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Implementation of Violations of the ITE Law Article 27 Verse (2) of 2016 Concerning Promotion of Online Gambling by Influencers in Indonesia

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Abstract

The 2016 Electronic Information and Transactions Law (UU ITE) which was created by the government to tackle cyber problems has generated a lot of controversy, one of which is the regulation governing online gambling and its promotion in Article 27 verse (2) of the ITE Law. A number of influencers violate these regulations by using social media to promote online gambling, which carries a moral burden of influence in promoting illegal products, to provide good universal service to the community. Furthermore, as someone who has many followers, one influencer also has high public interest which requires, as someone who is widely followed on social media, a person influencer must have a policy of utilizing their social media. This research uses a qualitative descriptive methodology with data collection literature review. This research finds that there is a need for firmness in the implementation of violations of the ITE Law article 27 verse (2), some influencers who claim not to know if the site being promoted is online gambling, this dedicates an unclear definition of online gambling. The reason is that currently some online games have a system similar to online gambling. That way, the government needs to make a clear separation, how to categorize online gambling and online games separately. That way, law enforcement against violators of online gambling promotions can be done firmly and reduce the possibility of similar actions in the future.

Introduction

This research will focus on the implementation of violations of the ITE Law article 27 verse (2) concerning the promotion of online gambling by influencers in Indonesia.

Influencer is someone who has followers and the ability to influence his followers (Jin et al., 2021), most of them are using social media. The use of social media is a development of the times that uses technology in its implementation, which makes it easier to participate and share information that can be accessed by people, both known and unknown (Nafila et al., 2022). With the development of social media, it is easy to convey the latest information to the public, from the lower class to the upper class. The various information that reaches the public is quite diverse, one of which is online gambling.

Gambling in the Indonesian Dictionary is a game in which money or valuable items are used as bets. Gambling which initially operated conventionally then developed online using a personal computer (PC) and the internet. It then continues to develop by making it easier for users to play online gambling through the internet. Gambling in Indonesia is regulated in some laws. The Article 303 verse (3) of the Criminal Code defines gambling activities. The law of Electronic Information and Transaction banned people from distributing or providing access to gambling which lead to imprisonment up to six years and or up to Rp 1 billion fine. Thus, all forms of gambling in Indonesia are categorized as illegal activities. The regulations are expected to decrease online gambling.

The Indonesian Ministry of Communication and Information stated in a press conference that starting 2018, it had blocked 566,322 online gambling sites. In 2018, it blocked 84,464 contents. The next year, a total of 78,306 online gambling contents were blocked. The number goes higher in 2020 with 80,0305 contents blocked. In 2021, the figure sharply hikes to 204, 917 content that was blocked. In 2022, 118,320 contents were blocked (Rizkinaswara, 2022). The trend for blocking Kominfo has increased every year and jumped sharply in 2021, during the Covid pandemic. There are quite many online gambling sites in Indonesia, such as Winning365.com, Lumbang88.com, and Dewapoker.com. Even government sites have a weak proxy security and can be hacked to be used as online gambling sites, such as the Bawaslu Makassar site and the Ministry of Transportation site <https://sipandu.dephub.go.id>. Even the official YouTube channel of the Indonesian House of Representatives (DPR) was hacked and showed live streaming of gambling (Bestari, 2023).

Online gambling has grown rapidly in Indonesia with various methods and promotions that can attract public interest. These online gambling companies promote their products using influential figures. Therefore, online gambling companies target artists, influencers from Instagram, and game content creators from YouTube. In 2020, artist Wulan Guritno promoted online gambling, which was then investigated in 2023. She promoted the online gambling application Lumbang 88 on Instagram by posting it to one of her post feeds. When questioned by the police, Wulan's manager stated that Wulan herself was asked to promote an online game and felt cornered (Gideon, 2023). After the investigation, Guritno was found not guilty of breaching the ban in promoting online gambling, under the pretext that she did not know what she was promoting was an online gambling site. Due to her ignorance, she was considered innocent.

