

The Effectiveness of the Old Criminal Code in Countering Online Gambling: An Analysis of Normative Weaknesses and a Comparison of Its Regulation with the ITE Law

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Abstract

The rapid development of information technology has transformed conventional gambling into online gambling that operates through electronic systems and transcends territorial boundaries, posing a serious challenge to the implementation of the old Criminal Code designed to tackle conventional crimes. Although the study of online gambling and cybercrime has developed quite a bit, there has been no research that systematically compares the old Criminal Code and the ITE Law from various normative aspects while integrating the theory of legal effectiveness as an analytical framework. This study fills this gap by analyzing the effectiveness of the old Criminal Code, identifying its normative weaknesses, and comparing its regulation with the ITE Law using legislative, conceptual, and comparative approaches. The results of the study show that the old Criminal Code has fundamental limitations due to the formulation of criminal elements oriented to physical acts, territorial assumptions, and the absence of regulation of electronic evidence, while the ITE Law has proven to be more responsive and has a position as a *lex specialis*. The contribution of this research is the availability of multi-aspect comparative analysis that integrates Soerjono Soekanto's theory of legal effectiveness as an academic reference and practical basis for cyber criminal law policy reform in Indonesia.

Keywords: *Old Criminal Code; Online Gambling; THE WILL; Legal Effectiveness; Lex Specialis.*

A. Introduction

Criminal acts are basically an act that is prohibited by law and threatened with criminal sanctions for violators. From the perspective of laws and regulations, criminal acts are understood as acts that meet certain elements as formulated in the law. According to Moeljatno, a criminal act is an act that is prohibited by a rule of law accompanied by a criminal threat for anyone who violates it¹. Meanwhile, Simons views criminal acts as unlawful acts committed by mistake and can be accounted for. One form of criminal act that

¹ Moeljatno, S. H. (2002). Principles of criminal law. *Rineka Cipta, Jakarta*.

has long been known is the crime of gambling, which is the act of risking something of value in the hope of obtaining profits that depend on the element of chance or luck².

Along with the development of information technology, the form of gambling has undergone quite significant changes. Gambling that was previously done conventionally is now developing into online gambling that utilizes the internet and electronic systems. These changes make the practice of gambling more accessible to the wider community without being limited by space and time. In fact, various studies show that online gambling has become an increasingly prevalent phenomenon and difficult to control due to its flexible and hidden nature³. In addition, technological developments have also encouraged the emergence of various digital platforms that facilitate more modern and organized gambling practices⁴.

Regulations regarding gambling crimes in Indonesia are spread across various laws and regulations. The old Criminal Code regulates gambling in Article 303 and Article 303 bis which basically prohibit all forms of gambling and provide criminal sanctions for the perpetrators and their organizers⁵. In addition, Law Number 7 of 1974 concerning Gambling Regulation affirms the state's commitment to eradicating gambling practices⁶. Along with the development of technology, regulations regarding online gambling were then accommodated in the Electronic Information and Transaction Law (ITE Law), especially in Article 27 paragraph (2) which prohibits the distribution or access of gambling content through electronic systems⁷. In practice, these three legal instruments are often used simultaneously in ensnaring online gamblers⁸.

The crime of gambling, especially online gambling, not only has an impact on legal aspects, but also has a fairly wide social and economic impact. From a social perspective, online gambling can cause addiction, damage family relationships, and trigger other criminal acts. From the economic side, the losses incurred are very large. Based on a report by the Financial Transaction Reporting and Analysis Center (PPATK), the turnover of online gambling funds in Indonesia reaches hundreds of trillions of rupiah⁹. This shows that online gambling not only harms individuals, but also has an impact on national economic stability. In addition, several studies also confirm that online gambling has a negative impact on people's social and mental conditions¹⁰.

² Hamzah, A. (2017). *Indonesian Criminal Law*. Graphic Rays.

³ Sa'diyah, N. K., Hapsari, I. P., & Iskandar, H. (2022). Criminal liability for online gambling perpetrators in Indonesia. *Gorontalo Law Review*, 5(1), 160-166.

⁴ Alamsyah, B. I. (2023). *Eradication of the Higgs Domino Island online gambling crime based on national law* (Doctoral dissertation, University of Muhammadiyah Surabaya).

⁵ Article 303 paragraph (1) of Law Number 1 of 1946 concerning Criminal Law Regulations.

⁶ Law Number 7 of 1974 concerning Gambling Regulation.

⁷ Article 27 paragraph (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions jo. Law Number 19 of 2016 jo. Law Number 1 of 2024.

⁸ Ariyanto, Y. W. B., & Ibrahim, B. H. (2024). Law enforcement of online gambling cases in Indonesia. *Culture: Journal of Law, Social, and Humanities*, 2(9), 306-310.

⁹ Financial Transaction Reporting and Analysis Center (PPATK), *Report on the Results of Financial Transaction Analysis Related to Online Gambling*, 2024. https://www.ppatk.go.id/backend/assets/images/publikasi/1742371852_.pdf

¹⁰ Harefa, A. (2025). Criminal Law Enforcement Efforts to Prevent Online Gambling in Indonesia. *Journal of Education and Development*, 13(1), 739-749.

Although various regulations have been implemented, law enforcement against online gambling crimes still faces various obstacles. One of the main obstacles is the borderless nature of crime, making it difficult to enforce the law conventionally. In addition, perpetrators often use technology to disguise identity and location. Research shows that other obstacles faced by law enforcement officials include limited facilities, difficulties in digital proof, and low public legal awareness¹¹. On the other hand, the ease of internet access and economic factors are also the main drivers of the increase in online gambling practices in Indonesia¹².

