

Criminal Liability for Online Gambling Practices Based on Chapter 27 Paragraph (2) and Chapter 45 Paragraph (2) of Law Number 1 of 2024

Kresna Satria Wibowo^{1*}, Brahma Astagiri²

^{1,2} Universitas Airlangga, Jawa Timur, Indonesia

*Corresponding Author:

Email: kresna.satria.wibowo-2022@fh.unair.ac.id

Abstract.

The practice of online gambling in Indonesia is increasingly widespread and has given rise to various new problems which have resulted in many changes to the increasingly advanced system. The practice of online gambling is currently still a major problem with a variety of more complex cases in the digital system. This research aims to analyze how Law Number 2024 (UU ITE) is able to solve problems related to online gambling practices. The method used in this research is normative law with the aim of examining legal norms relating to overcoming online gambling practices in Indonesia through Law Number 1 of 2024 concerning Information and Electronic Transactions (UU ITE). The research results show that Article 27 paragraph (2) of the ITE Law states that a person who intentionally and without the right distributes, transmits and/or makes accessible Electronic Information and/or Electronic Documents containing gambling content can be punished in accordance with the applicable provisions in accordance with Article 45 paragraph (3) of the ITE Law.

Keywords: Online Gambling; ITE Law and Digital.

I. INTRODUCTION

The development of information and communication technology in the era of globalization has had a significant impact on the social, economic, and cultural life of Indonesian society. Easy internet access and the widespread use of digital devices have opened up significant opportunities in various sectors, including the digital economy. However, despite these benefits, digital transformation has also created new challenges, one of which is the rise of online gambling. Online gambling is a complex cybercrime characterized by easy access, its hidden nature, and cross-border involvement, which complicates the monitoring process. This activity not only targets the adult age group, but also involves teenagers and students. This phenomenon negatively impacts various aspects of life, including psychological, social, and economic ones. Online gambling addiction can lead to cognitive impairment, broken family relationships, job loss, and increased crime rates. Economically, online gambling contributes to the country's foreign exchange losses because many platforms operate illegally from abroad. Furthermore, this practice often involves digital fraud, the spread of misleading content, and money laundering through various electronic payment platforms. Data from databoks.com shows that between August 8, 2023, and November 19, 2024, a number of online gambling transactions were conducted using e-wallets such as DANA, Gopay, LinkAja, and OVO. This demonstrates that digital financial technology is also vulnerable to being exploited for illegal activities.

Table 1. Proportion of E-Wallet Accounts Detected in Online Gambling Transactions

(August 8, 2023-November 19, 2024)

Data Name	Mark
FUNDS	25.68
Gopay	24.84
LinkAja	21.47
OVO	21.26
My Pocket	2.23
ShopeePay	2.11

According to data uploaded by databoks.com, the increase in online gambling transactions is closely linked to violations of the ITE Law, which can increase annually. These violations include the distribution of gambling content, the use of accounts for illegal transactions, and money laundering conducted through digital platforms. In many cases, perpetrators use fake identities or disguise their activities with various encryption techniques to evade detection by law enforcement. Recognizing the urgency of this problem, the Indonesian government has taken steps to address it, including revising the Electronic Information and Transactions Law (UU ITE). The enactment of Law No. 1 of 2024, amending the ITE Law, is expected to strengthen legal instruments for eradicating online gambling, including prevention, prosecution, and redress. This study aims to analyze the regulation and effectiveness of criminal law against online gambling crimes in Indonesia, particularly in the perspective of Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 and Law Number 1 of 2024. This study is expected to contribute in formulating more comprehensive legal steps in dealing with the dynamics of cybercrime in the digital era.

