

Legal Responsibility for the Perpetrators of Online Gambling Crimes in Indonesia

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ABSTRACT

With the development of this technology, humans can easily access what they want, one of which is online gambling sites. Online gambling is a deviation that is contrary to religious, moral, moral and legal norms, but it is increasingly widespread and difficult to eradicate. Gambling is a form of community disease and is included in the qualification of crime. The rise of gambling will damage the social system of society itself. With the aim, the author is expected to provide usefulness to the development of legal science, especially in criminal law. Based on this, the author formulates the problem of factors causing online gambling and legal liability for online gambling offenders. From this writing, the research method used is normative juridical and statutory approaches, the data source that the author uses in this research is secondary data sources. Secondary data is obtained by conducting library research to obtain a theoretical basis. Based on the results of the research, the factors causing online gambling are divided into two, namely internal factors including intention, nature, talent, and emotional power, and also external factors including economic factors, social factors and facilities and infrastructure. Legal liability for online gambling offenders in Indonesia has been clearly and explicitly regulated in Article 303 paragraph (3) of the Criminal Code and Article 27 paragraph (2) of the Law on Electronic Information and Transactions.

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I. INTRODUCTION

As time goes by, the use of the internet is increasing rapidly every day. However, this advanced technology is not always used for positive things. Often internet users are not wise in managing or responding to it, so many crimes have sprung up crimes committed for profit alone, this crime is often called cybercrime. Cybercrime is a crime that relies on a high level of trust and security of information that can be accessed and sent by internet users without meeting in person¹. One type of cybercrime is online gambling. Gambling is something that is contrary to Religion, Decency, and Pancasila Morals, and is harmful to the livelihood and life of the

¹ Anisa Dwi Andiani, Ahmad Sholikhin Ruslie. 2023. *Ratio Decidendi Pelaku Judi Online Slot (Pada Putusan Nomor 2283/PID.B/2021/PN.SBY)*. Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance. Vol 3, No. 2, hlm. 1238.

community, Nation, and State. Gambling is a form of community disease and qualifies as a crime.² Societal diseases are human behaviors that are considered incompatible with the norms of society and customs or are not integrated with general behavior³.

Online gambling is a game that is conducted using money as a bet with the terms of the game and the amount of the bet determined by the online gambling player and using electronic media with internet access as an intermediary. Various kinds and forms of gambling have spread in people's daily lives, both openly and secretly. Gambling transactions are also not limited by the development of increasingly sophisticated digital technology⁴.

Criminal offenses related to online gambling can also include fraud, identity forgery, money laundering and other crimes. In addition, online gambling addiction can also be a serious problem and can have a negative impact on a person's mental and financial health. Therefore, there is a need for serious handling of the problem of online gambling and criminal offenses related to it, both in terms of prevention and law enforcement⁵.

Gambling is regulated in Indonesian positive law and is divided into two, namely the crime of ordinary gambling and the crime of online gambling (network). The crime of ordinary gambling is regulated in general based on the rules contained in article 303 paragraph 3 of the Criminal Code, while online gambling is specifically regulated in article 27 paragraph 2 of Law number 11 of 2008 concerning Electronic Information and Transactions.⁶

II. RESEARCH PROBLEMS

1. What are the factors that cause online gambling in Indonesia?
2. How is the legal responsibility for online gambling crimes in Indonesia?

III. RESEARCH METHODS

This research uses normative juridical research methods to answer problem formulations one and two. In this research, the author uses a statutory approach and research writing using a normative approach. An approach based on statutory provisions by analyzing applicable and relevant laws and regulations. The data sources that the author uses in this research are secondary data sources. In the secondary data sources that the authors use require legal materials, including the following:

1. Primary legal materials
primary legal materials are sources of legal research consisting of:
 - a. Criminal Code Law Number 11 of 2008 concerning Electronic Information and Transactions.
 - b. Secondary legal materials
2. Secondary legal materials
Legal materials that assist in understanding and analyzing primary legal materials. Secondary legal materials include: books, journals, articles, and others

