

Legal Aspects Of The Act Gambling Crime Online

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Received: March 03, 2025
Revised: March 19, 2025
Accepted: March 20, 2025
Published: March 22, 2025

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Abstract: Gambling is a game where players bet using money to choose one option among several options where only one option is correct and becomes the winner. Law enforcement against gambling is not optimal, gamblers and bookies are not punished in accordance with applicable law, even though gambling is clearly a criminal act that is against the law in Indonesia. The problem in this research concerns the legal aspects of online gambling based on Law Number 19 of 2016 concerning Electronic Information and Transactions and what are the inhibiting factors in law enforcement against online gambling based on Law Number 19 of 2016 concerning Electronic Information and Transactions. This research uses a normative research method. Research Results and Discussion: Legal aspects of online gambling have been regulated by Law Number 19 of 2016 concerning Information and electronic transactions and are enforced by law by carrying out preventive and repressive efforts. Inhibiting factors in law enforcement against online gambling are the legal factors themselves, human resource factors, infrastructure and facilities factors and community factors. The conclusion and suggestion in this research is that prevention efforts are needed by blocking sites that contain gambling content as part of the police's efforts to eradicate criminal acts of online gambling. Law enforcers must provide more information to the public about the dangers of online gambling crimes.

Keyword : Legal Aspects of Online Gambling; Law Enforcement Challenges; Preventive Measures Against Online Gambling.

INTRODUCTION

Gambling is a game in which players bet to choose one choice among several options where only one choice is correct and becomes the winner. The player who loses the bet will give his bet to the winner. The rules and bet amount are determined before the match starts. According to the Great Indonesian Dictionary, gambling is a game by using money or valuables as bets (such as playing dice, cards). While Online Gambling itself is a gambling game through electronic media with internet access as an intermediary. In Article 303 paragraph (3) of the Criminal Code, it is explained that "what is called a gambling game is every game, where in general the possibility of making a profit depends on mere luck, also because the players are more trained or more proficient. It includes all rules about the decision of races or other games that are not held between those who participate in the race or play, as well as all other rules."



The phenomenon of gambling has been happening for a long time. Nowadays, the development of science and technology has led to the emergence of new ways to gamble, namely online or online. This can happen because of the facilities and media that make it easier for people to access sites and applications that have elements of gambling.¹

In Indonesia, gambling has been banned in Article 27 paragraph 2 juncto Article 45 paragraph 2 of the Electronic Information and Transaction Law (ITE Law). Parties who deliberately distribute or make accessible *online* gambling are threatened with a maximum prison sentence of 6 years and/or a maximum fine of Rp 1 billion. In addition, Article 303 of the Criminal Code imposes a maximum prison sentence of 4 years and/or a maximum criminal fine of Rp 10 million for gambling players.² Even though it has been banned by Indonesian law, *online gambling* is still widely found in the community. From the point of view of legal sociology, the series of criminal rules that ensnare online gambling perpetrators have not been effective in becoming a tool of social control over society.

The definition of legal effectiveness can be interpreted as a measurement of the value of the ability of a legal principle to achieve its goals as determined in the purpose of the formation of the law. The success of a legal rule in achieving its goals can be measured by looking at how the law succeeds in regulating people's behavior. In terms of legal certainty, gambling law is still considered to be less firm because there is uncertainty about the applicable law as stipulated in the Criminal Code and the ITE Law and its amendments.³ In terms of the qualification of legal sanctions, there are differences in the sanctions that can be imposed on violators on both legal grounds. The sanctions stipulated in the Criminal Code are alternative, namely providing space for the perpetrator to choose between imprisonment or a fine. Meanwhile, the sanctions regulated in the ITE Law and its amendments are alternative cumulative, namely making the perpetrators subject to imprisonment only, fines only, or imprisonment and fines at the same time.

The difference in the nature of sanctions in the Criminal Code and the ITE Law and its amendments give rise to various interpretations. The sanctions in the Criminal Code look lighter than in the ITE Law and its amendments, although in essence deviant acts are both acts of gambling. There is also legal uncertainty in the substance of gambling regulation in the Criminal Code, namely there is a phrase "without permission" (Article 303 Paragraph 1). The phrase causes an interpretation as if the act of gambling that has obtained a license is allowed in law. This is contrary to the provisions in Law Number 7 of 1974 concerning the Regulation of Gambling and the Criminal Code which states that all forms of gambling acts are crimes. This factor talks about the facilities available to support law enforcement in achieving legal goals. However,

¹ Hasan, Z., Apriano, I. D., Simatupang, Y. S., & Muntari, A. (2023). Penegakan hukum terhadap pelaku tindak pidana perjudian online. *Jurnal Multidisiplin Dehasen (MUDE)*, 2(3), 375-380.

