

Legal Analysis of The Application of Article 303 Paragraph (1) to 1 KUHP of The Criminal Code in Online Gambling Cases Study of Decision Number 283/PID.B/2024/PN Rokan Hilir

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Abstract.

Technological advancements have given rise to new crime modalities, including online gambling. Law enforcement against these practices often utilizes provisions in the Indonesian Criminal Code (KUHP), which does not explicitly regulate online gambling. This research analyzes the application of Article 303 Paragraph (1) point 1 of the KUHP in the Decision of the Rokan Hilir District Court Number 283/PID.B/2024/PN Rokan Hilir. The research method used is normative juridical with a case study approach. The results indicate that the application of the aforementioned article to the online gambling perpetrator was appropriate, even though the formulation of the article does not specifically mention online gambling. The judge argued that the substance of the defendant's actions, namely acting as a bookie, had fulfilled the elements of Article 303 Paragraph (1) point 1 of the KUHP. This decision sets an important precedent that Indonesian positive law can reach conventional crimes that migrate into the digital space.

Keywords: *Bookies; Criminal Code; Online Gambling; Article 303 and Law Enforcement.*

I. INTRODUCTION

The rapid development of information and communication technology in the era of the industrial revolution 4.0 has brought about fundamental transformations in all aspects of global society, including Indonesia. Cyberspace is no longer merely a virtual space but has become an integral part of real life, offering convenience, efficiency, and limitless connectivity. This digital revolution has transformed traditional paradigms in various sectors, from economics and social to law. However, behind all the benefits and conveniences offered, technological advances have also given rise to paradoxes by giving rise to new forms of crime that have migrated and adapted to the digital space. The phenomenon of conventional crime metamorphosing into cybercrime presents a unique challenge for law enforcement officials worldwide, including Indonesia. One of the most prominent phenomena and a serious concern for various parties in recent times is the rise of online gambling practices. Gambling activities that were once territorial and physical, with specific locations that could be monitored, can now be accessed easily, cheaply, and anonymously at the touch of a hand, transcending geographic boundaries and national legal jurisdiction.³ Data from the Indonesian National Police's Criminal Investigation Agency (Bareskrim) records a significant increase in online gambling cases in recent years, which not only causes significant material losses but also systemic social impacts. Material losses are not only experienced by individual players, but also impact the family economy as a whole.

Meanwhile, the emerging social impacts are very complex, ranging from family breakdown, neglect of responsibilities, decreased work productivity, to the potential for derivative crimes such as money laundering and fraud. In this case, the research method used is normative legal research (normative juridical), which focuses on examining applicable positive legal norms related to online gambling crimes. This approach is carried out by examining relevant laws and regulations, particularly the Criminal Code (KUHP), as well as other legal provisions related to combating information technology-based gambling. Normative legal research was chosen because it aims to analyze legal rules, legal principles, and legal systems in responding to the phenomenon of online gambling as a form of cybercrime. The approaches used include a statutory approach and a conceptual approach. The statutory approach is used to examine the regulation of gambling crimes and their application within the Indonesian criminal law system, while the conceptual

approach is used to understand the concepts of law enforcement, criminal law policy, and cybercrime from a theoretical perspective. The legal materials used consist of primary, secondary, and tertiary legal materials, which are analyzed qualitatively using descriptive-analytical analysis methods to obtain systematic and comprehensive conclusions.

Philosophically, the prohibition on gambling is deeply rooted in the noble values of the Indonesian nation, derived from Pancasila, particularly the principles of Belief in One Almighty God and Just and Civilized Humanity. Gambling is viewed as an activity that undermines the moral fabric of society, encourages an instant and speculative mentality, and contradicts the hard work ethic and social justice that underpin national character building. This philosophical aspect serves as the normative basis for the state to intervene and protect society from the dangers posed by gambling practices. The state exists not only as a regulator but also as a guardian of public morals (*custos morum*), responsible for creating an orderly, safe, and just social environment. Therefore, efforts to combat gambling, in any form, are a manifestation of the ideals of a state based on the rule of law (*rechtsstaat*), which aims to advance the general welfare and enhance the intellectual life of the nation, as enshrined in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. In the normative legal context, the Indonesian Criminal Code (KUHP) as the *lex generalis* of material criminal law has specifically regulated the crime of gambling in Chapter XIV concerning Crimes that Endanger Public Security for People or Property, Health and Public Order, especially in Article 303.