In these conditions, the effectiveness of the old Criminal Code in tackling gambling crimes is important to be studied. The old Criminal Code was basically designed to regulate conventional criminal acts based on physical acts and certain territorial spaces. This causes limitations in its application to digital-based crime. Several studies show that the Criminal Code has limitations in reaching the characteristics of cybercrime, including online gambling, so it often raises difficulties in the law enforcement process¹³.

On the other hand, the ITE Law exists as a special criminal law designed to regulate legal acts in cyberspace. In this case, the ITE Law can be positioned as *a lex specialis* against the Criminal Code as a general criminal law. The ITE Law has the advantage of accommodating technological aspects, including electronic systems and digital evidence. However, its implementation also still faces various challenges, both in terms of interpretation of norms and implementation in the field¹⁴.

Based on this description, it can be understood that the development of online gambling has posed new challenges for the criminal law system in Indonesia. The limitations of the old Criminal Code and the role of the ITE Law as a special criminal law are interesting issues to be studied further. Although the study of online gambling and cyber law in Indonesia has developed quite a bit, most of the previous research is still partial, for example, some only study the Criminal Code, some only analyze the ITE Law, or only focus on aspects of law enforcement without integrating the theory of legal effectiveness in depth. There have not been many studies that compare the two multi-faceted using a comprehensive theoretical framework. This is where the novelty of this research lies. Therefore, this study aims to analyze the effectiveness of the old Criminal Code in tackling online gambling crimes, identify its normative weaknesses, and compare it with the ITE Law as a special criminal law, not only descriptively, but critically using the theory of legal effectiveness, in order to make an academic and practical contribution to the reform of cyber criminal law policies in Indonesia.

¹¹ Husain, W. R. A. F. (2024). Criminal law of online gambling from an Indonesian perspective and the development of legality aspects. *Journal Of Human And Education (JAHE)*, 4(6), 1297-1304.

¹² Mustafa, H. M., Renggong, R., & Hamid, A. H. (2025). THE EFFECTIVENESS OF ERADICATING ONLINE GAMBLING CRIMES IN THE JURISDICTION OF THE MAMUJU POLICE. *Indonesian Journal of Legality of Law*, 8(1), 151-158.

¹³ Ardiansyah, M. R., Sudarmanto, K., Sukarna, K., & Arifin, Z. (2023). The Effectiveness of Eradicating Online Gambling Crimes. *Journal Juridisch*, 1(3), 183-191.

¹⁴ Firmansyah, F. (2025). Criminal law policy regarding the crime of online gambling (cyber gambling) in Indonesia. *Journal of Law, Politics and Social Sciences*, 4(3), 54-62.

B. Research Methods

This research uses *normative legal research* methods, which is research that focuses on positive legal norms contained in laws and regulations, without examining field data. This method was chosen because the problems studied are normative in nature to analyze the adequacy and effectiveness of the formulation of existing legal norms in facing the challenges of technology-based gambling crimes.

This study uses two complementary approaches. First, the statute *approach* used to examine the provisions in the old Criminal Code, especially Article 303 and Article 303 bis, as well as the ITE Law and all its amendments, in order to understand how gambling norms are formulated and the extent of their reach to online gambling practices. Second, the *conceptual approach* is used to examine the relevant basic concepts, namely the concept of criminal acts, the theory of legal effectiveness, and the principle of *lex specialis derogat legi generali*, as the theoretical basis for analysis.

The legal materials used consist of three categories. Primary legal materials include laws and regulations directly related to the object of research, namely the old Criminal Code, Law Number 7 of 1974 concerning Gambling Regulation, and the ITE Law and its amendments (Law No. 19 of 2016 and Law No. 1 of 2024). Secondary legal materials consist of textbooks, scientific journals, and relevant results of previous research. Tertiary legal materials in the form of legal dictionaries and legal encyclopedias are used to support the understanding of technical terms in research.

The collection of legal materials is carried out through library research, both from print and digital sources. The analysis of legal materials is carried out qualitatively by a descriptive-analytical method: the descriptive dimension is used to explain the applicable legal norms systematically, while the analytical dimension is used to critically evaluate the normative effectiveness and weaknesses of each legal instrument. In the analysis process, three methods of legal interpretation are applied in an integrated manner, namely: (1) grammatical interpretation, to understand the meaning of the elements of delinquencies based on the redaction of the regulatory text; (2) systematic interpretation, in order to understand the norms in the context of the overall legal system in force; and (3) teleological interpretation, to understand the purpose of regulation associated with the reality of cybercrime development. The results of the analysis are then synthesized to draw conclusions that answer the formulation of the research problem.

C. Research Results

1. The Effectiveness of Gambling Crime Regulation in the Old Criminal Code in Overcoming Online Gambling Crimes

The regulation of gambling crimes in the old Criminal Code is basically regulated in Article 303 and Article 303 bis. Both articles generally prohibit all forms of gambling and provide criminal threats for those who organize or participate in gambling practices. Article 303 of the Criminal Code regulates the act of offering or providing opportunities to play gambling and make it a livelihood, while Article 303 bis of the Criminal Code

focuses more on parties who participate in gambling¹⁵. Normatively, this provision shows that the Criminal Code has long recognized gambling as a prohibited act and seeks to overcome it through criminal law instruments.

However, when associated with the development of online gambling as a form of modern technology-based crime, the effectiveness of the provisions in the old Criminal Code needs to be questioned. This is because the formulation of norms in Article 303 of the Criminal Code is basically still oriented towards conventional gambling which is carried out directly (physically) and within a certain territorial scope. Elements such as "providing an opportunity to gamble" or "participating in gambling games" have not explicitly accommodated gambling activities conducted through electronic media and internet networks¹⁶. In other words, the Criminal Code does not specifically anticipate the transformation of gambling into a digital form.

