

CRIMINAL LIABILITY FOR ONLINE GAMBLING PROMOTION IN THE YOUTUBE COMMENT COLUMN

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Abstract: *The phenomenon of online gambling promotion through the YouTube comment column is a new challenge in criminal law enforcement in the digital era. Although it seems trivial, this action is part of a crime that can harm society. This study aims to analyze the existing online gambling regulations in Indonesia and the forms of criminal liability against perpetrators of online gambling promotion in YouTube comment sections. The method employed is a normative juridical approach with a legislative focus and a literature study. The results of the study show that the act of promoting online gambling in the comment column can be categorized as violating Article 27 paragraph (2) of the ITE Law and Article 303 of the Criminal Code (as well as the provisions of articles 426 and 427 in the New Criminal Code) because of deliberately disseminating electronic information containing gambling without permission. Under certain conditions, YouTube account owners can also be held accountable if they neglect to moderate. Meanwhile, platforms like YouTube have a responsibility to take down illegal content. The results of this study indicate that online gambling promotion through comments can still be legally charged, even though it is done indirectly, suggesting that an adaptive and collaborative legal approach is necessary among authorities, platforms, and the public.*

Keywords: *criminal liability, online gambling, YouTube commentary.*

A. INTRODUCTION

As a country of law, Indonesia considers criminal law one of the primary pillars in maintaining order and protecting people's rights. Criminal law is not only tasked with punishing those who have violated the law, but also serves to prevent crimes before they have a broader impact. As explained by Moeljatno, criminal law is a collection of rules that determine what acts are prohibited, as well as provide the threat of sanctions to anyone who violates them. (Moeljatno, 2008). The concept of the state of law emphasizes that every action of society must be based on the applicable law, both in the digital and real worlds.

Today's advances in information technology greatly affect the way humans interact and disseminate information in the digital environment. YouTube is one of the most widely

used platforms for a diverse range of content. As one of the largest video-based social media platforms in the world, YouTube is not only a means of entertainment but also a place for public interaction through its comment section. However, this progress also has negative impacts, one of which is the rampant spread of comments that contain elements of online gambling.

Online gambling is an illegal activity in Indonesia as stipulated in 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 (UU ITE) which reads: *"Every Person deliberately and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have gambling content."*

The provisions regarding the criminal act of gambling were previously regulated in Article 303 and Article 303 bis of the old Criminal Code. In the new Criminal Code, specifically Law Number 1 of 2023 concerning the Criminal Code (KUHP), the prohibition on gambling is reorganized in Articles 426 and 427, with a more systematic and adaptable scope to technological developments, as amended by Law Number 1 of 2023 concerning the Criminal Code. However, despite the existing legal provisions, the phenomenon of promoting online gambling through comments on YouTube is becoming more widespread and difficult to control.

Comments containing online gambling promotions are often found in various videos, particularly those featuring sports, entertainment, or other content with a high number of viewers. Director *Communication and Information System Security Research Center* (Cissrec), Pratama Persadha said that the modus operandi used by the perpetrators included the spread of links that led to gambling sites, the use of hidden words to avoid algorithm detection, and the use of bot accounts or fake accounts to flood the comment column with gambling advertisements.(Alinda Hardianto, 2025).

This is not only unlawful, but also has the potential to plunge the public, especially the younger generation, into illegal gambling practices. One of the primary challenges in addressing this phenomenon is the limited availability of supervision and enforcement mechanisms. Although YouTube has a policy of removing comments that contain illegal elements, its effectiveness is still questionable, given that many comments still appear in large numbers. In addition, the criminal liability for disseminating online gambling comments remains a topic of debate, particularly in determining who can be held accountable, whether it is only the perpetrator who disseminates the remarks or the platform that allows them to remain.

Based on these problems, it is necessary to conduct a juridical study to analyze how criminal law can be applied in addressing the spread of online gambling comments on YouTube, and whether existing legal provisions are sufficient to apprehend the perpetrators. This writing is expected to contribute to broadening insights and fostering a deeper understanding of criminal law in the context of digital crime, as well as providing recommendations for policymakers to strengthen regulations related to online gambling within the realm of social media.

To maintain and strengthen the purity and authenticity of this writing, the author refers to several previous studies relevant to the topic raised. One of them is research conducted by Nur Khabibatus Sa'diyah, Ifahdah Pratama Hapsari, and Hardian Iskandar in *Gorontalo Law Review Volume 5 No.1* (April 2022) entitled "Criminal Liability for Online Gambling Actors in Indonesia", which discusses how the provisions of Indonesian criminal law regulate online gambling, including efforts to counter it both penal and non-penal, as well as the need for regulatory updates considering developments in Current technology.

