

LEGAL REVIEW OF ONLINE GAMBLING CRIMES IN INDONESIA ACCORDING TO LAW NUMBER 11 OF 2008 CONCERNING ELECTRONIC INFORMATION AND TRANSACTIONS

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Abstract

Modern developments that drive advancements in technology and the internet have had a positive impact on society. People can easily access everything available on electronic media. However, the development of internet-based electronic media can also have negative impacts, such as the emergence of new social problems, namely the emergence of online gambling cases. Online gambling is a form of betting between players using money as the wager determined by the player and the online gambler, conducted on electronic media connected to the internet. Online gambling is illegal and violates existing societal values and norms. The type of research used in this journal is normative juridical legal research, which emphasizes efforts to find and analyze legal rules, legal principles, and legal doctrines, including the objectives of law and applicable values of justice. The analytical method applied uses a deductive reasoning approach, by collecting information and data through the study of relevant legal literature. What are the legal provisions for criminal acts of gambling via the internet according to Law Number 11 of 2008 concerning Information and Electronic Transactions? What is the criminal responsibility for online gambling using the internet according to Law Number 11 of 2008 concerning Information and Electronic Transactions. Therefore, there is a need for strict criminal sanctions imposed on online gambling perpetrators. The provisions for criminal acts for online gambling perpetrators in Indonesia are regulated in Article 303 bis of the Criminal Code, Article 2 paragraphs (1), (2), (3) of Law No. 7 of 1974 concerning Gambling Publication and Article 27 paragraph 2 Jo. Article 45 paragraph 2 of the ITE Law

Keyword : Legal Review, Criminal Acts, Online Gambling

A. Background

The development of the era that drives progress in the field of technology and the internet has a positive impact on society. The internet is described as a collection of computer networks consisting of a number of smaller networks that have different network systems. 1 In subsequent developments, the presence of advanced computer technology with internet networks has brought great benefits to humans. Its use is not only in government, the private/corporate world, but has reached every sector of life including all household (personal) needs. 2 Law Number 11 of 2008 concerning Electronic Information (UU ITE) has undergone two amendments. The first amendment was through Law Number 19 of 2016. Then, the second amendment was made with Law Number 1 of 2024. Regulations regarding online gambling in the ITE Law are regulated in Article 27 paragraph 2 of the ITE Law which expressly prohibits the distribution, transmission, and

¹Kenny Witson, *Ther Internet: Issues of Jurisdiction and Controversies Surrounding Domain Names*, (Bandung : Citra Aditya, 2002). p.7.

²WidyoPramono Hadi Widjojo. *Cyber Crime and Its Prevention*, Journal of Technology Law, Faculty of Law, University of Indonesia, Vol 2 August 2015, p.7. creation of electronic information access or electronic documents containing gambling content.

The world as a whole has entered or been integrated into the cyber world or virtual world. 3 All types of information can be accessed through the internet. People can easily access everything on electronic media. One of the conventional crimes that falls under the category of cybercrime is online gambling. 4 Online gambling is different from regular gambling. Online gambling is conducted using applications or even sophisticated websites, while regular gambling is only conducted directly without the use of electronic media. 5 Gambling is one of the oldest games in the world; almost every country recognizes it as a game of chance. Online gambling, which is a cyber crime, is specifically regulated in Article 27 paragraph 2 of Law No. 11 of 2008 concerning Electronic Information and Transactions, which stipulates the following: "Any person who intentionally and without the right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing gambling content." 6 Gambling via the internet (Internet Gambling) according to Onno W. Purbo

, namely as follows: "usually occurs due to placing bets on casino activities

³M. Yahya Harahap, *Several Reviews of Legal Problems*, Book One, (Bandung: Citra Aditya Bakti, 1997), p.274.

⁴ Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 27 paragraph 2.

⁵ Siti Fatimah, *A Legal Review of Online Gambling Criminal Acts in Indonesia*, *Journal of Social Science Research*, Vol.3, Number 2, 2023, pages 2807-3231.

⁶ Law Number 11 of 2008 concerning Electronic Information and Transactions, by Kasindo Utama, Surabaya, 2014, p. 17.

