

## The Urgency of Criminal Regulations Against Online Gambling Players

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### Abstract

*The criminal act of gambling in Indonesia is regulated in the Criminal Code (KUHP) Article 303 and the Information and Electronic Transactions Law (UU ITE) Article 27 paragraph (2) which can generally be applied to online gambling players even if the person concerned does not gambling as a livelihood, but in practice law enforcement is more targeted at online gambling organizers and is not yet optimal for ensnaring online gambling players at the individual level so that weak law enforcement against online gambling players has the potential to give rise to legal uncertainty, so this research is a type of normative legal research or literature research that carried out by examining theories, concepts, legal principles and statutory regulations related to the urgency of criminal regulation of online gambling players in fulfilling the principle of legal certainty through a statutory approach and a conceptual approach with primary legal material sources, the Criminal Code and the Law. ITE as well as secondary legal materials in the form of books, scientific journals, articles, literature related to this topic which are collected through literature studies and analyzed deductively so that they can provide prescriptions for criminal regulations for online gambling players who must guarantee the law. certainty in order to protect the public from the increasing dangers of widespread online gambling.*

**Keywords** online gambling, gambling players, crime, legal certainty

### INTRODUCTION

"Online gambling or online gambling is the activity of gambling or betting by utilizing the internet network and digital devices such as computers, smartphones and tablets."<sup>1</sup>The types of games offered include poker, slots, roulette, blackjack, bingo and cockfighting.

"Online gambling games are provided through websites and special downloadable applications. Players make deposits or put money into gaming accounts using credit/debit cards, bank transfers, or digital wallets."<sup>2</sup>Then players can place bets and play at any time as long as they are connected to the internet. Winnings are transferred to the player's account if they meet the requirements. Encryption and security technology is used to protect personal data and transactions of online gambling players. However, online gambling is still at risk of fraud or data leaks. Apart from that, online gambling greatly affects players' psychology and finances. Online gambling addiction can lead to large debts and financial disruption.

"According to Article 303 Paragraph (1) of the Criminal Code (KUHP), "is punishable by a maximum imprisonment of ten years or a maximum fine of twenty-five million rupiah, whoever without obtaining permission: (1) deliberately offers or providing opportunities for gambling and making it a pursuit, or deliberately participating in an enterprise for that purpose."<sup>3</sup>

<sup>1</sup>M. Patra, S. (2020). Technological Development and the Rise of Online Gambling Among Teenagers. *Journal of De Jure Legal Research*, 20(4), pp.509-528.

<sup>2</sup>McBride, J. & Derevensky, J. (2009). Internet Gambling Behavior in a Sample of Online Gamblers. *International Journal of Mental Health and Addiction*, 7, pp. 149–167.

<sup>3</sup>Article 303 Paragraph (1) of the Criminal Code



So, organizing or participating in gambling without a permit is a criminal offense. Online gambling in Indonesia clearly violates Article 303 of the Criminal Code because it is held without government permission. Online gambling perpetrators are threatened with prison sentences and fines. In addition, equipment used for online gambling can be confiscated by the state. However, the rise of online gambling in Indonesia indicates weak law enforcement against cybercrime. In recent years, the number of people caught in raids and arrested for being involved in gambling in Indonesia has continued to increase.

Based on data from the Directorate of General Crimes, Bareskrim Polri, the number of people who have been charged with gambling from 2020 to the present (18 December 2023) is as follows:

Year	Amount
2020	15,396 people
2021	14,348 people
2022	16,156 people
2023 (until 18 december)	10,542 people

