

The Application of Substantive Justice in the Indonesian Criminal Code to Online Gambling Offenders Through the Principle of Proportionality in the Prosecution Process

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DOI:

<https://doi.org/10.47134/jcl.v3i3.1.5850>

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Received: 26/05/2026

Accepted: 29/06/2026

Published: 29/06/2026



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Abstract: *The rapid development of digital technology has transformed gambling from a conventional offense into an online-based crime involving complex networks and cross-regional actors, while law enforcement in Indonesia continues to focus primarily on lower-level offenders, resulting in disparities in justice. This study aims to analyze the regulation of gambling offenses within the Indonesian criminal law system, examine current law enforcement practices against online gambling offenders, and explore the importance of applying the principle of proportionality in the prosecution process to achieve substantive justice. This research adopts a normative juridical approach with a descriptive-analytical method, utilizing library research on primary, secondary, and tertiary legal materials, which are analyzed qualitatively through legal interpretation, systematization, and argumentation. The findings indicate that although the legal framework has accommodated online gambling offenses, enforcement practices remain dominated by a retributive paradigm and have not optimally incorporated the principle of proportionality, resulting in an imbalance between the degree of culpability and the sanctions imposed. Furthermore, the socio-economic background of offenders has not been adequately considered in prosecutorial decision-making. This study contributes conceptually by proposing the integration of proportionality and substantive justice as a foundation for a more equitable, rational, and humane prosecution policy within the Indonesian criminal justice system.*

Keywords: *Gambling offenders; principle of proportionality; substantive justice*

Introduction

The rapid advancement of information technology has significantly transformed conventional forms of crime into digital-based offenses, including gambling activities that are now conducted through online platforms involving complex networks and cross-border actors. This transformation has positioned online gambling as a form of cybercrime that is increasingly difficult to control due to the ease of internet access, anonymity of offenders, and the high economic incentives it offers (Sopian et al., 2025). Within the Indonesian legal framework, gambling remains classified as a serious criminal offense under the Criminal Code, further reinforced by supplementary regulations such as the Electronic Information and Transactions Law, which impose substantial criminal sanctions (Anugrah et al., 2025). However, evolving socio-economic conditions and the structural complexity of digital crimes present significant challenges to law enforcement, particularly in terms of

effectiveness, fairness, and the relevance of criminal sanctions in addressing contemporary criminal behavior (Erlangga, 2025).

Despite the existence of a legal framework, current law enforcement practices against online gambling in Indonesia reveal significant disparities, particularly in identifying and targeting the appropriate subjects of prosecution. Enforcement efforts tend to focus on lower-level actors such as operators or players, while the primary beneficiaries within the digital gambling networks often remain beyond the reach of law enforcement. This imbalance reflects structural deficiencies within the criminal justice system that hinder the realization of substantive justice. Furthermore, the predominance of a retributive approach limits the application of alternative mechanisms such as restorative justice, even though limited provisions for such approaches exist within prosecutorial policies (Sugio and Soponyono, 2024). The lack of proportionality in sentencing practices undermines the credibility of the justice system and weakens its deterrent effect, thereby diminishing public trust and the overall effectiveness of law enforcement (Saleh and Gunawan, 2021).

From a theoretical perspective, these issues can be examined through the lenses of substantive justice and the principle of proportionality, both of which are fundamental to modern criminal law. Substantive justice emphasizes that legal outcomes should not merely comply with formal rules but must also reflect moral, social, and contextual considerations. The principle of proportionality requires a balance between the severity of the offense and the punishment imposed, ensuring that criminal sanctions are rational, fair, and humane. This principle also functions as a safeguard against excessive use of state power in punishment, thereby promoting accountability and fairness within the criminal justice system (Lacey, 2021). Failure to integrate proportionality into legal practice may lead to structural injustice and unequal treatment of offenders, particularly those from disadvantaged socio-economic backgrounds (Franko, 2023).

Based on this background, this study aims to comprehensively analyze the legal regulation of gambling offenses within the Indonesian criminal law system, examine current law enforcement practices against online gambling offenders, and explain the significance of the principle of proportionality in determining criminal sanctions. More specifically, this research addresses the following questions: how gambling offenses are regulated under the Indonesian Criminal Code; how law enforcement against online gambling is currently implemented; why the principle of proportionality is essential in determining criminal sanctions; and how its application can contribute to achieving substantive justice in the prosecution process. Employing a normative juridical approach, this study provides an in-depth analysis of legal norms and relevant conceptual frameworks to address these issues (Hosnah et al., 2025).

