

A JURIDICAL ANALYSIS OF THE ENFORCEMENT OF LAWS AGAINST ONLINE GAMBLING OFFENSES IN INDONESIA

Hikmal Fahrul Firmansyah¹, Labib Muttaqin²

Universitas Muhammadiyah Surakarta

¹e-mail: c100220084@student.ums.ac.id

²e-mail: labib.muttaqin@ums.ac.id

Abstract

This study examines the legal issues surrounding the rapid growth of online gambling in Indonesia due to advances in information technology, as well as the challenges faced in enforcing relevant laws. The objective of this research is to analyze the regulation of online gambling under the ITE Law and to evaluate the judge's legal considerations in Sidoarjo District Court Decision Number 654/Pid.Sus/2023/PN Sda. This study employs a normative juridical method using both a case approach and a legislative approach, relying on secondary data collected through literature review and analyzed qualitatively. The results show that the application of Article 45 paragraph (2) in conjunction with Article 27 paragraph (2) of Law Number 19 of 2016 has been appropriately implemented, as all elements of the offense namely "every person," "intentionally and without rights," and the act of distributing or making accessible electronic information containing gambling were fulfilled. However, law enforcement remains constrained by limited supervision and low public legal awareness, which continue to hinder effective implementation of the law.

Keywords: Law Enforcement; Online Gambling; Judicial Considerations.

INTRODUCTION

The development of information technology has brought significant changes to various aspects of life, including gambling practices, which have now transformed into digital forms known as online gambling offenses. Easy internet access, user anonymity, and the use of electronic transaction systems have made online gambling increasingly rampant and difficult to control. This condition poses complex legal challenges, particularly regarding the effectiveness of law enforcement against these cybercriminals. (Jadidah dkk., 2023).

In Indonesia, provisions regarding online gambling offenses are regulated under the Electronic Information and Transactions Law, which was most recently amended by Law Number 1 of 2024 as the Second Amendment to Law Number 19 of 2016. The relevant

provisions are set forth, inter alia, in Article 27 paragraph (2) juncto Article 45, which stipulate the prohibition and criminal sanctions against distributing or providing access to electronic information containing gambling content. Nonetheless, despite the severe criminal penalties prescribed normatively, sentencing disparities are frequently observed in judicial practice, where judges impose relatively lenient sentences. (Ainaiya & Saiffy, 2024).

Online gambling takes place via the internet or digital platforms and encompasses betting activities on various games, such as casino or poker. The Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana/KUHP*) defines gambling broadly, meaning that betting on various types of matches also constitutes gambling. Griffiths defines online gambling as the act of gambling



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over the internet using electronic devices, such as computers or mobile phones. (Kanda & Aziz, 2024).

Law enforcement represents the efforts of both the government and law enforcement agencies to implement legal principles and statutory regulations. These efforts aim to prevent legal violations and ensure that the law is fully executed within a jurisdiction. This endeavor is anchored in three primary principles: the rule of law, equality before the law, and legal substance. Prof. Dr. Jimly Asshiddiqie emphasizes that law enforcement is designed to manifest legal norms and operationalize them into reality, serving as a guideline for conduct within legal relationships in social and state life (Ariefiani, 2024).

The term “criminal offense” (*tindak pidana*) translates the Dutch phrase *strafbaar feit* and is interchangeably known by other terms such as delict, criminal act, or punishable event. Moeljatno defines a criminal offense as an act prohibited by law, which carries criminal sanctions for its violators. In general, a criminal offense is understood as an act that entails consequences in the form of criminal punishment against the perpetrator. While the Indonesian Criminal Code (KUHP) utilizes the term *strafbaar feit*, legal literature commonly refers to it as a delict. In essence, a criminal offense constitutes a crime or misdemeanor committed by an individual that inflicts harm upon both individual and public interests (Poernomo, 1994).

