

Juridical Analysis of Online Gambling Crimes from the Perspective of the Criminal Code (KUHP) and the ITE Law: A Study of Decision No. 36/Pid.Sus/2025/PN MJY

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ABSTRACT

The development of information technology has expanded the forms and modes of gambling conducted through electronic systems, thereby requiring adjustments in the framework of regulation and the application of criminal law. This research aims to analyze the regulation of gambling offenses from the perspectives of the KUHP and the UU ITE, as well as to examine the application of Article 45 paragraph (3) in conjunction with Article 27 paragraph (2) of the UU ITE to the defendant in the said decision based on the prevailing legal normative construction. The research method used was normative legal research with a statutory approach and a case approach, conducted through the examination of statutory regulations, criminal law doctrines, and legal considerations contained in court decisions. The results of the research show that the KUHP as *lex generalis* regulates gambling by emphasizing acts of providing, giving opportunities, as well as participating in gambling activities as regulated in Article 303 and Article 303 bis of the KUHP. Meanwhile, the UU ITE as *lex specialis* contains regulations concerning acts of distributing, transmitting, or making accessible electronic information containing gambling content as regulated in Article 27 paragraph (2), which conceptually are directed at parties who act as providers, operators, or facilitators of online gambling. This research affirms that the differences in regulatory character between the KUHP and the UU ITE require a systematic legal interpretation of the function and purpose of each norm.

INTRODUCTION

The global proliferation of internet connectivity and digital technologies has fundamentally transformed criminal landscapes across jurisdictions, creating novel forms of traditional offenses that exploit technological infrastructures while evading conventional regulatory frameworks (Wall, 2007; Brenner, 2010). Among the most significant manifestations of this phenomenon is online gambling, which represents the digital migration of age-old gambling practices into cyberspace, generating complex challenges for legal systems designed primarily for physical, territorially-bounded criminal activities (McMullan & Rege, 2010; Gainsbury et al., 2015).

International research consistently documents exponential growth in online gambling markets, with global online gambling revenue projected to exceed USD 100 billion annually, facilitated by technological advances including mobile platforms, cryptocurrency payment systems, and sophisticated user interfaces that lower barriers to participation while obscuring jurisdictional boundaries (Gainsbury, 2012; King & Delfabbro, 2016). This technological evolution has exposed critical regulatory gaps in criminal law systems worldwide, as traditional gambling prohibitions typically focused on physical establishments, face-to-face transactions,

and geographically-defined enforcement struggle to address digitally-mediated gambling that operates across borders, utilizes encrypted systems, and involves dispersed actors playing distinct roles in complex criminal networks (Brenner & Koops, 2004; Chawki & Abdel Wahab, 2006).

Scholarly analyses emphasize that effective regulation of online gambling requires nuanced legal frameworks capable of distinguishing among various participant roles including platform operators who establish gambling systems, content distributors who promote gambling services, technical facilitators who provide payment or hosting infrastructure, and end-users who participate as players while balancing criminal law's deterrent and punitive functions against principles of proportionality and legal certainty (Rose, 2006; Gainsbury et al., 2014). Southeast Asian jurisdictions, including Indonesia, face particular challenges given rapid internet penetration rates, limited digital literacy regarding online crime, weak regulatory enforcement capacity, and legal frameworks developed prior to widespread digitalization, creating environments where online gambling flourishes despite formal prohibitions while prosecution patterns reveal inconsistent application of cyber-criminal law to diverse participant categories (Lim & Hoxby, 2004; Banks, 2013).

The development of the world of technology has made the pattern of crime shift. From what used to be done traditionally, now many are moving into the digital realm, including in the practice of gambling. Online gambling is growing rapidly in Indonesia even though it is normatively prohibited by positive laws. Data from the Ministry of Communication and Information of the Republic of Indonesia interprets that in 2023 more than 4,000 active online gambling sites will be detected with transaction values of billions of rupiah every month (Juhara et al., 2025). This phenomenon not only represents massive violations of the law, but also shows the weak legal certainty in enforcement practices. The involvement of people across professions from students to informal workers shows that legal prohibitions have not fully functioned as instruments of social control. This condition is exacerbated by the low legal literacy of the community, as shown by Fadhli (2024) who found that only about 30% of respondents understand gambling as a criminal act. This situation indicates that legal certainty as a fundamental principle has not been internalized, the right steps are needed so that the handling of online gambling in Indonesia can run optimally (Ichsanullah & Santiago, 2022; Rahardjo, 2007).

Normatively, the prohibition against gambling has long been regulated in Article 303 and Article 303 bis of the Criminal Code (KUHP) as a *lex generalis* that focuses on the element of games that depend on expectations and bets on property. However, the development of digital technology has given birth to a new form of gambling that was not fully imagined by the drafters of the Criminal Code. To answer this challenge, Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) is present as an additional legal instrument that specifically regulates the prohibition of distributing, transmitting, and facilitating gambling content through electronic systems. ITE Law No. 1 of 2024 is not a new law standing alone, but is the second amendment to the previous ITE Law which originated from Law Number 11 of 2008 concerning Information and Electronic Transactions, which was first amended by Law Number 19 of 2016 before being revised again through Law No. 1 of 2024 to adjust to the dynamics of digital technology and provide legal certainty and a healthy digital space. ethical, and fair. In

this revision, a number of existing articles were amended and a number of new articles were added, including provisions containing a prohibition on the dissemination of certain content and a more comprehensive criminal regulation in the context of electronic systems, thereby increasing the effectiveness of law enforcement against illegal practices in the digital world such as online gambling.

