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Criminal Offence of Online Gambling: An Indonesian Criminal Law Perspective

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Abstract

This research aims to analyse the criminal act of online gambling in the perspective of criminal law in Indonesia, focusing on the existing law enforcement mechanisms as well as the challenges faced in eradicating online gambling practices. Although Indonesia has clear regulations related to online gambling, such as those contained in the Criminal Code (KUHP) and the ITE Law, this research found that the implementation of law enforcement still faces major obstacles, especially related to the development of information technology, the accessibility of illegal gambling sites, and problems in proving in court. More effective law enforcement requires the integration of more sophisticated technology, cross-border co-operation, as well as a preventive approach to raise public awareness. This research is expected to provide insights for policy makers, legal practitioners, and the public in addressing the problem of online gambling.

Keywords: criminal offence, online gambling, criminal law.

Introduction

Gambling, in its various forms, has long been one of the legal issues that continues to receive attention in Indonesia (Manalu, 2019; Vinifiantoro, 2024; Maita, et al., 2024; Shofa, 2024; Trisista, 2024; Faradila & Siagian, 2024). Based on the provisions contained in the 1945 Constitution of the Republic of Indonesia (UUD 1945), every citizen has the right to obtain information that can develop their personal and social environment. This is stated in Article 28 F of the 1945 Constitution, which affirms that everyone has the right to communicate and obtain information using all available channels. However, although this freedom is protected by the constitution, the application of this right must still respect the rights and freedoms of others, including the right to be free from practices that can be harmful, such as online gambling.

Gambling in Indonesia is regulated in several legal provisions, especially in the Criminal Code (KUHP). The criminal offence of gambling is regulated in Article 303 and Article 303 bis of the Criminal Code, which provides for imprisonment and fines for gambling offenders. In recent developments, these provisions have been strengthened by Law Number 1 Year 2023 on the Criminal Code (New Criminal Code), which introduces more severe sanctions for those involved in the criminal offence of gambling, both in physical form and conducted through electronic media. Specifically, Article 427 of the New Criminal Code provides for imprisonment



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of up to 3 years or a substantial fine for those who use unauthorised gambling opportunities. In addition, in Article 27 paragraph (2) of Law Number 1 Year 2024 on the Second Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions (ITE Law) also states that any person who intentionally and without right distributes or transmits electronic information containing gambling content is subject to imprisonment of up to 10 years and a very high fine.

Despite being regulated in sufficient detail in the legislation, online gambling practices in Indonesia continue to show a significant increase (Elvia, et al., 2023; Hidayah, et al., 2024). This is due to various factors, including the high accessibility to online gambling platforms via the internet, aggressive promotion by gambling websites, and weak law enforcement which has led to the proliferation of illegal gambling sites. This easy access, coupled with the ability to access gambling sites anytime and anywhere, makes online gambling even more difficult to eradicate. In addition, the use of increasingly sophisticated payment and banking facilities also supports the continuation of this illegal practice.

In terms of the Indonesian criminal justice system, despite the existence of strict regulations regarding the criminal offence of gambling, the process of proof in online gambling cases remains a challenge. According to the *Criminal Procedure Code* (KUHAP), valid evidence in the criminal justice process is limited to witness testimony, letters, instructions, and testimony of the defendant. However, with the development of information technology, evidence in the criminal offence of online gambling can now be in the form of electronic information and electronic documents that are valid according to *Article 5* of the ITE Law, which expands the category of evidence in the criminal law process. This certainly requires adaptation in the evidentiary mechanism in court to ensure justice in law enforcement.

Given the potential negative impacts of online gambling practices, socially, economically and psychologically, a deeper understanding of the criminal offence of online gambling from the perspective of the Indonesian criminal justice system is essential. This research aims to analyse and evaluate how the criminal justice system in Indonesia handles online gambling offences and the obstacles faced in law enforcement of this case. Thus, it is important to know how the legal process can run more effectively, as well as how the public can be given a better understanding of the dangers of online gambling and efforts to prevent it.

The purpose of this study is to analyse the criminal offence of online gambling in the perspective of criminal law in Indonesia, focusing on the existing law enforcement mechanisms as well as the challenges faced in eradicating online gambling practices. This research aims to identify the extent to which existing laws and regulations, both those contained in the Criminal Code (KUHP) and laws related to electronic transactions, can provide effective legal protection to the public from the negative impacts of online gambling. In addition, this research also aims to evaluate the criminal justice process in handling online gambling cases and provide constructive recommendations to strengthen the legal system in Indonesia in the face of technological developments that support this illegal practice.

