

**CRIMINAL RESPONSIBILITY OF PERPETRATORS WHO  
ADVERTISE ONLINE GAMBLING THROUGH INSTAGRAM  
(Decision Study No.98/Pid.Sus/2024/PN.Rta)**

**Sadam Ali Subambhi**

Email: [sadamali@gmail.com](mailto:sadamali@gmail.com)

Universitas Muhammadiyah Sumatera Utara

**ABSTRACT**

The development of technology in Indonesia is growing rapidly, this has also led to the development of online gambling crimes. Online gambling is a phenomenon that cannot be denied and is found in society, the increasing openness of online gambling sites has resulted in an increase in the number of online gambling players and online gambling advertising service providers in Indonesia. Online gambling advertising is an effort to advertise online gambling services provided through social media, one of which is Instagram. Advertising online gambling through Instagram has become the most strategic and effective in attracting public interest. Based on the results of the study, the formulation of the criminal offense of online gambling through Instagram can be charged with the ITE Law. In the Criminal Code, the crime of gambling is general (*lex generalis*) and the ITE Law Number 1 of 2024 regulates the crime of online gambling in Article 27 Paragraph (2) which is said to be a special regulation (*lex specialis*) of the Criminal Code. Actors who advertise online gambling via Instagram can be subject to criminal sanctions as regulated in Article 45 Paragraph (3) of the Republic of Indonesia Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning ITE, subject to a maximum imprisonment of 10 years and a maximum fine of IDR 10,000,000,000. can be held criminally responsible after fulfilling the elements of committing an unlawful act, being able to be responsible, having a form of error in the form of intent (*dolus*) and there is no justification and forgiveness. Based on the analysis of decision Number 98/Pid.Sus/2024/PN.Rta, it shows that there was an error made by the perpetrator by fulfilling the elements charged in accordance with Article 45 Paragraph (3) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning ITE.

**Keywords: Criminal Liability, Advertising Online Gambling, Instagram.**

**A. Introduction**

The development of information technology plays a major role in changing communication patterns and community activities. This phenomenon occurs throughout the world, including in Indonesia. The progress of information and communication is marked by the increasing use and utilization of the internet and also social media. A separate world known as cyberspace or virtual world is a computer-based communication that offers a new reality in the form of virtual indirect and unreal.

The development of information technology is truly like a double-edged sword that on one side contributes to the improvement of human welfare and civilization, but on the other

side becomes a means or media to commit unlawful acts. The development of technology and access to personal data on the internet has also created a virtual marketplace for criminals to share information and methods of crime.

Crimes that are often committed in cyberspace are gambling. Gambling is difficult to overcome, according to the law itself, gambling is also a crime that can disturb society. Gambling crimes are difficult to overcome because of their closed nature, making it easy for people to do it. Gambling is not only a national problem, but has become an international problem, because every country has gambling cases in it. This criminal act continues to increase every day, and its form also continues to change.

Online gambling promotions often occur in Indonesia, recorded from 2018 to July 19, 2023, the Ministry of Communication and Information has taken down access to 846,047 online gambling content on websites and social media platforms. The criminal case of advertising online gambling that occurred in Decision number 98 / Pid.Sus / 2024 / PN.Rta concerning advertising online gambling of the JEJUSLOT type. Based on the decision, it was explained that the defendant named Rini Erlina alias Ririn Binti Pansyah was proven to have advertised the online gambling site or link jejudot through her Instagram account and it was known from her actions that the defendant received a payment of IDR 600,000, - (six hundred thousand rupiah) per / 15 (fifteen days) and the defendant had received wages / salary 3 (three) times the payment with a total of IDR 1,800,000, - (one million eight hundred thousand rupiah) which was transferred directly to the defendant's DANA application account. The defendant's actions are regulated and threatened with criminal penalties according to Article 45 paragraph (3) of the Republic of Indonesia Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions. Therefore, it is very clear that the defendant's actions in advertising gambling are criminal acts that can be punished. Based on the description above, the formulation of the problem discussed in this study is, how is the formulation of the criminal offense of online gambling via Instagram, how is the criminal liability of perpetrators who advertise online gambling via Instagram, how is the analysis of decision Number 98 / Pid.Sus / 2024 / PN.Rta related to the criminal liability of perpetrators who advertise online gambling via Instagram.

## Research Methods

A study cannot be called research if it does not have a research method.<sup>1</sup> Research methods are one of the factors of a problem that will be discussed.<sup>2</sup> The study was conducted using secondary data which was analyzed qualitatively using the Desk Research Method.<sup>3</sup> The literature materials used in writing this research are several references originating from research results, studies, and reviews of several writings which are then summarized into a scientific paper.<sup>4</sup>

## B. Discussion

### 1. Formulation of Online Gambling Criminal Offenses from the Perspective of the Criminal Code and the ITE Law

The legal principle states that *lex specialis derogat lex generalis* states that if all acts included in criminal regulations are general in nature, but are regulated in criminal regulations that are special in nature, then the special nature is applied. In the provisions contained in Article 63 Paragraph 2 of the Criminal Code, there is a principle of *lex specialis derogat lex generalis* which is interpreted as a legal principle that means that special regulations (*lex specialis*) override general regulations (*lex generalis*). In the Criminal Code, gambling is not general in nature (*lex generalis*).

