



Influencer Liability for the Dissemination of Online Gambling Through Electronic Systems

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Original Article

Abstract

The rapid growth of social media has significantly expanded the dissemination of online gambling promotions through electronic systems, with influencers playing an increasingly prominent role. This development raises important questions regarding the adequacy of Indonesia's legal framework and the scope of criminal liability applicable to influencers engaged in such promotional activities. This study examines the adequacy of Indonesia's legal regulations governing the promotion of online gambling through electronic systems and develops a framework for influencer liability based on H.L.A. Hart's (1968) theory of criminal responsibility. Employing a normative legal research method, the study adopts statutory, conceptual, and case approaches through the analysis of legislation, judicial decisions, and legal doctrine. The findings indicate that the harmonization between the Indonesian Criminal Code and Law Number 1 of 2024 on Electronic Information and Transactions provides a sufficient legal foundation for addressing online gambling promotion. However, the existing regulatory framework does not explicitly govern promotional activities conducted by influencers in digital environments. To address this gap, the study proposes a framework of criminal liability based on four essential elements: a valid legal basis, the existence of culpability, criminal responsibility, and the absence of grounds for exculpation. This framework enhances legal certainty while strengthening the effectiveness of criminal law enforcement against the dissemination of online gambling promotions through electronic systems in Indonesia.

Keywords: *Influencer, Online Gambling, Criminal Liability, Electronic Systems*

Abstrak

Perkembangan media sosial telah meningkatkan promosi judi online melalui sistem elektronik dengan melibatkan influencer sehingga menimbulkan persoalan mengenai kecukupan pengaturan hukum dan batas pertanggungjawaban pidananya. Penelitian ini bertujuan menganalisis kecukupan pengaturan hukum di Indonesia terhadap promosi judi online melalui sistem elektronik serta mengonstruksikan pertanggungjawaban hukum influencer berdasarkan teori pertanggungjawaban pidana H.L.A. Hart (1968). Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus melalui analisis peraturan perundang-undangan, putusan pengadilan, serta doktrin hukum. Harmonisasi KUHP dan Undang-Undang Nomor 1 Tahun 2024 tentang Informasi dan Transaksi Elektronik telah memberikan dasar hukum yang memadai, meskipun belum mengatur secara eksplisit promosi digital oleh influencer. Penelitian ini merumuskan konstruksi pertanggungjawaban berdasarkan dasar hukum, unsur kesalahan, kapasitas bertanggung jawab, dan ketiadaan alasan penghapus pidana sehingga mampu memperkuat kepastian hukum serta efektivitas penegakan hukum terhadap promosi judi online di Indonesia.

Kata kunci: *Influencer, Judi Online, Pertanggungjawaban Pidana, Sistem Elektronik*

1. INTRODUCTION

The rapid advancement of information technology has transformed social media into a powerful digital marketing platform while simultaneously facilitating various forms of cybercrime, including the promotion of online gambling. Platforms such as Instagram, TikTok, Facebook, and YouTube have evolved beyond communication channels to become sophisticated marketing ecosystems that rely on influencers, internet celebrities, content creators, streamers, and affiliate marketers to reach millions of users. Through endorsements, affiliate links, referral codes, and entertainment-based content, influencers function as opinion leaders capable of shaping public attitudes and consumer behavior. Consequently, social media has become an integral component of electronic information systems, giving rise to legal consequences for the creation and dissemination of electronic information, including gambling-related content.

The proliferation of online gambling is further exacerbated by its transnational nature, which relies on offshore servers, electronic payment systems, digital assets, and algorithm-driven social media promotion.¹ Unlike conventional gambling, online gambling is accessible regardless of time or location, making it substantially more difficult to regulate and suppress. Its adverse effects extend beyond financial losses to include household indebtedness, money laundering, cyber fraud, mental health disorders, and other criminal activities associated with gambling addiction. Despite government efforts to block gambling websites, monitor digital platforms, and strengthen law enforcement, online gambling promotion continues to expand through increasingly sophisticated strategies that exploit influencers' popularity and the high level of public trust they command.

