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Criminal Liability of Influencers and Affiliates in The Promotion of Online Gambling on Social Media

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Abstract:

The promotion of online gambling through social media raises legal questions regarding the criminal liability of influencers and affiliates who facilitate access to gambling platforms without directly operating them. This study examines their criminal liability under Indonesian criminal law, particularly Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions and Law No. 1 of 2023 on the Criminal Code. It employs normative legal research using statutory and conceptual approaches, with legal materials analyzed qualitatively through descriptive and analytical methods. The findings indicate that influencers and affiliates may be held criminally liable when their conduct fulfills the elements of a criminal offense, particularly those concerning the intentional and unauthorized distribution, transmission, or accessibility of electronic information containing gambling content. Liability must be assessed individually by considering knowledge, intent, promotional conduct, economic benefits, and the degree of participation. Law enforcement faces challenges involving anonymity, cross-border activities, and difficulties in proving intent. Therefore, clear and proportionate liability parameters are necessary to ensure legal certainty, effective enforcement, and the prevention of excessive criminalization.

Keywords:

Affiliates; Criminal Liability; Influencers; Online Gambling; Social Media.

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1. Introduction

Advances in information and communication technology have transformed social interaction and created new opportunities for digital economic activities. Social media has evolved from a communication platform into a marketing tool that enables individuals to reach large audiences across geographical boundaries. These developments have generated digital economic models involving influencers and affiliate marketing, through which individuals earn revenue by promoting products, services, or referral links. However, the openness and rapid dissemination of digital content can also facilitate illegal activities, including online gambling promotion, creating challenges for the development and enforcement of criminal law.

Online gambling remains a significant law enforcement concern in Indonesia. Data from the Financial Transaction Reports and Analysis Center (PPATK) indicates that online gambling deposits associated with the 2026 World Cup reached approximately Rp1.02 trillion across 6,001,352 transactions (Ardiyanto, 2026). The Ministry of Communication and Digital Affairs of the Republic of Indonesia (Komdigi, 2026) also reported that online gambling promotion had expanded across social media platforms, including Instagram, TikTok, Facebook, X, and YouTube, with local influencers becoming potential targets of promotional campaigns. These developments demonstrate the role of digital marketing networks in expanding the distribution of gambling-related information. Research by Muharam et al. (2024) similarly examines the use of influencers in online gambling promotion and its relationship with public sentiment.

Influencers and affiliates can promote online gambling through posts, videos, live streams, endorsements, referral links, and commission-based arrangements. Although both may contribute to expanding public access to gambling platforms, their roles and economic relationships differ. Influencers primarily use their popularity and credibility to persuade audiences, whereas affiliates commonly receive commissions based on user activity through referral links. Research on gambling promotion through YouTube live streaming highlights the role of digital content and platform features in facilitating access to gambling sites (Al Muzaq & Golap, 2026). These promotional practices raise questions regarding the criminal liability of individuals who contribute to gambling activities without directly operating gambling platforms.

Indonesia has legal instruments addressing online gambling promotion through electronic media. Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions prohibits the intentional and unauthorized distribution, transmission, or making accessible of electronic information containing gambling content. Law No. 1 of 2023 on the Criminal Code, which came into force on January 2, 2026, also provides a framework for regulating gambling and criminal liability. Nevertheless, the application of these provisions to influencers and affiliates requires careful examination because their promotional activities do not automatically establish criminal liability. Katim et al. (2026) examine the implementation of Article 27(2) of the ITE Law in enforcing offenses involving online gambling advertisements, highlighting the relevance of this provision to gambling-related promotional activities.

Previous studies have examined criminal liability for online gambling promotion from different perspectives. Andreyn and Firmansyah (2026) discuss liability under Indonesian electronic information law, while Rahayu et al. (2026) examine the criminal liability of influencers acting as online gambling affiliates from an information technology law perspective. Raihan et al. (2026) also investigate the criminal liability of influencers promoting online gambling through social media. Furthermore, research on criminal sanctions for online gambling promotion addresses the effectiveness of enforcement against perpetrators (Muhammad et al.,

2026). However, the distinct characteristics of influencers and affiliates require further analysis, particularly concerning their knowledge, intent, economic benefits, degree of involvement, and potential participation in criminal acts.

This study addresses that issue by examining the criminal liability of influencers and affiliates in online gambling promotion under Indonesian criminal law. It focuses on the applicable legal framework, the distinction between promotional activities and substantive participation in gambling offenses, and the parameters necessary to establish liability proportionately. Accordingly, this study formulates the following research questions:

RQ1: How is the criminal liability of influencers and affiliates in promoting online gambling regulated under Indonesian criminal law, and how do their respective roles and forms of involvement differ?

RQ2: What legal elements and parameters should be considered in determining the criminal liability of influencers and affiliates, particularly regarding knowledge, intent, promotional conduct, economic gain, and participation in criminal acts?

