

# PROSECUTION ON ONLINE GAMBLING BASED ON ENFORCEMENT OF CRIMINAL LAW IN INDONESIA

**Dedhy Wahyu Aryadi, Rommy Hardyansah, Didit Darmawan, Rio Saputra, Arif Rachman Putra, Dharma Setiawan Negara, Amin Maulani**

**Universitas Sunan Giri Surabaya**

correspondence: dr.rommyhardyansah@gmail.com

**Abstract** - Curbing online gambling through criminal law enforcement is an important issue in the face of the development of information and communication technology. This article analyzes the social, economic, and psychological impacts of online gambling as well as challenges in law enforcement against it. The research method uses an empirical approach with data collection techniques through literature research and qualitative descriptive analysis. The results show that online gambling crimes pose various challenges, including difficulties in evidence collection and the involvement of law enforcement officers. Factors such as the popularity of online gambling, ease of access, and perceived safety also influence the increase in online gambling practices. However, obstacles in law enforcement include the prevalence of gambling practices, support from certain elements, and a lack of legal awareness in the community. An integrated approach is needed in addressing the problem of online gambling, including increasing the capacity of law enforcement officials and providing adequate facilities.

**Keywords:** Online gambling, Criminal law enforcement, Social impact, Challenges, Improvement factors

## INTRODUCTION

The development of technology and communication has led to a change in the social dynamics of society, shifting its attention from local areas to a more global dimension. This transformation is mainly triggered by the ongoing advancement of information technology. The combination of information technology and electronic media, especially the internet, has had a significant impact on human life (Negara & Darmawan, 2023). As emphasized by Banks and Banks (2017), the internet has brought a new dimension to human life, changing the paradigm of distance and time into a concept that is no longer limited. These changes open up new opportunities in various aspects of life, but also bring negative impacts, especially in the field of crime (Chazawi, 2015). In the virtual realm, individuals often commit various criminal acts that would not be possible in the real world. This phenomenon, known as computer crime, involves the use of computers as a tool to perpetrate it. Consequently, as argued by McMullan and Rege (2010), computer crime brings new challenges in the investigation, prosecution and investigation processes faced by law enforcement officials. In the realm of cyber crime, various types of crimes cause complex social problems (Isnaeni et al., 2023). One of them is the increasingly widespread practice of gambling in society through the internet platform, known as online gambling. This phenomenon has become a serious concern because of its troubling impact. As explained by McMillen (1996), gambling is a criminal act that involves betting a certain amount of money, where the winning party will get the bet, simply referred to as a game of chance. Article 303 of the Criminal Code paragraph (3) explains that gambling is any form of game in which the probability of winning depends solely on luck, or may also be due to the skill or training of the player. This includes any form of betting relating to the outcome of a race or game, without involving the participation of the participants directly.

Online gambling practices offer significant convenience and speed. Its unlimited accessibility, with operational services 24 hours a day, allows the use of internet cafes, smartphones, and other devices, aided by the availability of internet signals, as explained by McCormack & Griffiths (2012). The transaction process conducted online through sms banking or mobile banking services reflects the utilization of information and communication technology as a platform for online gambling.

The popularity of online gambling is driven by ease of access and a higher perception of safety compared to conventional gambling. Various types of online gambling games, including soccer, poker cards, lottery, and casino, are the top choices for many people. However, the government's efforts to eradicate online gambling practices show that these activities do not escape legal scrutiny. In Indonesia, regulations such as Law Number 7 of 1974 on Gambling Control, Government Regulation Number 9 of 1981 on the Implementation of Law Number 7 of 1974 on Gambling Control, the Criminal Code (KUHP), and Law Number 19 of 2016 on the amendment of Law Number 11 of 2008 on Electronic Information and Transactions (ITE) have regulated the procedures and sanctions related to online gambling practices.