II. METHODS

This research uses a normative juridical method, namely legal research that focuses on the study of applicable positive legal norms. This approach is conducted by analyzing relevant laws and regulations, legal doctrine, and court decisions related to online gambling crimes in Indonesia. The goal is to describe and examine how existing legal provisions, particularly Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) and its amendments, are used to address cybercrime in the form of online gambling practices and to assess the effectiveness of their implementation. The approaches used in this research are a statutory approach and a conceptual approach. The statutory approach examines articles in the Electronic Information and Transactions Law (UU ITE), the Criminal Code (KUHP), and other regulations governing gambling and cybercrime. Meanwhile, the conceptual approach examines theories of criminal law and criminal liability related to the phenomenon of online gambling as a form of digital crime.

The data sources used consist of three types of legal materials: primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations such as the 1945 Constitution, the Electronic Information and Transactions Law (ITE) and its amendments, the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), as well as implementing regulations and technical guidelines from law enforcement officials. Secondary legal materials include legal literature, scientific journals, previous research results, and the opinions of relevant legal experts. Meanwhile, tertiary legal materials include legal dictionaries, encyclopedias, and data and information from official government websites or related institutions. The legal data collection technique was carried out through library research by tracing, recording, and classifying various legal documents and scientific literature relevant to the research topic. Analysis of the legal materials was conducted qualitatively, by interpreting the content of applicable legal norms, comparing provisions between regulations, and assessing the effectiveness of law enforcement based on existing practices and court decisions. A deductive approach was used in drawing conclusions, namely by drawing logical connections from general norms in positive law to concrete cases of online gambling occurring in Indonesia.

Online Gambling Practices in Indonesia

Gambling is a form of activity in which someone risks something of value, such as money or valuables, to choose one of several possible outcomes in the hope of winning. The Big Indonesian Dictionary (KBBI) also defines it as a game involving wagers of money or valuables. With the advancement of technology, gambling practices have transformed from conventional to digital. Online gambling is a form of gambling conducted electronically, utilizing the internet as the primary intermediary. In this case, the entire process, from registration, game selection, placing bets, to cashing out winnings, is conducted online without the need for physical interaction between players. In his writing, Kurniawan, et al., stated that gambling is a conventional crime. However, with the advancement of information and communication technology, gambling methods have increasingly evolved, transforming from conventional methods to modern ones. Today, gambling no longer requires face-to-face interaction with other players. Gambling can now be played

anywhere and anytime through internet-accessible technology. It's important to note that gambling involves the concept of taking risks. This concept needs to be differentiated from other risky activities. Three factors distinguish gambling from other risky behaviors.

- 1) Gambling is an activity that involves a certain amount of money (or something else of value) where the winner will get money from the losing player.
- 2) The risks taken depend on future events with unknown outcomes and are largely determined by chance or luck.
- 3) The risk taken is not something that must be done, defeat or loss can be avoided by not taking part in gambling games.

The growing online gambling system in Indonesia has led to a variety of online gambling options. The growing variety of gambling options has also encouraged individuals to try different types of games. Some of the online gambling options available on internet sites include:

- 1) *Texas Hold'em Poker*

Texas Hold'em Poker Texas Hold'em Poker is one of the most popular poker games in the world, both in live and online games. This game relies on a combination of strategy, the ability to read opponents, and luck to win. Many social media platforms, such as Facebook, have detected Texas Hold'em Poker, although the platform uses coins between players instead of real money. With the advancement of internet technology, a new variation has emerged: online poker, which uses real money.² While the system and gameplay remain the same as traditional poker, the difference lies in the use of real money for betting. Players can transfer money to the account listed on each gaming site. Online poker offers various game variants with different names and ownership, but the concept and gameplay remain similar. All of these games are accessible through websites such as Dewa Poker, Pokerace99, Gudang Poker, Pokerclub88, and Texaspokercc.

- 2) *Sports Betting*

Sports betting encompasses various types of wagers related to many sports, both popular and lesser-known. Betting methods are tailored to existing rules. Some examples of sports that can be wagered on online gambling sites include football, basketball, baseball, tennis, badminton, and various others. One of the most popular and global sports is football. This sport is not only a favorite among sports fans but also a primary choice for online gambling. Before the advent of online gambling, football had long been a popular betting topic, both directly between individuals and through bookmakers. With the development of online gambling, football betting has become more detailed, allowing players to analyze statistics and the performance of the clubs they are betting on, giving them greater confidence in choosing which team or clubs to bet on.