In addition, research by Fricillia Geybi Manaroinson, Anna S. Wahongan, and Royke Yesdaven Jermia Kaligis in *the Journal of Lex Crimen Volume 12 No. 4* (2024) entitled "Criminal Liability of Perpetrators of Online Gambling Promotion" specifically examines criminal liability against individuals who promote online gambling on social media, with the legal basis of the old Criminal Code, the new Criminal Code, and Law Number 1 of 2024 concerning Information and Electronic Transactions.

These two studies enrich the theoretical and practical foundations of ongoing research, emphasizing that the promotion of online gambling, primarily through social media such as YouTube, still faces significant challenges in terms of legal regulation and enforcement effectiveness in Indonesia.

This research focuses on the legal regulation and criminal liability of perpetrators of online gambling promotion through the YouTube comment section. The scope of the study encompasses an analysis of the provisions in Law Number 1 of 2024 concerning Electronic Information and Transactions, as well as Law Number 1 of 2023 concerning the Criminal Code. In addition, this study also examines the extent to which criminal liability can be imposed on both the direct perpetrator and the party that facilitates the spread of comments containing online gambling promotions.

B. RESEARCH METHODS

This research employs a normative juridical approach, focusing on the analysis of applicable written legal norms. Referring to Soerjono Soekanto's opinion, this approach is carried out through the study of secondary legal materials or literature, and is therefore often referred to as literature research.(Soerjono Soekanto & Sri Mamudji, 2001). This type of research is descriptive and analytical, presenting a comprehensive picture of the legal rules governing the dissemination of gambling-related comments on social media and the application of criminal sanctions against the parties involved. All the collected data is then analyzed qualitatively using the deductive reasoning method, which involves concluding common legal principles to be applied to specific problems that are the focus of the research.(Muhaimin, 2020).

C. RESEARCH RESULTS

1. Online Gambling Regulation Based on Criminal Law in Indonesia

In the ever-evolving digital era, online gambling promotion has become one of the serious challenges for law enforcement in Indonesia. This phenomenon not only violates the rule of law but also triggers various social problems, especially in countries that strictly prohibit the practice of gambling, including Indonesia. Online gambling promotion in Indonesia is categorized as an illegal activity and is strictly regulated through various laws and regulations. **Regulation in Law Number 1 of 2024 concerning Information and Electronic Transactions.**

In the context of cyberspace, the need for more specific regulation becomes inevitable. This is the basis for the issuance of Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE), which was subsequently amended through Law Number 19 of 2016 and Law Number 1 of 2024, reflecting adjustments to technological developments and evolving legal needs in the digital era.

In particular, Article 27, paragraph (2) of the ITE Law regulates the prohibition of the distribution, transmission, and provision of access to information containing gambling electronically. This means that not only the operator of the online gambling site can be charged with the law, but also anyone who simply disseminates information or links related to gambling according to the content of Article 27 paragraph (2) of the ITE Law which reads: *"Every Person deliberately and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that have gambling content."*

This provision is strengthened by Article 45 paragraph (3) of the ITE Law, which reads: *"Every Person who deliberately and without the right distributes, transmits, and/or makes*

accessible Electronic Information and/or Electronic Documents that have gambling content as referred to in Article 27 paragraph (2) shall be sentenced to imprisonment for a maximum of 10 (ten) years and/or a maximum fine of Rp.10,000,000,000, 00 (ten billion rupiah).".

The criminal elements in these provisions include:

a. Elements of Legal Subjects (Actors)

This article applies to "Everyone", which means that anyone without exception can be criminally charged if he meets the other elements. In the context of YouTube comments, the perpetrator could be a regular internet user, a fake account owner, or even an automated bot controlled by a human. There is no restriction that the perpetrator must have a certain status, so anyone who knowingly disseminates gambling information may be subject to sanctions under this provision.

b. Object Elements

The objects protected in this article are electronic information and/or electronic documents containing gambling content. In practice, it includes various forms of digital content such as links, text, images, or videos that are disseminated through social media. Therefore, if the comment posted contains an active link or an invitation to gamble, it is included as the object referred to in this provision.

