

## Legal Analysis of Online Gambling and Its Criminal Threats Reviewed from Article 45 Paragraph (2) of Law Number 19 of 2016 concerning Electronic Information and Transactions

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ARTICLE INFO	ABSTRACT
<p><b>Keywords:</b> Online gambling, criminal threats, ITE Law.</p>	<p>Poverty that occurs in society has a bad influence on one's behavior and character. The occurrence of poverty is the impact of reduced employment opportunities that do not give someone the opportunity to do work in making money. One way a person makes money quickly and the easy way is by doing online gambling. Perpetrators of online gambling crimes include various groups, both old and young, entrepreneurs, workers, unemployed, men and women, in cities and villages Online gambling activities have caused many losses to the community. Eradicating online gambling is not an easy thing, this requires the role of responsive stakeholders in eradicating online gambling. Furthermore, each competent party in their field must continue to coordinate with ministries and institutions, digital platforms, cellular operators and internet service providers, banks and financial service providers for handling online gambling. The type of research used is the type of normative legal research. Normative law <i>research</i> uses normative case studies in the form of legal behavior products, for example reviewing laws. Results of discussion 1. Legal regulations regarding online gambling are reviewed from Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE) Article 27 paragraph (2): everyone intentionally and without rights distributes and or transmits and or makes accessible electronic information and / or electronic documents that have gambling content, Article 45 paragraph (2) Everyone who intentionally and without rights distributes and / or transmits and / or makes accessible Electronic Information and/or Electronic Documents that have gambling content as referred to in Article 27 paragraph (2) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah), Article 45A paragraph (1) Any person who intentionally and without rights disseminates false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment a maximum of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah); 2 Factors Causing Online Gambling are: a. Economic factors, b. Social Factors, c. Cultural Factors.</p>

### INTRODUCTION

Poverty that occurs in society has a bad influence on one's behavior and character. The occurrence of poverty is the impact of reduced employment opportunities that do not give someone the opportunity to do work in making money. This will make someone do negative things and even shortcuts to make money. One way for them to make money in a quick and simple way is by doing online gambling. At this time online gambling has been taken for granted by the public. The perpetrators are not only children at the elementary level, junior high school, high school, but at the college level, even certain institutions have participated in online gambling. According to the results of the study, it is known that perpetrators of online gambling crimes include various groups, both old and young, entrepreneurs, workers, unemployed, men and women, in cities and villages.

Gambling today has transformed into a form of online gambling, making it easier for actors to run it. Where all perpetrators are required to meet at a predetermined time and place, today it is no longer necessary. Online gambling can be done secretly, where one perpetrator with another as a gambling partner can carry out gambling in a predetermined place, just by sitting relaxed in front of a computer or smartphone and connected to the internet network by making a deposit by transferring via internet banking is very easy for them to do.

Online gambling activities have caused a lot of harm to society. From one online gambling site, public losses per year are estimated to reach Rp27 trillion. In fact, the Report of the Center for Financial Transaction Reporting and Analysis (PPATK) states that the total online gambling transactions in Indonesia are estimated to reach Rp200 trillion. During the period from September 1 to 21, 2023, the Ministry of Communication and Information has terminated access and/or takedown 60,582 online gambling content. In addition to terminating access and/or takedown of content, the Ministry of Communication and Information encourages efforts to take action against parties involved in online gambling transactions. On September 18, 2023, the Minister of Communication and Information has formally asked the Chairman of the OJK (Financial Services Authority) Board of Commissioners to block accounts involved in online gambling activities. As of September 21, 2023, 201 bank accounts have been blocked and 1,931 other accounts are being processed by the OJK.

Eradicating online gambling is not an easy thing, this requires the role of responsive stakeholders in eradicating online gambling. Furthermore, each competent party in their field must continue to coordinate with ministries and institutions, digital platforms, cellular operators and internet service providers, banks and financial service providers for handling online gambling. So that in the future, it is hoped that online gambling carried out by the community can be overcome and material losses experienced by the community will not occur again in the future. The current legal rules are expected to be well applied in the midst of society. Because if the implementation in the field of application of the rule of law for online gambling players is not carried out optimally, it will have a negative impact on behavior and economic factors and community welfare in the future. The formulation of the problem in this study is to find out how the legal arrangements and criminal sanctions against online gambling are reviewed from Law Number 19 of 2016 concerning ITE. What are the factors causing online gambling?