The scientific contribution of this study lies in its effort to integrate the concept of substantive justice with the principle of proportionality within the context of prosecuting online gambling offenses in Indonesia, an area that has not been comprehensively explored in existing criminal law literature. This study offers a novel perspective by positioning proportionality as a normative instrument to address disparities in law enforcement and to promote a more humane and responsive legal approach toward offenders. In addition, it contributes to the development of modern sentencing theory by emphasizing the importance of individualized punishment based on the offender's level of culpability and

socio-economic circumstances, thereby enabling the criminal justice system to better adapt to evolving social dynamics and digital crime patterns (Duus-Otterström, 2021).

Literature Review

The concepts of substantive justice and the principle of proportionality serve as the primary theoretical foundations of this study. Substantive justice emerged as a critique of formal justice, which focuses solely on compliance with legal norms without considering the concrete conditions of offenders and the broader social impact of judicial decisions. In modern criminal law, justice is regarded as the central objective of the legal system, requiring a balance between legal certainty, utility, and fairness (Journal of Law, Policy and Globalization, 2024). Meanwhile, the principle of proportionality originates from classical and neo-classical theories of punishment, emphasizing that sanctions must correspond to the severity of the offense and the offender's degree of culpability (Urusov, 2025). This principle functions not only as a normative guideline in sentencing but also as a mechanism to limit excessive state power in imposing punishment (Coverdale, 2024). Furthermore, the evolution of modern sentencing theory reflects a shift from retributive approaches toward more restorative and rehabilitative paradigms that emphasize balance among offenders, victims, and society (Howard and Pasternak, 2021).

A number of previous studies have examined issues of justice and proportionality within the criminal justice system, particularly in the Indonesian context. Research on prosecutorial policies based on restorative justice indicates that Indonesia has begun to adopt more humane approaches by allowing case resolution outside formal court processes through reconciliation mechanisms (Djanggih et al., 2023). Other studies highlight that restorative justice contributes to repairing social relationships and offers more comprehensive solutions compared to conventional punitive approaches (Jaladriyanta et al., 2024). Additionally, research on its implementation in judicial practice demonstrates that restorative justice can enhance legal certainty while promoting more substantive forms of justice for the parties involved (Meliala et al., 2024). At the same time, studies on criminal law reform reveal a paradigm shift toward a neo-classical approach that integrates both objective and subjective elements in sentencing decisions (Dananjaya and Bagiastira, 2025).

Despite these developments, existing literature reveals significant research gaps, particularly regarding the explicit integration of the principle of proportionality into prosecutorial practices for specific offenses such as online gambling. Most studies focus primarily on restorative justice frameworks or general criminal law reforms, without examining how proportionality can be operationalized in the prosecution process. Moreover, there are critiques indicating that the inconsistent application of proportionality may lead to legal uncertainty if not supported by a clear normative framework (Śliwiński, 2023). In addition, the implementation of restorative justice itself faces challenges, including imbalances in the protection of rights between offenders and victims, suggesting that alternative approaches have not yet fully ensured equitable justice (Sopian et al., 2025).

In response to these gaps, this article positions itself to integrate the concepts of substantive justice and proportionality specifically within the prosecution of online gambling offenses. Unlike previous studies that tend to address policy issues in a general sense, this research focuses on a normative analysis of how proportionality can serve as a

guiding principle in shaping fairer prosecutorial decisions. This approach contributes theoretically by enriching the discourse on equitable sentencing and practically by offering a framework for more responsive prosecution policies. Furthermore, this study connects sentencing theory with law enforcement practices, thereby providing a more comprehensive and applicable analytical framework (Kempen, 2023).

From a methodological perspective, trends in criminal law research demonstrate the dominance of normative juridical approaches that focus on statutory and doctrinal analysis. Such approaches are often combined with conceptual analysis to understand the evolution of relevant legal principles and theories (Tanjung and Harahap, 2024). Additionally, there is an increasing trend toward interdisciplinary approaches that link legal analysis with social, political, and economic dimensions in evaluating the effectiveness of the criminal justice system (Whitman, 2024). In the context of proportionality, contemporary studies also reveal ongoing debates regarding its scope and implementation, reflecting the complexity of applying this principle across different legal systems (Martin, 2024).

Based on the overall literature, a conceptual synthesis can be constructed by positioning substantive justice as the primary objective of the criminal justice system, with the principle of proportionality functioning as a normative instrument to achieve it. Within this framework, prosecution is not merely a formal process of enforcing legal norms but also a mechanism for balancing the interests of the state, offenders, and society in a fair manner. The integration of proportionality with restorative approaches enables the development of a more adaptive, humane, and responsive legal system capable of addressing the challenges of modern crime. Consequently, this study adopts this conceptual synthesis as the analytical foundation for examining the application of proportionality in prosecuting online gambling offenses, with the aim of contributing to the advancement of a criminal justice system oriented toward substantive justice.

