

Reconstruction of Legal Policy on Online Gambling within the Indonesian Legal System: Perspectives of ITE Law and Islamic Criminal Law

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ABSTRACT

This study aims to examine in depth the phenomenon of increasing online gambling practices in Indonesia from the perspective of positive law and Islamic criminal law. The focus of the study is directed at the legal basis of prohibition, the similarity of principles, and the efforts of the two legal systems in tackling these crimes. This study uses a normative legal approach by analyzing various relevant legal provisions, especially Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) and its amendments, as well as the principles of Islamic criminal law related to jarimah ta'zir. The novelty of this study lies in its integrative normative analysis that reconstructs legal policy by harmonizing positive law and Islamic criminal law, thereby contributing theoretically to the development of legal policy studies on online gambling in Indonesia. The study's findings show that Article 27, paragraph (2), of the ITE Law serves as the legal basis for prohibiting and sanctioning the dissemination of content containing gambling elements through electronic media. On the other hand, Islamic law expressly prohibits any form of gambling because it is considered to bring more harm than benefit. It can be concluded that both positive law and Islamic law have a harmony of views in viewing online gambling as a destructive act and have the potential to hurt morality, social order, and the economy of society, so both emphasize the importance of prevention and enforcement of the practice.

Keywords: Islamic criminal law, ITE Law, Legal policy, Online gambling,

Introduction

The rapid advancement of science and technology in the modern era has triggered significant changes in human life. One of the real impacts of these developments is the birth of the era of globalization. Globalization provides various important benefits for people around the world, especially in terms of the ease of long-distance communication enabled by modern communication technology and the creation of virtual spaces on the internet. This phenomenon shows that the internet, in addition to offering convenience and opportunities for creativity, also presents new challenges and potential risks that must be managed wisely in its use (Brodeur, 2021).

The rapid development of technology and information causes gambling patterns to change. If in the past gambling was carried out directly and limited to certain places, now the practice has shifted to a form of online gambling that is much more practical, easily accessible, and can be done at any time through devices such as computers, laptops, and smartphones (Ko, 2025). This phenomenon of online gambling is not new, because for a long time, the practice of lottery gambling, sports gambling, and card games has been widely known. However, in recent years, a new trend has emerged that is increasingly worrying, namely the rise of online slot games that attract the interest of many people, including the younger generation (Senjaya, 2022).

This condition further worsens the social situation as more and more people are entangled in online gambling practices. According to a report from the Financial Transaction Reporting and Analysis Center (PPATK), around 3.2 million Indonesians are estimated to be

involved in online gambling activities, with a total fund turnover of around IDR 327 trillion in 2023. The data indicate that online gambling practices in Indonesia have developed widely and massively, and are a real threat to national social and economic stability (Wijaya, 2024).

The negative impact caused by online gambling practices cannot be taken lightly. In addition to causing addictions that can damage a person's mindset and mental health, online gambling also often leads to huge financial losses, both for individuals and their families. There are not a few cases where online gambling players are entangled in debt, lose valuable assets, and even commit crimes to get money to return to gambling (Fortuna, 2023). On the other hand, from a legal point of view, participation in online gambling activities can expressly have legal consequences because it is contrary to the applicable laws and regulations in Indonesia, both as stated in the Electronic Information and Transaction Law (UU ITE) and in the Criminal Code (KUHP) (Harefa, 2025). This is in line with the basic concept of law in Indonesia, which emphasizes that every act must be based on the applicable legal rules (Gusman, 2025). In more detail, the 1945 Constitution of the Republic of Indonesia emphasizes that Indonesia is a state of law, guaranteeing the creation of order and legal certainty in the implementation of societal, national, and state life (Laras, 2025).

In the Islamic view, online gambling is considered an act that is contrary to religious teachings and moral values. This activity violates the principle of monotheism because it diverts the belief from Allah as the only place of dependence. When gambling, people often depend on betting or luck as if sustenance comes from it, not from Allah. In addition, from the side of Islamic law, gambling has many bad impacts. Gambling can damage morals, mental health, and social relationships in society. Islam actually allows various games or entertainment as long as they do not cause harm or danger (Fahrudin, 2024)

Gambling is classified as *jarimah ta'zir*. This means that gambling is an immoral act that does not have the sanction of limit (punishment that has been determined by sharia) or *kafarat* (ransom). Therefore, the sanctions are left to the government or judges to be determined according to the needs of the community. The purpose of this handover of authority is to ensure that punishment can adapt to the times and maintain public order. Because of its flexible nature, *ulil amri* (rulers) and judges are given space to perform *ijtihad* in determining the form of punishment (Ajidin, 2024).