Another influential figure promoting online gambling was Ferdian Paleka. He used Youtube to promote online gambling sites that provide some types of gambling, including poker, casino, lottery and slot games. It is estimated that Ferdian made a profit of Rp 600 million in promoting this product (Alhamidi, 2023).

The last case involves Steven Kurniawan, owner of Marsha's YouTube account, who was also suspected of promoting online gambling. Marsha promoted online gambling by camouflaging it through donations obtained when streaming games on her account. When Marsha was streaming, the account received donations or locally known as 'saweran' from a gambling account worth hundreds of millions of rupiah. She then

shouted out the gambling account that gave the donation (Mallasak, 2023). Multiple accounts then influence others to play live online gambling, win, and easily get lots of money. With this promotion, people in Indonesia can easily start playing online gambling.

Online gambling has become a concern in several public discussions in Indonesia. This could be triggered by the large number of online gambling players in the country and the significant impact of their losses. Indonesia is ranked first in slot gambling players in the world with 201,122 active players, which is more than the Philippines, Myanmar, Russia and Cambodia (Dian, 2023). Based on data from the Center for Financial Transaction Reports and Analysis, online gambling transactions in Indonesia by the end of 2023 would have been growing to IDR 200 trillion, up significantly from IDR 2 trillion in 2017. Furthermore, the Center for Financial Transaction Reports and Analysis noted that 2.1 million out of 2.7 million Indonesians used Rp 100,000 per day for online gambling deposits, ranging from students to housewives (CNBC Indonesia, 2023). Another significant consequence of these losses is the rise in crime.

Globally, some sites with the name "online gaming" actually contain elements of 'gambling' in it. Research by Ardiansyah & Wahyu (2024) shows that there are online games that operate under the same system as online gambling. This indicates that the argument used by Guritno in her case is more complex, as the government has not been able to clearly define the difference between online gambling and online games. As a result, Guritno could evade potential punishment for violating Article 27, sub article 2 of the Electronic Information and Transaction Law. Additionally, the government pays little attention to how online games with gambling mechanics can also be monetized, leading to behaviours similar to those associated with online gambling, such as continuous addiction.

Previous research has stated that the ban on online gambling promotion through social media reflects the government's commitment to addressing online gambling practices considered detrimental to the public. The ITE law provides a strong legal basis for enforcing this ban, with sanctions that include fines and imprisonment. Therefore, the promotion of online gambling through social media in Indonesia not only violates gambling regulations but can also result in serious legal actions in accordance with the existing legal framework. In the legal context of Indonesia, liability related to the promotion of online gambling through social media refers to the prohibition of gambling in general.

The owner of the social media platform, as the Electronic System Operator (PSE), and the user of the platform have legal responsibility for content that violates the rules, including the promotion of online gambling (Gunawan et al., 2023). This aligns with persuasive communication theory, where an activity is carried out to influence others by involving the psychological side to consciously do something of their will (Zaenuri, 2017). By leveraging their ability to influence others, influencers must be able to exert a positive influence and obey the law. The researcher identifies a gap in research in how the law is enforced regarding online gambling promotion by influencers in Indonesia and the provision of sanctions to the perpetrators. Therefore, the purpose of this research is to uncover how the promotion of online gambling in Indonesia by influencers is punished for violations of the existing ITE law.

Communication is growing rapidly with technological advances, and this development brings both positive and negative impact. Adequate laws are needed to maintain and oversee these rapid technological advances, ensuring they are used in ways that are safe, clean, conducive, productive, and beneficial to society (Rohmy et al., 2021). With the existence of regulations, the public will feel more organized and better informed about what can and cannot be done, as well as the sanctions that will

be imposed for violations. Technological advances can also render existing regulations inadequate, creating biases in policies related to traditional media and blurring the boundaries between segments of the communication industry. This requires appropriate regulatory differences (Napoli, 2001).

