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CRIMINAL POLICY FORMULATION ON CORPORATE CRIMINAL LIABILITY FOR ONLINE GAMBLING OFFENSES IN INDONESIA

[1] Yuris Wahyu Apriyoga, [2]Edi Saputra Hasibuan

[1]Faculty of Law, Universitas Bhayangkara Jakarta Raya, Jl. Raya Perjuangan No. 81 Marga Mulya, North Bekasi, West Java 17142
[2]Faculty of Law, Universitas Bhayangkara Jakarta Raya, Jl. Raya Perjuangan No. 81 Marga Mulya, North Bekasi, West Java 17142

Correspondence:
whoamiyrs@gmail.com

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Abstract

The development of information technology has driven the transformation of conventional gambling into online gambling, in which corporations take part as platform providers, operators of electronic systems, and beneficiaries of the economic gains generated by this illegal activity. The complexity of corporate involvement raises legal questions concerning the construction and mechanisms of corporate criminal liability for online gambling offenses in Indonesia. This study aims to analyze the regulation of corporate criminal liability for online gambling offenses and to formulate an ideal criminal law policy for addressing them. It employs normative legal research using statutory, conceptual, and case approaches. The legal materials were analyzed qualitatively through the interpretation of relevant statutory provisions and court decisions. The findings show that the regulation of corporate criminal liability for online gambling offenses does not yet fully provide legal certainty, particularly with respect to the criteria for attributing fault, the identification of responsible parties, and the mechanisms for imposing criminal sanctions on corporations. Law enforcement also remains oriented toward individual offenders and therefore has not effectively reached corporations that profit from these offenses. Accordingly, a criminal law policy formulation is needed through the harmonization of the Criminal Code, the Electronic Information and Transactions Law, and Supreme Court Regulation (PERMA) Number 13 of 2016, by clarifying the model of criminal liability, the standard of proof for corporate fault, and the optimization of criminal sanctions oriented toward restoration and crime prevention.

Keywords: Criminal Liability, Corporation, Online Gambling, Criminal Law Policy.

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A. Introduction

The development of information technology has changed the character of gambling from a conventional practice into an electronic activity accessible through websites, digital applications, social media, and electronic payment systems.[1] This shift has not only expanded the reach of gambling but has also altered the way the offense is organized. Online gambling today can be run through organizational structures involving platform managers, technology infrastructure providers, parties who handle financial transactions, and digital marketers. Within such a structure, gambling offenses no longer concern only the conduct of players or field operators; they also involve corporations that control operations and derive economic benefit from them. A legal problem arises when law enforcement is directed mainly at individuals performing technical functions, while the corporations that serve as the center of control and the recipients of economic benefit are not always treated as subjects of criminal liability. This situation reveals a fundamental problem of how corporate fault is to be constructed and proven in online gambling offenses.

Corporate criminal liability follows from the principle of justice that every legal subject who commits an offense and benefits from it must be held accountable in accordance with its fault.[2] Corporations should not be able to shelter behind their organizational structure to escape the legal consequences of acts committed in their interest and for their profit. This principle is consistent with the aims of criminal law: protecting the interests of society, maintaining public order, and preventing reoffending. Sociologically, online gambling has become a social problem that affects not only individuals but also causes economic harm to families, increases the risk of further offenses, and disrupts public order. Although positive law provides a basis for punishment through Article 27(2) in conjunction with Article 45(3) of Law Number 1 of 2024[3] and recognizes corporations as subjects of criminal law through various statutory provisions, including PERMA Number 13 of 2016, the questions of attributing fault and

[1] R. Jossy S. Belgradoputra and Mardani Mardani, "Model Kebijakan Penal–Non Penal dalam Penanggulangan Judi Online Berbasis Cyber Law di Indonesia," *Begawan Abioso*, vol. 17, no. 1, 2026, pp. 1–19.
[2] Kukuh Dwi Kurniawan and Dwi Ratna Indri Hapsari, "Pertanggungjawaban Pidana Korporasi menurut Vicarious Liability Theory," *Jurnal Hukum Ius Quia Iustum*, vol. 29, no. 2, 2022, pp. 324–346.
[3] Indonesia, *Law Number 1 of 2024 on the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions*, State Gazette of the Republic of Indonesia 2024 Number 1, art. 27(2) in conjunction with art. 45(3).

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imposing criminal liability on corporations still require a clearer and more workable legal construction.