Based on this background, the formulation of the problem in this study is how the regulation and legal policies related to online gambling practices in the perspective of positive Indonesian law and Islamic criminal law, as well as the extent to which the two legal systems are in harmony in viewing and tackling online gambling practices. The purpose of this study is to analyze the legal basis of the prohibition of online gambling according to the ITE Law and Islamic criminal law, examine the similarities in the principles and approaches of law enforcement used, and reconstruct a more comprehensive and adaptive legal policy in efforts to prevent and prosecute online gambling in Indonesia.

Research Methods

The research method applied in this study is normative legal research. This approach was chosen because the main focus of the study lies in the analysis of applicable laws and regulations and legal doctrines, not on the collection of empirical data in the field (Reandi, 2024). Thus, this study seeks to answer the problem through an examination of existing legal materials in order to provide a comprehensive understanding of the construction of legal policies on online gambling practices. This study uses a literature-based approach to examine the normative aspects of the law that govern online gambling, especially in the context of violations of the law by online gamblers. The primary legal sources used include *Law Number 11 of 2008 concerning Information and Electronic Transactions* and its amendments, as well as the

provisions of Islamic law regarding *jarimah ta'zir* related to gambling practices. All of these legal materials are analyzed using descriptive-analytical methods and legal interpretation. Through this approach, it is hoped that the research will be able to provide a deeper understanding of how Indonesia's positive law and Islamic law principles can be reconstructed to face the complex challenges of the online gambling phenomenon in the digital age. This research is limited to a normative legal analysis of online gambling regulations in Indonesia and does not include empirical or comparative legal approaches.

Research and Discussion

The rapid advancement of information technology has significantly changed the way humans communicate, interact, and obtain entertainment. One of the obvious consequences of these developments is the emergence of a modern form of gambling, namely online gambling. Unlike traditional gambling that is done face-to-face, online gambling can be easily accessed through a computer or smartphone, with a money wagering system set up by the organizers. One of the most popular forms is the online slot machine, which resembles the traditional slot machines in casinos, but is played online. Although it seems trivial and not directly disturbing, this practice has various negative impacts, ranging from domestic violence, decreased work ethic, financial losses, to social disputes. This condition shows that online gambling is not just a form of entertainment, but also a serious problem that requires legal and moral attention (Fauzi, 2024).

Recent data shows that online gambling practices in Indonesia have shown a very rapid increase in recent years. In 2023, the total value of online gambling transactions was recorded at IDR 327 trillion, or jumped up to 213% compared to the previous year, which only reached IDR 104.41 trillion. If pulled further, in the last five years, the growth of this transaction even jumped to 8,136.77% compared to 2018, when the transaction value was only at Rp 3.97 trillion. This increasing trend will continue in 2024, where in just the first three months, the number of online gambling transactions has exceeded IDR 100 trillion (Juhara, 2025).

Another ruling also shows that the use of social media to promote online gambling sites is seen as an active act that meets the element of intentionality and without rights, so that the perpetrators are still held criminally responsible even though they do not directly run gambling games. This strengthens the argument that Indonesia's positive law places online gambling as a technology-based crime whose enforcement is not limited to the main perpetrators alone. Apart from the transaction side, the number of online gambling players is also quite high. It is recorded that there are around 3.5 million people who are actively playing online gambling in Indonesia, with the majority, which is around 80%, coming from the lower middle class of society. Other sources even mentioned a figure close to 3.2 million players. In terms of age, this phenomenon is more worrying because some players come from a very young age group, even under 10 years old. Meanwhile, around 40% of players are in the productive age range, which is 31-50 years old. When viewed from the distribution of regions, West Java Province ranks at the top with the largest number of players, reaching 553,644 people and a total transaction value of around Rp 3.8 trillion. Next in order is DKI Jakarta with 238,588 players and total transactions of around IDR 2.3 trillion. These findings indicate that the practice of online gambling is not only a legal issue, but also a social problem that penetrates various levels of society and regions in Indonesia (Imtihan, 2024).

