



**Criminal sanctions for online gambling from the perspective of the Indonesian criminal code (kuhp) article 303 paragraph (1) and aceh qanun number 6 of 2014**

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**Abstract**

In this modern era, the advancement of time is rapidly progressing, especially in the field of technology. However, this development has led to a backlash on society, as crimes are not only committed in the physical world but also through the internet, known as cybercrime. The most common cybercrime is online gambling. With its development, gambling, specifically online gambling, has grown and expanded with the increasing number of users of internet-based electronic devices. The legal regulation of gambling offenses is governed by Article 303 of the Indonesian Criminal Code (KUHP) and Article 303 bis of the Indonesian Criminal Code. The criminal penalties are further enhanced under Article 2, paragraphs (1), (2), and (3) of Law Number 7 of 1974 concerning the Regulation of Gambling. The regulation of gambling also exists in Aceh Qanun Number 6 of 2014 concerning Islamic Criminal Law. The law enforcement policy for online gambling offenses is carried out based on the provisions of Article 27, paragraph (2), and Article 45, paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions. This research uses a qualitative research method with a normative juridical approach. The type of research to be conducted is a literature study (Library Search), referring to legal norms found in library materials and secondary data. In reality, the investigators of the Indonesian National Police still often use Article 303 of the Indonesian Criminal Code to prosecute online gambling offenders due to difficulties in applying Article 43, paragraph (6) of Law Number 11 of 2008, which requires investigators to obtain approval from the Chief Judge of the local District Court within twenty-four hours for the arrest and detention. Therefore, it is necessary to create new laws or improve existing provisions to address online gambling.

## **Keywords**

Criminal Sanctions, Online Gambling, Aceh Qanun, Indonesian Criminal Code (KUHP), and Information and Electronic Transactions Law (UU ITE)

## **Introduction**

Gambling is defined as risking money or valuable objects in a game based on guesses or chance. Gambling involves risking a certain value or something of value with the awareness that it is risky in a game, match, or event with uncertain outcomes (Kartini Kartono, 005:56). Some also consider gambling as a game that involves betting and is done directly. Gambling is an undeniable phenomenon in society. This game can be played with various mechanics over time. In its form, gambling is generally considered a crime and can disrupt the social order. With the rapid development of technology and information, gambling has also shifted to online gambling, which is more practical and secure. Even in the midst of society, especially in internet cafes or when using a laptop for such activities, or through smartphones with supporting facilities. One of the advantages of online gambling is that it can be played anytime, anywhere, as online betting companies operating on the Internet are available 24/7, and the games can be accessed via internet cafes, places with Wi-Fi, or through smartphones. Gambling is prohibited both in terms of religion and national law. The effects of gambling involve criminal components that can not only harm oneself but also have an impact on others. Gambling is not always profitable because in every game, there are winners and losers, and many people experience losses. In Islamic law, gambling is considered a practice that is strongly against the teachings of the Quran. This is based on the verse of Allah SWT in Surah Al-Maidah, verse 90:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْهُمُ رَجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ

O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful.

Some of the negative effects of online gambling include financial losses that can disrupt family economics, wasting precious time, decreased personal creativity, and, most severely, it can disturb societal security. From this, it can be seen that the damages outweigh the benefits. Nowadays, gambling takes various forms such as lottery, raffles, and even online gambling, utilizing devices like mobile phones, computers, and other internet-based tools. According to Article 27 of Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (UU 19/2016), engaging in online gambling is legally prohibited. Looking from the perspective of positive criminal law, which specifically regulates the criminal act of gambling, it can be found in Article 303 bis paragraph (1) of the Indonesian Criminal Code (KUHP) which states: (1) Whoever takes advantage of the opportunity to gamble,

which is organized by violating the provisions of Article 303, shall be punished with imprisonment for a maximum of 4 (four) years or a fine of up to ten million rupiahs; (b) whoever participates in gambling activities held in public places or their vicinity or in places accessible to the public, unless there is permission from the competent authority. Meanwhile, regarding online gambling, Article 27 paragraph (2) of the ITE Law states: Anyone intentionally and without right distributes, transmits, and/or makes accessible electronic information or documents containing gambling content. In Article 34 paragraph (1): anyone intentionally and unlawfully produces, sells, obtains for use, imports, distributes, provides, or possesses. (a) In Article 303 paragraph (1) point 1 of the Indonesian Criminal Code, it states: "Whoever, without permission, is subject to imprisonment for a maximum of ten years or a fine of up to twenty-five million rupiahs."

