

CRIMINAL LAW TREATS FOR ONLINE GAMBLING PERFORMERS: INVESTMENT FRAUD MODES

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ABSTRACT

Since 2018 to July 2022, the Ministry of Communication and Information has cut off access to 534,138 gambling content on various digital platforms. This very high number will continue to grow. One of the reasons for the rise of online gambling content is the mode that is used, namely the "bodong" investment mode. Society is promised with unreasonable profits. Blocking efforts are actually one way to prevent and protect the public. Criminal law has regulated gambling in the Criminal Code, as well as if it is done using technology media, it is regulated in the Information and Electronic Transaction Law. This paper examines the regulation of criminal law regarding online gambling in the present, and in the future. This normative law research uses a statutory, comparative, and conceptual approach with prescriptive analysis. The results show that the regulation of gambling in the Criminal Code does not regulate online gambling, the ITE Law still has weak juridical problems in juridical

consequences. While in the Draft Criminal Code, it is actually regulated more comprehensively, namely by regulating criminal acts committed with technology in general provisions, but regarding gambling, the Criminal Code concept there are exceptions to permit arrangements taking into account laws that apply in society. Gambling, which has been licensed by the government, has a negative impact on people's lives. The word "without permission" has a meaning that tends to be ambiguous and less relevant.

Keywords: Investment Fraud, Online Gambling, Penal Law Reform

INTRODUCTION

Several dimensions of the development of crime received serious attention from the United Nations through a Congress entitled The Prevention of Crime and the Treatment of Offenders,¹ such as at the 5th Congress of 1975 in Geneva, calling for attention, one of which was "Crime as business", which is a crime with the aim of to obtain material benefits through activities in business or industry, which are generally carried out in an organized manner and carried out by those who have a prominent position in society, usually related to consumer protection, in the financial sector, this is commonly known as "organized crime".² In fact, the more organized crime is, the more neatly it is carried out, especially by abusing information technology. At the 8th Congress in 1990 in Havana, Cuba, one of the dimensions of crime discussed, received emphasis, one of which was on computer related crime.

The need to tackle computer-related crimes, given several considerations, including the increasing use of computer technology and computer networks, as well as access to telecommunications around the world as an integral part of contemporary international banking and financial operations can also create conditions that greatly facilitate criminal

¹ Peter Jeremiah Setiawan and Hansel Ardison, "Criminal Victimization on Large-Scale Investment Scam in Indonesia," *Veritas et Justitia*, Volume 7 No. 1, 2021, hlm. 1–30.

² Farris Nur Sanjaya, "Application of Law Information and Electronic Transactions in Crime Investigation of Online Gambling," *Jurnal Daulat Hukum*, Volume 1 No. 2, 2018, hlm. 537.

operations in the world. within and between countries³; the increasing use of computers as a modality of economic crime and the difficulty of detecting computer-related crimes, especially given the speed with which these crimes can be committed⁴; and the potential link between organized crime and computer-related abuse⁵, and the fact that computers are often used by organized crime for purposes such as money laundering or in the management and transfer of illegally acquired assets.

In the international world, organized crime with crypto mode and is currently busy is the case of Ruja Ignatova. This Bulgarian woman is wanted on charges of fraudulent cryptocurrency or cryptocurrency known as OneCoin. Federal investigators accused Ignatova of using the OneCoin scheme to defraud her victims of more than \$4 billion.⁶ Ignatova is wanted for her role in running OneCoin, a cryptocurrency that she started introducing in early 2014.⁷ She offers people who buy this currency a commission for a commission if they can persuade others to buy it. The FBI revealed that OneCoin is of no value and is not protected by blockchain technology like other cryptocurrencies.⁸ Blockchain refers to a special database that records every transaction using a cryptocurrency⁹. OneCoin is allegedly using a Ponzi scheme disguised as a cryptocurrency. The FBI has listed Ruja Ignatova in the top 10 most wanted fugitives.

Not long ago, economic crimes by abusing technology also occurred in Indonesia.¹⁰ This has become a phenomenon, because the lure of big profits.¹¹ Some of the modes are

³ Sally M. Gainsbury, "Online Gambling Addiction: The Relationship Between Internet Gambling and Disordered Gambling," *Current Addiction Reports*, Volume 2 No. 2, 2015, hlm. 11.

⁴ Colin S Campbell, et. al, "The Legalization of Gambling in Canada," The Law Commission of Canada, July 2005, hlm. 105.

⁵ René van Swaaningen, "Globalisation and the Challenge to Criminology. Edited by Francis Pakes (Routledge, 2013, Vii–Viii, 1–184 Pp. £80 Hb/£24.99 Pb)," *British Journal of Criminology*, Volume 55 No. 4, 2015, hlm. 844.

⁶ Badua Jonah, "The Nature and Victimization of Investment Frauds," *Northwestern University, Philippines*, December 2020.

⁷ DESTU ARGİYANTO, "Protection in Retail Investors Disadvantaged By Fake Transaction Practice (Cornering the Market)," *Journal of Private and Commercial Law*, Volume 2 No. 1, 2018, hlm. 55–64.

