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Application of Article 427 of Law Number 1 of 2023 concerning the Indonesian Criminal Code to the Crime of Online Gambling (A Study of Decision Number 1090/Pid.B/2026/PN Sby)

Adef Dio Brahmana[1], Erry Meta[2]
[1] Universitas Wijaya Putra, Indonesia,
[2] Universitas Wijaya Putra, Indonesia
* Correspondence e-mail: adefdiob@gmail.com[1], errymeta@uwp.sac.id[2]

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Abstract

The proliferation of online gambling in Indonesia has created new challenges for criminal law enforcement, particularly following the enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP Nasional), which reformulates gambling offenses through Articles 426 and 427. While Article 426 targets organizers or those who make gambling a livelihood, Article 427 addresses individuals who merely use an opportunity to gamble without a license, reflecting a gradation of culpability that requires precise judicial identification of the offender's role. This study examines how Article 427 was applied in Decision Number 1090/Pid.B/2026/PN Sby, a case involving an online slot gambling player in Surabaya, in order to assess the consistency between the elements of the alternative charge, the judge's legal reasoning, and the sentence rendered. This research employs a normative juridical method with statutory and case approaches, analyzing primary legal materials consisting of relevant statutes and the court decision, supplemented by secondary legal literature. The findings indicate that both elements of Article 427 namely "every person" and "using an opportunity to gamble held without a license" were proven through consistent witness testimony, the defendant's statement, and physical evidence, justifying the judge's choice of the alternative charge over Article 426. However, the analysis reveals a disparity between the prosecutor's demand and the verdict, as well as an inconsistency between the judge's stated preventive sentencing objectives and the omission of additional sanctions targeting the gambling website itself, suggesting a structural weakness in the enforcement of online gambling law in Indonesia.

Keywords Article 427 of the Indonesian Criminal Code; Court Decision; Criminal Liability; Judicial Consideration; Online Gambling.

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INTRODUCTION

In today's digital age, advances in information and communication technology have made it easier for people to access information and interact without the constraints of distance or time (Yunanta, Nugrohob, Irsyadc, Tombakmataharid, &

Dwipayana, 2026). The development of information and communication technology driven by globalization has transformed people's lifestyles and spurred transformation in various fields, including social, economic, cultural, security, and law enforcement (Kudadiri, Najemi, & Erwin, 2023). However, while offering numerous conveniences, technological advancements can also be exploited to commit criminal acts, one of which is online gambling, which can be accessed through websites, apps, social media, and various other digital platforms (Istiqomah, 2026). This situation is not only an issue regarding the use of technology but also presents new challenges for law enforcement in addressing online gambling crimes.

Gambling, which was previously conducted in a conventional manner and limited by space and time, has now transformed into a digital activity that is widely accessible, fast, and relatively anonymous via electronic devices and the internet (Belgradoputra & Mardani, 2026). The phenomenon of online gambling is growing very rapidly in Indonesia as the number of internet users increases (Widjaya, Sukmalalana, Oktaviani, & Septuaji, 2022). Data from the Ministry of Communication and Digital Affairs of the Republic of Indonesia indicates that the government routinely blocks access to hundreds of thousands of pieces of content and websites suspected of hosting online gambling activities (Komdigi, 2025). The issue of online gambling is not only a legal violation but can also be linked to other criminal offenses, such as money laundering, digital fraud, and the misuse of personal data (Hammar, Silubun, & Renuat, 2026). In addition to raising legal issues, these activities also have the potential to cause financial losses, debt, job loss, and family conflicts resulting from gambling addiction.

Historically, gambling has been one of the activities regulated under criminal law in Indonesia. In principle, various forms of gambling are viewed as acts contrary to the law, and regulations governing them are set forth in the Criminal Code (KUHP) as well as in a number of other laws and regulations. However, the existence of online gambling presents unique challenges for law enforcement, particularly because many gambling platforms operate from outside Indonesia's jurisdiction (Hermansyah et al., 2023). This situation makes the process of taking action against perpetrators and operators of online gambling more complex. This demonstrates that technological advancements have given rise to new forms of crime that require adjustments to Indonesia's law enforcement system.

