

JURIDICAL STUDY ON CRIMINAL ACTS OF
ONLINE TOGEL GAMBLING

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Abstract

Online gambling has gained popularity worldwide as a major entertainment industry. However, this growth has also brought about concerns regarding criminal activities such as fraud, money laundering, and illegal gambling operations. This study aims to analyze the considerations of judges in sentencing online gambling crimes and proving online togel gambling crimes. The research adopts a normative juridical approach (legal research) to examine the application of rules or norms in positive law using a statute-based approach. The analysis reveals that Article 303 and Article 303 Bis of the Criminal Code are utilized to address online gambling crimes, particularly online togel gambling. Although Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2011 regarding Electronic Information and Transactions can serve as a legal basis, it was not applied in this case. When deciding a criminal case, judges must take into account various factors, including ensuring that the actions charged meet the formulation of the offense and are in violation of the law, assessing the defendant's ability to be held accountable, and considering any justifications presented. Furthermore, the judge should also consider objective requirements, such as a complete indictment, case submission letter, and the case file. In the context of online togel gambling, evidence is evaluated using the theory of the Negative Legal System, which mandates at least two valid pieces of evidence as stipulated in Article 184 of the Criminal Procedure Code, in conjunction with the judge's own belief. Despite the availability of the Information and Electronic Transactions (ITE) Law as a legal basis, this study demonstrates the continued reliance on Article 303 of the Criminal Code for such cases, indicating that the principle of *lex specialis derogat legi generali* (specific laws override general laws) does not apply.

Keywords: Crime, Togel Gambling, Online Gambling

1. INTRODUCTION

In Indonesian positive law, gambling is categorized into two types: online gambling (network) and ordinary gambling. The specific regulation for online gambling is outlined in Article 27, paragraph 2 of Law number 11 of 2008 concerning Electronic Information and Transactions. Ordinary gambling, on the other hand, is generally governed by Article 303 of the Criminal Code. Gambling encompasses various games such as “dice, blackjack (twenty-one), *jemeh*, *kodok-ulo*, roulette, baccarat, *kemping keles*, *kocok*, *keplek*, *tambola*, and others.” However, certain games like dominoes, bridge, *ceki*, *peidan*, etc., which are primarily used for entertainment, are not considered gambling.

The application of criminal liability for gambling should prioritize legal principles. A principle serves as the foundation for thinking, opinions, and actions (Kurniawan et al., 2022). Principles in law and regulation formation refer to the basis used in compiling laws and regulations (Nababan, 2021). In Article 63, paragraph 2 of the Criminal Code (KUHP), the principle of *Lex specialis Derogate Lex generalis* is stated. This principle of legal interpretation states that a special law (*lex specialis*) takes precedence over a general law (*lex generalis*).

Article 303, paragraph (3) of the Criminal Code defines gambling games as those that rely on luck for winning, and where cleverness and habitual involvement increase the chances of winning (Saragih et al., 2018). It also encompasses betting on race or game outcomes that do not involve the participants directly, as well as other games. A detailed explanation of Article 303, paragraph (3) is provided in the Explanation of Article 1 of Government Regulation Number 9 of 1981, which pertains to the Implementation of Law Number 7 of 1974 concerning Gambling Control.

To address the pressing concerns related to gambling, the New Order government era implemented Law Number 7 of 1974 concerning Gambling Control, which aimed to tackle the issue head-on. This legislation recognized the inadequacy of existing penalties outlined in the Criminal Code (KUHP) for gambling offenses and stressed the need for their augmentation. The gravity of gambling transgressions was clearly acknowledged as they were reclassified as crimes, leading to more severe punishments (Mestre-Bach et al., 2018). Previously, the penalties for gambling ranged from a maximum of one month to three months of imprisonment (Article 542, paragraph 1 and 2) under the Criminal Code. However, with the introduction of Law No. 7 of 1974, these penalties were substantially increased to a maximum of four years (Article 542, paragraph 1) and six years (Article 542, paragraph 2) respectively.