⁸ Anis Chariri et al., "Individual Characteristics, Financial Literacy, and Ability in Detecting Investment Scams," *Jurnal Akuntansi Dan Auditing*, Volume 15 No. 1, 2018 hlm. 91–114.

⁹ Jonathan Conon, "Aces and Eights: Why the Unlawful Internet Gambling Enforcement Act Resides in 'Dead Man's' Land in Attempting to Further Curb Online Gambling and Why Expanded Criminalization Is Preferable to Legalization," *Journal of Criminal Law and Criminology*, Volume 99 No. 4, 2009, hlm. 1157–1194.

¹⁰ Wiwit Lestari, Dewi Susilowati, and Wita Ramadhani, "The Role of Forensic Accountant and Investigative Audit in Fraud Detection on Banking Sector in Indonesia," *Simposium Nasional Akuntansi*, Volume 20, 2017, hlm. 1–26.

¹¹ Alan Emond, et. al, "Gambling by Young Adults in the UK During COVID-19 Lockdown," *Journal of Gambling Studies*, Volume 38 No. 1, 2022, hlm. 1–13.

by promising high profits or interest, embezzling customer funds, collecting public funds, using artificial intelligence applications and commodity exchanges, trading online with promises of high profits, trading on commodity exchanges or illegal platforms,¹² like the case of the Binomo app,¹³ the case of a married couple who committed investment fraud for online gambling in Jambi,¹⁴ and until because it was so rampant, the Communications and Information Technology had to block hundreds of thousands of online gambling sites.¹⁵ Some of the modes above lead to gambling problems that have developed using assistive facilities, namely technology, and are commonly known as online gambling.¹⁶ Regarding gambling, in general it has been regulated in several articles, including Article 303 bis Paragraph (1) of the Criminal Code, while the online gambling article is regulated in Article 27 Paragraph (2) of the ITE Law No. 11 of 2008 and Article 45 paragraph (2) of Law No. 19 of 2016, there are still many legal weaknesses, such as not yet systemic, and not yet maximal in tackling online gambling crimes through the means of the criminal law system.¹⁷ In the concept of the Criminal Code which is being initiated, it has accommodated the shortcomings contained in the current legislation as a countermeasure for online gambling.¹⁸

The fake investments are operated through several mobile phone applications.¹⁹ Allegedly fraud has occurred starting in April 2020. Existing investments promise a profit

¹² BBC News Indonesia, "Judi Online Marak Di Indonesia, Sejumlah Orang Kecanduan - 'Uang Tabungan Habis, Mobil Saya Jual'", <https://www.bbc.com/indonesia/indonesia-61404363>, accessed May 17, 2022.

¹³ Tim detik.com, "Polisi Sebut Investasi Bodong Binomo Yang Dipromosikan Indra Kenz Judi Online," <https://news.detik.com/berita/d-5937461/polisi-sebut-investasi-bodong-binomo-yang-dipromosikan-indra-kenz-judi-online>.

¹⁴ Azhari Sultan, "Suami Istri Pelaku Investasi Bodong Ditangkap, Uang Korban Dipakai Buat Judi Online," <https://lampung.inews.id/berita/suami-istri-pelaku-investasi-bodong-ditangkap-uang-korban-dipakai-buat-judi-online>.

¹⁵ Leski Rizkinaswara, "Kominfo Blokir 118.320 Konten Judi Online Hingga Agustus 2022 – Ditjen Aptika," <https://aptika.kominfo.go.id/2022/08/kominfo-blokir-118-320-konten-judi-online-hingga-agustus-2022/>, accessed October 2, 2022.

¹⁶ Shannon Harvey, et. al, "Understanding Victims of Financial Crime - A Qualitative Study with People Affected by Investment Fraud", <https://www.fca.org.uk/publication/research/qual-study-understanding-victims-investment-fraud.pdf>.

¹⁷ Erni Suryandari Fathmaningrum and Gupita Anggarani, "Fraud Pentagon and Fraudulent Financial Reporting: Evidence from Manufacturing Companies in Indonesia and Malaysia," *Journal of Accounting and Investment*, Volume 22 No. 3, 2021, hlm. 625–46.

¹⁸ Barda Nawawi Arief, *Perbandingan Hukum Pidana*, Jakarta: Raja Grafindo, 2010.

¹⁹ Samuli Knüpfer, Ville Rantala, and Petra Vokata, "Scammed and Scarred: Effects of Investment Fraud on Its Victims," *SSRN Electronic Journal*, 2021.

of 80 percent to 85 percent of the value or funds invested to trade each victim as a trader.²⁰ The trend of online gambling games has increased since the COVID-19 pandemic. Only with a smart phone and tens of thousands of rupiah, people try their luck. It is not realized that actions taken to fill time from boredom, result in addiction and have great potential for criminal acts.²¹ The Indonesian Ministry of Communication and Information noted that 534, 183 gambling content on various digital platforms had been cut off on August 2022.²²

The eradication of online gambling cannot be separated from the eradication of online sites. In fact, this is not easy to implement, because online gambling sites and applications keep popping up with different names even though access has been cut off.²³ Currently, in Indonesia there are rules regarding gambling, namely in Article 303 and Article 202 bis of the Criminal Code and reinforced by Law No. 7 of 1974 concerning Control of Gambling which is conventional gambling.²⁴ While related to online gambling, it has been regulated in Article 27 paragraph (2) of the ITE Law which explains that: "Everyone intentionally and without rights distributes and/or transmits and/or makes accessible information or Electronic Documents containing gambling content."