## **METHOD**

The type of research used is the type of normative legal research. Normative law research uses normative case studies in the form of legal behavior products, for example reviewing laws. The subject of study is law which is conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal findings in cases in concreto, legal systematics, levels of synchronization, comparative law and legal history. A normative legal research must certainly use a statutory approach, because what will be examined are various legal rules that are the focus as well as the central theme of a study. The nature of research in this writing is descriptive-analytical, namely the author uses how to describe rules and phenomena that have a relationship with online gambling problems and then analyzed using a statutory approach (statute approach).

## **RESULTS AND DISCUSSION**

### **A. Legal arrangements and criminal sanctions against online gambling are reviewed from Law Number 19 of 2016 concerning ITE**

According to the Big Dictionary Indonesian, gambling is a game by using money or valuables as bets (such as: playing dice, cards). While Online Gambling itself is a gambling game through electronic media with internet access as an intermediary. The definition of gambling can be interpreted in a broad sense including all bets about losing a horse race or other matches, or all bets, in a race held between two people who do not participate alone in those races, such as totalizers and others. Gambling or gambling games or 'gambling' according to the Big Dictionary Indonesian is a game by using money as a bet. Gambling is risking a sum of money or property in a guessing game based on chance, with the aim of getting an amount of money or property greater than the original amount or property. Kartini Kartono defines gambling as a deliberate gamble, namely risking one value or something that is considered valuable by realizing certain risks and expectations in events, matches, races, and events that have no or uncertain results.

In Article 303 paragraph (3) of the Criminal Code, it is explained that what is referred to as a gambling game is each game, where in general the possibility of making a profit depends on mere luck, also because the players are better trained or more proficient. It includes all rules regarding the decision of a race or other game – not held between those participating in the race or play, as well as all other rules. According to the author's

conclusion that the definition of online gambling is a gambling game that is carried out online by using a certain amount of money as a bet and using electronic media and can be accessed through internet media as a link.

Online gambling can bring the effects of addiction, initially just trial and error and finally addicted to obtaining winnings and finally done repeatedly because of desires or desires that cannot be stopped, so it is constantly done endlessly. In online gambling, bets start from small to finally on larger bets. Smaller bets will get smaller payoffs, while larger bets will get bigger profits if big hopes of winning are achieved. But if you lose, the bet will be forfeited and switch profits to other parties. Basically, online gambling can be done anywhere and anytime. All it takes is one's free time to do these online gambling activities.

The use of Information Technology, media, and communication has changed both the behavior of society and human civilization globally. The development of information and communication technology has caused world relations to become borderless and caused significant social, economic, and cultural changes to take place so quickly. Information Technology currently has 2 characteristics, namely positive and negative. The positive side has an influence on the development of the times and technological advances in their fields, but on the negative side it has a bad influence on human behavior and nature.

Online gambling has characteristics including cyber crime type cyber piracy, which is directly related to illegal contents where the dissemination of information and use of the internet network and make software to distribute the online gambling system that violates the law committed by the perpetrator in carrying out his crime mode. Some electronic devices that can easily access software made by perpetrators are, computers, laptops, mobile phones used by players to play online gambling. One tool that is often used in online gambling is mobile phones and computers, where mobile phones (mobile phones) are used as a means of communication whereas, computers as a means to work, but in principle remain the same, can be used as a tool to commit crimes or criminality. One of the conveniences of online gambling is that it can be done anywhere and anytime because the bookies operate 24 hours. In addition, online gambling is also run in internet cafes or places with wifi, or simply played using a smartphone. Payment or transaction is also online, either through M-banking, western union, money gram, credit card, money order wire transfer.

The phenomenon of gambling is a form of social problem that has existed since ancient times. In addition to contradicting the values and norms that exist in society, gambling also has a negative impact on personal life and in community groups. Gambling with the advice of technology grows and develops along with the increasing users of internet-based electronic communication devices. The government in its function as social control has set rules regarding gambling in the formulation of existing laws and regulations. Legal arrangements for gambling crimes have been regulated in Article 303 of the Criminal Code and Article 303 bis of the Criminal Code (KUHP). Meanwhile, the criminal sanctions are aggravated in accordance with Article 2 paragraph (1), paragraph (2), paragraph (3) of Law Number 7 of 1974 concerning the Regulation of Gambling. If it has been proven to do so, it can be processed in accordance with the applicable procedural law.

Law enforcement policies related to online gambling crimes are implemented based on the provisions of Article 27 paragraph (2) and Article 45 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions. But in fact, investigators of the National Police of the Republic of Indonesia still often use Article 303 of the Criminal Code for perpetrators of online gambling crimes because of the difficulty of applying Article 43 paragraph (6) of Law Number 11 of 2008, namely the provision for investigators in making arrests and detentions through the public prosecutor requesting the determination of the Chairman of the local District Court within one time twenty-four hours.