Article 303 Paragraph (1) 1 of the Criminal Code states firmly, "A person who intentionally and without the right to operate or allow a lottery or betting company to continue running, or profits from it, or participates in any other way in the company, shall be punished with imprisonment of up to 10 (ten) years or a fine of up to Rp. 25,000,000.00 (twenty-five million rupiah), shall be punished with imprisonment of up to Rp. 25,000,000.00 (twenty-five million rupiah). The fundamental problem that arises in the current context is that the formulation of this article was drafted during the Dutch colonial period, long before the emergence of the internet and the concept of the digital economy. The legal construction of Article 303 of the Criminal Code remains highly conventional, using terminology such as "betting company," which in the classical sense is often associated with a physical business entity with a clear location and organizational structure. This legal vacuum creates ambiguity and hermeneutical challenges for law enforcement when dealing with online gambling, which is borderless, decentralized, and utilizes sophisticated encryption technology. On the one hand, law enforcement is required to be able to tackle the increasingly widespread practice of online gambling, while on the other, the available legal instrumentarium does not explicitly regulate this modern form of gambling.

This situation places law enforcement, particularly judges, in a dilemma between meeting public demands to enforce the law and maintaining legal certainty in accordance with the principle of legality. Sociologically, Indonesia's heterogeneous society, with varying levels of digital literacy, is highly vulnerable to the negative impacts of online gambling. Easy access via smartphones and attractive apps with user-friendly interfaces make various groups, including productive age groups such as schoolchildren, college students, and young professionals, easy targets for online gambling practices. The public expects protection and legal certainty from the state. The inability of the law to keep pace with the rapid pace of technological development could potentially lead to a legitimacy crisis and a decline in public trust in law enforcement institutions. On the other hand, there is social pressure to ensure that justice is upheld equally, regardless of whether the crime was committed conventionally in a coffee shop or through a server platform located in another jurisdiction. Therefore, progressive and adaptive law enforcement is imperative to respond to these societal concerns and demands. The Rokan Hilir District Court Decision Number 283/PID.B/2024/PN Rokan Hilir tried the online lottery gambling crime case with the defendant SALIM alias APAK SALIM bin SYAHRUDIN, who was proven to have intentionally and without the right to offer and provide opportunities for the public to play online lottery gambling through the DINDONG TOGEL site, by creating accounts, accepting number placements from players, managing transactions, and obtaining a profit of 15% from each player's winnings.

Based on evidence in the form of witness statements, the defendant's confession, and evidence in the form of a cell phone, gambling account, cash, a summary book, an ATM card, and a dream interpretation book, the Panel of Judges considered that the defendant's actions fulfilled the elements of "offering or providing opportunities for gambling" and "participating in a gambling company" as regulated in Article 303 Paragraph (1) 1 of the Criminal Code, even though it was carried out online. Based on these considerations, the Panel of Judges declared the defendant legally and convincingly proven guilty of committing the crime of gambling and sentenced him to imprisonment and a fine in accordance with applicable legal provisions. In this context of progressive law enforcement, the Rokan Hilir District Court Decision Number 283/PID.B/2024/PN Rokan Hilir presents an interesting and crucial jurisprudence that deserves further in-depth study. In the decision, a defendant who acted as a bookie in the practice of online "slot" gambling through an application, was declared legally and convincingly proven guilty of committing a crime as referred to in Article 303 Paragraph (1) 1 of the Criminal Code. The application of this general and conventional article to a specific cyber crime has sparked debate in terms of legal certainty and the suitability between the elements of the article and the facts of the trial.

An in-depth analysis of the legal considerations (*rechtsoverweging*) constructed by the panel of judges in this decision is very important for understanding how Indonesian positive law is interpreted and applied to address the challenges of contemporary crime. The application of Article 303 of the Criminal Code to gambling crimes, including online gambling, demonstrates the state's commitment to maintaining public order and protecting society from the destructive impacts of gambling. Although Article 303 of the Criminal Code was formulated in the context of conventional gambling, the substance of the norm governing the act of "offering, providing opportunities, or participating in a gambling enterprise" remains relevant to ensnaring gambling practices conducted through electronic media and digital platforms. Therefore, legal interpretation of Article 303 of the Criminal Code must be carried out progressively and systematically to accommodate the development of gambling *modus operandi* that has transformed into cyberspace. Furthermore, the implementation of Article 303 of the Criminal Code needs to be supported by synergy with other laws and regulations, particularly those governing information technology, to strengthen the evidentiary aspects and criminal accountability of online gambling perpetrators. Consistent, firm, and just law enforcement against online gambling perpetrators serves not only as a repressive tool, but also as a preventive instrument to create a deterrent effect and prevent the spread of gambling practices in society.