1. By intentionally offering or providing opportunities for gambling and making it a livelihood, or by intentionally participating in a company for that purpose.
2. By intentionally offering or providing opportunities for the general public to gamble or by intentionally participating in a company for that purpose, regardless of whether there are any conditions or procedures to be met.
3. Making participation in gambling a livelihood.

In the formulation of the above crimes, there are five types of crimes related to gambling, stated in paragraph (1) as follows: First, the crime that prohibits a person without permission from intentionally offering or providing opportunities to gamble and making it a livelihood. This crime consists of objective and subjective elements. Objective elements: (a) the act of offering and providing opportunities. (b) the object is to gamble without permission and make it a livelihood. The subjective element is intentionally. Second, the crime that prohibits a person without permission from intentionally participating in a gambling business enterprise, consists of objective elements: (a) the act of participating. (b) the object is in an unauthorized gambling business activity. The subjective element is intentionally. Third, prohibiting a person without permission from intentionally offering or providing opportunities for the general public to gamble. Thus, it consists of objective elements: (a) the act of offering and providing opportunities, the object is to the general public and for gambling. The subjective element is intentionally. Fourth, the prohibition of intentionally participating in conducting gambling activities without permission. The elements are the objective elements: (a) the act of participating, (b) the object is in gambling activities without permission. The subjective element is intentionally. Fifth, prohibiting a person who engages in gambling activities without permission and makes it a livelihood. The elements contained are the act of participating, the object is in gambling activities without permission, as a livelihood.

### **Research method**

The research method serves as a foundation/way to obtain data or information related to the research. This research uses a qualitative research method with a normative juridical approach that emphasizes legal norms and

focuses on the aspects related to the Criminal Sanctions for online gambling from the perspective of Article 303 paragraph (1) of the Indonesian Penal Code (KUHP) and the Criminal Sanctions for online gambling from the perspective of Qanun Aceh Number 6 of 2014.

### **Research Type**

The type of research that will be conducted is a Literature Study (Library Search) with a normative juridical research approach. Normative juridical research refers to legal norm sources found in the Indonesian Penal Code (KUHP) Article 303 paragraph (1) and Qanun Aceh No. 6 of 2014.

### **Data Sources**

a. Primary Sources Primary sources in the research include:

- Indonesian Penal Code (KUHP) Article 303 paragraph (1).
- Qanun Aceh No. 6 of 2014 concerning Jinayat Law
- Law No. 11 of 2008 concerning Electronic Information and Transactions.

b. Secondary Sources Secondary sources in the research include:

- Books
- Journals
- Theses
- Articles
- Other relevant scientific works related to the research topic.

### **Data Collection**

Technique The data collection technique used in this research is Literature Review (Library Search). This study was conducted by examining aspects of legal studies focusing on researching legal regulations and documents that are available and other written materials related to this research. It involves searching, studying, and documenting information related to the research object.

### **Data Analysis**

Method The data analysis method used in this research is qualitative. It involves collecting legal sources such as the Penal Code, Qanun Aceh, relevant journals, and other sources, and analyzing them in relation to the theory of Criminal Sanctions for Online Gambling in the Perspective of the Penal Code Article 303 Paragraph (1) and Qanun Aceh No. 6 of 2014. This method is expected to facilitate the analysis of the research problem, provide explanations, draw conclusions, and ultimately address the issues raised in this research.

The research method includes research specifications, research type, approach method, data collection technique, and data analysis method used in the research. The research method is described descriptively and presented in a single paragraph.

## Results and discussion

### Review of Online Gambling

According to the Indonesian Dictionary, gambling is a game that involves using money or valuable items as bets (such as dice or cards). Online gambling, on the other hand, refers to gambling games played through electronic media with internet access as an intermediary.

Legal regulations regarding criminal acts of gambling in Islamic law  
Gambling in Islamic law is considered a behavior that is strongly contradictory to the Quran, as based on the verse of Allah SWT in Surah Al-Maidah, verse 90:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلُمُ رَجَسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ

"O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful."

