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A NORMATIVE JURIDICAL ANALYSIS OF CRIMINAL LIABILITY FOR THE DISSEMINATION OF ELECTRONIC INFORMATION CONTAINING GAMBLING CONTENT

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Abstract

Advancements in information technology have led to the emergence of various forms of electronic based crimes, one of which is the dissemination of electronic information containing gambling content. Such acts not only violate criminal law provisions but also negatively impact public order, morality, and the security of the digital space. This study aims to analyze the evidentiary process for online gambling crimes under the Electronic Information and Transactions Law, examine judicial considerations in sentencing perpetrators who disseminate gambling related electronic information, and investigate evidentiary obstacles and their resolutions based on a specific case in South Jakarta. The research findings indicate that the evidentiary process relied on admissible evidence as stipulated in the Criminal Procedure Code, supplemented by electronic evidence in accordance with the Electronic Information and Transactions Law. The panel of judges ruled that the defendant was legally and convincingly proven to have committed the crime of intentionally and without authorization distributing or making accessible electronic information containing gambling content. In rendering the verdict, the judges considered juridical aspects such as the fulfillment of criminal elements, evidence, and trial facts as well as non juridical aspects, including the defendant's attitude, the impact of the act, and the objectives of sentencing. Evidentiary challenges included issues related to the nature of digital evidence, perpetrator identification, and the constantly evolving landscape of information technology. In conclusion, criminal liability for the dissemination of gambling related electronic information in the South Jakarta case was applied in accordance with prevailing legal provisions, specifically the Electronic Information and Transactions Law and Indonesian criminal law.

Keywords: Criminal Liability, Electronic Information, Evidentiary Proof, Judicial Considerations, Online Gambling

INTRODUCTION

In the concept of an ideal state governed by the rule of law, the entire order of national and state life including every action, social interaction, and instance of public conduct is strictly regulated by prevailing positive legal norms (Rahardjo, 1980). The primary objective of this legal enforcement is to create, maintain, and uphold peace, tranquility, and justice within social life (Bonger, 2010). Indonesia's national legal framework is also built upon the noble values of Pancasila; philosophically, this guarantees every citizen's fundamental right to a sense of security, the protection of human dignity, and freedom from all forms of crime that undermine the social order (Astawa, 2026). Gambling is regarded as a highly reprehensible act; it is strictly prohibited and classified as a criminal offense (Andreyn & Firmansyah, 2026). This prohibition stems from the fact that gambling has been shown both sociologically and morally to conflict with moral values, religious norms, and public order. Comprehensive, multi layered legal regulations and safeguards against the dangers of gambling have been established by successive generations of lawmakers (Arianto & Manaf, 2026). The primary legal basis is found in Article 303 of the Criminal Code (KUHP), which traditionally criminalizes both the organizers and the participants of conventional gambling. As the state became increasingly aware of the latent threat gambling poses to the national economy and the nation's moral fabric, the government in collaboration with the House of Representatives enacted Law Number 7 of 1974 concerning the Regulation of Gambling. This law increased criminal penalties and reaffirmed that all forms of gambling constitute criminal offenses (Hermawan, Yetti & Afrita, 2024). Moving beyond the conventional era, as civilization entered the digital age, the state responded swiftly to the evolution of crime through modern legal instruments specifically Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) and its subsequent amendments. Article 27, paragraph (2) of this law explicitly prohibits any person from intentionally and without authorization distributing, transmitting, and/or making accessible electronic information or documents containing gambling related content. Ideally, all segments of society should demonstrate a high level of legal compliance by rejecting all forms of gambling, while law enforcement officials must stand at the forefront to take firm action against violations, thereby ensuring just legal certainty (Hermawan, Yetti & Afrita, 2024).

Despite the establishment of a robust regulatory framework featuring severe penalties, the current social reality reveals that criminal gambling remains rampant in Indonesia, permeating various strata of society from lower class individuals lured by the prospect of a financial shortcut to the middle and upper classes (Marwan, 2010). This sociological situation has become increasingly complex and difficult to control due to the wave of digital disruption and the rapid advancement of information technology and the internet, which have radically transformed the forms and modus operandi of gambling. Contemporary gambling is no longer confined to conventional physical spaces such as illicit casinos or private gathering spots requiring face to face interaction among participants. Instead, it has mutated into online gambling based on global internet networks, accessible with great ease, speed, and flexibility via computers, laptops, or the smartphones held in the palms of individuals (Manaf, 2024).