The normative weakness of the old Criminal Code can also be seen from the ambiguity in the formulation of criminal elements that have the potential to cause multiple interpretations. For example, the term "gambling game" in Article 303 of the Criminal Code does not provide clear limits on the form or medium used, so in the context of online gambling a broader interpretation is needed by law enforcement officials¹⁷. This condition can create legal uncertainty, especially when it comes to determining whether an activity on a digital platform can qualify as gambling within the meaning of the Criminal Code. In addition, the Criminal Code also does not explicitly regulate parties who play a role in the online gambling ecosystem, such as platform providers, site operators, and parties who facilitate electronic transactions.

From the aspect of proof, the old Criminal Code also has significant limitations in handling online gambling crimes. The evidentiary system in the Criminal Code was initially designed to accommodate conventional evidence, such as witness statements, letters, and instructions, without explicitly regulating electronic evidence. In practice, this makes it difficult for law enforcement officials to uncover online gambling cases that rely mostly on digital data, such as transaction records, activity logs, and other electronic traces¹⁸. Thus, the application of the Criminal Code to online gambling often requires additional legal constructions that are not always easy to do.

Furthermore, the limitations of the old Criminal Code are also seen in terms of jurisdictional reach. Online gambling has a borderless characteristic, where the perpetrator, server, and user can be in different regions, even abroad. Meanwhile, the old Criminal Code was basically drafted with the assumption that the crime occurred within the jurisdiction of Indonesia physically. This condition causes the Criminal Code to be less effective in reaching online gambling perpetrators who operate through foreign servers or use anonymous systems¹⁹.

¹⁵ Article 303 and Article 303 bis. Law Number 1 of 1946 concerning Criminal Law Regulations.

¹⁶ Hamzah, A. (2017). *Indonesian Criminal Law*. Graphic Rays.

¹⁷ Barda Nawawi Arief, S. H. (2016). *A potpourri of criminal law policy*. Medium Pregnancy.

¹⁸ Soekanto, S. (2011). Factors that affect law enforcement.

¹⁹ Husain, W. R. A. F. (2024). Criminal law of online gambling from an Indonesian perspective and the development of legality aspects. *Journal Of Human And Education (JAHE)*, 4(6), 1297-1304.

Several previous studies have also shown that the use of the Criminal Code in ensnaring online gambling perpetrators is often not optimal and tends to be combined with other provisions, especially the Electronic Information and Transaction Law. Research conducted by Nur Khabibatus Sa'diyah et al. shows that law enforcement against online gambling relies more on the ITE Law because it has a legal basis that is more relevant to the characteristics of digital crime²⁰. The same thing was also stated by Bayu Alamsyah and Levina Yustitiantingtyas who stated that the Criminal Code has limitations in reaching technological developments, so a special legal instrument that is more adaptive is needed²¹.

However, it does not mean that the old Criminal Code does not have a role in tackling online gambling at all. In practice, the Criminal Code can still be used as a general legal basis to ensnare perpetrators, especially in terms of the core acts of gambling itself. However, its effectiveness depends heavily on the ability of law enforcement officials to interpret the existing norms extensively. This shows that the Criminal Code functions more as a complement, not as the main instrument in handling online gambling.

Based on this description, it can be concluded that the regulation of gambling crimes in the old Criminal Code has limited effectiveness in tackling online gambling. These limitations are mainly caused by the incompatibility between the formulation of norms and the characteristics of digital crimes, the existence of normative weaknesses in the formulation of delicacy elements, and limitations in the aspects of proof and jurisdiction. Thus, although the Criminal Code still has relevance as a general criminal law, a more specific and adaptive legal instrument is needed to effectively deal with the crime of online gambling in Indonesia.

2. Comparison of Online Gambling Criminal Regulations between the Old Criminal Code and the ITE Law

Before going into an in-depth comparison, it is necessary to first understand the normative basis of each legal instrument to be compared. The Old Criminal Code regulates gambling crimes in general in Article 303 and Article 303 bis. Article 303 paragraph (1) of the Criminal Code prohibits the act of offering or providing opportunities for gambling games and making it as a search, or participating in a company for it, with a threat of imprisonment for a maximum of ten years or a maximum fine of twenty-five million rupiah²². Meanwhile, Article 303 bis targets perpetrators who use gambling opportunities held in violation of Article 303, with the threat of imprisonment for a maximum of four years or a maximum fine of ten million rupiah²³. On the other hand, the ITE Law through Article 27 paragraph (2), as last amended by Law Number 1 of 2024, expressly prohibits everyone from deliberately and without the

²⁰ Sa'diyah, N. K., Hapsari, I. P., & Iskandar, H. (2022). Criminal liability for online gambling perpetrators in Indonesia. *Gorontalo Law Review*, 5(1), 160-166.

²¹ Alamsyah, B. I. (2023). *Eradication of the Higgs Domino Island online gambling crime based on national law* (Doctoral dissertation, University of Muhammadiyah Surabaya).

²² Article 303 paragraph (1) of Law Number 1 of 1946 concerning Criminal Law Regulations.

²³ Article 303 bis paragraph (1) of Law Number 1 of 1946 concerning Criminal Law Regulations.

right to distribute, transmit, and/or make accessible Electronic Information and/or Electronic Documents that have gambling content²⁴. Violation of this provision is threatened with imprisonment for a maximum of ten years and/or a maximum fine of ten billion rupiah.

By understanding these two normative foundations, the comparison between the Old Criminal Code and the ITE Law can be done more systematically. To provide a simpler picture, the author first presents a comparison table that summarizes the following ten important aspects.

