

ANALYSIS OF JUDGES' RATIO DECIDENDI IN ONLINE GAMBLING CRIMINAL DECISIONS USING CRIMINAL CODE PROVISIONS

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Abstract

Advances in information technology have driven the transformation of conventional gambling into gambling conducted through electronic systems. This situation has raised legal issues regarding the application of criminal law to online gamblers, particularly concerning the use of the Criminal Code (KUHP) or the Electronic Information and Transactions Law (UU ITE). The purpose of this study is to analyze the judges' ratio decision in criminal judgments involving online gambling that apply provisions of the Criminal Code (KUHP). The research method used is legal research with a statutory regulatory approach and a case approach. Based on the research conducted, it is evident that there are differences in the judges' reasoning regarding the classification of online gambling. In verdict number. 32/Pid.Sus/2025/PN Lmj, the Panel of Judges applied Article 27(2) in conjunction with Article 45(3) of the ITE Law, primarily on the grounds that the use of electronic systems and access to gambling websites fulfilled the element of making electronic information containing gambling content accessible, thereby rendering the ITE Law applicable as *lex specialis*. Conversely, in verdict number 41/Pid.B/2025/PN Pdp, the Panel of Judges applied Article 303 bis of the Criminal Code because the defendant acted solely as an online gambler and was not proven to have distributed, transmitted, or made electronic information containing gambling content accessible to others. This discrepancy highlights differing interpretations of the elements within the ITE Law, which impact legal applications. Therefore, consistency in legal interpretation and application is necessary to ensure legal certainty in the handling of online gambling crimes in Indonesia.

Keywords: Ratio Decidendi; Online Gambling; ITE Law; Criminal Code.

A. INTRODUCTION

The development of information technology has transformed various aspects of people's lives, including crime patterns that have evolved from conventional to digital forms. One crime that has undergone this transformation is online gambling. Unlike conventional gambling conducted through physical meetings, online gambling utilizes electronic systems, allowing it to be accessed anytime and from anywhere. This phenomenon continues to increase with ease of internet access, smartphone use, and the development of digital payment systems. In fact, the Head of the Financial Transaction Reports and Analysis Center (PPATK) emphasized that there are an estimated 8.8 million online gamblers in Indonesia, with the majority coming from the lower-middle economic class. Of these 8.8 million, 97,000 are members of the Indonesian National Armed Forces (TNI) and the Indonesian National Police (Polri), 1.9 million work in the private sector, and 80,000 online gamblers are

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recorded as being under the age of 10.⁴ This situation indicates that online gambling has developed into a form of cybercrime that requires special legal handling.

In the Indonesian criminal law system, gambling was initially regulated through Article 303 and Article 303 bis of the Criminal Code. As technology developed, lawmakers then regulated electronic-based gambling through Article 27 Paragraph (2) in conjunction with Article 45 Paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the "ITE Law 11/2008"). Subsequently, this regulation was updated through Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the "ITE Law 19/2016"), which in the explanation of Article 27 Paragraph (1) provides further clarification regarding the meaning of the elements "distribute", "transmit", and "make accessible". Although the ITE Law 19/2016 contains a provision that Article 45 Paragraph (2) has been amended, in substance, this provision remains identical to Article 45 Paragraph (1) in the ITE Law 11/2008. Along with the increasingly rapid development of gambling crimes, this regulation was again updated through Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the "ITE Law 1/2024") in Article 27 Paragraph (2) in conjunction with Article 45 Paragraph (3). The presence of this provision indicates that online gambling is seen as having different characteristics from conventional gambling and therefore requires more specific regulations.

Theoretically, the existence of gambling provisions in the ITE Law has consequences for the application of the principle of *lex specialis derogat legi generali*, namely that special rules override general rules. Thus, the crime of gambling committed through electronic means should be more appropriately applied to the provisions of the ITE Law as a special regulation. However, in judicial practice, there are still decisions that apply the provisions of the Criminal Code to online gambling perpetrators. This condition indicates a difference that raises issues regarding legal certainty, uniformity of application of norms, and consistency in the application of the principle of *lex specialis derogat legi generali*. This difference is reflected in decisions number 32/Pid.Sus/2025/PN Lmj and decision number 41/Pid.B/2025/PN Pdp which, although both are related to online gambling, the first decision applies Article 27 Paragraph (2) in conjunction with Article 45 Paragraph (3) of the ITE Law, while the second decision uses Article 303 bis Paragraph (1) ke-1 of the Criminal Code. The differences in the application of the law raise questions regarding the legal reasons underlying the judge's choice of legal provisions to be used.