² Rumbay, I. S., Tangkudung, F. X., & Antow, D. T. (2023). Tinjauan Yuridis Terhadap Lemahnya Penanganan Tindak Pidana Judi Online. *Lex Privatum*, 11(5).

³ Madaniyyah, F., Fiqor, K. F. A., & Munawar, E. (2024). Sanksi Pidana Perjudian Online dalam Perspektif Kitab Undang-Undang Hukum Pidana (Kuhp) Pasal 303 Ayat (1), dan Qanun Aceh Nomor 6 Tahun 2014. *JURNAL SYNTAX IMPERATIF: Jurnal Ilmu Sosial dan Pendidikan*, 4(6), 793-802.

law enforcement actions are difficult to run smoothly without adequate facilities or facilities in the field of crime prevention and eradication. These supporting facilities include educated and expert human resources, adequate tools, and sufficient funds. In the case of online gambling, adequate means can be digital forensic experts to look for evidence of online gambling acts and sophisticated technological tools. The existence of this facility is very helpful for the government in carrying out its duties in reducing online gambling cases.

The available support facilities still seem inadequate. The proof is that there are still gaps that are very accessible to the public in playing online gambling. Community factors refer to community participation in law enforcement actions. The form lies in the level of legal awareness and public compliance with applicable laws. The existence of law enforcement is not enough to eradicate the phenomenon of deviance in society. Legal awareness from the community about a deviant act and not doing so will facilitate the achievement of the desired legal goals. The sanctions against online gambling actions so far seem to only affect public compliance. Without awareness, it will be difficult for people to comply with gambling bans.⁴ To increase public legal awareness, law enforcement can provide counseling or socialization to the public regarding certain deviant phenomena, both online and conventional, there are still people who do not know the existence of online gambling criminal rules. This shows the lack of legal knowledge and awareness of the community which, with or without realizing it, results in them breaking the law.⁵

This means that the community factor is still not in line with the goal to be achieved, which is to reduce online gambling actions. Cultural factors reflect the social values that prevail in a society. This value can indicate which deeds are good and which are bad. This cultural factor will always be related to the community factor. This is because culture arises from and is also implemented by the community. In order for the law to be effective, these values need to be aligned with the applicable law. The act of online gambling is an act that is not justified according to society. The existence of legal uncertainty that has been explained earlier also shows that it turns out that the social values of the community have also not been fully reflected in Indonesian laws and regulations.⁶ So, even though there are regulations regarding online gambling acts, the attitude of the community to comply with these regulations has not become a culture. Because there are still other factors that are not entirely in line with the social values embraced by the community. The problem is whether there is a legal aspect of online gambling?

METHOD

This study uses a normative juridical method by examining relevant legal materials related to online gambling in Indonesia. The approach used includes a statute approach by examining regulations such as

⁴ Bakhtiar, S. H., & Adilah, A. N. (2024). Fenomena Judi Online: Faktor, Dampak, Pertanggungjawaban Hukum. *Innovative: Journal Of Social Science Research*, 4(3), 1016-1026.

⁵ Intan, S. R. (2023). Legal Responsibility for the Perpetrators of Online Gambling Crimes in Indonesia. *Proceedings Series on Social Sciences & Humanities*, 14, 415-420.

⁶ Husen, T., Suryandari, W. D., & Susilowati, T. (2024). Legal Aspects in Developing Security Systems to Counter Fraud and Manipulation Threats in Online Gambling. *Return: Study of Management, Economic and Bussines*, 3(8), 609-617.

the Criminal Code, the ITE Law, and Law Number 7 of 1974 concerning Gambling Regulation. In addition, a conceptual approach is used to understand legal concepts and the effectiveness of their enforcement, as well as a comparative approach to compare regulations in other countries. The research data is sourced from primary legal materials in the form of laws and regulations, secondary legal materials such as journals, books, and expert opinions, and tertiary legal materials such as legal dictionaries and encyclopedias. Data was collected through literature review by examining relevant legal documents and scientific literature. Data analysis was carried out qualitatively with a descriptive-analytical method to examine laws and regulations and legal theories related to online gambling. In addition, this study identifies the factors that hinder law enforcement and seeks solutions to increase its effectiveness. The results of the study are expected to provide an overview of the legal aspects of online gambling in Indonesia, the effectiveness of its enforcement, and the obstacles faced. This research also aims to provide recommendations for policymakers to make the legal system more effective in eradicating online gambling in Indonesia.