"Sports such as online soccer betting or other games via the internet. Internet gambling is where the entire process, from betting on games to collecting money, takes place online." 7 The phenomenon of gambling has indeed existed since ancient times. In some indigenous communities, gambling is considered a traditional heritage that must be preserved. However, gambling is actually a social pathology because it conflicts with existing societal values and norms. 8 Special permits are no longer required to establish an online gambling business. With just a website with attractive gambling facilities, anyone can own an online gambling house. 9 The article that regulates gambling is Article 303 paragraph (1) of the Criminal Code (KUHP), which reads: "Threatened with imprisonment for a maximum of four years or a fine of up to ten million rupiah: Furthermore, if someone carries out or is involved in online gambling, the article imposed does not refer to the KUHP but refers to Article 27 of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions, which reads: "any person who intentionally and without the right distributes, transmits, or makes accessible Electronic Information or Documents containing gambling content."

⁷ Onno W Purbo, 2007, *The 2nd National Awakening Based on Information Technology*, Computer Network Research Group, ITB, p. 22.

⁸ Enik Isnaini, *Normative Legal Review of Online Gambling According to Positive Law in Indonesia*, *Jurnal Independent*, Vol.5, Number 1, p.24.

⁹ Maskun, *Cyber Crime: An Introduction*, (Jakarta: Kencana Prenada Media Group, 2013). p. 48.

B. Formulation of the problem

Based on the description of the background, the formulation of the research problem is:

1. How are the legal provisions regarding criminal acts of gambling via the internet according to Law Number 11 of 2008 related to the amended Law on Information and Electronic Transactions?
2. What is the criminal responsibility for online gambling using the internet according to Law Number 11 of 2008 with the amended Law on Information and Electronic Transactions?

C. Theoretical basis

1. Definition of Criminal Acts

The term "criminal act" is a translation of "strafbaar feit." The Criminal Code does not provide an explanation of what exactly "strafbaar feit" means. Criminal acts are usually synonymous with "delik," which comes from the Latin word *delictum*. The Great Dictionary of the Indonesian Language defines the term as follows: "A crime is an act that is punishable by law because it violates criminal law." 10 Moeljatno translates

the term *strafbaar feit* as a criminal act. In his opinion, the term "criminal act" refers to human behavior that results in certain consequences prohibited by law, for which the perpetrator may be subject to criminal sanctions. This can be interpreted as such because the word

¹⁰ Teguh Prastyo, *Criminal Law*, PT. Raja Grafindo Persada, Jakarta, 2012, p. 47. "actions" cannot be natural behavior, because only humans can do actions and the results of which are called actions.¹¹

A crime is an act that is prohibited by law and is punishable by punishment, where the definition of an act here includes not only an active act (doing something that is actually prohibited by law) but also a passive act (not doing something that is actually required by law).¹²

2. Understanding Online Gambling Online gambling (cyber gambling) is a form of gambling played online using a computer or smartphone/Android phone and accessed via the internet. This online gambling game involves each player first selecting and setting their betting table, then entering the table and selecting one of several options, which must be done correctly.

So, every player who correctly points is crowned the champion or winner, and the players who don't win will pay back their bets according to the agreed-upon amount. Examples of online gambling games include poker, dominoes, capsasusun, casino, soccer, and so on. This online gambling game is also regulated in Article 27 paragraph (3) of the ITE Law, NO. 11/2008 which states: "Any person who intentionally and without the right distributes, transmits and/or makes accessible Electronic Information or Documents containing gambling content as referred to in

¹¹ Ibid, p. 48.

¹² J Esther, AR Widiastuti, *Criminal Law*, Medan: Bina Media Perintis, 2019

Article 27 paragraph (3) shall be punished with a maximum prison sentence of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah)".¹³

D. Research methods

The research method used is a normative legal approach based on legislative policy. Normative legal research emphasizes law as a norm or rule, thus employing a positive legal approach. This study employs a qualitative research method that draws on legal norms contained in legislation, reference books, and journals.