In Indonesia, gambling is prohibited under Articles 303 and 303 bis of the Indonesian Criminal Code and further regulated under Article 27(2) in conjunction with Article 45(3) of Law Number 1 of 2024 concerning Electronic Information and Transactions. These provisions prohibit any person from intentionally and without lawful authority distributing, transmitting, or making accessible electronic information containing gambling-related content. Nevertheless, the rapid evolution of digital marketing practices has raised important questions regarding the adequacy of the existing legal framework to address the diverse forms of influencer involvement, particularly with respect to establishing criminal intent, determining the form of participation, proving causation, and defining the limits of criminal liability.

The growing body of scholarship on online gambling and the criminal liability of individuals involved in disseminating gambling-related content through social media reflects the expanding role of digital platforms as promotional channels. Contemporary

¹ Lorin Imogen, "Legal Efforts in Tackling the Spread of Online Gambling Promotions on Social Media in Indonesia," *International Journal of Multidisciplinary Research and Analysis* 08, no. 03 (2025): 1374–81, <https://doi.org/10.47191/ijmra/v8-i03-55>.

online gambling networks extend well beyond operators and gamblers to include influencers, affiliates, internet celebrities, streamers, and content creators who derive financial benefits from distributing gambling links, advertisements, and other promotional materials. This development has prompted increasing academic attention to the legal foundations for imposing criminal liability under the Indonesian Criminal Code, the Electronic Information and Transactions Law, and other regulations governing electronic systems. However, existing studies have largely concentrated on the constituent elements of criminal offenses, the effectiveness of law enforcement, and judicial decision analysis, whereas the construction of influencer liability from the perspective of modern criminal law theory has received comparatively limited scholarly attention.

One of the earliest studies, conducted by Nono et al., concluded that promoting online gambling websites through Instagram constitutes the electronic dissemination of gambling-related information and is therefore punishable under both the Indonesian Criminal Code and the Electronic Information and Transactions Law.² Similarly, Rodhiyah et al. argued that any individual who satisfies the legal elements of an online gambling offense may be held criminally liable, although their analysis primarily focused on principal offenders involved in gambling operations.³ More recently, Asra et al. identified several significant obstacles to effective law enforcement, including difficulties in obtaining digital evidence, the use of offshore servers, limited investigative capacity, and insufficient public participation. These findings suggest that the challenge of combating online gambling extends beyond the adequacy of substantive criminal law to encompass the practical effectiveness of criminal law enforcement within the digital environment.⁴

More recent scholarship has increasingly examined the legal status of influencers as third parties who facilitate the dissemination of online gambling promotions. Hapsari concluded that TikTok influencers may incur criminal liability when it can be established that they acted intentionally (*mens rea*) and were aware that the content they promoted constituted online gambling.⁵ Likewise, Bimantara and Sumardiana and Ridwansyah et al. argued that the primary challenges to effective law enforcement stem from difficulties in obtaining and authenticating digital evidence, thereby underscoring

² Ignasius Yosanda Nono et al., "Penegakan Hukum Terhadap Selebgram Yang Mempromosikan Situs Judi Online," *Jurnal Analogi Hukum* 3, no. 2 (2021): 235–39, <https://doi.org/10.22225/ah.3.2.2021.235-239>.

³ Isyatur Rodhiyah et al., "Pertanggung Jawaban Pelaku Tindak Pidana Perjudian Online Di Indonesia," *Al Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 2 (2022): 591–600, <https://doi.org/10.37680/almanhaj.v4i2.1986>.

⁴ Akbar Nur Wijaya Asra et al., "Penegakan Hukum Terhadap Tindak Pidana Perjudian Online Dari Perspektif Hukum Informasi Dan Transaksi Elektronik: Studi Kasus Kota Kupang," *Referendum: Jurnal Hukum Perdata Dan Pidana* 1, no. 4 (2024): 184–94, <https://doi.org/10.62383/referendum.v1i4.348>.

⁵ Angellica Anvi Hapsari, "Analisis Pertanggungjawaban Pidana Influencer Pelaku Endorse Judi Online Di Tiktok Ditinjau Dari UU ITE No. 1 Tahun 2024," *Jurnal Dinamika Sosial Dan Sains* 2, no. 7 (2025): 989–95, <https://doi.org/10.60145/jdss.v2i7.211>.

the need for stronger regulatory frameworks, enhanced digital literacy, and greater interagency coordination.⁶ These studies further contend that influencers who knowingly promote gambling websites may be prosecuted as accomplices under Indonesian criminal law, although the existing legal framework does not specifically regulate the distinctive characteristics of gambling promotion through social media.

