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A NORMATIVE JURIDICAL ANALYSIS OF LEGAL SANCTIONS FOR GAMBLING OFFENSES

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Abstract

This study aims to analyze the legal sanctions for the crime of gambling under Indonesian positive law specifically Law Number 1 of 2023 and to examine judicial considerations in imposing criminal sanctions on gambling offenders, based on a specific gambling case in North Jakarta. The research employs a normative-juridical legal research method, utilizing both statutory and case-based approaches. The study relies on secondary data, comprising primary, secondary, and tertiary legal materials. Data collection was conducted through literature review, while data analysis was performed qualitatively by elaborating on and correlating criminal law provisions, legal theories, and the judicial considerations found in the court ruling under study. The findings indicate that legal sanctions for gambling offenses in Indonesian positive law are established in Articles 303 and 303-bis of the Criminal Code (KUHP) and updated in Articles 426 and 427 of Law Number 1 of 2023 concerning the Criminal Code. These provisions distinguish between parties who offer gambling, provide the opportunity for it, or make a living from it, and those who merely take the opportunity to engage in gambling. In the North Jakarta gambling case, the judge considered juridical aspects namely the fulfillment of the elements of the offense, the presence of valid evidence, and the facts established during the trial. Additionally, the judge took into account non-juridical aspects, such as the defendant's circumstances, the consequences of the act, and the objectives of sentencing.

Keywords: Criminal Liability, Gamb Abling, Judicial Considerations, Law Enforcement, Legal Sanctions

INTRODUCTION

Indonesia firmly establishes itself as a state governed by the rule of law a fundamental philosophy requiring that all authority, policies, and actions of state apparatuses be grounded in the positive legal order to realize three primary legal ideals: justice, legal certainty, and social utility for the entire population (Dellyana, 1988). Within the framework of modern legal thought, law does not merely function as a passive set of written rules, rather, it acts as an instrument of social integration that coordinates and harmonizes the diverse interests of individuals and groups within society (Hakim, 2011). Furthermore, law bears the vital mandate of serving as a means of social control and social engineering, ensuring that the behavioral dynamics of society's members remain within the bounds of universally accepted norms (Kartono, 1981). In this normative context, gambling is fundamentally categorized as a form of social deviance that undermines the social order (Arief, 2001). Gambling presents an illusion of instant financial gain, bypassing the productive, rational, and value-adding processes of labor. Its reliance entirely on speculation and chance stands in diametric opposition to the national work ethic and morality; moreover, it clearly violates religious values, principles of decency, and the tenets of public order (Addiyansyah, 2023).

However, an examination of current empirical realities reveals a massive and alarming upward trend in gambling practices across Indonesia. Gambling is no longer confined to conventional realms such as physical venues, face-to-face encounters, or covert paper-coupon transactions but has undergone a significant transformation driven by modernization and advancements in information technology (Khilmi, Izzuddin & Huda, 2025). The evolution of gambling into its online form has radically altered the landscape of this illicit activity. Easy accessibility via smart devices, widespread internet infrastructure, and integration with modern digital payment systems such as digital wallets, instant banking transactions, and even crypto assets have further bolstered the reach and persistence of these illicit activities (Silvi & Nasution, 2024). Minimal oversight in cyberspace and the anonymity offered by digital platforms allow online gambling to proliferate without geographical constraints. This phenomenon has permeated various social strata regardless of economic background, aggressively targeting young people and the productive-age population. The resulting destructive impact extends beyond the personal financial crises of the individuals involved, leading to family dysfunction, a rise in secondary crimes such as fraud and theft, and even potential severe mental health issues stemming from addiction (Mahilda & Setiawan, 2025).

The prevalence of online gambling reveals a vast gap between the normative legal rules enshrined in statutory texts and the reality of law enforcement on the ground. This disparity can be analyzed in depth through the lens of the legal effectiveness theory developed by Soerjono Soekanto. According to Soekanto, the success or effectiveness of a law within society is determined by five interconnected factors: the substance of the law itself, the quality and integrity of law enforcement officials, the availability of supporting facilities and infrastructure, the level of public legal awareness, and the prevailing culture (Soekanto, 2016). Aligning with this perspective, Manullang et al. It is emphasized that the validity of the law is measured not only by formal legal aspects but also by the extent to which the law is genuinely obeyed and empirically implemented by law enforcement officials and citizens (Manullang et al., 2024). In the reality of criminal law enforcement regarding gambling cases in Indonesia, the primary problem lies in the disparity regarding the scope of repressive actions taken by law enforcement. Officials are often only able to apprehend low-level perpetrators such as small-time players, local-scale bet collectors, or field operators whose positions are easily filled by others. Meanwhile, the masterminds, major bookies, application developers, and server providers controlling the entire digital gambling system almost always evade legal consequences by operating covertly from abroad or utilizing complex cybersecurity protections (Kartono, 1981).