The defendant Nurma Atmaja alias Fuad Bin Hamim, a 34-year-old driver from Lumajang, was arrested on October 31, 2024 on the side of the Caruban–Ngawi Highway, Madiun Regency, in connection with an online gambling case that is being investigated. The arrest was made after the police found a Redmi 12 cellphone along with an active SIM card used by the defendant to access the online gambling site Next1221. From the examination, it was known that the defendant registered an account with the username Satriatimur1 and password respector007, as well as connecting his Bank BCA account to make deposits and withdrawals of gambling proceeds. In practice, the defendant made a deposit of IDR 50,000 through the Dana and QRIS applications, then played the online slot game "Mahjong Ways", several times obtained profits of up to IDR 800,000 and IDR 500,000 which were withdrawn to his personal account, while at the time of arrest the account balance remained of IDR 2,253.28. Evidence in the form of mobile phones and online gambling accounts was successfully secured for further examination. The Public Prosecutor charged the defendant with Article 45 paragraph (3) jo Article 27 paragraph (2) of Law No. 1 of 2024 concerning ITE, as well as an alternative to Article 303 paragraph (1) 2 of the Criminal Code, the Defendant was found guilty of online gambling and was charged with 1.5 years in prison plus a fine of Rp20 million, or 6 months imprisonment if not paid, confiscation of mobile phones for the state, destruction of online gambling accounts, and case costs of IDR 5,000.

The inequality between the ideality of norms and law enforcement practices is evident in Decision Number 36/Pid.Sus/2025/PN Mjy. In the case, the defendant Nurma Atmaja alias Fuad bin Hamim, a 34-year-old driver, was arrested for playing Mahjong Ways type online slot gambling. The defendant is known to have been gambling online for approximately four to five months and has no role as an organizer or facilitator. However, the court sentenced him to 1 year and 3 months in prison and a fine of IDR 20 million based on Article 45 paragraph (3) jo. Article 27 paragraph (2) of the ITE Law. This decision raises juridical problems because the defendant's actions substantially meet the elements of gambling as regulated in the Criminal Code, and not the offense of distribution or facilitation of electronic content as regulated in the ITE Law. Thus, there is a gap in the misapplication of law between the character of the perpetrator's actions as a player and the legal regime used to punish him.

The judge's legal considerations are at the core of the decision-making process in the judicial system. In the context of the judicial system, judges' considerations play a central role in bridging legal norms with concrete justice. Judges are not only required to apply the law textually, but also to interpret the law rationally, proportionately, and contextually. The judge's consideration should include a thorough analysis of the facts of the trial, evidence, the position of the defendant, and the purpose of the sentence. A good decision must be accompanied by a clear and adequate ratio of decidendi so as not to fall into the category of on sufficiently gemotiveerd (insufficient legal consideration). In online gambling cases, judges are faced with a crucial choice: whether to use the Criminal Code as the basis for criminalizing players, or to apply the ITE Law, which is conceptually more directed at organized cybercrime. The accuracy

of choosing a legal basis is an important indicator for the realization of legal certainty and substantive justice (Budiono et al., 2022).

The Theory of Legal Certainty put forward by Satjipto Rahardjo (2007), which views legal certainty as an important prerequisite in the state of law, but not the final goal. Legal certainty must go hand in hand with the principles of usefulness and justice so that the law remains alive and relevant in society (Ichsanullah & Santiago, 2022). In practice, legal certainty is reflected through the consistent and predictable application of laws and regulations (Shcherbanyuk et al., 2023). Problems arise when the provisions of the Criminal Code as an old legal product are faced with the reality of digital crimes that are cross-border and technology-based. Elements of gambling in the Criminal Code are often forcibly drawn into the digital context without an in-depth analysis of the position of the perpetrator and the character of his actions (Sulubara et al., 2025).

The ITE Law exists as a *lex specialist* that provides normative and technical tools to tackle electronic-based crimes (Kartika, 2019). Based on the principle of *lex specialist derogat legi generalis*, the ITE Law should be applied selectively and functionally. The ITE Law does not create a new gambling ban, but rather expands the mechanism of proof and prosecution against those who disseminate or facilitate gambling through electronic media. The shift in focus from "gambling games" to "distribution and access to electronic content" is the main essence of the ITE Law (Sugeng & SH, 2020). However, in judicial practice, this extension is often used to ensnare individual players, thus blurring the line between the main actor and the end user. This condition has the potential to cause legal uncertainty and criminal imbalances (Vedwal, 2023; Sangaji, 2024).