The *Kamus Besar Bahasa Indonesia* (KBBI) defines gambling as a game that involves staking money or valuables, such as in dice or card games. It is classified as a social malady falling under the category

of crime, with the potential to disrupt the social order. Gambling practices often stem from curiosity, environmental influence, or speculative motives to “try one's luck” in pursuit of quick wealth or money. Generally viewed as a game of chance, gambling inherently causes the less fortunate party to bear losses by forfeiting their staked funds (Karli dkk., 2023)

The advancement of information and communication technology has expanded online gambling on a global scale, including in Indonesia. Progress in internet infrastructure, smartphones, and digital applications has reshaped public entertainment patterns, thereby facilitating the accessibility of gambling practices. (Migu & Zaky, 2022) online gambling is defined as a wagering game conducted digitally via internet-connected devices. Players engage in the entire process online from player matchmaking and gameplay to the payout of winnings. Perpetrators or bookmakers exploit this method because the practice is deemed more covert, resulting in a lower risk of detection compared to conventional gambling. It manifests in various forms, including slots, lotteries, cockfighting, sports betting, poker, and online football wagering (Firnando & Legowo, 2021)

Normatively, the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana* or KUHP) under Article 303, paragraphs (1) and (2), in conjunction with Law Number 7 of 1974, prohibits gambling; however, advancements in information technology have driven these practices online. The Information and Electronic Transactions Law (UU ITE—Law Number 11 of 2008, as amended by Law Number 19 of 2016) further prohibits

any person from distributing, transmitting, or making accessible electronic information containing gambling content under Article 27, paragraph (2). It imposes sanctions under Article 45, paragraph (2), carrying a maximum prison sentence of six years and/or a maximum fine of IDR 1,000,000,000. Despite these strict prohibitions and sanctions, online gambling remains rampant due to the ease of access provided by rapid digital technology and low public legal awareness, thereby causing social unrest and posing a challenge to law enforcement agencies in its suppression.

The Sidoarjo District Court Decision Number 654/Pid.Sus/2023/PN Sda illustrates the application of law to online gambling, wherein the panel of judges found the defendant guilty of committing the criminal offense of gambling through electronic media pursuant to Article 45 paragraph (2) in conjunction with Article 27 paragraph (2) of Law Number 19 of 2016 (Amendment to Law Number 11 of 2008 on Electronic Information and Transactions). The judges affirmed the fulfillment of the legal elements of "any person," "intentionally and without right," as well as the act of "distributing, transmitting, or making accessible" electronic information containing gambling content, supported by court facts in the form of witness testimonies and physical evidence, while also factoring in social impacts along with aggravating and mitigating circumstances. Furthermore, this ruling demonstrates the principle of individualization of punishment; although the maximum statutory penalty is six years of imprisonment and a fine of IDR 1,000,000,000.00, the judges imposed a

sentence of ten months of imprisonment and a fine of IDR 1,000,000.00 in consideration of substantive justice, taking into account the defendant's polite demeanor, remorse, and lack of prior criminal record.

Unlike previous studies that generally focus on normative aspects and regulatory effectiveness, this research specifically dissects the judge's *ratio decidendi* in Decision Number 654/Pid.Sus/2023/PN Sda, particularly in applying the principles of proportionality and judicial discretion to impose a lighter sentence than the minimum penalty prescribed by statutory regulations.

RESEARCH METHOD

This study employs a case approach and a statute approach to analyze the issues surrounding online gambling offenses (Irwansyah, 2020). The research design adopted is normative or doctrinal legal research, which focuses on written legal norms as the foundation for addressing the legal issues under examination (Nawi, 2017; Amiruddin & Asikin, 2018). The data utilized consists of secondary data obtained indirectly through library research, comprising relevant books, journals, and statutory regulations (Soekanto & Mamudji, 2010). Subsequently, the collected data is analyzed qualitatively by describing, classifying, and interpreting the information into a descriptive narrative to draw conclusions aligned with the research objectives (Faisal, 2005).

RESULTS AND DISCUSSION

Legal Regulation of Online Gambling Crimes

Prior to the widespread proliferation of online gambling, law enforcement agencies in Indonesia relied heavily on Articles 303 and 303 bis of the Criminal Code (KUHP). Although lawmakers drafted the KUHP long before the digital era and without specific statutory penal provisions for cybercrimes, prosecutors still consistently utilize Article 303 as the primary legal basis for indicting online gambling perpetrators. Even when the evidence is obtained through digital media, this reliance underscores the dominant and enduring role of the KUHP in combating gambling in Indonesia (Nasyir & Tornado, 2025). The enactment of the ITE Law (Information and Electronic Transactions Law) through Law No. 11 of 2008, subsequently amended by Law No. 19 of 2016 and Law No. 1 of 2024, provides the legal basis to prosecute cybercrimes, including online gambling. Under Article 27 paragraph (2) of the ITE Law, it is explicitly prohibited for anyone to distribute, transmit, or make accessible electronic information containing gambling content; this empowers law enforcement agencies to penalize perpetrators under the ITE Law, which legal experts regard as a *lex specialis* that supersedes the general criminal law provisions of the Criminal Code (KUHP) (Widijowati dkk., 2025).