The hypothesis of this research is that although there are clear legal provisions related to online gambling criminal offences in Indonesian legislation, the implementation of law enforcement against online gambling practices still faces various obstacles, especially those



related to the development of information technology, the accessibility of illegal gambling sites, and weaknesses in the evidentiary mechanism in court. This study hypothesises that efforts to tackle online gambling in Indonesia are still hampered by a number of factors, both in terms of legal substance, law enforcement aspects, and public understanding of the dangers and impacts of online gambling.

The contribution of this research lies in a deeper understanding of the dynamics of online gambling offences in the context of the Indonesian criminal justice system. This research is expected to provide insights for policy makers, legal practitioners, and the public regarding the urgency of adjusting and strengthening existing regulations, as well as effective ways to overcome obstacles that arise in law enforcement against online gambling. In addition, this research also contributes to the development of criminal law theory and practice in Indonesia, especially in terms of handling increasingly complex technology-based criminal offences, as well as providing recommendations for improving the existing legal framework to be more responsive to the times.

The conceptual framework in this research focuses on understanding the criminal offence of online gambling from the perspective of Indonesian criminal law, which includes two main elements: the legal substance that regulates the criminal offence of gambling and the criminal justice system that enforces the law. Within this framework, this research examines the various regulations governing gambling, both conventional and electronic-based, and analyses the legal processes associated with proving and resolving online gambling cases. It also includes an analysis of the challenges faced in the implementation of the law, such as technological accessibility issues, difficulties in collecting electronic evidence, and enforcement constraints against perpetrators who often operate on a cross-border basis. This approach aims to provide a comprehensive overview of the dynamics of online gambling in the Indonesian criminal legal system.

Literature Review

In the study of online gambling offences in Indonesia, there are two main theories underlying this analysis, namely the Legal Response Theory and the Theory of Evidence. These two theories provide a framework for understanding how Indonesian criminal law responds to online gambling practices and how the evidentiary process is carried out in upholding justice for these offences.

Legal Response Theory

Legal Response Theory, developed by Philippe Nonet and Philip Selznick, offers a sociological approach to law by seeing law as a tool that not only regulates, but must also be responsive to social changes that occur in society (Widayati, 2022; Pahlevi, et al., 2023). According to Nonet and Selznick (2019), law cannot be considered a static system, but must be able to accommodate social change in order to achieve justice and public emancipation. In the context of online gambling, this theory provides a basis to see how Indonesian criminal law



responds to social phenomena that arise due to technological developments. Increasingly widespread online gambling is a challenge for the legal system, which must be able to respond with relevant and effective policies to protect the interests of society. Indonesian criminal law needs to demonstrate responsiveness (Widyaastuty, et al., 2024; Efendie, et al., 2024) in the face of technological developments, which facilitate online gambling practices. This responsiveness means that the law must not only be reactive but also be able to anticipate and face new problems caused by the times.

Responsive law, according to Nonet and Selznick (2019), acts as a facilitator that can bridge between social aspirations that develop in society and applicable law enforcement practices. As stated in Article 27 of the 1945 Constitution, the law must function to create social justice. In this case, Indonesian criminal law must respond to online gambling with measures that not only punish but also protect society from the negative impacts of gambling. The success of the law in dealing with online gambling, according to this theory, depends largely on the law's ability to adapt and respond to evolving social changes.

Theory of Evidence

One of the basic principles in Indonesian criminal law is known as the *presumption of innocence* (Luntungan, et al., 2023; Sunday, 2024), which is stated in Article 27 paragraph (1) of the 1945 Constitution and Article 183 of KUHAP. This principle requires that every person accused of committing a criminal offence, including online gambling, is presumed innocent until there is a court decision declaring his/her guilt with permanent legal force. Thus, the process of proof becomes a crucial element in determining whether a person is truly guilty or not.

Evidence in the criminal offence of online gambling when looking at Article 183 of the Criminal Procedure Code, which stipulates that the judge cannot impose a sentence on the defendant without at least two valid pieces of evidence and the judge's conviction that the criminal offence has actually occurred. Meanwhile, valid evidence is regulated in Article 184 of the Criminal Procedure Code, which includes witness testimony, expert testimony, letters, instructions, and testimony of the defendant. All of this evidence has the same position in the evidentiary process, regardless of its order, which shows that each piece of evidence must be considered objectively and thoroughly.

