

The Urgency of Special Regulations for online Gambling in Indonesia

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ABSTRACT: *In this era of digital disruption, gambling is ever-present in virtual spaces, accessible via websites on the internet. Online gambling sites have been growing since the birth of websites in 1990 and started becoming an "internet sensation" in the early 2000s. This paper focuses on the first issue, which is how online gambling is regulated in Indonesian positive law, and the second issue, which is the urgency of overcoming online gambling as a new disease of society. With normative juridical research methods and an analytical-descriptive approach, this research relies on secondary data in the form of primary and secondary legal materials. The result shows that the laws and regulations in Indonesia, which are still conventional, are unable to overcome online gambling. Considering that online gambling is addictive, closely related, and encourages various crimes—namely buying and selling bank account numbers, fraud, data theft, and money laundering—and considering that the internet can be easily used by anybody, a thorough and systemic countermeasure against online gambling is urgent.*

KEYWORDS: *online gambling, the urgency of regulations.*

I. INTRODUCTION

A. Background

Gambling is a social problem as old as human civilization itself. It has existed since 3500 BC, when in the ancient civilizations of Egypt, Greece, and Rome, it was known as a game involving something to be bet on. (Mau, 2007) The ancient civilizations of Southeast Asia, Japan, India, and China also knew of a similar game. The ancient Arab civilization was even known for betting on their wives. From this historical background, it can be seen that gambling games have a bad impact on people's social lives. The history of Indonesian culture also recognizes gambling games as people's entertainment since the days of the Majapahit kingdom by involving money, livestock, and crops as stakes. (Risa Herdita Putri, 2022)

The history of gambling in Indonesia was marked in the Dutch colonial era, in 1911, when gambling was considered a violation if carried out without permission from the authorities at that time. (Wahyu Lumaksono, 2014) During the Dutch colonial era in Indonesia, gambling was considered an unlawful act because it damaged the mentality and morality of the community in its development. Until 1974, gambling games were considered a state crime because they had become a social problem with a wider scope. (Stevin Hard Awaeh, 2017) The crime rate's increase at that time was caused by gambling, among others. The Indonesian government in 1974 issued Law Number 7 of 1974, which regulates Gambling Control. However, the law was considered null and void because there was a clause that required a permit for the administration of gambling, which was contrary to the constitution and the state philosophy, Pancasila. (Samosir, 2015)

However, gambling once existed in Indonesia, especially during the Governor of Jakarta Ali Sadikin's reign in 1966–1977. (Detha Arya Tifada, Yudhistira Mahabarata .) Ali Sadikin argued that taxes from gambling

games could support regional development at that time. This was proved when the regional income of the DKI province increased to 89 billion rupiah from a mere 66 million rupiah. The proceeds of the legalized gambling "contribution" were distributed to the development of school infrastructure, public health, and markets. At the end of 1974, gambling was considered a crime because it damaged the morals and noble values of the Indonesian nation.

However, in 1976, the Indonesian Ministry of Social Affairs at the time conducted a comparative study on the legalization of gambling in England. The result of the comparative study was the issuance of Sports and Agility Week Prize Coupons for Football 7 years later. The legality of these activities was based on Law No. 22 of 1954 concerning Lottery. The lottery program was extended to remote villages. Even so, there were rules prohibiting children under 17 years of age from participating in selling, distributing, or buying them. In 1987, the prize coupon program (which was later renamed to Kupon Sumbangan Olahraga Berhadiah, or KSOB) was discontinued because it resulted in rampant corruption among the village government, which used village funds in its implementation. (Muhammad Dziky, 2017) Instead of discontinuing KSOB, a coupon program with prizes emerged with a new term, Sumbangan Dermawan Sosial Berhadiah (SDSB). In 1993, the implementation of the SDSB was revoked by the Indonesian central government.