- 3) *Casino*

Casino gambling is a type of gaming that offers a wide variety of games involving elements of luck, strategy, and skill. In casino games, players will typically make predictions or guesses about certain outcomes such as which numbers will appear or which choice will win.

The presence of gambling is caused by various factors that make someone enter the gambling circle. Some of these factors include the following:

- 1) *Social and Economic Factors*

Socioeconomic factors are one of the main reasons why someone becomes involved in online gambling. Difficult economic conditions such as unemployment and financial stress can drive individuals to seek quick ways to make money, and online gambling is often seen as an instant solution. Many gamblers are tempted by the promise of large profits in a short time, unaware of the high risks of gambling, which can lead to new problems such as online loan debt.

- 2) *Situational Factors*

Situational and environmental factors can influence someone's decision to engage in online gambling. The availability of internet access makes digital transactions easier, leading many people to try it. Social factors, such as social interactions with friends, can also influence individuals to engage in gambling.

3) Learning Factors

Gambling behavior is also closely related to learning theory, where individuals begin gambling by observing how others do it. In psychology, social learning theory states that individuals tend to imitate behavior they observe, especially if that behavior appears to yield profitable results. In the context of online gambling, many people are drawn to try it after seeing the successful experiences of others who share their winnings on social media or online forums. Furthermore, digital platform algorithms often display gambling advertisements or promotions, further strengthening a person's desire to try.

4) Probability Perception Factor

Many online gamblers have a misconception about their chances of winning. They often believe they have control over the outcome of the game, even though gambling systems are generally designed to favor the organizers. The "gambler's fallacy," or the mistaken belief that winning will come after a series of losses, is also a factor that leads to continued gambling. Furthermore, online gambling often utilizes reward and reinforcement mechanisms, where players are occasionally given small wins to encourage them to continue playing in the hope of a bigger win. These factors can trigger and encourage someone to engage in online gambling.

Criminal Law in Indonesia

In the context of national criminal law, the term policy or politiek refers to the general principles used as guidelines in designing and implementing legal systems, including the criminal law system. Criminal law policy reflects the state's strategy in responding to and controlling crime to protect public order and interests. Criminal law policy is realized through regulations in laws that determine the types of prohibited acts, sanctions that can be imposed, and mechanisms for enforcing the law against perpetrators. Legal policy plays a crucial role in directing legal changes to align with social dynamics. Through legal policy, the state formulates *ius constitutum* (idealized law) which is then expected to serve as *ius constitutum* (new positive law) in the future. The use of criminal law as a tool of social control is inseparable from a planned and rational policy framework. The operationalization of criminal law policy through penal (criminal) means involves three main stages:

1. Formulation Stage (Legislative Policy)

This is the process of formulating criminal law norms by lawmakers. This stage determines the types of acts considered criminal, the elements of the offense, the degree of culpability, and the types of sanctions that can be imposed. This formulation is based on the principles of criminal law and values of justice.

2. Application Stage (Judicial Policy)

This stage relates to the implementation of criminal law norms by law enforcement officials such as police, prosecutors, and judges. Through investigations, inquiries, prosecutions, and the judicial process, criminal law is concretely applied to perpetrators of crimes.

3. Execution Stage (Executive Policy)

This is the implementation of a criminal decision that has permanent legal force. This task is carried out by an executing institution such as a correctional institution, under supervision from the relevant agency. Effective criminal law policy requires a conscious, rational, and systematic crime prevention strategy. In its design, the selection of criminal law as a means of crime prevention must consider various factors, including its effectiveness, fairness, and the law's practical application. Regarding criminal responsibility, this theory aims to determine whether an individual can be held accountable for a crime.