Online gambling is actually an extension of the long-standing conventional gambling practice, but it is now expanding by utilizing the internet. Its presence introduces additional elements typical of digital technology, such as user anonymity, cross-border reach, and ease

of access without space and time limits. Therefore, online gambling is categorized as part of transnational crime because it uses internet media to commit unlawful acts that are no longer limited to one jurisdiction. Given its complex nature and across geographical boundaries, the regulation and enforcement of online gambling is becoming increasingly urgent, both through the national legal apparatus and the perspective of Islamic law, in order to provide comprehensive protection for the community (Riyansyah, 2024).

Positive Legal Perspectives in Indonesia

In Indonesia, the practice of gambling, whether carried out traditionally or through digital means, is strictly prohibited by the applicable legal system. The Criminal Code (KUHP) through Article 303 states that every form of gambling is a criminal act. The perpetrator can be sentenced to imprisonment or a fine, depending on the level of the offense and the consequences caused. This provision shows the state's commitment to maintaining public order while protecting the community from social, economic, and moral losses caused by gambling (Fikriana, 2024). As part of efforts to reform the criminal law in Indonesia, the new Law Number 1 of 2023 concerning the Criminal Code (KUHP) provides a more comprehensive scope of regulation regarding gambling crimes, including online gambling activities. In Article 426 jo Article 427 of the new Criminal Code, it is stated that any individual who, without a license, offers, provides opportunities, or engages in gambling activities as a job or habit can be sentenced to imprisonment of up to 5 (five) years or a maximum fine of category VI. In addition, Article 427 also regulates sanctions for parties who take advantage of the opportunity to gamble, either directly or through online media, without permission from the authorities, with a maximum penalty of 3 (three) years in prison or a maximum fine of category III (Ko, 2025).

Regulations related to online gambling are not only listed in the New Criminal Code, but have also been regulated first through Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) and its revisions. This regulation was made to ensure that the use of digital technology continues to be used positively and not misused for harmful activities, such as online gambling practices (Indrawan, 2025). The presence of the ITE Law shows the government's efforts to close potential legal loopholes that can be exploited by criminals through technological developments (Fahrudin, 2024).

Article 27 paragraph (2) of the ITE Law provides a clear legal basis, namely the prohibition for everyone to create, upload, disseminate, or transmit electronic information or electronic documents that contain elements of gambling. Although the term "online gambling" is not explicitly listed, the substance of this article already covers all forms of gambling activities that use technological media, whether through websites, gaming applications, or social media platforms. This means that all digital betting activities are still included in the category of prohibited acts. With these provisions, the ITE Law has a strategic position as a legal instrument that adapts to the times. This regulation not only functions as a written rule, but also as a form of prevention so that the public is not easily entangled in illegal practices spread through the internet. The government also uses this regulation to take concrete actions, such as blocking websites, regulating applications, and enforcing the law against the parties involved (Latumaerissa, 2021).

The presence of strict rules through the Criminal Code and the ITE Law confirms that the state is trying to provide comprehensive protection for the community. This protection includes moral, social, and economic aspects, because gambling, especially digital-based, often has a wide and detrimental impact, both for individuals and their social environment. Therefore, this regulation is not just a form of prohibition, but also a preventive and

educational step so that the public is more aware that online gambling is a violation of the law that should not be done (Widhiatanti, 2024).

Article 45, paragraph (1) of the Electronic Information and Transaction Law (ITE Law) establishes criminal sanctions for anyone who violates the provisions of Article 27, paragraph (2). The violation is punishable by a maximum prison sentence of six years and/or a fine of up to IDR 1,000,000,000.00 (one billion rupiah). This provision shows the government's commitment to cracking down on technology-based gambling practices that are considered to damage the moral, social, and economic order of society. It is hoped that the application of this criminal sanction can provide a deterrent effect for perpetrators while serving as a preventive measure against the increase in online gambling cases in the community. In addition, this regulation also shows that Indonesian law is trying to adapt to the dynamics of the digital era, so that legal loopholes that may be used by perpetrators can be minimized (Handoko, 2023).