The practice of gambling, as regulated in the Criminal Code (KUHP), specifically in Chapter XVI Article 303, is designated as a crime against decency. In this context, gambling is a criminal offense that requires serious handling in society due to its potential negative impact on social order. When moving online, gambling practices are regulated under article 27 paragraph (2) of the ITE Law which prohibits the unauthorized distribution, transmission or access of information or documents containing gambling. The penalties for this offense are described in article 45 paragraph (2) of Law No. 19/2016, which imposes a maximum prison sentence of 6 years and/or a fine of Rp. 1 billion.

Law enforcement is the main responsibility of law enforcement officials in society, as stated by Manalu (2019). Law enforcement efforts depend on public legal awareness, and involve the involvement of law enforcement officials. In Indonesia, law enforcement related to cybercrime is the main task of the police as it is closely related to national security, as stated by Permana and Saefudin (2023). The police have a key role in responding to security threats, as mandated by Article 13b of the Indonesian National Police Law Number 2 of 2002.

To solve the problem of online gambling, the government and law enforcement officials have taken various steps, one of which is through legal instruments. Gambling sites can be blocked or the national security system can be improved to stop online gambling activities. Perpetrators of online gambling crimes can be subject to punishment in accordance with applicable legal provisions. However, criminal law requires valid evidence in accordance with Article 184 of the Criminal Code. Valid evidence can be in the form of witness testimony, expert testimony, letters, instructions, and testimony of the defendant. Criminal law itself is part of public law that regulates the prohibition of criminal acts and criminal penalties for violations.

Criminal law is often the main tool in dealing with social problems, including dealing with increasingly rampant crime, as stated by Munawar (2019) in the context of online gambling as an expression of community disease. Criminal law enforcement against online gambling cases is considered an action that must be taken consistently because this activity is considered deviative behavior, potentially causing conflict at both the individual and social levels, in accordance with the views of Mesakh et al. (2023). Its significance is not only limited to aspects of morality, but also related to the overall security of society and social order. Thus, it is hoped that law enforcement agencies can play an active and effective role in following up and overcoming online gambling crimes that violate the law.

The purpose of this study is to analyze the social, economic, and psychological impacts of online gambling on society. In addition, this research aims to identify the challenges faced in law enforcement against online gambling, including difficulties in evidence collection and the role of law enforcement officers. In addition, this research also aims to identify and understand the factors that influence the increase in online gambling, such as social, economic, and community perception factors. This research will also evaluate the barriers faced in law enforcement against online gambling, including issues of community support and the potential involvement of law enforcement personnel.

## **RESEARCH METHODS**

This research is intended to investigate ways to curb online gambling practices using a criminal law enforcement approach. The research method chosen is empirical research, specifically sociological legal research which is often referred to as field research (Fuadi, 2018). The main focus of this research is to understand how the effectiveness of criminal law enforcement in dealing with online gambling problems from a social and legal point of view related to online gambling.

In an effort to achieve these objectives, the data collection technique used is a desk research approach to investigate the theoretical foundations, relevant legal regulations, and frameworks that support this research. After the data is collected, the next step is data processing and analysis. The research data will be analyzed using a qualitative descriptive analysis method. This approach allows researchers to gain a better understanding of the phenomenon of online gambling and its social and legal impacts. It is hoped that this analysis can also produce more effective policy recommendations in dealing with the problem of online gambling through a criminal law enforcement approach.

## **RESULTS AND DISCUSSIONS**

Gambling is an activity in which individuals bet on one of several possible outcomes, where only one choice is correct and becomes the winner. The losing player will lose his/her bet to the winner according to the predetermined rules and bet amount (Tiyarto, 2012). Gambling, according to the Big Indonesian Dictionary, is a game that involves money or valuables as a bet, such as dice or card games. Online gambling, on the other hand, is a variant of gambling conducted through electronic media with the internet as the connecting bridge.

According to Article 303 paragraph (3) of the Criminal Code, gambling includes all forms of games in which success depends largely on sheer luck, although there is also an element of skill or skill of the players. The definition of online gambling is a game that uses money as a bet, with rules and bet amounts that have been determined by online gambling players, and uses internet technology as a medium of implementation.