DISCUSSION

The rise of online gambling and the great potential danger to people's lives encourage the urgency of having a stricter and clearer law to regulate this. The government needs to pay more attention to the legal certainty of gambling regulations in Indonesian law so that it is in line with social values that look down on all types of gambling. The public also needs to participate in supporting law enforcement to prevent online gambling cases from continuing to increase and help the government eradicate online gambling crimes. The development of technology in the current era of globalization is so rapid, especially in the information technology sector, that it makes it easy for people to receive and provide information to the wider community. The benefits of information technology can also have a negative impact, namely providing opportunities to be used as a means of committing cyber crimes. Cyber crime is defined as an illegal activity with computer intermediaries carried out through a global electronic network.⁷

Cyber crime is an activity that utilizes computers as a medium supported by a good telecommunication system, namely a dial up system, using a telephone line, or a wireless system, which uses a special antenna such as wireless. Cyber crime is also related to the term cyber space. Cyber space is seen as a world of computer-based communication. Cyber space is also considered a new reality in everyday life known as the internet. The working system of this cyber space can be said to change a distance and time that was once limited to infinity. Abuse in a cyber space is then referred to as cyber crime.

Along with the development of information technology, a new crime has emerged that is rampant in society, namely gambling that is carried out online. Online gambling is categorized as a cyber crime because in committing its crimes, online gambling uses computers and the internet as a medium to commit the crime of gambling. Gambling is basically contrary to the norms of religion, morality, and morality of Pancasila, and can be detrimental to the survival of society, nation and state. Gambling is a violation of the social culture in Indonesia. Cyber crimes, especially online gambling, require law enforcement efforts to prevent and eradicate these crimes so that they are not increasingly played. Conceptually, law enforcement is an

⁷ Saputra Gulo, A., Lasmadi, S., & Nabawi, K. (2020). Cyber Crime dalam Bentuk Phising Berdasarkan Undang-Undang Informasi dan Transaksi Elektronik. *PAMPAS: Journal Of Criminal*, 1(2), 68-81.

activity to harmonize the relationship of a value that is exposed in a good and disturbing rule and is also an attitude of action as a series of final stage value elaboration, in order to create, maintain and maintain peace of association.

Law enforcement is carried out and carried out by law enforcement. The implementation of the law in the community, apart from depending on the legal awareness of the community, is also very much determined by law enforcement officials. Law enforcement efforts against cyber crime in Indonesia are carried out by the police, because these crimes are related to state security and order issues. The police are at the forefront of anticipating various security threats and enforcing the law in Indonesia, this is according to Article 13 letter b of Law number 2 of 2002 concerning the National Police of the Republic of Indonesia which reads "The main task of the National Police of the Republic of Indonesia is to enforce the law."

Today's gambling practices are growing in various walks of life, ranging from the lower economic strata to the upper economic society. However, because the applicable law in Indonesia does not allow gambling, the activity is carried out secretly. Various forms of gambling ranging from traditional ones such as cockfighting gambling and guessing numbers such as dark toto (lottery) to the use of advanced technology using mobile phones or better known as online gambling.⁸

The use of criminal law is after the function of law as social control or social court, which is a process that has been planned in advance or aims to encourage, invite, order, or even force members of the community to comply with the legal norms and legal order that are currently in force.⁹

Article 2 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia determines that the function of the police is one of the functions of the state government in the field of maintaining public security and order, law enforcement, protection, protection, and service to the community. Based on this function, the Police have the duties specified in Article 13 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, namely:

1. Maintaining public security and order.
2. Enforce the law.
3. Providing protection, protection and to the community

The police is one of the government institutions that has an important role in the rule of law. In the legal state, legal life is largely determined by structural factors or legal institutions, in addition to other factors, such as legal substance factors and legal culture factors. Thus, the operational effectiveness of a legal structure or institution is largely determined by its position in the organization of the state. The success of the police in combating crime must be conditioned on the integrity of various approaches, which can be broadly divided into penal approaches, through the application of criminal law and non-penal efforts,

⁸ Wahyudi, R., & Sulchan, A. (2023). Penegakan Hukum Tindak Pidana Perjudian Online Yang Di Lakukan Oleh Anak (Studi Studi Kasus Polrestabes Semarang). *Jurnal Ilmiah Sultan Agung*, 2(1), 605-618.

⁹ Sugita, I. P. A., Niasa, L., & Faisal, A. (2020). PENEGAKAN HUKUM TERHADAP PELAKU JUDI ON LINE (Suatu Studi Di Polres Konawe). *Sultra Law Review*, 1073-1089.

namely countermeasures policies without the application of criminal law, but focused on various social policies.¹⁰ This is against the background that crime is a social problem and a humanitarian problem. Therefore, efforts to combat crime can not only rely on the application of criminal law alone, but also see the root of the birth of this crime problem from social problems, so social policies are also very important to be carried out. In handling gambling cases, the police can play a role by arresting the perpetrators of gambling cases, both players and bookies, and delegating the case to the court to get punished by being charged with articles in the criminal law.

