

LEGAL RESPONSIBILITY FOR PERPETRATORS OF ONLINE GAMBLING CRIMES

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ABSTRACT

The rapid expansion of online gambling crimes in Indonesia poses significant legal and social challenges, as existing laws struggle to effectively regulate and prosecute offenders in this evolving digital landscape. Despite regulations under the Criminal Code and the Electronic Information and Transactions (ITE) Law, gaps remain in addressing jurisdictional complexities, inconsistent penalties, and enforcement difficulties. This study aims to identify the legal foundations for prosecuting online gambling crimes, assess the forms of legal liability, and evaluate law enforcement effectiveness in handling such cases. Employing a normative juridical approach, the research analyzes relevant laws, literature, and legal cases. The findings reveal that law enforcement efforts are hampered by inadequate technical regulations, difficulties tracking perpetrators across jurisdictions, and low public awareness of online gambling's harmful impacts. The study highlights the crucial need for stronger legal frameworks, enhanced law enforcement capacity, and coordinated efforts among government agencies, law enforcement, and internet service providers. It also recommends public education campaigns to increase awareness of the risks and legal consequences of online gambling. These measures are expected to improve the efficacy and comprehensiveness of combating online gambling crimes in Indonesia, safeguarding public morality and social stability in the digital era.

Keywords: legal liability, online gambling, crime, law enforcement, cybercrime.

INTRODUCTION

Cybercrime continues to increase, both in terms of number, sophistication of modes, variations in the characteristics of perpetrators, and its increasingly serious impact (Widodo, 2013). In general, crimes involving computers, both as a target and a means of committing a crime, are known as cybercrimes (Al-Khater et al., 2020; Brands & Van Doorn, 2022; Curtis & Oxburgh, 2023; Monteith et al., 2021; Sviatun et al., 2021). One form of cybercrime that is growing is online gambling, although this type of crime is not yet fully known to the general public. Unlike conventional gambling such as lotteries or capjikia, online gambling requires more advanced technology, such as computers and internet networks. Regardless of the form of implementation, gambling in any form (conventional or online), is considered to violate the principles upheld by society, such as religious teachings, norms of decency, and applicable laws (Afrinda Parandita & Artikel, 2023; Isnaini, 2017; Munawar, 2019; Rahayu, 2023; Wirawan & Wahyudi, 2022). In addition to the violation of these values, gambling is also associated with various negative consequences, such as increased crime rates, poverty, social conflicts, and moral decay among the younger generation who are supposed to be the future hope of the nation.

The prohibition of gambling practices in Indonesia is based on a number of legal provisions that explicitly regulate and sanction the perpetrators of these activities. The Criminal Code (KUHP), in particular Articles 303 and 303 bis, contains explicit provisions on the crime of gambling, including criminal penalties for those involved in organizing and

participating in gambling activities. Beyond the Criminal Code, this prohibition is reinforced by various other regulations such as “Law Number 7 of 1974 concerning Gambling Control”, “Article 27 Paragraph (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions”, and “Government Regulation Number 9 of 1981 concerning the Implementation of Gambling Control” (Aisyah Siddiq, 2017). In general, criminal liability in online gambling crimes can be applied to individuals and legal entities, using the participation and corporate liability system.

However, even though there are laws and regulations governing gambling, there are weaknesses in these regulations. One of them is a rule that only regulates gambling as a livelihood, thus opening a legal loophole for perpetrators who do not make gambling the main profession. In addition, the law only sets the maximum limit of the penalty without setting a minimum limit, and focuses more on the means or means of carrying out gambling, without providing strict sanctions for the players. In judicial practice, this weakness often results in light verdicts, even acquitting the perpetrator.

Articles 303 and 303 bis of the Criminal Code were basically drafted in the context of laws that prevailed before the digital era, so their scope is limited to physical gambling practices such as games of chance conducted directly in a certain place. Therefore, the types of gambling that are now developing through digital media or the internet are not fully covered by these provisions. Article 303 bis Paragraph (1) Number 2 also only applies to illegal gambling, so gambling that has a license from the authorities is excluded. This legal loophole has the potential to be abused through corrupt practices, collusion, and nepotism with those in authority. This situation contradicts Article 1 of Law Number 7 of 1974 which definitively stipulates that all activities related to gambling are a crime (Hutapea, 2022).