c. Elements of Deeds

Prohibited acts include distributing, transmitting, or making accessible electronic information containing gambling content. This means, if a person posts, disseminates, or shares links or information related to gambling digitally such as in the comments section of social media in this case the YouTube platform, then he or she is considered to have fulfilled the elements of the act. The action is considered an attempt to expand access to gambling content to the public.

d. Elements of Error

The element of error in this article is shown by the intentionality in committing the act. This means that the perpetrator consciously knows that the information he disseminates contains elements of gambling, and of his own volition continues to spread it. In its consideration, imposing a criminal sentence against the perpetrator must be proven in court. Not only is it sufficient that the perpetrator has committed the act, but there must also be evidence that he did it consciously and without rights.

e. Elements Without Rights

One of the other important elements is that the act is done without rights. In Indonesia, no party legally has the right to distribute gambling information because the practice is

prohibited by law. Therefore, online gambling promotion of any kind has no legal justification, and this element will always be fulfilled as long as the perpetrator does not have a legally recognized license (which in this context is impossible to grant).

Regulations in the Old and New Criminal Code.

The Criminal Code or usually called the Criminal Code regulates various kinds of criminal acts in Indonesia. In the Criminal Code, there are articles that regulate the crime of gambling listed in the old Criminal Code Chapter Two: Crimes, Chapter 14 Crimes against Morality, Article 303. In the new Criminal Code, the regulation is contained in the Second Book: Criminal Acts, Chapter 15 of Moral Crimes, Part Eight of Gambling, Articles 426 and 427. In the context of online gambling promotion, these articles provide a legal basis for taking action against perpetrators who actively offer, advertise, or facilitate gambling activities, either directly or through electronic means. Article 303 paragraph (1) of the old Criminal Code reads: *"Threatened with imprisonment for a maximum of ten years or a fine of up to twenty-five million rupiah, who, without obtaining permission: 1. Intentionally offers or provides opportunities for gambling games and makes them a search, or deliberately participates in a company for that purpose; 2. Intentionally offering or giving opportunities to the general public to gamble or intentionally participate in the Company to, regardless of whether to use the opportunity of a condition or the fulfillment of an ordinance; 3. Make participation in gambling games such as searches.*

Meanwhile, Article 426 of the Criminal Code paragraph (1) reads *"Sentenced to a maximum of 9 (nine) years in prison or a maximum fine of category VI, Every person who without permission: a. offers or gives the opportunity to play gambling and make it a livelihood or participate in a gambling company; b. offer or provide opportunities to the public to gamble or participate in gambling companies, regardless of whether there is a condition or procedure that must be met to use such opportunities; or c. make participating in gambling games a livelihood."*

The criminal elements in these provisions include:

Elements of Legal Subjects (Actors). What is meant by a perpetrator in this provision is any individual who commits an act that is prohibited by law without having legitimate authority. This means that anyone, regardless of their social status, profession, or role, can be charged if they meet other elements. In the context of online gambling promotion, the perpetrator can be an individual who disseminates gambling promotions through social media, either as an account owner, a platform manager, or a general user.

a. Object Elements.

The object of this criminal act is the gambling activity itself, including the means and media used to disseminate or offer gambling opportunities. In the digital context, these objects include electronic content that contains information about gambling games, links to gambling sites, or calls to gamble, which are disseminated through social media platforms such as YouTube.

b. Elements of Deeds.

Prohibited acts include offering, giving opportunities, or making gambling activities a business. In the case of online gambling promotion, activities such as spreading links to gambling sites, including invitations to play, or advertising types of gambling games digitally can be included in the form of acts as referred to in the Criminal Code. This action is a concrete form of indirect gambling implementation or promotion.

c. Elements of Criminal Sanctions

Under the old Criminal Code, violations of Article 303 can be punished with imprisonment of up to ten years or a maximum fine of twenty-five million rupiah. In the new Criminal Code, criminal sanctions are renewed to a maximum prison sentence of 9 years and/or a maximum fine of category VI (up to two billion rupiah). This reflects the adjustment of the value of fines to economic development and the urgency of controlling gambling in the digital era.

d. Elements Without Permission

The provisions in Article 303 of the Criminal Code and Article 426 of the new Criminal Code explicitly state that the perpetrators who are convicted are those who do it without permission. In practice, the Indonesian government does not permit any form of online gambling, so any gambling promotion carried out online is ensured to meet this element. This element shows that there is no legalization of online gambling, and all perpetrators are considered to be acting outside the authority of the law.