This clearly indicates that gambling in any form is prohibited in the Quran due to the numerous negative impacts associated with it. The negative impacts of online gambling include financial losses that can ruin family economies, wasting valuable time, a lack of creativity, and, worst of all, disturbing public safety. Islamic jurists unanimously agree that al-maysir (gambling) is forbidden (haram). They differ only in their interpretation of the verse that prohibits it. Abu Bakr al-Jashhassh argues that the prohibition of al-maysir can be understood from Surah Al-Baqarah, verse 219, which states: "They ask you about wine and gambling. Say, 'In them is great sin and [yet, some] benefit for people. But their sin is greater than their benefit.'" He also argues that in this verse, al-maysir is classified as one of the major sins (itsm kabir), and every major sin is considered forbidden. Two other verses in Surah Al-Maidah explain that al-maysir is an impure act carried out by Satan and causes various negative consequences such as enmity, hatred, and neglect of remembrance of Allah SWT and the act of prayer. From a fiqh perspective, gambling is referred to as maysir, which is similar to khamar (intoxicants), both of which are abominable acts prohibited in the Quran. The jurists do not consider gambling as a separate topic in criminal offenses. From an Islamic law perspective, the prohibition on gambling is linked to khamar, and it is reasonable to consider gambling as a criminal offense with legal consequences similar to those of khamar. The legal regulations regarding criminal gambling offenses according to the Indonesian Penal Code (KUHP) are as follows: The enforcement of criminal law in gambling cases utilizes two articles. The first is Article 303 of the KUHP, also known as the Pure KUHP. Under this article, the punishment for a gambling player is 10 years of imprisonment. The second article used is Article 303Bis, which stipulates a 4-year prison sentence for individuals involved in gambling. It should be noted that the formulation of Article 303Bis of the KUHP is the same as Article 542 of the KUHP, which originally dealt with violations carrying a maximum penalty of one month of imprisonment or a fine of up to three hundred Indonesian Rupiah. In gambling, there is an element of

increasing interest and expectation, as well as tension caused by the uncertainty of winning or losing. Such uncertain situations make people more anxious and excited, fostering effects such as joy, emotional states, strong desires, and significant stimuli to continue playing. The tension increases when combined with animistic beliefs in fortune. Although such beliefs may seem anachronistic in the present machine age, they still persist among modern people, leading to uncontrollable gambling impulses and the emergence of professional gamblers who do not experience deterrence. Considering the formulation of these criminal law regulations, it is clear that gambling is prohibited under criminal norms because it fulfills the aforementioned criteria. Since the enactment of Government Regulation No. 9 of 1981, the government has banned the issuance of permits for gambling, which means that all types and forms of gambling activities are illegal and can be subject to criminal sanctions in accordance with criminal procedural law. Regarding the regulation of gambling offenses under the Information and Electronic Transactions Law (UU ITE), there is a specific law governing online gambling offenses, namely Article 27(2) of the UU ITE. The article states: "Any person who intentionally distributes, transmits, and/or provides access to information or electronic documents containing gambling content without permission." In the context of Islamic criminal law, Indonesia has a specific regulation governing gambling offenses, which is found in Qanun Aceh No. 6, Article 18 of 2014 concerning Jinayat Law. The article states: "Any person who intentionally commits the offense of Maisir with a bet value and/or profit of up to 2 (two) grams of pure gold shall be subject to Ta'zir punishment, including a maximum of 12 (twelve) lashes, a fine of up to 120 (one hundred and twenty) grams of pure gold, or a maximum of 12 (twelve) months imprisonment." In Qanun Aceh, gambling offenses are referred to as Maisir, as regulated in Qanun Aceh No. 6 of 2014 concerning Jinayat Law. In this Jinayat Law, the main elements of Maisir include betting, chance, and an agreement in which the loser pays the winner. In Qanun Aceh No. 6 of 2014, the explanation of Maisir, an act that involves betting and/or elements of chance, is found in Chapter 1, Article 1, Number 22, which explains that Maisir is an activity carried out between two or more parties, accompanied by an agreement that the winning party will receive certain payment/profit from the losing party, whether directly or indirectly. The criminal sanctions according to Qanun Aceh No. 13 of 2003, as stated in Articles 23, 26, and 27, include: First, every gambling player proven to have committed a criminal act of gambling shall be punished with a maximum of 12 and a minimum of 6 public lashings. Second, the provision or organization of gambling activities conducted by individuals, businesses, or legal entities domiciled or located within the jurisdiction of Nanggroe Aceh Darussalam shall only be punished with a fine of up to Rp. 35,000,000 (thirty-five million rupiahs) and a minimum of Rp. 15,000,000 (fifteen million rupiahs). If it is related to business activities, administrative sanctions in the form of revocation of business permits shall be imposed. Policy enforcement on online gambling offenses Law enforcement policy is essentially part of criminal policy, which in