In addition, in the Indonesian legal system, there are several approaches to proof, namely the proof system based on positive legislation, proof based on judge's belief, and proof system based on rational belief (Savitri, 2020; Banjarnahor & Faridah, 2023). These three approaches provide guidelines for judges in proving the truth in a criminal case. In the case of online gambling, valid evidence is very important so that judges can ensure that all available evidence fulfils the elements of the criminal offence regulated in Article 303 of the Criminal Code and other relevant regulations. The basic principle in criminal evidence is to find the material truth, namely the truth that is objective and can be accounted for based on existing facts. Therefore, the process of proof in online gambling offences must be carried out carefully and refer to existing laws and regulations. This system of evidence aims to ensure that the judge's decision is based



on valid evidence and in accordance with the principles of justice, which in turn will ensure legal certainty for the defendant and the community.

Method

This research adopts a normative legal approach to analyse the crime of online gambling in the perspective of Indonesian criminal law. The type of research used is normative legal research, which examines legal materials or secondary sources in the form of laws and regulations and legal doctrines relevant to the research topic. The collection of legal materials is carried out through observation and literature study, with a focus on collecting primary, secondary, and tertiary legal materials. Observation was carried out to gain an understanding of the patterns and events that occur in the practice of online gambling, including places, actors, objects, and actions taken. Meanwhile, literature study was conducted by collecting and analysing various legal sources, such as laws and regulations, books, and related scientific literature. The collected legal materials were then analysed qualitatively and presented descriptively, to provide an in-depth understanding of the application of legal provisions related to online gambling in Indonesia. Thus, this research aims to contribute to understanding the legal position of online gambling offences in the Indonesian criminal law system.

Criminal Offence of Online Gambling: An Indonesian Criminal Law Perspective

Gambling, whether conducted conventionally or through online media, has long been an important issue in Indonesian criminal law. Gambling can have a negative impact on society, socially, economically and morally. Therefore, legal regulations related to gambling in Indonesia are needed to maintain social stability. The regulation of the criminal offence of gambling, including online gambling, is regulated in a number of clear legal regulations, both in the Criminal Code (KUHP) and in laws related to information technology such as the ITE Law.

In the current Criminal Code, particularly Article 303 and Article 303 bis, the criminal offence of gambling is strictly regulated. These articles classify gambling as a crime of decency, which threatens perpetrators with quite severe punishment. The following is a summary of the regulation:

1. Article 303 of the Criminal Code
 - a. Regulates the prohibition of offering or providing opportunities to gamble without a licence.
 - b. Penalty:
 1. Imprisonment of up to 10 years or a maximum fine of IDR 25 million.
 2. The punishment applies to those who offer or participate in gambling as a livelihood or commercial activity.
2. Article 303 bis of the Criminal Code
 1. Provides sanctions for individuals who play gambling in a public place or outside a valid licence.



2. Penalty:
 1. Imprisonment of up to 4 years or a maximum fine of IDR 10 million.
 2. Offences that occur within two years of a previous conviction may be subject to more severe sanctions.

Development of Regulations in the New Criminal Code

In Law Number 1 Year 2023 on the Criminal Code (New Criminal Code), the regulation of the criminal offence of online gambling has been tightened. Some of the relevant articles are:

1. Article 426

States that any person who without a licence offers or provides an opportunity to play gambling, either in person or online, is punishable by a criminal offence:

- a. Imprisonment for a maximum of 9 years or a maximum fine of IDR 2 billion.
- b. Additional punishment in the form of revocation of the right to exercise a certain profession may be imposed if the criminal offence is committed in the context of the profession.

2. Article 427

Imposes sanctions on parties who participate in unauthorised online gambling with the following penalties: Imprisonment for a maximum of 3 years or a maximum fine of IDR 50 million.

Regulation of Gambling Offences in the Electronic Information and Transaction Law

Along with the development of technology, online gambling is increasingly difficult to stem. Therefore, in addition to the Criminal Code, Indonesian law also regulates the criminal offence of gambling through Law Number 1 Year 2024 on the Second Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions (ITE Law). The following are important provisions in the ITE Law related to online gambling:

1. Article 27 paragraph (2) of the ITE Law

- a. Stating that every person who intentionally and without right distributes, transmits, and/or makes accessible electronic information containing gambling content, is subject to criminal sanctions.

- b. Penalty:

- 1) Maximum imprisonment of 10 years or a maximum fine of IDR 10 billion.
- 2) This regulation targets offenders who use digital platforms to offer, distribute, or promote online gambling to the public.

2. Article 45 paragraph (3) of the ITE Law

Confirming that violations of Article 27 paragraph (2) are potentially subject to criminal sanctions in the form of imprisonment for up to 10 years or a maximum fine of IDR 10 billion.

Evidentiary Challenges in Online Gambling Cases

Although the legal regulation of online gambling offences in Indonesia is quite complete, the main challenge in law enforcement is the evidentiary process. This is due to the nature of



online gambling which is often conducted anonymously and uses technology that allows the perpetrator to hide behind a digital identity.