Online gambling often becomes an addiction, where the initial experience of winning encourages players to continue gambling with increasingly large stakes. The existence of indications of addiction makes gambling service providers use technology to make it easier for gambling addicts to fulfill it. The online form increases interest (Darmawan, 2023). The belief that greater risk will result in higher rewards is the main motive for those involved. The ease of access offered by online gambling allows individuals to gamble anytime and anywhere, provided they have free time, access to betting money, as well as devices such as computers or smartphones connected to the internet.

Online gamblers come from all walks of life, including the lower middle class, with motivations including the desire to acquire wealth without hard work or productive effort. The transformation of gambling from traditional forms to online gambling makes it easier to do without the need for physical meetings with fellow gamblers, simply by using technology to make transactions such as ATM transfers or internet banking.

Overall, online gambling reflects the dynamics of human behavior influenced by psychological factors and technological convenience. Online gambling not only provides a platform for gambling, but also opens the door to legal and social challenges relating to its impact on individuals and society at large.

### **Impact of Online Gambling and Challenges in Law Enforcement**

Online gambling crimes are an example of cybercrimes that pose challenges in the evidentiary process. This obstacle is caused by restrictions on the various types of evidence that can be relied upon in accordance with Article 184 of the Criminal Procedure Code, which is a guideline for judges in making decisions. Therefore, law enforcement against online gambling crimes requires an understanding of the applicable legal rules, and it is the responsibility of the Public Prosecutor to present the evidence before the court to ascertain the truth of the criminal offense charged. Online gambling can be done easily because it only requires internet access, devices such as computers or smartphones, and money capital. This phenomenon tends to be addictive; after tasting victory, the desire to bet more increases.

Evidence used in court, such as expert testimony, letters, and instructions, play an important role in dealing with cybercrime such as online gambling. Although the testimony of witnesses still has an important value, it is difficult to find witnesses who can provide direct evidence related to the crime of online gambling. Article 1 point 26 of the Criminal Procedure Code stipulates that witnesses must be individuals who directly witness or experience criminal events. However, in the case of online gambling, this activity is often carried out in privacy, it is difficult to find witnesses who can provide direct testimony. In fact, physical traces that could be evidence in conventional gambling cases are rarely found in online gambling. Therefore, gathering evidence and enforcing the law against this kind of crime becomes more difficult and complex.

Reliance on the defendant's testimony in the judicial process often raises doubts about its accuracy. Defendants are under no obligation to provide truthful testimony under oath, which leaves the possibility of lying or denying involvement in the crime wide open. Reliance on the testimony of defendants is further complicated in online gambling cases due to the excuses they may give, such as intimidation during questioning, to avoid responsibility for their actions.

As an alternative, the testimony provided by witnesses in court becomes the main focus in the evidentiary process, as stipulated in Article 185 paragraph (1) of the Criminal Procedure Code. However, challenges arise when the number of witnesses who meet the criteria set by the law is very limited in online gambling cases. Another factor that adds to the complexity is the characteristics of digital evidence, which is often the only form of evidence available. The process of collecting and analyzing digital evidence requires specialized expertise and careful validation to ensure its authenticity.

Therefore, in handling online gambling crimes, an integrated approach is needed. This includes increasing the capacity of law enforcement officers in managing digital evidence as well as inter-agency cooperation for more effective law enforcement. In addition, the importance of expert testimony in explaining the technical aspects of online gambling to judges who may not have an understanding of the technology involved.

The phenomenon of online gambling shows participation from various circles of society, regardless of age, gender, or socio-economic status. However, the dominance of online gambling players by the middle and lower classes reflects the notion that online gambling is a quick way to acquire wealth without hard work. The transformation of gambling from conventional to online forms facilitates access and increases the number of gambling players in various walks of life.

Online gambling provides easy access without the need for physical meetings with gambling partners or conducting gambling secretly in certain locations. With the advancement of technology, gamblers can simply sit in front of a computer or smartphone device connected to the internet to conduct gambling transactions. This allows them to make deposits through ATM machines or internet banking services, making online gambling accessible and doable anytime and anywhere.