Based on this description, there is a significant research gap, namely the absence of a juridical study that specifically criticizes the accuracy of the application of the ITE Law to online gambling actors who are positioned as players, not organizers. The novelty of this research lies in a normative-critical analysis of Decision Number 36/Pid.Sus/2025/PN Mjy by emphasizing that the application of the ITE Law to online gambling players has the potential to disproportionately shift the function of the Criminal Code, as well as weaken the principle of legal certainty. This study not only compares the norms of the Criminal Code and the ITE Law, but also assesses the rationality of judges' considerations in determining the basis for punishment. That way, this research is expected to be able to add conceptual insight in the development of criminal law in the digital era as well as practical recommendations for judges and law enforcers so that the application of the law to online gambling is fairer, on target, and based on the principle of legal certainty.

Based on the background that has been explained, the main research questions guiding this inquiry are: (1) How do the Criminal Code (KUHP) and the ITE Law respectively regulate gambling offenses, what are their conceptual differences in scope and focus, and how should these frameworks coordinate in addressing online gambling while maintaining their distinct regulatory purposes? (2) Is the application of Article 45 paragraph (3) in conjunction with Article 27 paragraph (2) of the ITE Law to the defendant in Decision Number 36/Pid.Sus/2025/PN Mjy legally appropriate based on systematic interpretation of these provisions' normative construction, proper scope, and intended targets, and what are the juridical implications of this application for legal certainty, proportionality, and role-appropriate liability attribution in Indonesian online gambling prosecution.

This research pursues two primary objectives that structure the analytical inquiry and findings. First, to comprehensively examine and compare the regulatory frameworks governing gambling offenses under the Criminal Code (KUHP) and the ITE Law, explicating their respective scopes, elements, conceptual foundations, and proper spheres of application, thereby establishing clear doctrinal foundations for understanding how Indonesian criminal law addresses conventional and online gambling through complementary but distinct normative instruments. This objective requires systematic statutory interpretation, examination of legislative history and intent, analysis of doctrinal scholarship, and consideration of comparative jurisprudence to construct comprehensive understanding of each framework's structure, purpose, and limitations. Second, to critically evaluate the application of Article 45 paragraph (3) in conjunction with Article 27 paragraph (2) of the ITE Law to the defendant in Decision Number 36/Pid.Sus/2025/PN Mjy, assessing whether this application comports with proper legal interpretation, respects distinction between content distributors and content users, maintains legal certainty principles, and achieves proportionate, role-appropriate criminal liability attribution. This objective demands detailed case analysis examining factual circumstances, judicial reasoning, element-by-element legal assessment, and normative evaluation against established principles of criminal law interpretation and application.

The anticipated contributions of this research span theoretical, practical, and policy dimensions. Theoretically, this study enriches Indonesian criminal law scholarship by developing systematic frameworks for understanding how general criminal prohibitions and specialized cybercrime regulations should coordinate in addressing digitally-mediated traditional offenses, with implications extending beyond gambling to broader categories of conventional crimes migrating to digital platforms. Practically, this research provides judges, prosecutors, and defense attorneys with analytical tools for proper application of Criminal Code and ITE Law provisions to online gambling cases, including criteria for role-differentiation, interpretive principles for statutory construction, and precedent analysis demonstrating proper and improper applications. From policy perspectives, this study generates evidence-based recommendations for legislative reforms clarifying ITE Law scope, judicial guidelines ensuring consistent application, and prosecutorial standards preventing systematic misapplication of cybercrime regulations beyond intended purposes. Ultimately, this research advances rule of law values legal certainty, proportionality, role-appropriate liability essential for legitimate, effective criminal justice systems in digital age contexts where technological change continuously challenges inherited legal categories and traditional enforcement paradigms.

METHOD

This type of research was normative law research, which is research that examines law as a building of a norm system (Rohman et al., 2024). This research focuses on legal principles, legal norms, and the harmony of legal hierarchies. In the process, three approaches are used: the statute approach, the conceptual approach, and the case approach. The goal is to explore in detail the juridical aspects of the criminal act of online gambling based on the Criminal Code and the ITE Law, so that a more comprehensive understanding of the issues discussed can be obtained

In accordance with the characteristics of normative legal research, this study uses primary and secondary legal materials as the main source (Marzuki, 2022). This research uses primary legal materials in the form of related laws and regulations and District Court Decision Number 36/Pid.Sus/2025/PN Mjy as the object of study. The secondary legal materials include legal literature, journal articles, and comments from experts, and other scientific works relevant to the issue of online gambling crimes.

The technique of collecting legal materials is carried out as a whole through literature studies, namely by collecting information and data from various written sources that are relevant to the research topic. Furthermore, the legal material analysis technique is carried out by categorizing information obtained from data sources, then connecting it with applicable theories and regulations. The data that has been collected is critically analyzed to find patterns that are relevant to the formulation of the problem, so that the results of the analysis are expected to contribute to the development of legal understanding of the crime of online gambling in Indonesia.