The Criminal Code is not the only basis for the prohibition of online gambling; a number of complementary regulations also underline it. Online gambling is considered very dangerous because it is easily accessible to various groups, including children and adolescents, and is often difficult to track because it is done anonymously and across regions. The impact is far-reaching, ranging from increased crime rates, family financial abuse, to national economic losses due to the flow of funds to illegal platforms, most of which are based abroad (Fan & He, 2023; Walker & Sobel, 2016). Therefore, the state considers it important to prohibit and crack down on online gambling in order to protect the public from its negative impacts and maintain social order, security and national economic stability (Kusumaningsih & Suhardi, 2023). The public hopes that there will be strict law enforcement against online gambling perpetrators to create a deterrent effect. However, the weakness of existing legal instruments provides space for perpetrators to continue their activities.

The rise of online gambling crimes in Indonesia, facilitated by rapid advancements in digital technology and internet access, poses significant challenges for law enforcement and regulatory frameworks. Despite existing laws such as the Criminal Code and the Information and Electronic Transactions (ITE) Law, the evolving nature of online gambling exploits legal loopholes, inconsistent penalties, and jurisdictional difficulties, resulting in ineffective prosecution and ongoing proliferation of illegal gambling activities. This legal inadequacy contributes to social harm, including increased crime, moral decline, and economic losses, underscoring the need for a critical evaluation of current legal frameworks and enforcement practices.

The urgency of this research stems from the expanding prevalence and sophistication of online gambling crimes, which threaten public order, morality, and national economic

stability. The anonymity and cross-regional nature of online platforms complicate law enforcement efforts, requiring updated legal instruments and improved inter-agency cooperation. Without prompt and effective legal reforms, the proliferation of online gambling can exacerbate social problems, financial exploitation, and loss of state revenue.

Additionally, public awareness about the risks and legal implications of online gambling remains low, further enabling its growth. Strengthening legal frameworks and enhancing enforcement capacity are urgent priorities to protect vulnerable populations, deter criminal behavior, and uphold social norms in the digital era.

Previous studies have highlighted the challenges in regulating cybercrime broadly, including online gambling, emphasizing the gap between technological advances and legal provisions (Widodo, 2013). Research on Indonesia's gambling laws notes inconsistencies and weaknesses, such as the absence of minimum penalties and the exclusion of certain perpetrators like players from sanctioning (Aisyah Siddiq, 2017; Candra Munif Pratama, 2020). Legal scholars argue that Articles 303 and 303 bis of the Criminal Code were designed for conventional gambling and inadequately address online forms (Hutapea, 2022).

Further research points to the ITE Law as a *lex specialis* regulating digital offenses, offering a legal basis for sanctioning online gambling, yet also facing challenges due to vague provisions and enforcement gaps (Sitepu, 2020). Studies call for enhanced cooperation among governments, law enforcement, and internet service providers to address the transnational nature of online gambling crimes (Kusumaningsih & Suhardi, 2023). However, comprehensive evaluations of the effectiveness of existing laws and enforcement strategies remain scarce.

Despite existing legal provisions addressing online gambling in Indonesia, there is a significant gap in empirical analysis regarding their effectiveness and the operational challenges faced by law enforcement. Current literature lacks a detailed assessment of how legal loopholes, enforcement capacity, and community legal culture affect prosecution outcomes. This study addresses this gap by examining the normative juridical framework and practical enforcement barriers in tackling online gambling crimes.

This research uniquely combines normative juridical analysis with a critical evaluation of the regulatory framework and enforcement practices related to online gambling in Indonesia. By integrating legal doctrine review with an analysis of enforcement obstacles and socio-cultural factors, the study provides a holistic understanding of the systemic challenges. It also offers concrete recommendations for legal reform, enhanced institutional coordination, and public education to strengthen law enforcement effectiveness.

The primary objective is to identify the legal bases for prosecuting online gambling offenders in Indonesia, evaluate the forms of legal liability prescribed, and assess the effectiveness of law enforcement officials in managing these crimes. The study aims to highlight regulatory gaps and operational challenges to inform policy and legal reforms.