The accessibility of internet infrastructure in the modern era enables individuals to place bets anytime and anywhere conveniently, instantly, and discreetly without detection by their immediate social environment. This disruptive phenomenon is further exacerbated by the emergence of modern digital financial ecosystems that facilitate illicit transactions, ranging from cross platform interbank transfers and anonymous digital wallets (e wallets) to the use of decentralized crypto assets. The integration of these modern payment systems allows illicit gambling proceeds to circulate rapidly across borders, bypassing the physical cash handling typically monitored by traditional banking authorities (Indrawan & Dinata, 2025). Empirical evidence demonstrates that online gambling syndicates are no longer casual, small scale operations; instead, they are run by highly structured transnational networks utilizing multi

layered server technologies and generating massive economic profits for master bookmakers and their affiliate networks.

The situation described above reveals a vast, stark, and glaring gap between the ideals of prevailing positive law and the empirical sociological reality of electronic gambling practices within society. On one hand, Indonesian positive law has established strict safeguards including severe criminal penalties to protect the public. On the other hand, the flexibility of information technology infrastructure creates significant loopholes that allow cybercriminals to evade traditional law enforcement measures. The distinctive characteristics of cybercrime such as its borderless nature, the ability to perfectly conceal identities through digital anonymity techniques, the use of encrypted networks like VPNs, and the strategic placement of operational servers outside the legal jurisdiction of the Republic of Indonesia pose immense challenges for law enforcement agencies in carrying out their oversight, investigative, and enforcement functions (Muksalmina et al., 2025). This structural and functional gap gives rise to a critical academic and practical challenge: how to effectively formulate and implement criminal liability for the new actors within the online gambling ecosystem. The focus of the issue has shifted away from mere players or conventional bookmakers toward the "masterminds" operating behind the scenes actors who play a vital role in disseminating, marketing, programming, and promoting gambling related content via electronic instruments (Marzuki, 2012). The complex issues surrounding the existence of online gambling and the efforts to combat it have been extensively examined in existing literature, legal doctrine, and prior studies, all of which highlight the fundamental weaknesses of conventional legal systems when confronted with the nature of modern cybercrime. Theoretical analysis by Simamora & Pranoto underscores that the rapid evolution of information technology compels national criminal justice systems to continuously update their criminal policies (Simamora & Pranoto, 2023). Electronic based crimes (online crimes) can no longer be addressed through conventional means or outdated legal paradigms; instead, they demand responsive regulatory adjustments capable of reaching perpetrators who exploit the loopholes of the global internet. Research grounded in the principles of substantive criminal law as outlined by Tampubolon places significant emphasis on the application of the dualistic theory (Tampubolon, 2022). This theory draws a clear, independent distinction between the concept of a "criminal act" (actus reus) and the concept of "culpability or criminal liability" (mens rea). This doctrinal study establishes the legal logic that, while the act of disseminating links to electronic sites constitutes the actus reus, proving the perpetrator's malicious intent (mens rea) and deliberate intent to manage the gambling site ecosystem remains the absolute prerequisite for imposing criminal sanctions. From the perspective of the sociology of law, a comprehensive study by Soerjono Soekanto on the factors influencing law enforcement demonstrates that successful law enforcement in the digital era relies heavily on the harmonious synchronization of five key pillars: the substance of the law, the mentality of law enforcement officials, the adequacy of supporting infrastructure (including proficiency in digital forensic tools), the level of public legal awareness, and digital cultural factors (Soekanto, 2013).

The aforementioned theoretical validity is further reinforced by empirical data demonstrated through actual case law within the jurisdiction of the South Jakarta District Court. In that case, the defendant, Wijanto Sanjaya (alias William), was found legally and convincingly guilty of the criminal offense of distributing an online gambling site, consequently, he was sentenced to one year and eight months in prison and ordered to pay a fine of one hundred million rupiah. This empirical case illustrates the tangible and pressing need for progressive law enforcement within the electronic systems domain to create a deterrent effect (Yantory, 2026). As a concrete effort to bridge the gap between legal norms and empirical realities on the ground, the normative juridical approach proposed in this study entails optimizing the application of the ITE Law (Electronic Information and Transactions Law).

