



RESEARCH ARTICLE

Online Gambling from the Perspective of Law of Obligations in Indonesia: Affirmation of Legal Consequences

Wurianalya Maria Novenanty*

Doctor of Law Program, Faculty of Law, Universitas Gadjah Mada

ARTICLE INFO	ABSTRACT
Received: Jan 3, 2025 Accepted: Feb 15, 2025	Currently Indonesia is in an online gambling emergency state. There are 2 (two) parties in the online gambling which are online gambling content providers and the users of the content. The act of providing online gambling contents is an act that violates Article 303 of the Indonesian Criminal Code and Article 29 paragraph (2) of the Law No.1 of 2024, while the act of the content users is an act that violates Article 303 bis of the Indonesian Criminal Code and the Law No.7 of 1974. This research analyzed online gambling from the perspective of the law of obligations, namely the law of agreements and the law of tort. The research method is normative juridical. The research results are based on the law of agreement, the online gambling agreement is an agreement that does not fulfill the conditions for the validity of the contract which is a lawful causa because the agreement violates laws and regulations therefore the agreement becomes null and void. Based on the tort law, online gambling fulfills the unsure of tort even though for certain cases, the causal relationship between tort and loss inflicted is an indirect relationship.
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*Corresponding Author: wurianalya.maria.novenanty@mail.ugm.ac.id	

INTRODUCTION

Online gambling can cause a human being to lose his humanity. A father sold his infant daughter for 15 million rupiah to play online gambling (Puspapertiwi and Nugroho, 2024). The number of online gambling contents circulating in Indonesia is not small. Based on data from the Minister of Communication and Information, Budi Arie Setiadi, from July 2023 to May 2024, almost 2 million online gambling contents have been terminated by the government (Kamil and Ramadhan, 2024). He has also stated that Indonesia is in a state of online gambling emergency (Kamil and Ramadhan, 2024).

The prohibition to open a gambling business and play gambling in Indonesia has been stated in the legislation. The prohibition to open an online gambling business is stipulated in Article 303 of the Criminal Code (KUHP) which regulates:

"Shall be punished with a maximum imprisonment of 10 years or a maximum fine of 25 million rupiah, whoever without obtaining a permit:

1. intentionally offering or providing opportunities for gambling games and making a living at it; or intentionally participating in an enterprise for that purpose;
2. Intentionally offering or providing an opportunity for the public to play gambling or intentionally participating in it, regardless of whether a condition or procedure is fulfilled in order to use the opportunity;
3. Making participation in gambling games a livelihood."

Meanwhile, the prohibition to play online gambling has been regulated in the Article 303 bis of the Criminal Code which reads:

"Threatened with a maximum imprisonment of 4 years or a penalty of 10 million rupiah:

1. Any person who makes use of an opportunity to play gambling, which is organized in violation of the provisions of Article 303;
2. Any person who participates in a game of chance held on a public road or on its side or in a place accessible to the public, unless a license has been obtained from the competent authority."

Furthermore, Article 1 of the Law No.7 of 1974 concerning Gambling Control (hereinafter referred to as the "Law No.7 of 1974") states that all gambling offenses are crimes (Sugiarto, 2023). The Law No.1 of 2024 concerning the Second Amendment to Law No.11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the "Law No.1 of 2024") categorizes online gambling as a prohibited act as regulated in the Article 27 paragraph (2) which reads: "every person intentionally and without the right to distribute, and/or, transmit and/or make accessible Electronic Information and/or Documents that have gambling content". The sanctions for violating this article are imprisonment for a maximum of 10 (ten) years and a maximum fine of 10 (ten) billion rupiah in the Article 45 paragraph (3) of the Law No.1 of 2024.