Thus, the implementation of Article 303 of the Criminal Code is not only interpreted as the implementation of legal norms, but also as an effort to protect moral and social values and legal certainty within the framework of the rule of law in Indonesia. This decision is also interesting to examine within the framework of legal interpretation theory and the development of criminal law doctrine in Indonesia. Does the judge's interpretation conform to the interpretative guidelines of criminal law, particularly in relation to the principle of legality? How should the law respond to rapid technological developments without sacrificing legal certainty?²⁴ These fundamental questions make the study of this decision not only practically relevant for legal practitioners but also academically significant for the development of criminal law. Based on the background description which includes the philosophical, legal and sociological aspects, this research will analyze in more depth the application of Article 303 Paragraph (1) 1 of the Criminal Code in online gambling cases. The problem formulation in this research is:

1. How is the construction of the Judge's legal considerations in applying the elements of Article 303 Paragraph (1) 1 of the Criminal Code to online gambling perpetrators in Decision Number 283/PID.B/2024/PN Rokan Hilir? And does the application of Article 303 Paragraph (1) 1 of the Criminal Code in the online gambling case fulfill the principles of legality and legal certainty and reflect a sense of substantive justice?

II. RESULT AND DISCUSSION

How is the construction of the Judge's legal considerations in applying the elements of Article 303 Paragraph (1) 1 of the Criminal Code to online gambling perpetrators in Decision Number 283/PID.B/2024/PN Rokan Hilir?

The application of Article 303 Paragraph (1) 1 of the Criminal Code in Decision Number 283/PID.B/2024/PN Rokan Hilir against online gambling perpetrators is based on the progressive and contextual construction of legal considerations by the Panel of Judges. The judges did not fall into the trap of a rigid literal (grammatical) interpretation of the terminology in the article, but instead carried out a sociological and teleological interpretation to capture the spirit or purpose of the law (the spirit of the law).

a. Interpretation of the Element of "Betting Company"

The key element that is crucial in the application of this article is the phrase "betting company." Conventionally, "company" is often associated with a formal business entity with a legal entity and a clear organizational structure. However, the Panel of Judges in this decision made an expansive interpretation by defining "company" as any activity carried out regularly, continuously, and aimed at seeking profit, regardless of its physical form or legal formality. The trial evidence demonstrated that the defendant actively and repeatedly managed online gambling accounts, accepted bets from other players, determined winnings and losses, and conducted financial transactions. This structured and ongoing pattern of activity is what the Judges qualified as a "betting company" in the substantive sense, even though it was conducted individually through digital devices.

b. Fulfillment of the Element of "Making a Living or Making a Profit"

The element of "enabling or profiting from a betting company" was also comprehensively proven. The judge not only looked at one aspect of the act, but also at the defendant's entire role in the online gambling ecosystem. The defendant was not merely a passive player, but also acted as a bookmaker, the backbone of online gambling operations. The defendant's actions in managing accounts, facilitating bets, and profiting from the difference in players' winnings clearly fulfilled the elements of "enabling" the betting activity and "profiting" from it. Electronic evidence in the form of chat history and bank transfer transactions served as key evidence demonstrating the continuity and intensity of the defendant's actions, allowing the elements of intent (*mens rea*) and unlawful act (*actus reus*) to be legally and convincingly proven.

c. Equivalence between Conventional and Digital Crimes

The most progressive legal reasoning lies in the judge's attempt to draw an analogy between conventional and digital forms of gambling. The judge argued that the essence of the crime of gambling is the activity of betting with the hope of gaining profit based on an element of chance (*kansspel*), regardless of the medium used. Therefore, the difference in platform, whether it is conducted on a physical table or on a digital server, does not change the fundamental nature and detrimental impact of the act. This interpretation aligns with the development of legal theory that emphasizes a substantive approach over a formalistic one, particularly in addressing new crimes arising from technological advances.

Does the application of Article 303 Paragraph (1) 1 of the Criminal Code in the online gambling case fulfill the principles of legality and legal certainty and reflect a sense of substantive justice?