From the history of gambling in Indonesia above, it can be seen that gambling can be packaged in various ways by utilizing the legal loopholes of laws and regulations. Various names and forms of gambling games in Indonesia, both legal and illegal, have massive negative impacts on the public. Crime rates and social deviations, such as suicide and divorce due to the impact of a decrease in quality of life, continue to rise as a result of gambling losses. This is what encourages society to condemn gambling in Indonesia because it is against the morality of the nation and religious norms. Even so, the existence of gambling games can not easily disappear. Gambling games continue to be popular among Indonesian people even though they are considered acts against the law. From Togel, Karambol, to Cockfighting, the modes of gambling games are growing and giving rise to social problems that will ultimately turn into a disease of society.

In this era of digital disruption, gambling is ever present in virtual spaces, accessible via websites on the internet. Online gambling sites have been growing since the birth of websites in 1990 and started becoming an "internet sensation" in the early 2000s. (Wood, 2007) At first, these online gambling websites were not easily accessible to the general public. Only those who understand the ins and outs of the internet, which is accessed through a computer device, are capable of engaging in such unlawful acts.

The development of information technology, along with science and technology, changed the internet into a multi-platform thing, which made the internet accessible by the public through personal devices such as smartphones. This ease of using the internet via smartphone devices has become an "easy way" for the online gambling website to be accessed by people from all stages of life, including children.

The COVID-19 pandemic that started at the beginning of 2020 has forced the government to issue policies regarding restrictions on community activities in order to prevent the spread and handling of the COVID-19 virus. (Ni Nyoman Pujaningsih, 2020) The "new normal" socialization where people's productivity activities change virtually, also affects the economic condition of the community, because many people lose their livelihoods. This makes online gambling websites grow more and more.

Online gambling activities are even more difficult to stem. Currently, there is no clear information regarding the number of online gambling sites that can be blocked by the Ministry of Communication and Information. This is what causes government control of the gambling community to become increasingly complex. In addition to the increasing number of new online gambling sites that have sprung up, the Indonesian government itself does not yet have specific legal regulations regarding the prohibition of online gambling.

From this background the author feels the need to research more deeply about the regulation of online gambling in Indonesia, both in terms of its positive legal arrangements and its social impact in a scientific paper titled "Online Gambling: A New Disease of Society (The Urgency of Special Regulations for Online Gambling in Indonesia)".

B. Problem Formulation

In order for this study to be more focused, the authors formulated the problems as follows:

1. How is Online Gambling Regulated in Indonesian Positive Law?
2. What is the Urgency of Overcoming Online Gambling as a New Disease of Society?

C. Research Method

The research conducted by the author is a normative juridical study, in which the author conducts a study of the norms in positive law. (Soemitro, 1998) This study uses a positivist conception of legis. By using a descriptive analytical approach, the author uses primary and secondary legal materials. The primary legal materials used by the author are the 1945 Constitution of the Republic of Indonesia, the Indonesian Criminal Code (KUHP), and Law Number 11 of 2008 concerning Information and Electronic Transactions. The secondary legal materials used in this study are the results of previous studies, reference books, and scientific articles that are related to the discussion of the problems in this study.

II. DISCUSSION

A. The Regulations of Online Gambling in Indonesian Positive Law

1. The Penal Act of Gambling in Indonesian Positive Law

a. The Indonesian Criminal Code (KUHP)

In the book of the Criminal Code, gambling is included in the classification of Crimes Against Politeness, which is regulated in Chapter XIV, Article 303. Article 303 of the Criminal Code stipulates the prohibition of gambling as follows:

“Threatened with a maximum imprisonment of ten years or a maximum fine of twenty-five million rupiahs, whoever without obtaining permission:

- a) intentionally offers or provides opportunities for gambling games and makes it a livelihood, or intentionally participates in an affiliated companies;*
- b) intentionally offers or provides opportunities for the general public to play gambling or intentionally participates in affiliated companies, regardless of whether to take advantage of the opportunity from certain conditions or the fulfillment of certain procedures;*
- c) makes taking part in gambling games a quest.”*

"Any game in which, in general, the probability of making a profit depends on sheer luck, either because the players are more trained or more proficient. It includes all bets on the decision of competitions or other games that are not held between those who are participating in the competition or playing, as well as all other bets."