Public interest is one of the foundation principles of communication policy. The prohibition of online gambling in Indonesia is driven by the significant economic losses experienced by the immediate families of online gambling perpetrators (Sitompul, 2014), resulting in the need to study the problems caused by online gambling. Another fundamental principle in a communication policy, according to Napoli (2001), is universal services. The government is obliged to provide public services that maintain health, security, and emergency response appropriately. The rapid development of digitalization also demands more flexible regulations to prevent complex problems, including online gambling. The presence of the internet makes online gambling promotion easier through digital media.

However, some influencers mentioned above receive different punishments. For instance, Wulan Guritno, who was then in talks to be appointed as an anti-online gambling ambassador by Kominfo. Budi Arie said, "celebrity artists have been summoned and will be appointed by Kominfo to become anti-online gambling campaigners" (CNN Indonesia, 2023). Similarly, Steven Kurniawan apologized to the public, and there has been no further process from the police. Meanwhile, Ferdian Paleka experienced disparate treatment, as he received an 8-month prison sentence. Other individuals involved in online gambling were also arrested by the police and sentenced to prison.

This disparate treatment is contrary to the Electronic Information and Transaction Law (ITE Law) Article 27 verse 2 and Article 45 verse 2, which regulate threats against parties who deliberately distribute and create access to online gambling, with a maximum penalty of six years in prison and a fine of 1 billion rupiah. Based on the facts above, it will be analyzed whether the implementation of the ITE Law in this gambling article is appropriate.

Research Methods

This research uses a qualitative descriptive methodology, which truly describes the conditions that exist in society (Nasip et al., 2020). The situation explained in this research is the phenomenon of violation of online gambling promotion by influencers. This research uses a critical paradigm, suggesting an ethical framework that does not impose universal moral codes but instead focuses on strengthening the relationship with oneself, enabling individuals to become the authors of their own actions (Denzin & Lincoln, 2011). Considering how social conditions are threatened by the rapid growth of online gambling, critical research on the implementation of the ITE law and violations by online gambling promotion actors is necessary. Data collection was carried out through literature review. A literature review is a research method used to collect, evaluate, and synthesize existing evidence provided by studies that address similar research statements (Synder, 2019). Such texts have provided a significant amount of material for qualitative researchers. Furthermore, the Internet has emerged as the primary platform for textual communication, experiencing more rapid growth in recent years than any other medium for text usage (Denzin & Lincoln, 2011). This research examines previous studies regarding online gambling, its effect, and violations by influencers caught promoting online gambling. It uses references from journals and credible news sources regarding online gambling promotion violations.

This study focused on how influencers who are arrested for promoting online gambling through social media are reported by valid news sources and analyzed in previous research journals. Influencer deliberately share promotional content for

online gambling through personal blogs and social media. Influencers are opinion leaders with the ability to influence their followers, as long as these figures have clout and are regarded as popular, they are considered social media celebrities (Jin et al., 2021). It is common for influencers to be used as opinion leaders in promoting goods or services. Promotion is categorized as originating from influencers when it is conducted through personal communication media such as social media, which can reach the public at large (Lee & Kim, 2020). Social media, also known as digital media, serves as a channel for disseminating information to the public; its strength lies in the personalisation of messages by its users (Moreno et al., 2015). Even though messages shared on social media are free and personal, they must comply with applicable norms, such as legal, social, and religious norms. This study will highlight how the violation of the ITE Law by influencers promoting online gambling through their social media affects the public interest and universal services, foundational principles of communication policy (Napoli, 2001). Therefore, we chose the case of online gambling promotion violations by Wulan Guritno, Ferdian Palenka, and Steven Kurniawan who promoted online gambling through their social media.

Results and Discussion

The implementation of measures against online gambling violations in Indonesia is highly complex, involving efforts such as blocking websites suspected of hosting online gambling and banning all forms of promotion containing online gambling elements. The government, through the Ministry of Communication and Information Technology (Kominfo), actively monitors and shuts down thousands of online gambling sites that continually emerge.