Furthermore, Article 1 of Law No. 7 of 1974 explicitly emphasizes that all forms of gambling offenses are regarded as crimes under the jurisdiction of this law. The legislation recognizes that gambling activities fundamentally contradict religious principles, social decency, and the moral values enshrined in Pancasila, the philosophical foundation of the Indonesian state. Moreover, it highlights that gambling poses significant threats to the livelihoods and well-being of both the community and the nation as a whole (Lakoro et al., 2020). By addressing the inherent dangers of gambling through more stringent penalties and legal measures, the government aimed to safeguard the interests of the society, nation, and state, fostering a more wholesome and prosperous environment for all.

The proliferation of "*togel*" (a form of lottery in Indonesia) in society reflects the failure to build rationality among the public (Handrio & Widowaty, 2022). This has made life more speculative, characterized by intrigue, suddenness, and unpredictability. Consequently, life is wagered through numbers. Irrationality has grown due to the diminishing culture of hard work and discipline in society. The dominant attitude among the public is the desire for quick wealth and fame. Politicians have already taught how to live a comfortable and suddenly affluent life. The current mentality displayed by the public is focused on achieving wealth without accomplishments. For politicians, this is considered normal, as being a political actor is seen as an investment to gain economic power. This is what fosters gambling because people seek positions by spending significant amounts of money but lack achievements and concepts. This cultivates a flourishing culture of speculative concepts. On the other hand, society itself allows for the proliferation of irrational things.

The application of regulations against online gambling perpetrators is still based on the same provisions as conventional gambling, namely Article 303 and Article 303 bis of the Criminal Code (Gaurifa, 2022). However, it is widely known that there are specific laws governing online gambling offenses, particularly Article 27, paragraph (2), and the corresponding penalty stated in Article 45 of Law No. 11 of 2008 concerning Electronic Information and Transactions. The imposition of severe penalties for gambling crimes is

necessary to create a deterrent effect on perpetrators and other members of society, preventing the occurrence of gambling offenses (Lakoro et al., 2020). Therefore, the role of the court, especially prosecutors and judges, is expected to be wiser, fairer, and more discerning in charging and imposing criminal sanctions on online gambling offenders. This should not only consider the perspective of the perpetrators but also the perpetuation of the criminal act, as gambling can lead to other criminal activities when individuals become obsessed with it.

Based on the aforementioned background, two main issues can be identified: (1) How do judges consider sentencing online gambling crimes? (2) How is the proof of online *togel* gambling crime established? This research aims to make a valuable contribution to the field of criminal justice by exploring the judicial decision-making process regarding sentencing for online gambling crimes and examining the methods employed to establish evidence in cases related to online "*togel*" gambling. By shedding light on these crucial aspects, this study seeks to enhance our understanding of the legal framework surrounding online gambling offenses and provide insights that can inform and improve future legal practices and policies in addressing such crimes.

2. RESEARCH METHODS

The research method employed in this study involved conducting legal research to identify legal rules, principles, and doctrines relevant to the legal issues under investigation (Soekanto & Mamudji, 2006). A normative juridical approach was utilized, focusing on examining the application of rules and norms within positive law. The research followed a statute-based approach, aiming to analyze primary legal materials and secondary legal sources.

Data collection for this study involved a comprehensive review and analysis of relevant legal materials. The primary legal materials utilized in this study included the following legislation that was in force during the research period:

1. Law No. 1/1946 on the Regulation of Criminal Law.
2. Law Number 8 of 1981 concerning the Criminal Procedure Code.
3. Law Number 7 of 1974 concerning the Control of Gambling.
4. Law Number 11 of 2008 concerning Electronic Information and Transactions.

To complement the analysis, secondary legal materials such as literature books, legal dictionaries, and legal journals were also consulted. These sources provided additional insights and perspectives on the legal issues under examination.

The data collection process involved the following steps:

- 1) Identification of relevant legal materials: The researcher conducted a thorough search and identification of primary legal materials, including statutes, regulations, and court decisions, that were directly related to the research topic.
- 2) Collection of secondary legal sources: The researcher gathered secondary legal materials, such as literature books, legal dictionaries, and legal journals, to supplement the analysis and provide additional perspectives on the legal issues.
- 3) Evaluation and analysis of legal materials: The collected legal materials were carefully reviewed and analyzed to extract key information and identify

relevant legal principles and doctrines.

