



# Ius Constituendum Regulation of Gambling in Indonesia: A Perspective of the Philosophy of Law Volkgeist Friedrich Carl von Savigny

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Article	Abstract
<b>Keywords:</b> Philosophy of Law; Gambling; Volkgeist	<i>This article discusses the phenomenon of gambling in Indonesia from the perspective of the Volkgeist legal philosophy of Friedrich Carl von Savigny, which asserts that law is not merely a product of formal legislation, but rather an expression of the collective spirit of a society living within local traditions and culture. Although gambling is prohibited in positive law, traditional gambling practices that are ingrained in the cultural identity of various ethnic groups indicate a tension between formal law and customary law rooted in the Volkgeist. Therefore, law enforcement against gambling needs to accommodate cultural values and local wisdom so that legal policies can be accepted and effective, as well as and maintain social harmonysocial harmony can be maintained. Future gambling regulations should be based on the understanding that the law reflects the collective spirit of society, with an approach that integrates formal legal aspects and respect for tradition, supported by cross-institutional collaboration and public education to effectively combat online gamblingto combat online gambling effectively. This holistic approach is expected to create a balance betweenbalance the supremacy of law and the preservation oflaw supremacy and preserve local values for sustainable justice and social order in Indonesia.</i>

## INTRODUCTION

Gambling worldwide is a vast social and economic phenomenon, significantly impacting various countries and social strata. Globally, gambling has become a part of many people's lives, although in some countries this practice is still considered illegal or strictly regulated.(Nafisah, 2023) In countries like the United States, England, Australia, and Japan, gambling has developed into a large industry with a very high turnover of money.(Trini Hastuti, 2023) For example, in 2023, the gross losses from gambling in the United States reached US\$116.9 billion, with about 62% of the population having gambled in the past year.(Mofea & Tamara, 2023) In China, although gambling is generally illegal, the practice remains rampant through official

lotteries and underground casinos, with Macau even becoming the largest gambling hub in Asia.(Zandonai, 2025)

Online gambling has become a global trend with the advancement of technology and increasingly easy internet access. In 2024, the global online gambling market revenue is estimated to reach US\$100.9 billion, with active users projected to exceed 281 million by 2029.(dw.com, 2024) The countries with the most significant online gambling transactions include the United States, the United Kingdom, Australia, Japan, and Germany. In some countries, like England, online gambling is strictly regulated by specialized agencies to ensure safety and social responsibility.

On the other hand, the negative impact of gambling is very real, ranging from financial losses to addiction, social and family problems. Gambling is often seen as a shortcut to improve the economy, especially among low-income communities, although in reality, it increases the risk of poverty and social conflict.(Trini Hastuti, 2023) Governments in various countries are striving to mitigate these negative impacts through strict regulations, public education, and the provision of rehabilitation services for people living with an addiction or a substance use disorder. In short, gambling is a complex phenomenon—combining aspects of entertainment, economy, and social risk—whose management requires an integrated approach of legal, educational, and supervisory measures at both national and global levels.

Gambling in Indonesia, especially online gambling, has become a severe social and economic problem and has rapidly developed in recent years. The latest data from the Financial Transaction Reports and Analysis Center (PPATK) shows that in the first quarter of 2025, there were approximately 1,066,000 online gamblers who made deposits totaling Rp 6 trillion, with the majority of players (71 percent) coming from the low-income group earning below Rp 5 million per month, indicating that this gambling activity significantly reaches the lower economic class of society.(Tempo.co, 2025) Most players are between 20 and 40 years old, which is the productive age group in society. West Java Province has the highest online gambling transactions, followed by Jakarta, Central Java, Banten, and East Java.

The value of online gambling transactions in Indonesia is expected to reach Rp 1,200 trillion by 2025, a significant increase from Rp 981 trillion in 2024, indicating a surge of 22.32 percent.(Akbar, 2025) This increase is driven by easy access to technology, high internet penetration, and aggressive marketing by online gambling platforms, most of which operate from abroad, making it difficult for the government to regulate effectively. Vulnerable groups such as children and low-income communities are the primary targets in this practice.

Nevertheless, the government's efforts to eradicate online gambling continue through the Online Gambling Eradication Task Force, which involves various agencies such as the National Police, the Ministry of Communication and Digital, the Financial Services Authority (OJK), Bank Indonesia, and the Financial Transaction

Reports and Analysis Center (PPATK). Thanks to this intervention, online gambling transactions in the first quarter of 2025 were reported to have drastically decreased by 80 percent compared to the same period the previous year, with the number of transactions successfully reduced from around 90 trillion to 47 trillion rupiah. If this downward trend continues, the total online gambling transactions throughout 2025 will be reduced to below 160 million. (Ramadhani, 2025) The blocking of more than 1.3 million online gambling sites by the Ministry of Communications and Digital became one of the key steps in reducing public access to online gambling.