IV. RESULT AND DISCUSSION

1. Factors causing online gambling in Indonesia

Criminal acts are human behaviors formulated in the law, against the law, which should be punished and committed with fault. A person who commits a criminal act will be held criminally responsible if he has guilt, a person has guilt if at the time of committing the act from the perspective of society shows a normative view of the wrongdoing committed. Processing to determine the guilt or innocence of a person's actions, this is solely under the power of the judiciary, meaning that only the ranks of this department are authorized to examine and try every case that comes to trial.⁷

Crimes that occur certainly have their own reasons why the perpetrators commit crimes, including online gambling crimes. A thing is said to be gambling according to religion is that there is property at stake, there is a game that is used to determine the winning and losing

² Zurohman, Achmad. 2016. Dampak Fenomena Judi Online terhadap Melemahnya Nilai-nilai Sosial pada Remaja (Studi di Campusnet Data Media Cabang Sadewa Kota Semarang). *Journal of Educational Social Studies*. Vol 5, No. 2, hlm. 157.

³ Kartini Kartono. 2011. *Patologi Sosial Jilid 1*. Rajagrafindo Persada. Jakarta

⁴ Hernanda Ramdhani. 2020. Penegakan Hukum dalam Pemberantasan Situs Judi Online di Indonesia. *Jurnal Lex Suprema*. Vol, II No, 2

⁵ Anisa Dwi Andiani. 2023. Ratio Decidendi Pelaku Judi Online Slot. *Indonesia Journal of Law and Social Political Governance*. Vol. 3, No. 2

⁶ Bambang Triwiratno. 2019. *Kajian Yuridis Penegakan Hukum Perjudian Online (Studi Kasus Putusan Pengadilan Negeri Sumber Nomor 277/Pid.B./2018/PN.Sbr)*. *Dinamika Hukum*. Vol. 10, No. 3. Hlm, 137.

⁷ M. Natsir Asnawi. 2014. *Hermeneutik Putusan Hakim Pendekatan Multidisipliner dalam Memahami Putusan Pengadilan*. UII Press, Yogyakarta. Hlm 3

parties, the winning party will take the property that is staked and the losing party loses his property.⁸ Of course, online gambling players have certain factors why they do this action so that it causes addiction. Online gambling is like a hobby that many people continue to do. The factors that influence gambling behavior include:

1) Social and Economic Factors, for people with low social and economic status gambling is often considered as a means to improve their standard of living, because they want to get money quickly to meet their needs. With very little capital they hope to get the maximum profit or get rich in an instant without great effort. In addition, the social conditions of the community that accept gambling behavior also play a major role in the growth of this behavior in the community.

2) Situational factors, situations that can be categorized as triggers for gambling behavior, including pressure from friends or groups or the environment to participate in gambling. Group pressure makes people who will do gambling feel bad if they don't do what the group wants.

3) Perception Factors about Victory Confidence, that the perception referred to here is the perception of the perpetrator in making an evaluation of the chances of winning that he will get if he gambles. Gamblers who find it difficult to leave gambling usually tend to have a wrong perception of the possibility of winning. They generally feel very confident about the victory they will get, even though in reality the chances are very small because the belief that exists is only an illusion that is obtained⁹

4) The Perception of Skills factor that gamblers who feel they are very skilled in one or more types of gambling games will tend to think that success / victory in gambling games is due to their skills. They think that their skills will enable them to control various situations to achieve victory. They often cannot distinguish which victories are obtained due to skills and which are just mere coincidences. For them, defeat in gambling is never counted as a defeat but is considered an "almost win", so they continue to hunt for the victory that they think will definitely be obtained.¹⁰

There are other factors that result in online gambling cases in Indonesia, including internal and external factors. Internal factors are factors that arise from each individual, namely intention, this arises because of a person's desire to do gambling, the nature of a person's character who likes to get benefits in any way and instantly, the talent of a person's expertise in playing gambling and calculations, and emotional power (the absence of a person's self-control to refrain from playing gambling which encourages a person to commit online gambling crimes, environmental factors, due to invitations from friends to play online gambling games. External factors include economic factors (the causes include the high number of unemployment in an area, population density, social pressure, and the number of needs).¹¹

This is what encourages people to do various ways to meet all needs, including in ways that are contrary to legal provisions), learned behavior factors or differential association (online gambling requires interaction and communication so that it is easier to learn), and facilities and infrastructure factors (online gambling can be done anywhere and anytime by simply using a gadget or laptop).¹²