- 4) Documentation of findings: The researcher documented the findings from the analysis of legal materials, including relevant legal provisions, case summaries, and scholarly interpretations.

By employing this comprehensive data collection process, the study aimed to ensure a thorough exploration of the legal framework and principles relevant to the research topic. The collected data served as the foundation for the analysis and conclusions presented in the study, contributing to the existing body of knowledge in the field of law.

3. RESULTS AND DISCUSSION

3.1. Considerations of Judges in Sentencing Online Gambling Offenders

In Indonesia, there are several regulations governing gambling, including both traditional and online forms. The penalties for gambling offenders in Indonesia are determined by the applicable laws and regulations, which specify the articles under which the perpetrators are prosecuted. Online gambling offenders can be charged under Article 27, Paragraph (2) of the ITE Law No. 11 of 2008, and Article 45, Paragraph (2) of the ITE Law No. 19 of 2016. On the other hand, perpetrators of *togel* gambling can be charged under Article 303, Paragraph (1) of the Criminal Code, which specifically addresses *togel* gambling.

The government has revised the punishment outlined in Article 303, Paragraph (1) of the Criminal Code for *togel* gambling offenses. The maximum imprisonment term has been increased from 2 years and 8 months to 10 years, and the maximum fine has been increased from Rp. 90,000 to Rp. 25,000,000. Regarding gambling in general, the punishment for offenders was previously addressed in Law Number 7 of 1947 concerning Gambling Control, where the legislation provided explanations regarding the penalties imposed on perpetrators.

Material criminal law refers to criminal law that includes rules defining punishable acts, conditions for imposing penalties, and provisions regarding punishment (Hutabarat et al., 2022). The regulation of material criminal law is outlined in the Criminal Code. Article 303 and Article 303 Bis of the Criminal Code are separate from “Article 27, Paragraph (2) of Law Number 11 of 2008 and Article 45, Paragraph (2) of Law Number 19 of 2016 concerning Electronic Information and Transactions.” This distinction arises because the maximum criminal sanctions for online gambling offenders under Article 303 and Article 303 Bis of the Criminal Code are up to 10 years in prison, whereas Article 27, Paragraph (2) of Law Number 11 of 2008 and Article 45, Paragraph (2) of Law Number 19 of 2016 concerning Electronic Information and Transactions impose a maximum penalty of 6 years. Consequently, this leads to differences in the length of potential imprisonment.

Article 303, Paragraph (1) to 2e, and Article 303 Bis, Paragraph (1) to (2) of the Criminal Code are as follows:

Article 303, Paragraph (1):

"Any person who intentionally offers or provides opportunities for gambling to the public or intentionally participates in an enterprise for that purpose, whether or not an

agreement exists or any means are used, shall be punished with a maximum imprisonment of ten years or a maximum fine of twenty-five million rupiahs."

2e:

"Intentionally provides or gives the opportunity to play gambling to the public or intentionally participates in an enterprise for that purpose, even if there is or is not an agreement or in any way to use that opportunity."

The elements of gambling according to Article 303, Paragraph (1) of the Criminal Code consist of two elements:

- a. Subjective elements, which involve intentionally committing a criminal offense.
- b. Objective elements, which include offering or providing opportunities for gambling games, making a livelihood, or participating in an enterprise.

Article 303 Bis, Paragraph 1:

"Any person who participates in gambling on a public street or near a street or in a place visited by the public, unless the competent authority has granted a license to conduct such gambling, shall be punished with a maximum imprisonment of four years or a maximum fine of ten million rupiahs."

(2):

"Any person who participates in gambling on a public street or near a street or in a place visited by the public, unless the competent authority has granted a license to conduct such gambling."

The elements of gambling according to Article 303 Bis of the Criminal Code consist of objective elements:

- a. Whoever.
- b. Participation in playing gambling.
- c. On or at the side of a public road or in a place open to the public.

The crime of gambling through internet facilities (online) is governed by legal provisions in the Criminal Code, specifically "Article 303 and Article 303 Bis." However, there are also legal provisions addressing gambling through internet facilities (online) in "Article 27, Paragraph (2) of Law Number 11 of 2008 and Article 45, Paragraph (2) of Law Number 19 of 2016 concerning Electronic Information and Transactions" (Azania & Mircahya, 2013; Lakoro et al., 2020; Rossa et al., 2020).

