Siber International Journal of Advanced Law (SIJAL)
E-ISSN : 2987-5595
P-ISSN : 2987-5609
https://review.e-siber.org/SIJAL siberpublisher.info@gmail.com +62 812-1046-7572
DOI:https://doi.org/10.38035/sijal.v3i4.
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Comparison of Online Gambling Legal Regulations Between Indonesia and the United States

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Abstract: Gambling in Indonesia has historically been a social ill strictly prohibited by various regulations, such as Article 303 of the Criminal Code, Law No. 7 of 1974, and the Electronic Information and Transactions (ITE) Law. However, a legal dualism currently exists , where gambling is prohibited for moral and religious reasons, while a legal loophole exists through the terms "without permission" and "without rights" in the law. This loophole manifests itself in the legality of business permits for gambling and betting activities (such as casinos, slot machines, and online games) under KBLI codes 9200 and 92000 through the business licensing system . The regulation of online gambling in Indonesia demonstrates inconsistencies compared to the United States, which strictly enforces regional (state)-based regulations. In Indonesia, there is a contradiction between the spirit of eradicating gambling and the emergence of legal business permits within the standard business classification. Therefore, a special review and regulatory improvement are needed by the government and legislative bodies to close this legal loophole and prevent misuse by irresponsible parties .

Keywords: Online Gambling, KBLI, Legal Dualisme, and Criminal Law.

INTRODUCTION

Gambling is a social ill that is inextricably linked to crime, and has been difficult to eradicate from generation to generation. Gambling is the deliberate wagering of something of value or perceived value, with the awareness of the risks and expectations inherent in games, matches, competitions, and events with uncertain outcomes. The wagers are purely speculative and based on chance. The concept of chance, to some extent, always contains an element of mystical belief in the possibility of good fortune. In the Criminal Code, gambling is regulated under Article 303 of the Criminal Code, with the threat of a four-year prison sentence and a fine of between ten million and 15 million Rupiah.[1]

In the Criminal Code, the authentic interpretation of the term gambling is not included in the first book, Chapter Nine, on "the meaning of several terms used in the law book", but is placed in Article 303 paragraph (3) of the Criminal Code. In Article 303 paragraph (3) of the

[1]Yustisia Vision Team, *Criminal Code and Criminal Procedure Code* , Jakarta: Visimedia, 2016. p. 45

Criminal Code, the definition is given that, What is called gambling is every game, where in general the possibility of getting a profit is more skilled or more skilled. This includes all bets on the results of races or other games that are not held between those who participate in the race or play, as well as all other bets. Then, the first sentence of Article 303 paragraph (1) of the Criminal Code, states that, "Threatened with criminal penalties ..., anyone without a permit: ..." So it can be interpreted that those who can be punished are those who run a gambling business without a permit. Thus, the condition for being punished in relation to gambling is that the gambling game is carried out without a permit. The logical consequence is that if a gambling business has a permit, the business owner cannot be prosecuted under this article. Likewise, those who gamble there cannot be prosecuted.[2]

In fact, in addition to being regulated in the Criminal Code, related to gambling, the government has officially issued a ban on gambling since 1965. The ban can be specifically seen in Presidential Decree Number 113 of 1965, Law Number 7 of 1974 concerning the Regulation of Gambling, and Government Regulation Number 9 of 1981 concerning the Implementation of Gambling Regulation, all gambling practices in Indonesia are abolished because they are contrary to religion and Pancasila morals. This ban is emphasized by the provisions in Article 1 paragraph (1) of Government Regulation Number 9 of 1981 which stipulates that granting permits for the implementation of all forms and types of gambling is prohibited, both gambling held in casinos, in crowded places, or those associated with other reasons.[3]

However, this gambling regulation seems to be dualistic, on the one hand it is prohibited, but on the other hand, there are legal regulations for permits as regulated in KBLI Number 9200 and 92000, where in KBLI code 9200 and 92000 on February 6, 2019 there are regulations for business permits in the form of Gambling and Betting activities such as casinos, bingo arenas, ball machines, slot machines, Fish shooting machines and Keno machines, as well as online game arenas or organizing bets and other betting activities in the form of *off track betting.*

So from the description it can be seen that the legal regulation of online gambling seems to have dualism, on the one hand it is prohibited, but on the other hand there are legal regulations for business permits, this is different from the legal regulation of online gambling abroad, where in several Middle Eastern countries, it is strictly regulated the prohibition of gambling, both online gambling and conventional gambling, and different regulations exist in Europe and in the United States which regulate gambling and online gambling depending on the state in which it is regulated, so it is interesting to discuss the legal regulation of online gambling between Indonesia and the United States to see the similarities and differences.