The legal regulation of online gambling offenses in Indonesia is currently governed by two primary legal frameworks, namely the *Indonesian Criminal Code* (Kitab Undang-Undang Hukum Pidana/KUHP) through Article 303 and the *Law on Electronic*

Information and Transactions (ITE Law), as amended by Law Number 1 of 2024. Conceptually, the coexistence of these two legal frameworks gives rise to a normative relationship that is not entirely harmonious. Within the framework of legal theory, the principle of *lex specialis derogat legi generali* applies, whereby the ITE Law, as a specific legal instrument, should prevail over the Criminal Code in cases involving gambling activities conducted through electronic systems (Arum & Sumardiana, 2025). Nevertheless, law enforcement practices continue to demonstrate inconsistencies, as law enforcement authorities frequently rely on Article 303 of the Indonesian Criminal Code (KUHP), particularly because it provides for relatively harsher criminal sanctions. This situation indicates that the application of the *lex specialis* principle has not been implemented consistently, resulting in diminished legal certainty. (Rizkita, 2023).

Legal scholars generally regard the Electronic Information and Transactions Law (ITE Law) as the *lex specialis* in this context. Accordingly, a comparison between the application of Article 303 of the KUHP and Article 27 paragraph (2) of the ITE Law reflects the operation of the principle of *lex specialis derogat legi generali*, under which the more specific regulation should take precedence over the general one. Consequently, law enforcement authorities should prioritize the ITE Law when handling online gambling cases. However, enforcement practices remain inconsistent, as authorities often continue to rely on the KUHP, which generally imposes more

severe criminal penalties (Nasyir & Tornado, 2025).

From the perspective of criminal policy, this situation reflects the lack of optimal harmonization between general criminal law and special criminal law in addressing the development of technology-based crimes (Cahyono, Erni, & Hidayat, 2025). As emphasized in criminal law scholarship, legal policy concerns not only the formulation of legal norms but also the consistency of their implementation. The inconsistency between the Criminal Code and the Electronic Information and Transactions Law (ITE Law) has the potential to weaken the function of law as an instrument of social control and to create disparities in judicial decisions.

In terms of evidentiary issues, online gambling offenses present more complex challenges than conventional gambling activities (Penatih & Pramesti, 2025). The transnational, anonymous, and technology-based nature of cybercrime makes it difficult for law enforcement authorities to identify perpetrators and collect evidence (Nurbaeti, 2025). Nevertheless, the Electronic Information and Transactions Law (ITE Law), particularly Articles 5 and 6, provides a strong legal foundation by recognizing electronic information and/or electronic documents as valid legal evidence. These provisions also broaden the scope of admissible evidence as stipulated in Article 184 of the Indonesian Criminal Procedure Code (KUHAP), which previously focused on conventional forms of evidence.

In Decision of the Sidoarjo District Court Number 654/Pid.Sus/2023/PN Sda, the panel of judges accommodated these

developments by accepting and assessing electronic evidence, including digital transaction records, bank account data, and electronic communications linking the defendant to online gambling activities. This demonstrates a progressive development in judicial practice, whereby judges are no longer confined to conventional forms of evidence. Nevertheless, the effectiveness of evidentiary processes continues to face challenges, particularly concerning the validity, authentication, and potential manipulation of electronic data. Therefore, strengthening the digital forensic capabilities of law enforcement authorities has become an urgent necessity to ensure the reliability and quality of evidence in criminal proceedings.

In the a quo case, the panel of judges held that the defendant had been lawfully and convincingly proven guilty of violating Article 45 paragraph (2) in conjunction with Article 27 paragraph (2) of the Electronic Information and Transactions Law (ITE Law). It is important to emphasize that Article 303 of the Indonesian Criminal Code (KUHP) was not applied as the legal basis for sentencing. Rather, it served as a conceptual reference in interpreting the element of “gambling.” Accordingly, the judgment did not involve a cumulative application of criminal provisions, but instead reflected an interpretative integration between general criminal law and special criminal law. This approach demonstrates the judges’ effort to address the normative gap within the ITE Law by referring to the Criminal Code as a source of substantive legal definition (Pinem, 2026).