From the explanation above, it can be concluded that the explicit regulation regarding the prohibition to conduct online gambling business is contained in Article 303 of the Criminal Code, the Law No.7 of 1974, and the Law No.11 of 2008 which has been amended by the Law No.19 of 2016 and the Law No.1 of 2024, while the regulation of the prohibition to play online gambling is contained in the Article 303 bis of the Criminal Code and the Law No.7 of 1974. Then how is this gambling reviewed from the perspective of civil law, especially the law of obligations in Indonesia? The law of obligations is regulated in Book III of the Indonesian Indonesian Civil Code, but the definition of obligation is not explained in the Indonesian Indonesian Civil Code so that the definition or limitation of obligation is concluded from the opinions of legal experts in various literatures (Waluyo, 2021). J.Satrio defines the obligation contained in Book III of the Indonesian Civil Code as a legal relationship in the field of property law in which there are rights on one side and obligations on the other (Waluyo, 2021). Therefore, it can be concluded that the law of obligations is a law that regulates legal relations in the field of property law which creates rights and obligations for the parties. Where is online gambling located in the law of obligations? What are the legal consequences of an online gambling agreement? Can online gambling be categorized as an illegal act according to Article 1365 of the Indonesian Civil Code? These matters will be tried to be answered in this research.

Some research on online gambling focuses on discussions around criminal law and electronic information and transaction law, including:

1. Legal review and Impact on Society of Online Gambling in Indonesia written by Agus Sugiarto in the *Pena Justisia Journal: Media for Communication and Legal Studies* Volume 22 No.1 March 2023. The results of this study are that although the laws and regulations have prohibited online gambling, the application and enforcement still face severe challenges, the other conclusion is the impacts of online gambling (Sugiarto, 2023);
2. Criminal Liability of Online Gambling Perpetrators in Indonesia According to the Electronic Information and Transactions Law written by Sherly Bantu, et.al. in the *Indonesian Impression Journal (JII)* Volume 3 No.9, September 2024. The results of this research are about the differences in criminal sanctions for online gambling in the Law No.11 of 2008 and the Criminal Code which make it difficult to enforce the law on online gambling crimes (Bantu et al., 2024); and
3. Online Gambling Practices (Positive Legal, Social, and Religious Review) written by Hudjolly, et.al in the journal *History: Educational Journal of History and Humanities* Volume 6 (3), 2023. The results of this research are that gambling is prohibited in

Indonesian legislation, gambling has a bad impact on society, and gambling is prohibited by most religions in Indonesia because it has a bad influence (Hudjolly et al., 2023).

The above studies focus on criminal law and the law of information and electronic transactions, while this study focuses on the law of obligations, namely the law of agreements and the law of tort. Criminal law and electronic information and transaction law are still discussed yet become part of the analysis of the problem formulation that uses the law of obligations as an analytical knife.

MATERIALS AND METHOD

This research is normative juridical research. The data used is secondary data which includes primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials used include the Law No.7 of 1974, the Law No.11 of 2008 on Electronic Information and Transactions and its amendments, namely the Law No.16 of 2019 and the Law No.1 of 2024, the Indonesian Criminal Code, and the Indonesian Civil Code. Secondary legal materials that are used to complement secondary legal materials are books, journals, and materials from trusted internet sites. Tertiary legal materials include the Indonesian Dictionary. The data are analyzed qualitatively using authentic, grammatical, and systematic interpretation methods. The results of the analysis are described descriptively and analytically.

RESULTS AND DISCUSSIONS

Online Gambling from the Perspectives of the Law of Obligations

Based on Article 1313 of the Indonesian Civil Code, an agreement is "an act in which one or more people bind themselves to one or more other people", while gambling games according to Article 303 paragraph (3) are:

"any game in which the probability of profit generally depends on sheer luck, as well as on the fact that the players are better trained or more skillful. This includes all bets on the decision of a race or other game that is not held between those participating in the race or game, as well as all other bets".

Quoted from Hukumonline, online gambling is "an act of gambling conducted online through a web or application that provides gambling content." (Munawaroh, 2023). Online gambling according to Imelda, et.al. is a gambling conducted using electronic technology that can be used to access electronic information or electronic documents (Rumbay et al., 2023). In online gambling, online gambling content providers offer gambling content through the web or application to persons and the persons choose to play gambling through the web or application ("online gambling content users") so that it can be concluded that there is an agreement that contains rights and obligations for each party. Article 1233 of the Indonesian Civil Code states that every obligation arises from agreements and laws.

