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PROVIDING CRIMINAL LIABILITY FOR CELEBRITIES WHO PROMOTE *ONLINE* GAMBLING ON INSTAGRAM MEDIA (PEKANBARU COURT DECISION 591/PID.B/2022/PN PBR)

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Abstract

This research aims to find out and analyze related to (1) The basis of the judge's consideration in handing down a decision against a celebrity who promotes online gambling on Instagram media in the PEKANBARU District Court Decision 591/PID.B/2022/PN PBR (2) Criminal liability of a celebrity who promotes online gambling on Instagram media in the PEKANBARU District Court Decision 591/PID.B/2022/PN PBR. This research is normative legal research which uses a statutory approach, case approach and conceptual approach. The legal materials used in this research are primary, secondary and tertiary legal materials which are useful for drawing conclusions relevant to the problems in this research. The research results show that (1) The judge's basic considerations in deciding cases related to celebrities promoting online gambling in decision no. 591/Pid.B/2022/PN Pbr are the basic elements covered by the governing law, such as: the element of every person (Universality, Legal Subject, Legal Capability), the element of Intentionally and Without Rights distributing and/or transmitting and/or making accessible Electronic Information and/or Electronic Documents containing gambling content" as intended in Article 27 paragraph (1)., the element of the Subject who orders or participates in carrying out a legal event. Then after these considerations, it is continued with elements of the Judge's Consideration of the Pledoi, Evidence, Situation, and attention to the Information and Electronic Transactions Law, as well as the Criminal Procedure Law (2) regarding the Criminal Liability of Celebrities Who Promote Online Gambling on Instagram Media in the Pekanbaru District Court Decision Number 591/Pid.B/2022/PN Pbr, the essence is to receive criminal sanctions in accordance with the provisions of the applicable law, as well as related evidence obtained and attached to the trial, to be used as confiscated items to be destroyed and / or remain attached to the case file.

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Introduction

Indonesia is a country with diverse ethnic groups. This diversity is caused by racial differences, differences in geographical environment, historical background, regional development, and differences in religion and belief. There are also majority and minority ethnic groups. In addition to such diverse ethnic groups, Indonesia is also one of the countries whose people have different cultures from one tribe to another.

Currently, people's lifestyle can change with the influence of globalization on the use of information and communication technology facilities and encourage social, cultural, economic, legal defense, security and defense changes that develop in the structure of life. Today's progress because of the internet can be through electronic media, for example computers (Gulo, 2020).

According to the *We Are Social* report, the number of internet users in Indonesia has reached 213 million people as of January 2023. This number is equivalent to 77% of Indonesia's total population of 276.4 million people at the beginning of this year. The number of internet users in the country increased by 5.44% compared to the previous year (year-on-year/yoy). In January 2022, the number of internet users in Indonesia was only 202 million people. *We Are Social* reports that there are 63.51 million people across the country who will not be connected to the internet by early 2023 (databoks.katadata.co.id).

The We Are Social report shows that there were 167 million active social media users in Indonesia in January 2023. This number is equivalent to 60.4% of the population in the country. The number of active social media users in January 2023 decreased by 12.57% compared to the previous year which amounted to 191 million people. The decline was also the first time in the last decade. Meanwhile, the time spent playing social media in Indonesia reaches 3 hours 18 minutes every day. This duration is the tenth highest in the world. The sophistication of information and communication technology not only has a positive impact, but also has a bad impact, one of which is that it can provide an opportunity to be used as a tool for committing new crimes (*Cyber crime*) so that protection efforts are needed (Gulo, 2020).

One of the cybercrime cases that is rampant at this time is internet gambling. Article 27 paragraph (2) of Law number 11 of 2008 concerning Information and electronic transactions regulates the prohibition of electronic gambling. Basically, gambling, whether conducted conventionally (traditionally) or *online*, is a violation of religion, decency, and legal norms, and has a negative impact on the life of the community, nation and state, especially the younger generation. On the one hand, gambling is a social problem that is difficult to overcome and the emergence of gambling has existed since the existence of human civilization. In cyberspace, gambling has become one of the largest business communities. Simply by capitalizing on a website and internet network can provide attractive gambling facilities for everyone to have a gambling account on the internet (Maskun in Handrio, 2022).