Several criminal law provisions in Indonesia already allow sanctions to be imposed on corporations, through both general provisions and specific provisions in sectoral legislation.[4] However, the existence of these norms does not by itself resolve the question of corporate liability for online gambling. Electronic gambling presents its own complexity, particularly in identifying the links between corporate policy, the acts of management, day-to-day operations, and the proceeds of the offense. In addition, the use of servers, bank accounts, applications, and transaction networks that may involve multiple parties means that proving corporate involvement cannot be equated with proving the guilt of an individual offender. Therefore, this research cannot be confined to examining the prohibition of online gambling and its penalties; it must address how corporate criminal liability is constructed through criminal law theory and doctrine, how existing norms are applied in judicial practice, and to what extent current regulation can reach corporations as both perpetrators and beneficiaries of the offense. It is here that research on the formulation of corporate criminal liability policy for online gambling offers novelty, particularly in formulating models of fault attribution, proof, and corporate sentencing that fit the characteristics of digital crime.[5]

In light of these problems, a criminal law policy formulation is needed that does not merely emphasize harsher penalties for individual offenders but is also able to reach corporations that in fact control, facilitate, or profit from online gambling. Such a reformulation should clarify the criteria for corporate criminal liability, the relationship between the liability of the corporation and that of its management, the standard of proof for fault, and the types and measure of proportionate sanctions.[6] This is important so that law enforcement does not stop at those who carry out orders or perform technical functions while the entities that obtain economic benefit from the offense escape liability. Accordingly, research entitled “Criminal Policy Formulation on Corporate Criminal Liability for Online Gambling Offenses in Indonesia” is important for examining the adequacy of positive law and for building a more comprehensive and

[4] Indonesia, *Law Number 1 of 2023 on the Criminal Code*, State Gazette of the Republic of Indonesia 2023 Number 1, arts. 45–50.
[5] Barda Nawawi Arief, *Tindak Pidana Mayantara: Perkembangan Kajian Cyber Crime di Indonesia*, RajaGrafindo Persada, 2006.
[6] Sutan Remy Sjahdeini, *Ajaran Pemidanaan: Tindak Pidana Korporasi dan Seluk-Beluknya*, Kencana, 2017.

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consistent criminal law policy oriented toward justice and the effective eradication of online gambling in Indonesia.

B. Research Method

This study uses normative (juridical-normative) legal research of a prescriptive nature, aiming both to analyze legal norms and to formulate an ideal criminal law policy. The approaches used are the statute approach, the conceptual approach, and the case approach.[7] Primary legal materials consist of relevant legislation and court decisions, while secondary legal materials include books, academic journals, and the opinions of criminal law experts.[8] All legal materials were analyzed qualitatively through legal interpretation and prescriptive argumentation in order to produce a formulation of corporate criminal liability that is effective in tackling online gambling offenses in Indonesia.

C. Results and Discussion

The development of information technology has transformed gambling offenses from conventional practices into internet-based gambling (*online gambling*) operated through electronic systems and digital networks. This change has also affected the structure of offenders, which is no longer limited to individuals but may involve corporations with an organized division of functions and operations. In practice, corporations may act as providers of gambling platforms, server operators, payment system operators, digital marketing service providers, or parties that derive economic benefit from gambling. In line with these developments, Indonesian criminal law has recognized corporations as subjects of criminal law. This recognition is reflected in various legal instruments, including the Criminal Code, the Electronic Information and Transactions Law (ITE Law) as last amended by Law Number 1 of 2024, and Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Criminal Cases Committed by Corporations.[9] Specifically, Article 27(2) of the ITE Law prohibits any person from intentionally and without right distributing, transmitting, or making accessible electronic information containing gambling content. This prohibition carries

[7] Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed., Kencana, 2017.
[8] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, RajaGrafindo Persada, 2015.
[9] Supreme Court of the Republic of Indonesia, *Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Criminal Cases Committed by Corporations*, State Bulletin of the Republic of Indonesia 2016 Number 2058.