No.	Aspects	Old Criminal Code (Articles 303 & 303 bis)	ITE Law (Article 27 paragraph (2) jo. Article 45 paragraph (3))	Comparative Analysis
1	Legal Structure	General criminal law (lex generalis) which contains various types of criminal acts comprehensively in one codification	Special criminal law (lex specialis) that specifically regulates legal acts in cyberspace and electronic space	The ITE Law sets aside the Criminal Code in accordance with the principle of lex specialis derogat legi generali (Article 63 paragraph (2) of the Criminal Code)
2	Setting Orientation	Conventional gambling; was born in the colonial era when digital technology was not yet known. Norma does not anticipate electronic medium	Digital-based gambling; born in the internet age and specifically designed to reach electronic system-mediated crime	The Criminal Code is outdated; ITE Law is responsive to technological developments
3	Norm Reach	Limited to physical and territorial acts. Difficulty reaching out to acts committed through digital platforms or servers outside of jurisdiction	Spacious; Covering cyberspace without physical boundaries. Article 37 of the ITE Law explicitly regulates acts outside Indonesia against electronic systems in Indonesia	The ITE Law is much more flexible and accommodating to the borderless nature of online gambling

²⁴ Article 27 paragraph (2) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions.

4	Formulation of Delik Elements	General and multi-interpreted. The phrases 'gambling', 'giving an opportunity', and 'participating' require extensive interpretation when applied to a digital context	More specific and contextual. The phrases 'distribute', 'transmit', and 'make accessible' are directly relevant to the modus operandi of online gambling	The ITE Law provides higher legal certainty in the context of digital crime
5	Legal Subject	Limited; Focusing on the direct actors (organizers and players). Not explicitly regulating platform providers, site operators, or digital transaction facilitators	Spacious; the phrase 'Everyone' includes anyone who distributes or facilitates access to gambling content, including admins, operators, hosting providers, and affiliates	The ITE Law is able to reach the entire ecosystem of online gambling crimes, not just players and bookmakers
6	Prohibited Forms of Acts	Offering/providing opportunities to gamble, making it a livelihood, and participating in gambling, it is all still oriented to direct physical actions	Distributing, transmitting, and making accessible information related to gambling through electronic systems, these things are fully relevant to the digital mode	The formulation of the ITE Law factually more accurately describes how online gambling works
7	Evidence	Relying on conventional evidence (witness statements, letters, instructions, physical evidence). Not explicitly regulating electronic evidence, making it more difficult to prove online gambling	Explicitly recognizes electronic information and electronic documents as valid evidence (Article 5 of the ITE Law). Digital transaction records, server logs, and screenshots can be used right away	The ITE Law is fundamentally more modern and accommodating in proving digital-based crimes
8	Jurisdiction	It is based on the principle of territoriality, namely that criminal acts must occur in the territory of Indonesia physically. Difficult to	Expanded through Article 37: to include any person outside Indonesia who commits an act against an electronic system	The ITE Law has the principle of extraterritoriality that makes it more effective in dealing with

		reach actors operating servers from abroad	within the jurisdiction of Indonesia	cross-border online gambling
9	Effectiveness in Practice	Low for online gambling. Many cases apply Article 303 of the Criminal Code but the results are not optimal because the elements of the crime are not in accordance with the characteristics of digital crimes	It is more effective as the main instrument of law enforcement. However, it still faces implementation constraints: limited investigator resources, the use of VPNs by perpetrators, and the anonymity of the platform	The ITE Law is predominantly used in practice even though it is not fully optimal in implementation
10	Functions in Law Enforcement Practice	Serves as a complement/alternative. Sometimes it is still imposed mainly for core gambling acts that are easier to prove conventionally	Serves as the main instrument. It has consistently been the primary basis for charges in online gambling cases, overriding Article 303 of the Criminal Code based on the principle of <i>lex specialis</i>	There has been a shift in dominance from the Criminal Code to the ITE Law in the enforcement of online gambling laws in Indonesia

The first aspect lies in the most fundamental difference between the Old Criminal Code and the ITE Law in its structural position in the Indonesian criminal law hierarchy. The Old Criminal Code is a general criminal law (*lex generalis*) that contains various criminal provisions in one comprehensive codification²⁵. As a general law, the Criminal Code applies to all types of criminal acts unless there are more specific regulations. In this position, the Criminal Code has actually anticipated the possibility of a special law that will override it, as reflected in Article 63 paragraph (2) which states that if an act is included in the general criminal rules, it is also regulated in the special criminal rules, then only the specific ones are applied²⁶.

Meanwhile, the ITE Law exists as a special criminal law (*lex specialis*) that expressly limits itself to legal acts carried out through electronic systems. This specificity is not only a matter of name or sector, but touches on the aspect of substance, where the ITE Law plays a role in regulating subjects, acts, and evidence that are fundamentally different from the conventional arrangements in the Criminal Code. Thus, in the context of online gambling carried out through electronic systems, the ITE Law should be the legal basis that is prioritized. Although in practice this relationship does not always run

²⁵ Al-Qifari, M. M., Tanudjaja, T., & Arwanto, B. (2023). LEGAL CERTAINTY ON THE USE OF ARTICLE 27 PARAGRAPH (2) OF THE ITE LAW IN ONLINE GAMBLING: Study of Decision Number: 95/Pid. P/2021/Pn. Sby. *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, 3(1), 1118-1129.

²⁶ Barda Nawawi Arief, S. H. (2016). *A potpourri of criminal law policy*. Medium Pregnancy.

smoothly, because there are still court decisions that override the principle of *lex specialis* due to various technical and non-technical factors, even though normatively the hierarchy is quite clear²⁷.

The next aspect is orientation, which is actually the root of all the problems that exist. The Old Criminal Code was born from the Dutch legal legacy that is more than a century old. When the articles on gambling were formulated, the world did not know the internet, there were no smartphones, and even computers were still something far from the imagination of the lawmakers at that time. So it is natural that the formulation in Article 303 of the Criminal Code only accommodates gambling in its most conventional form: there is a place, there are people, there is a physical transaction. All of his assumptions are based on the physical presence of the perpetrator in the same room.