Online gambling is conducted through the web or application so that gambling can be categorized as an electronic transaction that is subject to Law No.11 of 2008 and its amendments which are the Law No.16 of 2019 and the Law No.1 of 2024. Based on Article 1 point 2 of the Law No. 16 of 2019, electronic transactions are "legal actions carried out using computers, computer networks, and/or other electronic media". Article 27 paragraph (2) of the Law No.11 of 2008 which regulates online gambling has been amended in the Law No.1 of 2024 categorizing online gambling which is an electronic transaction as a prohibited act. The explanation of the article outlines that the prohibited acts are "offering or providing opportunities, making it a livelihood, offering or providing opportunities to the public to play gambling, and participating in companies for such acts". The sanctions for violating the article are imprisonment for a maximum of 10 (ten) years and a maximum fine of 10 (ten) billion rupiah in Article 45 paragraph (3) of the Law No.1 of 2024. The sanctions are heavier than the sanctions stipulated in Article 27 of the Law No.11 of 2008, which is imprisonment for a maximum of 6 (six) years and a maximum fine of 1 (one) billion.

In the doctrine of law of obligations, gambling is categorized as a natural obligation. A natural obligation is an obligation that causes an obligation to pay a debt whose fulfillment is not imposed by law, but if the debtor has made a payment then he cannot demand that the payment be returned so that this natural obligation is considered an obligation with a special character (Sujayadi et al., 2018). This obligation is referred to as an obligation with *schuld* without *haftung* (Sujayadi et al., 2018). *Schuld* is the obligation to fulfill the performance that is obliged in the agreement while *haftung* is the debtor's property that became a guarantee for his/her debt that is regulated in the Article 1131 and 1132 Indonesian Indonesian Civil Code (Meliala, 2019). The position of natural obligation exists in the legal field and the moral field where this position has been accepted in the doctrines on natural obligation (Sujayadi et al., 2018). According to Subekti, the position of natural obligation is in the middle of legal obligation and obligation of propriety or morals (Waluyo, 2021).

Article 1788 of the Indonesian Civil Code states that the law does not grant the right to sue legally in the event a debt is incurred due to betting or gambling. The article clearly states that debts originating from betting or gambling cannot be prosecuted. The doctrine of gambling as a natural obligation must be reviewed especially since gambling is now expressly prohibited in Article 303 and Article 303 bis of the Indonesian Civil Code, Article 1 of the Law No.7 of 1974, and Article 27 paragraph (2) of the Law No.1 of 2024.

The conditions for the existence or validity of an agreement are regulated in Indonesian Indonesian Civil Code which are the consents or conformity of the will of the parties, the capacity of the parties, a specific object, and a halal basis or causa (Mertokusumo, 2020). The following is an explanation for each requirement in relation to gambling as an agreement:

1. The agreement of the parties is a statement of the will of the parties given freely to enter into an agreement. In online gambling, online gambling content providers knowingly and intentionally offer online gambling content through the web or application and content users voluntarily enter into an agreement so that they can participate in gambling, therefore an agreement is reached between the online gambling content provider and the online gambling content user.

2. The capacity of the parties is the ability of the parties to perform legal acts. The meaning of capable of performing legal acts is that all people are capable of performing legal acts, unless the person is declared incapable by law (Sari, 2019). A person who has the capacity to act is someone who is an adult who has reached 18 years old and is not under guardianship (Sari, 2019). Although the gambler has met the requirements of an adult age and is not under guardianship, it does not mean that the gambling agreement can become a valid agreement because there are still 2 (two) conditions that shall be met so that an agreement can be declared as a valid agreement.

3. A specific thing or object

The thing or object in an agreement is something that is certain and can be ascertained (Mertokusumo, 2020). This must be in the form of a performance (Hartono and Prananingtyas, 2023). Performances include giving objects, whether movable or immovable, tangible or intangible, and doing or not doing something (Pepah et al., 2020). Article 1332 of the Indonesia Indonesian Civil Code stipulates that only tradable goods can be the object of an agreement. Traded goods are goods that does not violate laws and regulations when they are traded. The act of providing online gambling content and using online gambling content is an object of agreement that is violated laws and regulations, in this case Article 303 and Article 303 bis of the Criminal Code and Article 27 paragraph (2) of the Law No.1 of 2024.