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the penalty set out in Article 45(3), namely imprisonment of up to ten years and/or a fine of up to IDR 10 billion. Meanwhile, Article 52(4) of the ITE Law increases the principal penalty by two-thirds where an offense under Articles 27 to 37 is committed by a corporation.[10]

Although this normative framework provides a basis for treating corporations as subjects of criminal liability, the regulation still leaves problems regarding the construction of fault and the mechanism for imposing liability. The provision on increased penalties for corporations does not yet provide operational parameters for determining when an offense can be attributed to a corporation, how the relationship between the acts of management and the will of the corporation (*corporate mens rea*) is to be constructed, and to what extent corporate profits and internal policies may serve as grounds for imposing criminal liability.[11] These problems become even more complex in online gambling because operations may involve several entities with different functions, so identifying who controls and benefits from the offense requires more thorough proof. As a result, law enforcement tends to focus on the individuals who run operations, while the corporations that organize, control, or profit from online gambling remain largely untouched. Thus, the main problem is not that corporations are unrecognized as subjects of criminal law, but that the normative construction linking conduct, fault, and corporate criminal liability for online gambling offenses in Indonesia remains inadequate.

D. Corporate Criminal Liability from the Perspective of the Criminal Justice System

Corporate criminal liability is the juridical consequence of recognizing corporations as subjects of criminal law capable of acting through their organs, management, and organizational structure. Theories of corporate criminal liability offer several approaches to explaining the construction of corporate fault, namely the Identification Theory, Vicarious Liability, Strict Liability, and the Corporate Culture Model. The Identification Theory treats the conduct and fault of managers who hold a controlling or decision-making position as the conduct and fault of the corporation.[12] Vicarious Liability, by contrast, allows a corporation to be held liable for offenses committed by

[10] Indonesia, *Law Number 11 of 2008 on Electronic Information and Transactions*, State Gazette of the Republic of Indonesia 2008 Number 58, art. 52(4).
[11] Celia Wells, *Corporations and Criminal Responsibility*, 2nd ed., Oxford UP, 2001.
[12] Sutan Remy Sjahdeini, *Pertanggungjawaban Pidana Korporasi*, Grafiti Pers, 2006.

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persons who are in an employment relationship with it or who act in its interest. The Corporate Culture Model focuses on organizational culture, internal policies, and tolerance of practices that encourage the commission of offenses.[13] In the context of online gambling, these theories can be used to assess whether gambling operations are the deviant act of an individual or part of the corporation's policy and business activities. Criminal liability should therefore not stop at identifying the individuals who run operations; it should also trace the relationship between those acts, the corporation's interests, and its patterns of decision-making.

In the Indonesian criminal justice system, the application of corporate criminal liability is grounded in PERMA Number 13 of 2016 on Procedures for Handling Criminal Cases Committed by Corporations. Article 4(2) of the regulation provides that corporate fault may be assessed where the corporation obtains a profit or benefit from the offense, allows the offense to occur, or fails to take the necessary steps to prevent the offense and to ensure compliance with applicable law. This provision is highly relevant to online gambling, especially where a corporation provides the platform, controls the operational system, manages financial transactions, and profits from gambling activities. If management knows of gambling activity within the company but allows it to continue or even supports it, this may serve as a basis for assessing corporate fault. It must be stressed, however, that profit alone does not automatically prove corporate criminal fault. There must be a link between the offense, the interest or benefit of the corporation, and circumstances demonstrating fault as required by law.[14]

From the perspective of the criminal justice system, law enforcement against online gambling should adopt an approach oriented not only toward individual criminal liability but also toward developing mechanisms of corporate criminal liability. This relates to criminal justice system theory, which treats the police, the prosecution service, the courts, and correctional institutions as a single system with the shared goal of comprehensive crime control.[15] Punishing operators, administrators, or players of online gambling is necessary, but it will not necessarily stop gambling if the corporation controlling the platform, the infrastructure, and the flow of profits continues to operate. A law enforcement approach is therefore needed that can trace organizational

[13] Pamela H. Bucy, "Corporate Ethos: A Standard for Imposing Corporate Criminal Liability," *Minnesota Law Review*, vol. 75, 1991, pp. 1095–1184.
[14] Moeljatno, *Asas-Asas Hukum Pidana*, rev. ed., Rineka Cipta, 2008.
[15] Mardjono Reksodiputro, *Hak Asasi Manusia dalam Sistem Peradilan Pidana*, Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia, 1994.

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structures, employment relationships, corporate policies, flows of funds, and the parties with controlling authority. In this context, the Corporate Culture Model and the Identification Theory are relevant to proving corporate fault, while PERMA Number 13 of 2016 provides procedural guidance for handling such cases. The effectiveness of the criminal justice system in eradicating online gambling should thus be measured not only by its success in punishing individual offenders but also by its ability to hold accountable the corporations actually involved in committing the offense.