This number is the number of people who were arrested and prosecuted for committing gambling violations. This figure does not include the number of people arrested and prosecuted by regional police or other agencies. Based on this data, it appears that the number of people affected by gambling tends to increase from year to year. This sharp increase in arrests of gambling perpetrators indicates that the practice of gambling is increasingly widespread in society even though it is legally illegal. Many factors have caused this spike in gambling cases. First, developments in technology and the internet have made it easier to practice online gambling. Online gambling sites and applications are now easily accessible via smartphone from anywhere. Second, “the lack of jobs and high unemployment encourages some people to seek income from gambling even though it is illegal.”<sup>4</sup>Economic problems and poverty are thought to be the main triggers for the rise of gambling. Gambling is considered a shortcut to getting money instantly even though it is risky. Bookies take advantage of this condition by offering loans and gambling credits to ensnare victims. Apart from that, weak supervision and law enforcement also encourage open gambling practices. As a result, thousands of people are caught in gambling crimes every year. Ironically, most of those caught are just small bookies and ordinary gamblers, not the brains behind large gambling syndicates. Serious efforts are needed from the government and law enforcement officials to eradicate gambling from its roots in order to protect society.

Gambling in Indonesia is generally prohibited based on several statutory provisions. In the Criminal Code (KUHP), gambling is regulated in Article 303 which reads: "Whoever, without obtaining permission:

- a. deliberately offering or providing opportunities for gambling games and making it a pursuit, or deliberately participating in an enterprise for that purpose;

<sup>4</sup>Hendrawan, A. (2019). Problems of Law Enforcement against Gambling Crimes. *Journal of Law & Development* 49 No. 4: pp. 668-693.

- b. deliberately offering or giving the general public the opportunity to gamble or deliberately taking part in a company for that purpose, regardless of whether it is to take advantage of the opportunity for the existence of a condition or the fulfillment of a procedure;
- c. make participating in gambling games a pursuit;
- d. "intentionally offering or providing opportunities for the general public to gamble as a form of pursuit is punishable by a maximum imprisonment of ten years or a maximum fine of twenty-five million rupiah."

From Article 303 of the Criminal Code above, it can be seen that there are 2 types of actions that are prohibited and punishable by crime related to gambling, namely offering/giving gambling opportunities and participating in gambling. For online gambling players who just participate in gambling without making a living, they can be charged under Article 303 letter a or letter b of the Criminal Code. Even though online gambling players do not make gambling their livelihood, their actions in accessing and participating in online gambling still qualify as acts prohibited by the Criminal Code. The threat of punishment is a maximum imprisonment of 10 years or a maximum fine of IDR 25,000,000.

Apart from the Criminal Code, online gambling is also regulated in the Information and Electronic Transactions Law (UU ITE). Article 27 paragraph (2) of the ITE Law prohibits anyone from intentionally and without authority distributing and/or transmitting and/or making accessible Electronic Information and/or Electronic Documents that contain gambling content. Through this article, the actions of online gambling players in accessing gambling sites just to gamble can be punished under the ITE Law. The threat of punishment according to Article 45 paragraph (1) of the ITE Law is imprisonment for a maximum of 6 years and/or a fine of a maximum of IDR 1,000,000,000.

Normatively, online gambling players who simply participate in gambling without making a living can still be punished according to Article 303 of the Criminal Code and Article 27 paragraph (2) of the ITE Law. However, in law enforcement practices in Indonesia, action is more targeted at online gambling organizers or bookies, not at online gambling players. This is partly due to the difficulty of tracking the identity of online gambling players who access it from their personal electronic devices. Apart from that, law enforcement officials also target large-scale and organized online gambling, rather than online gambling carried out by individual players on a small scale. If there is action against online gambling players, law enforcement generally provides administrative sanctions in the form of warnings or confiscating electronic devices used for gambling.

Criminal action under articles in the Criminal Code and the ITE Law is rarely applied to individual online gambling players. The government is actually aware that law enforcement against online gambling in Indonesia is still considered weak and needs to be improved, considering the negative impact of the widespread practice of online gambling in society. Efforts to prevent and take action against online gambling need to be carried out comprehensively for both organizers, bookies and online gambling players in order to provide a deterrent effect.