In legal science, the reasoning that forms the basis for a judge's decision is known as the *ratio decidendi*. Through the analysis of the *ratio decidendi*, the judge's legal considerations in applying the provisions of the Criminal Code to online gambling cases can be understood, including their relationship to the interpretation of the elements of the crime, the relationship between the Criminal Code and the ITE Law, and the application of criminal law principles. Therefore, based on the explanation explained above, the author is interested in conducting further legal research on the judge's *ratio decidendi* in online gambling criminal cases entitled "Analysis of the Judge's *Ratio Decidendi* in Online Gambling Criminal Decisions Using the Provisions of the Criminal Code."

B. RESEARCH METHODS

The type of research used by the author in this study is normative legal research. This study employs a normative juridical approach, as it is conducted by examining and reviewing several judges' decisions related to online gambling criminal cases, based on relevant statutory provisions, as well as theories regarding the purpose of punishment and legal certainty. In this study, the author uses two research approaches, namely the statute approach and the case approach. The statute approach is one of the methods used in normative legal research to examine various laws and regulations related to the legal issue being studied. Meanwhile, the case approach is carried out by analyzing cases that are relevant to the research topic and have obtained permanent legal force from court decisions. In this study, case references refer to decisions number 41/Pid.B/2025/PN Pdp and decision number 32/Pid.Sus/2025/PN Lmj.

The legal material search technique used in this research was conducted through library research on various legal material sources. This library research aims to explore and obtain legal material by reviewing, recording, and analyzing books, literature, laws and regulations, and documents relevant to the issue being studied, including sources available via the internet. The legal analysis technique used by the researcher is a qualitative method with

⁴ Hanin Marwah, 2025, "PPATK: Online Gambling Money Turnover in 2025 Reaches IDR 1,200 Trillion", accessed at <https://www.tempo.co/hukum/ppatk-perputaran-uang-judi-online-2025-mencapai-rp-1-200-triliun--1233401> on April 22, 2026

a prescriptive nature. In the context of normative legal research, this analysis aims to develop legal arguments based on the research findings with the aim of providing recommendations for future judicial decisions in similar cases.

C. RESEARCH RESULTS AND DISCUSSION

The crime of gambling is the act of risking something of value in the hope of gaining a profit from an uncertain outcome. Terminologically, the Great Dictionary of the Indonesian Language (KBBI) defines gambling as a game using money as a wager.⁵ Besides being contrary to religious, moral, and ethical values prevalent in Indonesian society, gambling also has various negative impacts, such as dependency, economic loss, and disruption of social order. Therefore, gambling is categorized as a social problem subject to criminal law regulation. Developments in information technology have transformed the form of gambling from conventional gambling to online gambling, which utilizes electronic systems and the internet as the primary means. Unlike conventional gambling, which is regulated by Government Regulation Number 9 of 1981, to date there are no specific regulations comprehensively governing the classification and characteristics of online gambling. This situation presents challenges in law enforcement and has the potential to create legal uncertainty.

In Indonesian criminal law, gambling was initially regulated through Article 303 and Article 303 bis of the Indonesian Criminal Code as a crime against public order. However, the development of gambling in the digital space has driven the need for regulations that are more adaptive to the characteristics of cybercrime. Therefore, online gambling was then qualified as a crime related to the use of electronic systems and electronic information, so that its regulation no longer relies solely on the gambling provisions in the Indonesian Criminal Code. The regulation of online gambling is explicitly regulated in the ITE Law 11/2008 through Article 27 Paragraph (2) and its criminal provisions in Article 45 Paragraph (1). These regulations were then clarified through the ITE Law 19/2016, particularly regarding the meaning of the elements "distribute", "transmit", and "make accessible", without changing the substance of the sanctions provisions. Furthermore, the ITE Law 1/2024 further adjusted Article 27 Paragraph (2) and Article 45 Paragraph (3) in response to the increasingly complex and cross-jurisdictional development of online gambling. Therefore, the ITE Law is a *lex specialis* which specifically regulates gambling via electronic media so that, based on the principle of *lex specialis derogat legi generali*, it overrides the general provisions in the Criminal Code regarding acts with the same object and *modus operandi*.