The case also raises an important issue concerning the disparity between the criminal sanctions prescribed under the Electronic Information and Transactions Law (ITE Law) and the sentence imposed by the court. Article 45 paragraph (2) of the ITE Law provides for a maximum penalty of six years' imprisonment and/or a fine of up to IDR 1,000,000,000. The court, however, imposed a sentence of only ten months' imprisonment and a fine of IDR 1,000,000. From the perspective of legal certainty, such a significant disparity may create inconsistency and uncertainty in sentencing practices, particularly in the absence of clear standards regarding the proportionality of punishment (Juniamalla & Fadlan, 2023).

Viewed from the perspective of substantive justice and sentencing theory, the decision may be understood as an application of the principle of individualized sentencing. The court considered the defendant's specific circumstances, including his role solely as a player rather than an organizer, his cooperative attitude throughout the trial, his expression of remorse, and the absence of any prior criminal record. These considerations reflect the understanding that criminal punishment serves not only to impose retribution for unlawful conduct (retributive justice), but also to promote the offender's rehabilitation (rehabilitative justice) and to prevent future criminal acts (preventive justice) (Wibowo, 2019).

In this context, judicial discretion constitutes an essential element of the criminal justice system. Such discretion enables judges to tailor their decisions to the specific circumstances of each case, thereby achieving a balance between legal

certainty and justice. However, excessively broad discretion without clear guidelines may also lead to undue sentencing disparities. Therefore, more structured sentencing guidelines are necessary to promote consistency in judicial decisions while preserving judges' ability to take humanitarian considerations into account (Wulandari, Mulyanto, & Soetijono, 2025).

This phenomenon can also be examined within the framework of criminal law policy in Indonesia. The judge's decision to impose a relatively lenient sentence indicates a tendency to prioritize a more humane approach, particularly toward offenders whose degree of culpability is not considered severe. In the context of online gambling, the distinction between offenders as "players" and "bookmakers" becomes relevant in determining the severity of punishment. This demonstrates that the sentencing system is no longer rigid but rather adaptive to the complexities of social reality (Bakhtiar & Adilah, 2024).

The primary challenges in enforcing laws against online gambling offenses lie not only in the regulatory framework but also in the inconsistent application of legal norms, limitations in the collection and evaluation of digital evidence, and the absence of clear sentencing guidelines. Harmonization between the Criminal Code and the Electronic Information and Transactions Law is therefore necessary, alongside strengthening the capacity of law enforcement officers in the field of digital forensics and developing sentencing guidelines that balance legal certainty with substantive justice in judicial practice.

This issue becomes increasingly complex because the Electronic Information and Transactions Law (ITE Law) does not provide an explicit definition of “gambling.” As a result, law enforcement officers and judges continue to rely on the concept of gambling as defined in the Criminal Code (KUHP) as the basis for interpreting its substantive elements. This reliance demonstrates that the ITE Law primarily regulates formal aspects, namely the distribution of or access to electronic content, while the substantive understanding of gambling remains dependent on the provisions of the Criminal Code. Therefore, although the ITE Law has been amended through Law Number 1 of 2024 with several revisions to its wording, these changes have not entirely resolved the issue of regulatory dualism. Consequently, this situation may give rise to legal uncertainty, as law enforcement authorities retain broad discretion in determining the legal basis to be applied (Fatimah & Taun, 2023).

The lack of harmonization between the Criminal Code (KUHP) and the Electronic Information and Transactions Law (UU ITE) has led to inconsistent application of legal provisions and created legal uncertainty in practice. Law enforcement authorities frequently choose to apply the provisions of the Criminal Code, despite the fact that the UU ITE specifically regulates electronic content containing gambling activities and provides a legal basis for the use of electronic evidence in judicial proceedings. Nevertheless, digital evidence remains difficult to establish, as law enforcement officers often encounter challenges in identifying perpetrators and

tracing servers located abroad. As a result, the enforcement of laws against online gambling has not yet been carried out effectively and optimally (Gandi, 2025).

Regulations and law enforcement concerning online gambling remain ineffective, as law enforcement authorities continue to face various challenges, including legal gaps and the need for more specific regulations. Although the Indonesian Criminal Code (KUHP) and the Electronic Information and Transactions Law (ITE Law) provide the legal basis for imposing sanctions on online gambling offenders, existing regulations do not clearly define online gambling nor provide comprehensive and detailed provisions governing such activities. In judicial practice, a number of court decisions remain case-specific and have yet to reflect a criminal law approach that is sufficiently responsive and adaptive to the rapid development of information technology. Therefore, policymakers need to undertake a more comprehensive regulatory reform to address existing legal gaps, strengthen legal certainty for both law enforcement authorities and suspects, and establish a legal framework that is better suited to contemporary challenges (Khalik & Syahril, 2025).