## **METHOD**

This research is a type of normative legal research or library research. The research was carried out by examining theories, concepts, legal principles and statutory regulations related to the problem under study, namely the urgency of criminal regulations for online gambling players in fulfilling the principle of legal certainty.

The approach used in this research is a statutory approach and a conceptual approach. The legislative approach is carried out by examining the criminal provisions in the Criminal Code (KUHP), especially Article 303 and the Information and Electronic Transactions Law (UU ITE), especially Article 27 paragraph (2), which regulates the criminal act of gambling. Apart from that, a conceptual approach is also used to examine legal concepts and principles related to legal certainty in criminal law enforcement.

The sources of legal materials in this research consist of primary legal materials and secondary legal materials. Primary legal materials include the Criminal Code (KUHP) and the Information and Electronic Transactions Law (UU ITE). Secondary legal materials include books, scientific journals, articles, literature and other sources relevant to the topic of criminal regulation of online gambling players and upholding the principle of legal certainty.

## **RESULTS AND DISCUSSION**

Article 303 of the Criminal Code (KUHP) regulates criminal acts of gambling in Indonesia. This article specifically states that gambling carried out as a means of livelihood is a form of criminal act of gambling. From the words of Article 303 of the Criminal Code, there are several things that can be underlined regarding gambling as a livelihood, namely: Making gambling a livelihood is a form of action that is prohibited and punishable by crime according to Article 303 of the Criminal Code.

This is expressly stated in Article 303 letter c which reads "making participating in gambling games a quest". Making gambling your main profession or job to earn a living is a criminal offense according to the Criminal Code. Offering or providing the opportunity to gamble to the general public by using it as a livelihood is also a criminal offense according to Article 303 letter d of the Criminal Code. Not only perpetrators who gamble as a livelihood, but also parties who provide gambling facilities or opportunities for certain rewards.

This shows that the Criminal Code prohibits commercialization and gambling business practices. The threat of punishment given for the crime of gambling in Article 303 of the Criminal Code is imprisonment for a maximum of 10 years or a fine of a maximum of IDR 25,000,000. This penalty applies to both gambling perpetrators and parties who provide commercial gambling facilities, including making gambling a livelihood. A number of court decisions in Indonesia also show the application of Article 303 of the Criminal Code to punish gambling perpetrators who do it as a profession or livelihood.

For example, the East Jakarta District Court decision no. 1459/Pid.B/2018/PN.Jkt.Tim related to the criminal case of organized lottery gambling.<sup>2</sup> In this decision, the defendant was proven to have carried out organized lottery gambling activities through a number of



bookies, using it as a business and livelihood. The panel of judges stated that the defendant was proven to have violated Article 303 of the Criminal Code in conjunction with Article 55 of the Criminal Code and sentenced him to 3 years and 6 months in prison and a fine of IDR 100 million subsidiary to 6 months in prison.

Another example of a decision that applies Article 303 of the Criminal Code to gambling as a profession is the Blora District Court decision No. 38/Pid.Sus/2018/PN Bla which sentenced the defendant to 2 years imprisonment and a fine of IDR 50 million subsidiary to 3 months imprisonment.<sup>3</sup> In this case, the defendant carried out organized and commercial cockfighting gambling by providing a cockfighting arena and making a profit from spectator betting transactions. The defendant's actions are considered to violate Article 303 of the Criminal Code because he uses cockfighting gambling as a livelihood and business, so he must be punished according to the applicable criminal provisions.

Based on the description above, it can be concluded that Article 303 of the Criminal Code expressly prohibits and threatens criminal penalties for gambling carried out as a livelihood or profession, both by the gamblers themselves and by parties who provide commercial gambling facilities or facilities. Perpetrators of any type of gambling, if proven to be making it their main job to earn income, can be punished with a maximum prison sentence of 10 years and a maximum fine of IDR 25 million. This provision applies to all types of gambling, both conventional gambling and online gambling which has become popular recently. Thus, law enforcers are expected to be able to apply Article 303 of the Criminal Code consistently to eradicate organized and commercial gambling practices in Indonesia.