As the national criminal law system has evolved, regulations regarding gambling have been amended through Law No. 1 of 2023 on the Criminal Code. Law No. 1 of 2023 is one of the instruments in the reform of the national criminal law system,

particularly through Articles 426 and 427. Article 426 addresses the act of offering others the opportunity to gamble without a license and making gambling a source of livelihood. Such acts are punishable by imprisonment for a maximum of 9 years or a fine not exceeding Category VI. Unlike Article 426, which addresses organizers, Article 427 establishes criminal liability for any person who takes advantage of the opportunity to participate in gambling activities conducted without a license, punishable by imprisonment for a maximum of 3 years or a fine not exceeding Category III. This difference in wording reflects distinct characteristics of the acts and the roles of the perpetrators in gambling-related criminal offenses. Therefore, the determination of which criminal provisions apply must be based on an accurate identification of the nature of the act, the status, and the level of involvement of the perpetrator in the gambling activity.

Legally speaking, the imposition of criminal sanctions on online gambling offenders is part of the implementation of criminal law policy aimed at imposing legal consequences for the acts committed while also preventing the recurrence of similar criminal offenses (Nurdiansyah, Mugni, & Lailiyah, 2024). In practice, law enforcement regarding online gambling requires an analysis of the nature of the acts committed by the offenders, how the perpetrators utilize gambling opportunities, the presence of the "unauthorized" element, and the connection between the legal facts revealed during the trial and the elements of the criminal offense as stipulated in Article 427 of Law No. 1 of 2023 (Achmadi & Suciyani, 2026). As stated by Sutarso, Hutauruk, & Sinambela (2026), criminal liability is not only based on the fulfillment of the elements of a criminal offense but must also take into account fault, capacity to be held responsible, the nature of the act, the degree of involvement, and the circumstances surrounding the perpetrator. Thus, sentencing must be based on comprehensive considerations so that the application of sanctions complies with legal provisions and reflects justice.

One of the online gambling cases in Surabaya involved the defendant Ahmad Nadhir, who was found to have gambled online on slot games using a cell phone. The defendant had been gambling for approximately one month by making deposits via QRIS using the DANA app, including a deposit of Rp10,000.00 from his personal funds as gambling capital. These actions were subsequently prosecuted under the provisions of criminal law as set forth in Judgment No. 1090/Pid.B/2026/PN Sby. The defendant AHMAD NADHIR's actions violated Article 426(1)(c) of Law No. 1 of 2023 on the Criminal Code, as amended by Law No. 1 of 2026 on Criminal Law Adjustments. This judgment is of particular interest for analysis because it was issued after the National

Criminal Code came into effect and provides insight into how the National Criminal Code's provisions on gambling offenses are applied to online gambling cases. An analysis of this ruling is important to examine the relationship between the provisions in Article 427 of Law No. 1 of 2023 and the legal facts revealed during the trial, the judge's legal reasoning, and the fulfillment of the elements of the criminal offense charged against the defendant.

Based on the above discussion, this study aims to analyze the application of Article 427 of Law No. 1 of 2023 on the Criminal Code to the crime of online gambling in Judgment No. 1090/Pid.B/2026/PN Sby, using a normative legal research method. This study focuses on analyzing statutory provisions, concepts of criminal law, and the legal reasoning in the court decision that is the subject of this study. An examination of Judgment No. 1090/Pid.B/2026/PN Sby is important to understand how the provisions of Article 427 of Law No. 1 of 2023 are applied by judges to the criminal offense of online gambling.

METHODS

This study employs a normative legal approach to analyze the application of criminal cases against online gambling offenders as stipulated in Law No. 1 of 2023 on the Criminal Code. The normative legal approach is used to examine various legal sources, including relevant laws and court decisions. This approach aims to analyze the application of the provisions of Article 427 of Law No. 1 of 2023 on the Criminal Code to the crime of online gambling. The data collection techniques used in this study consist of a literature review and a document analysis, examining primary and secondary legal materials related to the application of Article 427 of Law No. 1 of 2023 to the criminal offense of online gambling.