Additionally, stringent regulations prohibit advertisements and promotions related to online gambling across various media, including social media, to prevent the spread of gambling activities that harm society. These actions demonstrate the government's commitment to safeguarding moral and social security from the threats posed by online gambling.

Reflection on the application of Electronic Information and Transaction Law (ITE Law) article 27 verse (2) states that "Everyone intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents which contains gambling content" can be traced by referring to the Joint Decree (Number 229 of 2021, Number 154 of 2021, Number KB/2/VI/2021) issued by the Minister of Communication and Information, the Attorney General of the Republic of Indonesia, and the Head of the National Police of the Republic of Indonesia. This decree outlines four points of guidance for implementing the law articles mentioned above, serving as a reference for law enforcement officers within the Ministry of Communication and Information, the Indonesian Prosecutor's Office and the National Police in carrying out their duties and authorities. The following are the implementation guideline points along with a critique of their execution.

Implementation of the Regulation

The emphasis on implementing Article 27 verse (2) of the ITE Law in the implementation guidelines focuses on the actions of a person who is electronically "transmitting", "distributing", and "making accessible" gambling content that is prohibited or does not have a permit based on statutory regulations. The terms 'transmitting', 'distributing', and 'making accessible' refer to the activities such as sending or disseminating documents or information, and any other related activities through an electronic system that makes the document or information publicly known (Leser et al., 2021, p. 247). The implementation guidelines further explain that the type of document/information in question can include applications, accounts,

advertisements, websites, and/or bookie operator billing systems. In the case of Wulan Guritno, the artist clearly and openly endorsed online gambling Barn 88 on her Instagram. Celebrity Endorsement is a marketing strategy that employs popular celebrities to promote products to potential consumers (Megayani & Marlina, 2019, p. 175).

Lifestyle pressures and societal expectations from society can motivate influencers to promote online gambling. Influencers might view accepting such promotional offers as financially beneficial (Affan & Saefudin, 2023). Influencers are reported to have received at least IDR 100,000,000.00 for gambling promotions (Insert, 2023). Additionally, influencers who create content closely related to gambling, such as online games, may find gambling promotions relevant to their audience, which can increase their popularity (Affan & Saefudin, 2023).

In the case of Steven Kurniawan, also known as Marsha Ozawa, a gambling promoter used a donation-based approach. Promoters would send donations in substantial amounts, up to tens of millions streamer, with the streamer then shouting out the promotional slogans included in the donation message. The involvement of influencers in promoting online gambling has reached an emergency level. Influencers, with their large social networks and follower bases, act as opinion leaders in their communities (Qiarasyifa, 2020). Both influencers' activities violate the implementation guidelines of the ITE Law (Article 27 verse 2 point c) which states that "forms of electronic information containing gambling content that are distributed, transmitted and/or accessible can be in the form of images, videos, sounds and/or writing."

Despite these clear violations of Article 27, paragraph (2) of the ITE Law, there have been no criminal sanctions imposed so far. The ineffective implementation and application of this law are evident, as personal influencers are even made anti-gambling ambassadors online despite the significant losses caused by online gambling. The authorities' handling of this issue remains suboptimal. Influencers have claimed ignorance about promoting online gambling sites during police inspections (Permatasari & Bahar, 2023). The ignorance indicates a lack of proper understanding of the ITE Law. This less-than-optimal law enforcement complicates efforts to eradicate online gambling in society. According to the Ministry of Communication and Information, the number of online gambling sites is vast and continues to grow despite being blocked, largely because these sites are operated by foreign companies, which limits the Indonesian Police's ability to act against them (Detik, 2012). Blocking efforts by the Ministry have become ineffective as gambling companies find ways to keep their sites accessible within Indonesian jurisdiction. Raising awareness and ensuring legal compliance in the community are crucial steps in addressing gambling issues.