The police have primarily relied on socialized efforts to prevent and control *togel* gambling. These efforts involve community cooperation and aim to prevent and combat *togel* gambling, which remains prevalent in Indonesia. The preventive and repressive measures implemented are as follows:

1. Preventive efforts (prevention)

Preventive efforts are aimed at averting the emergence and spread of gambling in society. The goal is to discourage individuals from engaging in gambling crimes. Examples of preventive measures include providing legal counseling to the community, establishing teams involving intelligence to monitor locations commonly used for *togel*

gambling, reinforcing religious beliefs among individuals, and conducting community patrols and supervision.

2. Repressive efforts (countermeasures)

Countermeasures refer to actions taken against individuals who have engaged in unlawful activities, with the objective of helping them reform and prevent recurrence of their actions. These efforts may involve gathering information from the public, conducting investigations, carrying out ambushes, imposing penalties or punishments on offenders, and providing guidance and rehabilitation.

According to Dr. Edwin H. Sutherland and Donald R. Cressey, criminology can be defined as "the body of knowledge about crime as a social phenomenon." It encompasses various sciences that study crime, which is considered a social phenomenon. Criminology can be divided into three main branches of science, as follows: (Sutherland et al., 1992)

- 1) Sociology of law: This branch focuses on studying crime as an act prohibited by law and subject to sanctions. The determination of an act as a crime is based on legal rules. In the context of sociology of law, *togel* gambling is considered a crime because it violates the established legal rules, which are accompanied by sanctions. In Indonesia, the regulation governing gambling is Law Number 7 of 1947 concerning Gambling Supervision, and Article 303 of the Criminal Code specifically addresses gambling offenses.
- 2) Etiology of crime: This branch of criminology seeks to scientifically analyze the causes of crime. The etiology of crime is a significant area of study within criminology. Interviews with various informants have revealed that the causes of gambling crimes include weak religious understanding, lack of education, low economic status, environmental and cultural factors, as well as weak law enforcement.
- 3) Penology: Penology primarily concerns the science of punishment, but Sutherland includes rights related to crime control efforts, including both repressive and preventive measures (Santoso & Zulfa, 2009). Law Number 7 of 1974 concerning Gambling Control states that all gambling offenses are crimes. Furthermore, the article includes amendments such as:
 - a. "Modifying the criminal punishment in Article 303, paragraph (1) of the Criminal Code, from a maximum imprisonment of two years and eight months or a maximum fine of ninety thousand rupiahs to a maximum imprisonment of ten years or a maximum fine of twenty-five million rupiahs.
 - b. Modifying the punishment in Article 542, paragraph (1) of the Criminal Code, from a maximum imprisonment of one month or a maximum fine of four thousand five hundred rupiahs to a maximum imprisonment of four years or a maximum fine of ten million rupiahs.
 - c. Modifying the punishment in Article 542, paragraph (2) of the Criminal Code, from a maximum imprisonment of three months or a maximum fine of seven thousand five hundred rupiahs to a maximum imprisonment of six years or a maximum fine of fifteen million rupiahs.
 - d. Changing the article title from Article 542 to Article 303 Bis."

Criminology aims to provide guidance on how society can effectively combat crime and, more importantly, prevent it (Bonger, 1962). The objective of criminology is to

anticipate and respond to all policies related to criminal law, thereby preventing potential adverse consequences for perpetrators, victims, and society as a whole (Atmasasmita, 2011). This is reasonable because gambling poses a real threat to social norms and can create tension both at the individual and societal levels. From a national interest perspective, all forms of gambling have negative impacts and harm the morals and mentality of society, especially the younger generation.

Regarding the considerations of judges in court, the defendant who has committed the crime of online *togel* gambling will be examined and evaluated by the panel of judges to determine whether the charges under Article 303, paragraph (1) of the Criminal Code or Article 303 bis, paragraph (1) of the Criminal Code have been fulfilled. The judge will consider the following factors:

1. The element of "*Barang Siapa*" (Whoever):

Considering that the Criminal Code does not explicitly define the term "*Barang Siapa*," it is clarified in the *Memories Van Toelichting* (MVT) that "*Barang Siapa*" refers to a human being as a legal subject. In this case, the witnesses and overall evidence presented in court have established that the identity mentioned in the prosecutor's indictment is indeed the defendant, Hendra Taty Andana Bin Muhammad Santoso, who is currently present and being examined in the public hearing of the Kudus District Court. Therefore, it is deemed that the element of "*Barang Siapa*" has been fulfilled.