Specifically, this is achieved through law enforcement based on Article 27 paragraph (2) in conjunction with Article 45 paragraph (3) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions. This normative approach grants law enforcement officials the strategic authority not only to pursue the principal operators hiding behind the scenes but also to comprehensively sever the criminal distribution chain by prosecuting every supporting actor. These actors range from domain creators, promoters, and Search Engine Optimization (SEO) specialists to those disseminating links (affiliate links) who knowingly facilitate online gambling operations. Naturally, this law enforcement solution must be synergistically integrated with valid methods for establishing digital evidence under the modern criminal procedural law system (KUHAP) to ensure legal certainty, utility, and substantive justice. Based on the background of the issue, this study aims to conduct an in depth analysis of the evidentiary process regarding the criminal offense of disseminating gambling related information under the ITE Law, examine the judges' legal and non legal considerations in rendering criminal verdicts, and identify various operational obstacles encountered during the trial's evidentiary process, along with their respective solutions.

RESEARCH METHODS

This study employs a normative legal research methodology often referred to as library research because the analysis focuses on examining positive legal norms, legal principles, criminal law doctrines, and court rulings that have attained permanent legal force. The research utilizes a statute approach to systematically analyze the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), the Law on the Regulation of Gambling, and the Law on Electronic Information and Transactions (ITE Law), alongside a case approach to examine how these norms are applied in judicial rulings regarding online gambling cases within the South Jakarta jurisdiction. Given its normative nature, the study does not rely on field data but instead explores the relationship between legal theories and legal facts documented in written records. Research materials are classified into three categories of secondary data. First, primary legal materials which are authoritative and binding include the 1945 Constitution, the Criminal Code, Law No. 7 of 1974 on the Regulation of Gambling, and the ITE Law (including its amendments). Second, secondary legal materials which provide comprehensive explanations of primary materials consist of scholarly literature (such as works by Moeljatno, Lamintang, Adami Chazawi, and Soerjono Soekanto), academic journals, and legal articles concerning electronic gambling. Third, tertiary legal materials provide complementary guidance, such as the (KBBI/Great Dictionary of the Indonesian Language) and legal encyclopedias. The study primarily focuses on the criminal liability of actors who disseminate gambling related information. Data collection was conducted comprehensively through library research methods, involving the inventorying, selection, classification, and systematization of written legal materials relevant to the research topic. All collected data were subsequently analyzed using qualitative data analysis techniques. The analysis was conducted using a descriptive analytical approach by interpreting the provisions of relevant laws and regulations and correlating them with legal theory. Conclusions were subsequently drawn using the deductive method a reasoning process that proceeds from general premises or theories (criminal law rules) to address specific issues (the concrete case of disseminating online gambling links) thereby ensuring scientific validity.

RESULT AND DISCUSSION

An analysis of law enforcement regarding the dissemination of gambling-related electronic information finds a solid foundation in the juridical facts transparently revealed in the court of first instance's ruling. To provide a comprehensive picture of how judicial

authorities handle this type of electronic crime, it is essential to examine the empirical basis established through court decisions. Specifically, within the jurisdiction of the South Jakarta District Court, a thorough examination of the case was conducted regarding the defendant, officially identified as Wijanto Sanjaya (alias William). The panel of judges hearing the case declared the defendant legally and convincingly guilty of the criminal offense formulated in the Public Prosecutor's second charge namely, violating Article 45 paragraph (2) in conjunction with Article 27 paragraph (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions (as last amended by Law Number 19 of 2016), in conjunction with Article 55 paragraph (1) item 1 of the Criminal Code. The facts presented at trial clearly revealed that the defendant's position and central role were not merely that of a passive player, rather, he acted as an operational supervisor bearing full responsibility for crucial digital aspects, including managing Search Engine Optimization (SEO) strategies, handling advertising, overseeing the widespread distribution of electronic information access, and paying monthly salaries to the employees operating the online gambling site. Based on the complete substantiation of the offense's elements, the panel of judges handed down a sentence of one year and eight months of imprisonment, with full credit given for the time the defendant had already spent under arrest and in detention. In addition to this custodial sentence, the court also imposed a fine of Rp. 100,000,000 (one hundred million rupiah), with the stipulation that if the fine is not paid by the convicted person, it shall be replaced by a term of imprisonment in lieu thereof for 3 (three) months.