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According to data from the Financial Transaction Reports and Analysis Center (PPATK), during the 2017-2022 period there were around 157 million *online* gambling transactions in Indonesia with a total value of money circulation reaching Rp. 190 trillion. PPATK obtained the data from tracing and analyzing 887 parties included in the *online* gambling network. To support the eradication of *online* gambling, the Ministry of Communication and Information Technology (Kominfo) has cut off access or *takedown* 60,582 content indicated *online* gambling during the period September 2023.

In this study, the author focuses on Instagram social media with celebrities as the main actors promoting *online* gambling as it is known that celebrities are the term for Instagram account users who are famous on the social networking site. The term celebgram comes from the words celebrity and Instagram which can be understood as a celebrity who is famous on Instagram (Anggiany, 2016). The promotion of online gambling has been prohibited in accordance with Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions precisely in Article 27 which prohibits actions or actions carried out intentionally and without permission to distribute and / or make electronic data accessible for gambling purposes (Bella et al., 2022).

Based on the data and several theories above, the researcher is interested in conducting research with the title "**PIDAL RESPONSIBILITY OF SELEBGRAMS PROMOTING ONLINE GAMES ON INSTAGRAM MEDIA (PN PEKANBARU Decision 591/PID.B/2022/PN PBR)**".

Based on the identification of the problem, the author tries to formulate the problem as follows:

1. What is the basis for the judge's consideration in handing down a verdict against celebrities who promote online gambling on Instagram media in the District Court Decision 591/PID.B/2022/PN PBR?
2. How is the criminal responsibility of celebrities who promote online gambling on Instagram media in the Decision of PN PEKANBARU 591/PID.B/2022/PN PBR?

Research Methods

This research is classified as normative legal research, namely the writing of scientific papers conducted on literature studies and looking for concepts, opinions or findings related to problems based on applicable norms (Sunggono, 2007).

This research is normative juridical in nature, which will examine document studies, namely using various secondary data such as laws and regulations, court decisions, legal theories, and can be in the form of expert opinions. Based on the nature of the research used is analytical descriptive research. This descriptive analytical research "is intended to provide data that is as accurate as possible about humans, circumstances or other symptoms in this case a description of the application of criminal sanctions against gambling criminal behavior." (Soekanto in Evander, 2019).

In addition, this study uses a qualitative approach. qualitative is a research work rule to understand the research data in order to get quality research. It aims to produce information from the research results in the form of descriptions in understanding social events through a holistic picture and gaining a broad and specific understanding according to the object of research. This research prioritizes direct and purposive data. With inductive analysis used in conducting research (Ibrahim, 2015).

The source of legal material used in this research is secondary data, namely data obtained by researchers from library research and documents, which are the results of research and processing of

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others, which are already available in the form of books or documents usually provided in libraries, or private property. In legal research, secondary data includes primary legal materials, secondary legal materials, and tertiary legal materials. Secondary data used in this study, which consists of:

1. Criminal Code.
2. Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Information and Electronic Transactions
3. District Court Decision 591/Pid.B/2022/Pn Pbr

The material collection technique in the research uses *library research* techniques, namely reading, recording, quoting, summarizing, and reviewing data information from regulations or literature related to the problem.

The data collection technique is done by means of *Library Research*. This method is by conducting research on various written reading sources from scholars, namely theoretical books on law, legal magazines, legal journals and also lecture materials and regulations on default and the basics of lawsuits.

Secondary data are related decisions regarding civil lawsuits that were rejected in the BARU District Court 591/PID.B/2022/PN PBR and legal regulations regarding Law No. 11 of 2008, ITE Law, Article 45 Paragraph 2 Juncto (Article) 27 Paragraph 2. Tertiary data in this case is the internet and also legal dictionaries.

Secondary data from primary legal materials are arranged systematically and then the substance is analyzed to obtain answers about the subject matter to be discussed in writing this thesis descriptively to get the right answers and accurate results. Qualitative research is an emphasis on processes and meanings that are not strictly studied or have not been measured, emphasizing the socially constructed nature of reality, the close relationship between the researched and the researcher, the pressure of the situation that shapes the investigation, full of values, highlighting the way social experience emerges as well as the acquisition of its meaning.

