

Penal Policy Against Online Gambling Criminals Reviewed from Law Number 19 of 2016 Concerning Electronic Information and Transactions

Aras Firdaus¹, Mhd. Ansor Lubis², Daniyel Arkan³, M. Taufik Kurniawan⁴

¹ University Quality, Indonesia; rechtraz@gmail.com

² University of Medan Area, Indonesia; mhd.ansorlubis@staff.uma.ac.id

³ University of Medan Area, Indonesia; daniyealarkan98@gmail.com

⁴ University of Medan Area, Indonesia; mtaufikkurniawan17@gmail.com

ARTICLE INFO

Keywords:

Law Enforcement;
Online Gambling;
Criminal Law

Article history:

Received 2025-01-27

Revised 2025-04-07

Accepted 2025-05-13

ABSTRACT

Legal efforts from the government carried out by law enforcers for criminal acts of online gambling. The implementation of legal applications in society does not only depend on legal awareness in society, but is also greatly influenced by law enforcement officials. Current developments that encourage progress in the field of technology have a positive impact on society so that people can easily access various websites on electronic media. Developments in internet-based electronic media can also have negative impacts such as online gambling. Online gambling is a form of betting between fellow players who use money as a bet, so online gambling users can do this via electronic media connected to the internet. Online gambling is one of the unlawful acts carried out by adults and teenagers, but it also violates the values and norms that exist in society. Therefore, legal efforts from the government against online gambling players are increasingly common in society due to developments in science and technology. One type of gambling that will be followed up is online slots. The government requires strict criminal action to be imposed on online gambling users. Criminal acts for online gambling perpetrators in Indonesia are regulated in Article 303, article 303 bis of the Criminal Code, article 2 paragraphs (1), (2), (3) of Law no. 7 of 1974 concerning Controlling Online Gambling and also article 27 paragraph 2 Jo. Article 45 paragraph 2 of the ITE Law.

This is an open access article under the [CC BY](https://creativecommons.org/licenses/by/4.0/) license.



Corresponding Author:

Mhd. Ansor Lubis

University of Medan Area, Indonesia; mhd.ansorlubis@staff.uma.ac.id

1. INTRODUCTION

Gambling in terms is a deliberate bet, namely betting on a value or something that is considered valuable by realizing the risks and certain expectations on game events, matches, competitions and

events that are not or are not yet certain. Gambling in Indonesia has existed since the Dutch colonial era. colonization. speaking, In general, gambling always has something to do with the darkness of the world and the gloomy. Gambling is very difficult to end or overcome.(Tasya Jadidah et al., 2023)

Gambling games have long been played in Indonesia. At that time gambling was still done with cards, lottery, ball, and also stone dam gambling. Along with the development of the era in the civilization of society, gambling games have developed significantly from all types of gambling, after that more modern types of gambling emerged using machines such as ding dong gambling, jackpot, casino and others. The presence of electric media which currently makes it very easy for people to access everything on electronic media. The development of electronic media based on the internet can also have a negative impact, such as the emergence of illegal sites that can be misused by the community can create new social problems that can violate applicable values and norms, namely with the case of online gambling. (Kurniawan et al., 2022). According to KBBI, gambling is a game where players use money or goods as bets that are wagered by guessing the numbers that come out of an official lottery.(Kusumaningsih & Suhardi, 2023)

Gambling games can basically damage the mentality of users or perpetrators, this can also damage the family economy. Gambling games can also make users addicted to continue playing them, if the perpetrators lose their bets, then in general they continue to be curious to play it again until they run out of money and property because of the gambling game. In the end, the gambler will continue to try to find capital that is used as a bet in the gambling game by breaking the law such as stealing, robbing, cheating, and also embezzling other people's property and all other unlawful acts.

The progress of the era as it is today has brought an impact on the opening of the door to freedom of expression and creativity for the community, including in cyberspace. In its development, it turns out that the use of the internet not only brings positive impacts but can also bring negative sides, by opening up opportunities for the emergence of anti-social actions and criminal behavior that have been considered impossible to happen, one example of the negative impact on the internet is online gambling.