In the 2019 RKHUP, the regulation regarding gambling is included in Article 432, punishable by a maximum imprisonment of 9 (nine) years or a maximum fine of category VI, anyone who without permission offers or gives the opportunity to play gambling and make it a livelihood or take part in a gambling company; offer or provide opportunities for the public to play gambling and make a living or participate in gambling companies; offer or provide opportunities for the public to play gambling or participate in gambling companies, regardless of whether or not there are conditions or procedures that must be met to use the opportunity, or make participating in gambling games as a livelihood, then

²⁰ Carlos Roy Fajarta "Bareskrim Kategorikan Investasi Bodong Binomo Sebagai Judi Online - Bagian 2," <https://www.inews.id/news/nasional/bareskrim-kategorikan-investasi-bodong-binomo-sebagai-judi-online/2>, accessed May 17, 2022.

²¹ J Banks, "Online Gambling and Crime: A Sure Bet?," *The ETHICOMP Journal*, 2012, <http://shura.shu.ac.uk/6903/>.

²² Leski Rizkinaswara "Kominfo Telah Blokir 534.183 Situs Judi Online – Ditjen Aptika," <https://aptika.kominfo.go.id/2022/08/kominfo-telah-blokir-534-183-situs-judi-online/>, accessed October 2, 2022.

²³ I Gusti Agung Kiddy Krsna Zulkarnain and Eko Soponyono, "Kebijakan Formulasi Tindak Pidana Informasi Dan Transaksi Elektronik Dalam Pembaharuan Hukum Pidana Indonesia", *Jurnal Belo*, Volume 7 No. 1, 2021 hlm. 1–14.

²⁴ Mustain, "The Victim of Fraudulent Financial Service Investments : A Case Study of Fraud Victims in Surabaya , Gresik , and Sidoarjo," *International Journal of Innovation, Creativity and Change*, Volume 13 No. 3, 2020, hlm. 1234–1248.

also regulated in Article 433 Every person who uses the opportunity to play gambling that is held without a permit shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of category III.

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Research Method

This legal research is a normative juridical research that focuses on the study of criminal law norms in online gambling crimes. The approach used is a statutory, conceptual, and comparative approach, with prescriptive analysis techniques. This means that the criminal code is analyzed prescriptively.²⁵ This issue is important to study because online gambling crimes are quite popular in the community, as indicated by the large number of blocked online gambling digital platforms. Primary legal materials are obtained from the Criminal Code, the Law on Information and Electronic Transactions, and related regulations both in Indonesia and foreign countries, while secondary legal materials are in the form of books and journals as complementary.

Result and Discussion

1. Policy on the formulation of criminal acts regarding online gambling in positive law in Indonesia

a. Regulation of the Crime of Online Gambling according to the Criminal Code Gambling is a phenomenon that has long existed in the world, and Indonesia is no

²⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, Surabaya: Kencana, 2021.

exception. Many areas such as Hong Kong, Macau, are big places for gamblers. Despite some countries, such as Canada, Germany, Singapore, and others that legalize gambling, it is estimated that global revenue from gambling will surpass \$600 billion USD by 2022.²⁶ Interestingly, in Indonesia in 2022 a big case emerged, namely investment, but after being investigated the investment was a fraudulent investment which is also part of online gambling crimes. Regulations regarding the crime of gambling have been regulated in the Criminal Code in accordance with the amendments by Law No. 7 of 1974 concerning the control of gambling. However, the policy formulation of laws and regulations has several weaknesses.

At the applicative stage, the judge is not free to determine the types of criminal sanctions that will be imposed on the perpetrators of gambling crimes. However, the policy formulation of laws and regulations has several weaknesses. This can be seen from the results of research conducted by Sugeng,²⁷ the application of criminal threats in Central Java to perpetrators of gambling crimes only lasted for a few months and the application of imprisonment for a period of years was almost never applied by judges. The punishment imposed by judges on gambling cases in 2015 is a type of imprisonment with a monthly period of time only, and the imposition of fines as an alternative form is also very difficult to implement.²⁸ This is due to the general minimum system and general maximum system adopted by the Criminal Code, so that any type of criminal sanctions contained in the law must be applied by judges. The policy of overcoming the crime of gambling in the future must still be carried out by means of a penalty. Criminal law formulation policies must be more optimal and able to reach the development of gambling crimes with advanced technology.²⁹

Gambling is a crime that cannot be carried out by one person alone, meaning that participation in it can be ascertained. According to Wirjono Prodjodikoro, participation or Deelneming is the participation of one or more people when another person commits a crime.³⁰ The teaching regarding inclusion in the Criminal Code divides the perpetrators

²⁶ Ian Wilenius, "A Safe Bet : Regulating Online Gambling and Lotteries Through the Criminal Code" Volume 27, 2018 hlm. 2.

²⁷ Sugeng Tiyarto, "Kebijakan Penegakan Hukum Pidana Dalam Rangka Penanggulangan Perjudian," *Fh.Undip2*, 2006, hlm. 130.