No criminal penalty can be imposed for an act that is not included in the formulation of a crime. This does not mean that a criminal penalty can always be imposed if the act is included in the formulation of a crime. For this, two conditions are needed: the act is unlawful and can be blamed. Thus, the formulation of the definition of a criminal act becomes clear: a criminal act is a human act that is included in the scope of the formulation of a crime, is unlawful, and can be blamed.

The rapid development of technology has also led to the development of gambling into the online realm, where the increasing openness of online gambling sites has resulted in an increase in the number of gamblers and online gambling promotion service providers in Indonesia. Online gambling, which is a cybercrime, has a very broad negative impact and is

---

<sup>1</sup> Koto, I., Hati, L. P., Manurung, A. S., & Siregar, A. S. (2024). Islamic Holy Days: The Contention of Rukyatul Hillal and Hisab Hakiki Wujudul Hilal Disputes for Muslims in Indonesia. *Pharos Journal of Theology*, 105(2).

<sup>2</sup> Hanifah, I., & Koto, I. (2025). Legal Protection for Workers with Fixed-Term Employment Agreements Before and After the Job Creation Law. *Kosmik Hukum*, 25(2), 245-256.

<sup>3</sup> Simatupang, R. S. A. (2024). Pelaksanaan Sistem Peradilan Pidana Anak Di Indonesia Perspektif Nilai Keadilan. *Jurnal Yuridis*, 11(1), 54-63.

<sup>4</sup> Perdana, S., & Koto, I. (2024). Providing Legal Protection for Consumers Against Standard Clauses/One-sided Agreements Made by Business Actors. *DE LEGA LATA: Jurnal Ilmu Hukum*, 9(1), 23-30.

more dangerous than conventional gambling, both for other internet users and unlimited access makes this crime a cross-country crime.

The second objective element in Article 27 Paragraph (2) is to make accessible information and/or electronic documents containing gambling content, the meaning of this element is that the perpetrator must be proven to have committed an act that can allow other people to access information and/or electronic documents containing gambling content. Law Number 1 of 2024 concerning ITE regulates the crime of online gambling, where a crime of online gambling (*lex specialis*) from a (*lex generalis*), then the crime of online gambling in Law Number 1 of 2024 concerning ITE as regulated in Article 27 Paragraph (2) in conjunction with Article 45 Paragraph (3) is the *lex specialis* of the crime of gambling in Article 303 and 303 bis of the Criminal Code.

## **2. Criminal Liability of Perpetrators Who Advertise Online Gambling Through Instagram**

When talking about criminal liability, it cannot be separated from the element of "fault". In criminal law, the most fundamental principle is known, namely the principle of "No Crime Without Fault" which is known as "Keine strafe ohne schuld" or "geen straf zonder schuld" or "nulla poena sine culpa". From this principle, it can be understood that fault is one of the elements of criminal liability of a legal subject who must have fault in order to be punished.

The main element of criminal liability is only error (*schuld*). So it is necessary to distinguish between the characteristics of the act that is considered a crime and the characteristics of the person who does it. The legal rules in material criminal law regarding criminal liability function as determinants of the conditions that must be present in a person so that a person is legally sentenced to a criminal penalty. An error is an act that is intended by a person, including in relation to online gambling carried out by the perpetrator/defendant.

The provisions on criminal liability for online gambling crimes are regulated in Article 45 Paragraph (3) "Any person who intentionally and without the right distributes, transmits and/or makes accessible Electronic Information and/or Electronic Documents containing gambling content as referred to in Article 27 Paragraph (2) shall be punished with imprisonment for a maximum of 10 (ten) years and/or a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah).

The element of imposing a criminal penalty on someone who commits a crime, there must be an element of error, whether done intentionally or due to negligence. This needs to be

proven if you want to take legal action. In this case, the role of the judge is very important in determining the existence of the elements required for criminal responsibility.

### **C. Conclusion**

Based on the description above, it can be concluded that the Criminal Code has regulated the crime of gambling, but this rule is general (*lex generalis*), meaning it does not apply to online gambling, and Law Number 1 of 2024 regulates the crime of gambling as a special rule (*lex specialis*) of the Criminal Code. Criminal liability for perpetrators who advertise online gambling via Instagram can be subject to criminal sanctions as regulated in Article 45 Paragraph (3) in conjunction with Article 27 Paragraph (2) of the Republic of Indonesia Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions shall be punished with imprisonment for a maximum of 10 (ten) years and/or a maximum fine of IDR 10,000,000,000 (ten billion rupiah)".

### **Bibliography**

- Hanifah, I., & Koto, I. (2025). Legal Protection for Workers with Fixed-Term Employment Agreements Before and After the Job Creation Law. *Kosmik Hukum*, 25(2), 245-256.
- Koto, I., Hati, L. P., Manurung, A. S., & Siregar, A. S. (2024). Islamic Holy Days: The Contention of Rukyatul Hillal and Hisab Hakiki Wujudul Hilal Disputes for Muslims in Indonesia. *Pharos Journal of Theology*, 105(2).
- Perdana, S., & Koto, I. (2024). Providing Legal Protection for Consumers Against Standard Clauses/One-sided Agreements Made by Business Actors. *DE LEGA LATA: Jurnal Ilmu Hukum*, 9(1), 23-30.
- Simatupang, R. S. A. (2024). Pelaksanaan Sistem Peradilan Pidana Anak Di Indonesia Perspektif Nilai Keadilan. *Jurnal Yuridis*, 11(1), 54-63.