A complementary line of research has adopted a case law approach to examine judicial interpretations of influencer liability. Putri et al., through the analysis of Decision No. 871/Pid.Sus/2022/PN.Tjk⁷, and Sujono, through Decision No. 907/Pid.Sus/2022/PN.PLG, found that affiliates and social media influencers who promote online gambling satisfy the constituent elements of criminal offenses under both the Indonesian Criminal Code and the Electronic Information and Transactions Law.⁸ Meanwhile, Ona et al. and Rahayu et al. identified persistent shortcomings in the substantive legal framework, the use of electronic evidence, and the effectiveness of law enforcement against online gambling promotions.⁹ Mahmudi et al. further argued that imposing equivalent criminal sanctions on principal offenders and individuals who merely distribute gambling links does not fully conform to the principle of proportionality in criminal punishment.¹⁰

Despite these contributions, previous studies have generally concentrated on the constituent elements of criminal offenses, the application of the Indonesian Criminal Code and the Electronic Information and Transactions Law, or the effectiveness of law enforcement in addressing online gambling promotions conducted by influencers. To date, no study has comprehensively examined both the adequacy of Indonesia's legal framework governing the dissemination of online gambling promotions through electronic systems and the construction of influencer liability based on H.L.A. Hart's theory of criminal responsibility. The integration of these two dimensions represents the principal contribution of the present study, offering a more comprehensive and

⁶ Okta Bimantara and Benny Sumardiana, "Tinjauan Yuridis Terhadap Fenomena Selebgram Yang Mempromosikan Situs Perjudian Online Di Media Sosial," in *Bookchapter Hukum Dan Lingkungan*, vol. 1 (Universitas Negeri Semarang, 2025), <https://bookchapter.unnes.ac.id/index.php/hk/article/view/563>; Muhammad Ramadhan Ridwansyah et al., "Pertanggungjawaban Pidana Influencer Atas Endorse Judi Online: Kajian Kejahatan Siber Di Indonesia," *Jurnal Hukum Lex Generalis* 6, no. 7 (2025): 1–13, <https://doi.org/10.56370/jhlg.v6i7.1173>.

⁷ Sarah Adinda Putri et al., "Pertanggungjawaban Pidana Terhadap Affiliator Judi Online: Studi Putusan Nomor 871/Pid.Sus/2022/PN.Tjk," *Indonesian Journal of Law and Justice* 2, no. 4 (2025): 18, <https://doi.org/10.47134/ijlj.v2i4.4390>.

⁸ Rizky Audika Viratama Sujono, "Pertanggungjawaban Pidana Pelaku Selebgram Yang Mengiklankan Produk Judi Online Pada Media Instagram: Putusan Nomor 907/Pid.Sus/2022/PN.Plg," *Integrative Perspectives of Social and Science Journal* 2, no. 2 (2025): 1469–77.

⁹ Maria Natalia Ona et al., "Pertanggungjawaban Pidana Terhadap Selebgram Pelaku Promosi Judi Online Pada Media Sosial Instagram," *Global Research and Innovation Journal* 2, no. 1 (2026): 755–69; Anggita Dwi Rahayu et al., "Criminal Liability of Influencers as Online Gambling Affiliates from the Perspective of Information Technology Law," *Media Hukum Indonesia* 4, no. 1 (2026): 147–54, <https://doi.org/10.5281/ZENODO.17847357>.

¹⁰ Handriyani Cahya Mahmudi et al., "Pertanggungjawaban Pidana Terhadap Pelaku Penyebaran Situs Judi Online: Studi Kasus Putusan Pengadilan Negeri Payakumbuh Nomor 123/Pid.Sus/2023," *Khatulistiwa: Jurnal Pendidikan Dan Sosial Humaniora* 5, no. 4 (2025): 998–1013, <https://doi.org/10.55606/khatulistiwa.v5i4.10340>.

legally certain framework for defining the limits of criminal liability applicable to influencers.

Accordingly, this study aims to evaluate the adequacy of Indonesia's legal framework governing the dissemination of online gambling promotions through electronic systems by examining the harmonization of the Indonesian Criminal Code, Law Number 1 of 2024 concerning Electronic Information and Transactions, and other relevant legislation. In addition, the study develops a framework for influencer criminal liability grounded in H.L.A. Hart's theory of criminal responsibility to establish proportionate limits of liability, enhance legal certainty, and strengthen the effectiveness of criminal law enforcement in combating online gambling promotion.