2. The element of "*Tanpa Mendapatkan Izin*" (Without Obtaining Permission):

Based on the testimonies of witnesses and the defendant's statements in court, it has been established that the defendant engaged in the game without obtaining or having any authorization from the competent authority. Therefore, it can be concluded that the element of "*Tanpa Mendapatkan Izin*" has been fulfilled.

3. The element of "*Dengan Sengaja Menawarkan atau Memberi Kesempatan Kepada Khalayak Umum Untuk Bermain Judi atau dengan Sengaja Turut Serta Dalam Perusahaan Itu*" (Intentionally Offering or Providing Opportunities to the General Public to Gamble or Intentionally Participating in Such Enterprise):

The term "*sengaja*" (intentionally) refers to performing an act willingly and being aware of its consequences. This can be observed not only from the defendant's internal intentions but also from their outward behavior and actions. The term "*permainan judi atau Hazardspel*" refers to any game that relies primarily on chance for winning, although it may also involve skill and experience.

The considerations of a judge are the basis or factors taken into account by the judge in deciding a criminal case. Additionally, the judge also considers the objective requirements, which include whether the act in question corresponds to the formulation of the offense, is contrary to the law, the individual's capacity for responsibility, and the absence of justifiable reasons.

Regarding the defendant's charges, as stipulated in Article 143 of the Criminal Procedure Code (KUHP), they are as follows:

- a) Article 143, paragraph (1) states that the public prosecutor transfers the case to the district court with a request for immediate trial, accompanied by an indictment.
- b) Article 143, paragraph (2) states that the public prosecutor prepares an indictment, which is dated, signed, and contains:

- The full name, place or date of birth, gender, nationality, residence, religion, and occupation of the suspect.
 - A precise, clear, and complete description of the alleged criminal offense, including the time and place it was committed.
 - c) Article 143, paragraph (3) states that an indictment that does not meet the provisions as mentioned in paragraph (2) letter b is legally null and void.
 - d) Article 143, paragraph (4) states that the derivative of the transfer letter of the case, along with the indictment, is delivered to the suspect or their legal representative and the investigator simultaneously with the delivery of the transfer letter to the district court.
- Based on Article 143, the term "*surat pelimpahan perkara*" refers to the complete transfer letter of the case, including the indictment and case files.

The considerations of a judge are one of the most important aspects in determining the realization of justice (*ex aequo et bono*) and legal certainty in a judge's decision. Moreover, these considerations should benefit the parties involved and therefore must be approached with careful, good, and meticulous attention. If a judge's considerations are not careful, good, and meticulous, the decision based on such considerations may be overturned by the High Court/Supreme Court.

In examining a case, a judge also requires evidence, as the results of the evidence will be used as a basis for consideration in deciding the case. The process of proving facts is the most crucial stage in a trial. The purpose of evidence is to obtain certainty that the presented event/fact actually occurred, in order to reach a correct and fair judge's decision. A judge cannot render a decision before it is clear to them that the event/fact in question truly happened, and that its truth has been proven, thereby establishing a legal relationship between the parties. Essentially, a judge's considerations should also include the following:

- a) The main issue and the undisputed or unchallenged facts or arguments.
- b) A juridical analysis of the decision covering all aspects related to the proven facts presented during the trial.
- c) Each part of the plaintiff's *petitum* (claim) must be considered and examined individually, so that the judge can draw conclusions regarding its proof and whether the demands should be granted or not in the operative part of the decision.