Methodology

This study employs a normative legal research design with a descriptive-analytical strategy, focusing on the examination of legal norms as an integrated system. This approach is selected because the study aims to analyze legal regulations, principles, and concepts related to online gambling offenses and the application of the principle of proportionality in the prosecution process. Normative legal research conceptualizes law as a set of binding norms and rules, rather than as observable social behavior, and emphasizes doctrinal and conceptual analysis of legal systems (Putra and Jainuddin, 2025). The descriptive-analytical strategy is applied to systematically describe the existing legal framework while critically analyzing its effectiveness and practical implementation (Karindra, 2024).

The study relies exclusively on secondary data, which consists of primary, secondary, and tertiary legal materials. Primary legal materials include relevant statutory regulations such as the Indonesian Criminal Code (KUHP), the Code of Criminal Procedure (KUHAP), and other regulations governing gambling offenses and prosecution mechanisms. Secondary legal materials comprise academic literature, including scholarly journal articles, legal textbooks, and prior research addressing substantive justice, proportionality, and modern criminal law. Tertiary legal materials consist of legal dictionaries, encyclopedias, and other supporting sources that clarify legal terminology. The use of secondary data in

normative legal research enables a comprehensive examination of legal doctrines and normative frameworks within the criminal justice system (Bikelis, 2024).

Data collection is conducted through library research using documentation techniques, which involve identifying, collecting, and reviewing relevant legal documents and academic literature. This process is carried out systematically by selecting sources directly related to the research topic, particularly those addressing law enforcement in online gambling cases and the application of proportionality in sentencing and prosecution. In the context of literature-based research, this method also includes systematic searches of academic databases to obtain valid and up-to-date sources that support comprehensive and evidence-based analysis (Dauda and McNabb, 2022).

The inclusion criteria for selecting data and literature consist of sources that are directly relevant to the research topic, possess academic credibility, and have been published within the last five years to ensure the timeliness and relevance of the analysis. Priority is given to peer-reviewed, open-access journal articles to maintain transparency and verifiability. The exclusion criteria include sources that lack direct relevance, fail to meet academic standards, or contain potential bias that may compromise the objectivity of the analysis. This selection process is essential for ensuring the validity and reliability of normative legal research, which heavily depends on the quality of its sources (Kempen, 2023).

The unit of analysis in this study consists of legal norms, principles, and concepts related to online gambling offenses and the application of proportionality in the prosecution process. The analysis focuses on statutory provisions, legal doctrines, and relevant law enforcement practices. Accordingly, the study does not examine individuals or groups as empirical subjects but instead analyzes the legal system as a normative structure. This approach enables a systematic examination of the relationships among legal norms and theoretical concepts within a coherent legal framework (Franko, 2023).

Data analysis is conducted using qualitative methods through interpretative and argumentative approaches. The analytical process involves several stages, including legal interpretation to understand the meaning of legal norms, legal systematization to organize and relate various legal provisions into a structured framework, and legal argumentation to develop logical and rational justifications for addressing the research problems. This approach allows the study to produce prescriptive conclusions by offering recommendations for legal reform and development. In this context, qualitative analysis not only explains legal phenomena but also evaluates and critiques the effectiveness of law enforcement practices (Baldwin, 2023).

Result

The findings of this study indicate that the regulation of gambling offenses within the Indonesian criminal law system is dispersed across several legal instruments, including the Indonesian Criminal Code (KUHP) and additional legislation addressing technology-based crimes. Within the KUHP, gambling is classified as a criminal offense with relatively severe penalties, particularly under Articles 303 and 303 bis, which categorize gambling as a crime against public order. Furthermore, regulatory developments through the Electronic Information and Transactions Law extend the scope of criminal liability to online gambling

activities, including the provision, distribution, and access to digital gambling content (Anugrah et al., 2025). These provisions reflect a normative acknowledgment of the transformation of gambling into a technologically driven offense, although limitations remain in regulating key actors within online gambling networks.

The results further reveal that law enforcement practices in Indonesia tend to concentrate on lower-level actors, such as players, operators, or individuals directly involved in gambling activities. Empirical patterns identified in the literature indicate that frontline offenders are more frequently prosecuted than those who control or significantly benefit from digital gambling operations (Sopian et al., 2025). In addition, law enforcement faces challenges related to evidentiary processes and the classification of offenses, particularly when gambling activities are disguised as other forms of digital transactions, such as investment schemes or online trading platforms. These conditions illustrate a gap between existing legal norms and their practical enforcement.

The study also finds that sentencing practices within the criminal justice system remain predominantly influenced by a retributive paradigm, emphasizing punishment as a form of retribution rather than as a means of achieving broader social objectives. Although there have been efforts to incorporate restorative justice into prosecutorial policies, its application remains limited and has not yet become a dominant practice (Djanggih et al., 2023). Moreover, variations in the implementation of restorative justice indicate the absence of standardized procedures, which may lead to inconsistencies in handling similar cases (Jaladriyanta et al., 2024).