Despite the many opportunities offered by online gambling, it is also necessary to consider the social, economic and psychological impacts on society. The evidentiary challenges in online gambling cases show that law enforcement must keep up with technological developments to deal with cybercrime more effectively. Research and development

continues to improve the ability of law enforcement officers to tackle online gambling and to provide better protection for the public from its negative impacts.

In developing countries, especially Indonesia, the main challenge in law enforcement relates to the existence of the legal system itself, and more to the quality and readiness of law enforcement officials. Law enforcement officers are expected to be role models in society, demonstrating capabilities that are in line with the expectations and needs of society. Effective communication skills and the ability to explain themselves to various target groups are important aspects, which will encourage active participation from the community at large. In addition, law enforcement requires the support of adequate facilities and equipment. This includes the presence of high-quality, skilled, well-coordinated and financially supported human resources. Without this infrastructure, law enforcement agencies will struggle to optimally achieve their objectives.

In addition, it is important to analyze online gambling as a behavior that violates social norms prevailing in cyberspace. To design effective law enforcement strategies, an understanding of the root causes of this behavior is crucial. Online gambling, as a form of cybercrime, requires law enforcement officials to have specialized expertise and appropriate equipment to handle related cases. Therefore, improving the quality and readiness of law enforcement officers and providing adequate facilities are important steps to ensure effective law enforcement in Indonesia.

There are various factors that contribute to the rise of gambling crimes, especially with the rapid development of digital technology. Significant growth in apps covering various areas of business and employment is one of the main drivers. One significant driver is the desire to achieve wealth without great effort and in a short period of time. The desire to acquire wealth quickly is one of the main motivations that drives many people to engage in online gambling practices.

The enforcement of criminal law against individuals involved in online gambling practices is considered urgent for several significant reasons. First, online gambling practices can have a substantial detrimental impact on society. These impacts include the risk of addiction, which has the potential to devastate aspects of an individual's personal and professional life. Secondly, a real risk of bankruptcy is often associated with gambling practices, where individuals can lose large sums of money in a short period of time. Furthermore, online gambling practices can also contribute to mental health issues, such as stress, depression and anxiety, which can worsen one's psychological state.

In addition to being personally detrimental, online gambling practices also have the potential to damage an individual's social relationships. Dependence on gambling often causes individuals to neglect relationships with family and friends, and undermines trust and social integrity. Therefore, the enforcement of criminal law against online gambling offenders is not only important to maintain legal order, but also to protect the welfare of society as a whole. This effort is necessary to maintain the stability of the social order and ensure that society does not fall into the dangers caused by online gambling practices.

Law enforcement has the objective of protecting the public from potential risks arising from online gambling as well as ensuring public welfare. Firstly, illegal gambling practices can disrupt social order and create an unstable situation. Therefore, criminal law enforcement aims to maintain public order and security, so that individuals can live their lives in a safe and stable environment.

Illegal gambling can also be an impetus for other crimes such as money laundering, fraud, and other criminal acts. By enforcing the law against online gambling offenders, authorities can prevent the occurrence of related crimes that can harm society. The enforcement of criminal laws can also serve as a strong indicator that lawlessness will not be tolerated. This can have a significant deterrent impact, making individuals more cautious before engaging in unlawful gambling practices.

As such, effective law enforcement not only protects society from the immediate dangers posed by online gambling, but also prevents further damage caused by related crimes. This ensures that society remains safe and stable, and that the law is respected and adhered to by all walks of life.

### **Factors Increasing Online Gambling and Barriers to Law Enforcement**

Factors that influence the increase of online gambling in society include social and economic aspects. Many people believe that online gambling offers a quick and easy way to achieve huge financial gains. This becomes an attraction for individuals looking for a shortcut to wealth. This belief triggers greater interest and participation in online gambling, as it is perceived as an efficient way to achieve financial goals instantly.