2. RESEARCH METHODOLOGY

This study employs a normative legal research design that focuses on analyzing the legal norms governing the promotion of online gambling through electronic systems and constructing a framework for influencer criminal liability. A normative approach is appropriate because the study seeks to evaluate the adequacy of Indonesia's positive law and develop normative legal arguments grounded in legal principles, doctrine, and criminal law theory, rather than examining social behavior through empirical methods. To achieve these objectives, the research adopts three complementary approaches: the statutory approach, the conceptual approach, and the case approach.

The statutory approach is used to examine the harmonization of the Indonesian Criminal Code, Law Number 1 of 2024 concerning Electronic Information and Transactions, and other relevant legislation governing online gambling. The conceptual approach draws upon H.L.A. Hart's (1968) theory of criminal responsibility to analyze the relationship among culpability, criminal responsibility, forms of participation, and the normative justification for imposing criminal liability on influencers. The case approach involves an analysis of judicial decisions concerning the promotion of online gambling to evaluate how statutory provisions have been interpreted and applied in judicial practice.

The study relies exclusively on secondary data, consisting of primary, secondary, and tertiary legal materials collected through comprehensive library research. Primary legal materials include statutes and judicial decisions, while secondary materials comprise scholarly literature and legal commentaries, supported by relevant tertiary sources. All legal materials are analyzed using a qualitative-prescriptive method involving the inventory and classification of legal materials, the synchronization of legal norms, statutory interpretation, and legal construction. This analytical framework is employed to formulate a systematic and proportionate model of influencer criminal liability that enhances legal certainty and strengthens the effectiveness of law

enforcement against the promotion of online gambling through electronic systems in Indonesia.

3. RESEARCH RESULT AND DISCUSSION

3.1. Adequacy of Indonesia's Legal Framework for the Dissemination of Online Gambling Promotions Through Electronic Systems

Indonesia has established a relatively comprehensive legal framework for regulating the dissemination of online gambling promotions through electronic systems. This framework has evolved through the harmonization of the general gambling provisions contained in Articles 303 and 303 bis of the Indonesian Criminal Code with the specific provisions set forth in Article 27(2) in conjunction with Article 45(3) of Law Number 1 of 2024 concerning Electronic Information and Transactions (ITE Law). From the perspective of the criminal justice system, these two legal regimes operate in a complementary manner.

The Indonesian Criminal Code criminalizes gambling as an offense against public order, whereas the ITE Law extends the scope of criminalization to include the electronic distribution, transmission, or making available of electronic information containing gambling-related content through digital platforms. Accordingly, the harmonization of these legal instruments provides a sufficient legal basis for addressing the transformation of gambling from conventional physical activities to offenses committed through electronic systems.

The statutory terms “distributing,” “transmitting,” and “making accessible electronic information,” as formulated in Article 27(2) of the ITE Law, are sufficiently broad to encompass various forms of digital promotion conducted through social media platforms. Influencer activities—including posting links to gambling websites through Instagram Stories, embedding hyperlinks in social media profiles, distributing affiliate referral codes, publishing sponsored promotional content, or directing followers to online gambling platforms—constitute forms of conduct that legally satisfy the elements of distributing or making accessible electronic information containing gambling-related content. Therefore, although the legislation does not expressly refer to influencers, the substantive wording of the ITE Law is sufficiently broad to encompass contemporary forms of digital promotion.

The adequacy of Indonesia's legal framework is demonstrated not only by its normative structure but also by its practical application in law enforcement. Several criminal cases illustrate the consistent application of Article 27(2) in conjunction with Article 45(3) of the ITE Law against influencers who promoted online gambling through social media. Cases involving the arrest of a social media celebrity in Madiun, the prosecution of four influencers in Batam, and the conviction of Komang Ayu Cahyani by the Singaraja District Court demonstrate that law enforcement authorities

have interpreted promotional activities on social media as constituting the electronic dissemination of gambling-related information. Moreover, judicial reasoning in several decisions has emphasized that the receipt of financial compensation for promotional activities reinforces the element of criminal intent (*mens rea*) while also establishing a causal relationship between the promotional conduct and the increased accessibility of online gambling platforms.