With regard to the principle of proportionality, the findings demonstrate that this principle has not been optimally applied in prosecutorial decision-making and sentencing practices. Several studies indicate that criminal sanctions are often imposed without adequately considering the offender's level of culpability or the socio-economic circumstances underlying the offense (Urusov, 2025). Additionally, disparities in sentencing may undermine the effectiveness of the criminal justice system in achieving its objectives, including fairness and deterrence (Saleh and Gunawan, 2021). These findings suggest that proportionality has not yet been fully institutionalized as a guiding principle in law enforcement practices.

The results also indicate that the realization of substantive justice within the Indonesian criminal justice system remains constrained by a persistent emphasis on legal certainty over fairness. In many cases, judicial outcomes are formally valid but do not necessarily reflect societal perceptions of justice (Journal of Law, Policy and Globalization, 2024). Furthermore, factors such as the offender's socio-economic background, economic pressures, and role within criminal networks are not consistently taken into account during prosecution and sentencing (Franko, 2023).

In addition, the findings highlight a growing trend toward the adoption of alternative approaches within the criminal justice system, including restorative justice and non-penal policies, as responses to the limitations of conventional punitive measures. These approaches have been shown to improve judicial efficiency, reduce the burden on correctional institutions, and promote more restorative outcomes (Marasabessy et al., 2025).

However, their implementation remains constrained by structural and normative challenges, including regulatory limitations and institutional resistance within the criminal justice system (Meliala et al., 2024).

The study further identifies a paradigm shift in modern sentencing theory toward more integrative and humane approaches. The principle of proportionality is increasingly recognized as a fundamental element in ensuring that punishment is not only legally valid but also aligned with broader principles of social justice and human rights (Lacey, 2021). Nevertheless, debates persist regarding the scope and application of this principle, particularly in relation to its interaction with other legal doctrines (Śliwiński, 2023).

Finally, the findings show that prosecutorial discretion plays a significant role in determining the direction of case handling, including the potential application of alternative mechanisms such as the termination of prosecution based on restorative justice. Progressive prosecutorial policies may create opportunities for incorporating proportionality into sentencing decisions, thereby enabling more balanced and rational outcomes (Sugio and Soponyono, 2024). However, such practices have not yet been fully integrated into the overall prosecutorial framework.

Stage	Analytical Component	Key Indicators	Implication for Prosecution
1	Identification of Offender Role	Player, intermediary, or principal actor	Determines hierarchy of responsibility within the online gambling network
2	Assessment of Culpability	Intent (dolus/culpa), level of participation, degree of benefit obtained	Establishes the moral and legal blameworthiness of the offender
3	Contextual Evaluation	Socio-economic background, motivation, economic pressure, social impact	Introduces individualized considerations beyond formal legal elements
4	Proportionality Test	Balance between severity of offense and proposed sanction	Evaluates whether punishment is excessive, adequate, or insufficient
5	Corrective Mechanism	Restorative justice, diversion, or reduction of charges	Provides flexibility to adjust prosecutorial decisions when disproportionality occurs
6	Determination of Prosecution Policy	Penal (imprisonment/fines) vs non-penal measures	Ensures rational and context-sensitive legal response
7	Final Outcome	Substantive justice-oriented decision	Produces fair, humane, and balanced prosecutorial outcomes

The results of this study can be further conceptualized through a structured decision-making framework that integrates the principle of proportionality into the prosecution process of online gambling offenses. This framework illustrates a systematic progression from the identification of the offender's role to the determination of a substantively just outcome.

At the initial stage, the identification of the offender's role is essential in distinguishing between different levels of involvement within online gambling networks. As highlighted in the findings, law enforcement practices in Indonesia tend to disproportionately target lower-level actors, such as players and operators, while more influential actors remain insufficiently addressed. Therefore, categorizing offenders based on their structural position becomes a fundamental step in ensuring fair prosecution.

Subsequently, the assessment of culpability serves as the core evaluative element in determining the degree of responsibility attributed to the offender. This includes examining the intent behind the act, the level of participation, and the benefits derived from the offense. The findings indicate that current prosecutorial practices often overlook these aspects, resulting in sanctions that do not accurately reflect the offender's level of fault.

The framework further incorporates a contextual evaluation stage, which emphasizes the importance of socio-economic and situational factors. This stage aligns with the concept of substantive justice, requiring that legal decisions consider the broader social realities surrounding the offender. As identified in the study, factors such as economic pressure and social background are rarely integrated into prosecutorial decision-making, thereby limiting the realization of equitable justice.

The proportionality test constitutes the central mechanism within this framework. At this stage, the severity of the offense is systematically compared with the proposed sanction to ensure a balanced and rational outcome. The absence of such a structured proportionality assessment, as demonstrated in the findings, has contributed to disparities in sentencing and weakened the legitimacy of the criminal justice system.

