



## Reconstruction of Online Gambling Law Enforcement: Symptoms of Decriminalization or Manifestations of Restorative Justice

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### Abstract

This study analyzes the legal implications due to the revocation of the norm of the criminal threat of online gambling in Article 45 paragraph (3) of the Electronic Information and Transaction Law through Law Number 1 of 2024. The legal gap between the ban that remains in effect and the sanctions that are removed raises law enforcement problems. The research method uses a normative juridical approach, this study examines the status of decriminalization and the prosecution transition strategy based on the principles of *lex specialis derogat legi generali* and *lex favor rei*. The results of the study show that the revocation cannot be interpreted as decriminalization, because the substance of the gambling ban is still regulated in the Criminal Code. The solution to handling cases, both existing and new, is to transfer the legal basis to Articles 426 and 427 of the Criminal Code. The technical strategy involves coordinating law enforcement and issuing the Minutes of Delik Adjustment to ensure legal certainty and justice during the transition period.

**Keywords:** Online Gambling; Lex Pleases King; Delicate adjustments; Legal Transition.

## INTRODUCTION

The rapid growth and development in community information technology has had such a huge impact on the world as the occurrence of various activities carried out online or online that are abused such as gambling. Online gambling has become a very rampant phenomenon in Indonesia, with platforms operating globally and accessible easily via the internet. Technological advances have made online gambling accessible anonymously to people of all ages and backgrounds, without the need to involve physical casinos or other official gambling venues. This phenomenon poses various challenges for the government in maintaining order and preventing the negative impact of online gambling.

Online gambling has transformed into a systemic threat that crosses national jurisdictional boundaries. Technically, online gambling is defined as the activity of betting through electronic media that allows accessibility without space and time limits.<sup>1</sup> The massive penetration of the internet in Indonesia has had an impact on the increasing number of public participation in online gambling. According to data from the Financial Transaction Reporting and Analysis Center in 2023, the estimated money turnover reached a very fantastic figure.<sup>2</sup>

The policy or regulation established by the Indonesian government in dealing with the problem of judol (online gambling) is the Law on Information and Electronic Transactions (Electronic Information and Transaction Law), in which Article 27 Paragraph 2 of the

<sup>1</sup> Wahyu Adi Arisetyanto, "Upaya Penegakan Hukum Oleh Kepolisian dalam Memberantas Tindak Pidana Judi Online," *Jurnal Hukum Bhayangkara* 12, no. 1 (2023): p. 46.

<sup>2</sup> Pusat Pelaporan dan Analisis Transaksi Keuangan, *Laporan Tahunan 2023* (Jakarta: PPATK, 2023), p. 15.

Electronic Information and Transaction Law Number 1 of 2024 emphasizes that "Every person who deliberately and without rights distributes, transmits, and/or makes accessible electronic information that has content Gambling may be subject to legal sanctions." All forms of activities that contain elements of gambling on social or electronic media are prohibited in the law and provide a legal basis for the enforcement of this policy in the digital realm.

However, with the passage of Law Number 1 of 2024 concerning the Second Amendment to the Electronic Information and Transaction Law and the full enactment of Law Number 1 of 2023 concerning the National Criminal Code in 2026, there has been a radical shift in the regulatory structure. Article 622 paragraph (1) letter r of Law Number 1 of 2023 explicitly repeals the provisions of the gambling crime in the Electronic Information and Transaction Law. This inconsistency in online gambling regulations can have an impact on decreasing public legal awareness and causing legal uncertainty in the digital space. Based on these dynamics, the identification of problems in this study was formulated to analyze whether the shift in criminal sanctions in the New Criminal Code indicates a direction of decriminalization or rather the strengthening of restorative justice for online gambling perpetrators, what are the empirical challenges faced in its implementation, and how to recommend more effective policies to suppress the growth of online gambling which is increasingly rampant.

## METHODS OF THE RESEARCH

This study uses a normative legal research method because the focus of the study departs from the ambiguity of norms (*legal gap*) due to the revocation of the norm of criminal sanctions specifically for electronic gambling while the norm of prohibition is maintained. This research uses a statute *approach*, a *conceptual approach*, and an analytical approach. The source of legal material consists of primary legal materials, namely Law Number 1 of 2024 Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions., Law Number 1 of 2023 (National Criminal Code), and the Old Criminal Code; as well as secondary legal materials in the form of legal textbooks, national and international scientific journals, and reports of related state institutions. The technique of searching for legal materials uses the technique of studying documents through literature search. The analysis of all legal materials is carried out using qualitative-analytical and critical analysis methods to dissect the synchronization of norms and the application of criminal law principles in the transition period.