With this arrangement, perpetrators who use the comment column on platforms such as YouTube to spread links or information related to online gambling sites can also be categorized as violators of the law. Therefore, it is essential to examine further how forms of criminal liability are imposed on individuals involved in promoting online gambling through digital media, especially in comment columns that often go unchecked.

Criminal Liability for Online Gambling Promotion Through YouTube Comments

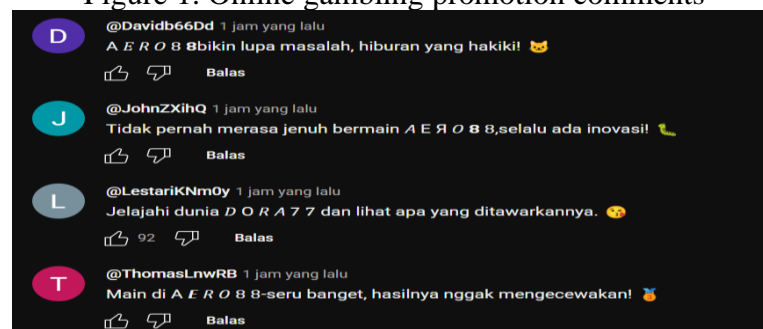
Criminal liability, which in foreign terms is known as *Theoretical Reasonableness* or *Criminal Responsibility*, basically aims to assess whether a person suspected of committing a

criminal act can indeed be held responsible for their actions. This means that accountability is the basis for determining whether a person deserves a criminal sentence or not.(Amir Ilyas, 2012).

Hanafi Amrani and Mahrus Ali, in their book, cite the view of Roscoe Pound, who explains that *Liability* means the responsibility to provide compensation for losses incurred by other parties.(Hanafi Amrani & Mahrus Ali, 2019). The opinion emphasizes that legal responsibility is not only related to unlawful acts, but also a form of accountability for the consequences caused by such acts to others.

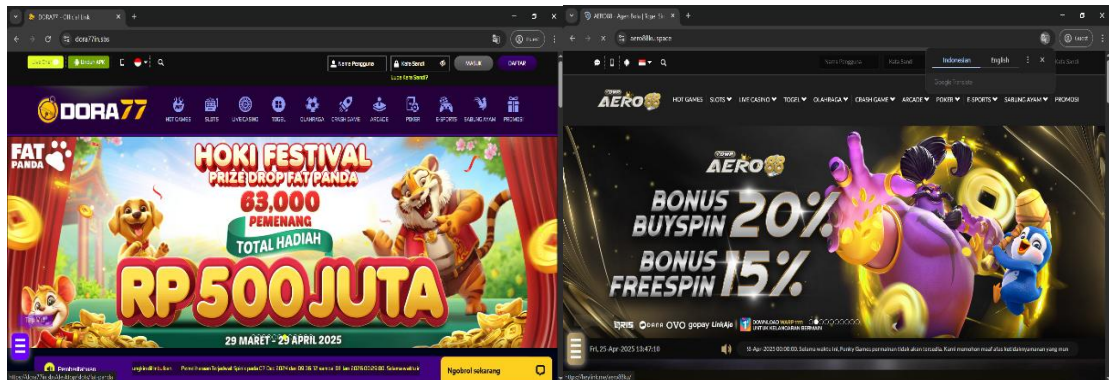
The concept of criminal liability becomes relevant when faced with modern crime phenomena, such as the promotion of online gambling. The phenomenon of online gambling promotion that is widely circulated in the comment columns of digital platforms such as YouTube is a new form of crime that challenges the enforcement of conventional criminal law. This is as revealed by Putri Alam, Director of Government Relations and Public Policy of Google Indonesia, who comments that online gambling promotions are indeed "circulating" on the YouTube platform.(Muhammad Syafaruddin, 2025). In practice, on platforms such as YouTube, comments containing links to gambling sites or invitations to gamble are sufficient to satisfy the elements of "distributing" or "making accessible" information containing gambling. The phenomenon of comments containing online gambling promotions is not an isolated occurrence. Typically, these comments are sent by bot accounts or automated promotional services, making the spread even more massive and difficult to monitor. These comments are usually accompanied by links that lead to gambling sites or use disguised terms to avoid algorithmic detection. The following is an example of comments that contain online gambling promotions:

Figure 1. Online gambling promotion comments



The comment appears to be regular, but upon closer inspection, it contains suspicious links that direct users to online gambling sites. The use of symbols, spaces, or special characters is used to trick YouTube's moderation system. The site, if searched, will be seen in Google search, for example, like this:

Figure 2. Online gambling promotion comments



With the increasing number of cases like this, the interpretation of the act of "distributing" in the ITE Law has become increasingly broad and adaptive to technological developments. Not only can sites or emails be a distribution medium, but even the comment column on a video platform can be a means of spreading illegal information.