FINDINGS AND DISCUSSION

Case Background and Identification of the Charges

Case No. 1090/Pid.B/2026/PN Sby originated from the arrest of the Defendant, Ahmad Nadhir, by Team 1 of the Surabaya Metropolitan Police Mobile Brigade (Resmob) on Thursday, February 26, 2026, at approximately 2:30 p.m. WIB, at Warkop STK, 232 Siwalankerto Timur Street, Siwalankerto Timur Village, Wonocolo Subdistrict, Surabaya City. The arrest took place precisely while the Defendant was using his cell phone to play an online slot game specifically, PG Soft's Mahjong Ways 1 via the 456WIN website. Based on the facts revealed during the trial, approximately thirty minutes before the arrest specifically at 2:00 p.m. WIB the Defendant opened the

website via the Google Chrome app, logged into his registered account, and then made a deposit of Rp10,000.00 from his personal funds using the QRIS payment method via the DANA app. From that initial investment, the defendant managed to earn a profit of Rp50,000.00 before he was ultimately arrested.

The Public Prosecutor filed this case using an alternative indictment rather than a single charge. The alternative indictment was chosen because a single series of acts could potentially satisfy two different criminal offenses that differ in nature and the status of the perpetrator. The First Count is based on Article 426(1)(c) of Law No. 1 of 2023 on the Criminal Code in conjunction with Law No. 1 of 2026 on Criminal Adjustments, which governs the act of, without authorization, making participation in gambling a means of livelihood. The Second Charge, filed as an alternative ("OR"), is based on Article 427 of the same law, which governs the act of taking advantage of gambling activities organized without a license.

The fundamental difference between these two provisions lies in the status and intensity of the perpetrator's involvement. Article 426(1)(c) targets perpetrators who make gambling a sustainable source of income or livelihood, resulting in acts that are more structured and ongoing in nature, punishable by imprisonment for a maximum of nine years. In contrast, Article 427 targets perpetrators who are ordinary players taking advantage of available gambling opportunities, without making it their livelihood, carrying a significantly lighter penalty of up to three years' imprisonment. This difference in the structure of criminal penalties reflects a gradation in the seriousness of the offense: lawmakers view organizers or those who depend on gambling for their livelihood as offenders who deserve harsher punishment compared to individual players who occasionally take advantage of opportunities to gamble.

Analysis of the Fulfillment of the Elements of Article 427 of Law No. 1 of 2023

The Panel of Judges, based on the alternative nature of the charges, immediately chose to examine the Second Charge under Article 427, which consists of two elements, namely: (1) the element of "any person"; and (2) the element of "who takes advantage of gambling opportunities organized without a license."

Regarding the first element, the Panel of Judges interpreted the phrase "any person" to mean any holder of rights and obligations who can be held criminally liable, namely a human being as a legal subject. During the trial proceedings, the identity of the person appearing as the Defendant was verified and proven to match the identity listed in the indictment, namely Ahmad Nadhir. Thus, this element was deemed legally satisfied without requiring further debate, given its formal nature and the fact that it was not contested by any party during the trial.

Regarding the second element, which constitutes the core of the offense (bestanddeel delict) under Article 427, the Panel of Judges based its findings on the testimony of the witnesses, the Defendant's statement, and the corroborating physical evidence. This element can, in fact, be further broken down into three interrelated sub-elements. First, the existence of an active act of utilizing gambling facilities, which in this case took the form of accessing the website, logging in, making a deposit, and playing the slot game. Second, the "chance-based" nature or the element of chance as an essential characteristic of gambling, evident in the mechanics of the Mahjong Ways 1 game itself: the outcome of a win is determined by the random appearance of symbol combinations through the spin feature, not by the player's skill or control. This element of chance aligns with the general conception of gambling long upheld in Indonesian criminal law doctrine, namely that any game whose winning outcome fundamentally depends solely on luck. Third, the absence of a license from the competent authority, as evidenced by the Defendant's own testimony and that of witnesses that the 456WIN website does not hold a gambling operating license from any authority in Indonesia. Based on these three sub-elements, the Panel of Judges concluded that the second element had been legally satisfied; consequently, all elements of Article 427 were found to be proven, and the Defendant was found guilty in accordance with the second alternative charge.