Beyond the structural weaknesses in the scope of cyber law enforcement, the prevalence of gambling is also driven by internal factors rooted in the culture and socio-economic conditions of the community itself. Mounting economic pressures, high unemployment rates, and limited formal job opportunities often drive individuals to seek shortcuts to meet their living needs or pursue rapid social mobility (Lamintang, 1984). Amidst financial vulnerability, the illusion of sweet victory offered by online gambling algorithms becomes highly persuasive and manipulative. Individuals with low levels of financial and digital literacy easily fall into a vicious cycle of gambling, where repeated losses actually fuel the urge to keep betting in an attempt to recoup previous losses. These psychological and economic drivers create a massive demand base at the grassroots level, consequently, even when gambling sites are blocked or targeted by authorities, new platforms quickly emerge to fill the resulting market gaps (Situmeang, Ariska & Ali, 2023).

A clear picture of the disparity in law enforcement and the shifting of gambling is evident in Indonesian criminal justice practice. Concrete supporting evidence is found in the case of defendant Muktar bin Tarkam, adjudicated by the North Jakarta District Court, which offers an objective overview of these dynamics. In December 2023, the defendant was legally and convincingly proven to have committed a criminal offense by intentionally offering and providing the general public with the opportunity to engage in digital "Macau-style" lottery gambling in the Koja area of North Jakarta. In carrying out his activities, the defendant acted as an intermediary, collecting wagers from local residents and channeling them into an online gambling platform. The Muktar bin Tarkam case perfectly illustrates the failure of grassroots prevention mechanisms, as low-level perpetrators exploit a blend of conventional methods and digital media to facilitate gambling within densely populated residential neighborhoods. This phenomenon demonstrates that the shift in gambling mediums from physical spaces to cyber platforms has permeated the lowest levels of the social hierarchy; consequently, conventional criminal law instruments often struggle to keep pace with the rapid evolution of these criminal methods (Tima & Harry, 2025).

Given the complexity of these issues, the reform of national criminal law has become an absolute necessity. The existing framework for gambling-related criminal sanctions which has long relied on the explicit provisions of Articles 303 and 303 bis of the old Criminal Code (KUHP) in conjunction with Law Number 7 of 1974 is considered inadequate and insufficiently responsive to modern technological advancements. Therefore, the enactment of Law Number 1 of 2023 concerning the Criminal Code (the National KUHP) offers a new direction for criminal policy formulation in Indonesia. Law No. Law No. 1 of 2023 introduces a legal framework that is more modern, proportionate, and adaptive to the challenges of the digital era. A key substantive improvement within this new legal framework is the distinction in categorization and the degree of criminal liability between those who organize the activity and those who are merely users. Article 426 of Law No. 1 of 2023 explicitly targets parties who offer gambling, facilitate it, or make it their livelihood with severe criminal sanctions, including a maximum prison sentence of nine years. Meanwhile, Article 427 regulates the liability of individuals who participate in gambling, imposing a more measured penalty a maximum of three years in prison. Philosophically, this distinction clarifies the direction of law enforcement, ensuring that priority repressive measures focus on breaking the chain of criminal organization (Nurhasanah et al., 2025).

Beyond merely re-evaluating the severity of penalties, Law No. 1 of 2023 offers a fundamental breakthrough through the implementation of a "double-track system" a dual sentencing approach that harmonizes the imposition of criminal sanctions (punishment) with the imposition of measures (treatment). In addressing systematic online gambling crimes, conventional imprisonment often proves ineffective at creating a deterrent effect or restoring the social order disrupted by the offense (Dewi & Adriansyah, 2023). Through the double-track

system approach, criminal law instruments go beyond the mere deprivation of the offender's physical liberty, they empower judges to impose decisive measures, such as the forfeiture of all financial gains derived from the crime, the closure and blocking of electronic platforms or access points used to facilitate gambling, and mandatory rehabilitation for offenders suffering from severe psychological dependency. Integrating asset recovery measures with the cutting off of digital access is crucial for comprehensively crippling the financial and operational foundations of gambling kingpins and operators. Consequently, optimizing the application of legal sanctions under Law No. 1 of 2023 by combining firm upstream cyber law enforcement, proportionate downstream legal action, and public education alongside socio-economic strengthening is expected to bridge the gap between legal ideals and actual practice, while simultaneously realizing genuine order, justice, and legal certainty in the digital era.