The impact of gambling certainly causes deviant behaviors on a person's personal character, such as being influenced by the environment through interaction, an attitude of imitation so that later it will affect the desire to gamble in a person¹³

2. Legal liability for online gambling crimes in Indonesia

Criminal responsibility is a form of determining whether a person can be held accountable for a criminal offense that has occurred. In other words, criminal responsibility is a form that determines whether a person is acquitted or convicted. In criminal liability, the responsibility imposed on the perpetrator of a criminal offense is related to the basis for imposing criminal sanctions. A person will have the nature of criminal responsibility if a matter or act committed by him is against the law, but a person can lose his responsibility if there is an element that causes the loss of a person's ability to be responsible.¹⁴

The concept of criminal liability means that every person who commits a violation of the law is obliged to be responsible for what has been done. so that both persons and legal entities who commit online gambling crimes

⁸ Uswatun Hasanah. 2022. Fenomena Judi Online Terhadap Kecenderungan Pemahaman Hadis di Era Disrupsi Digital. *Jurnal Riset Agama*. Vol 2 No. 3

⁹ Abi Arsyian Makarim Subagyo, Laras Astuti. 2022. Faktor yang Mempengaruhi Mahasiswa Melakukan Perjudian Online. *Indonesian Journal of Criminal Law and Criminology*. Vol.3, Issue 3, hlm. 187- 188

¹⁰ Nur Khabibatus Sa'diyah dkk. 2022. *Pertanggungjawaban Pidana Terhadap Pelaku Judi Online di Indonesia*. Gorontalo Law Review. Vol. 5, No. 1, hlm 162.

¹¹ Anang Priyanto. 2012. *Kriminologi*, Penerbit Ombak, Yogyakarta.

¹² Zekel Calvin Ginting. 2023. Faktor Penyebab Meningkatnya Pelaku Judi Online pada Pelajar di Masa Pandemi Covid-19. *Jurnal Ilmu Sosial dan Humaniora*. Vol 2, No. 1

¹³ Muhammad Ikhsan. 2015. Faktor-Faktor Penyebab Terjadinya Perjudian Online Melalui Mediainternet yang dilakukan oleh Mahasiswa di Kota Pontianak Ditinjau dari Sudut Kriminologi. Skripsi. Universitas Tanjungpura

¹⁴ Christianata. Perjudian Online dalam Perspektif Undang- Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik. *Jurnal Teknologi Informasi*.

that have been regulated and prohibited in the provisions of Indonesian law can be held criminally responsible. The law has expressly regulated the prohibition of all forms of gambling, including online gambling.¹⁵ Each article regulating the act of gambling has different categories in its structure to determine the status of the offender for which type of act he has committed.¹⁶

So that perpetrators who commit online gambling crimes in Indonesia can be punished based on the following provisions:

- 1) Criminal Code (KUHP) The crime of gambling according to Article 303 of the Criminal Code is explained that:
 - (1) "Shall be punished with a maximum imprisonment of ten years or a maximum fine of twenty-five million rupiahs, whoever without obtaining a license:
 - a) Intentionally offers or provides an opportunity to play gambling and makes a living from it, or intentionally participates in a business activity;
 - b) Intentionally offers or provides an opportunity to the public to play gambling or intentionally participates in a business activity, regardless of whether for the use of the opportunity there is a condition or the fulfillment of a procedure;
 - c) Makes participation in gambling games a means of livelihood.
 - (2) If the offender commits the crime in the exercise of his profession, he may be deprived of the exercise of his profession.
 - (3) "Gambling game" means any game in which the probability of profit generally depends on sheer luck, as well as on the fact that the players are better trained or more skilful. "Gambling game" includes any bet on the decision of a race or other game which is not made between the participants in the race or game, as well as any other bet.

Article 303 bis explains that:

a) Article 303 Paragraph (1): "Shall be punished by a maximum imprisonment of four years or a maximum fine of ten million rupiahs:

1. Any person who uses an opportunity to play gambling, which is organized in violation of the provisions of Article 303.

2. Any person who participates in a game of chance on a public road or on the side of a public road or in a place where the public may visit, unless a license has been obtained from the competent authority which has granted the license for the game of chance."