METHOD

In this research, the researcher uses the Normative Juridical Legal Research method, namely legal research that emphasizes secondary data in research and examines the principles of positive law derived from library data.[4]

The research approaches used in this research include:

a. The statute approach *is* an approach that is carried out by examining all laws and regulations related to the legal issue being discussed.

[2] Kartini Kartono, *Social Pathology* , Volume I, Jakarta: Raja Wali Press, 2009, p. 62
[3] Tessani Justishine Tarore, Jurnal Lex Et Sociatis, *Issuance of Gambling Licenses in Indonesia*, Jakarta: Deeppublshing, 2016. p. 6 ,
[4]Mukti Fajar ND, *Dualism in Legal Research,* Student Library: Yogyakarta, 2013. p. 23

b. Conceptual Approach (*Conceptual Approach*) is an approach in legal research that provides an analytical perspective on solving problems in legal research seen from the aspect of the legal concepts that underlie it, or can even be seen from the values contained in the norming of a regulation in relation to the concepts used.

c. The Analytical Approach *is* an analysis of legal materials to understand the meaning contained in the terms used in legislation conceptually, as well as to understand their application in legal practices and decisions.

In this study, the researcher used secondary data. Secondary data is library data containing legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials.

The collection of legal materials is carried out by identifying and inventorying positive legal regulations, examining library materials (books, scientific journals, research reports), and other legal sources relevant to the legal issues being studied. The collected legal materials are then classified, selected, and ensured to be non-contradictory to facilitate analysis and construction.

The data analysis method used in this research is qualitative juridical, namely in the form of an in-depth interpretation of legal materials as is common in normative legal research.

RESULTS AND DISCUSSION

In the previous explanation, it is known that gambling is basically something that is prohibited in positive law in Indonesia, based on Article 303 and Article 303bis of the Criminal Code, where the provisions of Article 303 of the Criminal Code state,[5]

a. Anyone who, without obtaining permission: is threatened with a maximum prison sentence of ten years or a maximum fine of twenty-five million rupiah.
    1. Intentionally offering or providing an opportunity for gambling and making it a pursuit, or intentionally participating in an enterprise for that purpose;
    2. Intentionally offering or giving the public the opportunity to gamble or intentionally participating in an enterprise for that purpose, without regard to whether there are any conditions or procedures required to use the opportunity;
    3. Make participating in gambling games a livelihood:
b. If the person guilty of committing the crime while carrying out his/her search, then his/her right to carry out that search can be revoked.
c. Gambling refers to any game in which the probability of winning generally depends solely on luck, or on the skill or skill of the players. This includes all bets on the outcome of races or other games that are not made between the participants in the race or game, as well as all other forms of betting.

Meanwhile, Article 303 bis of the Criminal Code states,

a. Threatened with a maximum prison sentence of four years or a maximum fine of ten million rupiah:

1. Anyone who uses the opportunity to gamble, which is held in violation of the provisions of Article 303;
2. Anyone who participates in gambling on a public road or on the side of a public road or in a place that can be visited by the public, unless there is permission from the competent authority who has given permission to hold the gambling.

[5] Alfies Sihombing, *Textbook of Criminal Procedure Law* , *Widina Publisher* , Bandung, 2026. p. 72

b. If at the time of committing the violation, it has not been two years since a criminal conviction became final due to one of these violations, a maximum prison sentence of six years or a maximum fine of fifteen million rupiah may be imposed.

And in the Article 426 Law Regulation Number 1 of 2023 About Criminal Code states, were known for stating, "(1) held in violation with prison sentence maximum for 9 (nine) years or maximum fine based on category VI, anyone without permit. a. suggested or give a chance to play gambling and made that thing to be a profesion for collect some money or interest or include in gambling corporation; b. suggested or give a chance to play gambling in public or include in gambling corporation, either with or without some condition or by the ruled which need to completed, to used the opportunity; or c. Including in gambling as profesion for collect some money or interest. If the violation reffered in poin 1 are done as a profesion, the fugivtive can be sentenced with the extra sentence reffered to article 86 poin f."[6]