RESEARCH METHODS

This study employs a normative legal research methodology, examining the law as norms and rules existing within society. The primary approaches utilized are the statute approach and the case approach. The analysis focuses on criminal liability regarding actual gambling offenses within the jurisdiction of the North Jakarta District Court. The research relies entirely on secondary data, comprising primary legal sources (such as the 1945 Constitution, the Criminal Procedure Code/KUHAP, and Law No. 1 of 2023), secondary legal sources (legal textbooks and criminal law theories), and tertiary legal sources (such as legal dictionaries and encyclopedias).

Data was gathered through library research, involving the review, reading, study, and cataloging of various regulations, legal theories, and court judgment documents. The data was subsequently analyzed using qualitative techniques. The researcher systematically breaks down, interprets, and connects statutory provisions with theoretical frameworks such as Barda Nawawi Arief's theory on the objectives of sentencing to understand the construction of the panel of judges' reasoning in the judgment under study.

RESULT AND DISCUSSION

The regulation of legal sanctions for the criminal act of gambling within Indonesian positive law has undergone a fundamental normative transformation, particularly through the enactment of Law Number 1 of 2023 concerning the Criminal Code (the New Criminal Code). Prior to the New Criminal Code taking effect, Indonesia's criminal law framework relied on Articles 303 and 303-bis of the Criminal Code (the Old Criminal Code) and Law Number 7 of 1974 concerning the Regulation of Gambling as the primary basis for law enforcement. Under the Old Criminal Code regime, gambling acts were classified as crimes against public order and contraventions, with sanctions focusing on conventional penalties such as imprisonment and fines. Law Number 7 of 1974 subsequently reinforced the classification of all forms of gambling as crimes and increased the severity of penalties to create a deterrent effect for offenders.

Through Law Number 1 of 2023, the national criminal justice system has updated the formulation of gambling offenses by categorizing them in a more systematic and structured manner. In the New Criminal Code, regulations regarding gambling offenses are set forth in Articles 426 and 427. Article 426 of the New Criminal Code imposes a harsher penalty specifically, imprisonment for a maximum of nine years on parties who offer gambling, provide opportunities for it, or make the organization of gambling their livelihood. Meanwhile, Article 427 of the New Criminal Code specifically addresses legal subjects acting as users or players of gambling without authorization from the competent authorities, carrying a maximum penalty of three years' imprisonment. This distinction in roles demonstrates the legislature's effort to establish proportionality in sanctions between those who control or facilitate the chain of

gambling crimes and those who merely take advantage of the opportunity (Situmeang, Ariska & Ali, 2023). A substantial update in Law Number 1 of 2023 lies not only in the classification of offenses but also in the adoption of a "double-track system." This system integrates criminal sanctions (punishment) and measures (treatment) into a unified legal framework. The New Criminal Code no longer relies solely on imprisonment as the primary recourse (ultimum remedium); instead, it offers a variety of modern criminal sanctions, such as supervision orders, community service, and category-based fines. This flexibility allows law enforcement officials particularly judges to impose sanctions that are more humane and focused on social rehabilitation for offenders whose culpability is relatively minor. In addition to principal sanctions, the New Criminal Code strengthens supplementary penalties, including the forfeiture of economic gains derived from criminal activity and the closure of business premises used for gambling (Tima & Harry, 2025). The enforcement of gambling laws in the modern era is also inextricably linked to the phenomenon of digital transformation. Conventional gambling has integrated with the internet, giving rise to online gambling practices. Within the context of Indonesian positive law, regulations regarding electronic-based gambling are interpreted in harmony with Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions (the ITE Law). The provisions of Article 27 paragraph (2) in conjunction with Article 45 paragraph (3) of the ITE Law serve as the legal basis for prosecuting any person who intentionally and without authorization distributes, transmits, or makes accessible electronic information or documents containing gambling content. Thus, Indonesia's positive legal framework possesses a comprehensive normative reach, covering both physical forms of gambling and cyberspace-based gambling (Nurhasanah et al., 2025).