In cases where disproportionality is identified, the framework introduces a corrective mechanism through alternative approaches such as restorative justice, diversion, or the reduction of charges. Although these mechanisms have been recognized within the Indonesian legal system, their application remains limited and lacks consistent implementation. This stage therefore highlights the need for greater institutional integration of non-penal approaches.

Following this, the determination of prosecution policy involves selecting the most appropriate legal response, whether penal or non-penal, based on the results of the proportionality assessment. This stage underscores the critical role of prosecutorial discretion in achieving balanced outcomes.

Finally, the framework culminates in a substantive justice-oriented decision, where legal certainty is harmonized with fairness and humanity. This outcome reflects the integration of proportionality as a guiding principle in prosecution, ensuring that sanctions are not only legally valid but also socially just.

Overall, this framework provides a conceptual model that operationalizes the findings of the study by translating abstract principles into a structured prosecutorial process. It reinforces the argument that the integration of proportionality is essential for addressing disparities in law enforcement and for advancing a more equitable and responsive criminal justice system in Indonesia.

Discussion

The findings of this study confirm that, although the regulation of gambling offenses within the Indonesian criminal law system is normatively well-established, its implementation in practice has not fully reflected substantive justice, particularly in the prosecution of online gambling offenders. This outcome directly corresponds to the research objectives and problem formulation, which emphasize disparities in law enforcement, the dominance of a retributive paradigm, and the limited application of the principle of proportionality. In this context, law enforcement practices continue to disproportionately target lower-level offenders, despite their relatively minor roles compared to the primary beneficiaries within digital gambling networks (Erlangga, 2025).

From a theoretical perspective, these findings can be interpreted through the framework of substantive justice, which requires that legal enforcement extend beyond formal compliance to incorporate moral, social, and contextual considerations. Substantive justice emphasizes the necessity of balancing legal certainty with fairness, ensuring that law functions not merely as an instrument of repression but also as a mechanism for protecting fundamental rights (Karindra, 2024). Within this framework, the principle of proportionality serves as a normative tool to ensure that criminal sanctions correspond to the offender's degree of culpability. It also reinforces the importance of individualized sentencing by taking into account factors such as socio-economic background and the offender's role in the criminal act.

When compared with previous studies, the results of this research are consistent with findings indicating that the Indonesian criminal justice system remains largely dominated by a retributive approach, prioritizing punishment over restoration. Prior research has demonstrated that, although restorative justice mechanisms have been introduced, their implementation remains limited and lacks systematic integration into prosecutorial processes (Meliala et al., 2024). Furthermore, other studies have shown that the absence of proportionality in sentencing may result in unjust outcomes, particularly when sanctions do not accurately reflect the offender's level of culpability (Dauda and McNabb, 2022). However, critical perspectives also highlight that the unstructured application of proportionality may generate legal uncertainty and open the possibility of discretionary abuse by law enforcement authorities (Śliwiński, 2023).

The scientific contribution of this study lies in its conceptual integration of substantive justice and the principle of proportionality within the specific context of prosecuting online gambling offenses in Indonesia. This research not only reinforces the argument that proportionality is a fundamental principle in criminal sentencing but also demonstrates how it can be operationalized in prosecutorial decision-making to address disparities in law enforcement. Moreover, this study contributes to the development of modern sentencing

theory by emphasizing a more humane and adaptive approach to criminal justice, particularly in responding to the complexities of digital crime (Lacey, 2021).

Nevertheless, this study has several limitations that must be acknowledged. First, as a normative legal study, the analysis is confined to doctrinal and conceptual examination without incorporating empirical data from actual law enforcement practices, which may limit its ability to fully capture real-world dynamics. Second, the availability of literature specifically addressing the application of proportionality in online gambling cases remains limited, restricting the scope of comparative analysis. Additionally, the rapidly evolving nature of digital crime regulations may result in normative developments that are not fully reflected within the scope of this study (Bikelis, 2024).

The implications of this study highlight the need for reform in prosecutorial policies that prioritize the application of proportionality and substantive justice, particularly in addressing online gambling offenses. For policymakers, these findings provide a basis for developing clearer and more structured prosecutorial guidelines that incorporate considerations of culpability and socio-economic context. For legal practitioners, especially prosecutors, this study underscores the importance of exercising discretion responsibly in order to achieve not only legal certainty but also fairness. For future research, there is a need for empirical studies that examine the effectiveness of proportionality in prosecutorial practices and its broader impact on the criminal justice system (Urusov, 2025).

Further analysis of the findings reveals that the limitations in the application of proportionality within prosecutorial practices are closely linked to the structural orientation of the Indonesian criminal justice system, which continues to prioritize legal certainty and procedural compliance over contextual justice. While legal certainty remains a fundamental principle, its dominance in practice has resulted in a rigid application of statutory provisions, thereby constraining the ability of prosecutors to fully consider the substantive dimensions of justice. This imbalance illustrates a persistent tension between formal legality and equitable outcomes, particularly in cases involving socio-economically vulnerable offenders.