Public discussion on online gambling surged when an influencer highlighted state losses due to online gambling promoted by influencers (Ramadhan, 2023). In a YouTube broadcast, the influencer explained the modus operandi and motives behind influencers' collaboration with bookies to promote online gambling. Growing public awareness and discussion about the negative impacts of online gambling are leading to increased scrutiny of the ITE Law's implementation.

Rosana (2014) notes that creating legal awareness involves implementing principles of justice and certainty, with the law being applied indiscriminately to prevent gaps that might undermine its role in society. Legal awareness should be raised without coercion or intimidation, and it is closely linked to legal compliance. Given the serious negative impacts of online gambling, the government needs to enhance legal awareness, including stages of legal knowledge and understanding.

At the stages of legal knowledge and understanding, the government must conduct outreach on actions prohibited under Article 27, paragraph (2) of the ITE Law,

including promoting online gambling. Throughout 2022, the National Police arrested 866 online gambling suspects, focusing only on players and bookies (CNN Indonesia, 2023). With increased public legal knowledge, there should be no excuse for not imposing penalties on those promoting online gambling. Effective implementation of the ITE Law requires firm action against application providers advertising gambling, such as on Instagram and Facebook.

Violations of Online Gambling Promotion by Influencers

Minister of Communication and Information Regulation Number 5 of 2020 concerning Private Electronic System Operators outlines the obligations of electronic system operators to comply with existing legal regulations in Indonesia. This regulation aims to enhance public awareness and caution in their interactions with Electronic System Operators (Kominfo, 2020). It also relates to the ITE Law article 27 verse (2), which sets out obligations and sanctions for Private Scope Electronic System (PSE) concerning the prevention of gambling and content that disrupts the public order and interest. Instagram, Facebook and YouTube, as foreign entities, have registered their operations under the PSE (Mursid, 2022). Chapter 4, Article (3) of the Minister of Communication and Information Regulations mandates blocking when electronic system users violate regulations by creating content that disturbs public order. In this context, Electronic System Operators must enhance security to prevent exposure to prohibited content, including gambling. Failure to do so may result in sanctions ranging from administrative penalties to access blocking, as detailed in these regulations.

In the case of online gambling promotions, the government has been less stringent in imposing sanctions on both the promoters and the electronic system organizers (PSE). As of August 2023, Kominfo has blocked 534,183 online gambling sites (Kominfo, 2022), yet this has not led to a decrease in online gambling game activity, which reached 100 trillion in September 2023 (Muhamad, 2023). This increase in gambling transactions indicates that the preventive measures of blocking online gambling sites is ineffective. The application of sanctions should target companies involved in electronic transactions, such as digital wallet providers like Dana, Ovo, LinkAja and Gopay, which facilitate these gambling transactions (Sanusi, 2022). These digital wallet companies should implement security features to block transactions suspected of involving gambling, in line with the principle of universal service, which require providing security for stakeholders.

The government is also perceived as unfair towards influencers involved in online gambling. When investigated, some influencers claimed ignorance of the gambling nature of the products or services they promoted. This has led to a lack of sanctions, as seen in the case of Guritno (CNN Indonesia, 2023). Influencers should be expected to understand their responsibilities when collaborating with brands to ensure that they promote products that comply with regulations, thereby avoiding legal violations. Universal service under the ITE Law should regulate the promotion of products and services to ensure they do not violate legal standards, with prohibitions on online gambling promotions being part of efforts to protect public security, health, and comfort.

Additionally, the issue of influencers claiming ignorance of online gambling sites highlights a legal gap not addressed by the law. Previous research indicates that similarities between "online games" and online gambling—such as requiring payment to play games—can lead to confusion and misuse of online gaming systems as substitutes for gambling (Ardiansyah & Wahyu, 2024). This lack of clear differentiation between games and online gambling creates a loophole for violators. Addressing this gap requires a clear legal distinction between online games and online

gambling to improve the enforcement of gambling regulations and their promotions.