In the criminal law system, responsibility is determined by three main elements:

1. There are acts that violate the law,
2. The element of fault or *mens rea* (malicious intent or awareness of the perpetrator), and
3. The perpetrator's ability to be legally responsible.

A person can only be subject to criminal sanctions if proven to have acted consciously and with free will, except in circumstances that exclude the element of guilt, such as mental disorder or extraordinary pressure (*over macht*). Furthermore, the existence of justification and excusal, such as the defense of emergency (*noodweer*), is also a consideration in assessing criminal responsibility.

Electronic Information and Transaction Law

The Electronic Information and Transactions Law (UU ITE) is a crucial legal instrument for combating digital violations, including online gambling. While Article 303 of the Criminal Code (KUHP) provides criminal sanctions for gambling perpetrators, this provision primarily targets conventional gambling practices that take place in physical locations. With technological advancements and increasingly easy internet access, gambling practices have shifted to digital platforms. In the review of online gambling, Article 27 paragraph (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) which has been updated by Law Number 1 of 2024 states that:

"Any person who intentionally and without authority distributes, transmits, and/or makes accessible electronic information and/or electronic documents containing gambling content can be punished with a maximum prison sentence of 6 years and/or a maximum fine of 1 billion rupiah."

This provision indicates that any form of dissemination of information or promotion of gambling through digital media, whether through websites, applications, social media, or other electronic communication platforms, is illegal. Therefore, the ITE Law serves as a legal instrument that adapts criminal provisions to developments in digital technology, which allow gambling to be conducted without limitations of time and space.

In Article 27 paragraph (2) of the ITE Law, there is clarity on the following elements:

a. Subjective Elements

The subjective element is that any person acts intentionally and without right. The intentional and unintentional elements are a single entity that must be proven by law enforcement. This element means the perpetrator intended and consciously knew that their actions were unlawful. In this case, unintentional acts constitute an unlawful act.

b. Objective Elements

The objective elements in this case are:

1. Distribute.
2. Transmit
3. Making accessible electronic information and/or electronic documents containing gambling content.

Legal Provisions of the ITE Law in Online Gambling Practices

The Electronic Information and Transactions Law (ITE Law) regulates legal provisions regarding online gambling in Article 27 paragraph (2) of the ITE Law, which reads:

"any person who intentionally and without authority distributes and/or transmits and/or makes accessible Electronic Information or Electronic Documents containing gambling content, "

Sanctions for violations of these provisions are regulated in Article 45 paragraph (2) of the ITE Law, which states that:

"Any person who intentionally and without authority distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing gambling content as referred to in Article 27 paragraph (2) shall be punished with imprisonment of up to 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah), "

Online gambling law is regulated in Article 45 paragraph (2) of Law 19/2016 which explains that any person who intentionally and without the right distributes, transmits and/or makes accessible electronic information and/or electronic documents containing gambling content shall be subject to a maximum prison sentence of six years and/or a maximum fine of IDR 1 billion. The provisions of the ITE Law indicate that the prohibition on online gambling extends beyond just gambling itself, but also to those who distribute, advertise, or facilitate access to digital gambling. The severe penalties, including up to six years in prison and a maximum fine of IDR 1 billion, demonstrate the government's commitment to combating the increasingly disturbing practice of online gambling within the community. In addition to the ITE Law, online gambling has also been prohibited under Article 303 and Article 303 bis of the Criminal Code (KUHP), which threatens perpetrators with imprisonment of up to 10 years and a maximum fine of IDR 25 million.

The most fundamental article regulating gambling in Indonesia is Article 303 paragraph (1):

"Anyone who intentionally offers or introduces gambling games to the public, either to obtain direct or indirect profits, shall be punished with a maximum imprisonment of 10 years and/or a maximum fine of IDR 25,000,000."

This article regulates anyone involved in organizing gambling, whether as organizers, managers, or parties offering gambling to the public. In other words, this article criminalizes all parties involved in gambling operations, both those in Indonesia and those abroad who provide online gambling to the Indonesian public.