This study provides valuable insights for policymakers, legal practitioners, and law enforcement agencies by clarifying the strengths and weaknesses of the current legal framework governing online gambling. It offers evidence-based recommendations to enhance legal regulations, improve enforcement mechanisms, and promote public awareness. The findings can support more effective crime prevention strategies and contribute to safeguarding public morality and national stability in the digital age.

METHOD

This research employs a normative juridical approach, a method centered on the systematic analysis of existing written legal norms and regulations. Rather than investigating social behaviors or empirical data from communities, this approach critically examines the body of laws that govern online gambling crimes in Indonesia. The primary focus is to understand the legal framework as it stands—specifically, how various statutes define, prohibit, and sanction online gambling activities. Through this method, the study seeks to map out the explicit legal provisions related to online gambling, including the Criminal Code and the Electronic Information and Transactions (ITE) Law, identifying their scope, clarity, and alignment with technological advancements.

Furthermore, this normative juridical method enables an evaluation of the effectiveness and adequacy of these laws in practice. The research scrutinizes whether current legal instruments sufficiently address the complexities of cyber-based gambling offenses, considering possible gaps, ambiguities, or overlaps among regulations that might undermine enforcement. Such an analysis includes assessing how well the laws protect societal interests, ensure justice, and provide clear guidelines for prosecution. This critical legal assessment is essential in highlighting areas where regulatory updates or legislative reforms are necessary to close loopholes, particularly those that arise due to the rapid evolution of online technologies.

Lastly, the normative juridical approach facilitates an examination of the practical application of these laws by law enforcement officials and judicial institutions. The study explores how legal norms translate into operational procedures, including the challenges faced by authorities in interpreting and enforcing laws within the digital domain. By focusing on the legal texts and their interpretation, the research provides foundational insights into legal consistency, procedural adequacy, and potential improvements in regulatory frameworks. This approach is particularly appropriate for policy recommendations aimed at strengthening legal responses to online gambling crimes, ensuring both legal certainty and societal protection.

RESULTS AND DISCUSSION

Regulation of Online Gambling Crimes Reviewed from the Perspective of Criminal Law

One of the main prerequisites for realizing a prosperous society is compliance with the laws and regulations that apply in the social environment and the state. In Indonesia, the act of online gambling is categorized as a criminal offense and has been regulated in a number of laws and regulations. The following are some of the legal provisions governing online gambling in Indonesia:

Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Information and Electronic Transactions

UU ITE is a regulation created in response to the rapid development of digital technology and the internet. It regulates digital activities to stay in line with the law and ethics, including criminal acts with elements of gambling content. Acts that are prohibited and classified as ITE criminal acts are formulated in Articles 27 to 35, with criminal threats regulated in Articles 45 to 52.

ITE Law Article 27 paragraph (2) expressly prohibits the dissemination of electronic information containing gambling elements. This includes various actions, such as

disseminating, transmitting, or allowing others to access information containing gambling elements through the internet or other digital media. The article reads:

"Any person who deliberately and without the right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have gambling content shall be sentenced to imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah)."

The details of the elements of the criminal offense as stated in Article 27 Paragraph (2) are as follows:

Subjective elements:

Intentionality of the perpetrator.

Objective elements:

Unlawful acts without rights.

Actions include:

Distribute

Transmit, or

Make electronic information accessible.

Object:

Electronic information or electronic documents that contain gambling elements.

This article protects moral values in society by cracking down on gambling activities carried out through information technology networks. Considering that Article 303 and Article 303 bis of the Criminal Code regulate conventional gambling, Article 27 paragraph (2) and Article 45 paragraph (1) of the ITE Law can be considered as *lex specialis* or more focused rules. *Lex specialis* means that a more specific regulation will take precedence over a more general regulation. This means that although Article 303 and Article 303 bis of the Criminal Code cover both conventional and electronic gambling, "Article 27 paragraph (2) and Article 45 paragraph (1) of the ITE Law" explicitly regulate gambling crimes in digital or online form. This means that these two provisions are a more relevant legal basis for tackling gambling that occurs in cyberspace, because they are in accordance with technological developments involving electronic media.