²⁸ *Ibid*, hlm. 132.

²⁹ Ian Wilenus, *Op. Cit.*

³⁰ Adnan Musa Asy'ari, *Pertanggungjawaban Pidana Para Pihak yang Terlibat dalam Perjudian Online*, skripsi UII Yogyakarta, 2020.

of criminal acts into several groups, namely: *Pleger / dader* or perpetrators; *Doenpleger* or the person who ordered to do; *Medepleger* or people who participate; *Uitlokker* or people who recommend, while assistants or *medeplichtige* are: Helpers at the time the crime was committed; and Assistant before the incident was carried out.

Simons as quoted by Eddy O.S. Hiariej stated that *Bij de leer der deelneming worden gemeenlijk twee vormen van deelneming onderscheiden, de zelfstandige en de onzelfstandige deelneming* (In the teaching of inclusion, it is usually divided into two forms of participation, independent participation and non-standing inclusion). Stand-alone participation is that the actions of each participant in committing a criminal act are given a separate assessment or qualification and their respective actions will be judged individually. Meanwhile, non-stand-alone participation is whether or not a participant can be punished depending on his role in the criminal act that has been committed by an offender and also depends on whether the act committed is a criminal act or not.

An example of a gambling case ³¹ related to the existence of the website www.mansion88.com which was decided by the court in 2014. In the decision of the North Jakarta District Court Number 1133/Pid.B/2014/PN Jkt.Utr dated 27 October 2014 with the defendants Stefanus Rocky, Marvin Tanjung, Fernandez, Judianto, and April Yanti were charged by the Public Prosecutor with charges in the form of subsidiaryity, namely (1) Primary one violates Article 303 paragraph (1) of the 1st Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code; (2) The first Subsidiary violates Article 303 paragraph (1) of the 2nd Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code; (3) Both violate Article 27 paragraph (2) in conjunction with Article 45 paragraph (1) of Law no. 11 of 2008 in conjunction with Article 55 paragraph (1) of the 1st Criminal Code; (4) The three primers violate Article 10 in conjunction with Article 3 of Law No. 8 of 2010; and (5) The three Subsidiaries violated Article 10 in conjunction with Article 5 of Law no. 8 Year 2010.

In his decision, the judge stated that the defendants were not proven to have committed the First Primary, First Subsidiary, Third Primary, and Third Subsidiary crimes, and then stated that the defendants were legally and convincingly proven guilty

³¹ Dosy Tri Purnawinata, "Aspek Hukum Pidana Dalam Perjudian Secara Online," *Solusi*, Volume 19 No. 2, 2021, hlm. 252–271.

of committing the First Subsidiary crime, namely violating Article 303 paragraph (1) the 2nd KUHP in conjunction with Article 64 paragraph 1 of the KUHP and sentenced the defendants to imprisonment for 1 (one) month and 20 (twenty) days respectively.³² Based on the available evidence and supported by the facts at the trial, the defendants should be charged with Article 27 paragraph (2) in conjunction with Article 45 paragraph (1) of the ITE Law in conjunction with Article 55 paragraph (1) of the 1st Criminal Code with a maximum sentence of imprisonment. 6 (six) years and/or a maximum fine of Rp 1,000,000,000 (one billion rupiah).

From the facts of the trial, it is known that the perpetrators together with Lucas Atjep Soegandi, Patrick Antonius, Achad Hakim (charged with separate files) and Henry Cahyadi (DPO) run the website www.mansion88.com which contains elements of gambling in it, and deliberately distributes, transmit, and make accessible gambling websites. In committing the crime of online gambling, there were defendants who acted as website owners, website promotion section, and administration section. From the results of the investigation, evidence was also obtained in the form of computers, storage media, bank accounts, and 5 servers used in online gambling crimes.

1) *Plegen*

In cases related to court decision number 1133/Pid.B/2014/PN Jkt.Utr, the investigator can conduct further investigations regarding the ownership of the website www.mansion88.com from registration data and bank accounts used to finance the operation of the website obtained from the results of investigation. It can be said that the owner of the website www.mansion88.com is the main actor in this case³³.

There are several experts who express their opinions regarding *Plegen* (who performs) or *Pleger* (perpetrators). Hazewinkel-Suringa stated that the perpetrator is any person who alone has fulfilled all the elements of the offense as determined. In contrast to Suringa, Pompe stated as follows, the perpetrators were all the people mentioned in article 55 of the Criminal Code, this was reinforced by the MvT which stated that all the people mentioned in article 55 of the Criminal Code were perpetrators. Van Bemmelen and Van Hattum then define the perpetrator: the perpetrator is a person who fulfills a formulation of an offense or a person who fulfills all elements of the formulation of an

³² *Ibid.*

³³ Eddy O S Hiariej, *Prinsip-Prinsip Hukum Pidana*, Yogyakarta: Cahaya Atma Pustaka, 2016.

offense, or as Zevenbergen says: a person who has fulfilled all the elements of an offense completely.