essence is an integral part of social policy, aimed at maintaining peace in social life. As a process, law enforcement is essentially the application of discretion, which means that the decision-maker is not strictly governed by legal rules but has an element of personal judgment. It is implemented within the criminal justice system, which has a dual functional dimension. On the one hand, it functions as a means for society to control and contain crime at a certain level (crime containment system). On the other hand, the criminal justice system also serves secondary prevention, which aims to reduce criminality among those who have committed criminal acts and those intending to commit crimes through detection, prosecution, and punishment. These factors are interconnected and essential to law enforcement and the functioning of law in society.

Regarding the enforcement of the criminal law on gambling offenses, the criminal justice system involves its subsystems working coherently, coordinatively, and integratively to achieve maximum efficiency and effectiveness. Therefore, the efficiency and effectiveness of law enforcement depend on various factors, including:

a. **Legal Factors:** One of the principles in criminal law determines that no act is prohibited and punishable unless it has been previously stipulated in legislation (principle of legality). The operationalization of criminal legislation has a strategic position in the criminal justice system as it provides the definition and meaning of law enforcement activities, which involve aligning the values described in firm rules and embodying a proactive attitude as the final stage of value interpretation. It aims to create, maintain, and control actions formulated as criminal acts, regulating the government's efforts to promptly eradicate criminal acts and punish the perpetrators, and providing limitations on the penalties that can be applied for each crime. In other words, criminal legislation creates a legislated environment that regulates all the procedures and methods to be adhered to at various stages of the criminal justice system.

b. **Law Enforcement Factors:** The success of criminal law's mission to combat online gambling offenses is not solely determined by the perfection of legal postulates formulated in positive law. It is also highly dependent on the enforcement agents (law enforcement officers) from the investigative level to the execution level. Law enforcement officers must have enhanced capabilities in conducting investigations and presenting evidence, both in preliminary examinations and during the judicial process. Extensive knowledge and insight into substantive offenses and legal events, as well as discipline and high dedication in the implementation of punishment, are essential.

c. **Supporting Infrastructure Factors for Facilities and Infrastructure**

This factor can be considered as the backbone of law enforcement against online gambling crimes. Its existence serves as a support for the success in discovering a material truth. The harmonious collaboration between law enforcement agencies and several experts and specialists in their respective fields, such as forensic experts, telematics experts, and adequate operational funding, is

a supporting factor in prosecuting and punishing or narrowing the space for online gambling criminals.

d. Legal Culture Factor

The legal culture factor of society has an influence and plays an important role in the process of law enforcement against gambling crimes. The pluralism of legal culture within society is a unique phenomenon and carries potential risks, often placing law enforcement authorities in a dilemma, which in turn can result in ambivalence in implementing their actual regulations.

The compliance of all members of society with the law, social indiscipline, disregard for social ethics, the ease with which members of society are tempted by forms of gambling that offer extraordinary profits, and so on, are examples of legal cultural forms that are vulnerable and potentially lead to gambling crimes. Requirements for the effectiveness of the law in its implementation include:

1. Well-designed legislation.
2. Legislation should ideally be prohibitive rather than regulatory.
3. The penalties imposed should be proportionate to the nature of the violated laws.
4. The severity of penalties imposed on offenders should not be excessive.
5. There must be a possibility to observe, investigate, or examine actions that violate the law.
6. Laws that contain moral prohibitions are more effective than laws that are not in line with moral principles or are neutral.
7. Those working as law enforcers must carry out their duties effectively.

Based on the above, the formulation of legislation should be detailed and clear, regulating and imposing sanctions to avoid doubts in their implementation, thereby creating justice and legal certainty for the parties involved. There are many activities carried out by state institutions in enforcing the law, such as the police, the prosecution, judges, lawmakers, government institutions, and criminal enforcement agencies, all of which have roles in preventing and combating crimes. Considering the issues related to law enforcement in relation to online gambling crimes, the activities or measures that can be taken to address the problems arising in law enforcement and its anticipation can include the creation or improvement of existing legislation. The availability of adequate law enforcement personnel both in terms of quantity and quality, as well as institutional support. Based on the aforementioned descriptions, it can be observed that the effectiveness of criminal law functionalization against online gambling crimes does not solely depend on the efficiency and effectiveness of each subsystem within the criminal justice system. It also depends on social and institutional support in shaping public opinion on online gambling crimes and the broad dissemination of national laws. Online gambling crimes are only subject to existing legal provisions, in this case, Article 303 of the Criminal Procedure Code (KUHP), even though there are currently provisions regulating online gambling in Article 27 paragraph (2) and Article 45 paragraph (1) of Law Number 11 of 2008 concerning electronic