4. Lawful causa

A halal causa or cause is the content of an agreement. Article 1337 states that a cause is prohibited if it is prohibited by law or if it is contrary to good morals or public order so that it can be concluded that the contents of the agreement shall be in harmony with the law,

public order, and appropriateness. The "cause" referred to here is not the impetus for someone to make an agreement, but the substance in the agreement which is the objective that the parties want to achieve ((Pepah et al., 2020). An agreement that contains the rights and obligations to provide and use online gambling content is an agreement that contradicts Article 303 and Article 303 bis of the Criminal Code, the Law No.7 of 1974, and Article 27 paragraph (2) of the Law No.1 of 2024.

The four requirements for the validity of an agreement are divided into subjective requirements and objective requirements. The agreement of the parties and the capacity of the parties are subjective requirements which, if not fulfilled, can cause the agreement being annulled juridically (Hartono and Prananingtyas, 2023). Certain objects and halal causes are objective conditions which, if not fulfilled will cause the agreement will be null and void juridically (Hartono and Prananingtyas, 2023). Online gambling as an agreement does not fulfill the validity requirements of an agreement which are a specific object and a lawful cause, therefore the online gambling agreement shall be null and void. The nullification of an agreement results in the agreement being deemed never to have existed (Medahalyusa and Busro, 2023).

What about gambling as a natural obligation that falls within the field of law and morals? A natural obligation is not an obligation that arises as a result of an act that is contrary to morals (immoral) or to the principles of justice (*unjust*) because obligations cannot be born from such acts (Sujayadi et al., 2018). (Sujayadi; et al., 2018). Therefore, the classification of gambling as a natural obligation should no longer be applied. This conclusion is also based on Article 303 and 303 bis of the Criminal Code, Article 1 of the Law No.7 of 1974, and Article 27 paragraph (2) of the Law No.1 of 1974 which explicitly states that gambling is a prohibited act. The regulated sanctions are becoming increasingly severe along with the phenomenon of online gambling which causes harm to the community. Online gambling is a prohibited act and cannot have legal consequences for the parties. This needs to be emphasized in the law of obligations so that people realize the consequences of online gambling in the field of law of the obligations.

Online Gambling from the Perspective of Tort Law

The next question that must be answered is whether online gambling can be categorized as an illegal act regulated in Article 1365 of the Indonesian Civil Code? Article 1365 of the Indonesian Civil Code states that every unlawful act that causes harm to another person, obliges the person who through his fault causes the loss to compensate. The article consists of 4 (four) elements, namely unlawful acts, mistakes, losses, and causal relationships between unlawful acts and losses. The following is the proof of the elements of online gambling as a tort:

1. Unlawful act

Initially, unlawful acts are only acts that violate laws and regulations (Rosa Agustina, 2012). (Rosa Agustina, 2012).^{Now}, unlawful acts have a broader scope. The unlawful act includes acts that are contrary to the subjective rights of others, the legal obligations of the perpetrator, appropriateness, accuracy, and/or prudence (Rosa Agustina, 2012). (Rosa Agustina, 2012). In online gambling, both online gambling content providers and content users commit unlawful acts which are acts that violate laws and regulations. Online gambling content providers violate Article 303 of the Criminal Code and Article 27 paragraph (2) of the Law No.1 of 2024, while users of online gambling content violate Article 303 bis of the Criminal Code and the Law No.7 of 1974.