RESULT AND DISCUSSION

Regulation of Gambling Crimes in the Perspective of the Criminal Code and the ITE Law

Gambling is an act that has long been seen as contrary to moral values, public order, and the social interests of society. In the context of Indonesian criminal law, gambling is qualified as a criminal offense because it contains elements of speculation, betting on property, and the potential to harm the perpetrator and the wider community. The development of information and communication technology has given birth to a new form of gambling, namely online gambling, which is carried out through electronic media and internet networks. Online gambling not only expands the scope of gambling practices, but also increases the complexity of its law enforcement because it involves electronic systems, cross-regions, as well as the anonymity of the perpetrators.

Constitutionally, the prohibition on gambling can be linked to the state's obligation to protect citizens from practices that are detrimental to human dignity and human dignity and threaten social order. This principle is in line with the state's goals stated in the Preamble to the 1945 Constitution, especially in realizing the general welfare and protecting the entire Indonesian nation. Therefore, regulating gambling crimes is part of the state's responsibility in maintaining public morality and social stability.

The regulation of gambling crimes in Indonesia is regulated in the Criminal Code as a *lex generalis*, especially Articles 303 and 303 bis. Article 303 paragraph (1) emphasizes that people who deliberately offer, give opportunities, or make gambling a livelihood, or participate in a gambling business, can be sentenced to imprisonment or a fine. This provision shows that the main elements of the criminal act of gambling include the existence of games, betting, and the expectation of profits that depend on luck. The element of "offering or giving opportunities" confirms the active role of the perpetrator as an organizer or manager of gambling activities.

Article 303 bis of the Criminal Code stipulates that anyone who participates in gambling in a public place or in a certain meeting can be punished, even if he does not act as an organizer. This provision extends the scope of the penalty not only to gambling managers, but also to parties who participate as players. However, as stated by (Ahmad, 2023), the formulation of Articles 303 and 303 bis of the Criminal Code is still basically still oriented towards

conventional gambling that is carried out physically and face-to-face. As a result, the Criminal Code has limitations in accommodating online-based gambling practices that are cross-border and do not depend on a specific physical space.

The development of digital technology then gave birth to the phenomenon of online gambling which was carried out through websites, applications, and various electronic platforms. To respond to this development, the Electronic Information and Transaction Law (ITE Law) is present as a *lex specialist* that regulates unlawful acts in cyberspace. Article 27 paragraph (2) of the ITE Law expressly states that every person who deliberately and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that have gambling content is punished in accordance with the provisions of laws and regulations. This provision focuses on the aspects of dissemination, facilitation, and provision of access to gambling content through electronic systems.

Doctrinally, the phrases "distribute", "transmit", and "make accessible" in Article 27 paragraph (2) of the ITE Law are aimed at parties who play an active role as organizers or facilitators of online gambling. (Pakpahan et al., 2025) emphasized that the phrase refers to the act of providing, disseminating, or promoting gambling content to the public, not simply accessing it as a user. A similar opinion was put forward by (Maharani et al., 2022), who stated that the term "making accessible" should be interpreted as the act of providing a system or means for gambling content to be accessible to others. Thus, the ITE Law is conceptually more appropriate to apply to online gambling organizers, operators, or promoters, rather than to players who only position themselves as end users.

The application of the ITE Law in judicial practice in principle shows a tendency to take action against perpetrators at the organizer level. Several court decisions ensnared defendants who acted as operators or promoters of online gambling based on Article 27 paragraph (2) of the ITE Law, thus showing consistency that the ITE Law functions as a legal instrument to reach digital-based gambling crimes. In this context, the ITE Law acts as a "surgical tool" of cyber-criminal law, while the Criminal Code remains the normative basis that affirms that gambling, both conventional and online, is an act prohibited by law.

The synergy between the Criminal Code and the ITE Law reflects Indonesia's criminal law efforts in adapting to technological developments without abandoning the basic principles of criminal law. The Criminal Code provides moral and juridical legitimacy that gambling is a criminal act, while the ITE Law provides a technical mechanism for cracking down on gambling practices through electronic media that need to be carried out carefully and proportionately, with a firm distinction between organizers and online gambling players, so as not to cause legal uncertainty or injustice in the criminal process.

The regulation of online gambling crimes in the perspective of the Criminal Code and the ITE Law shows that Indonesian criminal law already has a relatively complete normative framework to deal with digital-based gambling. The main challenge lies not in the absence of legal norms, but in the consistency and accuracy of their application in law enforcement practices. A proper understanding of the functions of Articles 303 and 303 bis of the Criminal Code and Article 27 paragraph (2) of the ITE Law is the key to realizing legal certainty, justice, and effectiveness of online gambling in Indonesia.

Traditionally, the Criminal Code has regulated gambling as a prohibited crime regardless of whether it is carried out conventionally or through digital media. Article 303 of the Criminal

Code generally prohibits gambling that relies on the profit and betting of property, while Article 303 bis of the Criminal Code threatens sanctions against those who participate in such gambling. This provision applies to all actors, including organizers and players, although in practice enforcement is more often ensnaring the party who organizes or provides gambling venues/services. Online gambling, even though it uses digital media, is basically still included in this prohibited provision and is seen as a criminal act with the threat of punishment that can reach several years in prison along with fines, but the Criminal Code does not specifically distinguish the type of role of the perpetrator (e.g. dealer vs player) specifically in the context of digital technology.