Article 303 Paragraph (2): "If during the commission of the misdemeanor two years have not yet elapsed since an earlier conviction of the person found guilty on account of one of these misdemeanors has become final, he shall be punished by a maximum imprisonment of six years or a maximum fine of fifteen million rupiahs".

b) Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 on Electronic Information and Transactions For perpetrators of online gambling crimes, Article 27 Paragraph (2) regulates: "Every person intentionally and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that have gambling content."

Article 45 Paragraph (1): "Every person who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be sentenced to a maximum imprisonment of 6 (six) years and or a maximum fine of Rp 1,000,000,000.00 (one billion rupiah). "The two articles in the ITE Law above can be imposed in cases of online gambling using technological media.

In this regulation, it can be concluded who can be subject to criminal sanctions or held criminally responsible, namely:

1. Organizing or providing the opportunity to play gambling as a livelihood. So, a bookie or other person who as a company opens gambling. People who intervene in this are also punished. Even if it is in a closed place or a closed circle, it is enough, as long as the gambling has not received permission from the authorized permit;
2. Intentionally organizing or giving the opportunity to play gambling to the public. Here it is no longer necessary to make a living, but must be in a public place or in a place visited by the public. If there is a license from the competent authority, he/she is not punished;
3. Participating in gambling as a means of livelihood;
4. Punished as a perpetrator of a criminal offense;
 - a. Those who commit, those who order to commit, and those who participate in the act;

¹⁵ M. Ramli AT. 2019. Judi Online Dikalangan Remaja. *Hasanuddin Journal of Sociology*. Vol. 1, Issue 2

¹⁶ Gerald Waney. 2016. Kajian Hukum Terhadap Tindak Pidana Perjudian. *Lex Crimen*, Vol. V, No. 3

- b. Those who, by giving or promising something, by abuse of power or dignity, by force, threat or deception, or by providing opportunity, means or information, intentionally encourage others to commit an act.
5. Only the act that is intentionally encouraged is taken into account, along with its consequences;
6. Every person intentionally without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that have gambling content.¹⁷

Online gambling can also be prevented or by preventive countermeasures, emphasizing prevention before the occurrence of crime and indirectly carried out without using criminal means or criminal law. Crime prevention policies with preventive means only include the use of social means to improve certain social conditions. Gambling countermeasures experience obstacles in their implementation, one of which is because gambling has become a habit for certain groups.

V. CONCLUSION

In this modern era, gambling has penetrated all levels of society. Rich or poor, old or young, from adults to the younger generation and students. Based on the results of the research, it was found that the phenomenon of online gambling carried out by the community has many adverse effects, both in terms of social, religious, material, and psychological aspects.

The factors that cause this online gambling case include internal factors, which are factors that arise from each individual such as intention, nature, talent, and emotional power of a person to commit online gambling crimes, and external factors which include economic factors, learned behavior factors (differential association), and facilities and infrastructure factors. Current technological advances are also a driving factor for people to commit online gambling crimes.

The regulation of criminal sanctions for perpetrators of gambling in online gambling as a form of criminal responsibility is regulated in Article 45 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions, namely "Every person who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)." Therefore, it is recommended that the active role of law-aware people who have Information Technology expertise to participate in assisting law enforcers to combat online gambling.

Overcoming online gambling crimes in Indonesia can be done through efforts, namely by applying the provisions of criminal law in Article 303 of the Criminal Code and the ITE Law to tackle gambling crimes and non-penal efforts by involving three legal components, namely legal structure, namely by involving the role of law enforcement officials by applying criminal law to provide a deterrent effect for perpetrators and preventing the public from doing the same thing, legal substance or using legal material as outlined in the relevant laws and regulations and changing the legal culture of the Indonesian people who generally crave wealth in an easy and fast way so that they are no longer trapped by the online gambling trap.

Criminal liability for online gambling perpetrators already has legal substance in the Criminal Code and the ITE Law, but the provisions in the Criminal Code to tackle online gambling crimes are no longer in accordance with the legal conditions that take place in society today, so that the latest legal substance is needed that can provide strict sanctions and provide a deterrent effect on the perpetrators according to the current legal situation in society. As for tackling online gambling in Indonesia, the active role of the Police is needed, therefore it is hoped that the public will be more open in providing information and reports to the Police regarding online gambling criminal acts so that the Police can follow up on the action.