Nevertheless, there is a debate regarding the placement of gambling content in Article 27 Paragraph (2). Articles 303 and 303 bis of the Criminal Code do specifically regulate the prohibition and sanctions against gambling, and some experts interpret that the position of these articles is within the scope of offenses against public decency. This means that gambling is seen not only as a violation of administrative or economic law, but also as a threat to social morality, because it can trigger deviant behavior, damage life ethics, and cause disharmony in community life. However, because the legislator systematically does not place gambling in the realm of criminal acts of decency, the application of Article 27 Paragraph (2) of the ITE Law should not be directly linked to the aspect of decency. Instead, an understanding of the prohibition of gambling in this context is more relevant when referring to the provisions of Articles 303 and 303 bis of the Criminal Code.

The scope of restrictions on electronic information and documents in the ITE Law is very comprehensive. Therefore, even if an online gambling case involves information that is not specifically mentioned in the ITE Law, the action may still be prosecuted under the ITE Law through a more extensive interpretation.

A. Legal Accountability for Online Gambling Crimes in the ITE Law

The ITE Law provides a legal basis for sanctioning online gambling crimes. Relevant provisions, namely:

Article 27 Paragraph (2) stipulates the prohibition against acts relating to the dissemination of gambling content in electronic form. In this case, individuals are prohibited from intentionally and without the right to distribute or transmit information or electronic documents containing gambling material. This prohibition covers various types of information distribution, be it through websites, applications, social media, or other forms that can be accessed by others.

Harsh criminal sanctions are set out in Article 45 paragraph (1) for individuals who violate Article 27. The sanctions are imprisonment for a maximum of 6 years or a maximum fine of IDR 1 billion.

However, both of these provisions contain weaknesses. One of the weaknesses is that the ITE Law only stipulates the maximum penalty without determining the minimum penalty. The ITE Law is considered not fully strict because it does not regulate minimum penalties, so the room for discretion of judges is quite wide and has the potential to cause imbalances in decisions. In addition, there are differences in the treatment of gambling that is carried out without a license and those that have an official license. In principle, Law Number 7 of 1974 states that all forms of gambling must be eradicated (Ramdania, 2018). This discrepancy shows the existence of legal loopholes that can be utilized by the perpetrators, and has the potential to weaken efforts to uphold legal norms and moral values that explicitly reject gambling practices in any form.

The ITE Law also does not sanction certain parties involved in online gambling, such as gamblers. As a result, the application of the law against them is often ineffective (Candra Munif Pratama, 2020).

B. Legal Accountability for the Crime of Online Gambling in the Criminal Code

The Transitional Rules of Article II of the 1945 Constitution and Law Number 1 Year 1946 provide the foundation for criminal law in Indonesia, including the Criminal Code. As the main guideline, the Criminal Code contains various articles that regulate criminal offenses related to gambling, namely:

Criminal sanctions for gambling offenses are listed in Article 303 of the Criminal Code, which carries a maximum penalty of 10 years imprisonment or a maximum fine of IDR 25 million. Law No. 7 of 1974 revised this provision, providing a more detailed description of the types of penalties for gambling offenders.

A maximum sentence of 6 years imprisonment or a fine of Rp 15 million can be imposed on gambling offenders under Article 303 bis of the Criminal Code. These articles indicate that gambling is an act that violates criminal law in Indonesia and can be subject to sanctions in accordance with the legislation.

However, the Criminal Code does not specifically discuss gambling conducted online or via the internet. Therefore, in the face of the emergence of online gambling, more specific regulations are regulated in other laws and regulations, including the ITE Law. This law functions as a *lex specialis* or special rule that regulates criminal acts that occur in the electronic realm, including gambling conducted through digital platforms. The ITE Law is present as an additional legal umbrella that provides a foundation for handling online gambling, as well as assisting law enforcement officials in tackling these illegal actions in cyberspace.

C. Subjects Who Can Be Held Criminally Liable

Based on various applicable regulations, the following are the parties who can be held criminally liable in online gambling cases:

Business actors or parties who make gambling a business or money-making commodity (Oktariani, 2023).

For example, bookmakers or gambling operators. Even if gambling is carried out in a closed place and for a limited audience, if it does not have permission from the competent authority, the party can still be held accountable.

Intentionally Holding or Giving Gambling Opportunities.

A person can be subject to criminal sanctions if they deliberately organize or provide opportunities for the public to gamble (Muhammad Fadhel 2024). In this case, the essence is not revenue generation, but the activity must take place in an open space or area that is accessible to the public. However, if the gambling has obtained official permission from the authorities, then it cannot be penalized.