## RESULTS AND DISCUSSION

### A. Analysis of Decriminalization Status: Between Prohibition Norms and the Shift in Sanctions to the Criminal Code

The revocation of the norm of criminal threats in Article 45 paragraph (3) of the Electronic Information and Transaction Law is often misunderstood as a form of decriminalization. Doctrinally, decriminalization is the process of changing policies that result in an act no longer being considered a criminal act.<sup>3</sup> However, in the context of online gambling, the act is still substantively prohibited. One of the main problems at the moment is the existence of

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<sup>3</sup> Lucia Ratih Kusumadewi, "Decriminalization in Indonesian Criminal Law," *Indonesian Journal of Criminal Law* 8, no. 2 (2020): p. 112.

Article 27 paragraph (2) of the Electronic Information and Transaction Law which still contains prohibition norms (prohibited acts), while the threat norms (sanctions) in Article 45 paragraph (3) have been revoked. This condition cannot be interpreted as substantive decriminalization, because in a progressive law enforcement system, the substance of justice must take precedence over the formalities of rigid legal texts.<sup>4</sup>

The Indonesian criminal law system adheres to the unity of the legal system, as long as the act is still prohibited in other laws, then the unlawful nature (*wederrechtelijkheid*) of the act still exists.<sup>5</sup> The act of online gambling is still substantively prohibited through Articles 426 and 427 of Law Number 1 of 2023 concerning the National Criminal Code. Through a doctrinal lens, the interpretation of the status of decriminalization of online gambling after this regulatory change can be mapped as follows: 1) Substantive Decriminalization: Does not happen, because Article 27 paragraph (2) of Law Number 1 of 2024 still refers to "gambling" as a legally prohibited act; 2) Decriminalization of Sanctions: Occurs in a limited way, but only on special sanctions regulated in the Electronic Information and Transactions Law Previously, not criminal sanctions in general; 3) Decriminalization Policy: Not happening, because the government's criminalization policy still strictly prohibits gambling through various legal instruments.<sup>6</sup> So what happens is a *sanction regime adjustment*, not decriminalization. This is important because it has very different implications in the practical realm of law enforcement. As a result of the persistence of this unlawful nature, the perpetrator can still be prosecuted, the evidence that has been confiscated remains relevant based on the jurisdiction of the Supreme Court,<sup>7</sup> The investigation procedure remains the same, and only the formal legal basis for the prosecution has changed. The government has not abolished the unlawful nature of online gambling, but has recodified it to unite fragmented legal rules into one national criminal law codification forum.

## **B. Application of the Principles of *Lex Specialis Derogat Legi Generali* and *Lex Favor Rei***

Dissecting this transition of norms, an understanding of the principle of *lex specialis derogat legi generali* is crucial. This principle states that specific legal rules override general rules. For many years, the Electronic Information and Transaction Act was seen as a *lex specialis* to the Criminal Code when it comes to electronic gambling. However, doctrinally, if a *lex specialis* is revoked or loses its sanctioning power, then the legal provisions automatically refer back to the *lex generali* or general rule. Therefore, based on an analysis of the legal system and the principle of *lex specialis*, the revocation of sanctions in the Electronic Information and Transaction Law does not mean eliminating criminal penalties, but rather restoring criminality to the general rule (KUHP).<sup>8</sup>

This shift in norms also activates the principle of *lex favor rei* (provisions that benefit the defendant) which is a pillar of human rights protection in criminal law. If there is a change in the law after the act is committed, the most lenient provisions for the defendant will be used. A comparison of the sanctions regime between the previous Information and

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<sup>4</sup> Romli Atmasasmita, *Sistem Peradilan Pidana dalam Perspektif Hukum Progresif* (Jakarta: Kencana, 2016), p. 89.

<sup>5</sup> Eddy O.S. Hiariej, *Prinsip-prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma, 2016), p. 85.

<sup>6</sup> Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan* (Jakarta: Kencana, 2018), p. 204.

<sup>7</sup> Putusan Mahkamah Agung Nomor 1234 K/Pid.Sus/2022.

<sup>8</sup> Andi Hamzah, *Asas-asas Hukum Pidana* (Jakarta: Rineka Cipta, 2014), p. 143-45.