In addition, situational factors also play an important role in increasing the popularity of online gambling in society. People who tend to be consumptive and look for quick solutions to earn money respond positively to promotions that emphasize success in online gambling. News about success in gambling is often widely highlighted, which reinforces the perception that online gambling is an effective way to achieve wealth quickly. This situation creates an environment that encourages many people to engage in online gambling, as it is perceived as an opportunity to achieve financial success quickly and easily.

Participation in online gambling is often influenced by complex psychological factors. Many individuals are drawn to try online gambling because of their curiosity drive or a desire to expand their experience. Once they engage in this activity and achieve a little success, the urge to continue taking risks and increasing their bets gets stronger. They



believe that the possibility of winning can happen to anyone, including themselves, which encourages them to continue participating. For some, online gambling is perceived as an opportunity to succeed and win, creating a positive perception of the activity.

The perception of winning probability also plays a key role in attracting individuals to gamble online. Many gamblers have an unrealistic view of the true odds in gambling, often feeling confident that they will experience success, even though the actual odds are very small. This belief is sometimes based on their subjective assessment of the situation or previous experiences, which can create an unrealistic illusion of winning. The urge to continue participating comes from the belief that winning is only a matter of time and not something that is impossible.

In addition to psychological factors, individuals' beliefs in their ability to use information and communication technology (ICT) also play a role in their participation in online gambling. Those who believe that success in gambling largely depends on their skills in utilizing ICT tend to feel more confident in taking risks. They often find it difficult to distinguish between successes achieved thanks to skill and those due to sheer luck. This belief motivates them to continue to seek further victories, convinced that with enough time and effort, they will achieve the desired results. This phenomenon reflects the complexity of human behavior in response to psychological drives, perceptions of probability, and beliefs in individual abilities.

Regulations related to online gambling crimes are regulated in Law Number 11 of 2008 concerning Electronic Information and Transactions. The regulation is contained in Article 27 paragraph (2) which states that every person who intentionally and without right distributes, transmits, or makes accessible electronic information or electronic documents containing gambling, will be subject to sanctions. Article 45 paragraph (1) states that a person who fulfills the elements as referred to in Article 27 paragraph (2) may be subject to a maximum imprisonment of 6 years and/or a fine of up to Rp1,000,000,000.00. Meanwhile, Article 52 paragraph (4) emphasizes that in the case of a criminal offense committed by a corporation, the basic punishment will be increased by two-thirds.

The obstacles in law enforcement against gambling crimes can be grouped as follows: First, the widespread practice of gambling in community life, both hidden and open, reflects the apathy of the community towards the phenomenon of gambling. This behavior is considered normal and has even become a habit, due to a lack of legal awareness and knowledge of the laws governing gambling. This lack of legal awareness causes people to assume that gambling is not a violation of the law, thus increasing the risk of an increase in gambling cases due to a lack of legal knowledge.

Secondly, support or backing, which is the term for collaboration between gambling offenders and certain elements, often affects the effectiveness of law enforcement officials in cracking down on gambling crimes. In this case, the bookies must obtain support from certain individuals, often from the police, to launch their business. After getting this support, the bookies pay the police officers to keep the business running smoothly. The presence of backing from certain elements causes uncertainty of information related to gambling, hampering law enforcement officials in handling gambling cases. As a result, law enforcers more often arrest members of gambling retailers than bookies, because bookies have collaborated with certain police officers.

Prevention efforts against online gambling are carried out by the police through counseling in schools and communities, implemented by the Directorate of Community Development (Dit Bimmas). When countermeasures are ineffective, the police can provide guidance. Although Dit Reskrimsus is in charge of taking action, Dit Bimmas is responsible for preventive efforts through counseling in schools and communities.

Repressive efforts are social controls that are carried out after a criminal offense, where the focus is on tackling crimes that have already occurred. In repressive countermeasures, the step is not to prevent crime but to take firm action against the perpetrators of crime to provide a deterrent effect. The police have the responsibility to take action against online gambling cases that disturb public order. The detective function in the police, which is responsible for handling cyber crimes such as online gambling, is based on strong laws. This is reflected in the establishment of a cybercrime unit based on National Police Chief Decree No. KEP/54/X/2002: KEP/54/X/2002, which is tasked with investigating and prosecuting criminal offenses related to information technology, telecommunications, and electronic transactions.