2) *Doenplegen*

Doenplegen is also referred to as *middelijk* *dadenschap* which means a person has the will to commit a criminal act, but he does not want to do it himself and uses other people who are ordered to commit the criminal act. However, a person who orders another person to do an action is the same as that person doing the act himself: *qui per alium facit per seipsum facere videtur*. There are at least three important requirements in *doenplegen*. First, the tool used to commit a criminal act is a person. Second, the person who was ordered did not have intention, negligence or the ability to take responsibility. Third, as a consequence of the second condition, those who are ordered to do so cannot be punished.³⁴

Related to the context of online gambling, people who order to distribute, transmit, or make accessible content containing gambling can be categorized as *doenplegen*. For example: Andi ordered Budi to create and operate a website that contains gambling in it. Then Andi is included in the category of people who tell him to do it (*doenplegen*).

3) *Medeplegen*

Medeplegen can be interpreted as participating in doing. Regarding the term *medeplegen*, initially the sentence was used “*opzettelijk tot het plegen daarvan medewerken*” deliberately come to work to do the deed. The term raises objections because there is no visible difference with the helper who provides assistance when the act is carried out. Based on the suggestion of De Vries, a linguist, so the word “*medewerken*” replaced with the term *medeplegen*. This form of inclusion of *medeplegen* is not expressed in an expressive *verbis* manner in the French Penal Code, but recognized in jurisprudence. Therefore, there is no unity of opinion among criminal law experts regarding what is meant by *medeplegen*.³⁵

³⁴ *Ibid.*

³⁵ *Ibid.*

In the case of court decision number 1133/Pid.B/2014/PN Jkt.Utr it can be said that all defendants jointly participated in distributing, transmitting, and making accessible the website www.mansion88.com which contains gambling.

4) *Uitlokking*

Uitlokking literally interpreted as encouraging or moving, while people who encourage or move are called *uitlokker*. There are two forms of assistance. First, assistance when the crime is committed. Second, assistance to commit crimes. This means that assistance is given before the crime occurs, whether by providing opportunities, means or information to commit a crime. Assistance to commit violations is not criminal. A person cannot be called an assistant actor just because he knows the main actor, but the assistant must know what he is doing and how to help him. As legal principles *nullus dicitur accessories post feloniam sed ille qui novit principalem feloniam fecisse, et illum recepitavit et confortavit* (no one is called an accessory after the fact but that person who knew the principal to have committed a felony, and received and comforted him).³⁶

In online gambling, there are online gambling service providers and online gambling service users. Online gambling service providers require a computer server that can serve requests to access online gambling on a large scale, online gambling service owners also have online gambling websites that can be accessed by online gambling service users. Online gambling service providers in Indonesia sometimes choose to rent servers located outside the jurisdiction of the Indonesian state to avoid law enforcement, online gambling service providers tend to choose to rent servers located in countries that allow gambling, on this server is stored all player data, a list of accounts used, and all data related to this online gambling service.

Online gambling service providers also have a website as an interface for online gambling service users and it is through this interface that users can access online gambling.³⁷ The website created by the gambling service provider is then placed on the server that has been rented by the service provider so that when an inspection is carried out it appears that the server and website domain for the online gambling service are outside the territory of Indonesia. online gambling service managers then monitor servers and websites as well as users of online gambling services through computers that have

³⁶ *Ibid.*

³⁷ J Banks, *Op. Cit.*

access to online gambling servers. a system used to control online gambling. has been made in such a way that it can run automatically by the server computer, starting from processing player data, matching player data, to managing player data for cheating in online gambling.

Online gambling service providers must have a technician who is an expert in the field of computers to monitor the condition of the server and website and regulate the condition of the server and services so that they can work perfectly. online gambling service users then access gambling websites that have been provided by online gambling service providers by first registering themselves, entering user data and bank accounts to then be used in gambling games.

After registering through an online gambling website, users of online gambling services can access gambling services and interact with other online gambling service users. enter user data and bank accounts for later use in gambling games. After registering through an online gambling website, users of online gambling services can access gambling services and interact with other online gambling service users. In general, users of online gambling services prefer to disguise their real identities to avoid law enforcement, whether using pseudonyms or using other people's bank accounts.

b. Regulation of the Crime of Online Gambling according to Law no. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions

One of the new dimensions of crime in the modern era is cyber crime. This crime, which has generated a lot of international attention, is referred to by Volodymyr Golube as by Barda Nawawie Arief, defined as *“the new form of anti-social behaviour.”* There are many terms used to represent the term cyber crime, including cyber space/birtual space offense, a new dimension of high tech crime, a new dimension of transnational crime, and a new dimension of white collar crime.³⁸

Cyber crime is the dark side of technological progress that has a very broad negative impact on all areas of modern life today. In response to this, Indonesia already has criminal regulations regarding electronic information and transactions. Law No. 19 of

³⁸ Barda Nawawi Arief, “Beberapa Aspek Pengembangan Ilmu Hukum Pidana (Meyongsong Generasi Baru Hukum Pidana Indonesia)”, Pidato Pengukuhan Jabatan Guru Besar Pada Fakultas Hukum Universitas Diponegoro, 1994.

2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions, in Article 45 paragraph (2), it is stated that “Anyone who knowingly and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing gambling content as referred to in Article 27 paragraph (2) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).” Article 45 of this Law is related to Article 27 paragraph (2), which states that “Everyone intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing gambling content.”