Meanwhile, the ITE Law more specifically regulates online gambling through Article 27 paragraph (2) which prohibits everyone from deliberately and without the right to distribute, transmit, or make electronic information containing gambling accessible to the public, followed by criminal threats in Article 45 paragraph (3). This provision highlights more the act of providing access to or gambling content on the internet than simply the act of gambling itself. According to a juridical study, Nasution (2021), the ITE Law is more focused on being used to ensnare parties who are bookmakers or online gambling organizers who are responsible for the spread of gambling content in cyberspace, while this regulation does not provide an adequate legal basis to process online gambling players criminally, so that the function of the norm is more appropriately directed to platform providers, operators, or online gambling content promoters

In the Criminal Code (KUHP), the crime of gambling is regulated mainly in Article 303 and Article 303 bis. Article 303 generally prohibits gambling, which is the act of providing or participating in providing an opportunity to gamble, where players risk something in the hope of gaining a profit or profit. Article 303 bis adds that those who participate in gambling companies can also be punished. The elements of the Criminal Code include: the existence of games or gambling, betting on property, the existence of expectations of profits, and the role of the perpetrator, both as organizers, facilitators, and players. The Criminal Code is *lex generalis*, so it still reaches digital gambling, but does not distinguish the role of the perpetrator in detail between the bookmaker and the player. In court practice, several cases such as Decision Number 1052/Pid.B/2025/PN Sby continue to use Article 303 of the Criminal Code for online gambling, even though the electronic element is actually more appropriate to be charged with the ITE Law, thus showing the inconsistency in the application of the *lex specialis* law to online crimes.

The ITE Law (Law Number 1 of 2024) regulates online gambling through Article 27 paragraph (2). This article prohibits anyone from knowingly and without rights disseminating, sending, or making electronic information containing gambling content publicly accessible. If violated, there is a criminal threat as stipulated in Article 45 paragraph (3). The elements of the ITE Law include technology-based actions (distribution/transmission/access to gambling content), elements without rights and deliberate knowledge, and focus on ensnaring providers of online gambling facilities, media, or means of content. Decision Number 240/Pid.Sus/2024/PN Sgm shows the application of the ITE Law in digital gambling cases, while Decision Number 871/Pid.Sus/2022/PN.Tjk highlights the liability of affiliates or promoters who market online gambling services, thus reinforcing the view that the ITE Law is more appropriate to target bookmakers or promoters rather than just individual players, while

reflecting the function of the ITE Law as a digital *lex specialis* for regulating online gambling content.

Application of Article 45 Paragraph (3) jo. Article 27 Paragraph (2) of the Law on Information and Electronic Transactions against the defendant in Decision Number 36/Pid.Sus/2025/PN Mjy.

The defendant Nurma Atmaja alias Fuad Bin Hamim, a 34-year-old driver from Lumajang, was arrested on October 31, 2024 on the side of the Caruban–Ngawi Highway, Madiun Regency. During the arrest, the police found a Redmi 12 cellphone with an active SIM card that the defendant used to access the online gambling site Next1221. From the examination, it was found that the defendant had registered an account with the username Satriatimur1 and the password respect007, as well as connected his Bank BCA account to make deposits and withdrawals of gambling proceeds.

In practice, the defendant made a deposit of IDR 50,000 through the Dana and QRIS applications, then played the online slot game "Mahjong Ways" on the site. The defendant several times obtained profits of up to Rp800,000 and Rp500,000, which were then withdrawn to his personal account. However, at the time of the arrest, the defendant's online gambling account balance remained at IDR 2,253.28. Evidence in the form of mobile phones and online gambling accounts was successfully secured by the police for further examination.

The Public Prosecutor filed the first alternative indictment based on Article 45 paragraph (3) jo Article 27 paragraph (2) of ITE Law No. 1 of 2024 related to the prohibition of the distribution or access of electronic information related to gambling. The second primary alternative indictment refers to Article 303 paragraph (1) 2 of the Criminal Code, and the second subsidiary alternative indictment in Article 303 bis paragraph (1).

The Public Prosecutor emphasized that the defendant was legitimate and convincingly proven to have committed the crime of online gambling, so he was charged with imprisonment for 1 year and 6 months, minus the prison term, and a fine of Rp20,000,000 subsidy for 6 months of confinement. In addition, evidence in the form of a Redmi 12 cellphone was confiscated for the state, an online gambling account was destroyed, and the defendant was charged a case fee of Rp5,000.

Furthermore, the Panel of Judges considered that the defendant was indeed proven to have committed acts deliberately and without the right to access and distribute electronic information containing gambling. Evidence in the form of online gambling accounts, deposit transactions, and the results of criminal laboratory examinations strengthened the Public Prosecutor's indictment. The judge also considered that online gambling was profiteering and did not have an official license, so that the defendant's actions met the elements of a criminal act as regulated in the ITE Law.