3.2. Proving the Crime of Online *Togel* Gambling

The development of technology and communication has affected many aspects of human life, including the law. The law is required to keep up with advances in communication and technology by issuing legal provisions that regulate activities in cyberspace. The emergence of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions is used to regulate all activities in cyberspace, including online gambling. It is difficult to apprehend online gambling criminals because gambling has become a tradition in Indonesia, and with technological advances, gambling has become increasingly accessible. Online gambling clearly violates Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, but apprehending and prosecuting the perpetrators is challenging due to insufficient evidence. Online lottery gambling involves an interconnected network of participants that mutually

benefit from it, including regional bookies, lottery number collectors, and retailers. However, the ease of technology makes it difficult to apprehend and prove the guilt of cybercriminals, especially those involved in online lottery gambling crimes.

In criminal justice, proof is an effort to uncover the truth about a criminal offense committed by an individual (Panggabean, 2012). Evidence is a crucial factor in determining the fate of the defendant. If the existing evidence, as stipulated in Article 184 of the Criminal Procedure Code, is not sufficient to prove the defendant's guilt, the defendant is declared free from all charges. Judges must be cautious, thorough, and judicious in assessing and considering the value of evidence in a trial. The system or theory of proof in Indonesia adheres to a system or theory of proof based on the negative law (*Negatief Wettelijk Stelsel*). This system or theory of proof is mentioned in Article 183 of the Criminal Procedure Code, which states:

"The judge may not impose a sentence on a person unless at least two valid pieces of evidence are present, leading to a conviction that a criminal offense has indeed occurred and that the defendant is guilty of committing it."

Referring to Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 5, paragraph (1) states that all electronic documents and their printouts are considered valid evidence that can support the prosecution of an offense as an ITE crime. In the case of online gambling, proof of bank transactions and the use of cell phones differentiate it from conventional gambling. Based on the elements outlined in Article 27, paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, and considering the facts presented in the case, it can be concluded that bank transfer evidence in online gambling is deemed admissible in court.

The Criminal Procedure Code (KUHAP) regulates the process of presenting evidence in Article 183. The process of proof is crucial in the examination of a case in court, as it involves presenting evidence to establish the guilt or innocence of the defendant in a criminal case. In online gambling cases, the evidentiary process must be supported by at least two pieces of evidence, as stipulated in Article 183 of the Criminal Procedure Code. The types of evidence recognized in Article 184 of the Criminal Procedure Code include:

- Witness Testimony:

In online gambling cases, finding witnesses who have direct knowledge of the perpetrator's actions and the commission of the offense is often challenging. Perpetrators usually act alone, as these crimes require specific knowledge and expertise in utilizing computer intricacies, unless the perpetrator has connections with individuals possessing similar abilities or expertise.

- Expert Testimony:

An expert can examine and provide an explanation regarding the trustworthiness of a computer system, ensuring that the electronic data contained within the system can be accounted for and presented as evidence with equal strength as other evidence outlined in Article 184 of the Criminal Procedure Code.

- Official Letters:

Official letters possess substantial evidentiary value if they fulfill the necessary formal requirements, are issued by authorized officials, contain official information, and

are executed under oath. The information contained in such letters can only be contradicted by other evidence (Edmon, 2003).

- Instructions:

According to Article 188, paragraph (1) of the Criminal Procedure Code, acts, events, or circumstances that demonstrate a correspondence both with one another and with the crime itself indicate the occurrence of a crime and identify the perpetrator.

- Testimony:

The statement of the accused, as mentioned in Article 189, paragraph (1) of the Criminal Procedure Code, refers to the statement provided by the accused during court proceedings. However, this provision is not absolute, as testimony given by the defendant outside of the trial can be utilized to assist in proving the case in court, as long as the testimony is supported by valid evidence related to the charges against the defendant.

The utilization of electronic evidence in the process of proving criminal cases can be challenging but is feasible due to the existence of standards or provisions for the use of electronic evidence in our laws and regulations, as stated in Article 44 of the ITE Law. In the context of online gambling, evidence that substantiates a criminal occurrence takes the form of electronic data, whether stored on a computer (hard disk) or in the form of printouts or other records of computer activity connected to the internet. With the enactment of Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), which regulates electronic evidence, handling online gambling cases has become more manageable. In court proceedings, electronic evidence used to establish online gambling crimes includes website views, log files (indicating the time of the actions), and Internet Protocol (IP) addresses, which serve as valuable personal evidence for identifying perpetrators and determining the location of computer users. Through research and examination of IP ownership, the user's location can be determined.