Although Law no. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions, at a glance, has accommodated online gambling crimes, but in fact it still contains weaknesses, namely juridical problems.³⁹ This weakness is so basic in nature, because in the absence of stipulation of qualifications for offenses or qualifications for criminal acts in the form of crimes or violations, juridical problems will arise in its implementation. Juridical qualifications in the form of crimes and violations that are not included in the criminal provisions will lead to juridical consequences. There will be differences in general rules, such as the application of general rules for punishment in Chapters I-VIII Book I of the Criminal Code, the juridical qualifications for each criminal act formulated in laws outside the Criminal Code will arise.⁴⁰ As a result, there is confusion about some general rules of punishment, for example on “trial and assistance”, “concurus”, “expiration of prosecution and criminal execution, “in terms of complaint offenses” and so on which are contained in Book I of the Criminal Code which becomes difficult to use.⁴¹

2. Online Gambling Crime Reformulation in Future

a. Online Gambling Crime Formulation Policy in Several Countries

1) Germany

Criminal liability for playing at online casinos

³⁹ Tri Hendro Sigit Prakosa, “How Irrationality Works in Indonesia: A Case of Fake Investment,” in *Proceedings Ofthe 7th International Conference on Entrepreneurship and Business Management*, 2019, hlm. 14–19.

⁴⁰ N Kieffer Christine and R Mottola Gary, “Pension Research Council Working Paper,” *Understanding and Combating Investment Fraud*, 2016, hlm. 274–316.

⁴¹ Ade Adhari et al., “Masalah Yuridis Tidak Ditetapkannya Kualifikasi Delik Dalam Ketentuan Pidana Pada Undang-Undang Yang Disahkan Dalam Kurun Waktu 2015-2019,” *Jurnal Muara Ilmu Sosial, Humaniora, dan Seni*, Volume 5 No. 1, 2021, hlm. 273–274.

Anyone as an organizer, offering games of chance (gambling), which also includes online casinos, without appropriate state approval, may be subject to prosecution (§ 284 StGB). Disputes sparked by Gambelli's decision of the European Court (decision 6 November 2003 - Ref.: C-243/01)

Penal Code (StGB)

Article 284 Organization of unauthorized games of chance

- 1) Any person who openly organizes or carries out a game of chance or provides facilities for it without official permission, shall be punished by a maximum imprisonment of two years or a fine.
- 2) Games of chance in closed clubs or societies where games of chance are usually held are also considered to be held for the public.
 - 1) Who in the case of verse , 2) commercial or 3) acting as a member of a gang formed to continue such acts, is punishable by imprisonment from three months to five years.
- 3) Whoever advertises general gambling (paragraphs 1 and 2) shall be punished with a maximum imprisonment of one year or a fine.

Section 285 Participation in illegal gambling Anyone who takes part in games of public chance (§ 284) is punishable by imprisonment of up to six months or by a fine of up to one hundred and eighty daily rates.⁴²

2) Russia

Penal Code Article 171.2. Illegal organization and gambling behavior (as amended by Federal Law No. 227-FZ of 29 July 2018)

1) Organization and (or) gambling using gaming equipment outside the gambling zone, or without the permission obtained in accordance with the established procedures for regulating and conducting gambling in betting and lottery shops outside the gambling zone, or without the permission obtained in accordance with established procedures permit to carry out activities to regulate and conduct gambling in gambling zones, or use information and telecommunications networks, including the Internet, or means of communication, including mobile

⁴² Kanzlei Dr Bar, "Strafbarkeit des Mitspielens bei Online-Casinos", <https://www.gluecksspiel-und-recht.de/aufsaeetze/strafbarkeit-des-mitspielens-bei-online-casinos/>, accessed on February 7, 2022 at 17:01 WIB.

communications, with the exception of cases where interactive bets are accepted by the gambling organizer at the betting office and (or) sweepstakes, as well as the systematic provision of premises for illegal organization and (or) gambling behavior is punishable by a fine in the amount of 300 thousand to 500 thousand rubles, or in the amount of wages or salaries, or any other income of the convicted person for a period of one to three years, or with mandatory work for a term one year time. a term of 180 to 240 hours, or with limitation of liberty up to four years, or imprisonment of up to two years. 2) The acts referred to in paragraph 1 of this article, which are committed by a group of persons with prior consent or involve the taking of large-scale income, shall be punished by a fine in the amount of five hundred thousand to one million rubles, or in the amount of wages or salaries, or any other income of the convict for a period of three to five years, or by deprivation of liberty. for a term of up to four years, with a fine in the amount of up to five hundred thousand rubles, or in the amount of wages or salaries, or other income of the convict for a period of up to three years or without him. 3) The acts governed by paragraphs 1 or 2 of this Article, if committed by an organized group or by a person using his official position, or involve taking income on a very large scale, shall be punished by a fine in the amount of one million to one million five hundred thousand rubles, or in the amount of wages or salaries, or any other income of a person sentenced for a period of four to five years, or deprivation. liberty for a term of up to six years, with a fine of up to one million rubles, or in the amount of wages or salaries, or other income of a convicted person for a term of up to five years or without, and with deprivation of the right to occupy certain positions or engage in activities for a period of up to five years or without.