With this consideration, the Panel of Judges decided according to the prosecutor's demands: the defendant was sentenced to 1 year and 6 months in prison and a fine of Rp20,000,000, or replaced with 6 months imprisonment if not paid, based on Article 27 paragraph (2) jo Article 45 paragraph (3) of the ITE Law contains elements of criminal acts that must be fulfilled cumulatively so that a person can be held criminally responsible. These elements will be analyzed one by one based on the legal facts in Decision Number 36/Pid.Sus/2025/PN Mjy as follows:

1. The "Everybody" Element

The interpretation of the element of "everyone" in Article 27 paragraph (2) of the ITE Law refers to every legal subject, both an individual (natuurlijk persoon) and a legal entity (rechtspersoon), who can be legally held criminally responsible for their actions. This element is general and does not require a specific position or profession of the perpetrator.

In the a quo case, the defendant Nurma Atmaja alias Fuad Bin Hamim, 34 years old, who works as a driver and lives in Lumajang Regency, is legally proven to be a subject of individual law. The identity of the defendant has been confirmed at the trial, there is no rebuttal to his legal capacity, and based on the results of the examination, because the defendant is physically and spiritually healthy, he is considered capable of accounting for his actions before the law. Based on these facts, the Panel of Judges is of the opinion that the element of "everyone" in Article 27 paragraph (2) of the ITE Law has been fulfilled and can be juridically attached to the defendant as the perpetrator of the crime of online gambling.

2. The Element of "Deliberately and Without Rights"

The element of "deliberately" (opzet) refers to the will and awareness of the perpetrator to carry out actions that are prohibited by law. In criminal law, intentionality can mean: intentionally with a specific purpose, deliberate because the consequences are certain, or intentional even though there is only a possibility that the consequences will occur (Moeljatno). Meanwhile, the element of "without rights" indicates that the act was carried out without a valid basis of authority or permission according to the law. Based on the facts of the trial, the defendant consciously and actively:

- a. Register an online gambling account on the Next1221 site;
- b. Using usernames and passwords made by yourself;
- c. Connecting his personal Bank BCA account;
- d. Make a deposit of money through the Dana and QRIS applications;
- e. Play the online slot game "Mahjong Ways";
- f. Withdraw the winnings to his personal account.

The entire series of acts is carried out without coercion, negligence, or emergencies. In addition, it should be emphasized that there is not a single form of legal online gambling license in Indonesia, so all online gambling activities are prohibited by positive law.

Thus, the element of "deliberately and without rights" has been fulfilled perfectly, because the defendant knows the unlawful nature of his actions and continues to do so for personal gain.

3. Element "Distributing and/or Transmitting and/or Making Accessible Electronic Information Containing Gambling"

This element is the most crucial and most problematic element in the application of Article 27 paragraph (2) of the ITE Law to perpetrators who are positioned as online gambling players. Juridically, the term:

- a. Distributing means disseminating to other parties;
- b. Transmitting means transmitting electronic information;
- c. Making it accessible means doing an act that causes an electronic information to be accessed through an electronic system, including by operating or running an internet-based application.

In this case, the defendant did not play the role of a bookmaker or manager of an online gambling site. However, based on the facts of the trial, the defendant:

- a. Actively access online gambling sites;
- b. Log in to a gambling account;
- c. Interact directly with the gambling site's electronic system;
- d. Conducting electronic transactions in the form of deposits and withdrawals of funds.

In the practice of criminal justice in Indonesia, including in this decision, the Panel of Judges adheres to a broad interpretation of the element of "making it accessible". Online gambling players are considered to participate in making the online gambling system accessible and functional, because without the participation of players, the gambling system would not run. Although doctrinally there is a debate that Article 27 paragraph (2) of the ITE Law is more appropriately applied to gambling dealers, operators, or promoters, based on positive legal practices and jurisprudence tendencies, judges have consistently considered player activities as part of the act of making electronic information with gambling content accessible. Thus, this element is considered to have been fulfilled according to the current law.

4. Element of "Electronic Information and/or Electronic Documents Containing Gambling"

Electronic information related to gambling includes any digital content that contains betting activities with elements of chance and the use of money or economic value as bets, either in the form of websites, applications, or online games.

In the a quo case, the electronic information in question is the online slot game "Mahjong Ways" accessed through the Next1221 website, where the defendant made real money deposits and obtained financial gains. The game clearly fulfills the gambling element because it is a chance and does not have official permission from the competent authorities. Therefore, the element of electronic information related to gambling has been fulfilled in a real way and does not raise legal doubts.

Criminal liability can only be imposed on the perpetrator if all elements of the criminal act are fulfilled and the perpetrator has a fault (schuld). In this case, the defendant was proven to meet the objective and subjective elements of Article 27 paragraph (2) of the ITE Law. There was no justification or excuse that could eliminate the defendant's unlawful nature or mistake.

As stated by Moeljatno, criminal acts are acts that are prohibited by law and threatened with criminal charges, while criminal liability is directed at the person who commits the act. In this context, the defendant knowingly engaged in online gambling and profited from it, making it worthy of criminal liability.