information and transactions. Therefore, policies need to complement each other regarding which regulations can be applied to online gambling crimes. The application of Article 303 of the Criminal Procedure Code to online gambling crimes poses difficulties in the process of proving the offense since the Criminal Code (KUHP) does not regulate elements that involve information technology, while in online gambling cases, everything is done through the internet (cyber). Meanwhile, the non-application of Article 27 paragraph (2) and Article 45 paragraph (1) of Law Number 11 of 2008 is due to the investigation procedures in Article 43 paragraph (6) of Law Number 11 of 2008 that are difficult to implement, namely the requirement for investigators to seek the appointment of the local district court chief within twenty-four hours. And this is impossible to do, so the Indonesian National Police, as the investigator, is forced to resort to the provisions of Article 303 of the Criminal Procedure Code to handle such online gambling cases.

### **Conclusion**

Based on the previous discussion, the conclusion of this research can be summarized as follows: Online gambling operators can be subject to criminal sanctions in accordance with the Criminal Law (KUHP), the Electronic Information and Transaction Law, and other relevant laws for those who engage in online gambling in the special province of Nanggroe Aceh Darussalam, where Islamic Sharia Law is implemented. In this province, the perpetrators may also be subject to Jinayat Law as regulated in the Nanggroe Aceh Darussalam Qonun Law No. 6 of 2016. According to Islamic law, gambling is considered a practice that contradicts the teachings of the Quran. In Surah Al-Maidah, verse 90, Allah SWT clearly states that intoxicants (alcoholic beverages), gambling, sacrificing for idols, and divining arrows are acts that belong to the domain of Satan, and Muslims are encouraged to stay away from such acts. In the context of online gambling, the negative impacts include financial losses that can harm family economies, wasted time, a lack of creativity, and even disruption of public safety. Therefore, scholars unanimously agree that gambling (al-maysir) is prohibited. They may have different opinions regarding specific verses that explicitly forbid it, but the consensus among Islamic jurists is that gambling falls under the category of major sins (itsm kabir), and every major sin is considered forbidden. From a fiqhi perspective, gambling (maysir) is deemed a vile act prohibited in the Quran. However, the fuqaha (Islamic jurists) do not explicitly include gambling as a topic in criminal offenses. In Islamic law, the prohibition of gambling is linked to the prohibition of intoxicants (khamar) because both are considered to have sufficient reasons for being forbidden. Therefore, from the perspective of Islamic law, the prohibition of gambling is associated with the prohibition of intoxicants, and the legal consequences or sanctions are considered equivalent to criminal offenses related to intoxicants. Based on Islamic law, gambling is prohibited as it is considered a vile act that contradicts the teachings of the Quran. The negative impacts of gambling also serve as an important reason why this behavior is avoided in Muslim communities.

There are several factors that influence law enforcement policies regarding online gambling crimes. These factors include:

1. **Legal Factors:** Relevant legislation must be well-designed and clearly regulate online gambling. It is important to determine whether online gambling offenses are covered by provisions related to information technology or laws governing electronic information and transactions.
2. **Law Enforcement Factors:** The success of law enforcement depends on the capabilities of law enforcement agencies in conducting investigations, gathering evidence, and implementing criminal proceedings. They must possess knowledge, insight, discipline, and high dedication to carrying out law enforcement duties.
3. **Supporting Infrastructure Factors:** Adequate facilities and infrastructure, including cooperation with forensic experts and information technology specialists, as well as sufficient operational funding, are necessary to support law enforcement against online gambling crimes.
4. **Legal Cultural Factors:** The legal culture of society plays a crucial role in law enforcement. Compliance with the law, social ethics, and attitudes towards gambling can affect the effectiveness of law enforcement. Society must have a good understanding of online gambling crimes and the importance of obeying the law. In order to address the challenges of law enforcement against online gambling crimes, several efforts can be undertaken, including improving relevant legislation, ensuring the availability of an adequate law enforcement apparatus, and creating awareness and understanding among the public about online gambling crimes.

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