E. Analysis of Court Decisions

The analysis of court decisions in this study examines the extent to which Indonesian criminal justice practice has accommodated corporate criminal liability for online gambling offenses. In Surabaya District Court Decision Number 2321/Pid.B/2024/PN Sby, the defendant Agus Imam Ghozali was sentenced to one year's imprisonment for gambling through the Jaya Poker application under Article 303 bis of the Criminal Code.[16] From a criminal law policy perspective, this decision shows that the use of information technology as a means of gambling has not always been matched by a law enforcement approach that addresses the entire ecosystem of the operation. Enforcement against players is necessary, but it should be extended to trace those who provide, control, and profit from the gambling platform. A similar problem appears in Surabaya District Court Decision Number 967/Pid.B/2025/PN Sby, which sentenced the defendant Galih Widodo to one year and three months' imprisonment under Article 27(2) in conjunction with Article 45(3) of the ITE Law.[17] The application of a specific provision on gambling through electronic media shows progress in the use of criminal law instruments, yet the examination of the case remained focused on individual liability. Both decisions show that law enforcement still faces challenges in extending investigations to the parties behind the management of online gambling platforms, especially where there are indications of corporate involvement.

Meanwhile, Medan High Court Decision Number 1018/PID/2023/PT MDN, in the case of Jonni alias Apin BK, displays different characteristics, as the defendant was prosecuted not only for his involvement in operating online gambling but also for laundering the proceeds of that gambling. The Medan High Court amended the first-

[16] Surabaya District Court, *Decision Number 2321/Pid.B/2024/PN Sby*, Defendant Agus Imam Ghozali, 2024.
[17] Surabaya District Court, *Decision Number 967/Pid.B/2025/PN Sby*, Defendant Galih Widodo, 2025.

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instance judgment and imposed three years' imprisonment and a fine of IDR 1 billion.[18] This decision shows that law enforcement against online gambling can be developed through a *follow the money* approach that targets not only the act of gambling but also the flow and concealment of its proceeds.[19] Nevertheless, criminal liability in that case was still imposed on Jonni alias Apin BK as an individual. From the perspective of corporate criminal liability, this underscores the importance of extending investigations to identify the possible involvement of business entities, organizational structures, and parties benefiting from gambling activities, insofar as evidence satisfying the elements of corporate criminal liability is found.

These three decisions show that Indonesian criminal justice practice has developed in applying the law to online gambling, whether through the Criminal Code, the ITE Law, or the prosecution of money laundering. However, these developments do not yet show corporate criminal liability being used as an instrument to tackle online gambling comprehensively. Analyzed through the Identification Theory and the Corporate Culture Model, law enforcement should not stop at the individuals who commit or carry out gambling activities but should also examine whether those acts form part of a policy, a management decision, or an organizational culture that benefits the corporation.[20] The issue, therefore, is not merely the severity of the punishment imposed on individual offenders but the capacity of the criminal justice system to uncover the control structures, relationships of liability, and flows of profit connected to the offense. This provides the basis for a criminal law policy formulation that offers clearer guidance on the investigation, proof, prosecution, and sentencing of corporations in online gambling cases.

F. Formulating a Corporate Criminal Liability Policy

Based on the analysis of positive law and judicial practice, a criminal law policy formulation is needed that firmly establishes corporations as subjects of criminal liability for online gambling offenses. First, the norms of the Electronic Information and Transactions Law should be strengthened to regulate more operationally the criteria for corporate criminal liability, including the attribution of fault, the relationship between the acts of management and the interests of the corporation, the involvement of those

[18] Medan High Court, *Decision Number 1018/PID/2023/PT MDN*, Defendant Jonni alias Apin BK, 2023.
[19] Indonesia, *Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering*, State Gazette of the Republic of Indonesia 2010 Number 122, art. 2(1)(t).
[20] James Gobert and Maurice Punch, *Rethinking Corporate Crime*, Butterworths LexisNexis, 2003.