If you look at the position of the case mentioned above, the articles charged and the legal considerations in the above decision, it can be seen that the judge's legal considerations in Decision Number 36/Pid.Sus/2025/PN Mjy which imposed a criminal sentence on the defendant Nurma Atmaja as an online gambling player based on Article 45 paragraph (3) jo Article 27 paragraph (2) of the ITE Law look inappropriate according to the law, Because the elements in the article are substantially aimed at actors who play an active role in distributing, transmitting, or making gambling content accessible to the public, and not aimed at perpetrators who commit gambling acts. The judge's consideration shows an error in carrying out a systematic and teleological interpretation of the norms of the ITE Law. In fact, according to the principle of legality and the principle of legal certainty, there needs to be a clear distinction between online gambling operators and parties who are only positioned as users or players.

From the aspect of structure and law enforcement officials, the decision also shows a lack of prudence in implementing cyber-criminal law. Law enforcement officials tend to ignore the principle of *lex specialist derogat legi generalist*, where the gambling provisions in the Criminal Code should be the main reference for perpetrators who play the role of players, not the ITE Law which is oriented towards crimes based on electronic systems. This inaccuracy has implications for the non-fulfillment of the principle of proportionality in punishment, as stated by Satjipto Raharjo (2007) that legal certainty must go hand in hand with substantive justice. The imposition of prison sentences on online gambling players with very small transaction values reflects a repressive approach that is insensitive to the characteristics of the act and the role of the perpetrator in the crime. In addition, from the perspective of societal factors and legal culture, this decision does not fully reflect social justice. Many online gambling players are in vulnerable positions and are often part of a chain of structured gambling systems, so they are more appropriately seen as objects of exploitation than the main perpetrators. This is in line with the views of Ichsanullah and Santiago (2022) who affirm that good law enforcement must balance legal certainty, utility, and justice for the community. Therefore, it is necessary to update the criminal law policy through the revision of the ITE Law with stricter and differential regulations on online gambling, especially between bookmakers and players, as well as a more rehabilitation-oriented approach to criminalization. Thus, law enforcement in the field of online gambling not only fulfills the normative aspect, but also provides real protection and benefits to society.

In the practice of Indonesian jurisprudence, the application of Article 27 paragraph (2) jo. Article 45 paragraph (3) of the ITE Law on online gambling is not yet fully consistent, but there are examples of examples of decisions that lead to the entrapment of perpetrators who act as providers of gambling facilities, operators, or promoters, reflecting the function of these norms as regulators of content and access to electronic systems. As an illustration, the Tanjung Karang Court Decision Number 871/Pid.Sus/2022/PN.Tjk against online gambling perpetrators who play a role in facilitating and spreading access to gambling shows that the defendants who act as operators, shareholders, and online marketing/marketing are charged with the provisions of the ITE Law (Article 27 paragraph (2) jo. Article 45 of the ITE Law) because of their actions in the form of distribution and provision of gambling content through electronic systems, including gambling site management, customer acceptance, and marketing of online gambling platforms. In the ruling, the element of dissemination and access to online gambling content is seen as a starting point for criminal liability for gambling site operators and marketing, with significant prison sentences and fines, showing the focus of enforcement against digital gambling content facilitators/providers.

Furthermore, in the juridical study of Decision Number 1052/Pid.B/2025/PN Sby which examines the liability of online gambling players, the judge views the activity of using online gambling opportunities as an act that meets the criminal elements regulated in the Criminal Code, and not as a violation of the criminal article in the ITE Law. This example shows that the enforcement of the ITE Law is more ideally directed at actors who provide, disseminate, or facilitate online gambling content such as bookmakers, operators, affiliates, or promoters rather than individual players who only access and play gambling games, thus providing a contextual comparison picture of decisions that criminalize players, such as Decision Number 36/Pid.Sus/2025/PN Mjy.

CONCLUSION

Based on the results of the analysis in the discussion above, it can be concluded that: First, the regulation of gambling crimes in the perspective of the Criminal Code is regulated in Article 303 and Article 303 bis of the Criminal Code. Article 303 paragraph (1) of the Criminal Code basically states that anyone who deliberately offers or provides opportunities for gambling games and makes them a livelihood, or deliberately participates in gambling companies, is punished with imprisonment or a fine. This provision shows that the main elements of the criminal act of gambling include the existence of games, betting, and the expectation of profits that depend on luck. The element of "offering or giving opportunities" confirms the active role of the perpetrator as an organizer or manager of gambling activities. Meanwhile, Article 303 bis of the Criminal Code stipulates that anyone who participates in gambling in a public place or in a certain meeting can be punished, even if he does not act as an organizer. This provision extends the scope of the penalty not only to gambling managers, but also to parties who participate as players.