Furthermore, if referring to the general principle in criminal law, an act is considered to have fulfilled the elements of a criminal act when there are two essential elements: *actus reus* (unlawful act) and *mens rea* (malicious intent or mistake). In the case of online gambling comments, posting comments containing gambling links or promotions can be considered to meet both elements, as they are done knowingly to direct users to illegal activities.

In Indonesian criminal law, *mens rea* translates to the concept of intent, which consists of two primary forms: *intention (Dolus)* and *negligence (culpa)*. *Dolus* is a condition in which the perpetrator is aware of and intends the consequences of their actions. While *Guilt* occurs when the perpetrator does not want the consequences, but the consequences arise due to their negligence (Emy Rosna Wati & Abdul Fatah, 2020). In the case of online gambling promotion on social media, especially YouTube comments, it is unlikely that a justifiable or forgiving reason will be found. The perpetrators are generally not in an emergency or coercive situation that can remove the unlawful nature or wrongdoing from their actions. Justification reasons and pardon reasons are the two main categories of criminal expungement reasons. According to one of the classical definitions, a justifiable reason is a circumstance that "eliminates the unlawful nature of the act, so that what the defendant does becomes a proper and right act". On the other hand, a pardon is a circumstance that "expunges the guilt of the defendant" so even if his actions are classified as a violation of the law, the perpetrator cannot be criminally charged because he is not proven to have an element of guilt (R. Achmad Soema in Pradja, 1982).

In line with this understanding, direct perpetrators, i.e., individuals or networks who knowingly post gambling-charged comments, are the primary subject of criminal liability. However, the problem becomes more complex when we consider not only the perpetrator who wrote the comment, but also the other parties indirectly involved, such as the owner of the video account where the comment appeared, as well as digital platforms like YouTube, which serve as the medium for dissemination.

Therefore, it is necessary further to analyze the roles and responsibilities of each party as follows:

Direct Actors (Comment Spreaders)

Direct perpetrators, in the form of individuals or entities, who write comments on online gambling promotions in the YouTube column, are among the most susceptible to criminal sanctions. According to Article 27, paragraph 2 of the ITE Law, the perpetrator must deliberately broadcast gambling information without the necessary rights; if proven, they face a sentence of 10 years in prison. This principle is already proven in law enforcement practice: for example, several celebrities have been proven to have spread online gambling links and been arrested by the police for "introducing online gambling links" to the public (Dian Nugraha Ramdani, 2024).

The case shows that the authorities consider the dissemination of gambling advertisements, including through social media comments, to be an unlawful act. In addition, if the disseminator of the gambling comment works on the orders of the bookmaker or as an affiliate, the act can be qualified as an assistant to a criminal act as stated in Article 21 paragraph (1) letter a of Law Number 1 of 2023 concerning the Criminal Code, which states that: *"Every person is convicted as an assistant to a criminal act if it intentionally: a. provides the opportunity, means, or information to commit a criminal act; or b. assisting at the time of the Crime."*, so that he can also be punished criminally as a party to help. In short, people who actively write links or online gambling invitations in YouTube comments are the same as "distributing gambling information," which is prohibited by the ITE Law. If innocence (intentionality) is challenging to prove, the authorities cannot punish the perpetrator.

YouTube Video Account Owner

The owner of a YouTube account or channel is usually not immediately punished just because their comments are filled with gambling spam by other parties. Legally, he is not a

gambling organizer and does not "distribute" gambling content by himself. Only if it is proven that the account owner intentionally promotes gambling, for example by displaying links in videos or deliberately posting comments, can they be considered a co-perpetrator. In that case, he can be punished based on the principle of participation by Article 21 paragraph (1) for acting as a party who assists in the violation. Conversely, if the account owner is only a victim of spam or deleting prohibited comments, there are generally no immediate criminal sanctions. However, the reality on the ground shows that content creators are often overwhelmed by a wave of gambling spam. According to media surveys, many YouTubers feel "overwhelmed" because the YouTube Studio system does not automatically detect gambling spam. Security practitioners even called this social media platform "not having strict control", so illegal actors are free to use the comment column to spread gambling links. As a mitigation measure, account owners are encouraged to actively moderate comments. For example, this can be achieved by allowing comments only from verified customers or utilizing spam account filtering and blocking features.(Alinda Hardianto, 2025). However, the task of moderation is preventive/administrative and has no criminal implications if it is missed. In essence, the owner of a YouTube account can only be punished if there is evidence of their active involvement in online gambling promotion, not solely because of the appearance of illegal comments from third parties.