In this study, data analysis was carried out qualitatively, which emphasizes understanding of problems in social life based on holistic, complex and detailed conditions of reality or natural settings (Arifin, 2012).

Qualitative data is based on secondary data, namely the Decision of the BARU District Court 591/PID.B/2022/PN PBR relating to the title to be analyzed which is obtained systematically and then the substance is analyzed to obtain answers about the subject matter to be discussed in writing this thesis qualitatively to get definite answers and accurate results. Meanwhile, the data in the form of theories obtained are grouped according to the sub-chapter discussion, then analyzed qualitatively so that a clear picture of the subject matter is obtained. Furthermore, the data compiled is analyzed descriptively so that a comprehensive picture of the symptoms and facts in the lawsuit rejected at the Pekanbaru District Court can be obtained. And ended with drawing conclusions using the inductive method as an answer to the problem formulated.

Results and Discussion

The Basis for Judges' Considerations in Passing Sentences Against Celebgrams Promoting Online Gambling on Instagram in Decision Number 591/Pid.B/2022/PN Pbr.

In deciding the case contained in Decision Number 591/Pid.B/2022/PN Pbr, in addition to paying attention to the evidence, considerations, facts that exist, judges are also required to pay

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attention to the relevant articles and laws governing the implementation of cases so that they are in accordance with the governing law.

Based on this, there are several considerations of the judges in deciding the case in the Pekanbaru District Court Decision Number 591/Pid.B/2022/PN Pbr, as follows:

Elements of Judges' Consideration Included in the Decision of the Pekanbaru District Court Number 591/Pid.B/2022/PN Pbr.

Life In the attachment or verdict sheet in the Pekanbaru District Court Decision Number 591/Pid.B/2022/PN Pbr, there are elements of Judge Consideration attached to the Pekanbaru District Court Decision Number 591/Pid.B/2022/PN Pbr which are divided into 3 (Three), namely:

1. Elements of Every Person

Based on the page of the Pekanbaru District Court Decision Number 591/Pid.B/2022/PN Pbr, the element of every person in this discussion is divided into 3 (three) parts in the judge in deciding his consideration.

a) Universality

Universality refers to the human being as the subject of the law (the supporter of rights and obligations).

b) Legal Subject

The subject of law is a person or group who individually or collectively performs an action or legal event whose legal subject is a person or group who is legally capable of performing a legal action / event.

c) Legal Capacity

Legal capacity here refers to a person who, according to the Criminal Code, has the capacity to take full responsibility for his or her actions.

2. The element of "Intentionally and Without Right distributing and/or transmitting and/or making accessible Electronic Information and/or Electronic Documents containing gambling content" as referred to in Article 27 paragraph (1).

3. The element of a subject who commits, orders to commit or participates in committing a legal event.

Based on an expert, as stated by R. Soesilo in his book "Criminal Code and its Commentaries Complete Article by Article" reprinted in 1996, Page 73, states: "*The person who participates in committing (medepleger), "Participating in Committing" in the sense of the word "jointly committing", there must be at least two people, namely the person who commits (pleger) and the person who participates in committing (medepleger) the criminal event. Here it is required, that the two people all carry out the factors or elements of the criminal event "*

Elements of Judges' Consideration of Pledoi, Evidence, Situation, Electronic Information and Transaction Law, and Criminal Procedure Law

Elements of Judges' Consideration of the Pledoi in Decision Number 591/Pid.B/2022/PN Pbr

Based on the Pledoi submitted by the defendant at the Pekanbaru District Court, the judge considers and pays attention to the elements of Article 45 paragraph (2) Jo Article 27 paragraph (2) of Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Electronic Information and Transactions Jo Article 55 paragraph (1) to 1 of the Criminal Code has been proven from the description of the actions of the Defendant, therefore the Defendant's Pledoi / Defense is no longer relevant to be considered, therefore it must be set aside, so that the sentence to be imposed on the Defendant is fair as in the verdict.