The type of gambling that most often occurs in the jurisdiction is carried out by the community online because players do not need to use a lot of media or tools, only need cards and a few gambling perpetrators as well as money to be used as bets.¹¹ Countries have established many regulations regarding online gambling, including laws and regulations enacted by the locals. The Criminal Code (KUHP) has regulated the crime of gambling, which is regulated in Article 303 of the Criminal Code (KUHP) and Article 303 bis. The Criminal Code based on the formulation of Article 303 of the Criminal Code who is punished is a person who provides the opportunity to play gambling to the public, playing gambling as a livelihood. Article 303 bis of the Criminal Code applies to people who participate in the game subject to punishment as stipulated in Article 303 bis of the Criminal Code.¹²

Online gambling has been specifically regulated in Article 45 paragraph (2) jo Article 27 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008. Gambling is one of the diseases of society. As one of the diseases of society, it is necessary to identify the right causative factors to carry out treatment in the form of countermeasures. Although the threat of punishment increases and the type of offense changes (from offense to crime) in gambling cases, this societal problem cannot be solved. This is partly because humans have basic needs that must be met, but not everyone can do it for various reasons, such as not having a job or insufficient work to meet their basic needs. To provide for themselves and their families, among the options they have are gambling and gambling.

Even though they are aware of the dangers, they still have to engage in this activity even though they are aware of the risks. Given the widespread nature of the impact of gambling, the police as law enforcers are tasked with significant and demanding responsibilities. The police are government agencies that are tasked with maintaining public security and order (arresting violators of the law) or can be interpreted as members of government agencies (civil servants who are tasked with maintaining public security and order). The Great Dictionary of the Indonesian Language defines the police as a government agency responsible for

¹⁰ Wahyudi, R., & Sulchan, A. (2023). Penegakan Hukum Tindak Pidana Perjudian Online Yang Di Lakukan Oleh Anak (Studi Studi Kasus Polrestabes Semarang). *Jurnal Ilmiah Sultan Agung*, 2(1), 605-618.

¹¹ Kurniawan, Y., Siregar, T., & Hidayani, S. (2022). Penegakan Hukum Oleh Polri Terhadap Pelaku Tindak Pidana Judi Online (Studi Pada Kepolisian Daerah Sumatera Utara). *ARBITER: Jurnal Ilmiah Magister Hukum*, 4(1), 28-44.

¹² Alkarni, A. S., & Taun, T. (2023). Upaya Kepolisian Dalam Pencegahan Kejahatan Judi Online (Studi Kasus Judi Slot). *Jurnal Ilmiah Wahana Pendidikan*, 9(4), 55-59.

maintaining public security and order (enforcing the law and taking action against those who violate it). Online gambling games in Indonesia are increasing along with the increase in the ease of supporting factors to access the internet, whether computers, notebooks, or through gadgets.

The various factors that affect people entangled in online gambling are divided into two factors, namely internal factors and external factors. Internal factors are factors that arise from each individual, namely intentions, traits, talents, and emotional power.¹³ External factors include economic factors, behavioral factors studied or differential associations, and factors of availability of facilities and infrastructure.¹⁴ Gambling in any form, whether conventional, traditional and online, has a negative impact not only on society but also on children and adolescents as the next generation. The average teenager understands that information technology is an easy target for online gambling crimes.

Gambling among teenagers has a negative effect where bettors will feel addicted because they find it easy to earn money by gambling. In gambling the loser will feel curious and will try to catch up with the lost amount of money by betting gambling again with the same amount of money to bet or more to make a profit. This will have a negative impact when teenagers lose or become addicted to online gambling will easily be entangled in other criminal acts to fulfill the desire to play online gambling. The eradication of online gambling is difficult because online gambling players do not meet each other in the real world. Online gambling utilizes information technology by using servers from abroad so that it is more for law enforcement.¹⁵

Forms of online gambling include

1. Gambling, where gambling in the form of online gambling has become widespread, for example: online betting, online casinos, online football, online poker, and online lotteries.
2. Sociable Games, which is gambling where everyone will win or lose together. Examples: craps, baccarat, pai gow poker, blackjack.
3. Analytical Games, which is gambling that requires accurate research and information and has the ability to analyze various events. Examples are horse racing and sports betting.
4. Patience Games, which is a relaxed and not rushed gambling to get results, in this category, players have to wait patiently for their numbers to come out. Examples of gambling games in this category are lottery, keno, and bingo.