"Article 27 paragraph (2) of the ITE Law is normatively intended for legal subjects who facilitate or provide online gambling facilities. This can be seen from the use of the phrases "distributing", "transmitting", and "making accessible" gambling-related electronic information in the article."<sup>5</sup> These phrases indicate that this article is aimed at parties who organize, run and facilitate gambling websites such as online bookies, not the gambling players themselves.

"However, there is also an argument that the phrase "make accessible" electronic gambling information can be interpreted to include acts of access carried out by online gambling players."<sup>6</sup> So online gambling players have the potential to be charged under Article 27 paragraph (2) of the ITE Law if they are proven to have accessed gambling websites illegally. "This opinion is supported by the Slawi District Court Decision No. 58/Pid.Sus/2018/PN.Sla which stated that the defendant (online gambling player) was proven to have violated Article 27 paragraph (2) of the ITE Law by accessing online gambling sites."<sup>7</sup>

"Similarly, Painan District Court Decision No. 66/Pid.Sus/2017/PN.Pnn which punished the defendant for accessing an online soccer gambling site"<sup>8</sup>. However, there are

<sup>5</sup>Edmon Makarim, *Compilation of Telematics Law*, (Jakarta: Rajawali Pers, 2014), p. 521.

<sup>6</sup>Fransiska Novita Eleanora, "Criminal Liability of Internet Gambling Organizers in Indonesia", *Journal of Law & Development*, Vol. 44 No. 3, 2014, p. 292-3083.

<sup>7</sup>Slawi District Court Decision No. 58/Pid.Sus/2018/PN.Sla

<sup>8</sup>Blora District Court Decision No. 137/Pid.Sus/2018/PN Bla



also decisions that do not apply Article 27 paragraph (2) of the ITE Law to online gambling players, such as Blora District Court Decision No. 137/Pid.Sus/2018/PN Bla. In this decision, the defendant was only punished under Article 303 of the Criminal Code for participating in online gambling.

This difference in the application of Article 27 paragraph (2) of the ITE Law to online gambling players creates legal uncertainty. So law enforcers need to look at whether online gambling players have fulfilled all the elements of this article before presenting charges. It can be concluded that textually Article 27 paragraph (2) of the ITE Law is intended for parties who facilitate online gambling. However, the potential for ensnaring online gambling players remains through the interpretation of the phrase "making accessible" electronic gambling information. Clearer guidelines are needed so that law enforcement against online gambling is more certain and consistent.

The practice of online gambling in Indonesia is currently widespread, whether done as a livelihood or simply as a game and entertainment. "However, criminal regulations regarding online gambling in Indonesia are still considered unclear and firm. Article 303 of the Criminal Code (KUHP) and Article 27 paragraph (2) of the Information and Electronic Transactions Law (UU ITE) do not explicitly regulate the subject of online gambling crimes, whether only for those who make a living or also include players. who only participate in online gambling as a game."<sup>9</sup>This has the potential to create legal uncertainty in law enforcement against online gambling in Indonesia.

Therefore, it is necessary to carry out clearer and firmer criminal regulations regarding the subject of online gambling crimes, especially online gambling players who do not use it as a livelihood.

This regulation is important to fulfill the principle of legal certainty in law enforcement in Indonesia in accordance with Article 28D Paragraph (1) of the 1945 Constitution. 1 The existence of legal certainty can prevent different and arbitrary interpretations by law enforcers in ensnaring online gambling players.

Some of the urgency of clear criminal regulations for online gambling players to fulfill the principle of legal certainty are:

1. Providing clarity on the status of online gambling players' actions in Indonesian criminal law

With clear regulations, it can be ascertained whether participating in online gambling without making a living is a criminal offense or not. If they are still convicted, at least online gambling players know the legal consequences they will face.

2. Prevent abuse of authority by law enforcement

Law enforcers cannot arbitrarily punish online gambling players if their actions are not clearly categorized as criminal acts. Strict regulations can prevent abuse of power.