The harmonization of the Indonesian Criminal Code and the ITE Law has therefore produced a legal enforcement mechanism capable of accommodating developments in information technology and digital communications. Consistent with the principle of *lex specialis derogat legi generali*, the ITE Law functions as a specialized legal instrument that complements the general gambling provisions of the Criminal Code, thereby providing law enforcement authorities with a clear legal basis for prosecuting the promotion of online gambling through electronic systems. This harmonized framework also minimizes the risk of regulatory gaps arising from the evolving methods by which criminal activities exploit social media as a marketing and promotional medium.

The findings of this study reinforce the conclusions reached by Hapsari, Rahayu et al., and Sujono, who argued that influencers who knowingly promote online gambling websites satisfy the statutory elements of criminal offenses under the ITE Law.¹¹ However, whereas previous studies primarily focused on establishing the constituent elements of criminal offenses and the potential criminal liability of influencers, the present study situates these issues within the broader framework of legal harmonization. Rather than limiting the analysis to the fulfillment of statutory offense elements, this study evaluates the adequacy of Indonesia's regulatory structure in responding to the continuously evolving characteristics of digital promotion. This perspective demonstrates that the effectiveness of criminal regulation depends not only on the existence of substantive criminal provisions but also on the coherence and interaction among general criminal law, specialized criminal legislation, and judicial enforcement practices.

Despite its overall adequacy, Indonesia's existing legal framework exhibits several important limitations. Article 27(2) of the ITE Law employs broad and general language without expressly regulating the roles of influencers, affiliates, content creators, or other digital marketing actors involved in promoting online gambling. This regulatory gap creates the potential for inconsistent interpretation and application in law enforcement, particularly where influencers claim that they were unaware the promoted content

¹¹ Rodhiyah et al., "Pertanggung Jawaban Pelaku Tindak Pidana Perjudian Online Di Indonesia"; Rahayu et al., "Criminal Liability of Influencers as Online Gambling Affiliates from the Perspective of Information Technology Law"; Sujono, "Pertanggungjawaban Pidana Pelaku Selebgram Yang Mengiklankan Produk Judi Online Pada Media Instagram: Putusan Nomor 907/Pid.Sus/2022/PN.Plg."

related to online gambling or argue that they were merely performing obligations under a commercial endorsement agreement.

In such circumstances, the determination of criminal liability depends largely on establishing the existence of criminal intent, the influencer's knowledge of the nature of the promoted content, the contractual relationship with the gambling operator, and the economic benefit derived from the promotional activity. Consequently, reliance on case-by-case judicial interpretation may produce inconsistent legal outcomes unless supported by clear and uniform interpretative guidelines.

The adequacy of a legal framework should not be assessed solely by the existence of criminal prohibitions,¹² but also by its capacity to respond effectively to developments in digital technology. The rapid evolution of social media has generated increasingly sophisticated forms of online promotion, including live streaming, embedded hyperlinks, affiliate marketing, algorithm-driven recommendations, and covert advertising integrated into entertainment content. Because these promotional techniques are not explicitly addressed in the current statutory framework, significant room remains for divergent interpretations in law enforcement and judicial practice. Accordingly, legislative harmonization should be complemented by comprehensive implementation guidelines that define the operational characteristics of digital promotional activities, establish objective indicators of active participation, specify standards for electronic evidence, and clarify the parameters for determining criminal intent in social media promotions.

The effectiveness of legal regulation depends on the interaction of three interrelated dimensions: the adequacy of substantive legal norms, the consistency of law enforcement, and the uniformity of judicial interpretation.¹³ These dimensions must function cohesively to ensure the effective criminalization of online gambling promotion. Where one dimension is deficient, legal certainty is diminished even when substantive criminal provisions are formally in place.

Accordingly, future legal reform should extend beyond increasing criminal sanctions and instead focus on refining statutory provisions that explicitly regulate the criminal liability of digital promoters, including influencers, affiliates, and other digital professionals who derive economic benefits from disseminating electronic information containing gambling-related content. Such reforms would provide greater legal certainty while ensuring that criminal liability is imposed consistently and proportionately.

Indonesia's legal framework is, in principle, sufficient to address the dissemination of online gambling promotions through electronic systems, as the harmonization of the

¹² Jacob Barrett and Gerald F. Gaus, "Laws, Norms, and Public Justification: The Limits of Law as an Instrument of Reform," in *Public Reason and Courts*, 1st ed., ed. Silje Langvatn et al. (Cambridge University Press, 2020), <https://doi.org/10.1017/9781108766579.009>.