## **CONCLUSIONS**

This study provides an understanding that technological developments have a significant impact on the widespread practice of online gambling. Collaboration between law enforcement agencies, regulators and other parties can create a safer and more regulated environment. In addition to law enforcement, prevention and education approaches are also important. The public needs to be made aware of the negative impacts of online gambling, while rehabilitation efforts should be part of the law enforcement strategy. Thus, law enforcement can be proactive in preventing acts of online gambling and creating an environment free from the practice.

Some suggestions include increasing the socialization of the ITE Law so that people are more aware of the legal consequences of online gambling. Law enforcement is also expected to be more progressive in eradicating online gambling by blocking gambling sites. In addition, the author proposes the need for legal provisions that specifically

regulate online gambling crimes, in accordance with Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. The principle of "Lex Specialis derogat legi generali" applied in the Indonesian legal system emphasizes the importance of special laws in regulating cyber crimes such as online gambling.

## REFERENCES

- Banks, J., & J. Banks. (2017). Organised Crime, Gambling and Illegal Gambling. *Gambling, Crime and Society*, 111-136.
- Chazawi, A. (2015). *Tindak Pidana Informasi & Transaksi Elektronik*, Media Nusa Creative, Malang.
- Darmawan, D. (2023). Studi Empiris Perilaku Konsumen Aliexpress: Peran Online Consumer Review, Online Customer Rating, dan Persepsi Harga Terhadap Keputusan Pembelian Impulsif, *Jurnal Baruna Horizon*, 6(1), 1-13.
- Fuadi, M. (2018). *Metode Riset Hukum Pendekatan Teori dan Konsep*, PT. Raja Grafindo Persada, Jakarta.
- Isnaeni, M., D. Darmawan, S. Sutriyono, D. Sulistiono, & A. D. Octavianto. (2023). The Crime of Brand Counterfeiting in Commerce, *Studi Ilmu Sosial Indonesia*, 3(2), 101-118.
- Issalillah, F. & R. Hardyansah. (2024). Relevance of Privacy within the Sphere of Human Rights: A Critical Analysis of Personal Data Protection, *Bulletin of Science, Technology and Society*, 3(1), 31-39.
- Manalu, H. S. (2019). Penegakan Hukum terhadap Pelaku Tindak Pidana Perjudian Online. *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 2(2), 428-539.
- McCormack, A., & M.D. Griffiths. (2012). Motivating and Inhibiting Factors in Online Gambling Behaviour: A grounded theory study. *International Journal of Mental Health and Addiction*, 10, 39-53.
- McMullan, J. L., & A. Rege. (2010). Online Crime and Internet Gambling. *Journal of Gambling Issues*, 54-85.
- Mesakh, N., E.A. Ginting, N.Y. Simbolon, & M. Yasid. (2023). Penegakan Hukum Tindak Pidana Perjudian Online di Kota Medan. *DIKTUM*, 2(1), 180-186.
- Munawar, S. (2019). Kebijakan Penegakan Hukum Pidana Terhadap Tindak Pidana Perjudian. *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum*, 1(1), 1-18.
- Negara, D.S. & D. Darmawan. (2023). Digital Empowerment: Ensuring Legal Protections for Online Arisan Engagements. *Bulletin of Science, Technology and Society*, 2(2), 13-19.
- Permana, H. C., & Y. Saefudin. (2023). Peranan Kepolisian Polres Purbalingga Dalam Penanggulangan Judi Online Pragmatic Play/Slot Di Wilayah Purbalingga. *Amerta Jurnal Ilmu Sosial dan Humaniora*, 3(2), 19-28.
- Tiyarto, S. (2012). *Penegakan Hukum Terhadap Tindak Pidana Perjudian*, Genta Publishing, Jakarta.