In the context of online gambling offenses, this tension becomes increasingly pronounced due to the complex and layered nature of digital crime. Unlike conventional offenses, online gambling involves multiple actors operating within decentralized and often transnational networks. As a result, the uniform application of punitive measures without differentiation among actors leads to a distortion of justice, where individuals with minimal roles may receive sanctions comparable to those imposed on more culpable actors. This finding reinforces the argument that proportionality must function not only as a sentencing principle but also as a methodological framework guiding the entire prosecution process.

Moreover, the findings indicate that the current reliance on a retributive paradigm is not solely a matter of legal doctrine but is also influenced by institutional culture and performance metrics within law enforcement agencies. In many cases, the success of prosecution is measured by quantitative indicators, such as the number of cases processed or convictions secured, rather than the quality and fairness of outcomes. This performance-oriented approach incentivizes the prosecution of easily identifiable offenders, often at the

expense of pursuing more complex cases involving higher-level actors. Consequently, the application of proportionality is undermined by systemic incentives that prioritize efficiency over justice.

From a comparative perspective, the challenges identified in this study are not unique to Indonesia but reflect broader global debates on the implementation of proportionality in criminal law. However, the Indonesian context presents distinct characteristics, particularly in the coexistence of formal legal structures and emerging restorative justice mechanisms. While restorative justice has been introduced as an alternative approach, its limited integration into prosecutorial practice suggests that it has not yet been fully aligned with the principle of proportionality. In this regard, proportionality can serve as a unifying framework that bridges punitive and restorative approaches, ensuring that both operate within a coherent system of justice.

Another important dimension highlighted by this study is the role of legal interpretation in shaping prosecutorial decisions. The absence of explicit guidelines on proportionality has resulted in a wide range of interpretative practices, which may lead to inconsistency and potential inequality before the law. This situation underscores the necessity of developing doctrinal clarity regarding the application of proportionality, including its criteria, scope, and limitations. Without such clarity, the discretionary power of prosecutors may inadvertently produce outcomes that contradict the very principles of justice it seeks to uphold.

In addition, the discussion points to the need for integrating interdisciplinary perspectives into the analysis of criminal behavior, particularly in cases of online gambling. Economic, sociological, and technological factors play a significant role in shaping both the occurrence of the offense and the appropriate response to it. For instance, individuals involved in low-level gambling activities may be driven by economic vulnerability rather than criminal intent, which necessitates a differentiated approach in prosecution. By incorporating these perspectives, the application of proportionality can be enhanced to produce more contextually informed and socially responsive decisions.

The findings also suggest that the effectiveness of proportionality as a guiding principle depends on the broader institutional ecosystem, including judicial oversight and legislative support. Courts play a crucial role in reviewing prosecutorial decisions and ensuring that the principle of proportionality is upheld in sentencing. At the same time, legislative reform is needed to provide a clearer normative basis for integrating proportionality into criminal law. This includes the potential codification of proportionality principles within statutory provisions or prosecutorial guidelines, thereby strengthening their binding force.

Finally, this study contributes to the ongoing discourse on criminal justice reform by emphasizing the importance of aligning legal practices with evolving social realities. The rise of digital crime, including online gambling, challenges traditional legal frameworks and requires adaptive responses that go beyond conventional punitive measures. The integration of proportionality into prosecutorial practice represents a critical step toward achieving a more balanced and humane criminal justice system. However, this

transformation requires not only normative adjustments but also a shift in institutional mindset, where justice is understood not merely as the application of law, but as the realization of fairness in concrete situations.

In sum, the extended discussion reinforces the central argument of this study that the principle of proportionality is indispensable in addressing disparities in the prosecution of online gambling offenses. Its effective implementation necessitates a comprehensive approach that encompasses doctrinal development, institutional reform, and interdisciplinary engagement, thereby enabling the criminal justice system to better fulfill its role in delivering substantive justice.

Conclusion

This study demonstrates that although the regulation of gambling offenses within the Indonesian criminal law system is normatively comprehensive, its implementation in law enforcement practices has not fully achieved substantive justice. The enforcement of laws against online gambling tends to disproportionately target lower-level offenders, while key actors within the criminal network remain insufficiently addressed. In addition, the prevailing reliance on a retributive paradigm has resulted in limited consideration of the offender's individual circumstances, indicating that the principle of proportionality has not been optimally applied in prosecutorial decision-making. In this regard, the application of proportionality proves essential in ensuring a balanced relationship between the offender's level of culpability and the severity of sanctions, thereby supporting the realization of substantive justice within the criminal justice system.