3. Guarantee justice and legal benefits

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<sup>9</sup>Ferry Fathurokhman, "Legal Certainty in the Perspective of Legal Regulations for Gambling Crimes in Indonesia", *Juridical Journal*, Vol. 5 No. 1, June 2018, p. 1-104.

If the criminal regulations are fair for online gambling players, justice will be created. Likewise, criminal regulations are sociologically useful for preventing the negative impacts of online gambling.

4. Providing security and legal order. With legal certainty from clear regulations, the public, especially online gambling players, will feel safe and protected. This is important for the sake of legal order and public order.
5. Increasing the professionalism and accountability of law enforcers. Legal certainty encourages law enforcers to be professional and accountable in implementing online gambling criminal regulations. They cannot act arbitrarily without a clear legal basis.

"Therefore, criminal provisions for online gambling players who do not do it as a livelihood need to be regulated explicitly immediately. These settings can be:"<sup>10</sup>Include the phrase "for livelihood purposes" in Article 303 of the Criminal Code and Article 27 Paragraph (2) of the ITE Law. So that ordinary players are not subject to criminal acts. Determining certain qualifications for online gambling players who can be punished, such as the value of bets and the frequency of playing online gambling. Regulates special criminal provisions for online gambling players outside Article 303 of the Criminal Code and the ITE Law. Regulating forms of administrative sanctions such as rehabilitation rather than criminal sanctions for online gambling players who are not professional gamblers. Clear and firm criminal regulations for online gambling players are important to avoid arbitrariness and ensure fair legal certainty in enforcing laws and regulations in Indonesia. The government and DPR must immediately revise the current online gambling criminal provisions in order to realize the principle of legal certainty.

## CONCLUSION

The criminal regulation of online gambling in Indonesia is currently considered to be still unclear and firm because neither Article 303 of the Criminal Code nor Article 27 Paragraph (2) of the ITE Law explicitly regulates the subject of criminal acts of online gambling, whether only for those who use it as a livelihood or also includes players who only participate in online gambling as a game, which creates legal uncertainty and inconsistencies in its enforcement against online gambling players. Clearer and firmer criminal regulations are needed for online gambling players who do not use it as a livelihood in order to fulfill the principle of legal certainty in order to protect the public from negative impacts. online gambling which is increasingly widespread by including the phrase "for livelihood purposes" in Article 303 of the Criminal Code and Article 27 Paragraph (2) of the ITE Law, determining certain qualifications that can be punished for online gambling players, or regulating special criminal provisions outside the Criminal Code and the Law ITE is currently in effect so that the government and DPR need to immediately revise the online gambling criminal provisions so that they are clearer and more explicit about the subject and scope of criminal acts, especially regarding online gambling players in order to realize fair law enforcement and prioritize the principle of legal certainty in Indonesia. The

<sup>10</sup>Antho F. Susanto, "Tackling Online Gambling Through a Restorative Justice Approach", Journal of Mimbar Justice, Vol. 13 No. 2, August 2020, p. 257-276.



government and DPR need to immediately revise the criminal provisions for online gambling in the Criminal Code and the ITE Law to make the subject and scope of criminal acts clearer, especially regarding online gambling players who do not make a living in order to ensure legal certainty by including the phrase "for livelihood purposes" in criminal provisions, determining certain qualifications that can be punished, or regulating special criminal provisions outside the existing Criminal Code and ITE Law, in addition to the need for increased coordination between law enforcement institutions so that criminal enforcement against online gambling is more optimal, consistent and comprehensive, both for organizers and players. online gambling and there is a need for intensive socialization to the public regarding the dangers of online gambling and the criminal sanctions imposed to suppress the practice of online gambling in Indonesia and further research needs to be carried out regarding the sociological impact of the criminal regulation of online gambling so that the policies created can be effective in suppressing the practice of online gambling and provide a deterrent effect for perpetrators.

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