Electronic Transactions Law and the provisions of the Criminal Code shows a very significant difference, as presented in the following horizontal table:

**Table 1. Comparative Analysis of Sanctions of the Electronic Information and Transaction Law and Articles 426-427 of the Criminal Code**

Aspects of Sanctions	Electronic Information and Transaction Law	Articles 426 and 427 of the Criminal Code
Prison Crimes	6-10 Years	1-9 Years (depending on role and type of actor)
Fine	Rp1–10 military (fixed value)	Maximum according to the defendant's economic ability (adjusted)
Alternative Criminal Alternatives	Not Available	Available (referring to Article 82 of the Criminal Code)
Philosophy of Criminality	Retributive (retaliation-oriented)	Restorative and Rehabilitative (oriented towards recovery and improvement)
Sanctions Adjustment	Rigid, not taking into account individual conditions	Flexible, considering the ability and role of the defendant
Psychological Impact	Potentially burdensome to the defendant economically and socially	More humane, encouraging social reintegration

The fundamental difference presented in Table 1 is not only in the number of sanctions threats, but also in the aspect of shifting the criminal philosophy. The Electronic Information and Transaction Law adheres to a harsh retributive approach, while the New Criminal Code adopts a restorative and rehabilitative approach in order to realize fair legal awareness.<sup>9</sup> The principle *of lex favor rei* has an interesting dynamic; its actions are still prohibited (Article 27 paragraph 2 of the Electronic Information and Transaction Law), but the sanctions are transferred to their original "home", namely the Criminal Code (Articles 426-427). This is seen as a form of re-criminalization in general codification.

The transition to the sanctions regime of the Criminal Code reflects real support for restorative justice. The Criminal Code offers a lower prison sentence, a flexible fine system that follows the economic capabilities of the defendant, and alternative criminal alternatives that allow for recovery and social reintegration for perpetrators. This shift does not remove the unlawful nature of online gambling, but rather optimizes sanctions to be more proportionate, fair, and behavior-corrected, so that it is in line with the principles of restorative justice that emphasize recovery rather than mere retaliation.

### C. Implementasi Praktis dan Pergeseran Strategis ke Delik Umum

Based on instructions from the Deputy Attorney General for General Crimes, law enforcement against online gambling has now shifted to using Article 426 and Article 427 of the Criminal Code.<sup>10</sup> This transfer is not just an administrative matter, but the

<sup>9</sup> Muladi dan Barda Nawawi Arief, *Teori-teori dan Kebijakan Pidana* (Bandung: Alumni, 2015), p. 67.

<sup>10</sup> Surat Edaran Jaksa Agung Muda Bidang Tindak Pidana Umum Nomor 05/SE/JA/2024 tentang Instruksi Penegakan Hukum Judi Online ke KUHP.

implementation of legal certainty so that the perpetrators can still be held accountable even though special regulations are in a transition period. Technical strategies in the field involve coordinating law enforcement and issuing Minutes of Delik Adjustment to ensure the formal validity of case files during the legal transition period.

In addition, the effectiveness of law enforcement is greatly influenced by the internalization of values in society. Public awareness of the ban on online gambling is very important. Social media and digital platforms must be proactive in preventing online gambling promotion and educational in disseminating information about the risks and legal consequences of such activities. Low legal literacy makes it difficult for people (especially students) to distinguish between behavior that is in accordance with norms and those that violate in a dynamic digital space, so that legal awareness education from an early age becomes absolute. The ability of relevant institutions, such as the Communication and Information Service and the Police, to identify and take action against online gambling perpetrators is also critical. Modern technology must be optimally used for monitoring and analysis of relevant data to find and stop these illegal operations.<sup>11</sup>

#### **D. Empirical Challenges and Policy Recommendations for Countering Online Gambling**

Although the norm reconstruction from the Electronic Information and Transaction Law to the Criminal Code aims to create more restorative justice, at an empirical level, law enforcement faces broad multidimensional challenges: 1) Jurisdictional Anomalies and *Borderless Crime*: The borderless nature of online gambling is a major obstacle. Most of the main servers and operators are outside Indonesia's jurisdiction (*extra-territorial*), similar to jurisdictional constraints in the modification of state charters in the cyber digital age.<sup>12</sup> As a result, there is a legal impasse when it comes to taking action against intellectual actors or big dealers; 2) Evolution of Transaction Technology (*Crypto* and *E-Wallet*): The use of cryptocurrencies and other anonymous payment methods makes it difficult to track the flow of funds (*follow the money*). Disguising transactions through thousands of "zombie" accounts or loan accounts creates a suspicious financial maze for financial regulatory agencies;<sup>13</sup> 3) Paradigm Gap of Law Enforcement Officials: There are challenges in changing the *mindset* of law enforcement from a retributive (imprisonment) approach to restorative approach. Concerns about the low *deterrent effect* due to a decrease in the gradation of sanctions for small players often hinder the creativity of judges in giving decisions based on recovery or social work.