The ITE Law comes with a fundamentally different orientation. This law was born in 2008, in an era when the internet has become part of daily life, so the ITE Law was formulated with full awareness that crimes can occur without a physical presence, without territorial boundaries, and even without a clear identity. Article 27 paragraph (2) of the ITE Law explicitly prohibits the distribution of gambling content through electronic systems, which means that every link, every web page, every application that contains gambling content falls within the scope of this ²⁸prohibition. From this orientation perspective, it is clear that the ITE Law is designed to answer the challenges that the Criminal Code never even imagined it would face.

The next aspect is reachability. One of the most concrete limitations of the Old Criminal Code in the context of online gambling is the issue of the reach of the norm. Online gambling is *borderless*, for example, the perpetrator can be in Indonesia, the server is in Cambodia, and the players are spread across various provinces without ever meeting face-to-face. The Criminal Code, which is built on the assumption of territoriality, is structurally incapable of reaching this configuration. When the perpetrator operates through an overseas server, the question of where the crime occurred becomes vague, and the territorial principle of the Criminal Code does not provide a satisfactory answer²⁹.

The ITE Law addresses this problem through Article 37 which explicitly stipulates that anyone who meets the elements of Articles 27 to 36 *outside the territory of Indonesia* for Electronic Systems in the territory of Indonesian jurisdiction can still be punished³⁰. This principle of extraterritoriality is an important breakthrough that answers the real challenges of online gambling law enforcement. However, it should be acknowledged that in practice, this principle is not always easy to implement, especially when it comes to cooperation between countries in terms of extradition or exchange of

²⁷ PRISKA, M. N. F., & HANIN, A. L. (2024). The application of the principle of *lex specialis derogat legi generali* to Law Number 19 of 2016 concerning information and electronic transactions related to online gambling crimes. *JUSTITIABLE-JOURNAL OF LAW Учредители: University of Bojonegoro*, 7(1), 157-172.

²⁸ Article 27 paragraph (2) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions.

²⁹ Sulubara, S. M., Fauzi, H., Muslim, B., Ferdiansyah, M. F., & Musmulyadi, M. (2025). Online Gambling as a Cybercrime and the Challenges of Criminal Law Enforcement in the Digital Era: Between Regulation, Proof, and the Threat of Cybercrime. *Journal of Research in the Social, Political and Humanities Cluster*, 4(2), 539-552.

³⁰ Article 37 of Law Number 11 of 2008 concerning Information and Electronic Transactions.

investigative information. However, at least normatively, the ITE Law provides a much more adequate legal basis than the Criminal Code.

The next aspect is the formulation of delicate elements. This is perhaps the most crucial aspect of this entire comparison. The formulation of the element of delinquency determines whether an act can be charged by an article, and this is where the Old Criminal Code is most visible. The phrases used in Article 303 of the Criminal Code, such as "providing opportunities for gambling games," "offering," and "participating" are phrases of conventional value, which in the analog world are quite clear in meaning³¹. But when faced with the reality of online gambling, these phrases require a very extensive interpretation: does uploading a link to a gambling platform "give a chance"? Does simply having an active account on a gambling site mean "participating"? These questions do not have definite answers in the text of the Criminal Code itself, thus creating legal uncertainty³².

In contrast, the ITE Law uses the phrase "distributing, transmitting, and/or making accessible Electronic Information and/or Electronic Documents that have gambling content." This phrase is much more operational in a digital context. Uploading gambling content to social media is "distributing." Managing the server that hosts a gambling site is "making it accessible." Sending a gambling link via instant message is "transmitting".³³ There is no need for excessive extensive interpretation, because the acts that actually occur in the online gambling ecosystem are almost all of them already accommodated in the formulation of the ITE Law in a more direct and accurate³⁴ manner.

The next aspect is the subject of law. The online gambling ecosystem is much more complex than it seems. Behind a gambling site, there are domain owners, there are operators who manage the platform, there are affiliates who promote the site, there are admins who process transactions, there are digital payment service providers, and only then do players access the site. The Old Criminal Code, with its focus on "organizers" and "players," was only able to touch the ends of this ecosystem³⁵. Parties in the middle of the chain, such as server operators, domain providers, or affiliates, are difficult to be charged with Article 303 of the Criminal Code directly because there is no firm formula regarding these roles.

The ITE Act uses a more inclusive approach with the phrase "Everyone" combined with broad verbs, such as distributing, transmitting, making accessible. This combination allows law enforcement officials to reach out to various actors in the online

³¹ Soesilo, R. (1974). Criminal Code (KUHP): and its comments are complete article by article: for state police officials, prosecutors/district courts, civil servants, etc. (*No Title*).

³² Barda Nawawi Arief, S. H. (2018). *Problems of law enforcement and criminal law policy in crime prevention*. Medium Pregnancy.

³³ Article 27 paragraph (2) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions.

³⁴ Naszir, M. A., & Tornado, A. S. (2025). Legal certainty in online gambling cases in the use of Article 303 of the Criminal Code with 27 paragraph 2 of the ITE Law. *Collaborative Journal of Science*, 8(7), 4493-4506.

³⁵ Sa'diyah, N. K., Hapsari, I. P., & Iskandar, H. (2022). Criminal liability for online gambling perpetrators in Indonesia. *Gorontalo Law Review*, 5(1), 160-166.

gambling ecosystem more flexibly³⁶. An influencer who promotes a gambling site on his social media can be said to be "distributing" gambling-related content. An administrator who manages a player's account can be considered "making accessible" a gambling platform. The expansion of the scope of this legal subject is the advantage of the ITE Law which is very relevant to the operational reality of online gambling in Indonesia.

The next aspect is evidence. Proof is at the heart of criminal law enforcement. Without valid and adequate evidence, a suspect cannot be convicted no matter how strong the investigator's belief about someone's guilt is. This is where the Old Criminal Code faces quite serious obstacles. The evidentiary system in the Criminal Code was built to accept physical and conventional evidence: witness statements, written letters, instructions, and material evidence. When it comes to online gambling, the most relevant "evidence" is in the form of digital data, such as banking transaction records, server activity logs, conversation screenshots, file metadata, and so on, which are explicitly not regulated in the framework of proof of the Criminal Code.