¹³ Irwanto, I., Yuliah, Y., Alandito, A., Daifa, D. T., Khanzani, C. L., Armando, D. A., ... & Maulidin, Z. F. (2024). SOSIALISASI SERTA UPAYA PENCEGAHAN JUDI DAN PEMINJAMAN SECARA ON-LINE DI DESA KORANJI KECAMATAN PULOSARI PANDEGLANG. *Jurnal Pengabdian Mandiri*, 3(9), 813-824.

¹⁴ Sayuti, M., Hafni, H., Regi, P., Alfisah, N., & Mahmud, I. (2024). Maraknya Judi Online di Kalangan Masyarakat Khususnya di Kalangan Masyarakat di Kecamatan Pemayung. *DISPUTANDUM: Jurnal Hukum dan Kemanusiaan*, 1(2), 51-66.

¹⁵ Hasan, Z., Apriano, I. D., Simatupang, Y. S., & Muntari, A. (2023). Penegakan hukum terhadap pelaku tindak pidana perjudian online. *Jurnal Multidisiplin Dehasen (MUDE)*, 2(3), 375-380.

To realize the achievement of the country's goals, namely a prosperous and just and prosperous country, a conducive atmosphere is needed in all aspects, including legal aspects. To accommodate the needs and aspirations of its people, the Indonesian state has determined social policy in the form of policies to realize social welfare (social welfare policy) and policies to provide social protection (social defence policy)

One of the policies to provide social protection (social defence policy) is by preventing and overcoming actual and potential criminal acts or crimes. All law enforcement efforts to prevent and overcome this crime/crime are included in the area of criminal policy. Criminal law enforcement efforts known as policy are an effort to prevent crime through criminal law enforcement, which is rational, namely fulfilling the sense of justice and usefulness. In order to overcome crimes against various means as a reaction that can be given to the perpetrators of crimes that are preventive and repressive, which can be integrated with each other if criminal means are called to tackle crime, it means that the politics of criminal law will be implemented, namely holding elections to achieve the results of criminal legislation that are in accordance with the circumstances and situations at a time and for the times that will come. come.

The use of criminal law as a means to protect the public from the threat or disruption of crime is actually a problem of criminal politics, namely a rational effort to tackle crime. In the life of governance, this is a policy of the state apparatus. The term policy in this paper is taken from the term policy (English) or politiek (Dutch). Departing from these two foreign terms, the term "criminal law policy" can also be referred to as the term "criminal law politics". In foreign literature, the term 'political criminal law' is often known by various terms, including penal policy.¹⁶

According to Barda Nawawi Arief, if criminal law efforts/means (penal) are used in crime prevention or politics, then criminal law policy must be directed to the goals of social policy which consists of social welfare policies and policies/efforts for social protection.¹⁷ Therefore, it can be said that the ultimate goal or main goal of criminal politics is the protection of the community to achieve welfare.

Non-penal policy is a crime prevention policy using means outside the criminal law. This policy can be carried out in the form of activities such as:

- a. social support and education in order to develop the social responsibility of the community; cultivating people's mental health through moral, religious education, and so on;
- b. increase of welfare and youth businesses; and
- c. Ongoing patrol and other surveillance activities by police and other security forces¹⁸

¹⁶ Mawati, E., Sulistiani, L., & Takariawan, A. (2020). Kebijakan Hukum Pidana Mengenai Rehabilitasi Psikososial Korban Tindak Pidana Terorisme Dalam Sistem Peradilan Pidana. *Jurnal Belo*, 5(2), 34-56.

¹⁷ Heath-Kelly, C., & Shanaáh, Š. (2022). The long history of prevention: Social Defence, security and anticipating future crimes in the era of 'penal welfarism'. *Theoretical Criminology*, 26(3), 357-376.

¹⁸ Priamsari, R. P. A. (2022). Kebijakan Integral Penanggulangan Tindak Pidana Penyalahgunaan Narkotika. *Jurnal Hukum Progresif*, 10(2), 99-111.

This preventive countermeasure effort focuses more on prevention before the crime occurs and indirectly that is carried out without using criminal means or criminal law. Crime prevention policies with non-penal or preventive means only include the use of social facilities to improve certain social conditions, but indirectly affect efforts to prevent crime from occurring. Several law enforcement efforts related to online gambling are preventive. What is done by the Police in handling online gambling cases is carried out by applying restorative justice legal remedies and if agreed, SP 3 (Notice of Termination of Investigation) is made by first making a Peace Letter or Dading. If it cannot be pursued in a restorative justice manner, then the investigation will be continued.

Preventive enforcement efforts are to provide an appeal to the public about the dangers of gambling and provide supervision in cyberspace through Internet media. The appeal is to go directly to the community by providing warnings and counseling. Counseling in this case is that the Police approach by providing an understanding of online gambling and providing knowledge of the dangers and losses obtained when doing online gambling. The police also gave a warning by emphasizing that gambling and online gambling are criminal offenses and will get criminal sanctions for those who do so as stipulated in Article 45 paragraph (1) of Law Number 19 of 2016 concerning Information and Electronic Transactions.