It should be noted that in the article there is a "without permission" element, which means that if the gambling game gets permission from the government (official or agency), then all actions in the formulation of the article can erase the unlawful nature of the gambling game.

b. Law No. 7 of 1974 Concerning Gambling Control

In this law, it is stated that all forms of gambling are crimes. The rule of law in this legislation has the aim of controlling gambling games so that, in time, gambling games disappear from all regions in Indonesia. This law was enacted to accommodate changes to the articles in the Criminal Code which are no longer relevant because the penalties given in the Criminal Code related to gambling games cannot provide a deterrent effect.

c. Government Regulation Number 9 of 1981 concerning the Implementation of Law no. 7 of 1974 concerning Gambling Control

This Law's Article 1 paragraphs (1) and (2) state:

- “(1) The granting of permits to operate all forms and types of gambling is prohibited, whether gambling is held in casinos, in crowded places, or for other reasons.
(2) The license to organize gambling that has been granted is declared revoked and is no longer valid as of March 31, 1981.”*

From the explanation of the articles in the law above, it is hoped that gambling can completely disappear from Indonesian people's culture. The enactment of the law results in the annulment of all government regulations that are contrary to the content of the rules in the article. The hope is that the rules in this article can reduce the number of gambling activities to the total elimination of it in Indonesia.

2. The Penal Act Regulation of Online Gambling in Indonesian Positive Law

a. Law Number 11 of 2008 concerning Information and Electronic Transactions

The content of the prohibition on online gambling is specifically regulated in Article 27 paragraph (2), which reads as follows:

“Every person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing gambling content.”

While the criminal rules against online gambling crimes are regulated in Article 45 paragraph (1), which reads:

“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 Rp1,000,000,000 (one billion rupiah).”

The formulation of the elements of a penal act in Article 27 paragraph (2) is basically a re-formulation of the articles that regulate gambling in the Criminal Code. As a game that generally aims to seek profit by involving something to be bet on, the characteristics of online gambling also follow those of conventional gambling games. In online gambling games, there are bets, something that is used as a prize for gambling winners. Winning an online gambling game only relies on luck and the player's skill in calculating opportunities.

However, the elements of online gambling crimes are not listed in the Information and Electronic Transaction Law and follow the rules in Article 303 of the Criminal Code. This makes the content of online gambling crimes in the Information and Electronic Transaction Law very dependent on other laws that regulate conventional gambling crimes. In other words, the Information and Electronic Transaction Law has not been able to become an independent regulation in the enforcement of online gambling crimes.

B. The Urgency of Overcoming Online Gambling as a New Disease of Society

The penal act of online gambling is a relatively new cyber-assisted crime in the Indonesian law enforcement system. Online gambling games are an integral part of a transnational crime that utilizes the internet network as a means of carrying out its crimes. Online gambling games, as an extension of traditional gambling, have additional characters that follow the characters of the Internet itself. Internet characters that include Borderless, Anonymous, Non-Confrontational, Impersonal, and Easy to Use make online gambling games a crime that is difficult to eradicate. For approximately 20 years since the beginning of its popularity, online gambling has actually become a global problem, not only in Indonesia. The ease of access 24 hours a day from anywhere makes online gambling games increasingly popular among various circles, even the younger generation.

Online gambling games pose more complex problems than conventional gambling. Online gambling games also bring new issues such as addictive nature for the players to the security of users' personal data. It can even give birth to a new crime mode, namely buying and selling personal bank accounts, which is an illegal act in Indonesia. In addition, online gambling games are another form of

cheating game scheme that aims to take as much profit as possible in a way that harms its users. As for the new problems that also come with the negative impact of the online gambling game itself, the authors summarize some of the problems below:

(1) Addiction to Online Gambling Games in Indonesia's Younger Generation

Based on the results of research conducted by Asriadi, in his scientific article entitled "Analysis of Online Gambling Addiction (A Case Study of SMAK AN-NAS MANDAI MAROS Students, Maros Regency)", shows that addiction to online gambling games has damaged the mentality of the younger generation, especially school students. In his research obtained from the observation, the ego and emotional factors that were still in their development resulted in teenagers being more susceptible to addiction to online gambling games. The ease of accessing the internet through personal devices, the breadth of information about websites that provide online gambling game services, and the low supervision of parents and schools in controlling the use of personal devices are also factors that trigger addiction to online gambling games. In addition, curiosity and the desire to repeat the feeling of sensation/euphoria from winning gambling games also affect the addiction of teenagers to online gambling games. As a result, the younger generation is starting to ignore the negative effects of gambling games. This tends to bring changes to their mentality in the future. This should be the attention of the Indonesian government in protecting children's rights in their growth and development. If online gambling games are not eradicated immediately, then the presence of a generation experiencing moral and norm degradation is a guarantee.

(2) Buying and Selling Bank Accounts Owned by Individuals

Interviews conducted through the Whatsapp application by the author with Rio Krisnajati, a BRI bank Legal Officer employee, obtained interesting facts about a new crime mode, namely buying and selling bank accounts belonging to individuals. The modus operandi of this relatively new crime takes advantage of the economic conditions of the victims. These sellers of personal bank accounts lure their target victims with some money to buy account books and ATMs from them, and then resell the following account numbers with the ATM card (along with the PIN code) online at a much higher price than the nominal offered to their victims. From the observations made by the author on the deposit system on online gambling game sites, the authors found that one online gambling game website offers a system of transferring funds through several bank accounts. What attracts the author's attention is that one type of bank is offered as a transaction option. For example, the choice of Bank Central Asia, there are more than 10 beneficiary accounts offered at random. By looking at the element of anonymity in a cyber crime, it can be ascertained that these accounts are not the accounts of the owner or manager of the online gambling game website. The new crime mode of selling personal accounts can be one way to maintain the anonymity of online gambling game website managers.

(3) Fraud

In some countries where gambling is legal, the online gambling game model creates new problems in terms of honesty and fair play. But basically, online gambling games are one of the biggest industries in the world today. As a large industry, the owners, developers, and managers of online gambling game websites must be able to maintain a high income turnover. In Indonesia, regulations regarding online gambling are very limited to only one article in one legislation. This means that there will be problems regarding multi-jurisdictions in controlling online gambling game websites. This creates many opportunities that will benefit the "providers" of online gambling game sites to engage in fraudulent activities. So it is not surprising that there are many cases where online gambling game websites do not pay out the winnings of their players or cheat the game system so that it continues to make the players lose (adjusting algorithms that can understand the psychology of players so that they are tricked into making deposits repeatedly even though they always lose). Even Sportbookreview, an independent monitoring organization, noted that there were more than 500 online gambling sites that carried out fraudulent acts, including cheating the game system, making fraudulent bonus winnings, and "stealing" player deposits in their accounts. Simply put, many online gambling websites do not

pay any winnings to the players. These online gambling websites offer easy deposits to promise winning bonuses with fantastic values to attract customers, and not infrequently, many sites then "eliminate" game deposit funds in the player's account.

(4) Identity Theft

The Internet, by its very nature, offers many new opportunities for criminals. One of the most frequently used modes of personal data theft is to create a clone website from an online gambling website. When these customers log into their accounts, criminals can collect customer IDs, passwords, and bank account data belonging to the customers of the online gambling site. These cybercriminals take advantage of DNS weaknesses which will later target the firewall defenses of online gambling sites (most of which have weak firewalls) so that these "crackers" can easily "go in and out" of their sites to steal personal data of their customers for personal gain.