The ITE Law addresses this gap through Article 5 which expressly states that Electronic Information and/or Electronic Documents and/or their printed results are valid legal evidence, and are an extension of valid evidence in accordance with the applicable Procedural Law in Indonesia³⁷. With this provision, investigators can use screenshots of gambling sites, transaction log recordings, account metadata, and various other digital evidence as the basis for a valid indictment in court. Of course, proving with electronic evidence still has its own challenges, especially regarding the authenticity and integrity of data, but at least the legal framework is already available in the ITE Law, something that the Criminal Code does not have.

The next aspect is jurisdiction. Jurisdictional issues are one of the biggest challenges in cyber law enforcement globally, and Indonesia is no exception. Online gambling that operates with servers overseas, especially in countries that do not yet have an extradition treaty with Indonesia, it has historically been a "grey zone" that is difficult for conventional legal instruments to reach. The Old Criminal Code, which rests on the principle of narrow territoriality, theoretically only applies to criminal acts that occur within the territory of Indonesia physically. This means that a perpetrator who operates an online gambling server from outside Indonesia can argue that he is not in the jurisdiction of Indonesian law is a loophole that is not often used³⁸.

The ITE Law closes this gap through Article 37 which adheres to the principle of extraterritoriality. This principle illustrates a more modern approach: what matters is not where the perpetrator is physically, but where the impact of his or her actions is felt. As long as the electronic system that is the target or means of the act is within the

³⁶ Sulubara, S. M., Fauzi, H., Muslim, B., Ferdiansyah, M. F., & Musmulyadi, M. (2025). Online Gambling as a Cybercrime and the Challenges of Criminal Law Enforcement in the Digital Era: Between Regulation, Proof, and the Threat of Cybercrime. *Journal of Research in the Social, Political and Humanities Cluster*, 4(2), 539-552.

³⁷ Article 5 paragraphs (1) and (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions.

³⁸ Sulubara, S. M., Fauzi, H., Muslim, B., Ferdiansyah, M. F., & Musmulyadi, M. (2025). Online Gambling as a Cybercrime and the Challenges of Criminal Law Enforcement in the Digital Era: Between Regulation, Proof, and the Threat of Cybercrime. *Journal of Research in the Social, Political and Humanities Cluster*, 4(2), 539-552.

jurisdiction of Indonesia, the ITE Law can be enforced³⁹. Although in practice the execution of this principle still requires international cooperation which is not always easy, the existence of this article at least provides a normative foundation that is much stronger than what the Criminal Code can offer in dealing with cross-border online gambling operations.

The next aspect is effectiveness and function in law enforcement practice. After examining the previous seven aspects normatively, the most practical and perhaps most important question is: how do these two legal instruments work in the field? Findings from various studies show a consistent pattern. In many online gambling cases handled by Indonesian law enforcement officials, Article 303 of the Criminal Code still often appears as the basis for indictments, especially in areas where investigators are not too familiar with the provisions of the ITE Law. This phenomenon illustrates that although the ITE Law is normatively more appropriate, the transition from the old legal framework to the new law does not take place automatically and uniformly.

One relevant concrete example is the inconsistency of the application of *lex specialis* in court decisions. In the case of the Bojonegoro District Court Decision Number 139/Pid.B/2022/PN Bjn, for example, the judge faced questions about whether Article 303 of the Criminal Code or Article 27 paragraph (2) of the ITE Law should be applied to the same act of online gambling. Cases like this show that weaknesses exist not only in the text of norms, but also in the way they are interpreted and applied by legal practitioners in the field. Factors such as the investigator's educational background, the quality of prosecutors' indictments, and the judge's understanding of information technology all contribute to these inconsistencies.

From a broader perspective, the shift towards the dominance of the ITE Law in handling online gambling cases can actually be seen as a positive trend. As law enforcement officials increasingly understand the characteristics of cybercrime and become more skilled in using digital evidence, the ITE Law is gradually taking on the role of the main instrument in countering online gambling⁴⁰. However, this shift must be followed by strengthening the capacity of investigators, standardizing digital forensic procedures, and better judicial understanding so that the normative potential of the ITE Law can be realized optimally in practice.

From the overall analysis above, the picture that emerges is quite clear: normatively, the ITE Law has a significant advantage over the Old Criminal Code in almost all aspects relevant to online gambling countermeasures. Starting from the legal structure, regulatory orientation, reach of norms, formulation of delicacy elements, scope of legal subjects, regulation of evidence, to the scope of jurisdiction. The ITE Act has consistently shown a more responsive design to the characteristics of technology-based crime.

However, it is important not to stop at normative analysis alone. Excellence on paper does not always correlate directly with effectiveness on the field. The Old Criminal

³⁹ Article 37 of Law Number 11 of 2008 concerning Information and Electronic Transactions.

⁴⁰ Sa'diyah, N. K., Hapsari, I. P., & Iskandar, H. (2022). Criminal liability for online gambling perpetrators in Indonesia. *Gorontalo Law Review*, 5(1), 160-166.

Code, although it has various limitations that have been described, still has a function as a safety net when certain aspects of a case are not fulfilled in the ITE Law. On the other hand, the ITE Law, although normatively superior, still faces significant implementation challenges, ranging from the limited technical capacity of investigators, the inconsistency in the application of *lex specialis* in judicial practice, to the complexity of proving cybercrimes that require special expertise.