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with controlling authority, and circumstances indicating tolerance of the offense.[21] Such regulation should also provide guidance on proving corporate fault, so that law enforcers need not rely solely on proving the guilt of the individuals who run operations but can uncover the policies, decisions, and organizational structures that enable online gambling. The formulation of these norms must therefore provide certainty as to when conduct can be attributed to a corporation without abandoning the principle of culpability in criminal law.[22]

Second, sentencing policy should be directed toward developing types of sanctions that are not limited to fines but also take into account the characteristics and economic capacity of corporations. Sanctions that may be considered include confiscation of the proceeds of crime, revocation of business licenses, suspension of business activities, blocking of access to the electronic systems used for gambling, and, in certain circumstances and in accordance with the law, dissolution of the corporation. In addition, provisions on the payment of compensation or restitution should be considered where there is a legal basis and a provable loss. The application of these sanctions must take into account proportionality, the degree of involvement, the profits obtained, and the impact of the offense. The aim is to ensure that punishment not only has a deterrent effect but also removes the economic gain that is the main motive for operating online gambling.

Third, the National Criminal Code, the ITE Law, and PERMA Number 13 of 2016 need to be harmonized so that they are consistent regarding the status of corporations as subjects of criminal law, the criteria of fault, examination mechanisms, and the types of penalties that may be imposed. Harmonization is important to avoid divergent interpretations in applying the law, particularly concerning the relationship of liability between a corporation and its management. In this context, PERMA Number 13 of 2016 should serve as procedural guidance for handling corporate cases, while the elements of the offense and the rules on criminal liability must remain grounded in statute.[23] Fourth, law enforcement authorities need to develop *follow the money* and *follow the corporation* approaches by tracing flows of funds, ownership structures, beneficial

[21] Dwidja Priyatno, *Kebijakan Legislasi tentang Sistem Pertanggungjawaban Pidana Korporasi di Indonesia*, CV Utomo, 2004.
[22] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru*, Kencana, 2008.
[23] Indonesia, *Law Number 12 of 2011 on the Formation of Laws and Regulations*, State Gazette of the Republic of Indonesia 2011 Number 82, arts. 7–8.

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owners,[24] internal policies, and the relationships between corporations and providers of electronic systems and financial services. This approach allows investigations to move beyond operational actors and identify those who control and benefit from the offense. With this formulation, efforts to eradicate online gambling are expected not only to result in the punishment of individuals but also to dismantle the economic and organizational structures that sustain online gambling crime.

G. Conclusion

Based on the results of the research and discussion, it can be concluded that corporate criminal liability for online gambling offenses in Indonesia already has a normative basis in the National Criminal Code, the Electronic Information and Transactions Law, and PERMA Number 13 of 2016. However, these instruments have not yet formed an integrated construction of corporate criminal liability, particularly in determining the parameters of fault (*corporate fault*),[25] the attribution of management conduct to the corporation, the mechanisms of proof, and the application of criminal sanctions. This is reflected in judicial practice, which still tends to focus on punishing individual offenders such as operators, agents, or players, while the corporations that control operations and obtain economic benefit remain largely untouched.[26] Therefore, a criminal law policy formulation is needed through the harmonization of the National Criminal Code, the ITE Law, and PERMA Number 13 of 2016 that clarifies the construction of fault and the mechanism for imposing corporate criminal liability, accompanied by stronger sanctions in the form of proportionate fines, confiscation of criminal proceeds, revocation of business licenses, suspension of business activities, closure of electronic systems, and, under certain conditions, dissolution of the corporation.[27] The implementation of this policy should be supported by *follow the money*, *follow the asset*, and *follow the corporation* approaches so that law enforcement does not stop at field-level actors but reaches the organizational structures and parties that profit from the offense. In this way, the formulation of corporate criminal liability is expected to establish a more comprehensive law enforcement system, provide legal

[24] Indonesia, *Presidential Regulation Number 13 of 2018 on the Application of the Principle of Recognizing the Beneficial Owners of Corporations in the Prevention and Eradication of Money Laundering and Terrorism Financing*, State Gazette of the Republic of Indonesia 2018 Number 23.
[25] Brent Fisse and John Braithwaite, *Corporations, Crime and Accountability*, Cambridge UP, 1993.
[26] Setiyono, *Kejahatan Korporasi: Analisis Viktimologis dan Pertanggungjawaban Korporasi dalam Hukum Pidana Indonesia*, Bayumedia Publishing, 2005.
[27] Indonesia, *Law Number 1 of 2023 on the Criminal Code*, arts. 118–124.

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certainty, and enhance the effectiveness of efforts to eradicate online gambling in Indonesia.

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