The validity of the criminal conviction rests entirely on the cumulative fulfillment of the elements of the criminal offense as defined by the ITE Law. The first subjective element "Any Person" refers to a legal subject capable of holding rights and obligations (or a natural person); in this case, this element was clearly met by the defendant, who possessed the psychological and mental legal capacity to be held accountable for their actions. The second subjective element"Intentionally and Without Right" was proven by the defendant's state of mind, specifically the intent (dolus) behind managing and directing the gambling SEO network. The phrase "without right" was legally satisfied because the defendant lacked any valid operational permit from the competent authorities, and the activity of distributing the gambling site directly contravened the provisions of Law Number 7 of 1974 concerning the Regulation of Gambling. Meanwhile, the objective element of the offense was satisfied by the defendant's active conduct in distributing, transmitting, and/or making accessible electronic documents containing gambling content; the defendant intentionally designed an electronic system that enabled the general public to access online gambling sites (Andreyn & Firmansyah, 2026).

The aforementioned legal facts demonstrate a fundamental paradigm shift in criminal law regarding the handling of gambling offenses: a transition from the conventional law enforcement model which focused on physical interactions in real-world spaces under the Criminal Code (KUHP) to the enforcement of laws against structured cybercrimes via the ITE Law. The fulfillment of the elements of Article 27 paragraph (2) of the ITE Law establishes an interpretation wherein a legal subject need not be prosecuted while physically seated at a gambling table; rather, active involvement in a digital "distribution chain" is sufficient to place the burden of criminal liability upon the perpetrator (Arianto & Manaf, 2026). When examined through a theoretical framework, this analysis of criminal liability finds strong relevance in the theory regarding the principles of criminal law (Astawa, 2026). This theory explicitly distinguishes between the concept of the criminal act (actus reus) and the concept of culpability or criminal liability (Astawa, 2026). In the context of interpreting the criminal act (actus reus), the defendant's actions architecting the system digitally, configuring search algorithms via SEO techniques, and distributing access links to the public constitute concrete, tangible acts. Objectively, these actions are strictly prohibited by the ITE Law because they generate massive exposure to gambling content within the digital public sphere. Conversely, regarding the

interpretation of culpability (mens rea), the judge does not merely consider the physical or digital existence of the gambling site; rather, the judge rigorously establishes that the defendant acted with intent, adhering to the principle of "no punishment without fault" (geen straf zonder schuld). The defendant's role in overseeing advertising and managing the salaries of gambling-related staff confirms the presence of premeditated intent (opzettelijk), rather than mere negligence (culpa). The perpetrator consciously willed and understood the consequences of their actions namely, the continued operation of the gambling site for the purpose of reaping financial gain (Bonger, 2010).

Furthermore, the judge's reasoning relied heavily on the legal weight of the evidence presented during the trial. Under the evidentiary system prescribed by the Criminal Procedure Code (KUHAP) integrated with the provisions of the ITE Law traditional evidence such as witness testimony had to be corroborated by valid electronic evidence. This included server logs, digital traces of URL distribution, electronic financial transaction histories from e-wallets, and computer hardware seized from the perpetrator. The judge ruled that these digital evidentiary instruments possessed valid, binding, and conclusive probative value, as they were obtained through legally sanctioned data extraction procedures. Consequently, the verdict imposing a prison sentence of one year and eight months and a fine of one hundred million rupiah reflects legal proportionality; the punishment was commensurate with the defendant's specific role as a distributor of electronic information, rather than that of a primary financier or major gambling operator (Hermawan, Yetti & Afrita, 2024).

Turning to the scholarly analysis, the District Court's ruling aligns perfectly with the study's initial normative hypothesis: that actors who facilitate and disseminate gambling content online can be held criminally liable through the combined application of the ITE Law and the Criminal Code (KUHP). The hypothesis that imposing criminal penalties on agents who distribute electronic information is legally valid was fully upheld by the Panel of Judges. In doing so, the judge applied the principles of legal certainty and social utility, maintaining that severing the chain of cyber-gambling promoters and affiliates is just as critical as apprehending the primary gambling operators. The judge's reasoning successfully balanced a juridical approach addressing the establishment of legal facts and the elements of the offense with non-juridical considerations, such as the defendant's state of mind and the moral damage resulting from the massive dissemination of the online site (Indrawan & Dinata, 2025).