¹³ Donny Widiyanto and Azis Budianto, "Reforming the Limits of Discretion and Strengthening the Police Code of Ethics in Achieving Justice in Law Enforcement," *Jurnal Impresi Indonesia* 3, no. 12 (2024): 907–15, <https://doi.org/10.58344/jii.v3i12.5731>.

Indonesian Criminal Code and the ITE Law provides a solid legal basis for criminalizing such conduct. Nevertheless, this adequacy remains primarily substantive rather than fully operational. The absence of explicit statutory provisions governing the legal status of influencers and the distinctive characteristics of contemporary digital promotion continues to create uncertainty in law enforcement and judicial practice. The principal finding of this study is that strengthening legal certainty does not require the creation of new criminal offenses targeting influencers. Instead, it requires the refinement of existing legal norms and the development of clear implementation guidelines capable of aligning advances in information technology with the principles of modern criminal law, thereby promoting consistent, proportionate, and adaptive enforcement in the evolving digital environment.

3.2. Constructing Influencer Criminal Liability for the Promotion of Online Gambling Through Social Media

The rapid expansion of social media has transformed influencers from content creators into strategic actors within the digital marketing ecosystem. The trust established between influencers and their followers enables recommendations and promotional content to exert substantial influence over public attitudes and behavior. This influence has been increasingly exploited by online gambling operators to disseminate electronic information containing gambling-related content through various promotional mechanisms, including paid endorsements, affiliate marketing, embedded hyperlinks, referral codes, Instagram Stories, and live-streaming platforms. Consequently, when influencers knowingly use their social media accounts to introduce or direct users to online gambling platforms, they can no longer be regarded as neutral intermediaries but instead become legal actors involved in the dissemination of electronic information containing gambling-related content.

The legal basis for imposing criminal liability on influencers is established through the harmonization of Article 27(2) in conjunction with Article 45(3) of the ITE Law and the general provisions governing criminal participation under the Indonesian Criminal Code. These statutory provisions do not distinguish offenders based on their profession or occupational status. Rather, they focus on the intentional act of distributing, transmitting, or making accessible electronic information containing gambling-related content. Accordingly, influencers who actively post links to gambling websites, incorporate affiliate referral codes, publish sponsored promotional content, or direct followers to online gambling platforms engage in conduct that falls within the scope of activities prohibited by law. Their criminal liability is therefore determined by their affirmative conduct rather than by their professional identity as digital marketers or social media personalities.

Consistent with H.L.A. Hart's theory of criminal responsibility, criminal liability may be imposed only where a clear relationship exists among the prohibited conduct, culpability, criminal responsibility, and the absence of any grounds for exculpation.¹⁴ The criminal liability of influencers cannot be established solely because gambling-related promotional content has been disseminated. Instead, the prosecution must demonstrate that the influencer knew the promoted content related to online gambling, intentionally engaged in the promotional activity for economic gain, possessed the legal capacity to understand the consequences of the conduct, and lacked any legally recognized justification or excuse that would preclude criminal responsibility.

Judicial practice in Indonesia demonstrates that these four elements have been consistently considered in cases involving the promotion of online gambling. In one case involving a social media celebrity from Madiun, investigators established that the defendant received financial compensation from the operator of an online gambling website and knowingly published promotional content through social media accounts. These facts satisfied the element of culpability because the defendant was aware that the promoted activity was prohibited by law yet continued to engage in the promotion for financial benefit.

A similar pattern emerged in the prosecution of four influencers in Batam, who actively embedded links to online gambling websites in their Instagram Stories and account biographies in exchange for monetary compensation. Likewise, in the Singaraja District Court's decision involving Komang Ayu Cahyani, the panel of judges concluded that the defendant possessed the capacity for criminal responsibility, fully understood the legal consequences of her conduct, and lacked any justification or excuse that would negate criminal liability. Consequently, the court held that the imposition of criminal sanctions was consistent with the fundamental principles of criminal responsibility.