Why the Judge Chose Article 427 Rather Than Article 426: A Study of the Quality of Legal Reasoning

The most interesting aspect of this ruling to examine critically is the way the Panel of Judges made its choice between the two alternative charges. In its reasoning, the Panel of Judges merely stated that "in light of the aforementioned legal facts, it directly selected the second alternative charge," without explicitly outlining the comparative considerations as to why the First Charge under Article 426(1)(c) was not selected or deemed inconsistent with the facts.

Theoretically, this practice aligns with the nature of alternative charges in criminal procedure law, which grants judges the discretion to directly select and prove the charge deemed most consistent with the trial evidence, without being bound by the obligation to prove charges sequentially starting with the earliest formulated charge. Thus, procedurally, the Panel of Judges' decision cannot be deemed erroneous or in violation of criminal procedure law. The substantive basis for selecting Article 427 is also justified by the facts revealed: The defendant was proven to have acted as a gambler placing bets with his own money, not as a manager, administrator, or organizer of gambling for others; thus, substantively, his actions are more

appropriately classified as "taking advantage of an opportunity" as referred to in Article 427, rather than "making a livelihood" as referred to in Article 426.

However, from the perspective of the quality of legal reasoning, the judge's lack of elaboration in explaining why the "livelihood" element in Article 426 is irrelevant to the facts of the case constitutes a flaw worthy of criticism. The fact that the Defendant had been gambling on the same website repeatedly for approximately one month until his arrest with a purpose he himself admitted was to seek profit actually raises the question of whether this pattern of conduct approaches the level of "continuity" required by Article 426, or remains purely incidental in nature as required by Article 427. The absence of an explicit comparative analysis in the legal reasoning of this decision indicates that the Panel of Judges tended to jump directly to a conclusion without clearly articulating, through argumentation, the distinguishing boundaries between the two provisions. For the sake of doctrinal development and consistency in the application of the law in the future, such a comparative analysis is important to include, given that the two articles carry significantly different criminal penalties; thus, a choice that is not adequately justified has the potential to lead to disparities in the application of the law in similar cases in the future.

The Court's Consideration of Aggravating and Mitigating Circumstances

Before imposing a sentence, the Panel of Judges considered the aggravating and mitigating circumstances as required by Article 197(1)(f) of Law No. 20 of 2025 on Criminal Procedure. Only one aggravating circumstance was cited: that the Defendant's actions were contrary to the government's program to eradicate online gambling. In contrast, the mitigating circumstances were described in greater detail, including the Defendant's polite demeanor during the trial, his admission of all his actions, the remorse he demonstrated, and the fact that the Defendant had no prior criminal record.

The disparity in the length and depth of the analysis between these aggravating and mitigating factors is worth noting. The aggravating factors listed are generic in nature and refer to general government policy, rather than to the specific characteristics of the Defendant's actions; thus, they have the potential to be applied uniformly to nearly all online gambling cases without adjustment to the specific facts of each case. This kind of formulaic reasoning, when compared to the more personal and contextual descriptions of mitigating factors, can create the impression that the judges' deliberations lean toward a lighter sentence. This is then relevant to the final sentencing outcome, as will be discussed further in the next section.