Theoretically, the design of legal sanctions in the New Criminal Code aligns with Barda Nawawi Arief's concepts regarding criminal policy. Penal policy must balance the interests of society, the interests of victims, and the rights of offenders. The imposition of punishment is not merely a form of physical retribution or the infliction of suffering; rather, it is a rational instrument for achieving the goals of social defense and crime prevention. Viewed through the lens of Soerjono Soekanto's theory of legal effectiveness, the legal norms embodied in Law Number 1 of 2023 meet the necessary criteria regarding the legal factor itself. However, the effectiveness of law enforcement in practice remains contingent upon four other factors: the qualifications of law enforcement officers, the adequacy of supporting facilities and infrastructure, the level of public legal awareness, and evolving legal cultural dynamics (Dewi & Adriansyah, 2023). The inclusion of legal certainty (rechtssicherheit) in the formulation of the New Criminal Code serves as a crucial foundation to ensure that the imposition of sanctions by the judiciary does not result in glaring disparities in sentencing. The provisions regarding the classification of criminal offenses and the graduated scale of sanctions in Articles 426 and 427 of the New Criminal Code curb arbitrary action while guaranteeing equality before the law. Consequently, the regulations concerning gambling sanctions in the New Criminal Code satisfy the three fundamental pillars of criminal law: legal certainty, justice, and utility for public order. The evidentiary proceedings at the North Jakarta District Court established the facts regarding the criminal act committed by the defendant, Muktar bin Tarkam. The offense took place on Monday, December 25, 2023, at approximately 22:30 WIB. The scene of the incident was located at Jalan Sindang Pulo RT.011/009, Koja Urban Village, Koja District, North Jakarta an area falling under the jurisdiction of the North Jakarta District Court.

The Defendant engaged in unlawful activity by organizing "Macau-style" togel (lottery) gambling without possessing a valid permit from any authorized official or agency. The Defendant's modus operandi involved directly accepting number selections and wager money from buyers or bettors. These transactions took place daily between 13:00 WIB and 21:00 WIB. Subsequently, the Defendant forwarded the selected numbers by uploading them to the online

gambling site (www.jneemerald.com) dan (https://www.jneemerald.com) using his mobile phone. To access the site, the Defendant utilized a personal account with the username "Vikho20" and the password "jnejaya77." He would top up his account balance (deposit funds) before placing the selected numbers into the bookmaker's system.

The nature of the Macau lottery gambling organized by the Defendant was entirely speculative, relying on an element of chance. The winning numbers were announced by the bookmaker via the website at 22:00 WIB. If a buyer's selected numbers matched the draw results, the Defendant would receive the winnings from the bookmaker to pass on to the winner. Conversely, if the wagered numbers did not win, the stake money became part of the gambling transaction, generating profit for both the bookmaker and the Defendant. The Defendant's primary motivation for organizing this gambling activity was to secure quick financial gain to meet daily living expenses, given that he lacked steady employment.

The evidentiary system in Indonesian criminal procedural law adheres to the principle of negatief wettelijk bewijsleer (negative statutory evidentiary theory), as stipulated in Article 183 in conjunction with Article 184 of the Criminal Procedure Code (KUHAP). A judge may not impose a criminal sentence on an individual unless, based on at least two pieces of valid evidence, they are convinced that a criminal offense actually occurred and that the defendant is the person who committed it. In the case of Defendant Muktar bin Tarkam, the Public Prosecutor presented four categories of evidence before the court:

First, the Public Prosecutor presented two police witnesses Nurman Laksono, S.H., and Kurniawan Ristiaji, S.H., both officers of the North Jakarta Metro Police. Both witnesses testified under oath, confirming the details of the investigation and the defendant's arrest on December 25, 2023. Their testimony consistently described the discovery of evidence specifically a mobile phone and cash in the defendant's possession at the time of the arrest. Second, before the Panel of Judges, Defendant Muktar bin Tarkam provided testimony that was honest and straightforward. The defendant confirmed the entire chronology of the arrest, his control over the "Vikho20" account on the websites www.jneemerald.com and https://www.jneemerald.com, the mechanism for collecting numbers from bettors, and the absence of authorization from the competent authorities. Third, the Public Prosecutor submitted physical evidence consisting of cash amounting to Rp113,000.00 and one Oppo A53 mobile phone. It was legally established that the mobile phone served as the primary electronic instrument (instrumenta delicti) used to access the gambling site and conduct transactions. In the verdict, the Panel of Judges ordered the cash to be forfeited to the state, while the mobile phone was ordered to be forfeited for destruction to prevent its future use in similar crimes. Fourth, pursuant to Article 188 of the Criminal Procedure Code (KUHAP), evidence in the form of "indications" is derived from the logical consistency between witness testimony, the defendant's statement, and the submitted physical evidence. This consistency establishes the indisputable legal fact that the Defendant did, in reality, organize Macau lottery gambling without legal authorization. The legal considerations constitute the analysis performed by the Panel of Judges to determine whether the Defendant's material actions satisfied all elements of the offense charged by the Public Prosecutor. The Public Prosecutor drafted the indictment in the alternative, and the Panel of Judges focused the evidentiary proceedings on the First Charge, namely Article 303 paragraph (1) item 2 of the Criminal Code (KUHP). The element of "Any Person" (Whoever) refers to a legal subject capable of bearing rights and obligations and who is legally accountable for their actions (toerekeningsvatbaar). The Defendant, Muktar bin Tarkam, appeared in court in a state of sound physical and mental health, and no grounds for excuse or justification were found that would absolve the Defendant of criminal liability. The element of "Intentionally" (Deliberately) a subjective element encompasses both awareness (weten) and intent (willen). The Defendant was consciously aware that his actions collecting betting numbers and uploading them to a gambling site were prohibited. The Defendant also