The emergence of various criminal provisions outside the Criminal Code raises questions regarding the relationship between general criminal law and specific criminal law. In this case, Article 103 of the Criminal Code serves as a bridge article connecting criminal provisions in the Criminal Code with criminal legislation outside the Criminal Code, which is reaffirmed in Article 187 of the National Criminal Code. On the other hand, the National Criminal Code re-regulates gambling crimes through Articles 426 and 427 as part of an effort to re-codify them more systematically within national criminal law. This regulatory construction opens up the possibility of differences in the application of norms to gambling crimes based on the mode and media used. Conventional gambling is generally more appropriately subject to provisions of the Criminal Code or the National Criminal Code, while gambling conducted through electronic systems is more relevant to be "entrapped" under the ITE Law. However, in practice, law enforcement still shows inconsistencies, as online gambling in some cases is still processed using the provisions of the Criminal Code, while others use the ITE Law. This condition reflects differences in interpretation of the application of the *lex specialis* principle and shows the need for harmonization and consistency in law enforcement to ensure legal certainty and uniformity in the application of norms in dealing with online gambling.

Indonesian criminal procedure law adheres to a negative system of proof according to law (*negatief wettelijk bewijstheorie*), namely that the defendant's guilt must be based on at least two valid pieces of evidence and the judge's conviction as stipulated in Article 183 of the Criminal Procedure Code.⁶ This principle is maintained in Article 244 Paragraph (1) of Law Number 20 of 2025 concerning the Criminal Procedure Code (hereinafter referred to as the "New Criminal Procedure Code"), although accompanied by modernization through the expansion of evidence, including electronic evidence, physical evidence, and judge observation. In addition, Article 235 Paragraph (5) of the New Criminal Procedure Code adopts the principle of the exclusionary rule which emphasizes that evidence obtained unlawfully has no evidentiary force. Thus, the evidentiary system still

⁵ Poerwadarminta, 1995, *Big Indonesian Dictionary*, Jakarta: Balai Pustaka, p. 419

⁶ Marinus Lase, 2022, "Theory or System of Proof in Indonesian Criminal Procedure Law", accessed at <https://www.aksarahukum.com/2022/03/teori-atau-sistem-pembuktian-dalam-hukum-acara-pidana-indonesia.html> on April 22, 2026

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balances legal certainty and the search for material truth through a fair trial process (due process of law). Within this framework, the judge is obliged to issue a decision based on facts proven in court and legally justifiable reasons. In online gambling cases , the ratio decidendi theory plays a crucial role as a basis for judges' considerations in assessing facts, digital evidence, modus operandi, and determining the appropriate legal norms to be applied, whether derived from the Criminal Code, the National Criminal Code, or the Electronic Information and Transactions Law. The application of the ratio decidendi also requires harmonization between general criminal law and specific criminal law to avoid overlapping norms and ensure legal certainty. In addition to the legal aspects, the ratio decidendi in online gambling cases must consider philosophical and sociological dimensions. Judges are required to reflect the values of justice, morality, and public order, while also considering the social impacts of online gambling , such as dependency, economic loss, and the potential for other crimes. Therefore, the decision must be structured logically, argumentatively, and transparently to achieve a balance of legal certainty, justice, and benefit.

the ratio decidendi theory in online gambling cases has become crucial amidst the development of information technology and the rise of cybercrime. Through this approach, judges are expected to produce decisions that are not only normatively correct but also responsive to social dynamics, providing optimal legal protection and supporting efforts to combat online gambling. In practice, there are decisions number 32/Pid.Sus/2025/PN Lmj and number 41/Pid.B/2025/PN Pdp, both of which adjudicate online gambling crimes . Despite having similar subject matter, the two decisions show significant differences.