Law enforcement authorities have applied Article 303 of the Indonesian Criminal Code and Article 27 paragraph (2) of the Electronic Information and Transactions Law inconsistently in addressing online gambling cases, thereby creating legal uncertainty. Although the Electronic Information and Transactions Law specifically regulates criminal acts committed in electronic spaces, law enforcement officials frequently rely on

Article 303 of the Criminal Code as the basis for prosecution, particularly because it carries more severe criminal sanctions. This practice has resulted in inconsistencies in judicial proceedings, as law enforcement tends to depend on a general legal provision that does not fully accommodate the dynamics and characteristics of technology-based crimes. Therefore, law enforcement authorities should prioritize the application of the Electronic Information and Transactions Law as the *lex specialis* in handling online gambling cases, considering that the legislature enacted this law specifically to address criminal offenses committed through electronic systems (Fitra, 2025).

The identification of perpetrators and the verification of digital evidence in online gambling cases constitute one of the primary challenges in law enforcement. Empirical studies indicate that the capacity of law enforcement officers to conduct digital forensic investigations remains limited, resulting in difficulties in proving the involvement of individuals in online gambling offenses, particularly when the servers used to facilitate such activities are located outside Indonesia's jurisdiction. This issue is further complicated by the transnational nature of cybercrime, which operates through internet-based platforms that enable offenders to access and conduct illegal activities beyond geographical and legal boundaries (Husain, 2024). As a consequence, the effectiveness of law enforcement efforts is often hindered, as tracing perpetrators and collecting relevant evidence require cooperation with authorities in other countries. Such cooperation frequently

involves lengthy procedures and faces various challenges arising from international legal frameworks. Therefore, the process of establishing evidence remains a significant obstacle to the successful enforcement of laws against online gambling (Bentara dkk., 2025).

Indah Purwatiningsih examined the implementation of law enforcement against online gambling offenses at the Demak Regional Police and found that law enforcement officers had undertaken various enforcement measures. However, the implementation of these efforts continued to face several limitations, particularly in terms of human resources and the availability of supporting facilities and infrastructure. These findings illustrate the challenges encountered by law enforcement agencies in handling online gambling cases (Sugio, 2022). Siti Fatimah and Taun explained that various factors contributing to the proliferation of online gambling in Indonesia may inadvertently give rise to social problems. One of the most significant consequences is addiction, as individuals involved in online gambling may develop a dependency and continue gambling excessively. This condition can lead to further unforeseen problems, such as indebtedness or even theft, thereby increasing crime rates within society. Moreover, financial losses resulting from gambling may trigger depression among gamblers and, in severe cases, may contribute to fatal outcomes (Firnando & Legowo, 2021).

The police and other law enforcement agencies play a crucial role in combating online gambling. The Indonesian National Police (Polri) holds a strategic position as the frontline institution in law

enforcement, particularly in efforts to eradicate online gambling. Polri actively undertakes various measures, including cyber patrols, collaboration with communities and the public, website blocking, and enforcement actions against individuals involved in online gambling activities. Nevertheless, these efforts continue to face significant challenges, such as weak coordination among law enforcement institutions, limited forensic technology capabilities, and low public awareness of the risks associated with online gambling. Several scholars have recommended strengthening the capacity of law enforcement personnel, particularly in the field of cybercrime investigation, as well as enhancing and expanding cooperation with digital platform providers and international institutions to address these challenges. Such cooperation is expected to improve the effectiveness of efforts to combat transnational crimes related to online gambling (Tanuwijaya & Hutabarat, 2025).

The effectiveness of prevention efforts and the role of the Ministry of Communication and Digital Affairs (Komdigi), formerly known as the Ministry of Communication and Informatics (Kominfo), are crucial in combating online gambling. Komdigi plays a significant role in blocking content and advertisements associated with online gambling activities. The policy of blocking online gambling websites and advertisements that promote such activities aims to restrict the operations of gambling operators while reducing public exposure to gambling-related content accessible through digital media. This measure forms part of the

government's broader efforts to mitigate the negative impacts of online gambling and prevent its wider spread within society (Tanjung dkk., 2025).