The existence of clear provisions in Article 27 paragraph (2) and Article 45 paragraph (1) of the ITE Law, it can be seen that the state is trying to close the legal loophole against digital-based crimes, including online gambling. However, rapid advances in information technology have also given rise to various new forms of cybercrime known as *cyber crime*. This phenomenon is not only a problem at the national level, but has also developed into a global threat that is faced jointly by many countries, both between regions and between countries. Therefore, the existence of the ITE Law is very important as a legal instrument to regulate and limit activities that abuse communication and information technology, so as to create peace and legal certainty in community life, both in conventional activities and those that take place in the digital space. In the realm of law enforcement, the existence of criminal sanctions functions as a tool to achieve the goal of criminalization, which is to provide a deterrent effect to the perpetrator while maintaining social order. This sanction can only be imposed if a person is proven guilty of violating the provisions of the applicable laws and regulations. Therefore, the nature of criminal sanctions is absolute for violators, although in practice, criminal liability still considers certain conditions such as age, mental health, and a person's eligibility to be held legally responsible (Fortuna, 2023).

One concrete example can be found in the case of influencers or social media users who participate in promoting online gambling sites. The act can be punished as stipulated in Article 45 paragraph (2) juncto Article 27 paragraph (2) of Law Number 19 of 2016, which is an amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law). This article clearly prohibits the creation, dissemination, distribution, and provision of access to electronic information that contains elements of gambling. The sanctions imposed are also quite severe, namely a prison sentence of up to 10 years and a maximum fine of one billion rupiah (Listiyanto, 2021). This provision emphasizes that online gambling through social media is not just an act of ethical violation, but is clearly a criminal act according to positive Indonesian law. This statement shows that the legal regulations are not only aimed at the main actors who carry out gambling, but also include parties who play a role in its spread, such as through promotional activities, providing access, or other forms of facilitation (Lakoro, 2020). Thus, criminal sanctions have a dual function, namely, taking firm action against perpetrators and warning the wider community to avoid unlawful acts that can bring harm to themselves and others (Ko, 2025)

The elements contained in Article 27 paragraph (2) of the ITE Law can be divided into three main parts. First, the subjective element, namely the intentionality of the perpetrator as shown by the phrase "*intentionally*", so that the act can only be punished if it is done with full intention or awareness. Second, the unlawful element, which is reflected in the phrase "*without rights*", indicates that the act is contrary to the provisions of the law or a legitimate

right. Third, the element of the act includes tangible actions such as disseminating, sending, or providing access to electronic information that contains elements of gambling. All forms of activities, such as the dissemination of websites, gambling applications, or electronic communications that promote or facilitate online gambling, are included in the category of serious crimes according to this provision (Romdoni, 2025).

Perspective of Islamic Law

The practice of gambling in Arabic terms is known as "al-maysir" or "al-qimār." The word *maysir* comes from the root of the word *yusr*, which means ease, which is to get something in an instant way without proper effort. While *qimār* refers to betting activities or games based on luck, where the winning side will take advantage of the other party's losses. This concept affirms that gambling is an unfair activity because the profits made by one party must always be borne by the other party (Madaniyyah, 2024). Online gambling can be seen as a new form of *maysir* that is clearly forbidden in Islamic teachings. Although it is packaged in a digital platform and looks as if it is just entertainment, online gambling still contains the same elements of betting and speculation as traditional gambling practices. This phenomenon is not only contrary to sharia law but also has a wide negative impact on people's lives. From an individual perspective, online gambling can plunge a person into financial losses, addiction, and moral degradation. Meanwhile, from the social side, digital gambling can trigger household conflicts, increase economic inequality, and threaten social stability because of its nature that damages the order and moral values of society (Ajidin, 2024).

Gambling activities are considered to be acts that are clearly contrary to the teachings of the Qur'an. This is affirmed in Surah Al-Maidah, verse 90, where Allah SWT strictly prohibits all forms of gambling without exception. The ban has a strong basis, because gambling practices, including modern versions such as online gambling, cause various adverse impacts both for individual perpetrators and society at large. The consequences caused include material losses that have the potential to destroy the family's economic condition, waste of time that should be used for productive activities, and decreased individual creativity. Gambling can also disrupt social stability by causing unrest and damaging the security of the community (Gusman, 2025).

Fiqh scholars agree that gambling, which in Sharia terms is called al-maysir, is haram. However, they have different views regarding the verse that is the basis for the ban. According to Abu Bakr al-Jashshash, the haram of al-maysir can be understood from Surah Al-Baqarah verse 219. In the verse, it is explained that although there are a few benefits in the practice of *khamar* and gambling, the harm is much greater, so both are great sins (*itsm kabir*). Another verse in Surah Al-Maidah also emphasizes that gambling is a dirty act that comes from the actions of Satan, which can cause hostility, hatred, and make people negligent of remembering Allah SWT and performing prayer (Kifly, 2023).