In determining the sentence, the Panel of Judges also referred to the sentencing guidelines as set forth in Articles 51 through 54 of Law No. 1 of 2023 on the Criminal Code. Pursuant to Article 51, the objectives of sentencing include the prevention of criminal acts through the enforcement of legal norms for the protection of society; the rehabilitation of the Defendant so that he may once again become a productive member of society; the resolution of conflicts and the restoration of balance and a sense of security within society; and the fostering of legal awareness in the Defendant. Pursuant to Article 52, the Panel also considered the degree of culpability and the Defendant's mental state as he was deemed to have consciously and voluntarily engaged in gambling the manner in which the criminal act was committed, which was deemed to indicate an element of planning, the impact of the act on society, and the Defendant's personal circumstances, as he comes from a family of middle-income status. Furthermore, pursuant to Article 53, the Panel of Judges considered the balance between the interest in the Defendant's rehabilitation so that the imposed sentence is not merely punitive but also serves rehabilitative and preventive purposes.

Discrepancy Between the Prosecutor's Sentencing Recommendation and the Judge's Ruling

One of the most significant findings in this case is the clear discrepancy between the criminal sentence recommended by the prosecutor and the ruling handed down by the panel of judges. The Public Prosecutor sought a prison sentence of one year and six months, accompanied by an additional penalty in the form of the public posting of the court's verdict on the local government's bulletin board with costs borne by the convicted person as well as forfeiture in the form of the destruction (deactivation) of the 456WIN website through the ministry responsible for government affairs in the field of communications and digital technology. The verdict handed down by the Panel of Judges, however, consisted only of a one-year prison sentence, without any additional penalties other than the forfeiture of the evidence namely, the defendant's cell phone to the state.

There are two aspects of the disparity that warrant in-depth discussion. First, the disparity in the principal sentence specifically, the reduction from one year and six months to one year, or a reduction of six months. This reduction can be understood as a logical consequence of the Panel of Judges identifying more mitigating factors than aggravating factors, as discussed in the previous section. In line with the principle that judges are not absolutely bound by the criminal charges filed by the Public Prosecutor (the principle of judicial independence in rendering a verdict based on the evidence and the judge's own conviction), this reduction in the principal sentence cannot be

categorized as a legal deviation but rather as a manifestation of the independence of the judiciary.

Second, and more substantively worthy of criticism, is the Panel of Judges' failure to impose any additional penalties at all, particularly regarding the seizure or destruction of the 456WIN website. In fact, such an additional penalty serves a function and purpose that is fundamentally different from the principal penalty: while the principal penalty focuses on the defendant's individual liability, the additional penalty in the form of deactivating the gambling website is aimed at general prevention, namely preventing the site from continuing to operate and potentially harming or ensnaring other players in the future. The failure to impose this additional penalty raises critical questions regarding the consistency between the legal reasoning developed by the Panel of Judges and the ruling's disposition. As outlined in the previous section, the Panel of Judges explicitly cited Article 51 of the National Criminal Code, which identifies "preventing the commission of criminal act for the protection and welfare of society" as one of the purposes of criminal punishment. However, this preventive objective is not concretely reflected in the judgment's disposition, given that the 456WIN website which served as the means through which the Defendant committed the offense was not addressed at all by this judgment and remains potentially accessible and usable by others. This disconnect between the philosophical reasoning and the concrete outcome in the judgment's disposition constitutes the most substantial weakness in the analyzed decision.

The Proportionality of the Imposed Sentence to the Purposes of Punishment Under the National Criminal Code

If the one-year prison sentence imposed on the Defendant is assessed from the perspective of proportionality between the severity of the offense and the severity of the sanction, it is important to note that the scale of the offense was actually relatively small: the gambling stake was only Rp10,000.00 and the profit obtained was Rp50,000.00, with a duration of involvement that, according to the facts of the indictment, lasted approximately one month. This small scale of losses and profits stands in stark contrast to the nature of large-scale online gambling cases involving significant cash flows or organized networks of operators.