The current regulatory framework gives rise to both legal and social implications, including adverse social and economic consequences. Numerous studies have demonstrated that online gambling not only creates legal issues but also affects the social and economic conditions of society. Individuals involved in online gambling may develop addictive behaviors that extend their impact to family members and close social circles. Furthermore, gambling activities can reduce work productivity and undermine the economic stability of individuals as well as their surrounding social environment. These consequences underscore the need for legal policies that are not solely repressive through the imposition of sanctions, but that also emphasize preventive measures, including public education programs aimed at increasing awareness of the dangers of online gambling and strengthening efforts to prevent its occurrence (Harefa, 2024).

The criminal justice system plays an important role in protecting society from various forms of crime, including online gambling. Studies on the criminal justice system indicate that online gambling has created new challenges for law enforcement and judicial processes in Indonesia. The existence of gambling activities conducted through electronic media requires a deeper understanding of electronic evidence and the ability of courts to adapt legal approaches to developments in information technology. This situation presents significant challenges in the pursuit of justice, as the

evidentiary process often involves digital transactions and complex electronic trails. If the criminal justice system is unable to effectively address these developments, public confidence in the ability of positive law to combat digital-based crimes, such as online gambling, may decline (Hardini dkk., 2025).

Judicial Legal Reasoning in the Sidoarjo District Court Decision Number 654/Pid.Sus/2023/PN Sda Regarding the Criminal Offense of Online Gambling

Legal considerations undertaken by judges play an essential role in judicial decision-making. Prior to rendering a judgment, judges carefully assess various relevant factors surrounding the case. Judges also actively participate in resolving disputes and exercise judicial authority as the primary executors of the judicial function. Through their decisions, judges not only uphold the law but also seek to realize justice. A judicial decision represents the culmination of the case examination process. Therefore, judges must prepare their decisions with great care, avoid negligence, and ensure compliance with both formal and substantive legal requirements, while applying the necessary technical expertise in drafting judgments (Sitompul & Andi, 2021).

Judges are required to state the legal grounds and considerations underlying every court decision, whether derived from written law or from unwritten legal norms that exist and develop within society. This principle constitutes a general rule in civil procedural law. Through these considerations, judges account for their decisions to the public,

higher courts, and the applicable legal system. Therefore, the panel of judges must examine all relevant aspects carefully to ensure that the decision is fair, impartial, and acceptable to all parties, thereby strengthening its legal authority. A judgment that is not supported by clear and adequate reasoning may be declared null and void by operation of law (Hendri & Khoiri, 2018).

In Decision of the Sidoarjo District Court Number 654/Pid.Sus/2023/PN.Sda, the Panel of Judges examined and adjudicated an online gambling case involving the defendant, Arif Wicaksono Bin Handoyo. The Panel found that the defendant's conduct fulfilled the elements of a criminal offense, as he used electronic means to access gambling services involving monetary bets. Based on this assessment, the Panel emphasized that the defendant was not merely "playing" or "experimenting" in a digital environment; rather, he was engaging in gambling activities that fundamentally relied on wagering and chance, with the possibility of financial gain or loss. Furthermore, the Panel classified the conduct as a cybercrime, considering that the defendant utilized internet networks, online platforms, and electronic transactions, thereby extending the potential impact of the offense on both the defendant himself and public order.

The Panel of Judges also found that the defendant had engaged in online gambling by accessing the website www.linkgacor88.com.

Accordingly, the defendant's conduct met the characteristics of online gambling activities carried out through a digital platform. In assessing the case, the Panel

of Judges did not merely regard the defendant's actions as a violation of legal provisions, but also considered their broader social impact on society. The Panel of Judges was of the view that online gambling has the potential to cause addiction, result in financial losses, and trigger various social problems that may adversely affect the community. Based on these considerations, the Panel of Judges regarded the handling of this case as part of an effort to maintain public order and protect society from the harmful effects of online gambling, which has become increasingly accessible due to advancements in information technology.

Arif Wicaksono bin Handoyo was found guilty of disseminating access to electronic information containing gambling-related content, as stipulated under Article 45 paragraph (2) in conjunction with Article 27 paragraph (2) of the Electronic Information and Transactions Law (ITE Law). Accordingly, the defendant was sentenced to 10 months of imprisonment and fined IDR 1,000,000 (with a subsidiary penalty of 2 months' imprisonment in the event of non-payment). Furthermore, the court ordered the confiscation and destruction of the evidence, consisting of one black Realme C55 mobile phone along with SIM cards bearing the numbers 085686042739 and 087864105492.