(5) Money Laundering

Many legal experts state that there is a great potential for laundering the proceeds of crime through online gambling sites. Usually, those involved in money laundering are large criminal organizations such as drug dealers, human trafficking perpetrators, and the management of terrorism funds. However, as a result of the borderless nature and anonymity that characterize online gambling, it makes transactions and money laundering activities on online gambling sites difficult to uncover. In addition, many online gambling sites use an encryption system in their financial activities, thus providing a great opportunity for money laundering activities. There are three main ways through the mechanism of money laundering through online gambling sites. First, the proceeds of the crime were transferred to several online gambling managers so that the peacock funds were difficult to trace. Second, the proceeds of the crime are transferred to an anonymous account that seems to be a customer of the online gambling site, and then the account performs gambling games on the online gambling website autonomously. Third, money laundering actors use fake accounts or fake identities to first play on an online gambling site and then withdraw the remaining money or transfer it to an overseas account.

(6) The Modus Operandi of Online Gambling Makes It Easy for Anyone to Get Involved

Online gambling is a series of acts against the law that can all be done online, so that in accordance with the characteristics of the internet (borderless, anonymous, non-confrontational, and ease of use) as stated earlier, online gambling is very easy to do, teach, and imitate by anyone. Compare this with other online diseases of society, such as online prostitution. In online prostitution, it can be said that only promotions and transactions are online, while the sexual services remain offline. This offline activity can limit or prevent someone from doing it, for example, if he has to leave the house, is afraid of being caught by someone, and so on. While online gambling can be done by anyone while doing other activities without worrying about being known by others.

From the author's description of the opportunities for crime that arise apart from the addictive effects of online gambling games, it shows the fact that online gambling games are a new disease of society in today's digital era, which is very urgent to be eradicated. As one of the cybercrimes, the eradication of online gambling can no longer be done using the conventional legal system. A more comprehensive effort is needed to overcome the problem of online gambling as a form of cybercrime. Cybercrime prevention and control must be approached more holistically in current penal and non-penal policies.

III. CLOSING

A. Conclusion.

1. The Regulations of Online Gambling in Indonesian Positive Law

a. The Penal Act Regulation of Gambling

Regulated in Article 303 of the Criminal Code with a maximum imprisonment of 10 (ten) years, a maximum imprisonment of 4 (four) years or a maximum of ten million rupiah for paragraph (1), and a maximum imprisonment of 6 (six) years or a maximum fine of fifteen million rupiah for paragraph (2); Law Number 7 of 1974 concerning Gambling Control, which increases the criminal threat contained in Article 303 of the Criminal Code and Article 542 of the Criminal Code; Government Regulation Number 9 of 1981 concerning the Implementation of Law Number 7 of 1974 concerning Gambling Control.

b. The Penal Act Regulation of Online Gambling

Regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions, Article 27 paragraph (2) regarding actions and Article 45 paragraph (1) regarding penal sanctions, with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp1,000,000,000 (one billion rupiah).

2. The Urgency of Overcoming Online Gambling as a New Disease of Society

Online gambling games bring more complex problems than conventional gambling. A number of problems that arise are:

- a. Leads to addiction to online gambling games in Indonesia's younger generation;
- b. Encourages buying and selling bank accounts owned by individuals;
- c. Triggers fraud;
- d. Encourages identity theft;
- e. Encourages money laundering;
- f. The modus operandi of online gambling makes it easy for anyone to get involved.

B. Suggestions

1. Reconstruction of the legal system in the handling of online gambling is needed, starting with the reconstruction of statutory regulations, considering the Information and Electronic Transaction Law, especially the Criminal Code, is no longer relevant in the formulation of the elements of online gambling due to the various modus operandi, motives, and elements of action, which in principle are very different from conventional gambling. More specific laws and regulations are needed regarding online gambling, not only regarding material/substantive penal law but also the formal/procedural penal law, starting from investigation, trial, and execution, considering that conventional penal procedural law is no longer able to reach online gambling acts. Reconstruction of the legal system is also necessary considering that conventional law in Indonesia is no longer capable of being a legal protection system for the community from the impact of cybercrime, including increasingly complex online gambling.
2. Infrastructure reconstruction is needed to handle online gambling, considering that this addiction/addiction act is related to other penal acts and can be a means or purpose of other crimes, such as buying and selling bank accounts, fraud, data theft, money laundering, and the fact that online gambling is very easy to access by anyone. With the reconstruction of infrastructure, regional, transnational, and international cooperation can be established. It is hoped that it will be able to overcome and eradicate online gambling to its roots, making the problem of proving it easier.