In this context, it is important to examine whether imprisonment is the form of punishment most consistent with the philosophy of rehabilitation espoused by the National Criminal Code, as reflected in the formulation of the purposes of punishment in Article 51, which emphasizes rehabilitation so that convicted persons can once again become productive members of society and the fostering of legal awareness rather

than merely retribution. For small scale offenders such as the defendant in this case a private-sector employee with no prior criminal record it is debatable whether a prison sentence, with all its social and economic consequences (including the risk of job loss and stigmatization), is the most appropriate sanction, or whether alternative sanctions such as a fine or forms of rehabilitation outside the correctional system are actually more in line with the rehabilitative orientation that the Panel of Judges itself emphasized in its reasoning based on Article 53 of the National Criminal Code. This discussion is important to highlight the potential tension between the rehabilitation-oriented sentencing norms in the National Criminal Code and the practice of imposing prison sentences, which continues to be predominantly applied to individual and small-scale online gambling offenders.

Implications for the Enforcement of Online Gambling Laws in Indonesia

This ruling ultimately illustrates a broader pattern in the enforcement of laws against online gambling crimes in Indonesia, namely that the parties who are easiest to reach and prosecute are small scale individual players such as the Defendant in this case who are physically located within the jurisdiction and can be directly arrested by law enforcement officers in the field. Conversely, the operators or administrators of the 456WIN website itself who face far harsher penalties under Article 426 of Law No. 1 of 2023 were not prosecuted or even identified in this case. This aligns with the general nature of online gambling operations, which often operate from outside Indonesia's jurisdiction, making them difficult for domestic law enforcement to reach.

This situation reveals a structural disparity in the enforcement of laws regarding online gambling: the most severe penalties under the law tend to be difficult to impose on those most responsible for the scale of social harm caused, while lighter penalties are most often imposed on individual players who are in a relatively vulnerable position, both economically and socially. Consequently, the application of Article 427 to cases similar to Judgment No. 1090/Pid.B/2026/PN Sby although normatively appropriate and consistent with the legal facts revealed during the trial must be accompanied by the strengthening of enforcement mechanisms against operators at the systemic level, including the optimization of additional penalties in the form of blocking access to or destroying websites as was in fact requested by the Public Prosecutor but not granted by the Panel of Judges in this case. Without strengthening these structural aspects, a law enforcement approach that continues to focus on individual actors risks failing to provide a significant deterrent effect on the sustainability of the online gambling ecosystem as a whole.

CONCLUSION

Based on the analysis of Judgment No. 1090/Pid.B/2026/PN Sby, it can be concluded that the application of Article 427 of Law No. 1 of 2023 on the Criminal Code against the Defendant Ahmad Nadhir was normatively appropriate, in that the Panel of Judges selected the second alternative charge because the Defendant was proven to be an ordinary player who took advantage of the opportunity to participate in unlicensed online gambling, rather than a party who made gambling a livelihood as required by Article 426(1)(c), with both elements of the provision namely, "any person" and "taking advantage of the opportunity to gamble in an unlicensed setting" deemed to be satisfied based on witness testimony, the defendant's statement, and corroborating evidence. Nevertheless, this ruling leaves several issues open to criticism, including the judge's lack of elaboration in explaining the reasoning behind why Article 426 was not applied, even though the Defendant had gambled repeatedly for approximately one month with the intent to make a profit, as well as the disparity between the Public Prosecutor's plea (one year and six months, accompanied by an additional penalty of the destruction of the 456WIN website) and the judge's ruling (one year in prison without any additional penalties), as well as the gap between the judges' philosophical reasoning which emphasizes the goal of prevention as stipulated in Article 51 of the National Criminal Code and the ruling's disposition, which, in fact, does not address the continued operation of the gambling site itself. These findings confirm that the enforcement of online gambling laws in Indonesia still tends to focus on small-scale individual players who are physically accessible, while operators facing harsher penalties are difficult to prosecute due to jurisdictional issues. Therefore, it is necessary to strengthen the consistency between legal reasoning and the ruling's disposition, as well as to optimize additional penalties so that the preventive and rehabilitative objectives of criminal punishment under the National Criminal Code can be fully achieved.

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