Hart's theory of criminal responsibility provides a more comprehensive analytical framework than approaches limited to determining whether the statutory elements of a criminal offense have been satisfied.¹⁵ Rather than focusing exclusively on the objective elements of the offense, Hart conceptualizes criminal liability as arising from the interaction among the prohibited act, culpability, criminal responsibility, and the normative justification for punishment.¹⁶ Under this framework, not every influencer whose content is associated with online gambling should automatically incur criminal liability. Criminal sanctions are justified only where there is convincing evidence of intentional and active participation, the capacity for criminal responsibility, and the absence of legally recognized grounds for exculpation. This approach is consistent with the fundamental principle of criminal law, *geen straf zonder schuld* ("no punishment without

¹⁴ H. L. A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford University Press, 1968).

¹⁵ Hart, *Punishment and Responsibility: Essays in the Philosophy of Law*.

¹⁶ Hart, *Punishment and Responsibility: Essays in the Philosophy of Law*.

fault”), which requires that criminal liability be predicated upon proven culpability rather than mere involvement.

This perspective reinforces the findings of Ona et al., Rahayu et al., Rodhiyah et al., and Sujono, who concluded that influencers and affiliates who knowingly promote online gambling may be held criminally liable under the provisions of the ITE Law.¹⁷ However, these studies primarily focus on establishing the constituent elements of the offense and identifying the statutory basis for criminal punishment. Comparatively less attention has been devoted to developing a comprehensive theoretical framework for determining the scope and limits of influencer criminal liability.

Criminal liability cannot be established solely on the basis of the existence of criminal prohibitions. Rather, it must be constructed through an analysis of the relationship among the prohibited conduct, culpability, criminal responsibility, and the absence of legally recognized grounds for exculpation (Hart, 1968). Building on this theoretical foundation, the present study proposes a more systematic framework for defining the boundaries of influencer criminal liability within the context of online gambling promotion.

The emergence of influencers as key participants in the digital economy necessitates a reconstruction of criminal liability that is responsive to the unique characteristics of cyberspace. Unlike conventional gambling operators, influencers generally facilitate public access to online gambling without directly acting as organizers or participants in gambling activities. Consequently, their criminal liability should not automatically be equated with that of principal offenders. Instead, liability should be determined by considering several objective factors, including the influencer’s contribution to the dissemination of electronic information containing gambling-related content, knowledge of the nature of the promoted content, the economic benefits received, and the degree of active involvement in the promotional activity. Such an approach reflects the principle of proportionality in criminal law while avoiding the overcriminalization of legitimate digital marketing activities undertaken without culpability.

Based on this analysis, the present study develops a framework for influencer criminal liability consisting of four essential elements. First, there must be a legal basis, demonstrated by the fulfillment of the statutory elements prescribed in Article 27(2) in conjunction with Article 45(3) of the ITE Law. Second, the prosecution must establish culpability, evidenced by the influencer’s knowledge of the nature of the promoted content, the intention to disseminate electronic information containing gambling-related

¹⁷ Ona et al., “Pertanggungjawaban Pidana Terhadap Selebgram Pelaku Promosi Judi Online Pada Media Sosial Instagram”; Rahayu et al., “Criminal Liability of Influencers as Online Gambling Affiliates from the Perspective of Information Technology Law”; Rodhiyah et al., “Pertanggung Jawaban Pelaku Tindak Pidana Perjudian Online Di Indonesia”; Sujono, “Pertanggungjawaban Pidana Pelaku Selebgram Yang Mengiklankan Produk Judi Online Pada Media Instagram: Putusan Nomor 907/Pid.Sus/2022/PN.Plg.”

material, and the existence of a financial or economic motive. Third, the influencer must possess criminal responsibility (capacity), meaning the legal ability to understand both the unlawful nature of the conduct and its legal consequences. Fourth, there must be an absence of legally recognized grounds for justification or excuse that would preclude criminal liability. Collectively, these four elements provide objective and systematic criteria for determining whether an influencer may be held criminally responsible for promoting online gambling through electronic systems.