Article 303 bis of the Criminal Code regulates the implementation of gambling games as follows:

"Anyone who intentionally carries out or organizes gambling games that are not regulated by statutory regulations shall be punished with a maximum prison sentence of 6 years and/or a maximum fine of IDR 10,000,000."

In the context of online gambling, this article can also be applied to prosecute individuals who organize or facilitate unauthorized or illegal gambling games, including gambling via the internet that is not registered in Indonesia.

Meanwhile, Article 303 paragraph (1) of the Criminal Code focuses on gamblers or individuals involved in gambling. Article 303 paragraph (1) states:

"Anyone who intentionally participates in gambling, either as a player or a betting party, shall be subject to a maximum imprisonment of 4 years and/or a maximum fine of Rp. 10,000,000."

This article regulates anyone who participates in or bets on gambling activities, whether conducted in person at a conventional gambling venue or accessed through an online gambling site. Although many online gamblers are often difficult to monitor directly, the law still provides sanctions for those involved in this activity. The article governing the management or ownership of gambling facilities is contained in Article 303 of the Indonesian Criminal Code, which states that anyone who intentionally provides a place or means for gambling, either directly or through other means, shall be subject to a maximum prison sentence of five years and/or a maximum fine of Rp15,000,000.³ With the development of technology and ease of internet access, this article can also be applied to online gambling site operators who provide gambling platforms through applications or websites. There is also criminal liability for those who promote online gambling. The increasing popularity of social media has given rise to the term "selebgram" or someone who carries out promotional or endorsement activities. This promotion is one of the strategies used by bookies to communicate with their consumers. The promotion carried out will become a tool to provide information to other people or buyers about a service or product being offered.

In promoting online gambling, social media is utilized as an intermediary for promotion. The large number of internet users in Indonesia makes online gambling promotion increasingly difficult to control, especially because it is carried out covertly through entertainment content inserted with links to gambling sites. In a legal context, the act of promoting online gambling can be subject to criminal sanctions under the provisions of Article 27 paragraph (2) in conjunction with Article 45 paragraph (2) of the Electronic Information and Transactions Law (UU ITE). This article states that anyone who intentionally distributes, transmits, or makes accessible electronic information containing elements of gambling can be punished with a maximum prison sentence of six years and/or a maximum fine of IDR 1 billion. In addition, the promoter can also be subject to criminal sanctions based on Article 303 of the Criminal Code which regulates the prohibition of all forms of gambling activities including the promotion and facilitation of gambling with the threat of imprisonment of up to ten years and/or a fine of IDR 25 million. In Chapter XI of the ITE Law which contains criminal provisions, Article 45 paragraph (1) states that any individual who violates Article 27 paragraphs (1), (2), (3), or (4) can be subject to imprisonment of up to six years and/or a fine of up to IDR 1 billion. Article 27 paragraph (2) specifically regulates the prohibition on electronic information containing gambling content, with three main elements being the basis for criminal punishment, namely:

1. Distributing

This element refers to the act of distributing information to others, either directly or through various digital means such as social media, websites, or apps. An example is an individual who knowingly spreads links to online gambling sites through WhatsApp groups or social media posts.

2. Transmit

This term refers to the process of sending gambling information from one party to another via electronic systems, such as email, SMS, or messaging apps. Perpetrators who intentionally send gambling promotional content fall into this category, as they are actively transferring illegal information.

3. Making Information accessible

This element includes actions that facilitate or enable others to access online gambling, for example by inserting links to gambling sites in digital content, providing access guides, or acting as a transaction intermediary. Affiliates who create videos or articles containing information leading to gambling sites may be prosecuted under this element.