Before rendering a verdict, the judge must consider both legal and non-legal aspects to find substantive truth and achieve justice that is oriented towards the benefit of society. In decision number 32/Pid.Sus/2025/PN Lmj, the judge's considerations were based on the following factors.

a. Legal Considerations

The judge's legal considerations are based on the trial facts and legally valid evidence. The Public Prosecutor submitted alternative charges, namely First Article 27 Paragraph (2) in conjunction with Article 45 Paragraph (2) of the ITE Law 19/2016 in conjunction with Article 45 Paragraph (3) of the ITE Law 1/2024 or Second Article 303 bis Paragraph (1) point 1 of the Criminal Code. Based on the facts revealed at the trial, the Panel of Judges chose to apply the first charge because it was considered most appropriate to the defendant's actions. The evidence was supported by the statements of two witnesses given under oath, expert testimony read at the trial, written evidence in the form of the results of a forensic laboratory examination of the defendant's cell phone, and the defendant's statement admitting his actions. In addition, evidence in the form of a cell phone and screenshots of online gambling activities were proven to be directly related to the criminal acts committed by the defendant. Based on all of this evidence, the Panel of Judges stated that all elements of Article 27 Paragraph (2) in conjunction with Article 45 Paragraph (2) of the ITE Law 19/2016 ... Article 45 Paragraph (3) of the ITE Law 1/2024 has been fulfilled. Therefore, the application of the first alternative charge is deemed to be in accordance with the provisions of Article 193 of the Criminal Procedure Code and the principle of *geen straf zonder schuld* .

b. Non-Legal Considerations

online gambling was deemed to have had a negative impact on society and was the basis for sentencing. Furthermore , the defendant's personal circumstances were also taken into consideration as a basis for determining the severity of the sentence imposed.

In handing down the verdict, the judge also considered aggravating and mitigating circumstances as stipulated in Article 197 paragraph (1) letter f of the Criminal Procedure Code. The aggravating circumstance was that the defendant's actions disturbed the public and were contrary to the government's program to eradicate gambling. In addition, the actions were carried out repeatedly, thus indicating the defendant's low legal awareness. The mitigating circumstances were that the defendant admitted his actions, was cooperative during the trial, and was still a student with a long future. Based on these considerations, the Panel of Judges imposed a lighter sentence than the maximum threat stipulated by law. According to the author, these considerations reflect a criminalization orientation that is not only repressive, but also aims to improve the perpetrator so that he can return to being a good and responsible member of society.

In decision number 32/Pid.Sus/2025/PN Lmj, the Panel of Judges' ratio decidendi rested on the evidence that the elements of the crime of online gambling were fulfilled as stipulated in Article 27 Paragraph (2) in conjunction with Article 45 Paragraph (2) of the ITE Law 19/2016 in conjunction with Article 45 Paragraph (3) of the ITE Law 1/2024 by referring to the facts in the trial that online slot games fulfill the elements of gambling because they involve betting money and a factor of chance . The judge's considerations were based on the consistency between witness statements, electronic evidence, the results of digital forensic laboratory

examinations, and expert testimony which cumulatively proved the defendant's intention to access an electronic system containing gambling. The Panel of Judges considered the element of "every person" fulfilled because the defendant is a legal subject who is capable of being responsible and his identity is proven according to the indictment. The element of "intentionally and without rights" was proven through the defendant's conscious actions in accessing the KPK TOTO online gambling site, making deposits, choosing games, and playing with the aim of gaining profits. The element of "making accessible electronic information containing gambling" was deemed fulfilled because the defendant actively used electronic devices to access online gambling sites. The ratio decidendi was strengthened by electronic evidence in the form of screenshots of gambling activities found through examination by the Criminalistics Laboratory, as well as expert testimony explaining the meaning of the elements "intentionally and without right" and "making accessible electronic information containing gambling" in Article 27 Paragraph (2) of the ITE Law. Based on all of this evidence, the Panel of Judges obtained conviction and applied Article 27 Paragraph (2) in conjunction with Article 45 Paragraph (2) of the ITE Law 19/2016 in conjunction with Article 45 Paragraph (3) of the ITE Law 1/2024 with the consideration that the essence of the defendant's actions was not only gambling, but also the misuse of electronic systems as the main means of criminal acts. The application of the ITE Law is based on the principle of *lex specialis derogat legi generali*, because the ITE Law specifically regulates gambling conducted through electronic media, while the Criminal Code only regulates gambling in general. In addition, the case's evidence relies on electronic evidence, such as mobile phones, screenshots, digital forensic results, and electronic transaction data. Thus, the judge qualifies online gambling as a cyber crime that is more appropriately prosecuted using the ITE Law than Article 303 bis Paragraph (1) 1 of the Criminal Code.