The role in tackling online gambling crimes emphasizes more on preventive methods or prevention, in preventive efforts to do so by instilling good norm values through the community through communities or community organizations in Semarang City and informing about the dangers that occur when people commit online gambling crimes.¹⁹ As well as establishing the Bhayangkara Coach, Security, and Order (bhabinkamtibmas) door to door to convey messages to the community to avoid criminal acts and always maintain security and order in the community. criminal cases because of the quality of their actions and can be subject to criminal sanctions, in this case in Article 45 paragraph (1) of Law Number 19 of 2016 concerning Information and Electronic Transactions. However, online gambling cases need to be seen in a different legal perspective than ordinary legal cases in terms of criminals. This is because the perpetrator is still categorized as immature in terms of age because he has not reached the age of 18 (eighteen) years or is not married, so that legal procedures cannot be applied as befits adults.

In the case of the arrest of children who are playing online gambling, we must use the perspective of criminal law according to Article 45 paragraph (1) of Law Number 19 of 2016 concerning Information and Electronic Transactions.²⁰ Similarly, in carrying out legal proceedings against children, in addition to referring to Law Number 8 of 1981 concerning the Criminal Procedure Law, the legal process for the suspect must be based on Law Number 11 of 2012 concerning the Criminal Justice System (SPPA). The concept of criminalization against minors is known as the concept of diversion and restorative justice. The

¹⁹ BUSONO, B. (2023). *Pencegahan Kejahatan Di Media Sosial Oleh Humas Polres Batang Dalam Perspektif Hukum Dan Hak Asasi Manusia (Studi Kasus Perjudian Online)* (Doctoral dissertation, undaris).

²⁰ Siregar, D. (2023). Hukum Transaksi Dan Informasi Elektronik Berhubungan Dengan Hukum Pelanggaran Perjudian Online. *Jurnal Hukum Positum*, 8(1), 76-95.

diversion process aims to avoid the negative effects of the criminal court process on the soul and its future development. Another purpose of diversion is to provide wider opportunities to be educated or fostered by their parents or community or state institutions. Protection is all activities to guarantee and protect their rights in order to live, grow, develop, and participate, optimally in accordance with the dignity and dignity of humanity, and to be protected from violence and discrimination. If the trial process is still enforced, then can these children have a normal life that lives, grows, develops, and participates optimally like other children who are certainly not shackled by the trial and may also be the end of the punishment that falls on them to live and settle in a correctional institution.

This is the 11th rule of the United Nations Standard Minimum Rules For the Administration of Juvenile Justice (The Beijing Rules). Diversion itself in the regulation of the criminal justice system in Indonesia has not yet received a firm regulation, but in Article paragraph (1) 18 of Law Number 2 of 2002 concerning the Police states that it is in the public interest that officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities can act according to their own judgment. In paragraph (2), the implementation of the provisions as referred to in paragraph (1) can only be carried out in very necessary circumstances by paying attention to laws and regulations, as well as the Professional Code of Ethics of the National Police of the Republic of Indonesia. This should be rethought by various parties, not just the Police in handling the case. But also Prosecutors, Judges, Legal Advisors and also all components of this nation and state.

The concept of prevention that is thought of is to prevent the emergence of trials against children who are in conflict with the law by holding meetings together for discussion or deliberation. Of course, the deliberations that are carried out are also to be a learning for the parents in particular. Just like with the Diversion Concept which has not yet received a clear regulation in the criminal justice system in Indonesia.

Restorative Justice is a concept that basically resolves the settlement of criminal acts by means of settlements outside the criminal justice system. The restorative justice process aims to find a way out of the traditional model of justice that centers on the punishment of those who commit crimes to have a deterrent effect.²¹ A person who violates the criminal law will deal with the state through its law enforcement apparatus. As an instrument of social control, criminal law relies on sanctions because its function is to deprive people of their right to life, liberty, or property.

In Indonesia, the concept of restorative justice can be seen in Law Number 39 of 1999 concerning Human Rights (HAM), in Article 66 states that arrest and detention are carried out as a last resort for children. This is also mentioned in Law Number 23 of 2002 in Article 64 which states expressly that the imposition of

²¹SAPUTRA, D. D. (2024). *Penerapan Restorative Justice Terhadap Tindak Pidana Lalu Lintas Korban Meninggal Dunia Yang Dilakukan Oleh Anak Di Bawah Umur (Penelitian di Polres Pekalongan Kota)* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

appropriate sanctions is in the best interest of children, considering that it is an asset of the nation that can be expected to continue the period with the nation and state.