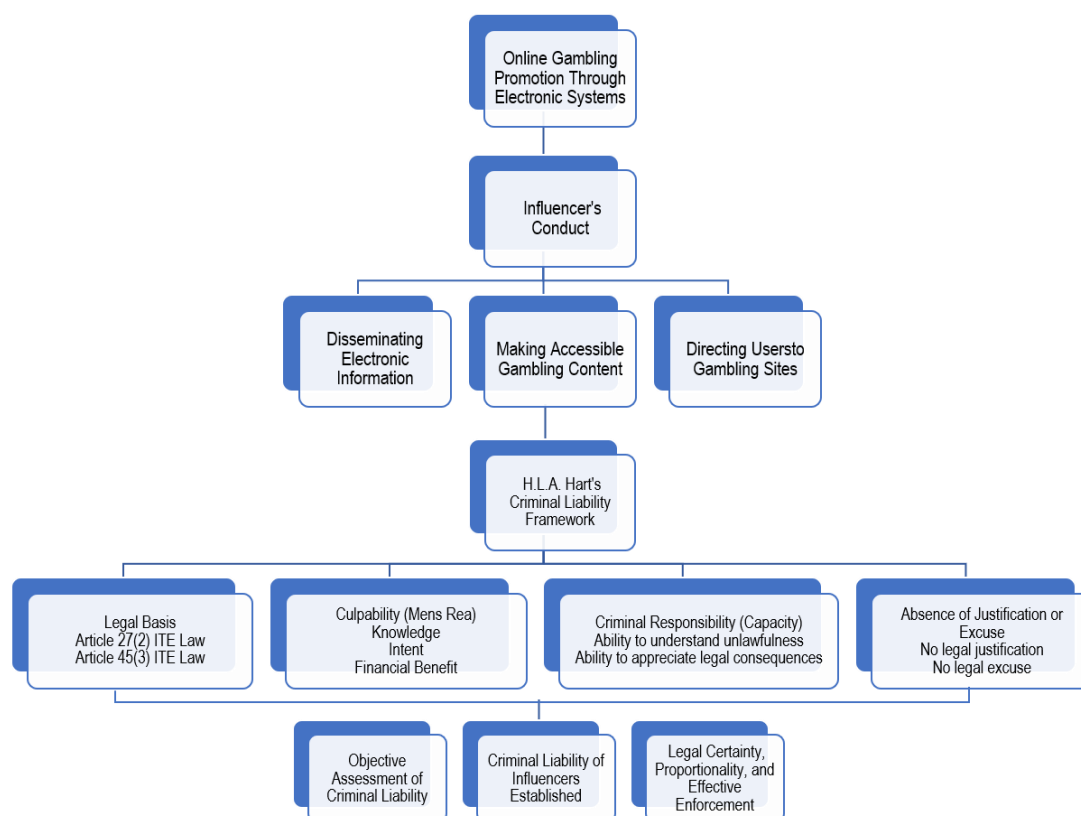


Figure 1. Framework of Influencer Criminal Liability for the Promotion of Online Gambling Through Electronic Systems

Strengthening legal certainty does not require the creation of new criminal offenses specifically targeting influencers. Instead, it requires the refinement of existing legislation to explicitly define the responsibilities of digital promoters, the development of comprehensive law enforcement guidelines identifying prohibited forms of digital promotion, the establishment of clear evidentiary standards for proving criminal intent, and enhanced coordination between law enforcement authorities and electronic system operators. The framework of criminal liability proposed in this study not only provides a normative formulation for defining the limits of influencer criminal responsibility but also offers a conceptual model capable of enhancing legal certainty, preserving the principle of proportionality in criminal punishment, and improving the effectiveness of

law enforcement against the promotion of online gambling through social media in Indonesia.

4. CONCLUSION

The harmonization of the Indonesian Criminal Code and Law Number 1 of 2024 concerning Electronic Information and Transactions provides a sufficient legal foundation for prosecuting influencers who intentionally distribute or make accessible electronic information containing online gambling content. Nevertheless, the existing statutory framework remains broadly formulated and does not expressly address the diverse forms of digital promotion conducted by influencers, affiliates, and content creators. As a result, the absence of explicit regulatory provisions may give rise to inconsistent interpretation and application in law enforcement practice.

This study proposes a framework for influencer criminal liability based on four essential elements: (1) a valid legal basis, (2) the establishment of culpability, (3) the capacity for criminal responsibility, and (4) the absence of legally recognized grounds for justification or excuse. Under this framework, criminal liability is not predicated on an individual's status as an influencer or content creator, but rather on the individual's intentional and active participation in expanding public access to online gambling through electronic systems. The findings of this study are expected to provide guidance for legislators and law enforcement authorities in refining the existing regulatory framework, enhancing legal certainty, and strengthening the effectiveness of criminal law enforcement against the promotion of online gambling in Indonesia.

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