus, the prohibition of online gambling is not solely a religious mandate but aligns with the state's obligation to maintain public ethics.

From the perspective of *ḥifẓ al-naḥs* (protection of life) and *ḥifẓ al-'aql* (protection of intellect), online gambling poses serious risks in the form of addiction, psychological disorders and irrational decision-making.¹⁶ In legal policy terms, this justifies state intervention not only through punitive measures but also through preventive and rehabilitative approaches. This aligns with the broader objective of criminal law as a tool of social protection, rather than merely retribution.

From the perspective of *ḥifẓ al-nasl* (protection of offspring), the socio-familial impacts of online gambling such as neglect of family responsibilities and increased divorce rates indicate that its harm extends beyond individual actors to the structural integrity of society. This reinforces the argument that online gambling should not be treated as an ordinary crime, as its consequences affect intergenerational welfare.

¹⁵ Abu Ishaq al-Shatibi, *Al-Muwafaqat fi Ushul Al-Syari'ah*, vol.2, Dar al-Kutub al-Ilmiyyah, Beirut, 2003, p.5–6.

¹⁶ Mulazimatul Hasanah Lailiyah, dkk., *Analysis of Online Gambling Perception: Socio-Economic Implications in the Perspective of Sharia Maqashid*, JEKOMBIS: Journal of Management and Business Economics Research, Vol.4, No.4 (November 2023), p.289.

From the perspective of *ḥifẓ al-māl* (protection of property), online gambling involves speculative and unjust mechanisms that undermine lawful economic order. In this regard, *maqāṣid al-syarī'ah* provides a strong normative foundation for policies such as asset confiscation, financial tracking, and the *follow the money* approach, which are also recognized within modern criminal law systems.¹⁷

The integration of *maqāṣid al-syarī'ah* with national law can be seen in the Indonesian legal framework, which acknowledges religious values as part of its normative foundation, as reflected in Articles 18B and 29 of the 1945 Constitution. Therefore, *maqāṣid al-syarī'ah* can function as a complementary analytical tool to strengthen the philosophical basis of legal norms, particularly in addressing complex and evolving crimes such as online gambling.

Based on this integrative approach, *maqāṣid al-syarī'ah* can be used to construct a legal argument for classifying online gambling as an *extraordinary crime*. The cumulative violation of all five fundamental protections (*al-kulliyāt al-khamsah*) indicates that online gambling is not merely an individual moral offense, but a systemic threat to public welfare. This multi-dimensional harm affecting morality, mental health, family structure, and economic stability meets the criteria of extraordinary crimes, which are characterized by their widespread impact and the necessity for exceptional legal responses.

Thus, *maqāṣid al-syarī'ah* does not only justify the prohibition of online gambling but also provides a normative and philosophical foundation for its legal reconstruction as an extraordinary crime. This reconstruction supports the development of progressive legal policies that integrate moral values, social protection, and legal effectiveness within the Indonesian legal system.

C. CONCLUSION

The reconstruction of online gambling as an extraordinary crime is a legal necessity to address the complex challenges posed by digital-based crimes in Indonesia. Based on the analysis in the previous sections, the conclusions of this study are as follows:

¹⁷ Indonesia, *Undang-Undang tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik*, UU No.1 Tahun 2024.

1. Conclusion on Legal Purpose Theory

The reconstruction of online gambling as an *Extraordinary Crime* is philosophically and legally justified through the theory of legal objectives initiated by Gustav Radbruch. From the perspective of justice (*Gerechtigkeit*), online gambling exploits the economic and psychological vulnerabilities of the community, necessitating a more progressive legal response than ordinary crimes. In terms of utility (*Zweckmabigkeit*), the massive negative impacts on social and economic stability outweigh any perceived benefits, thus legal intervention must prioritize public welfare. Furthermore, legal certainty (*Rechtssicherheit*) is strengthened by qualifying these activities as extraordinary crimes, allowing for the application of specialized instruments such as asset seizure and the follow the money approach under Law No. 1 of 2024 concerning Electronic Information and Transactions.

2. Conclusion on *Maqasid al-Syari'ah* Perspective

From the perspective of *Maqasid al-Syari'ah*, online gambling is a direct threat to the five fundamental necessities of human life (*Al-Kulliyat al-Khamsah*). It undermines *hifz al-din* (safeguarding religion) through prohibited speculative acts (*maysir*), damages *hifz al-nafs* (preserving life) and *hifz al-'aql* (keeping the mind) through addiction and mental distress and triggers the destruction of *hifz al-nasl* (taking care of offspring) and *hifz al-mal* (taking care of property) through structural poverty and family disharmony. Therefore, the reconstruction of online gambling as an extraordinary crime is a manifestation of the state's responsibility to realize *maslahah* (public interest) and eliminate *mufسادah* (harm) within the Indonesian national legal system.

3. Formulation of Legal Norm (Norm Reconstruction)

As a core contribution of this research, the reconstruction of online gambling as an extraordinary crime can be formulated into a proposed legal norm as follows:

a. Proposed Norm:

“Online gambling, as a digital-based and transnational crime that is organized, systematic and causes widespread socio-economic harm, shall be classified as an Extraordinary Crime. Consequently, its regulation and

enforcement shall be subject to special legal measures, including but not limited to extended jurisdiction, asset tracing and confiscation, the follow the money approach and strengthened national and international cooperation.”

This norm implies several legal consequences:

- 1) The recognition of online gambling as an extraordinary crime within statutory law (*lex specialis*).
- 2) The expansion of investigative and prosecutorial authority beyond conventional criminal procedures.
- 3) The prioritization of financial-based enforcement (*asset recovery approach*) rather than solely offender-based punishment.
- 4) The integration of preventive, repressive and rehabilitative measures within a unified legal policy framework.

Thus, this formulation bridges philosophical justification (legal purpose theory), moral foundation (*maqāsid al-syarī’ah*) and practical legal enforcement in Indonesia.

4. Suggestions/Recommendations

Based on the results of the research, the author provides several recommendations as follows:

- a. The government and the House of Representatives (DPR) are expected to immediately formulate a specific legal umbrella that officially categorizes online gambling as an *Extraordinary Crime*. This is essential to provide a stronger legal basis for law enforcement to use special investigative powers, such as inter-agency coordination and international cooperation, to dismantle transnational gambling syndicates.
- b. Law enforcement agencies, particularly the Indonesian National Police and the Ministry of Communication and Digital, should optimize the *follow the money* approach. By focusing on the flow of funds and freezing assets related to gambling networks, the state can effectively cut off the economic "lifeblood" of these criminal organizations, ensuring legal utility and justice for the public.

- c. It is recommended that religious and educational institutions increase public literacy regarding the dangers of online gambling from the perspective of *Maqasid al-Syari'ah*. Preventive measures are just as crucial as repressive ones to protect the five fundamental human necessities (*Al-Kulliyat al-Khamsah*) from the destructive influence of digital-based gambling.



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