The panel of judges based its assessment on the facts revealed during the trial and elected to apply the first alternative charge, namely Article 45 paragraph (2) in conjunction with Article 27 paragraph (2) of the Electronic Information and Transactions Law (ITE Law). The panel interpreted the element

of "any person" as referring to a legal subject who is capable of bearing legal responsibility and subsequently determined that Arif Wicaksono bin Handoyo satisfied this element, as he appeared before the court as the individual required to account for his actions. The defendant was found to be in sound physical and mental condition, enabling him to understand the criminal nature and consequences of his conduct. The judges concluded that the defendant could be held criminally liable because no grounds for excuse or justification were established, and they further found that he was not in any of the circumstances contemplated under Articles 44, 48, 49, 50, and 51 of the Indonesian Criminal Code (KUHP).

Second, the element of "intentionally and without authority distributing and/or transmitting and/or making accessible electronic information and/or electronic documents containing gambling-related content" is alternative in nature. Therefore, the public prosecutor is not required to prove all of these acts simultaneously; it is sufficient to establish one of the acts based on the facts revealed during the trial for this element to be satisfied. The panel of judges interpreted the phrase "intentionally" as an act carried out consciously and in contravention of statutory provisions as well as the prevailing norms of compliance within society. In legal doctrine and judicial practice, intent is generally classified into three forms: intent as purpose (*dolus directus*), intent with awareness of certainty (*dolus indirectus*), and intent with awareness of possibility (*dolus eventualis*).

In determining the legal basis of its decision, the panel of judges examined the relationship between Article 27 paragraph (2) of the Electronic Information and Transactions Law (ITE Law) and Article 303 of the Indonesian Criminal Code (KUHP). The panel emphasized that the ITE Law specifically prohibits gambling-related content in electronic information or electronic documents, while Article 303 of the KUHP serves as the primary reference in assessing whether the defendant's conduct contains elements of wagering money and the possibility of obtaining profit based on chance. Consequently, the conduct fulfilled the concept of gambling as regulated under the KUHP. Based on this consideration, the panel of judges affirmed that although the act was committed in an electronic environment, the KUHP continues to provide the substantive legal basis for determining the nature of gambling, particularly where the defendant's conduct demonstrates a betting mechanism similar to that of conventional gambling.

The Panel of Judges imposed the sentence based on Article 303 of the Indonesian Criminal Code (KUHP), primarily because this provision carries a more severe criminal penalty than the provisions commonly applied under the Electronic Information and Transactions Law (ITE Law). By applying this article, the Panel of Judges demonstrated its preference for a legal provision that provides stricter sanctions in order to create a deterrent effect and to reaffirm the State's firm stance against gambling activities. However, this decision also highlights concerns regarding the consistency of legal enforcement. The

Panel of Judges chose to apply the general criminal provision contained in the KUHP, even though the ITE Law should, in principle, function as the *lex specialis* governing criminal offences committed through electronic systems. Indirectly, the decision suggests that law enforcement practice still allows considerable discretion for law enforcement authorities to determine the applicable legal basis according to prosecutorial strategies or considerations regarding the severity of the available criminal sanctions.

From a legal policy perspective, Indonesia needs to harmonize the application of the Criminal Code (KUHP) and the Electronic Information and Transactions Law (ITE Law) in cases involving online gambling. In practice, law enforcement authorities often rely on Article 303 of the Criminal Code, which carries a more severe criminal sanction, even though the ITE Law specifically regulates gambling-related activities conducted through electronic systems. This inconsistency creates legal uncertainty, both for law enforcement officials in determining the appropriate legal basis and for the public in understanding the legal consequences of engaging in online gambling. Therefore, policymakers should clarify the relationship and boundaries between the application of the Criminal Code and the ITE Law, affirm the ITE Law as the *lex specialis* governing digital crimes, and establish consistent implementation guidelines to ensure greater uniformity, certainty, and predictability in the handling of cases and judicial decisions.