Platform YouTube

Regarding the accountability of platforms such as YouTube, to date, Indonesia's positive laws, including the ITE Law, have not specifically regulated direct criminal liability for platform operators. However, based on Article 40 paragraph (2a) which reads as follows: *"The Government is obliged to prevent the dissemination and use of Electronic Information and/or Electronic Documents that have prohibited content by the provisions of laws and regulations."* and paragraph (2b) which reads as follows: *"In carrying out prevention as referred to in paragraph (2a), the Government is authorized to terminate Access and/or order the Electronic System Operator to terminate Access to Electronic Information and/or Electronic Documents that have unlawful content."*, By regulation, the ITE Law (Article 40 paragraphs 2a and 2b) gives the government the authority to order the blocking or deletion of electronic content that violates the law.

In practice, Google (the owner of YouTube) is working with the Ministry of Communication and Informatics to shut down tens of thousands of online gambling sites and block gambling ads massively on the Internet. According to Google Indonesia, artificial

intelligence technology (*Machine Learning*) on YouTube continues to be developed to detect and remove gambling ads that appear in comments.(Scott, 2025). Google's system even managed to block about 100,000 gambling sites every week and reached 1.5 million online gambling ads over the previous year.(Muhammad Syafaruddin, 2025).

This kind of precautionary measure demonstrates the platform's compliance with the rules of blocking illegal content; However, criminally, the formal responsibility remains with the original perpetrator (the advertiser), not with the system provider. In short, YouTube has an administrative obligation to remove gambling content on government orders. Still, the big company is not criminally charged as a "gambling provider" if illegal comments are tucked into its system.

Based on an analysis of the perpetrators of the comment, account owners, and the role of the YouTube platform, it is evident that promoting online gambling on social media, particularly in YouTube Comments, cannot be viewed as a mere individual action. Each party involved, whether directly or indirectly, has the potential to be held criminally liable based on its role and contribution.

D. CONCLUSION

Based on the above description, it can be concluded that the regulation of online gambling crimes in Indonesia has undergone significant development through harmonization between the old and new Criminal Codes, as well as strengthening in the Electronic Information and Transactions Law (ITE Law). This change reflects the state's seriousness in responding to the shift in gambling modes from conventional forms to the digital realm. The criminal provisions in the Criminal Code and the ITE Law expressly prohibit all forms of dissemination, organization, and promotion of gambling, including those carried out covertly through social media comment columns such as YouTube. This shows that anyone who plays a role in disseminating information related to gambling online, either as the main perpetrator or a supporting party through the medium of comments, can still be subject to criminal sanctions.

Criminal liability for the promotion of online gambling through social media, especially in the YouTube comment column, can be directed to several parties. Direct perpetrators who spread comments containing gambling can be charged as the main perpetrator. If it is proven that the action was carried out on orders, directions, or cooperation with other parties such as bookmakers or gambling site operators, then the provisions regarding participation apply. Additionally, YouTube account or channel owners who deliberately allow or facilitate the

dissemination of gambling content can also be held criminally liable, particularly if there is an element of intentionality or negligence. Digital platforms can be held accountable if they are negligent in preventing or addressing the systematic and sustainable spread of illegal content.

SUGGESTION

Seeing the complexity of online gambling promotion in digital spaces such as YouTube comment columns, the government and law enforcement officials need to continue to strengthen adaptive criminal law approaches, as well as the preparation of more detailed technical guidelines so that law enforcement is not only reactive, but also able to keep up with increasingly sophisticated digital crime patterns.

In addition, there needs to be derivative regulations that more specifically regulate the roles and obligations of digital platforms in preventing the spread of illegal content, including online gambling promotions. YouTube and similar platforms need to be encouraged to have a more active and responsible moderation system. Collaboration between governments, platforms, and the community is essential so that digital crime prevention depends not only on enforcement, but also on effective and sustainable prevention.

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