Before rendering a verdict, the judge must consider both legal and non-legal aspects to find substantive truth and achieve justice that is oriented towards the benefit of society. In decision number 41/Pid.B/2025/PN Pdp, the judge's considerations were based on the following factors.

a. Legal Considerations

The judge's legal considerations are based on the trial facts and legally valid evidence. The Public Prosecutor submitted alternative charges, namely First Article 45 Paragraph (3) in conjunction with Article 27 Paragraph (2) of the ITE Law 11/2008 as last amended by the ITE Law 1/2024 or Second Article 303 paragraph (1) ke-3 of the Criminal Code or Third Article 303 bis Paragraph (1) ke-1 of the Criminal Code. Based on the trial facts, the Panel of Judges chose to apply the third alternative charge because it was considered most appropriate to the defendant's actions. The evidence was supported by the statements of two witnesses given under oath, expert testimony given under oath, and the defendant's statement admitting his actions. In addition, evidence in the form of a cell phone and cash directly related to the crime of gambling. The evidence used in the crime was confiscated for the state in accordance with Article 39 paragraph (1) of the Criminal Code. Based on all the evidence, the Panel of Judges stated that all elements of Article 303 bis paragraph (1) point 1 of the Criminal Code had been fulfilled. Therefore, the application of the third alternative charge was deemed to be in accordance with the provisions of Article 193 of the Criminal Procedure Code and the principle of *geen straf zonder schuld*.

b. Non-Legal Considerations

In addition to legal considerations, the judge also considered non-legal aspects, namely the impact of the defendant's actions and the defendant's personal circumstances. The defendant's actions as a gambler have legal consequences that form the basis for sentencing, while the defendant's personal circumstances are a consideration in determining the severity of the sentence imposed.

In handing down the verdict, the judge also considered aggravating and mitigating circumstances as stipulated in Article 197 paragraph (1) letter f of the Criminal Procedure Code. The aggravating circumstances were that the defendant's actions were contrary to the government's program to eradicate gambling and showed a lack of legal awareness. Meanwhile, the mitigating circumstances were that the defendant had never been convicted and was the backbone of the family. Based on these considerations, the Panel of Judges imposed a lighter sentence while still paying attention to the purpose of sentencing, namely to improve the perpetrator so that he becomes a better person and useful to society.

ratio decidendi in decision number 41/Pid.B/2025/PN Pdp focused on determining the appropriate legal basis for the Defendant's actions, namely distinguishing between the crime of gambling according to the Criminal Code and the crime of electronic system-based gambling according to the ITE Law. Based on the trial facts, the Defendant was proven to have gambled online through the QQ39Bet site by playing the "Mahjong Ways" slot game, registering an account, depositing money, and playing to gain profits. Therefore, the element of gambling was deemed to have been fulfilled because the game was a game of chance and depended on luck. However, the

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Panel of Judges considered that the Defendant's actions did not fulfill the elements of "distributing", "transmitting", and/or "making accessible" electronic information containing gambling as regulated in Article 27 Paragraph (2) in conjunction with Article 45 Paragraph (3) of the ITE Law. Based on expert testimony and trial facts, the Defendant only acted as an online gambler for personal gain and was not proven to have distributed, provided access, managed the site, or facilitated gambling to other parties.

Thus, the use of electronic systems alone is insufficient to enforce the provisions of the ITE Law if all elements of the offense are not met. This consideration demonstrates the application of a restrictive interpretation of criminal norms in accordance with the principle of legality, so the judge avoided extending the norm analogously to online gamblers as end users. The Panel of Judges distinguished between perpetrators who disseminate or facilitate online gambling and perpetrators who only act as users. Because the Defendant acted only as a player, the gambling provisions in the Criminal Code were deemed more appropriate to apply. Furthermore, the judge considered that the substance of the Defendant's actions was gambling without a permit, while the use of the internet was merely a means of carrying out the crime. The game "Mahjong Ways" meets the elements of gambling because it involves betting money and the outcome depends on luck. Therefore, even though it was conducted online, the essence of the act remains the crime of gambling as regulated in the Criminal Code, not the crime of disseminating electronic information containing gambling as referred to in the ITE Law.