Note.

1. Systematic assignment of places in this article means giving places more than twice.
2. Revenue on a large scale in this article is recognized as income, the amount of which exceeds one million five hundred thousand rubles, and on a large scale - six million rubles.⁴³

⁴³КОНСУЛЬТАНТПЛЮС, “Уголовный кодекс Российской Федерации”, http://www.consultant.ru/document/cons_doc_LAW_10699/b20820739fab5a2c2645f2c2dba2d73e9025f6e4/, accessed on February 10, 2022 at 11.44 WIB

3) Korean

The Game Industry Promotion Act (“Game Industry Act”) was enacted in 2006. In December 2020, a comprehensive amendment law (“Amendment Bill”) that includes new and more stringent regulations was introduced to protect game users and prevent speculative activity. The material matters of the Amendment Bill include (a) a domestic agent system that requires overseas game business actors to appoint domestic agents to prevent communication problems with users regarding user protection; (b) a general obligation on game business operators not to encourage or permit speculative activities using games, which may be issued by the Ministry of Culture, Sports and Tourism (MCST); (c) inclusion of the definition of loot boxes and the requirements of game business operators to disclose information about loot boxes, including types and opportunities of obtaining goods; expansion of reasons for revoking age ratings for games of general prohibition against speculative activities;

Recent Changes

a) enacted in 2011, the mandatory termination system under the Juvenile Protection Act requires game business operators to block access to their internet games for teens under the age of 16 from 12 a.m. to 6 a.m. (“Mandatory Termination System”); b) enacted in 2012, a selective shutdown system under the Gaming Industry Act allows youth under the age of 18 to choose or adjust the time to play internet games with the permission of their legal guardian (“Selective Shutdown System”). c) In November 2021, the National Assembly approved a bill to abolish the Mandatory Termination System, and the government is currently discussing ways to improve the Selective Termination System.⁴⁴

b. Reformulation of Online Gambling Criminal Act Regulations in the Future

Penal policy according to Marc Ancel is a science as well as an art which ultimately has a practical goal to enable positive legal regulations to be formulated better. There are two main problems in criminal policy using penal means, namely

⁴⁴ Portilla, Ruy-Diaz y Aguilar, S.C “*Comparisons | Global Practice Guides | Chambers and Partners,*” <https://practiceguides.chambers.com/practice-guides/comparison/714/7874/12454-12457-12460-12468-12478-12481-12488-12491-12494-12500-12504-12508-12515>, accessed August 9, 2022.

about what actions should be made into criminal acts, and related to what sanctions should be used or imposed on violators. The integralistic conception cannot be separated from analyzing the two central issues between criminal policy, social policy, and national development policy. This means that the solution to the problems above must also be directed to achieve certain goals of the socio-political policies that have been set.⁴⁵

It should be stated that the concept of the 2022 Criminal Code has regulated criminal acts committed in the field of technology, in the Territorial or Territorial Principles section, which is a renewal of the WvSNI Criminal Code. Article 4 point c, explains that criminal acts in the field of information technology or other criminal acts are experienced or occur in the territory of the Unitary State of the Republic of Indonesia or on Indonesian Ships and on Indonesian Aircraft.⁴⁶

Gambling issues are included in the Ninth Part of Articles 430 and 431. "(1) Sentenced to a maximum imprisonment of 9 (nine) years or a maximum fine of category VI, Anyone without a permit: a. offer or provide opportunities to play gambling and make a living or participate in gambling companies; b. offer or provide opportunities for the public to play gambling or participate in gambling companies, regardless of whether or not there are conditions or procedures that must be met in order to use the opportunity; or c. take part in gambling games as a livelihood; (2) If the crime as referred to in paragraph (1) is committed in carrying out the profession, an additional penalty may be imposed in the form of revocation of rights as referred to in Article 86 letter f."

Then in Article 431 "Everyone who uses the opportunity to play gambling that is held without a permit, is punished with a maximum imprisonment of 3 (three) years or a maximum fine of category III." Paragraph (1) Article 430 explains that what is meant by "permit" is a permit determined by the government with due observance of the laws that live in the community.

If you recall, the two main problems in criminal policy using the means of penalization (criminal law) are related to the problem of determining what acts are

⁴⁵ Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Jakarta: Prenada Media, 2018.

⁴⁶ Barda Nawawi Arief, *Reformasi Sistem Peradilan (Sistem Penegakan Hukum di Indonesia)*, Semarang: Badan Penerbit Universitas Diponegoro, 2017.

criminal acts, and the sanctions that should be used will be imposed on violators.⁴⁷ Through the concept of the Criminal Code, gambling acts have been regulated in articles 430 and 431, then digital means are regulated in general provisions, article 4 point c.