The handling of online gambling has been carried out in accordance with applicable legal procedures. In addition to enforcing the law in accordance with legal regulations, both the criminal code and Law No. 11 of 2012 concerning the Child Criminal Justice System, it also seeks preventive legal measures. As for cases that are processed criminally, legal remedies are first carried out in Restorative Procedure, by seeking deliberation for the Complainant, the Reported Party and other related parties, namely the parents of the Reported. After there is an agreement, a statement is made that it will not repeat again and/or a voice of peace or dading.

With the efforts of Restorative Justice, on the other hand, Diversion legal efforts are also carried out, namely settlements outside the criminal justice system. After a diversion settlement, the case is stopped by the Investigator and/or Investigator Furthermore, online gambling perpetrators who are still children are handed over to each of their parents for coaching so that they do not gamble again.²²

Obstacles to Tackling Online Gambling Crimes Committed Online which are obstacles for the police in terms of legal structure are in the Police itself. This is because online gambling crimes are still relatively new and there are still factors that are obstacles to overcoming the occurrence of online gambling crimes which can be seen from several obstacles, namely:

a. Constraints Law Enforcement/ Human Resources

Law enforcement in the face of the outbreak of cyber crime, especially online gambling. This is against the background of the lack of personnel of law enforcement officers in the cyber crime section. In addition, there are not many officials who understand the intricacies of information technology, besides that law enforcement officials in the regions are not ready to anticipate the rampant crime because there are still many law enforcement institutions in the regions that have not been supported by the internet network and lack of training on technology, especially here in the field of cyber crime.

b. No evidence found

The absence of evidence at the time of the arrest at the scene of the incident can also be an obstacle to tackling gambling crimes, evidence is easily changed and lost. Evidence for online gambling is evidence of information media and electronic transactions that are easily eliminated or changed by these online gambling actors, so it takes speed and caution to secure evidence. With the absence of evidence of those suspected of gambling and have been arrested, cannot be examined for the purpose of investigation and must be released within a maximum period of 1x24 hours, and thus the examination of the gambling case is declared closed because the preliminary evidence is not present and no evidence was found at the crime scene. This can of course cause gambling cases to

²² Wahid, A. (2022). Keadilan Restoratif: Upaya Menemukan Keadilan Substantif?. *Jurnal Ius Constituendum*, 7(2), 307-321.

be stopped just as soon as the examination is done so that the perpetrators cannot be arrested and punished.

c. Ip Address Public Website Gambling Game

Allocation Abroad The address of online gambling websites is mostly abroad and made abroad, it will make it difficult to investigate if there is a difference in legal views between Indonesia and other countries, because it is possible that the country where the website is made, gambling is considered legal or legal. The difference in the legal views of the Republic of Indonesia with the country where the online gambling website server provider is located, in Indonesia gambling is included as a criminal act, but abroad gambling is not necessarily included as a criminal offense, so if such a thing happens the state as the place where the online gambling website server provider legalizes gambling, then the country will not want to provide data related to online gambling.

d. Bank accounts are always changing

The bank accounts used by the perpetrators to receive online gambling transactions are always changing, the online gamblers have many bank accounts and with different identities and different banks.

e. The unit that solves cyber crime problems only exists at the Police level

Based on the Regulation of the National Police Chief Number 22 of 2010 concerning the Organizational Structure and Work Procedures at the Regional Police Level, the unit that handles cyber issues is one of the parts of the duties of the Directorate of Criminal Investigations, and the Directorate of Criminal Investigation only exists at the Police level and is one of the elements of implementing the main duties under the Chief of Police. In the future, the unit that handles cyber problems will be developed to the police depending on the state's financial capabilities.

The solution to counteract crimes, known as policy, is an effort to prevent crime through criminal law enforcement, which is rational, namely fulfilling the sense of justice and usefulness. In order to overcome crime against various means as a reaction that can be given to the perpetrators of crimes that are preventive and repressive, which can be integrated with each other. If criminal means are called to tackle crime, it means that criminal law politics will be implemented, namely holding elections to achieve the results of criminal legislation that are in accordance with the circumstances and situations at a certain time and for the future. This preventive solution focuses more on prevention before the crime occurs and indirectly that is carried out without using criminal means or criminal law. Crime prevention policies with non-penal or preventive means only include the use of social facilities to improve certain social conditions, but indirectly affect efforts to prevent crime from occurring. Solutions related to online gambling that are preventive. What the Police did was to appeal to the public about the dangers of gambling and provide supervision in cyberspace through Internet media.