Then in Article 27 Paragraph 2 Jo Article 45 Paragraph 1 of Law Number 11 of 2008 which has been updated with Law Number 19 of 2016 concerning Electronic Information and Transactions which states, " (Article 27 Paragraph 2) Any person who intentionally and without the right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain gambling content. [7](Article 45 Paragraph 1) Any person who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah). [8]"

Based on the description of the provisions of Article 303, Article 303 bis of the Criminal Code, and Article 27 paragraph 2 in conjunction with Article 45 paragraph 1 of Law Number 11 of 2008 which has been updated with Law Number 19 of 2016 concerning Electronic Information and Transactions, basically there is a legal loophole that can be used in applying for a business permit in the field of gambling or gambling by utilizing online media , where in the provisions of Article 303, Article 303 bis of the Criminal Code, there is a phrase " without obtaining permission " in the provisions of Article 303 of the Criminal Code, then there is a phrase " except if there is permission from the authorized authority who has given permission to hold the gambling " in the provisions of Article 303bis of the Criminal Code, and there is also a phrase " without rights " in Article 27 paragraph 2 in conjunction with. Article 45 paragraph 1 of Law Number 11 of 2008 which has been updated by Law Number 19 of 2016 concerning Electronic Information and Transactions.

The phrase " without permission " in Article 303 of the Criminal Code means that gambling can be categorized as a criminal act if someone does not have permission from the government. Likewise, the phrase " except if there is permission from the authorized authority who has given permission to hold the gambling " in Article 303bis of the Criminal Code means that there is an exception in the enforcement of criminal law against perpetrators of gambling crimes as regulated in Article 303bis of the Criminal Code, where the exception applies to parties who have permission from the authorized authority, which in this case is the government.

Then, the phrase contained in Article 27 paragraph 2 in conjunction with Article 45 paragraph 1 of Law Number 11 of 2008 which has been amended by Law Number 19 of 2016 concerning Electronic Information and Transactions, which has the phrase " without rights ", has an ambiguous meaning that can be interpreted quite broadly, because the meaning of the phrase without rights means that for every person or legal entity that does not

[6] Edi Ribut Harwanto, *Pembaharuan Sistem Hukum Pidana Melalui Rekodifikasi Demokratis Konsolidasi Adaptasi Di Dalam KUHP Nasional*, Lampung : Laduny Alifatama, 2023. hlm. 229-230
[7]Gradient Mediatama Publishing Team , *Internet and Electronic Transactions Law , Op. Cit* ., p. 8
[8] *Ibid.*, p. 11

have the right to do something, own something, and run something, so that if a person or a legal entity does, owns, or runs something without the subjective rights referred to in the laws and regulations, then a criminal offense can be imposed on the person or legal entity. On the other hand, if a person has the right to run, own, or do something, on the basis of rights in the form of permission or approval given by the authorized party, then no criminal offense can be imposed on the person or legal entity.

In its own development, specifically regarding the provisions of Article 303, and Article 303 bis of the Criminal Code, in Presidential Decree Number 113 of 1965, Law Number 7 of 1974 concerning the Regulation of Gambling, and Government Regulation Number 9 of 1981 concerning the Implementation of Gambling Regulation, all forms of gambling practices in Indonesia are prohibited, both those with permits and those without permits, because they are contrary to religion and the morals of Pancasila. This prohibition is emphasized by the provisions of Article 1 paragraph (1) of Government Regulation Number 9 of 1981 which stipulates that granting permits for the implementation of all forms and types of gambling is prohibited, both gambling held in casinos, in crowded places, or those associated with other reasons. However, the provisions of Presidential Decree Number 113 of 1965, Law Number 7 of 1974 concerning the Regulation of Gambling, and Government Regulation Number 9 of 1981 concerning the Implementation of Gambling Regulation, only apply to the provisions of Article 303, and Article 303 bis of the Criminal Code, and do not apply to Article 27 paragraph 2 in conjunction with Article 45 paragraph 1 of Law Number 11 of 2008 which has been updated by Law Number 19 of 2016 concerning Electronic Information and Transactions, because there are no implementing provisions for these provisions that remove the phrase "without rights", which is contained in the provisions of Article 27 paragraph 2 in conjunction with Article 45 paragraph 1 of Law Number 11 of 2008 which has been updated by Law Number 19 of 2016 concerning Electronic Information and Transactions.[9]

The existence of these phrases can basically be a legal loophole for parties who have the desire to exploit the loophole, so that the existence of phrases as mentioned in Article 303, Article 303 bis of the Criminal Code, and Article 27 paragraph 2 in conjunction with Article 45 paragraph 1 of Law Number 11 of 2008 which has been updated by Law Number 19 of 2016 concerning Electronic Information and Transactions, needs to be reviewed specifically by the government and legislative bodies, to get improvements, so that it is not misused by irresponsible parties due to the existence of these legal loopholes.