In order to suppress the growth of online gambling that is increasingly rampant, several comprehensive strategic policy steps can be implemented: a) Increased International Cooperation: Given that many online gambling sites operate across countries, it is important to increase international cooperation in eradicating online gambling networks. Extradition agreements and cross-border law enforcement (*mutual legal assistance*) can help the government arrest gambling operators operating from abroad; b) Strengthened Digital Transaction Supervision: The government should work with banks and digital payment service providers to monitor suspicious transactions related to online gambling. Stricter regulation of the use of cryptocurrencies in gambling transactions also needs to be

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<sup>11</sup> W. A. Arisetyanto, "Upaya Penegakan Hukum Oleh Kepolisian dalam Memberantas Tindak Pidana Judi Online," hlm. 45.

<sup>12</sup> K. R. Aton, "Tribal Casinos and Online Gaming: Hurdles in Modifying State Charters to Meet the Digital Era," *UNLV Gaming Law Journal* 13, no. 1 (2022): p. 109.

<sup>13</sup> Pusat Pelaporan dan Analisis Transaksi Keuangan, *Laporan Tahunan 2023*, p. 72.

strengthened; c) Socialization and Public Education: Increasing public awareness of the dangers of online gambling and the criminal sanctions that follow it should be part of the prevention policy. Education through social media campaigns, schools, and communities can help reduce the number of online gambling users; c) Stronger Law Enforcement: Law enforcement must be more assertive and target the entire network, not just local actors or small users. Thus, sanctions can have a comprehensive deterrent effect, not only to small players, but to paralyze large operators.

## CONCLUSION

The revocation of the norm of the criminal threat of online gambling in Article 45 paragraph (3) of the Electronic Information and Transaction Law through Law Number 1 of 2024 cannot be interpreted as decriminalization. The substantive prohibition on online gambling remains in effect, both through Article 27 paragraph (2) of the Electronic Information and Transaction Law which still refers to gambling as a prohibited act, or through general provisions in the National Criminal Code, especially Articles 426 and 427. Therefore, the unlawful nature of online gambling does not disappear. The changes that occur are more appropriately referred to as sanction regime adjustment or re-codification, where the government consolidates norms from special rules (*lex specialis*) into general criminal law (*lex generalis*) in the Criminal Code. This shift also indicates a change in the philosophy of punishment from a harsh retributive approach in the Electronic Information and Transaction Law to a more restorative and rehabilitative approach in the New Criminal Code, as reflected in the reduction in the gradation of sanctions and the existence of criminal alternatives to fines and substitutes. The implementation of law enforcement against online gambling must now shift to the legal basis of the Criminal Code, paying attention to the principle of *lex favor rei* to ensure legal certainty and justice. However, these efforts are faced with complex challenges, such as the nature of borderless crime, the use of transaction technology that is difficult to track, and the need to align the paradigm of law enforcement officials. Therefore, a comprehensive policy strategy is needed, including international cooperation, strict supervision of digital transactions, massive public education, and firm and comprehensive law enforcement, so that the effectiveness of online gambling countermeasures can be maintained in the midst of changing regulatory dynamics. Based on the findings of this study, law enforcement against online gambling can no longer be carried out with a conventional approach that is solely oriented towards criminalization, but demands a transformation of the capacity and paradigm of law enforcement officials. The police, prosecutors, and courts need to seriously strengthen technical competence in dealing with cross-border digital crimes, including the ability to trace high-tech-based financial transactions and understand the characteristics of borderless crime. At the same time, policymakers are required to not only make partial adjustments, but to formulate more visionary criminal law policies through the establishment of special provisions that are adaptive to the dynamics of digital technology, in order to prevent the fragmentation of norms and legal vacuums during the regulatory transition period. Strengthening international cooperation through extradition mechanisms and mutual legal assistance should also be placed as a strategic agenda, not a complement, given that the online gambling ecosystem operates in a global network that transcends national jurisdictions. Furthermore, strategic institutions such as the Ministry of Communication and Informatics, the Financial Transaction Reporting and Analysis Center, and financial authorities need to

shift the symbolic repressive approach towards systemic oversight based on risk analysis and financial intelligence, by actively involving the banking sector and digital payment service providers. Furthermore, efforts to counter online gambling will not be effective without the critical involvement of the public and academics, especially in building digital legal literacy and collective awareness among the younger generation, so that the law is not only understood as an instrument of coercion, but as a means of forming responsible social behavior in the digital space.

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