Therefore, the right conclusion is not "the ITE Law completely replaces the Criminal Code" or "The Criminal Code is still as effective as the ITE Law." What is more accurate is that these two legal instruments are in a complementary relationship, with the ITE Law occupying the position as the main instrument and the Criminal Code as a reserve. The effectiveness of online gambling prevention in the Indonesian legal system depends on how well these two instruments are harmonized and implemented synergistically by all components of the criminal justice system⁴¹.

3. Evaluation of the Effectiveness of the Old Criminal Code and the ITE Law in Tackling Online Gambling Crimes in Indonesia

After the previous section explained the regulation of each law and its comparison, the most crucial thing is actually how effective the two legal instruments work in tackling online gambling which is increasingly rampant. This cannot be answered only from normative rules alone, because the effectiveness of the law is not just a matter of whether or not a rule exists, but whether the rule is really able to change behavior and have a deterrent effect⁴². To evaluate the effectiveness in a structured manner, this study refers to the theory of legal effectiveness put forward by Soerjono Soekanto. Soekanto stated that the effectiveness of a legal rule is influenced by five interrelated factors, namely: (1) the legal factor itself (the quality of norms); (2) law enforcement factors (capacity and integrity of the apparatus); (3) supporting facilities and facilities; (4) community factors (level of awareness and compliance with the law); and (5) cultural factors (values and norms that apply in society). These five factors are an analytical framework to assess how far the old Criminal Code and the ITE Law are really effective in tackling online gambling, not only normatively, but also in its implementation in the field.

Starting from the old Criminal Code, it needs to be acknowledged that this instrument is still used in law enforcement practices against online gambling, especially through Article 303 and Article 303 bis. However, the problem is that the effectiveness of the use of these articles has long been questioned. Normatively, Article 303 of the Criminal Code formulates a prohibition of gambling by referring to physical and conventional acts: offering gambling opportunities, making it a livelihood, or participating in a gambling company⁴³. This kind of formulation was clearly born from an era that did not know the

⁴¹ Sulubara, S. M., Fauzi, H., Muslim, B., Ferdiansyah, M. F., & Musmulyadi, M. (2025). Online Gambling as a Cybercrime and the Challenges of Criminal Law Enforcement in the Digital Era: Between Regulation, Proof, and the Threat of Cybercrime. *Journal of Research in the Social, Political and Humanities Cluster*, 4(2), 539-552.

⁴² Adlina, N. A. (2025). Effectiveness of online gambling law enforcement in Indonesia: Overcoming regulatory and implementation barriers. *Journal of Contemporary Law Studies*, 2(2), 197-208.

⁴³ Article 303 paragraph (1) of Law Number 1 of 1946 concerning Criminal Law Regulations.

digital ecosystem at all. As a result, when faced with the practice of online gambling where the entire process takes place through an electronic system, investigators and public prosecutors must make a sufficiently twisted interpretation to "force" the elements in Article 303 into the digital facts in front of them⁴⁴.

The inaccuracy of this formulation is no small problem. In criminal law, the elements of delinquency must be strictly fulfilled. When the phrase "providing an opportunity for gambling games" is to be interpreted to include the management of gambling websites, or the phrase "opt-in" is forced to reach someone who only manages digital payment accounts in the gambling ecosystem, there is what could be termed "interpretive tension" that has the potential to create legal uncertainty. Naszir and Tornado in their study of the legal certainty of the use of Article 303 of the Criminal Code compared to Article 27 paragraph (2) of the ITE Law concluded that there are still inconsistencies in the application of the principle of *lex specialis*, and that Article 63 paragraph (2) of the Criminal Code, which explicitly orders the prioritization of special provisions, is often ignored in judicial practice.

It is at this point that the ITE Law comes with a more relevant approach. Article 27 paragraph (2) of the ITE Law as last amended by Law Number 1 of 2024 expressly prohibits everyone from deliberately and without rights to distribute, transmit, and/or make accessible information or electronic documents that have gambling content, with a maximum penalty of ten years in prison and/or a maximum fine of ten billion rupiah⁴⁵. This formulation is much more operational than Article 303 of the Criminal Code because the verbs chosen, namely "distribute," "transmit," and "make accessible," directly reflect how online gambling works in the real world. Managing a gambling site's server is "making it accessible." Spreading gambling links on social media is "distributing." There is no need for excessive extensive interpretation because the delicate formulation speaks for itself.

However, the normative advantages of the ITE Law do not necessarily mean that its enforcement runs smoothly in the field. Adlina's research on the effectiveness of online gambling law enforcement in Indonesia found a significant gap between the criminal threats that exist in regulations and the real ability of law enforcement to implement them. One of the most striking findings is the inconsistency of the threat of sanctions between the ITE Law and the Criminal Code, which raises questions about equality before the law, because in reality offline gambling and online gambling perpetrators can be treated differently even though the level of danger is not much different. On the other hand, the limited capacity of investigators to handle digital evidence, the lack of trained digital forensic personnel, and the use of VPNs and anonymization technology by perpetrators also weaken the effectiveness of the implementation of the ITE Law as a whole⁴⁶.

⁴⁴ Naszir, M. A., & Tornado, A. S. (2025). Legal certainty in online gambling cases in the use of Article 303 of the Criminal Code with 27 paragraph 2 of the ITE Law. *Collaborative Journal of Science*, 8(7), 4493-4506.

⁴⁵ Article 27 paragraph (2) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions.

⁴⁶ Rasman, R., Hutauruk, A., & Jaya, S. (2025). The application of criminal sanctions against online gambling perpetrators based on the Law on Information and Electronic Transactions in the City of Denpasar. *Equality:*

Another problem that is no less serious is the reappearance of online gambling sites that have been blocked. Mahendra in his study of this phenomenon concluded that although the normative prohibition is quite firm, the enforcement carried out so far is still reactive and technologically lagging behind. The perpetrators take advantage of regulatory and technical loopholes such as rapid domain switching and the use of VPN services to bypass government blocks, so that blocking efforts that have been carried out do not have a significant long-term impact⁴⁷. This situation proves that good legal norms on paper are not enough if they are not accompanied by adequate technical and institutional capacity to execute them.