And in practice, it turns out that the loophole in the phrase then emerged when legal regulations regarding OSS/one-door licensing were made, which are regulated in PP number 24 of 2018, where in addition to the OSS system, the government also formed a Standard Classification of Business Fields, to determine what types of business permits are legalized in Indonesia, and online gambling turns out to be a type of business permit that is legalized in Indonesia based on KBLI number 9200 (2019) and KBLI number 92000 (2021).

In the United States, both online and land-based gambling are legally restricted. In 2008, gambling activities generated gross revenues (the difference between the total amount wagered minus the funds or "winnings" returned to players) of $92.27 billion in the United States.[10]

The American Gaming Association, an industry trade group, states that gaming in the US is a $240 billion industry, employing 1.7 million people in 40 states. In 2016, gambling taxes contributed $8.85 billion in state and local tax revenue. Critics of gambling argue it

[9] Muhammad Arbani, "Integration of Artificial Intelligence and Augmented Reality in Indonesian National Defense: Strategic Opportunities and Cybersecurity Threats," *Journal of Comprehensive Science* 4, no. 5 (2025): 1392–1409

[10] Norbert Wiener, " *Cybernetics* " Newyork : MIT Press, 1950. p. 4

leads to increased political corruption, compulsive gambling, and higher crime rates. Others argue that gambling is a regressive tax on individuals in the local economy where the gambling establishment is located.[11]

Gambling is legal under US federal law, although there are significant restrictions regarding interstate and online gambling. Each state is free to regulate or prohibit the practice within its borders. The Professional and Amateur Sports Protection Act of 1992 effectively banned sports betting nationwide, excluding some states. However, on May 14, 2018, the United States Supreme Court declared the entire law unconstitutional. Including state-run lotteries, nearly every state can be said to permit some form of gambling. Only two states completely prohibit all forms of gambling: Hawaii and Utah. However, casino-style gambling is far less widespread. Federal law allows Native American Trust Land to be used for games of chance if an agreement is made between the State and Tribal Government (i.e., a "Compact" or "Treaty") under the Indian Gaming Regulatory Act of 1988.

Nevada and Louisiana are the only two states where casino-style gambling is legal statewide. Both state and local governments impose licensing and zoning restrictions. All other states that allow casino-style gambling are limited to small geographic areas (e.g., Atlantic City, New Jersey, or Tunica, Mississippi), or American Indian reservations, some of which are located in or near major cities. As domestically dependent nations, American Indian tribes have used legal protections to open casinos, which has become a controversial political issue in California and other states. In some states, casinos are limited to "riverboats," large, multi-story barges that are, more often than not, permanently moored on bodies of water.[12]

Online gambling has become more tightly regulated. The Federal Wire Act of 1961 prohibits interstate sports betting but does not address other forms of gambling. This has been the subject of court cases. The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) does not specifically prohibit online gambling; instead, it prohibits financial transactions involving online gambling service providers. Some offshore gambling providers responded by shutting down their services to US customers. However, other operators continue to evade the UIGEA and continue serving US customers. For this reason, the UIGEA has received criticism from prominent figures in the gambling industry.[13]

By that explanation, then it can be known that The rapid flow of technological change from analog to digital has impacted a shift in human lifestyles, which tend to be practical, dynamic, and closely linked to the use of information technology. In its development, it is known that in the licensing sector, previously permits had to go through various complicated, time-consuming and costly bureaucratic systems. However, today, permits can be processed through a single-door system, the OSS (Online Single Submission). In practice, this OSS system can be exploited not only by the public and investors, but also by some irresponsible parties, for example, those seeking to establish gambling companies. so based on the explanation, it is known that the purpose of this study is to analyze the legal certainty of the current regulation of the prohibition of online gambling in Indonesia, and the problematic regulation of the prohibition of online gambling in Indonesia, as well as to describe and analyze the ideal legal reconstruction needed regarding policy updates regarding the regulation of the prohibition of online gambling in Indonesian law.