In its consideration, the Panel of Judges assessed the evidence presented in

this case as electronic evidence obtained through an investigation of online gambling websites. Such evidence included bank transaction records, bank account numbers used by the defendant, and electronic communications linking the defendant to gambling activities. The Court emphasized that the use of digital evidence is highly relevant in addressing crimes involving information technology. Although electronic evidence was admitted, the Court underscored the importance of verifying the authenticity of digital evidence, particularly electronic documents that are susceptible to manipulation. The Court further suggested that law enforcement authorities strengthen their digital forensic capabilities to ensure more accurate and reliable evidence in online gambling cases.

The panel of judges applied Article 303 of the Indonesian Criminal Code (KUHP), even though the Electronic Information and Transactions Law (ITE Law) specifically regulates online gambling. This approach reflects an inconsistency in the application of legal provisions, as law enforcement authorities often prefer to rely on the more general provision under the Criminal Code due to its heavier criminal sanctions. In principle, however, the ITE Law should function as a *lex specialis* in addressing offences involving electronic systems. This decision gives rise to legal uncertainty in the enforcement of laws against online gambling, as law enforcement authorities may choose to apply the more general provisions of the Criminal Code rather than the more specific provisions of the ITE Law. The judgment also considers the social

impacts arising from online gambling activities.

The panel of judges emphasized that the defendant's conduct not only constituted a violation of the law but also caused harm to society through financial losses, gambling addiction, and various social problems. Therefore, the judges considered that law enforcement against online gambling should not merely focus on imposing punishment on offenders, but should also aim to mitigate its broader social and economic consequences through preventive measures. This view reflects the need for law enforcement to prioritize preventive and rehabilitative approaches, rather than relying solely on repressive measures. The judges further underscored the importance of the government's role in addressing online gambling by strengthening coordination among law enforcement agencies and fostering cooperation with internet service providers to block online gambling websites that continue to emerge. In addition, the judges encouraged the government to enhance regulations concerning electronic evidence and digital transactions in order to improve the effectiveness of law enforcement efforts against online gambling.

In imposing the sentence, the court first assessed and considered both the aggravating and mitigating circumstances relating to the defendant. From a legal perspective, the disparity between the statutory penalty prescribed by the law and the sentence ultimately imposed by the judge reflects the application of the principle of individualized sentencing, which grants judges the authority to determine the severity of punishment based on the offender's personal

circumstances, characteristics, and the nature of the offense committed. This issue is particularly worthy of examination, given the significant discrepancy between the statutory maximum penalty of six years' imprisonment and a fine of one billion rupiah provided under the relevant provision, and the court's decision to impose only ten months' imprisonment and a fine of one million rupiah.

This difference illustrates how the judges exercised broad and contextual discretion in rendering their decision. The ruling was based on the assessment that the defendant's misconduct was not considered severe, that the defendant behaved respectfully throughout the trial proceedings, expressed remorse for the offense committed, and had no prior criminal record. Furthermore, the defendant's actions did not cause substantial harm or significant public disturbance. Therefore, the judgment reflects the application of the principle of substantive justice, whereby the judges did not merely apply the statutory provisions in a literal manner but also took into account humanitarian considerations and the proportionality of the punishment imposed. This approach aims to rehabilitate the offender while maintaining public order in a fair and equitable manner.

CONCLUSION

The legal regulation of online gambling offenses in Indonesia is governed by two statutory provisions, namely Article 303 of the Indonesian Criminal Code (KUHP) and Article 27 paragraph (2) in conjunction with Article 45 paragraph (2) of the Electronic

Information and Transactions Law (ITE Law). Although the ITE Law serves as the *lex specialis* and, in principle, should prevail over the Criminal Code, law enforcement authorities in practice frequently rely on Article 303 of the KUHP due to its more severe criminal sanctions. This inconsistency has created legal uncertainty, which is further exacerbated by the absence of an explicit definition of gambling under the ITE Law, limited digital forensic capabilities, and the difficulty of tracing offenders who operate across multiple jurisdictions.

These issues are reflected in the Sidoarjo District Court Decision Number 654/Pid.Sus/2023/PN Sda, where the panel of judges convicted the defendant under the ITE Law while referring to the KUHP as an interpretative basis for determining the gambling element of the offense. Although the applicable law provides for a maximum sentence of six years' imprisonment, the court imposed a sentence of only ten months' imprisonment by applying the principle of individualized sentencing. This disparity demonstrates the need for greater harmonization between the KUHP and the ITE Law, strengthened digital forensic capabilities, and the development of sentencing guidelines that ensure both legal certainty and substantive justice.

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