REFERENCES

- [1] Detha Arya Tifada, Yudhistira Mahabarata (ed), A. S. (n.d.). *Membangun Jakarta Pakai Pajak Judi. Membangun Jakarta Pakai Pajak Judi.*
- [2] Mau, D. H. (2007). *Judi Sebagai Gejala Sosial (Perspektif Hukum Islam)*. Jurnal Ilmiah Al-Syir'ah.
- [3] Muhammad Dziky Dzuqarnain Majid. (2017). *Porkas Sampai SDSB di Indonesia Tahun 1985-1993.*
- [4] Ni Nyoman Pujaningsih, I. G. A. A. D. S. P. (2020). Penerapan Kebijakan Pembatasan Kegiatan Masyarakat (PKM) Dalam Penanggulangan Wabah Covid-19 Di Kota Denpasar. *MODERAT*, 6(3), 459.

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- [5] Risa Herdita Putri. (2022). *Main Judi Masa Jawa Kuno (Permainan Judi pada Masa Jawa Kuno diatur, diawasi, dan ditarik pajak)*. <https://historia.id/kuno/articles/main-judi-masa-jawa-kuno-vYMd5/page/1>
- [6] Samosir, D. (2015). Faktor-Faktor yang Menyebabkan Materi Muatan Undang-Undang Bertentangan Dengan UUD 1945. *Constitution Journal*, 12(4), 792.
- [7] Soemitro, R. H. (1998). *Metode Penelitian Hukum*. Ghalia Indonesia.
- [8] Stevin Hard Awaeh. (2017). Pertanggungjawaban Hukum Atas Tindak Pidana Judi Online Ditinjau Dari Perspektif Hukum Pidana. *Jurnal Lex et Societatis*, 5(5), 160.
- [9] Wahyu Lumaksono, A. A. (2014). Legalisasi Porkas dan Dampaknya Terhadap Masyarakat Pada Tahun 1985-1987. *AVATARA, e-Journal Pendidikan Sejarah*, 2, 3.
- [10] Wood, R. T. (2007). *Past, Present and Future, San Diego, California*. Elsevier Publishing.
- [11] Indonesian Criminal Code (KUHP Indonesia)
- [12] Government Regulation No. 9 of 1981 concerning the Implementation of Law no. 7 of 1974 concerning Gambling Control
- [13] 1945 Constitution of the Republic of Indonesia
- [14] Law Number 11 of 2008 concerning Information and Electronic Transactions
- [15] Asriadi, Analisis Kecanduan Judi Online (Studi Kasus Pada Siswa SMK An Nas Mandai Maros Kabupaten Maros), S1 Thesis, Universitas Negeri Makassar, 2020, <http://eprints.unm.ac.id/id/eprint/20023>
- [16] Detha Arya Tifada, Yudhistira Mahabarata (ed), Ali Sadikin Membangun Jakarta Pakai Pajak Judi, <https://voi.id/memori/71812/ali-sadikin-membangun-jakarta-pakai-pajak-jud>
- [17] James Banks, "Online Gambling And Crime: A Sure Bet?", *The ETHICOMP Journal*, Sheffield Hallam University, 2012.
- [18] https://shura.shu.ac.uk/6903/1/Banks_online_gambling.pdf
- [19] Margarida de Sousa Tedim, Predicting Fraud Behaviour In Online Betting, NOVA Information Management School, November 2018
- [20] <https://run.unl.pt/bitstream/10362/59929/1/TEGI0423.pdf>
- [21] MHA Repors, The Threat Of Money Laundering And Terrorist Financing Through The Online Gambling Industry, MHA Finansial Crime Suports, June 2009, <https://www.egba.eu/uploads/2018/10/The-threat-of-money-laundering-and-terrorist-financing-through-the-online-gambling-industry-By-MHA-on-behalf-of-the-RGA-2009.pdf>