intended the consequences of these actions to occur: specifically, the execution of gambling transactions and the realization of financial gain. The element of "Offering or Providing an Opportunity to the General Public to Gamble" an objective element was fully proven by the Defendant's open acceptance of lottery number orders from residents and the community in the vicinity of Jalan Sindang Pulo. The Defendant acted as an intermediary, providing the public with access to participate in betting activities. The element of acting "without obtaining a permit" renders the Defendant's conduct unlawful (unsittlich), as the Defendant did not possess the official authorization from the government or competent authorities required by prevailing laws and regulations. With all the criminal elements of Article 303 paragraph (1) point 2 of the Criminal Code (KUHP) satisfied, the Panel of Judges possesses a strong and valid legal basis to declare the Defendant legally and convincingly guilty of committing the criminal offense of gambling (Addiyansyah, 2023).

In determining the severity of the criminal sanction imposed, the Panel of Judges did not rely solely on legal rationality but also weighed non-legal considerations including sociological and psychological aspects, as well as the defendant's personal background. This approach aligns with the views of Lilik Mulyadi, who asserts that a fair judicial ruling must integrate both legal and non-legal dimensions to achieve substantive justice (Khilmi, Izzuddin & Huda, 2025).

Aggravating factors regarding the defendant's sentence included the social impact of the offense, which disturbed public order and ran counter to the government's vigorous efforts to eradicate all forms of gambling. Conversely, mitigating factors included the defendant's polite demeanor during the trial, a candid confession that facilitated the judicial process, deep remorse, and the defendant's role as a head of the family with financial dependents (Silvi & Nasution, 2024).

From the perspective of sentencing theory, the sanction imposed on the defendant, Muktar bin Tarkam, reflects the application of the combined theory (verenigingsthoerie) and the ideas of Muladi and Barda Nawawi Arief. Sentencing is not intended as a means of vengeance or absolute retribution (retributive justice), but rather as an educational and preventive measure (Mahilda & Setiawan, 2025). The imposed punishment aims to rehabilitate the offender (reformatively), create a deterrent effect for the wider public to prevent the imitation of such acts, and restore the social balance that had been disrupted (Manullang et al., 2024).

When viewed through the lens of Aristotle's concept of corrective justice, the criminal sanction imposed by the judge serves to rectify the social imbalance caused by the violation of the law. The imposition of a sentence upon the defendant constitutes an expression of criminal liability for the culpability (schuld) incurred through their actions (Kartono, 1981). Thus, the judge's ruling in this gambling case in North Jakarta has successfully bridged the gap between normative legal certainty and the justice that prevails within society.

CONCLUSIONS

The legal framework governing gambling offenses in Indonesia has evolved into a far more structured and forward-looking system with the enactment of Law Number 1 of 2023. Unlike the old colonial Criminal Code regime, which focused solely on punitive measures, the new Criminal Code applies sanctions proportionally distinguishing between gambling organizers and ordinary players while integrating a "double-track system" that allows for the simultaneous imposition of administrative penalties and rehabilitative measures. In a real-world case involving online Macau lottery gambling in North Jakarta, the judicial panel's ruling exemplified ideal law enforcement. The judge demonstrated the ability to form a conviction based on valid evidence including police witness testimony, the defendant's open confession, and physical evidence such as mobile phones and betting money while also considering the

defendant's humanitarian (non-legal) circumstances.

To ensure this new regulation effectively minimizes this social ill, an extraordinary level of collaborative commitment is required. Moving forward, law enforcement agencies must look beyond low-level field operatives and aim to dismantle the masterminds behind gambling networks by leveraging cyber-investigation expertise. Furthermore, cultural outreach and the provision of alternative employment opportunities are essential to close the structural gaps that drive people toward gambling.

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