Gambling is a disease in society and such act is classified as a crime (Rumbay et al., 2023). The social system of society can be damaged by the proliferation of gambling (Rumbay et al., 2023). Religion also prohibits gambling because gambling or betting is considered a haram or sinful act (Rumbay et al., 2023). The World Health Organization has proclaimed gambling addiction as a global health problem (Krisdamarjati, 2024). The losses caused by online gambling are not only material losses but also losses in aspects other than material, namely

damage to interpersonal relationships that lead to acts of violence, decreased physical health, decreased productivity in education or work, and the emergence of mental and emotional disorders (Krisdamarjati, 2024). Casualties have also fallen due to this online gambling, there are victims who committed suicide due to debt caused by online gambling, there are also victims who were burned by their spouses with online gambling as the root of the problem (Krisdamarjati, 2024). A child can also become a victim of this online gambling. One example of a case is a father selling his baby for 15 million rupiah so he can play online gambling (Puspapertiwi and Nugroho, 2024).

Currently, online gambling is not only a matter of violation of laws and regulations, but this act can also enter an act that is contrary to decency. Decency norms are the rules of decency in society as long as the community can accept these rules as/in unwritten legal regulations (Rosa Agustina, 2012). According to the Indonesian Dictionary, decency is: "1. good manners; civilized; polite 2. appropriateness". Someone who provides online gambling content and someone who uses the content has violated decency because gambling, as explained above, is a crime according to laws and regulations and an act prohibited by religion.

Apart from being against decency, the act of providing online gambling content and using the content is potentially against propriety. Appropriateness or *redelijkheid* is in accordance with common sense or reasonable (Rini, 2021). Actions that can be classified as actions that are not in accordance with propriety are actions that bring harm to others without a proper interest and actions that do not have benefits that endanger others based on a normal mindset that needs to be considered (Rosa Agustina, 2012). The provision of online gambling content and games, apart from harming users of online gambling content, can also harm other people, for example, online gambling which leads to acts of violence, can bring harm to the person and/or property of others.

2. Fault

A person is at fault in an event or action if he can be held responsible for it or if he can be blamed for it (Mertokusumo, 2019). A person can be blamed for his or her actions if the action he or she has taken is an action that an ordinary person would not do because he/she considers the consequences that arise may harm other people (Mertokusumo, 2019). In a broad sense, fault consists of intentionality (*dolus*) and negligence (*culpa*). Intentionality is when a person commits an act by realizing all the consequences of the act, while negligence is when a person does not intend to commit an act that causes harm but the consequences of the act turn out to bring harm.

Someone who provides online gambling content and someone who uses online gambling content realizes the actions they take so that these actions can be held accountable to them. It means that they have fulfilled the element of guilt. A person's mistake can be forgiven if he has a "psychological disability". If a person has a psychic disability, then he has no fault (Djojodirdjo, 1979). An example of a psychic disability is a person who is temporarily insane or mentally ill (Djojodirdjo, 1979). Therefore, it can be concluded that if a person who has a mental disorder provides online gambling content or uses such content, his or her guilt can be "forgiven".

3. Loss

One of the elements of tort is loss, but the Indonesia Indonesian Civil Code does not regulate compensation in tort (Rosa Agustina, 2012). To determine loss in a tort, the same provisions in determining loss in a default can be used (Rosa Agustina, 2012). Loss in tort consists of material loss and immaterial loss. Material losses are losses that can be clearly calculated in money, on the other hand immaterial losses are intangible losses experienced by a person, for example disappointment, heartache, trauma, mental disorders, and things that affect a person's psychological state.

The act of providing online gambling content causes material harm to its users because of the "gamble" that brings uncertain results so that no matter how much money is spent, the results obtained can be disproportionate. The act of providing online gambling content can also cause immaterial losses in the form of the emergence of mental disorders in users who experience addiction. From the data, some victims of online gambling have chosen to end their lives because of online gambling debt.

The act of using online gambling content can also bring material losses to those closest persons to the user, for example a husband who uses his money to gamble online and forgets his obligations as a husband and if he has children, he forgets his obligations as a father. Immaterial losses can also be experienced by the closest people, for example the family of the user in the form of disappointment and heartache due to the behavior of users of online gambling content that brings misery and / or violence in the family.