Article 27 verse (2) of the ITE Law states "Every person intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents which contain gambling content". The term 'person' in the ITE Law includes individuals, whether Indonesian citizens, foreign nationals, or legal entities. Given the involvement of legal entities in electronic system operations, the government should impose sanctions beyond those listed in the Minister of Communication and Information regulations. According to Article 45, sub article (2) of the ITE Law, "Every person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing gambling content as specified in Article 27, paragraph (2) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of up to IDR 1,000,000,000.00 (one billion rupiah)."

According to Harold Lasswell's Hypodermic Needle Theory, media has a direct, immediate, and powerful effect on audience (Fitrianti et al., 2024). This theory is particularly relevant when considering the impact of social media influencers, who possess the ability to disseminate information and messages to the public, including their followers through their personal media channels. The rapid and far-reaching influence of these influencers makes them pivotal actors in the spread of information in the digital age, especially in a country like Indonesia, where social media usage is widespread. Influencers' ability to "inject" messages into the public consciousness aligns with Lasswell's theory, suggesting that their role is crucial in shaping public opinion and behaviour.

Influencers play a significant role in the promotion and dissemination of online gambling content, particularly through social media platforms. The continuous "injection" of online gambling-related content by influencers can contribute to the normalization and entrenchment of online gambling behaviours, especially in developing countries. In nations with low economic stability, literacy, and education levels, the population may be more susceptible to the allure of easy money and large rewards promised by online gambling (Amoah-Nuamah et al., 2023). This susceptibility underscores the need for critical scrutiny of the messages promoted by influencers, as their content can have a profound impact on societal behaviour, potentially exacerbating the issue of online gambling.

The pervasive influence of social media influencers can lead to significant societal changes, especially concerning behaviours like online gambling. Promotions carried out by influencers could have a stronger impact when they contain emotional appeal (Sánchez-Fernández, 2021), especially in countries with economic challenges, such as Indonesia, where the promise of easy rewards may be particularly enticing. The promotion of online gambling by influencers can create a culture where gambling is seen as a viable means of improving one's financial situation, potentially leading to an increase in gambling-related problems. This highlights the need for influencers to be more socially responsible and for governments to implement regulations that prevent the promotion of negative behaviours.

Given the significant role that influencers play in disseminating information to a wide audience, there is a pressing need for strong regulations and strict enforcement regarding the promotion of online gambling. Without regulatory oversight, influencers may unwittingly or deliberately contribute to the spread of harmful practices such as online gambling, particularly among vulnerable populations. By imposing robust regulations, governments can ensure that influencers are held accountable for the content they share, thereby protecting the public from the adverse effects of such promotions. This approach is crucial in curbing the spread of online gambling, especially in developing countries where the consequences can be more severe due to

socio-economic factors.

Conclusion

The implementation of Article 27, sub article (2) of the ITE Law has proven to be ineffective. This is evident from the fact that influencers continue to evade accountability by claiming ignorance about the gambling content they promote. The government also appears to lack firmness in enforcing sanctions under Article 45 sub article (2) of the ITE Law. The ability of influencers to claim ignorance about the distinction between online games and online gambling highlights a weakness in the law, as many online games employ systems similar to those used in gambling. Therefore, the government, as the policymaker, should review and clarify the distinction between games and online gambling based on public interest and the principles of universal service. This clarification should serve as a basis for categorizing a site or application as either a game or online gambling. Then this difference can be used as a reference for how to categorize a site or application as a game or online gambling. That way, the excuse for the influencers or else's ignorance is that online gambling can be reduced, and the implementation of violation of online gambling promotion can be done more firmly. By making this distinction clear, the government can reduce the use of ignorance as an excuse and enforce stricter measures against online gambling promotions.

This research is not without limitation. The study is limited to data collection through a literature review, which may result in some data being less in-depth or missing, particularly if the data has not been published. Additionally, this research focuses on the communication policy framework based on the principles established by Napoli (2001). Other frameworks might yield different findings.

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