The provisions on gambling crimes in the Criminal Code apply as *lex generalis*. Meanwhile, from the perspective of the ITE Law, gambling regulation is regulated in Article 27 paragraph 2 of the Gambling Regulation in the ITE Law in response to the development of digital technology which then gave birth to the phenomenon of online gambling carried out through websites, applications, and various electronic platforms. Therefore, to respond to this development, the ITE Law is present as a *lex specialist* that regulates gambling crimes committed online that are not accommodated in the Criminal Code which only regulates gambling acts conventionally. Second, the application of Article 45 paragraph (3) jo Article 27 paragraph (2) of the ITE Law to the defendant in Decision Number 36/Pid.Sus/2025/PN Mjy, looks inappropriate according to the law. This is because even though the defendant in the case was proven to have gambled using electronic or online media, it does not necessarily mean that the defendant's actions have fulfilled all elements of Article 27 paragraph (2) of the ITE Law. This is because the provisions of Article 27 paragraph (2) of the ITE Law are aimed at parties who provide, distribute, or facilitate access to online gambling content, and not against someone who plays online gambling games.

The element of "distributing, transmitting, or making accessible electronic information containing gambling" in Article 27 paragraph (2) of the ITE Law does not include or does not include the act of playing gambling games online. Therefore, the application of the ITE Law to the defendant in the verdict looks inappropriate according to the law. Supposedly, the appropriate article applied to the defendant in the case is Article 303 bis of the Criminal Code. Based on this conclusion, the author suggests that lawmakers update the norms in the ITE Law which regulates the criminalization of online gambling players to ensure legal certainty and substantive justice. In addition, it is hoped that the judge in examining and prosecuting a criminal case can apply criminal articles against the defendant appropriately or proportionately in accordance with the criminal act committed and the elements of criminal acts in the criminal article charged, especially for gambling crimes committed online.

REFERENCES

- Ahmad, R. F. (2023). Criminal Acts for Event Organizers Online Game Tournament Organizers Who Receive Sponsorship from Online Gambling Sites Based on Indonesian Criminal Law. *Trunojoyo Law Review*, 5(2), 162–174.
- Budiono, A., Prasetyo, Y., Wardiono, K., Yuspin, W., Dimyati, K., & Iriani, D. (2022). Legal conscience and the pressure of the formal law system. *Wisdom*, 2 (22), 223–233.
- Fadhli, M. (2024). Penegakan Hukum Terhadap Tindak Pidana Perjudian Online. *Indragiri Law Review*, 2(2), 68–73.
- Ichsanullah, I., & Santiago, F. (2022). Aspects of Legal Certainty, Justice and Usability in the Decisions of Judges in Civil Courts. MIC 2021: Proceedings of the First Multidiscipline International Conference, MIC 2021, October 30 2021, Jakarta, Indonesia, 386.
- Juhara, N. F., Amalia, M., & Mulyana, A. (2025). Efektivitas Penegakan Hukum terhadap Judi Online di Indonesia: Analisis Yuridis dan Sosiologis. *Journal of Contemporary Law Studies*, 2(2), 153–164.
- Kartika, P. P. (2019). Data Elektronik sebagai Alat Bukti yang Sah dalam Pembuktian Tindak Pidana Pencucian Uang. *Indonesia Journal of Criminal Law*, 1(1), 33–46. <https://doi.org/10.31960/ijocl.v1i1.146>
- Maharani, N. M. A. D., Somawijaya, S., & Ramdan, A. (2022). Critical Analysis of Application of Article 303 BIS Paragraph (1) to 1 of The Criminal Code in Accessible Cases Online Gambling. *Pandecta Research Law Journal*, 17(2), 167–177.
- Marzuki, P. M. (2022). *Penelitian Hukum Edisi Revisi*. Jakarta: Kencana Prenada Media Group.
- Pakpahan, N. H., SH, S. P., Pakpahan, B. P., & SH, M. H. (2025). Penegakan Hukum Judi Online di Indonesia. *Selat Media*.
- Rahardjo, S. (2007). *Biarkan Hukum Mengalir: catatan kritis tentang pergulatan manusia dan hukum*. Penerbit Buku Kompas.
- Rohman, M. M., Mu'minin, N., Masuwd, M., & Elihami, E. (2024). Methodological reasoning finds law using normative studies (theory, approach and analysis of legal materials). *MAQASIDI: Jurnal Syariah Dan Hukum*, 204–221.
- Sangaji, R. (2024). Analisis Yuridis Tindak Pidana Mempergunakan Kesempatan Main Judi dalam KUHP. *Proceedings Series on Social Sciences & Humanities*, 17, 406–409.
- Shcherbanyuk, O., Gordieiev, V., & Bzova, L. (2023). Legal nature of the principle of legal certainty as a component element of the rule of law. *Juridical Tribune-Review of Comparative and International Law*, 13(1), 21–31.
- Soekanto, S. (2011). *Faktor-faktor yang mempengaruhi penegakan hukum*.
- Sugeng, S. P., & SH, M. H. (2020). *Hukum Telematika Indonesia*. Prenada Media.
- Sulubara, S. M., Fauzi, H., Muslim, B., Putra, F. F., & Musmulyadi, M. (2025). Judi Online Sebagai Cybercrime Serta Tantangan Penegakan Hukum Pidana di Era Digital: Antara Regulasi, Pembuktian, dan Ancaman Cybercrime. *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora*, 4(2), 539–552. <https://doi.org/10.55606/jurrish.v4i2.4990>
- Vedwal, A. (2023). Admissibility of Digital Evidence for Cyber Crime Investigation. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4443356>