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Elements of Judges' Consideration of Evidence in Decision Number 591/Pid.B/2022/PN Pbr

In evidence that is used as a tool (Electronic) to commit a criminal offense, the judge decides to be confiscated for destruction. Whereas for goods that have been used, the judge decided that the evidence remains attached to the case file.

Elements of Judges' Consideration of the Trial Situation in Decision Number 591/Pid.B/2022/PN Pbr

In every moment of the trial process that occurred in deciding case number 591/Pid.B/2022/PN Pbr, there were situations that became mitigating circumstances and also aggravated the defendant, these circumstances were:

Aggravating circumstances:

The defendant's actions did not support the government's program to eradicate gambling, and the defendant's actions disturbed the community.

Mitigating circumstances:

The defendant was polite during the trial, and the defendant has never been convicted.

Elements of Judges' Consideration of the Law in Decision Number 591/Pid.B/2022/PN Pbr

In deciding the case in Pekanbaru District Court Decision Number 591/Pid.B/2022/PN Pbr, the judge focused on 2 (Two) Regulations in responding to the case being handled in Pekanbaru District Court Decision Number 591/Pid.B/2022/PN Pbr. The 2 (two) regulations include Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions and Law Number 8 of 1981 concerning Criminal Procedure.

Criminal Liability of Celebs Promoting Online Gambling on Instagram Media in the Decision of the Pekanbaru District Court Number 591/Pid.B/2022/PN Pbr

Criminal Liability and/or Criminal Provisions to someone who promotes Online Gambling fulfill the elements contained in the Electronic Information and Transaction Law and the Criminal Code, namely:

1. Article 45 paragraph (2) of Law Number 19 of 2016 Concerning the Amendment to Law Number 11 of 2008 Concerning Electronic Information and Transactions, namely "Shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah)." For any person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have gambling content as referred to in Article 27 paragraph (2)
2. Article 303 Paragraph (1) of the Criminal Code, namely "Shall be punished with a maximum imprisonment of 10 (ten) years or a maximum fine of Rp. 25,000,000 (twenty five million Rupiah). Any person who without obtaining a license: (1) Intentionally offers or provides an opportunity for a game of chance and makes it a profession, or intentionally participates in an enterprise for that purpose; (2) Intentionally offers or provides an opportunity for the public to play gambling or intentionally participates in an enterprise for that purpose, regardless of whether to use the opportunity there is a condition or the fulfillment of a procedure.

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Conclusion

The conclusions that can be drawn from the presentation of the results and discussion of this thesis are as follows:

First, the consideration of the judges of the Pekanbaru District Court in deciding the case number 591/Pid.B/2022/PN Pbr has many considerations, such as: the element of every person (universality, legal subject, legal capacity), the element of intentionally and without the right to distribute and / or transmit and / or make accessible Electronic Information and / or Electronic Documents that have gambling content" as referred to in Article 27 paragraph (1), the element of the subject who ordered to carry out or participate in carrying out a legal event. Then continued with the elements of the Judge's Consideration of the Pledoi, Evidence, Situation, and attention to the Electronic Information and Transaction Law, as well as the Criminal Procedure Law.

Second, the Criminal Liability of Celebgrams Promoting Online Gambling on Instagram Media in the Decision of the Pekanbaru District Court Number 591/Pid.B/2022/PN Pbr, in essence, is to get criminal sanctions in accordance with the provisions of the applicable law, as well as related evidence obtained and attached to the trial, made booty to be destroyed and / or still attached to the case file.

The suggestions that can be presented regarding this research are as follows:

First, in the trial process, especially related to the eradication of online gambling, if all segments / law enforcement officials throughout Indonesia eradicate seriously and tirelessly in carrying out their duties, especially in solving problems and continuing to provide solutions related to preventing and handling the existence of online gambling in Indonesia.

Second, Regarding the property obtained from non-halal proceeds, especially online gambling, it should be a lesson to all Indonesian people and a reminder that any form and activity based on gambling should be avoided because it is contrary to the Law.

Third, Regarding the Eradication of Online Gambling and its strict enforcement, if the Government continues to actively urge and educate the public that Online Gambling is a criminal act and is not allowed to exist in Indonesia using the facilities and infrastructure and apparatus in the government sector to crack down and actively eradicate its existence.

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