Gambling or betting of money or something of value on an event with an uncertain outcome with the main aim of winning additional money or material goods, where gambling is not only done conventionally, but also widely found in the global Cyber world, in the western world gambling behavior has been known since ancient Greek times. The development of internet technology, many gambling is done online, gambling in cyberspace is difficult to be prosecuted as a violation of the law if only using the national law of a country like in the real world, this is due to the unclear location of the crime because the perpetrators can easily move their gambling place with computers and the internet. In essence, gambling is an act that is contrary to religious norms, morals, decency and law, and is dangerous to the lives and livelihoods of society, nation and state. From a legal perspective, gambling is one of the criminal acts that disturbs society. In this regard, in the Criminal Code Article 303 paragraph (3) it is defined that betting (gambling) is any game which bases the hope of winning generally on luck alone and also if that hope increases due to the intelligence and habits of the player.

Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Electronic Information and Transactions Article 45 Paragraph (2) Jo Article 27 Paragraph (2) and or Article 45A Paragraph (1) Jo Article 28 Paragraph (1) Viewed from the national interest, the implementation of gambling has negative and detrimental effects on the morals and mentality of society, especially the younger generation. The increasing mode of criminal acts of gambling which is getting higher can be seen from the rampant types of gambling, for example lottery, tail gambling, white coupon gambling, even to those using sophisticated technology via telephone, internet or SMS (short message service). Gambling in the historical process from generation to generation has not been easy to eradicate. Although the reality also shows that the gambling proceeds obtained by the government can be used for development efforts.

The following is an example that Indonesia is recorded asonline gambling players in Indonesia as many as 4,000,000 people. Online gambling players, not only come from adults but also children. No

kidding, based on demographic data, online gambling players under the age of 10 years old reach 2% of players, with a total of 80,000 people. The distribution of players between the ages of 10 years to 20 years is 11% or approximately 440,000 people, then the age of 21 to 30 years is 13% or 520,000 people. Age 30 to 50 years is 40% or 1,640,000 people and age over 50 years is 34% with a total of 1,350,000 people. PPATK recorded that there were 168 million online gambling transactions with a total accumulated turnover of IDR 327 trillion throughout 2023. In total, the accumulated turnover of online gambling transaction funds reached IDR 517 trillion from 2017-2024. ("EMERGENCY! Fantastic Number of Children Playing Online Gambling," 2023)

The negative impact of online gambling games is so great on the perpetrators and their families and also on others related to the perpetrators, therefore online gambling games are prohibited by the state, and the perpetrators will be subject to criminal sanctions regulated in the Criminal Code (KUHP) in force in Indonesia originating from the Wetboek Van Strafrecht (WVS) made by the Dutch colonial government, and its ratification which was carried out starting from Staatblads Number 732 of 1915 and came into effect on January 1, 1918. The Criminal Code (KUHP) inherited from the Dutch government remains in effect in Indonesia, which is based on article 2 of the transitional provisions of the 1945 Constitution which reads "All state bodies and regulations that still exist are enforced, as long as new ones have not been made according to this constitution". (Kurniawan et al., 2022)

Therefore, the government and related law enforcement must take firm action so that people stay away from and eventually stop gambling. Based on the above facts, in order to overcome the problem of gambling, a criminal law policy is needed. The policy must be concentrated in two directions, the first leading to an applicative policy, namely the Legal Media policy for how to operationalize the current criminal law regulations in order to deal with gambling problems. While the second is a formulative policy or a policy that leads to the renewal of criminal law, namely a policy for how to formulate regulations in criminal law (also related to the concept of the new Criminal Code) which is precisely in order to overcome gambling in the future.

2. METHODS

Legal research is conducted to find solutions to legal issues arising from the topics discussed in this paper. The research method used is normative juridical. Normative juridical legal research, or library legal research, is conducted by analyzing literature or secondary data relevant to the research topic. (Mahmud, 2005). According to Soerjono Soekanto, normative legal research consists of: legal principles; legal systematics; research on the level of legal synchronization; on legal history; comparative law.

Of the five types of normative legal research that will be used in this study are research on legal principles and comparative legal research. (Sukanto, 1990). This type of research examines legal norms and principles on asset confiscation through the Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions

3. RESULTS AND DISCUSSION

Criminal Law Policy on Combating Gambling

Law Number 7 of 1974 on Gambling Regulation as a regulation or provision that improves the Criminal Code is a provision or regulation of law that establishes and changes several provisions in the Criminal Code. The formulation and determination of criminal sanctions by the legislators are regulated in Articles 303 and 303, both of which are crimes. (Wirawan & Wahyudi, 2022)

The crimes referred to above are formulated in Article 303 of the Criminal Code, which in full is as follows:

- a. Anyone who, without permission, is threatened with a maximum prison sentence of ten years or a maximum fine of twenty-five million rupiah:

1. Intentionally offering or providing an opportunity for gambling and making it a livelihood, or intentionally participating in such a business activity.
2. Deliberately offering or giving opportunities to the general public to gamble or intentionally participate in such business activities, regardless of whether there are conditions or procedures to use the opportunity.
3. Make participating in gambling a livelihood.
- b. If the person guilty of committing the crime is in the course of carrying out his/her livelihood, then his/her right to carry out the work may be revoked.
- c. What is called a gambling game is every game, where in general, the possibility of making a profit depends on luck alone, also because the player is more trained or more skilled. This includes all bets on the results of races or other games that are not held between those who participate in the race or play, as well as all other bets.

Law Enforcement Policy Against Online Gambling Crimes

Law enforcement policy is essentially a part of criminal policy which is essentially an integral part of social policy. (Harahap et al., 2023), then this policy is implemented into the criminal justice system. The criminal justice system has a dual functional dimension. (Rizki Nurdiansyah et al., 2024) On the one hand, it functions as a means for society to restrain and control crime at a certain level (crime containment system), on the other hand, the criminal justice system also functions for secondary prevention, namely trying to reduce crime among those who have committed crimes and those who intend to commit crimes through the process of detection, punishment and implementation of punishment. (Michael, Lefri & Lago, 2022) The criminal justice system in its operation involves its subsystems that work coherently, coordinated, and integratively, in order to achieve maximum efficiency and effectiveness. Therefore, its efficiency and effectiveness are highly dependent on the following factors:

- a. Supporting infrastructure for facilities and infrastructure
- b. Professionalism of law enforcement officers
- c. Legal culture of society

Conceptually, the core of the meaning of law enforcement lies in the activity of harmonizing the relationship of values outlined in solid rules and manifesting attitudes as a series of final stage value descriptions, to create, maintain and defend peaceful social interactions. As a process, law enforcement is essentially an application of discretion that states that decision makers are not strictly regulated by legal rules but have elements of personal judgment. There are several factors that influence law enforcement, namely:

- a. The legal factor itself
- b. Law enforcement factors
- c. Factors of facilities or infrastructure that support law enforcement
- d. Community factors
- e. Cultural factors

Factors Causing the Rise of Online Gambling

a. Broken home

Family factors here include parenting patterns, parental attention to their children, parent-child interactions, family economic conditions, and parental interest in their children. As an additional reference that I convey, factors that encourage teenagers to participate in online gambling include environmental influences, such as the teenager's family situation. So, is the role of parents here important in raising their children to grow well, or on the contrary, will children fall into the evils of society itself? Therefore, all parents are strongly advised to educate their children well and provide sufficient attention. (Zekel Calvin Ginting & Ginting Workshop, 2023)

b. Economic Factors

From an economic point of view, whether an activity falls into the category of "deviation" or not, the desire to do it increases if it brings benefits. One of the main reasons why students are interested in joining online gambling directly without long and tiring efforts is to win. According to calculations, the amount of bets made by students in online gambling is several times greater than the amount of winnings, so the benefits brought by online gambling are very attractive and diverse. (Zekel Calvin Ginting & Ginting Workshop, 2023) This factor makes it the most important way to gamble online, because online gamblers often do this for the purpose of achieving very high profits with low expenditure. (siti fatimah, 2023)

1. No need to place a lot of bets

Many bets can be said to be bets to gamble, be it bets from money, objects and so on. The players or online gamblers do not need to spend so much money to get a win or high profit, this is because many people are interested in trying their luck from online gambling. (siti fatimah, 2023)

2. Perspective Factors towards Gambling Games

This factor is determined by calculating the possibility of winning this game with confidence. Basically, online gambling for beginners pays for winnings so they can continue playing. This makes those who play online gambling confident in their chances of winning and luck every time they play. Confidence and victory affect the player's perception that even if they don't win this game, they will win the next game. This makes criminals addicted and difficult to get out of this game. (Bakhtiar, SH, & Adilah, AN, 2024)

3. Online Gambling Sites Are Increasing

In Indonesia itself, gambling is an act that violates morality because it is considered detrimental to society and damages the soul of a society. Therefore, the Ministry of Communication and Information or what is known as KOMINFO has blocked access to illegal gambling sites. Thus, blocking access to illegal sites has not been carried out comprehensively, because there are still many sites that have emerged, these illegal gambling sites are spread across various platforms. (siti fatimah, 2023)