These three elements emphasize that the ITE Law targets not only the main perpetrators of gambling but also those who contribute to the dissemination, promotion, or facilitation of access to online gambling activities. Therefore, the law strictly sanctions all forms of involvement in online gambling practices, both direct and indirect. Online gambling site managers or providers are the main actors in the increasingly widespread online gambling operations in Indonesia. They are responsible for the design, management, and maintenance of digital systems that enable people to gamble online. Under Article 27 paragraph (2) in conjunction with Article 45 paragraph (2) of the ITE Law, individuals who intentionally disseminate, transmit, or provide access to information containing electronic gambling content may be subject to criminal sanctions of up to six years' imprisonment and/or a fine of up to IDR 1 billion. In this position, platform providers act not only as intermediaries but also as entities disseminating gambling information to the public. In addition to being prosecuted under the ITE Law, these site providers may also be subject to Article 303 of the Indonesian Criminal Code, which prohibits all forms of gambling activities, including providing the means or opportunities for gambling. The criminal penalty for this violation is up to ten years in prison and/or a fine of up to IDR 25 million, representing a heavier legal burden than the provisions of the ITE Law, given the provider's central position within the online gambling structure.

In practice, these providers often use overseas servers to avoid detection and blocking by Indonesian authorities. They also utilize difficult-to-trace payment methods such as anonymous digital wallets and collaborate with affiliates or agents to recruit players. Affiliates can also be held criminally liable if proven to have played a role in the distribution of online gambling content or access. Online gamblers are an integral part of the digital gambling ecosystem. Although often considered victims, they still bear legal responsibility for their involvement in activities that have been declared prohibited. Based on Article 27 paragraph (2) in conjunction with Article 45 paragraph (2) of the ITE Law, any individual who knowingly participates in the distribution, transmission, or provision of access to electronic gambling information may be subject to criminal sanctions. In addition, players can also be charged under Article 303 of the Criminal Code, which regulates sanctions for anyone involved in gambling practices, whether directly or digitally. Criminal penalties include imprisonment of up to ten years and/or a maximum fine of IDR 25 million. Meanwhile, Article 303 bis of the Criminal Code also stipulates that players who only participate without being organizers can still be subject to imprisonment of up to four years or a maximum fine of IDR 10 million. Thus, involvement in online gambling, even as a participant, still carries serious legal consequences.

However, law enforcement against online gamblers faces several challenges. Many players use fake identities or anonymous accounts when registering and utilize digital payment systems such as e-wallets or cryptocurrencies, which are difficult to trace. Nevertheless, law enforcement can track them through financial transaction analysis, investigations into online gambling communities, and collaboration with financial institutions to identify suspicious activity. In Indonesia, the number of cases involving online gamblers continues to rise in line with the government's intensification of anti-gambling policies. Some players have been summoned for questioning, while others have been subject to administrative sanctions such as blocking their accounts or e-wallet accounts used for gambling. In certain cases, if indications of

systematic and profitable gambling are found, players can also be charged with money laundering. In addition to legal sanctions, online gamblers also face various social and economic consequences. Many experience financial loss, job loss, and even resort to crime to fund their gambling habits. Within the family, gambling addiction contributes to increased domestic conflict and divorce.

III. CONCLUSION

1. Law Number 1 of 2024 concerning Electronic Information and Transactions (ITE) provides a strong legal basis for efforts to eradicate online gambling practices. This is reflected in Article 27 paragraph (2), which explicitly prohibits anyone from intentionally and without authority distributing, transmitting, or making accessible electronic information containing elements of gambling. Sanctions for violating this provision are regulated in Article 45 paragraph (2), namely a maximum prison sentence of six years and/or a fine of up to IDR 1 billion. This provision confirms that the state takes online gambling seriously as a form of legal violation in cyberspace.

2. The ITE Law has been implemented in various forms of law enforcement against perpetrators, including promoters, agents, site managers, and users. Several cases, such as the distribution of gambling advertisements on social media, the operation of illegal sites, and transactions through digital wallets, have been successfully prosecuted under applicable law. However, various obstacles remain in its implementation, including difficulties in tracking perpetrators using foreign servers, limited cross-border coordination, and low levels of legal literacy. Furthermore, the use of advanced technology and encryption techniques also pose challenges in the digital evidence-gathering process.

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