When compared with the theoretical views of earlier legal scholars, the findings of this ruling offer significant reinforcement. First, the ruling supports Gustav Radbruch's Theory of Legal Certainty. Sentencing based on the ITE Law confirms Radbruch's postulate that written positive law can clearly frame borderless cybercrime without falling prey to ambiguity, while simultaneously demonstrating the law's ability to respond to the legal reality within society (rechtswerkelijkheid) where crime has migrated into cyber systems. Second, the ruling supports the Law Enforcement Theories of Soerjono Soekanto and Satjipto Raharjo. Soerjono Soekanto posited that the effectiveness of law enforcement depends on the synchronization of five factors: the substance of the law, the mentality of law enforcement officials, infrastructure and facilities, public legal awareness, and culture. Case analysis demonstrates that evidentiary obstacles specifically the volatile nature of electronic data were successfully overcome through the support of capable police technological resources and expert proficiency in tracing digital fund flows. Third, the ruling supports the theories of substantive criminal law articulated by P.A.F. Lamintang and Adami Chazawi. Lamintang stated that gambling essentially entails elements of a game, a wager, and chance, resulting in financial gain derived from the loss suffered by the opposing party. Trial facts confirm that this theory remains universally applicable and timeless, even as the medium of the activity has evolved. Betting stakes, formerly physical in nature, have now transformed into digital balances and virtual transactions; however, from a doctrinal standpoint, such acts still satisfy the essential elements of "gambling"

under Article 303 of the Criminal Code and Law No. 7 of 1974.

Nevertheless, the examination of this case also reveals various critical challenges and obstacles requiring continuous evaluation within the realm of cyber law enforcement. A primary hurdle in holding online gambling perpetrators criminally liable lies in the complexity of establishing material truth. Cybercriminals typically employ pseudonyms (anonymity), utilize encrypted Virtual Private Network (VPN) connections, and host their main gambling servers outside the jurisdiction of Indonesian law enforcement. Judges and public prosecutors frequently contend with the volatile nature of electronic data, which can easily be altered or deleted remotely. Yet, the ruling in this case demonstrates that such technical obstacles in no way negate the unlawful nature of the criminal acts committed. Once a local operational agent acting as a distributor is legally identified, their criminal liability cannot be absolved by any grounds for excuse or justification. Ultimately, this analysis confirms that the enforcement of the principle of legality (nullum delictum nulla poena sine praevia lege poenali) in the digital era operates in a highly responsive manner to protect the public from the threat of cybercrime.

CONCLUSIONS

Based on the results of the normative analysis and the case study approach described above, it can be concluded that the application of criminal liability to perpetrators of the distribution of electronic information containing online gambling has been implemented based on very solid legal certainty. First, the process of proving the crime of electronic gambling absolutely uses a combination of conventional evidence in the Criminal Procedure Code, which is legitimized by the regulation of digital evidence in the ITE Law. The strength of the evidence is placed on the transmission record and distribution of electronic documents to the public domain. Second, the Panel of Judges at the South Jakarta District Court, in handing down the verdict against the defendant, objectively and comprehensively examined two fundamental dimensions: the fulfillment of the actus reus element (the act of distributing the website unlawfully) and mens rea (the perpetrator's deliberate intention to gain profit). The judges' considerations combined legal aspects, such as the facts of the evidence in court, with non legal aspects, such as the destructive impact of gambling on the moral and economic resilience of society. The absence of excuses or justifications on the part of the defendant validates the appropriateness of imposing a prison sentence and financial fine.

In response to the urgency of cybercrime, which is dynamic and has the potential to continue evolving, several constructive recommendations are proposed. First, for law enforcement officials, continuous updating and training in digital forensics skills must be an absolute priority to effectively address challenges in identifying digital footprints, blocking foreign servers, and tracking crypto transactions. Second, for lawmakers (legislative bodies), strengthening regulatory synchronization between the new Criminal Code and the Electronic Information and Transactions Law is considered essential to minimize legal loopholes, especially for affiliates or public figures who promote online gambling under false pretenses. Third, the public is expected to develop adequate legal literacy and digital ethics to avoid involvement, whether as players, advertisers, or distributors of links that intentionally harm public order and national social interaction. This preventative awareness will undoubtedly be the key to

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