Of the several factors that continue to cause the rampant online gambling that continues to occur in Indonesia, it can unknowingly cause social problems. One of the impacts will be the occurrence of a dependency effect. This causes someone who does online gambling to become continuously dependent on online gambling, so that it can create unexpected problems experienced by the perpetrator, such as borrowing money, to stealing goods that can increase crime in society. This is caused by the defeat of the perpetrator in playing online gambling which can trigger excessive depression that can lead to death because of his depression over the defeat he experienced while playing online gambling. (siti fatimah, 2023)

The government has firmly issued rules and regulations for online gambling crimes in Indonesia. In Indonesia, the application of criminal law related to gambling cases is stated in Article 303 bis of the Criminal Code, Article 2 paragraph (1), (2), (3) of Law No. 7 of 1974 concerning the regulation of gambling, and Article 27 paragraph 2 in conjunction with Article 45 paragraph 2 of the ITE Law. (siti fatimah, 2023)

In Article 303 and Article 303 bis of the Criminal Code which regulates the crime of gambling carried out directly (gambling carried out without electronic media intermediaries). Article 303 of the Criminal Code states that:

1. Anyone who, without permission, is threatened with a maximum prison sentence of ten years or a maximum fine of twenty-five million rupiah:
 - a. Deliberately offering or providing opportunities for gambling games and making it a pursuit, or deliberately participating in an enterprise for that purpose;

- b. Intentionally offering or giving the public the opportunity to gamble or intentionally participating in an enterprise for that purpose, without regard to whether there are any conditions or procedures required to use the opportunity;
- c. Make participating in gambling games a pursuit.

Meanwhile, Article 303 bis of the Criminal Code states:

1. Threatened with a maximum prison sentence of four years or a maximum fine of ten million rupiah:
 - a. Anyone who uses the opportunity to gamble, which is held in violation of the provisions of Article 303;
 - b. Anyone who participates in gambling on a public road or at the side of a public road or in a place that can be visited by the public, unless there is permission from the competent authority who has given permission to hold such gambling.
2. If at the time of committing the violation, two years have not passed since a criminal conviction became final due to one of these violations, a maximum prison sentence of six years or a maximum fine of fifteen million rupiah may be imposed.

However, the gambling provisions regulated by Article 303 and Article 303 bis of the Criminal Code have been changed to Article 2 paragraph (1), (1), (3) of Law No. 7 of 1974 concerning the Issuance of Gambling which states that:

- a. Changing the threat of punishment in Article 303 paragraph (1) of the Criminal Code, from a maximum prison sentence of two years and eight months or a maximum fine of ninety thousand rupiah to a maximum prison sentence of ten years or a maximum fine.
- b. Changing the threat of punishment in Article 303 bis paragraph (1) of the Criminal Code, from a maximum imprisonment of one month or a maximum fine of four thousand five hundred rupiah, to a maximum imprisonment of four years or a maximum fine of ten million rupiah.

Changing the threat of punishment in Article 303 bis paragraph (2) of the Criminal Code, from a maximum imprisonment of three months or a maximum fine of seven thousand five hundred rupiah to a maximum imprisonment of six years or a maximum fine of fifteen million rupiah. (siti fatimah, 2023)

It is stated that in Article 303, Article 303 bis of the Criminal Code and Article 2 paragraph (1), (2), and (3) of Law No. 7 of 1974 only determine the punishment for violators who gamble directly, which means gambling that is done without an intermediary such as an electronic device connected to the internet. The article that regulates the provisions of punishment for perpetrators of online gambling cases is regulated in Article 27 paragraph 2 in conjunction with Article 45 paragraph 2 of the ITE Law, which states that: Any person who intentionally and without the right distributes/transmits or makes accessible electronic information or electronic documents that have gambling content as referred to in Article 27 paragraph (2) will be punished with a maximum imprisonment of 6 years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). (siti fatimah, 2023)

Therefore, in Government Regulation No. 9 of 1981 concerning the implementation of gambling control, it states in Article 1 paragraph 1 "The granting of permits for the implementation of all forms of gambling is prohibited, both gambling held in casinos, in entertainment venues, or in places that are closed for other reasons". This triggers all forms of gambling, both directly and indirectly in Indonesia. If there are several parties or several perpetrators, then the perpetrators/users will be subject to criminal sanctions under the law and based on the provisions in force in Indonesia. (siti fatimah, 2023)