With the issuance and enactment of regulation number 19 of 2016 concerning ITE on amendments to Law number 11 of 2008 concerning Electronic Information and Transactions, it is expected that the management, use, and utilization of electronic information and transactions must continue to be developed through legal infrastructure and regulation so that its utilization can be carried out safely for the prevention of abuse in the field of technology, This is of course by taking into account the religious values, social norms, and culture of the people in Indonesia, as well as to maintain, maintain, and strengthen national unity and unity based on laws and regulations in the national interest. Based on data sourced from the Ministry of Communication and Information (Kominfo) for the period 2018 to August 22, 2022, Kominfo has cut off access to 566,332 contents in the digital space that have elements of gambling, including digital platform accounts and sites that share content related to gambling activities, with details of handling per year as follows:

- a. In 2018 there were 84,484 contents.
- b. In 2019 there were 78,306 contents.
- c. In 2020, there were 80,305 contents

- d. In 2021, there were 204,917 contents and
- e. In 2022 (as of August 22, 2022) there were 118,320 contents.

The termination of access was carried out based on the findings of cyber patrols, reports from the public, and reports from government agencies on the discovery of content that has elements of gambling. Cyber patrols carried out by the Ministry of Communication and Information are supported by a negative internet site monitoring system or AIS, which is operated for 24 hours without stopping by a team of the Directorate of Information Application Control. Based on the Kominfo data, the government has actually banned online gambling activities because they are considered detrimental to the community and violate religious norms. Especially for online gambling, the Electronic Information and Transaction Law (ITE) ensnares perpetrators and people who distribute gambling content with the threat of a maximum prison sentence of six years and/or a maximum fine of Rp1 billion.

The eradication of online gambling in Indonesia is quite heavy, because online gambling sites or applications continue to appear under different names, even though access has been cut off. In addition, gambling activities are legalized in several countries outside Indonesia, resulting in cross-country law enforcement obstacles. That is a challenge in itself because of the differences in legal provisions related to online gambling. Regulations related to online gambling crimes are regulated in Law number 19 of 2016 concerning Electronic Information and Transactions About ITE on amendments to Law number 11 of 2008 concerning Electronic Information and Transactions as follows:

- a. Article 27 paragraph (2): any person intentionally and without rights distributes and or transmits and or makes accessible electronic information and or electronic documents that have gambling content.
- b. Article 45 paragraph (2) Any person who intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have gambling content as referred to in Article 27 paragraph (2) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah).
- c. Article 45A paragraph (1) Every person who intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah).

## **B. Factors causing online gambling**

The increasing prevalence of online gambling crimes today is influenced by several things, these factors can be seen as follows:

### **a. Economic factors**

Economic factors are the main factor in online gambling activities. Many assume that online gambling can bring large profits in a short time in a simple way. With a weak economy, one can do negative things including one of doing online gambling. If you win, then a person can fulfill all his desires, including meeting the needs of daily life.

### **b. Social Factors**

Social factors are the second factor in someone doing online gambling. There are conditions in society that are consumptive and the lure of others, that can get money instantly in an easy way and supported by a good marketing system that always makes news or exposes successful and profitable gambling news, so that many people are interested and participate in online gambling. At first just want to try something new, by departing from curiosity, then try and believe you will definitely win, so do online gambling repeatedly. Until finally it becomes addictive and done repeatedly.

### **c. Cultural Factors**

Cultural factors are the third factor in society. The culture here is related to a person's behavior that is carried out continuously and has been a common thing to do every day. So because it has become a habitual factor, finally if the habit is not done, there is something lacking in doing other things. People who do online gambling in this factor, they no longer care about the impact on losing and winning. They just think about doing it and hope to definitely win. Because the gambling system is an uncertain thing. Not sure to win but not sure to lose. The existence of an uncertainty in winning does not make someone deterrent in doing online gambling. Because something gambling is something they usually do because of cultural factors that influence it.

## CONCLUSION

Legal arrangements and criminal sanctions against online gambling are reviewed from Law Number 19 of 2016 concerning ITE. Regulations related to online gambling crimes are regulated in Law number 19 of 2016 concerning Electronic Information and Transactions concerning ITE on amendments to Law number 11 of 2008 concerning Electronic Information and Transactions; (a) Article 27 paragraph (2): any person intentionally and without rights distributes and or transmits and or makes accessible electronic information and or electronic documents that have gambling content; (b) Article 45 (2) Any person who intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have gambling content as referred to in Article 27 paragraph (2) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah); (c) Article 45A (1) Any person who intentionally and without rights disseminates false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah). Factors Causing Online Gambling (a) Economic factors; (b) Social Factors; (c) Cultural Factors.

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