The results of the study indicate that the legal certainty of the regulation of the prohibition of online gambling in Indonesia currently actually already exists in the Law on Information and Electronic Transactions in the form of a prohibition and the threat of imprisonment for perpetrators, but the existence of the phrase without permission (in the

[11] Petter Gottschalk, *Policing Cyber Crime* (London: Ventus Publishing, 2024). p. 24
[12] Ichwan Kurnia, *Cyber Criminal Law , Eureka Media Aksara* (Purbalingga, 2025).
[13] Ibrahim Fikma Edrisy, *Introduction to Cyber Law* , Lampung: Sai Wawai Publishing, 2025. p. 64

2008 and 2016 ITE Laws), as well as the phrase without rights (in the 2024 ITE Law), creates a legal loophole and has an unclear meaning of ambiguity. The problem of the prohibition of online gambling regulations in Indonesia is related to the existence of legal loopholes in the provisions of laws and regulations related to gambling. The ideal legal reconstruction required for policy updates regarding the prohibition of online gambling in Indonesian law includes implementing regulations that strictly limit and prohibit online gambling. Furthermore, improvements to the OSS system and programming are needed, including enhanced monitoring, filtering, and enforcement of business permit applications that violate legal provisions.

A comparison of gambling licensing laws between Indonesia and the United States reveals fundamental differences in state recognition of the activity, which are further complicated by the discovery of administrative loopholes in Indonesia. In Indonesia, gambling is fundamentally prohibited under Law Number 1 of 2023 concerning the National Criminal Code (KUHP). Articles 426 and 427 of the National Criminal Code emphasize that all forms of gambling are a criminal offense against morality, punishable by up to nine years in prison for those who run them.

Unlike the system in the United States, the legality of gambling is left to the discretion of each state under the 10th Amendment to the US Constitution. This allows states like Nevada or New Jersey to legalize and regulate gambling as a licensed commercial industry for tax revenue. The legal loopholes in Indonesia arise through administrative aspects, particularly in KBLI code 92000 (Indonesian Standard Classification of Business Fields), which includes "Gambling and Betting Activities."

Despite being criminally prohibited, the existence of this code in business licensing systems (such as the OSS) is often exploited by unscrupulous companies, including allegations involving entities like PT Proteksi Emas, to apply for business permits that appear administratively legitimate. This practice creates ambiguity, as business actors attempt to whitewash online gambling operations under the guise of investment or brokerage services officially registered with the bureaucratic system, even though the Investment Coordinating Board (BKPM) explicitly states that this business sector is closed to investment.

A similar situation can be seen in Law No. 6 of 2023 (Job Creation Law), where business licensing uses a risk-based approach (OSS-RBA). The loophole argument arises when a business sector technically falls within the classification list but does not align with its illegal status under criminal law. Regarding licensing requirements, in the United States, the process is very transparent yet stringent, including background investigations (probity checks), proof of financial viability, and compliance with technology audits to ensure game fairness (RNG). Conversely, in Indonesia, due to its total prohibition, there are no legally recognized "licensing requirements" for private companies. Instead, what's happening is an attempt to close legal loopholes by urging the government to revoke the KBLI 92000 code to prevent its further misuse as a covert legalization tool. Thus, this comparison demonstrates that while the US uses regulations to control the industry, Indonesia remains focused on synchronizing criminal laws (the new Criminal Code) with administrative systems to shut down all forms of gambling operations.

CONCLUSION

Online gambling in the United States is strictly regulated in several states, where America applies legal regulations regarding gambling and online gambling based on the region, where almost every state gambling and online gambling are restricted in circulation, but in two states in particular gambling is legalized and prohibited completely, where in two states such as Hawaii and Utah completely prohibit various forms of gambling, but in two states namely Nevada and Louisiana all forms of gambling including online gambling are legalized in the country. The regulation is very different in Indonesia, where the regulation of

this gambling seems to be dualistic, on the one hand it is prohibited, but on the other hand, there are legal regulations for permits as regulated in KBLI Number 9200, and 92000, where in KBLI code 9200 and 92000 on February 6, 2019 there are regulations for business permits in the form of Gambling and Betting activities such as casinos, bingo arenas, agile ball machines, slot machines, Fish shooting machines and Keno machines, as well as online game arenas or organizing bets and other betting activities in the form of *off track betting.*

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