Referring to the two decisions reveals a number of fundamental similarities in the handling of online gambling cases. First, both defendants were proven to have acted as online gamblers (end users) who used mobile phones, internet networks, gambling accounts, and cash deposits to play online slot games. In this case, neither defendant acted as an organizer or manager of the gambling, so the judge's assessment focused on the gambling activities carried out individually through electronic media. Second, both decisions applied a negative system of proof according to law as stipulated in Article 183 of the Criminal Procedure Code, namely by basing the judge's conviction on at least two valid pieces of evidence and the facts of the trial. Third, expert testimony in both cases was positioned as independent evidence (*vrij bewijskracht*), so it only served to strengthen the judge's conviction and was not binding in determining the defendant's guilt. Fourth, the Panel of Judges in both decisions concluded that online slot games fulfill the elements of gambling because they involve betting money, the chance of winning, reliance on luck, and are conducted without a permit. Fifth, the non-judicial considerations used are also relatively similar, namely that the defendant's actions are considered disturbing the community and contrary to the gambling eradication program, while the defendant's cooperative attitude and confession are mitigating factors. In addition, both decisions have the same ratio decidendi, namely both base their considerations on proof that online gambling activities were carried out consciously and without rights. In this case, the difference lies in the legal basis used, where decision number 32/Pid.Sus/2025/PN Lmj interprets Article 27 Paragraph (2) of the ITE Law broadly by considering that online gambling access and games have fulfilled the element of "making accessible" gambling content. In contrast, decision number 41/Pid.B/2025/PN Pdp applies a restrictive interpretation by stating that online gamblers who only gamble for themselves do not fulfill the element of distributing, transmitting, or making accessible information containing gambling. Thus, both decisions affirm that online gambling is an act prohibited by Indonesian law. However, the difference in the choice of legal regime between the ITE Law and the Criminal Code indicates that there is still a dynamic interpretation regarding the limits of the application of Article 27 Paragraph (2) of the ITE Law to online gambling perpetrators as end users. This condition also reflects the development of jurisprudence regarding the relationship between gambling provisions in the Criminal Code and electronic-based gambling in the ITE Law after the enactment of ITE Law 1/2024.

Although both cases relate to online gambling of the slot type conducted via mobile phones and internet-based sites, there are fundamental differences in the legal construction, proving the elements of the crime, the use of expert testimony, and the ratio decidendi used by the judge. First, there is a difference in the legal basis applied where in decision number 32/Pid.Sus/2025/PN Lmj, the Panel of Judges applied Article 27 Paragraph (2) in conjunction with Article 45 Paragraph (2) of the ITE Law 19/2016 in conjunction with Article 45 Paragraph (3) of the ITE Law 1/2024 because it considers the use of electronic systems as the core of the act so that online gambling is considered a cyber crime. On the other hand, in decision number 41/Pid.B/2025/PN Pdp the Panel of Judges applied Article 303 bis paragraph (1) point 1 of the Criminal Code with the consideration that the internet is only a means, while the core of the act remains gambling. Second, there are differences in interpretation of the element of "making accessible," where the Lumajang District Court decision interpreted broadly that the act of accessing a gambling site, logging in, making a deposit, and playing slots fulfills this element. In contrast, the Padang Panjang District Court decision interpreted it restrictively, that players who only access the site for

personal gain cannot be considered to distribute, transmit, or make gambling content accessible to others, so this approach is more in line with the principle of *nullum crimen poena sine lege stricta*.