In the context of jurisdiction, both the Criminal Code and the ITE Law face challenges from the borderless nature of online gambling. However, the ITE Law at least has more adequate normative provisions through Article 37 which adopts the principle of extraterritoriality⁴⁸. On the other hand, the Criminal Code, which is based on a purely territorial principle, is structurally unable to reach perpetrators who operate servers from abroad. Husain in his study of the perspective of criminal law in online gambling in Indonesia emphasized that jurisdictional limitations are one of the biggest obstacles to effective law enforcement, especially when gambling platforms use encryption technology and servers spread across different countries⁴⁹.

In terms of proof, the difference in effectiveness between the Criminal Code and the ITE Law is becoming increasingly visible. Article 5 of the ITE Law, which recognizes electronic information and documents as legitimate evidence, provides a legal basis for investigators to use screenshots, transaction logs, and other digital data as the basis for indictment⁵⁰. This is clearly a very practical advantage over the Criminal Code whose proof system is built for conventional evidence. Even so, the normative recognition of electronic evidence still faces its own challenges related to the authenticity and integrity of data, which require strict and standardized digital forensic procedures.

Considering all of the above descriptions, it can be concluded that normatively the ITE Law has a significant advantage over the old Criminal Code in tackling online gambling crimes. The formulation of the delicacy is more contextual, the scope of the legal subject is wider, the evidence is more accommodating, and the principle of jurisdiction is more flexible. However, the effectiveness of the law ultimately cannot be measured only by the quality of the normative text. The research of Sulubara et al. aptly illustrates this condition by stating that the existing regulations are still partial and have not fully been able to accommodate the characteristics of *borderless cybercrime*, so that strengthening the technical capacity of investigators, standardizing digital forensics, and synergy between institutions is a non-negotiable⁵¹ prerequisite. Thus, what is needed is

Journal of Law and Justice, 2(2), 239-258.

⁴⁷ Mahendra, H. Z. P. (2025). Legal Analysis of the Resurgence of Online Gambling Sites Even though They Have Been Blocked by the Government. *Al-Zayn: Journal of Social Sciences & Law*, 3(6), 8139-8155.

⁴⁸ Article 37 of Law Number 11 of 2008 concerning Information and Electronic Transactions.

⁴⁹ Husain, W. R. A. F. (2024). Criminal law of online gambling from an Indonesian perspective and the development of legality aspects. *Journal Of Human And Education (JAHE)*, 4(6), 1297-1304.

⁵⁰ Article 5 paragraphs (1) and (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions.

⁵¹ Sulubara, S. M., Fauzi, H., Muslim, B., Ferdiansyah, M. F., & Musmulyadi, M. (2025). Online Gambling as a

not solely a choice between the Criminal Code or the ITE Law, but the optimization of both synergistically with the support of real implementation capacity.

It is also important to note in this context the presence of the new Criminal Code as stipulated in Law Number 1 of 2023 which has officially entered into force since January 2, 2026. In the new Criminal Code, gambling is still regulated in Article 426 which is substantially similar to Article 303 of the old Criminal Code which prohibits the organization and participation in gambling, but does not specifically accommodate the characteristics of online gambling based on electronic systems. Thus, the normative limitations that have existed in the old Criminal Code have the potential to continue in the new Criminal Code if it is not balanced with the affirmation of the position of the ITE Law as a *lex specialis*. This condition further strengthens the argument that the regulation of online gambling requires better harmonization between the new Criminal Code, the ITE Law, and other technical regulations so that there are no legal vacancies or overlapping norms in the Indonesian criminal law system.

D. Conclusions and Recommendations

Based on all the descriptions that have been presented, it can be concluded that the old Criminal Code has quite basic limitations in dealing with the crime of online gambling, especially because the formulation of the delicacy in Article 303 and Article 303 bis is still oriented towards conventional gambling based on physical, territorial, and non-digital means, so that its application to technology-based crimes requires a very extensive interpretation and has the potential to cause legal uncertainty. This condition becomes a strong normative basis for the need for a more specific legal instrument, namely the ITE Law, which through Article 27 paragraph (2) jo. Article 45 paragraph (3) as amended by Law Number 1 of 2024 provides a legal framework that is much more responsive to the characteristics of online gambling, both in terms of the formulation of more contextual crimes, a wider scope of legal subjects, the recognition of electronic evidence, and the principle of extraterritoriality that allows the outreach of perpetrators across jurisdictional boundaries. In the relationship between the two legal instruments, the ITE Law normatively has a position as *lex specialis* which should be prioritized based on the principle of *lex specialis derogat legi generali* as reflected in Article 63 paragraph (2) of the Criminal Code, although in practice this principle is not always applied consistently by law enforcement officials and judges, which shows that the weakness does not only lie at the level of norms, but also at the implementation level. Thus, effective countermeasures of online gambling crimes are not enough to rely only on the existence of better regulations, but also require strengthening the capacity of investigators in handling digital evidence, standardizing cyber forensic procedures, and more solid inter-agency synergy so that the normative potential of the ITE Law as the main instrument can be realized optimally in the Indonesian criminal justice system. The scientific contribution of this research lies in the availability of multi-faceted comparative analysis that integrates Soerjono Soekanto's theory of legal effectiveness as an analytical framework, which is an approach that has not

been widely applied in similar research. Practically, this study recommends several concrete steps: (1) affirming the position of the ITE Law as a *lex specialis* for online gambling through harmonization with the new Criminal Code (Law No. 1 of 2023); (2) the establishment of a special cyber investigation unit with certified digital forensic competence; (3) standardization of procedures for collecting and testing electronic evidence in online gambling cases; and (4) strengthening international cooperation for cross-jurisdictional law enforcement.

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