4. Causal relationship between tort and damages

The meaning of the causal relationship between the unlawful act and the loss is not explained in Article 1365 of the Indonesian Civil Code so that the determination of its meaning is decided by the judge (Mertokusumo, 2020). There are 2 (two) theories regarding this causal relationship. The first theory was elaborated by Von Buri, namely *condition sine qua non*, which considers every action or problem is a cause of an effect, if the action or problem does not occur, there will be no effect (Djojodirdjo, 1979). The second theory is *adequate veroorzaking* which considers an effect caused by actions that are balanced with the consequences that arise (Rosa Agustina, 2012). To determine the basis of a "balanced act" according to a proper calculation, namely a calculation using common sense that an effect can be expected to arise from the act (Rosa Agustina, 2012).

The act of using the online gambling content is an unlawful act as has been explained in the elements of unlawful acts that the act is an act that violates laws and regulations and/or decency and/or appropriateness which causes material and/or immaterial losses which can result in direct losses. An example of material loss directly caused by the perpetrator of online gambling is if someone experiences material loss due to online gambling, for example in a family, a father or mother uses money for family needs to play online gambling so that the main needs of the family are not met. An example of immaterial loss that can be experienced directly due to the online gambling perpetrators is that people who play online gambling commit violence against other people which results in disappointment, anger, and hurt.

The act of providing online gambling content is also an unlawful act as has been explained in the elements of unlawful acts that the act is an act that violates laws and regulations and/or decency and/or appropriateness which can cause material and/or immaterial losses which can result in losses both directly and indirectly. If the family of someone who is addicted to online gambling files a lawsuit against the online gambling content provider, then the losses they experience are indirect losses. If the judge uses the theory of causal relationship *condition sine qua non*, then the causal relationship exists because every action is considered to be the cause of an effect. However, if the judge uses the *adequate veroorzaking* causal relationship theory, then the actions of the online gambling content provider do not directly result in a loss so that this element of causal relationship is not proven.

What if the user of online gambling content sues the online gambling content provider with the basis of Article 1365 of the Indonesian Civil Code? The act of providing online gambling content is an act that fulfills the elements of a tort, namely unlawful acts which are acts that violate laws and regulations, decency, and appropriateness, the mistake in this case is the intent to provide online gambling content, the losses incurred are material and/or immaterial losses, and there is a causal relationship between the provision of online gambling content and the losses incurred. However, the obligation arising from an online gambling as a tort is a natural obligation so that even though the elements of the tort have been fulfilled, a natural obligation is an obligation that creates an obligation

to pay an obligation whose fulfillment is not forced by law, but if the debtor has made a payment then he cannot demand that the payment be returned.

CONCLUSION

Online gambling is a gambling conducted through the web and/or applications that allow a person to access electronic information and/or documents. In online gambling there are parties that provide online gambling content and users of the content. Online gambling from the perspective of the law of obligations which is the law of agreements, is an agreement that does not fulfill the legal requirements of an agreement, namely lawful causa or cause so that the legal consequences of this agreement are null and void. Online gambling from the perspective of the law of agreements cannot be classified as a natural obligation because basically the conditions for the validity of the agreement have not been fulfilled and natural obligation cannot arise from an act that is immoral or contrary to the principles of justice.

Based on the tort law, the act of both providing and using online gambling content is a tort, namely an act that violates the laws and regulations which are Articles 303 and 303 bis of the Criminal Code, the Law No.7 of 1974, and Article 27 paragraph (2) of the Law No.1 of 2024. The act also contains the element of fault. The element of loss, both material and immaterial, can also arise from the online gambling action. The last element is the causal relationship between the unlawful act and the loss, the online gambling action can cause losses that arise either directly or indirectly. If there has been a payment of compensation in online gambling, the theory of natural obligation is applied, it means that the payment cannot be returned if it has been paid.

The suggestion that can be given from this research is that online gambling in the field of law of agreement cannot be categorized as an agreement that creates an obligation to pay so that this action cannot be categorized as a natural obligation. It needs to be emphasized in the law of agreement that cause an online gambling agreement does not create obligations for the parties because the agreement is invalid. If there is such affirmation, the public will not be interested in participating in gambling realizing that the agreement cannot create rights and obligations between the parties.

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