The primary contribution of this study lies in the development of a conceptual framework that integrates the principle of proportionality with substantive justice in the context of prosecuting online gambling offenses. This approach offers a new perspective within Indonesian criminal law by emphasizing the importance of individualized sentencing and the rational use of prosecutorial discretion to achieve fairer and more humane outcomes. From a practical standpoint, the findings of this study may serve as a foundation for policymakers and law enforcement authorities in formulating prosecution policies that are more responsive to the evolving nature of digital crime, while reinforcing a criminal justice system that prioritizes not only legal certainty but also substantive fairness.

The implications of this study highlight the need to strengthen regulatory frameworks and prosecutorial guidelines that explicitly incorporate the principle of proportionality as a basis for decision-making. Furthermore, future research is encouraged to adopt empirical approaches to assess the effectiveness of proportionality in practice and its broader impact on the criminal justice system. Interdisciplinary studies are also necessary to better understand the relationship between socio-economic factors and sentencing policies, thereby contributing to the development of a more adaptive, equitable, and sustainable legal system.

In addition to the primary findings, this study underscores the urgency of transforming prosecutorial practices in Indonesia from a predominantly formalistic and

retributive orientation toward a more balanced and context-sensitive approach grounded in proportionality. The persistence of disparities in handling online gambling cases reflects not only structural limitations within law enforcement institutions but also the absence of a clearly operationalized framework for integrating substantive justice into prosecutorial decision-making.

The proposed integration of proportionality as a guiding principle highlights the need for a paradigm shift in how criminal responsibility is assessed and translated into legal consequences. Rather than relying solely on statutory provisions, prosecutors are required to adopt a more nuanced evaluative approach that considers the offender's role, level of culpability, and socio-economic conditions. This transformation is particularly relevant in addressing cyber-based crimes such as online gambling, where the complexity of networks and the diversity of actors demand a differentiated legal response.

Furthermore, this study emphasizes that the realization of substantive justice cannot be achieved without institutional support and normative clarity. The development of prosecutorial guidelines that explicitly incorporate proportionality is therefore essential to ensure consistency and prevent arbitrary or excessive use of discretion. Such guidelines would also serve to strengthen accountability within the criminal justice system while maintaining flexibility in responding to individual cases.

From a broader perspective, the findings of this study suggest that the future direction of criminal law enforcement in Indonesia should move toward a hybrid model that combines penal and non-penal approaches. The integration of restorative justice mechanisms, when applied within a proportional framework, offers a viable pathway for reducing over-criminalization, enhancing efficiency, and promoting social reintegration of offenders. However, this requires not only regulatory reform but also a shift in institutional culture among law enforcement authorities.

Finally, this study reaffirms that proportionality is not merely a technical principle in sentencing but a fundamental component of a just legal system. Its application serves as a bridge between legal certainty and fairness, ensuring that the exercise of state power in punishment remains legitimate, rational, and humane. By embedding proportionality within prosecutorial practices, the Indonesian criminal justice system can better respond to the evolving challenges of digital crime while advancing the broader objective of substantive justice.

References

- Anugrah, S. K., Rahmat, D., & Sudarto, S. (2025). Law enforcement against online gambling offenders based on the theory of justice. *LITERATUS*. <https://journal.uoc.ac.id/index.php/literatus>
- Baldwin, G. (2023). Freedom of religion under the Australian constitution: Is proportionality the answer? *Australian Journal of Law and Religion*. <https://ausjlr.com/index.php/ajlr/article/view/2886>