The appeal is to go directly to the community by providing warnings and counseling. Counseling in this case is that the Police approach by providing an understanding of online gambling and providing knowledge of the dangers and losses obtained when doing online gambling. The police also gave a warning by

emphasizing that gambling and online gambling are criminal offenses and will get criminal sanctions for those who do so as stipulated in Article 45 paragraph (1) of Law Number 19 of 2016 concerning Information and Electronic Transactions. In giving appeals in the form of counseling and warnings to the community, targeting counseling to community leaders such as religious leaders, village heads, sub-district heads, and people who have an influence in an area. In addition to community leaders, the police also target providing counseling to community organizations such as Karang Taruna in all villages in the Jurisdiction With this, the appeals that have been given by the Police are expected to be distributed to the entire community, and also to encourage the community to play an active role in eradicating online gambling carried out by their respective jurisdictions

The next effort made by the Police in eradicating online gambling is to conduct surveillance in cyberspace with Internet media. The police and the Ministry of Communication and Information Technology (Kominfo) collaborate in eradicating sites that contain elements of online gambling. The role of the Police in this case is to patrol the cyber world using Internet media to supervise the activities of each person who is indicated to be carrying out online gambling activities and to track and collect a number of links and sites suspected of containing gambling elements. The links and sites that have been collected are submitted to Kominfo for processing and selection, then sites that are proven to contain gambling elements will be blocked so that these sites cannot be accessed by the public.

Repressive countermeasures are one of the law enforcement efforts that focus more on eradicating after the occurrence of crimes committed under criminal law, namely criminal sanctions that are a threat to the perpetrators. Investigations, follow-up investigations, prosecutions and so on are all parts of the politics of criminal law, but currently to never handle cases of online gambling committed by children. The solution is that this preventive solution focuses more on prevention before the crime occurs and indirectly that is carried out without using criminal means or criminal law. Crime prevention policies with non-penal or preventive means only include the use of social facilities to improve certain social conditions, but indirectly affect efforts to prevent crimes, This collaboration between Satreskrim and Sat Binmas targets counseling to community leaders such as religious leaders, village heads, sub-district heads, and people who have an influence in an area. In addition to community leaders, the police also target providing counseling to community organizations such as Karang Taruna in all villages and villages.

The handling of online gambling cases must prioritize the principle of *lex specialis derogat legi generalis*. From the descriptions of the elements of Article 303 paragraph (1) to 2 of the Criminal Code and Article 27 paragraph (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions in the previous discussion, it is in accordance with the definition of non-criminal online gambling which is regulated in Article 27 paragraph (2) of Law Number 11 of 2008 jo Law 19 of 2016 concerning Information and Electronic Transactions. Investigators should apply a single article by applying Article 27 paragraph (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions which is a special rule (*lex specialis*) of Article 303 paragraph (1) 2 of the Criminal Code which is a general rule (*lex generalis*).

The conditions in question include the crime *lex specialis* must contain all the main elements of the *lex generalis* crime. Plus one or more special elements in the *lex specialis* that are not found in the *lex generalis*. In this case, the main elements contained in Article 303 paragraph (1) 2 of the Criminal Code are: a) whose goods; b) without permission; c) intentionally; d) offer or give the opportunity to the general public to gamble or deliberately participate in the company for it, regardless of whether to use the opportunity of a condition or the fulfillment of an ordinance. Then the addition of special elements in Article 27 paragraph 2 of the Electronic Information and Transaction Law, namely: a. intentionally; b. without rights; c. distribute, transmit, make accessible; d. Electronic information and/or electronic documents that have gambling content. Factors that affect people entangled in online gambling are divided into two factors, namely internal factors and external factors. The handling of online gambling cases must prioritize the principle of *lex specialis derogat legi generalis*. The application of Article 303 paragraph (1) of the Criminal Code for conventional gambling and Article 45 jo. Article 27 paragraph (2) of Law Number 11 of 2008 concerning ITE. Efforts to prevent online gambling can be carried out in various ways, including pre-emptive methods, preventive methods, and repressive methods. Online gambling prevention methods are an effective means of eradicating online gambling crimes.

CONCLUSIONS

Law enforcement efforts against perpetrators of online gambling crimes are carried out through preventive or preventive measures, and can be sanctioned based on Article 27 paragraph (1) of Law Number 19 of 2016 concerning Information and Electronic Transactions. The main obstacles in tackling this crime are the lack of adequate equipment and difficulties in finding evidence. The solution that can be applied through preventive methods is to socialize community leaders throughout Indonesia about the dangers of online gambling and collaborate with the Ministry of Communication and Information Technology (Kominfo) to block online gambling sites. In addition, repressive methods are also needed to take strict action against perpetrators involved in online gambling activities to provide a deterrent effect and reduce the number of these crimes.

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