1. Evidence in Criminal Law

Evidence in the criminal offence of online gambling still refers to the Criminal Procedure Code (KUHP), which stipulates the types of valid evidence, among others:

- a. Witness testimony
- b. Expert testimony
- c. Letter
- d. Instructions
- e. Statement of the defendant

2. Electronic Information as Evidence, In the context of online gambling, electronic information and electronic documents are valid evidence according to Article 5 of the ITE Law. This article explains that electronic information generated from gambling transactions can be used as valid legal evidence, even though the transaction process occurs digitally.

3. Article 5 of the ITE Law states that valid electronic information can be used as evidence in the criminal justice process, including gambling transactions conducted via the internet.

Analysis of Research Findings

Online gambling in Indonesia is a significant issue from a criminal law perspective, mainly due to the strict regulation of gambling in various applicable legal frameworks. In general, Indonesia categorises gambling, both conventional and online, as a crime that undermines the social and moral norms of society. The Indonesian Criminal Code (KUHP) regulates gambling in Article 303 and Article 303 bis, which threaten imprisonment for those who offer or engage in unlicensed gambling. These articles have long been applicable to regulate gambling in general, but Law Number 1 Year 2023 on the Criminal Code (New Criminal Code) and the Electronic Information and Transaction Law (ITE Law) provide a clearer and broader legal basis for the criminal offence of online gambling.

From the findings of this research, the legal regulation of the criminal offence of online gambling in Indonesia is quite strict and comprehensive, both in terms of providing criminal sanctions against gambling offenders, operators, and promoters of online gambling platforms. Article 426 of the New Criminal Code, for example, provides criminal penalties for those who, without a licence, offer or provide opportunities to play gambling, with imprisonment of up to 9 years or a fine of IDR 2 billion. This shows that the government is increasingly emphasising the prohibition of gambling in any form, including gambling conducted online. In addition, Article 27 paragraph (2) of the ITE Law regulates the prohibition against the dissemination of electronic information containing gambling content, with the threat of imprisonment of up to 10 years and/or a fine of IDR 10 billion for those who violate it (Zega et al., 2021; Arditha, 2023).

However, although Indonesian law has established very clear regulations, law enforcement against online gambling offences still faces various challenges. One of the biggest challenges is the proof process. As noted in Article 5 of the ITE Law, electronic information and electronic documents can be used as legal evidence in online gambling cases. However, proof in



this context is quite complex as gambling offenders often use technology to conceal their identities, making it difficult for authorities to detect and identify offenders. Myranika (2023) explains that the anonymity provided by online platforms and the continuous development of technology are major obstacles to effective law enforcement.

In addition, online gambling in Indonesia is often connected to organised crime and money laundering, further complicating law enforcement efforts. Research by Shafira (2023) states that online gambling often involves international networks using digital currencies, which cross national borders and are increasingly difficult to trace. Therefore, international cooperation and the use of more sophisticated technology is crucial in combating organised gambling networks.

Socially, online gambling also has a very detrimental impact, especially for young people who are more vulnerable to gambling addiction. For example, Setiawan et al. (2023) emphasise the importance of public education and awareness regarding the negative impact of online gambling, as well as the importance of preventive campaigns to reduce its social impact. Online gambling, which is often massively promoted through digital media, can undermine society's moral values and increase the risk of addiction among individuals exposed to gambling content.

Closing

Conclusion

Based on the findings and analysis of this research, it can be concluded that although Indonesia has clear and strict regulations regarding the criminal offence of online gambling, through the Criminal Code (KUHP), the New Criminal Code, and the Electronic Information and Transaction Law (ITE Law), the implementation of law enforcement against online gambling practices still faces a number of significant obstacles. The main challenge lies in proving criminal offences committed in cyberspace, due to the anonymity of users and the development of information technology that allows perpetrators to hide their identity. In addition, the proliferation of illegal gambling sites and the difficulty of monitoring digital platforms further exacerbate the situation. Therefore, although the existing regulations are quite comprehensive, law enforcement still needs a more adaptive and effective approach to address the problem.

Suggestion and Recommendation

This research suggests that the government and law enforcement officials in Indonesia strengthen inter-agency and cross-border co-operation to combat international online gambling networks. Improving technological capacity to monitor and identify online gambling platforms should be a priority, utilising digital technology and cyber forensics to uncover the identity of perpetrators and illegal transactions. In addition, there is a need to strengthen public education and awareness regarding the negative impact of online gambling, as well as the development of rehabilitation programmes for victims of gambling addiction. To accelerate the eradication of online gambling practices, it is also recommended that periodic regulatory reviews be conducted



to ensure the relevance of existing regulations with the rapid advancement of information technology.

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