In fiqh literature, gambling or *maysir* is often equated with *khamar*, because both are included in the heinous acts (*fahsya*) which are expressly prohibited in the Qur'an. Although the fuqaha do not explicitly classify gambling as a criminal offense in classical jurisprudence, based on the prohibitions of the Qur'an, the practice of gambling is placed on a par with *khamar*. Therefore, it is natural for gambling to be considered a form of criminal act in Islamic law, with sanctions or legal consequences that are parallel to the criminal act of *khamar* (Handoko, 2023).

The existence of online gambling causes various negative impacts that are contrary to Islamic teachings, including:

1. Ignoring hard work. Islam teaches the importance of following *sunnatullah*, which is to earn a living through halal and earnest efforts. However, the practice of online gambling

actually makes a person depend only on luck, not on real effort and hard work that should be done.

2. Squandering wealth. In Islam, sustenance is a gift of Allah that must be thankful and managed properly. In contrast, online gambling encourages a person to spend their wealth for momentary pleasure, potentially even taking away the rights of others. This is categorized as a null act because it involves an improper way of obtaining property.
3. Creates hostility. Both online and conventional gambling can trigger social conflicts. Although there seems to be a willingness in the game, in practice, it often ends in hatred and strife. For example, a person who loses gambling may owe a friend a debt but is unable to pay it off, causing disappointment, heartache, and leading to hostility (Mulyadi, 2025).

The practice of gambling activities is strictly prohibited because it is considered a form of game that uses money or valuables as bets. Individuals involved in this activity generally tend to be addicted, always tempted by the lure of acquiring abundant wealth without legitimate efforts. This kind of behavior keeps humans away from the value of hard work, fosters laziness, and fosters excessive desires without being balanced with real efforts to make a living halal. From the perspective of Islamic law, perpetrators can be sanctioned in the form of ta'zir punishment. This punishment is a form of sanction that is not explicitly regulated in the Qur'an or hadith, but is left to the authority of a judge. The goal is to protect the interests of the community, prevent vigilante acts, and enforce order for those who are reluctant to comply with Sharia rules. The punishment of ta'zir emphasizes that Islam provides space for judges to adjust the type and level of punishment according to the conditions, needs, and social impact caused by an act (Al Gani, 2025).

The imposition of punishment in Islam is not only repressive but also has preventive and educational purposes. The prevention aspect is aimed at preventing the perpetrators of crimes from returning to their actions and creating a sense of deterrence for other communities not to imitate similar acts. Meanwhile, the education aspect aims to form moral awareness and discipline so that people can live in accordance with Sharia values. Therefore, the severity of the punishment of ta'zir depends on the level of danger and harm caused, both for individuals and the wider community. Thus, the implementation of punishment is expected to be able to maintain social stability while realizing the main goal of Islamic law, which is to create benefits and prevent damage (Calodo, 2024).

The provisions regarding the prohibition of online gambling in Indonesia's positive law are listed in Article 27 paragraph (2) of the ITE Law, which affirms that every individual is prohibited from creating, distributing, or transmitting electronic information that contains elements of gambling. Violation of this provision is threatened with punishment as stipulated in Article 45 paragraph (1), which is a maximum prison sentence of six years or a maximum fine of one billion rupiah. Meanwhile, Islamic law views both online and conventional gambling as haram because it does not provide legitimate benefits and actually causes harm to individuals and society. Islamic principles emphasize that sustenance should be obtained through halal business and hard work, not from games of chance that have the potential to damage morals, reduce productivity, and disrupt family and social stability. Therefore, according to both positive law and Islamic law, gambling, including that based on digital technology, is a dangerous practice that should be prevented and eradicated for the sake of creating social order and community protection. (Ningsih, 2025).

Conclusion

Online gambling in Indonesia constitutes a serious threat to moral, social, and economic order. This study finds that Article 27 paragraph (2) jo. Article 45 of the ITE Law provides a clear legal basis for prohibiting and sanctioning online gambling activities, while Islamic criminal law categorizes gambling as *jarimah ta'zir* that must be prevented due to its harmful impacts. The harmony between positive law and Islamic law demonstrates a shared normative foundation in addressing online gambling. This study contributes to legal policy discourse by offering a normative reconstruction that integrates both legal systems as a basis for strengthening preventive and repressive measures against online gambling in Indonesia.

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