Criminalizable Activities

Also playing gambling as a livelihood.

Persons who are considered to be perpetrators of criminal acts, include:

- a. Individuals who are directly involved, give instructions, or take part in the actions taken.
- b. Those who, through abuse of power or status, threats, misrepresentation, promises, or the provision of facilities, deliberately invite others to commit such acts.

Organizer actions:

Liability only covers actions that are deliberately encouraged, including the resulting impacts.

Electronic distribution of gambling information:

The activity of disseminating electronic information containing gambling elements is an offense that can result in criminal sanctions. This condition applies if the individual commits the act with full awareness and without a valid license. Electronic information related to gambling can be disseminated through various digital channels, including web pages, applications, or social media platforms. This criminal sanction is expected to have a preventive effect and overcome the circulation of content that has a negative impact on society (Sitepu, 2020).

The Principle of Prohibition in Criminal Law

The state establishes penalties to prevent violations of applicable rules. This punishment can be in the form of detention, confiscation of assets, or even the death penalty (Sosiawan, 2020). Nevertheless, the law aims to protect the freedom, security, and property rights of every individual. Therefore, the granting of sanctions by the state to the perpetrators of crimes can be justified, especially if the existing rules are designed to ensure justice and legal certainty.

Law Enforcement: Efficiency and Effectiveness

Law enforcement against gambling is influenced by a number of factors:

Legislation:

The prevailing legal rules must be able to accommodate the development of crime, including modern forms of technology-based gambling. The principle of legality in criminal law requires that an act can only be punished if it has been clearly regulated in the law. Therefore, a legislative update is needed to anticipate the use of advanced technology in gambling activities.

Law Enforcement Officers:

The success of law enforcement is highly dependent on the professionalism and moral courage of law enforcement officials. They are required to have high competence in investigating, proven, and handling gambling cases, both in the investigative process and in court.

Facilities and Infrastructure:

Adequate infrastructure is an important factor in law enforcement of gambling crimes. This means supporting success in uncovering material legal facts.

The effectiveness of prosecuting, adjudicating, and limiting the activities of gambling offenders is highly dependent on harmonious collaboration between law enforcement officials and experts in the field of forensics and telematics, as well as adequate operational financial support. Without sufficient technical support and resources, law enforcement efforts can be hampered, and gambling offenses involving digital technology can be difficult to overcome.

Culture Factors of Community Law

Community legal culture also plays a very important role, on par with other factors. The legal culture of society refers to the values, norms and attitudes that exist in society in relation to the law and its application. This factor greatly influences how people perceive and behave towards the law, including in terms of law enforcement against gambling crimes. The diversity of legal cultures that exist in a society can create challenges, as each community group may have different views on what is considered right or wrong in relation to gambling. This can add complexity to law enforcement, given that not all communities may support efforts to prevent or prosecute gambling. The risk arises when different cultural views lead to a lack of awareness or acceptance of the law, which in turn can hinder effective law enforcement efforts. This condition often puts law enforcement officials in a dilemma situation that can lead to internal conflicts in carrying out their roles in real life. Concrete examples of a risky society's legal culture include low compliance with the law, lack of social discipline, ignorance of social ethics, and the tendency of society to be easily tempted by gambling that offers unreasonable profits. These things are potential loopholes for the occurrence of gambling crimes.

CONCLUSION

This research concludes that Article 27 Paragraph (2) of Law Number 11 of 2008, in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions, primarily regulates service providers involved in online gambling but does not explicitly include sanctions for players. However, this provision can be interpreted more broadly to cover the entire scope of online gambling crimes. While it does not directly sanction players, referring to Article 45 Paragraph (1), which regulates criminal threats, allows the law to be applied to all parties involved, including both players and service providers. This reflects the state's effort to update legal frameworks to address criminal offenses emerging alongside technological advances, especially the misuse of electronic media. Therefore, although not specifically targeting online gambling, these articles provide a sufficiently strong legal basis to combat internet-based gambling activities harmful to the community. For future research, it is recommended to explore the practical enforcement of these laws, including case studies on prosecution outcomes, and to investigate the need for more explicit legal provisions targeting players and intermediaries. Additionally, assessing

the role of inter-agency coordination and technological tools in law enforcement could offer insights into improving the effectiveness of combating online gambling crimes.

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