4. CONCLUSION

That advances in technology, in addition to having a positive impact on society, can also have a negative impact. The more technology develops, the more illegal sites such as online gambling can be created, which are often misused by the public as a means of online gambling. The increasing number

of online gambling users in Indonesia can make users depressed and even lead to death. It is still not certain that online gambling users from adults to teenagers can also be involved in online gambling. An important role for the authorities is needed to eradicate online gambling users. The perpetrators are entitled to be subject to criminal sanctions in accordance with the provisions of the existing articles, such as in Article 303 of the Criminal Code, Article 303 bis of the Criminal Code, Article 2 paragraphs (1), (2), (3) of Law No. 7 of 1974 concerning the regulation of gambling, and also in Article 27 paragraph 2 Jo. Article 45 paragraph 2 of the ITE Law. The government is also needed to eradicate users/perpetrators of online gambling sites that are spread on illegal platforms in Indonesia. Therefore, the role of society is very important to address online gambling cases. If the public still sees or finds these sites, please immediately report it to the authorities..

REFERENCES

- EMERGENCY! Fantastic Number of Children Playing Online Gambling. (2023). PPAK.CO.ID. <https://www.ppatk.go.id/news/read/1373/gawat-jumlah-fantastis-usia-anak-main-judi-online.html>
- Harahap, M., Lubis, MA, Lubis, HF, & Rizky, A. (2023). Reflections on Criminal Law Politics. In Eureka Media Aksara. Eureka Media Aksara.
- Mikhael, Lefri & Lago, Y. (2022). Gambling Crime in Indonesia. 7(2), 301–322.
- Rizki Nurdiansyah, Mugni Mugni, & Melly Rifa'atul Lailiyah. (2024). Effectiveness of Law Enforcement Against Online Gambling Crimes. *Federalism: Journal of Law and Communication Studies*, 1(3), 219–238. <https://doi.org/10.62383/federalisme.v1i3.79>
- Wirawan, J., & Wahyudi, A. (2022). Criminal Law Enforcement Policy in the Framework of Combating Online Gambling. *Journal Evidence Of Law*, 1(3), 11–21. <https://doi.org/10.59066/jel.v1i3.99>
- Fatimah, S., & Taun, T. (2023). Legal Review of Online Gambling Criminal Acts in Indonesia. *Inovatif: Journal of Social Science Research*, 3 (2), 3224–3231.
- KURNIAWAN, Yundha; SIREGAR, Taufik; HIDAYNI, Sri. Law Enforcement by the Police Against Online Gambling Criminals (Study on the North Sumatra Regional Police). *ARBITER: Scientific Journal of Master of Law, [SI]*, v.4, n. 1, pp. 28-44, June 2022. ISSN 2722-1865.
- Pahrijal, R., Idrus, N., & Triyanto, A. (2024). Indonesian Government Strategy in Eradicating Online Gambling Practices: Descriptive Analysis. *Wara Sains Journal of Law and Human Rights*, 3(02), 264–271.
- Sitanggang, Adelina, Bertania Permata Sari, and Eirene Dahlia Sidabutar. "Enforcement of the ITE Law on Online Gambling Cases." *Mediation: Journal of Law* (2023): 16-22.
- Jannah, AM, Al Wafi, MOZ, & Aliyan, S. (2023). Online Gambling Behavior in Religious Communities in Indonesia. *Islamic Education*, 1(3), 348-357.
- Kusumaningsih, R., & Suhardi, S. (2023). Eradication of Online Gambling in Society. *ADMA: Journal of Community Service and Empowerment*, 4(1), 1-10.
- Jadidah, IT, Lestari, UM, Smanah Fatiha, KA, Riyani, R., Neli, & Wulandari, CA (2024). Analysis of the prevalence of online gambling in society. *Journal of Indonesian Social and Cultural Sciences*, 1 (1), 20-27.
- Zekel Calvin Ginting, & Bengkel Ginting. (2023). Factors Causing the Increase in Online Gambling Perpetrators among Students During the Covid-19 Pandemic (Case Study in Mangga Village). *SOSMANIORA: Journal of Social Sciences and Humanities*, 2 (1), 20–25.
- Bakhtiar, SH, & Adilah, AN (2024). Online Gambling Phenomenon: Factors, Impacts, Legal Responsibilities. *Innovative: Journal of Social Science Research*, 4 (3), 1016–1026.