The application of Article 303 Paragraph (1) 1 of the Criminal Code in this case must be tested against two fundamental principles in criminal law: the principle of legality as regulated in Article 1 Paragraph (1) of the Criminal Code, and the principle of substantive justice.

a. Test of Compliance with the Principle of Legality

The principle of legality, known as the adage *nullum delictum, nulla poena sine praevia lege poenali*, requires that an act can only be punished if it has been clearly regulated in previously applicable legislation. A potential criticism of this decision is that Article 303 of the Criminal Code does not explicitly mention "online gambling," so its application could be considered a violation of the principle of legality. However, the Panel of Judges argued that the starting point is not the medium, but the nature of the act. The elements in Article 303 Paragraph (1) 1 of the Criminal Code, namely "betting company," "supporting," and "making a profit," are generic elements and can cover various *modus operandi*, including those utilizing technology. Thus, what the Judge did was not an analogy, which is prohibited in criminal law, but rather an extensive interpretation of existing elements to cover acts that are substantially the same. This approach is legally acceptable as long as it remains within the corridor of reasonable interpretation and does not create new criminal provisions.

b. Fulfillment of Substantive Justice

From a substantive justice perspective, this ruling reflects a legal effort to provide true justice to society. Justice is not merely seen as blind adherence to legal texts (justice according to law), but also as an effort to realize the purpose of law itself (the purpose of law). If conventional gambling is punishable under Article 303 of the Criminal Code, while online gambling, with its far broader social and economic impacts, is allowed to continue due to a lack of formulation, this will create injustice and disparities in law enforcement. This ruling emphasizes that the law must be living law and able to respond to societal dynamics. By criminalizing the perpetrators, this ruling not only fulfills the sense of justice for the victims and the affected community but also has general preventive value by conveying the message that the digital space is not a lawless zone.

c. Legal Certainty and Social Dynamics

On the one hand, this ruling can be considered a bold step in maintaining legal certainty by utilizing existing legal instruments. On the other hand, it also highlights the systemic weaknesses of the Criminal Code, a colonial legacy that is no longer fully relevant to the challenges of the times. Therefore, while from a legal policy perspective, this ruling deserves appreciation, from a formal legal certainty perspective, a more ideal solution would be to immediately revise the Criminal Code or issue specific regulations that explicitly regulate and prosecute online gambling crimes. Until then, progressive rulings like this serve as a necessary bridge to ensure that the law does not lose its relevance and authority in the face of ever-evolving crime modes.

III. CONCLUSION AND SUGGESTION

1. Conclusion

Based on the discussion that has been described, it can be concluded that:

1. The construction of the Judge's legal considerations in Decision Number 283/PID.B/2024/PN Rokan Hilir was built through a progressive interpretation approach to the elements of Article 303 Paragraph (1) 1 of the Criminal Code. The Panel of Judges carried out an extensive interpretation of the phrase "betting company" by defining it as any activity carried out regularly, continuously, and aimed at seeking profit, regardless of its physical form or legal formality. The Judge also made a substantive equivalence between conventional and digital gambling by arguing that the essence of the crime of gambling lies in betting activities with the hope of obtaining profits based on elements of chance, not on the medium used.

2. The application of Article 303 Paragraph (1) 1 of the Criminal Code in the online gambling case has fulfilled the principle of legality substantively even though it has not fulfilled it formally, and reflects a sense of substantive justice. The application of this article can be justified because what the Judge did was an extensive interpretation of existing elements, not an analogy which is prohibited in criminal law. From the perspective of substantive justice, this decision has succeeded in realizing justice for the community by emphasizing that the digital space is not a law-free zone, while maintaining the credibility of the law amidst rapid technological developments.

2. Suggestion

Based on the research and analysis of Decision Number 283/PID.B/2024/PN Rokan Hilir, it is recommended that law enforcement against online gambling crimes be further enhanced through several strategic steps. First, criminal law regulations need to be updated to more specifically regulate information technology-based gambling to reduce ambiguity and strengthen legal certainty. Second, the synergy between criminal law and information technology regulations, such as the ITE Law, must be strengthened to facilitate the provision of evidence and criminal accountability of perpetrators. Third, increasing the capacity of law enforcement officers in handling cybercrime, including training in digital investigations and understanding the modus operandi of online gambling, is crucial. Fourth, legal and digital literacy among the public needs to be improved so that they can recognize illegal online gambling practices and report them effectively. Finally, strengthening progressive jurisprudence through consistent court decisions can serve as a guideline for other judges, so that law enforcement not only upholds legal certainty but also maintains the values of substantive, moral, and social justice in the digital era.

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