Third, this difference is also influenced by expert testimony, where in the Lumajang District Court decision, the expert argued that access to a gambling site can be qualified as "making accessible" electronic information containing gambling content. Conversely, the expert in the Padang Panjang District Court decision stated that players who only gamble for themselves do not fulfill this element and are more appropriately charged using the Criminal Code. This shows that expert testimony plays an important role in shaping the judge's belief regarding the meaning of the elements of electronic crimes. Fourth, there is a difference in the orientation of the evidence where the Lumajang District Court decision emphasizes electronic evidence such as mobile phones, digital forensic results, and electronic data, while the Padang Panjang District Court decision focuses on proving gambling elements in the form of betting money, games of chance, and the absence of a permit. Fifth, the difference is also seen in the application of the principle of *lex specialis derogat legi generali* where the Lumajang District Court prioritizes the ITE Law as a special law, while the Padang Panjang District Court does not apply it because the elements in the ITE Law are deemed not to be fulfilled so that this approach is in line with the doctrine that special law only overrides general law if all elements of the crime are proven.

Sixth, the difference stems from the ratio decidendi of each decision where the Lumajang District Court decision bases its considerations on the use of electronic systems, access to gambling sites, electronic evidence, and the fulfillment of the elements of Article 27 paragraph (2) of the ITE Law so that online gambling is seen as a cyber crime. In contrast, the Padang Panjang District Court's decision relied on the failure to meet the elements of distribution, transmission, and accessibility to other parties, as well as the defendant's status as a mere player, thus applying Article 303 bis of the Indonesian Criminal Code. Thus, the main difference between the two decisions lies in the judge's assessment of the legal status of online gamblers as end users. The Lumajang District Court's decision adopted a more expansive interpretation of the element of "making accessible," while the Padang Panjang District Court's decision adopted a stricter interpretation based on the principle of legality. This difference demonstrates the continuing lack of uniformity in judicial views regarding the criminal liability of online gamblers in Indonesia.

The fundamental difference between decision number 32/Pid.Sus/2025/PN Lmj and decision number 41/Pid.B/2025/PN Pdp lies in the legal basis used in trying online gambling crimes. Decision number 41/Pid.B/2025/PN Pdp applies Article 303 bis of the Criminal Code, considering that the defendant gambled through an online site by risking money to obtain profits that depended on an element of chance. The ratio decidendi in this decision emphasizes the substance of the gambling act, while the use of the internet is seen only as a means of implementation. This approach is in line with the principle of legality because the elements of gambling as regulated in the Criminal Code are deemed to have been fulfilled. However, the application of Article 303 bis of the Criminal Code to online gambling has limitations because the provision is formulated for conventional gambling and does not explicitly regulate the use of electronic systems or the characteristics of cybercrime. In contrast, decision number 32/Pid.Sus/2025/PN Lmj applies Article 27 Paragraph (2) in conjunction with Article 45 Paragraph (2) of the ITE Law 19/2016 in conjunction with Article 45 Paragraph (3) of the ITE Law 1/2024.

The ratio decidendi is based on the use of electronic systems to distribute, transmit, or make accessible electronic information containing gambling content. Therefore, the evidence is focused on the existence of electronic information or documents; the use of electronic devices and the internet; the distribution, transmission, or accessibility of gambling content; and the perpetrator's intention in utilizing information technology. These considerations indicate that online gambling is seen as a form of cybercrime that has different characteristics from conventional gambling and therefore requires special legal instruments. From the perspective of the principle of *lex specialis derogat legi generali*, Article 27 Paragraph (2) of the ITE Law is a more specific provision than Article 303 bis of the Criminal Code because it specifically regulates gambling content through electronic systems. Therefore, for criminal acts of gambling committed via the internet, the application of the ITE Law is more appropriate as long as its elements are fulfilled, in line with the purpose of its formation to accommodate developments in information technology which have not been optimally regulated in the Criminal Code.