E. Discussion

1) Legal Provisions for Criminal Acts of Gambling via the Internet According to Law Number 11 of 2008 in relation to the amended Law Concerning Electronic Information and Transactions

Handling every criminal case cannot be separated from the process of providing evidence which can become a benchmark and consideration for judges in deciding a case. Talking about proof also includes the evidence and materials considered valid according to the criminal procedure law in force in Indonesia, in this case the Criminal Procedure Code. Proving means convincing the judge of the truth of the arguments or arguments presented in a dispute, and proof is only required in the trial process in court. Meanwhile, proving in the legal sense means providing a sufficient basis to the judge.

¹³ Adhigama A Budiman and others, *Reorganizing Cyber Crime Policy* (Jakarta: Institute for Criminal Justice Reform (ICJR), 2021), p. 73.

in examining a case, to obtain confidence for the judge regarding the truth of the events in a case.¹⁴

Therefore, judges cannot use evidence that is contrary to the law, because the truth of a decision must be tested with legally valid evidence and have the power of proof inherent in each piece of evidence found. In addition to physical evidence, material evidence is also very important in the process of proving a crime, including the crime of internet gambling. This evidence can be obtained through searches and seizures carried out by investigators. Based on Article 43 paragraph (3) of the ITE Law, it is emphasized that searches and/or seizures of electronic systems as well as arrests and detention of cyber crime perpetrators must be carried out

with the permission of the Head of the local District Court within one twenty-four hour period. 15. Talking about evidence in gambling via the internet cannot be separated from the provisions regarding evidence as regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law). Article 5 paragraph (1) of the ITE Law states that electronic information and/or electronic documents and/or printouts are valid legal evidence. Based on Article 1 number 1 of the ITE Law, what is meant by electronic information is one or a collection of electronic data, including but not limited to writing, sound, images, maps, designs, photos, electronic data interchange (EDI), electronic mail, telegrams, telex, telecopy, or similar, letters, signs, numbers, codes

¹⁴Hetty Hasannah, "Internet Gambling Crimes Reviewed from Law No. 11 of 2008 Concerning ITE," UNIKOM Scientific Magazine, Vol. 8, No. 2, p. 235

¹⁵ Article 43, Law No. 11 of 2008 concerning ITE access, symbols or perforations that have been processed to have meaning or can be understood by people who are able to understand them.

Meanwhile, Article 1 number 4 of the ITE Law states that what is meant by an electronic document is any electronic information that is created, forwarded, sent, received or stored in analog, digital, electromagnetic, optical or similar form, which can be seen, displayed and/or heard via a computer or electronic system, including but not limited to writing, sound, images, maps, designs, photos or the like, letters, signs, numbers, access codes, symbols or perforations that have been processed which have meaning or can be understood by people who are able to understand them.¹⁶

If examined, then the Website of the gambling organizer via the internet and the E-mail of the gambling participants, as well as SMS are part of the electronic information, so that they can be categorized as one of the legally valid evidence. Meanwhile, Article 5 paragraph (2) of the ITE Law also emphasizes that Electronic Information and/or Electronic Documents and/or their printouts as referred to in paragraph 1 above are an extension of the valid evidence in accordance with the applicable procedural law in Indonesia. It is clear that the Website of the gambling organizer via the internet, E-mail and SMS of the gambling participants are one part of the electronic information that can be considered as legally valid evidence, and are an inseparable part of the provisions regarding evidence and proof as regulated in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP), in this case an extension of the indicative evidence.

¹⁶Ibid

Thus, the website of the internet gambling provider, emails, and text messages from the gambling participants have the power to prove evidence, especially in this internet gambling case. Furthermore, witness testimony and expert testimony can be used as evidence in the process of proving the crime of internet gambling. The process of proving the crime of internet gambling in court requires a technical approach because the evidence found may be electronic, which is not yet recognized by procedural law (KUHP). Therefore, it still needs to be supported by expert testimony to be accepted in court.¹⁷ The evidence includes the website of the internet gambling organizer, emails and text messages from the gamblers, witness statements, and expert testimony in the field of information technology. The purpose of providing evidence in the trial process in internet gambling cases for the public prosecutor is to convince the judge through the available evidence that the defendant, in this case the organizer and perpetrator of internet gambling, can be found guilty according to the prosecutor's charges. Thus, evidence is proven to be very important in determining the judge's decision, including in this internet gambling case.