RQ3: What challenges arise in enforcing criminal law against influencers and affiliates who promote online gambling, and how can an appropriate framework for criminal liability be formulated to ensure legal certainty and proportional enforcement?

2. Methods

This study employs normative legal research to examine the criminal liability of influencers and affiliates in promoting online gambling on social media under Indonesian criminal law. Normative legal research examines legal norms, statutory provisions, legal principles, and doctrines relevant to the research problem. This study uses a statutory approach and a conceptual approach. The statutory approach is applied to analyze the legal provisions governing online gambling, the distribution of electronic information containing gambling content, and criminal liability under Indonesian law. The conceptual approach is used to examine the principles of criminal liability, fault, intent, and complicity, particularly in distinguishing the legal positions of influencers and affiliates involved in online gambling promotion. These approaches provide the basis for examining the applicable legal framework and the parameters for determining criminal liability (Marzuki, 2017).

The legal materials consist of primary and secondary legal materials, supported by tertiary materials where necessary. Primary legal materials include relevant legislation, particularly Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions and Law No. 1 of 2023 on the Criminal Code, as well as relevant judicial decisions where available. Secondary legal materials include legal textbooks, academic journal articles, scholarly publications, and expert opinions concerning criminal liability and online gambling promotion. Tertiary materials are used to clarify legal terminology and relevant concepts.

Legal materials are collected through library research by examining relevant legislation, legal literature, and academic publications identified in the study. The collected materials are analyzed qualitatively using descriptive and analytical methods. The analysis involves identifying the applicable legal provisions, interpreting the relevant legal concepts, and examining the relationship between promotional conduct and the elements of criminal liability. The analysis also distinguishes the roles of influencers and affiliates by considering their knowledge of the gambling content, intent, promotional activities, economic benefits, and degree of involvement. Finally, the findings are used to formulate legal parameters for determining criminal liability and to identify law enforcement challenges, with the aim of addressing the three research questions concerning the applicable legal

framework, the elements of liability, and the formulation of a proportionate framework for enforcement.

3. Results and Discussion

3.1 The Legal Framework and the Distinct Roles of Influencers and Affiliates in Online Gambling Promotion

The promotion of online gambling through social media raises legal issues because digital content can expand public access to gambling platforms without requiring promoters to operate the platforms directly. Influencers may promote gambling sites through endorsements, videos, posts, and live streams, while affiliates generally use referral links or codes to generate commissions from user activity. Research by Muharam et al. (2024) examines the use of influencers in online gambling promotion, while Al Muzaq and Golap (2026) discuss the promotion of online gambling through YouTube live streaming. These promotional models demonstrate the different ways third parties may contribute to the dissemination of gambling-related information.

The principal legal framework is Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions. Article 27(2) prohibits any person from intentionally and without authorization distributing, transmitting, and/or making accessible electronic information or electronic documents containing gambling content. Article 45(3) provides the corresponding criminal sanctions. These provisions establish a legal basis for assessing promotional activities when the required elements of the offense are satisfied (Law No. 1 of 2024, 2024). Katim et al. (2026) specifically examine the implementation of Article 27(2) in the enforcement of offenses involving online gambling advertisements.

The legal framework must also be considered alongside Law No. 1 of 2023 on the Criminal Code, particularly Article 426 concerning unauthorized gambling opportunities or gambling enterprises (Law No. 1 of 2023, 2023). The relevance of this provision depends on whether a promotional act merely disseminates information or has a more substantive connection to providing opportunities to gamble. Andreyn and Firmansyah (2026) discuss the legal uncertainty surrounding the application of electronic information law to influencers, affiliates, and other third parties involved in online gambling promotion.

Accordingly, influencers and affiliates cannot automatically be equated with gambling operators or participants. Their legal positions must be assessed according to the actual conduct, the nature of their involvement, and the applicable statutory elements. The distinction between persuasive promotion by influencers and commission-based promotion by affiliates is relevant to the assessment of their respective roles, but neither status alone establishes criminal liability.

3.2 The Elements and Parameters of Criminal Liability for Influencers and Affiliates

The criminal liability of influencers and affiliates depends on whether their conduct fulfills the elements of a criminal offense and whether the required basis of culpability can be established. Article 36(1) of Law No. 1 of 2023 recognizes intentional conduct and negligence as bases of criminal liability under the National Criminal Code (Law No. 1 of 2023, 2023). In applying Article 27(2) of the ITE Law, the assessment must focus on the intentional and unauthorized distribution, transmission, or accessibility of electronic information containing gambling content.

For influencers, relevant conduct may include publishing endorsements, displaying gambling activities, sharing gambling links, or encouraging followers to access gambling platforms. For affiliates, the use of referral links, tracking codes, and commission arrangements may provide evidence of an economic relationship with the promoted platform. However, neither the publication of gambling-related

content nor the receipt of payment should automatically be treated as sufficient proof of criminal liability. The assessment must establish the person's knowledge of the gambling content, the nature of the promotional act, and the relevant intention.