There is a significant difference from the concept of regulating gambling criminal acts in the 2019 RKUHP, the ninth section on gambling, in Article 432, it is stated that "(1) Sentenced to a maximum imprisonment of 9 (nine) years or a maximum fine of category VI. Persons without permission: a. offer or provide opportunities to play gambling and make a living or participate in gambling companies; b. offer or provide opportunities for the public to play gambling or participate in gambling companies, regardless of whether or not there are conditions or procedures that must be met in order to use the opportunity; or c. take part in gambling games as a livelihood. (2) If the crime as referred to in paragraph (1) is committed in carrying out the profession, an additional penalty may be imposed in the form of revocation of rights as referred to in Article 86 letter f." Meanwhile, it is also explained that gambling carried out without a permit can be subject to criminal penalties, according to Article 433 "Article 433 Anyone who takes advantage of the opportunity to play gambling that is held without a permit shall be punished with imprisonment for a maximum of 3 (three) years or a maximum fine of category III."

Indeed, criminal law reform is known as a policy approach point of view, this is because as part of social policy, criminal law reform is essentially part of efforts to overcome social problems in order to support national goals (public welfare, and so on). As part of criminal policy, criminal law reform is basically a part of community protection efforts, especially in crime prevention efforts. Then as part of law enforcement policies, criminal law reform is essentially part of efforts to update legal substance in order to make law enforcement more effective. Another important thing is the existence of a values approach, because criminal law reform is basically an effort to review and reassess ("reorient and re-evaluate") sociopolitical values; socio-philosophical, and sociocultural that underlies and provides content to the normative and substantive content of the aspired criminal law. There are exceptions to the concept

⁴⁷ Iqbal Kamalludin and Barda Nawawi Arief, "Kebijakan Formulasi Hukum Pidana Tentang Penanggulangan Tindak Pidana Penyebaran Ujaran Kebencian (Hate Speech) Di Dunia Maya," *Law Reform*, Volume 15 No. 1, 2019, hlm. 113–129.

of the 2022 Criminal Code, namely if there is a permit from the government by taking into account the laws that live in society. Even though this explanation may be intended to accommodate the laws that live in society with the permission of the government. As studied by Ika Inda Agus Sri Rejeki, using a sociocultural approach, Hwa-Hwee Gambling was granted permission by the DKI Jakarta Provincial government, but because of the emergence of several negative impacts, especially for the mentality of the community itself. Many people in Jakarta are disturbed because they lost the Hwa-Hwee game. The spread of Hwa-Hwee in the community is increasingly widespread without control, causing the government to take action to close the gambling practice.⁴⁸ As for the gambling tradition that exists in Indonesia, according to the social science approach as studied by Yuliana Nuraeni⁴⁹, gambling is a phenomenon that accompanies a tradition, in this study is the tradition of the Harvest Festival in Bekasi Regency. This shows that culture which is actually a noble tradition, such as in the Harvest Festival, is an expression of gratitude, which then if carried out with a value approach, this tradition actually seems to be degraded by gambling behavior.

Penal Code of Germany	<p>It has been regulated about online gambling, in this country there are types of gambling that are legalized, it is also regulated about the crime of inviting people to participate in online gambling, in the form of advertising.</p> <p>Criminally, this country applies more fines to minimize imprisonment. The imprisonment can be replaced with a fine.</p> <p>In addition to threatening individual perpetrators, Article 284 also regulates criminal threats for organizations.</p>
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⁴⁸ Ika Inda Agus Sri Rejeki, "HWA-HWEE KU SAYANG HWA-HWEE KU MALANG," *AVATARA, e-Journal Pendidikan Sejarah*, Volume 1 No. 3, 2013, hlm. 377–388.

⁴⁹ Yuliana Nuraeni, *Fenomena Judi Dalam Tradisi Pesta Panen (Kasus Di Kampung Utan Keramat Desa Jayabakti Kecamatan Cabangbungin Kabupaten Bekasi)*, Thesis Universitas Islam Negeri Sunan Gunung Djati, 2015, hlm. 1.

Penal Code of Rusia	<p>The Russian state regulates certain areas where gambling is allowed. Organizers who use the internet system outside the gambling zone will be subject to a fine.</p> <p>The punishments applied are in the form of fines and social work. This punishment is an alternative to imprisonment.</p>
Korean Game Industry Law	<p>Online gambling organizers from abroad must legally appoint agents as a form of legal protection for users. Children under the age of 16 are not allowed to make online gambling transactions, there are restrictions on access to online games from 12 to 6 in the morning.</p>
Draft Criminal Code	<p>Crimes in the digital world are regulated in Article 4 of the RKUHP, so that any crime committed is based on the principle of digital territory and territory. Gambling is regulated in Articles 430 and 431, by accommodating alternative criminal penalties for fines. Accountability is also imposed on individual subjects and legal entities with a clear classification of criminal acts. It's just that in Article 433 it is written that the implementation of gambling without a permit must have a comprehensive explanation so that it does not cause multiple interpretations</p>

Table of Comparative Analysis of Online Gambling Regulations in Germany, Russia, Korea, and the Indonesian RKUHP

Conclusion

Gambling arrangements in the Criminal Code do not regulate online gambling, the ITE Law still has weak juridical problems in juridical consequences. While in the Draft Criminal Code, it is actually regulated more comprehensively, namely by regulating criminal acts committed with technology in general provisions, but regarding gambling,

the Criminal Code Concept contain exceptions to permit arrangements taking into account laws that apply in society. Gambling, which has been licensed by the government, has a negative impact on people's lives. The word "without permission" has a meaning that tends to be ambiguous and less relevant.

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