- Bikelis, S. (2024). Confiscation beyond the all-crime approach and the proportionality principle—A case of the Lithuanian illicit enrichment offence concept. *Laws*, 13(1), 4. <https://doi.org/10.3390/laws13010004>
- Coverdale, H. B. (2024). Putting proportional punishment into perspective. *Criminal Law and Philosophy*, 18, 181–201. <https://doi.org/10.1007/s11572-023-09678-x>
- Dananjaya, N. A. A. P., & Bagiastra, I. N. (2025). Construction of legislation formation on restorative justice in the neo-classical criminal perspective of Law Number 1 of 2023 concerning the criminal code. *Policy Law Notary and Regulatory Issues (POLRI)*. <https://radjapublika.com/index.php/POLRI>
- Dauda, C., & McNabb, D. (2022). Getting to proportionality: The trouble with sentencing for possession of child pornography in Ontario. *Windsor Yearbook of Access to Justice*, 37. <https://doi.org/10.22329/wyaj.v37i0.7123>
- Djanggih, H., Syam, E. S., & Gunawan, S. (2023). The prosecutor's legal policy in enacting restorative justice on criminal case. *Journal of Law and Sustainable Development*, 11(12). <https://doi.org/10.55908/sdgs.v11i12.2452>
- Duus-Otterström, G. (2021). Do offenders deserve proportionate punishments? *Criminal Law and Philosophy*, 15, 463–480. <https://doi.org/10.1007/s11572-021-09572-2>
- Erlangga, D. B. (2025). Legal compliance and enforcement against gambling crimes in Sorong City. *Journal of Law Justice (JLJ)*. <https://jurnal.unamin.ac.id/index.php/jlj>
- Franko, K. (2023). On the relevance of citizenship in criminal law: Implications for proportionality, equality, and justice. *Bergen Journal of Criminal Law & Criminal Justice*, 11(1). <https://doi.org/10.15845/bjclj.v11i1.3852>
- Hosnah, A. U., Jevis, W., & Fernandez, J. D. (2025). The principle of proportionality in drug control policy in the Philippines and Indonesia. *Sriwijaya Law Review*, 9(1). <https://doi.org/10.28946/slrev.Vol9.Iss1.2842>
- Howard, J., & Pasternak, A. (2021). Criminal wrongdoing, restorative justice, and the moral standing of unjust states. *Journal of Political Philosophy*, 29(4). <https://doi.org/10.1111/jopp.12248>
- Jaladriyanta, S., Hakim, A., Sarwono, & Rochmah, S. (2024). Restorative justice policy on the reduction of crime rates in Indonesia: A narrative review. *International Journal of Religion*, 25(1). <https://doi.org/10.61707/v25i1.234>
- Karindra, A. B. (2024). Pretrial efforts to realize legal provisions that are proportional and do not contract the perspective Pancasila law. *International Journal of Multicultural and Multireligious Understanding*, 11(2). <https://doi.org/10.18415/ijmmu.v11i2.5412>
- Kempen, P. H. P. H. M. C. van. (2023). Legality and sentencing discretion: Consistent individualisation through the principles of proportionality, guilt, and equality. *International Journal of Law, Crime and Justice*, 75. <https://doi.org/10.1016/j.ijlcrj.2023.100598>
- Lacey, N. (2021). Getting proportionality in perspective: Philosophy, history, and institutions. *Crime and Justice*, 50, 77–114. <https://doi.org/10.1086/714856>

- Marasabessy, F., Sugiri, B., & Ratnohadi, H. (2025). Non-penal policy in prosecution termination (reconstructing criminal law through restorative justice). *IBLAM Law Review*. <https://iblamlawreview.id/index.php/blr>
- Marasabessy, F., Sugiri, B., & Ratnohadi, H. (2025). Unequal restorative justice: The problem of neglecting the rights of the reported party in the criminal justice system. *IBLAM Law Review*, 6(1). <https://doi.org/10.52249/ilr.v6i1>
- Martin, R. (2024). Convicting peaceful protesters: Proportionality's proper place at criminal trial. *Oxford Journal of Legal Studies*, 44, 342–375. <https://doi.org/10.1093/ojls/gqae006>
- Meliala, N. M., Ismaidar, & Sahlepi, M. A. (2024). Penerapan restorative justice oleh pengadilan negeri Medan untuk mewujudkan kepastian hukum dalam penyelesaian tindak pidana. *Jurnal Ilmu Hukum, Humaniora dan Politik*, 4(2). <https://doi.org/10.38035/jihhp.v4i2>
- Putra, M. Y., & Jainuddin, J. (2025). Analysis of the application of the principle of proportionality article 31 of Law Number 1 of 1974 concerning marriage. *International Journal of Nusantara Islam*, 13(1). <https://doi.org/10.15575/ijni.v13i1>
- Saleh, G., & Gunawan, T. J. (2021). Designing a just, definite, deterrent, restorative, and responsive criminal justice system through sentencing economic value. *International Journal of Criminal Justice Sciences*, 16(1). <https://doi.org/10.5281/zenodo.4764512>
- Śliwiński, E. (2023). Principle of proportionality as a threat to criminal-law-related fundamental rights. *New Journal of European Criminal Law*, 14(3), 327–344. <https://doi.org/10.1177/20322844231194205>
- Sopian, R. M., Erlina, B., & Zaini, Z. D. (2025). Criminal sanctions for online gambling offenders. *LAWYER: Jurnal Hukum*. <https://jurnal.unugha.ac.id/index.php/lawyer>
- Sugio, M. K., & Soponyono, E. (2024). Termination of prosecution based on restorative justice in the settlement of conventional gambling crimes in Indonesia. *International Journal of Social Science and Human Research*, 7(1). <https://doi.org/10.47191/ijsshr/v7-i01-42>
- Tanjung, A. S., & Harahap, J. F. (2024). Restorative justice regulations in reforming criminal procedure law. *Daengku: Journal of Humanities and Social Sciences Innovation*. <https://doi.org/10.35877/454RI.daengku218>
- Urusov, A. (2025). The proportionality between the size of the fine and the category of crime. *Siberian Law Review*, 12(1). <https://doi.org/10.19073/2658-7602-2025-12-1>
- Whitman, J. R. (2024). Inside knowledge: Incarcerated people on the failures of the American prison. *The Howard Journal of Crime and Justice*. <https://doi.org/10.1111/hojo.12554>