The concept of complicity is also relevant because promotional actors are not necessarily the principal organizers of gambling. Rahayu et al. (2026) examine the criminal liability of influencers acting as online gambling affiliates, while Andreyn and Firmansyah (2026) discuss the legal scope of liability for parties involved in disseminating gambling-related electronic information. These studies support the need to distinguish between mere publication, the provision of access, and conduct that makes a substantive contribution to gambling activities.

Based on these considerations, five parameters are relevant to determining liability: (1) knowledge of the gambling nature of the promoted content; (2) active conduct involving distribution, transmission, or provision of access; (3) intention and the circumstances demonstrating culpability; (4) economic benefits, including payments or commissions, as supporting indicators rather than conclusive proof; and (5) the nature and degree of participation in the relevant criminal conduct. These parameters are consistent with the need to assess each person's actual contribution rather than relying solely on their professional status as an influencer or affiliate. Muhammad et al. (2026) examine the effectiveness of criminal sanctions against perpetrators of online gambling promotion, reinforcing the relevance of evaluating liability and enforcement in relation to the conduct involved.

3.3 Law Enforcement Challenges and the Formulation of a Proportionate Criminal Liability Framework

Enforcing criminal law against influencers and affiliates presents challenges because online gambling promotion occurs in a digital environment characterized by rapid content distribution, anonymity, and cross-border activity. Promotional materials may be disseminated through posts, live streams, referral links, and disguised content, making it difficult to identify responsible parties and establish the circumstances surrounding each act. Andreyn and Firmansyah (2026) identify anonymous accounts, foreign servers, disguised content, and evidentiary complexity as issues affecting enforcement. Al Muzaq and Golap (2026) also examine online gambling promotion through YouTube live streaming, a format in which promotional content can reach audiences in real time.

A central challenge is proving intent under Article 27(2) of Law No. 1 of 2024. Investigators must establish more than the existence of gambling-related content on a person's account; they must assess whether the person intentionally and without authorization carried out the prohibited conduct. Contracts, promotional instructions, payment records, referral arrangements, and the content of communications may be relevant to this assessment, depending on the evidence available. Raihan et al. (2026) examine the criminal liability of influencers promoting online gambling through social media, while Katim et al. (2026) address the implementation of Article 27(2) in enforcement concerning online gambling advertisements.

A proportionate framework should therefore distinguish among individuals who merely disseminate information, those who actively provide access to gambling platforms, and those whose conduct demonstrates a more substantial contribution to gambling activities. The five parameters identified above knowledge, active conduct, intention, economic benefit, and degree of participation can guide this distinction. Economic gain may support an assessment of involvement but should not independently determine guilt.

The application of these parameters should also be consistent with the fault-based principles of criminal law and the relevant statutory provisions. Muhammad et al. (2026) provide a relevant perspective on the effectiveness of criminal sanctions against online gambling promoters. Accordingly, enforcement should focus on

evidence of each individual's conduct and culpability, while distinguishing the legal positions of influencers and affiliates from those of gambling operators. This approach can support more consistent and proportionate enforcement while maintaining legal certainty and avoiding the excessive imposition of criminal liability.

4. Conclusion

Based on the findings, influencers and affiliates may be held criminally liable for promoting online gambling if their conduct fulfills the elements of a criminal offense under Indonesian law. Article 27(2) of Law No. 1 of 2024 concerning the Amendment to the Electronic Information and Transactions Law provides a legal basis for assessing the intentional and unauthorized distribution, transmission, or accessibility of electronic information containing gambling content. Article 426 of Law No. 1 of 2023 on the Criminal Code is also relevant when promotional activities involve providing opportunities to gamble.

Criminal liability cannot be established solely on the basis of a person's status as an influencer or affiliate, the presence of gambling-related content, or the receipt of financial compensation. The assessment must consider the individual's knowledge, intent, specific promotional conduct, economic benefits, and degree of involvement in the relevant criminal activity. These elements are important for distinguishing promotional activities from substantive participation in gambling offenses and for applying the principle of fault proportionately.

Law enforcement continues to face challenges involving anonymous accounts, cross-border activities, digital evidence, and difficulties in establishing intent. Therefore, a proportionate framework for criminal liability should distinguish between individuals who merely disseminate information, those who facilitate access to gambling platforms, and those whose conduct demonstrates a more substantial contribution to gambling activities. Applying these parameters can strengthen law enforcement while maintaining legal certainty and preventing excessive criminalization. Ultimately, harmonizing the applicable statutory provisions with clear standards of individual culpability is essential to ensuring effective and fair enforcement against online gambling promotion.

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The data that support the findings of this study are available from the corresponding author upon reasonable request.