2) Criminal Liability for Online Gambling Using the Internet According to Law Number 11 of 2008 in relation to the amended Law on Electronic Information and Transactions

Criminal sanctions for online gambling are regulated in Article 27 Paragraph (2): Any person who intentionally and without the right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents which

¹⁷ Hetty Hasannah, Op.Cit, p.237 contains gambling content.¹⁸ Article 45 Paragraph (1): Any person who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR

1,000,000,000.00 (one billion rupiah).

The two articles in the ITE Law above can be applied in cases of online gambling that uses technology as a medium. However, both articles have a weakness, namely that the ITE Law only regulates the maximum limit of punishment, but does not regulate the minimum limit of punishment. Punishment is only imposed on illegal gambling, while there is no punishment for legal gambling, even though Article (1) of Law Number 7 of 1974 concerning the Regulation of Gambling states that all acts of gambling are crimes, especially since all religions prohibit all acts of gambling.¹⁹ In addition, for parties who have been mentioned in Article 27 Paragraph (2) but are involved in online gambling crimes, for example gamblers, they are not subject to criminal sanctions. In the ITE Law, regulations regarding gambling in the cyber world are regulated in Article 27, which states "Any person who intentionally and without the right distributes, transmits, or makes accessible Electronic Information or Documents containing gambling content." The criminal threat from the above article is stated in Article 45 of the ITE Law, namely a maximum prison sentence of 6 (six) years and / or a maximum fine of IDR 1 billion.

¹⁸ Law Number 11 of 2008 concerning ITE

¹⁹ Law Number 7 of 1974 concerning the Regulation of Gambling Criminal threats for perpetrators of online gambling crimes can be found in several articles in Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law), including:

- a) Article 27 paragraph (2) of the ITE Law stipulates that anyone who distributes or transmits and makes accessible electronic information or documents containing gambling content can be subject to a maximum prison sentence of 6 years and/or a maximum fine of IDR 1 billion. Actions carried out in the context of online gambling containing these elements can be subject to criminal sanctions in accordance with this article.
- b) Article 45 paragraph (1) of the ITE Law stipulates that anyone who commits an act that violates the provisions of the ITE Law may be subject to a maximum prison sentence of 6 years and/or a maximum fine of IDR 1 billion. Actions committed in the context of online gambling that violate the provisions of the ITE Law may also be subject to criminal sanctions in accordance with this article.

The criminal penalties for online gambling offenders under Law No. 19 of 2016 also vary depending on the specific case and the severity of the violation. However, the criminal sanctions stipulated in this law are expected to deter illegal activities in electronic transactions, including online gambling.

A. Closing

The evidentiary process in criminal procedure requires the use of valid evidence according to the Criminal Procedure Code (KUHAP). Valid evidence includes electronic information such as gambling websites and emails, gambling participants, and SMS messages used in gambling transactions. The ITE Law stipulates that electronic information and electronic documents, including printouts, are valid evidence in court proceedings. This broadens the scope of evidence that can be used to prove internet gambling crimes. In addition to electronic evidence, testimony from witnesses and information technology experts is also important in strengthening the evidence. They help explain the technicalities of electronic evidence that may be unfamiliar to the judge. The purpose of evidence in court is to convince the judge of the defendant's guilt based on the prosecutor's charges. This demonstrates the importance of strong evidence in determining a fair and appropriate verdict. Article 27 paragraph (2) and Article 45 paragraph (1) of the ITE Law regulate criminal sanctions for online gambling perpetrators. The threat of punishment includes a maximum of 6 years' imprisonment and/or a fine of up to 1 billion rupiah. However, there is no provision regarding the minimum sentence, which is a deficiency in this regulation. The ITE Law expressly stipulates that online gambling that violates the provisions can be subject to criminal sanctions. This includes the distribution, transmission, or making accessible electronic information containing gambling. Although the provisions in the ITE Law provide criminal threats for online gambling perpetrators, penalties are not imposed on the gamblers themselves. The main focus is on gambling providers and those actively involved in distributing gambling information. In addition to the ITE Law, Law No. 19 of 2016 concerning Amendments to the ITE Law provides a framework for various penalties, depending on the severity of the violation committed and the case. This is intended to prevent illegal acts in electronic transactions, including online gambling.

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