From a legal perspective, the author considers Decision Number 32/Pid.Sus/2025/PN Lmj, which applies the ITE Law, to be more appropriate than Decision Number 41/Pid.B/2025/PN Pdp, which still uses Article 303 bis of the Criminal Code. This assessment is based on the following reasons:

- a. Correspondence between the act and the formulation of the offense

Online gambling is conducted through electronic media, so the elements in Article 27 Paragraph (2) of the ITE Law are directly related to the *modus operandi* of the crime. In contrast, Article 303 bis of the Criminal Code only regulates the substance of gambling without addressing the digital aspect, which is the primary characteristic of the act.

b. Implementation of the principle of *lex specialis derogat legi generali*

The ITE Law is a legal instrument specifically designed to regulate activities in cyberspace. Therefore, when gambling crimes are committed online, the application of the ITE Law is more in line with the principle of *lex specialis derogat legi generali* than the general provisions of the Criminal Code.

c. Legal certainty and modernization of criminal law

The implementation of the ITE Law reflects the legal response to developments in information technology. This approach provides legal certainty because the defendant's actions are directly linked to norms specifically designed to regulate electronic and digital activities.

d. Effectiveness of cyber crime prevention

Online gambling involves more than just the gambling element, but also the use of servers, electronic accounts, applications, websites, digital wallets, and internet networks. Therefore, the use of the ITE Law allows judges to assess the entire chain of conduct more comprehensively than an approach that focuses solely on the gambling element in the Criminal Code.

Thus, based on the *ratio decidendi* theory, decision number 41/Pid.B/2025/PN Pdp still applies Article 303 bis of the Criminal Code because it views the internet only as a means, while the substance of the defendant's actions remains gambling. On the other hand, decision number 32/Pid.Sus/2025/PN Lmj considers online gambling as an electronic system-based activity so that it is more appropriate to apply Article 27 Paragraph (2) in conjunction with Article 45 Paragraph (2) of the ITE Law 19/2016 in conjunction with Article 45 Paragraph (3) of the ITE Law 1/2024. Based on the principle of *lex specialis derogat legi generali*, the suitability of the *modus operandi* with the formulation of the offense, and the need for law enforcement against cybercrime, the application of the ITE Law is considered more appropriate from a legal perspective. This consideration shows that the judge has connected the digital character of online gambling with legal norms that specifically regulate activities in cyberspace, resulting in a more comprehensive decision and in accordance with the development of criminal law in the information technology era. If these considerations are not taken into account, such conditions can result in inconsistent application of the law to online gambling crimes and have the potential to create legal uncertainty, so that clearer harmonization of interpretation and guidelines for the application of the law is needed to realize legal certainty and create uniformity in law enforcement against online gambling crimes in Indonesia, especially in determining the limits of application between the provisions of the Criminal Code and the ITE Law.

D. CONCLUSION

The difference in the judge's *ratio decidendi* in applying the legal basis for online gambling crimes is that in decision number 32/Pid.Sus/2025/PN Lmj, the Panel of Judges applied Article 27 Paragraph (2) in conjunction with Article 45 Paragraph (2) of the ITE Law 19/2016 in conjunction with Article 45 Paragraph (3) of the ITE Law 1/2024 with the consideration that the defendant's actions not only fulfill the elements of gambling, but also involve the use of electronic systems as the main means of criminal acts. The Panel of Judges considered that the activity of accessing online gambling sites, making deposits, and playing gambling games via electronic devices had fulfilled the element of "making accessible" electronic information containing gambling. Therefore, online gambling is qualified as a cyber crime which is subject to special provisions in the ITE Law based on the principle of *lex specialis derogat legi generali*. On the other hand, in decision number 41/Pid.B/2025/PN Pdp, the Panel of Judges applied Article 303 bis Paragraph (1) 1 of the Criminal Code because it considered that the defendant only acted as an online gambling player for personal interests and was not proven to have distributed, transmitted, or made accessible electronic information containing gambling to other parties.

The judge was of the opinion that the use of the internet was only a means of carrying out the act, while the substance of the crime remained gambling as regulated in the Criminal Code. Therefore, the elements of the crime in the ITE Law were not fulfilled so that the application of the Criminal Code was considered more appropriate. The difference between the two decisions shows the difference in the judges' interpretation of the element of "making accessible" in Article 27 Paragraph (2) of the ITE Law as well as different views regarding the position of online gambling players as end users. This condition results in inconsistencies in the application of the law to online gambling crimes and has the potential to create legal uncertainty. Therefore, it is necessary to harmonize the interpretation and clearer guidelines for the application of the law to create uniformity in law

enforcement against online gambling crimes in Indonesia, especially in determining the limits of application between the provisions of the Criminal Code and the ITE Law.

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