REFERENCES

- Anang Priyanto. 2012. *Kriminologi*, Penerbit Ombak, Yogyakarta.
- Kartini Kartono. 2011. *Patologi Sosial Jilid 1*. Rajagrafindo Persada. Jakarta
- M. Natsir Asnawi. 2014. *Hermeneutik Putusan Hakim Pendekatan Multidisipliner dalam Memahami Putusan Pengadilan*. UII Press, Yogyakarta. Hlm 3
- Abi Arsyah Makarim Subagyo, Laras Astuti. 2022. Faktor yang Mempengaruhi Mahasiswa Melakukan Perjudian Online. *Indonesian Journal of Criminal Law and Criminology*. Vol.3, Issue 3, hlm. 187- 188

¹⁷ Stevin Hard Awach. 2017. Pertanggungjawaban Hukum Atas Tindak Pidana Judi Online Ditinjau dari Perspektif Hukum Pidana. *Lex et Societatis*. Vol. V No. 5.

- Anisa Dwi Andiani, Ahmad Sholikhin Ruslie. 2023. Ratio Decidendi Pelaku Judi Online Slot (Pada Putusan Nomor 2283/PID.B/2021/PN.SBY). *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*. Vol 3, No. 2, hlm. 1238.
- Anisa Dwi Andiani. 2023. Ratio Decidendi Pelaku Judi Online Slot. *Indonesia Journal of Law and Social Political Governence*. Vol. 3, No. 2
- Bambang Triwiratno. 2019. *Kajian Yuridis Penegakan Hukum Perjudian Online (Studi Kasus Putusan Pengadilan Negeri Sumber Nomor 277/Pid.B./2018/PN.Sbr)*. *Dinamika Hukum*. Vol. 10, No. 3. Hlm, 137.
- Christianata. Perjudian Online dalam Perspektif Undang- Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik. *Jurnal Teknologi Informasi*.
- Geraldly Waney. 2016. Kajian Hukum Terhadap Tindak Pidana Perjudian. *Lex Crimen*, Vol. V, No. 3
- Karolina Sitepu. 2015. Pemberantasan dan Penanggulangan Tindak Pidana Perjudian Togel di Wilayah Hukum Polresta Medan. *Jurnal Ilmiah Medan*. Vol. 1, No. 1
- M. Ramli AT. 2019. Judi Online Dikalangan Remaja. *Hasanuddin Journal of Sociology*. Vol. 1, Issue 2
- Nur Khabibatus Sa'diyah dkk. 2022. Pertanggungjawaban Pidana Terhadap Pelaku Judi Online di Indonesia. *Gorontalo Law Review*. Vol. 5, No. 1, hlm 162.
- Stevin Hard Awaeh. 2017. Pertanggungjawaban Hukum Atas Tindak Pidana Judi Online Ditinjau dari Perspektif Hukum Pidana. *Lex et Societatis*. Vol. V No. 5.
- Uswatun Hasanah. 2022. Fenomena Judi Online Terhadap Kecenderungan Pemahaman Hadis di Era Disrupdi Digital. *Jurnal Riset Agama*. Vol 2 No. 3
- Zekel Calvin Ginting. 2023. Faktor Penyebab Meningkatnya Pelaku Judi Online pada Pelajar di Masa Pandemi Covid-19. *Jurnal Ilmu Sosial dan Humaniora*. Vol 2, No. 1
- Zurohman, Achmad. 2016. Dampak Fenomena Judi Online terhadap Melemahnya Nilai-nilai Sosial pada Remaja (Studi di Campusnet Data Media Cabang Sadewa Kota Semarang). *Journal of Educational Social Studies*. Vol 5, No. 2, hlm. 157.
- Muhammad Ikhsan. 2015. Faktor- Faktor Penyebab Terjadinya Perjudian Online Melalui Mediainternet yang dilakukan oleh Mahasiswa di Kota Pontianak Ditinjau dari Sudut Kriminologi. Skripsi. Universitas Tanjungpura