During trial proceedings, the authenticity of digital evidence will be scrutinized by presenting it to demonstrate its relevance to the online gambling crime case at hand. Since the investigation, prosecution, and court proceedings typically span a considerable duration, digital evidence must be presented in its original and complete form as initially identified and analyzed by investigators, often through the Forensic Computer Laboratory. Therefore, digital evidence should be presented digitally using a laptop or computer without the need for printed copies (printouts). The ITE Law Number 11 of 2008 provides provisions for the admissibility of electronic information and establishes specific procedures as guidelines for judges in examining and proving online gambling crimes. Hence, if no other evidence can be presented, the recorded electronic information within the system can serve as proof, implicating the subject as a participant in the online gambling crime and holding them accountable. The discussion on electronic evidence pertains to the "seizure" required for evidentiary purposes or the search for tools or evidence that may exist, necessitating the testing of computer systems. The validity and authenticity of the computer system must be verified to ascertain the trustworthiness of the digital evidence.

The discussion on electronic evidence also emphasizes the need for "seizure" carried out for evidentiary purposes or the search for tools or potential evidence, which requires the examination of computer systems. The initial examination of the computer system's validity is essential to establish its authenticity and accountability. As stipulated in Article 43, paragraph (3) of the ITE Law, evidence obtained through confiscation and

seizure conducted by investigators must be accompanied by permission from the presiding judge of the local district court. However, obtaining such permission from the local district court can present challenges for investigators in certain circumstances.

The ITE Law Number 11 of 2008 has provided provisions for the admissibility of electronic information and established specific procedures to guide judges in examining cases and proving online gambling crimes (Karo & Sebastian, 2019). Therefore, if no other evidence can be presented, the recorded electronic information within the system can serve as proof, implicating the subject as a participant in the online gambling crime and holding them accountable for the electronic evidence discovered. The subject's responsibility regarding the identified electronic evidence can be requested. The ITE Law has regulated a special procedure for handling electronic evidence, necessitating that the seizure and confiscation of electronic systems related to alleged criminal acts be carried out with the permission of the presiding judge of the local district court. However, obtaining permission from the local district court can be challenging for investigators in certain situations.

4. CONCLUSION

In applying criminal law to online gambling crimes, particularly online *Togel* gambling, Article 303 and Article 303 Bis of the Criminal Code (KUHP) are used to prosecute online gambling offenders, rather than relying on Law Number 19 of 2016 on Amendments to Law Number 11 of 2011 concerning Electronic Information and Transactions. Judges take several factors into consideration when deciding a criminal case, such as ensuring that the alleged act corresponds to the elements of the offense, is illegal, and establishing the defendant's capacity and absence of justifiable reasons. Additionally, judges must also adhere to the objective requirements set forth by the law. Article 143 of the Criminal Procedure Code (KUHAP) regulates the preparation of the indictment by the public prosecutor, which must meet certain criteria; otherwise, it will be declared null and void. The referral document of the case should also include a complete indictment and case files.

The burden of proof in online *Togel* gambling cases follows the theory of the Negative Legal System based on the law, which requires at least two valid pieces of evidence as stipulated in Article 184 of the Criminal Procedure Code (KUHAP), along with the judge's own conviction. However, in the case examined by the author, the crime should have been prosecuted under the Law on Electronic Information and Transactions (UU ITE), which operates outside the Criminal Code (KUHP). Nonetheless, the offense in this case was still prosecuted under Article 303 of the Criminal Code (KUHP), demonstrating the inapplicability of the *lex specialis derogat legi generali* principle, meaning that the specific law overrides the general law.

Based on the findings, it is recommended that legislators revisit the legal framework regarding online gambling crimes to ensure consistency and effectiveness in prosecuting such offenses. The inclusion of the Law on Electronic Information and Transactions (UU ITE) as the primary legal basis for prosecuting online gambling crimes would provide a more comprehensive and specific approach, considering the unique nature of online activities. This would align with the principles of *lex specialis derogat legi generali* and enhance the legal system's ability to address evolving forms of criminal activities in the digital era. Additionally, further research and analysis should be conducted to explore

alternative legal strategies and measures to effectively combat online gambling and its associated societal issues, taking into account international best practices and experiences.

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