Overall, gambling in Indonesia, especially in the online form, poses a significant economic and social threat because it involves a massive flow of funds and reaches a broad audience, including vulnerable groups. The government continues to strive for more effective supervision and enforcement to reduce the negative impact of gambling. Still, the challenges remain significant considering the cross-border nature of online gambling and its easy accessibility through digital technology.

Gambling in Indonesia is strictly regulated under the old and new Penal Code (KUHP), with the latest code, which will take effect in 2026, featuring several significant differences. Under the old KUHP, gambling is regulated in Articles 303 and 303 bis, where those who organize gambling can be sentenced to a maximum of 10 years in prison and fined up to IDR 25 million, while those who merely participate in gambling face a maximum prison sentence of 4 years and a fine of IDR 10 million. (Lisma, 2019) Meanwhile, the new KUHP, regulated under Law No. 1 of 2023, addresses gambling in Articles 426 and 427 with more detailed and systematic sanctions. Perpetrators who organize or manage gambling can be sentenced to a maximum of 9 years in prison and a fine of up to category VI (around Rp2 billion), as well as additional penalties such as the revocation of business or professional rights if done professionally, such as online gambling operators. Meanwhile, gamblers have a maximum prison sentence of 3 years and a fine of category III (around Rp50 million).

The fundamental difference between the old and new Criminal Codes is that the new Criminal Code imposes much higher financial sanctions and adds social penalties in the form of the revocation of business or professional rights. However, the prison sentence for organizers is slightly lighter (9 years compared to 10 years in the old Criminal Code). The new Criminal Code also adopts stricter principles of criminal liability and a tiered fine system based on categories, thereby providing a more substantial deterrent effect. Additionally, the new Criminal Code more clearly regulates corporate criminal liability and provides a stronger legal basis for efforts to prevent and supervise gambling crimes. Thus, the new Criminal Code reflects the modernization of gambling criminal regulations adjusted to the development of technology and current gambling practices, especially the increasingly rampant online gambling in Indonesia.

Gambling has deep historical roots in the traditions and culture. It was part of the era of ancient kingdoms, especially in the regions of Java and the coasts that became centers of civilization and trade.(Tasya Jadidah et al., 2023) At that time, gambling served as entertainment and had complex social and ritual meanings, such as wagering honor, power, and social status in various forms of games, including cockfighting, which became one of the most famous gambling traditions and held deep cultural value. Cockfighting, for example, was not just a money bet. It is also a means to demonstrate bravery, masculinity, and social ethics recognized in specific communities, and it even sparked major conflicts, such as wars in the 16th century.(Fitriya et al., 2024) Moreover, several inscriptions and ancient manuscripts provide evidence that gambling had already become part of the royal social structure, with special professions such as gamblers and gambling supervisors, indicating that this activity was regulated and formally recognized within the royal governance system.

In the modern era, the tradition of gambling has rapidly transformed into the digital realm, where online gambling has become a widespread and difficult-to-control phenomenon. Yet, it continues to have a significant social impact, especially on vulnerable groups.(Tondi, Situmeang, Ariska, & Mabbar, 2023) Nevertheless, in Indonesian society, gambling is still viewed as a controversial activity. It is often associated with bad luck, poverty, and moral decay, so in general, gambling is considered haram in religious teachings and prohibited by state law. Thus, gambling in Indonesia is a blend of long-standing cultural traditions and modern challenges that must be addressed with appropriate regulations and social education to minimize its negative impacts without disregarding historical roots and existing cultural values.

One example of a tradition in Indonesia that is very closely associated with gambling, yet still considered a local wisdom, is cockfighting, which has deep cultural roots and a long history in various regions such as Java, Bali, and Sulawesi. Cockfighting is not merely a physical contest between two roosters that fight until one is defeated or dies. Still, it is also part of traditional and religious rituals rich in symbolic and spiritual meaning. In Javanese tradition, for example, cockfighting has existed since the era of the Kadiri and Majapahit kingdoms. It is even recorded in folk tales such as the legends of Cindelas and Ciung Wanara, which elevate cockfighting as a symbol of bravery, social status, and a determinant of a leader's identity.(Tandiangga, Suma, Palinoan, Dama, & Riwandi, 2025) In Bali, cockfighting is known as *tajen* or *taji*. It is often held as part of religious ceremonies as an offering to the gods for fertility and purification, thus containing a strong religious dimension.(Sukerna, I Nyoman, 2023)

Furthermore, in Bugis culture, cockfighting is called *massaung manu* and serves as a measure of a man's bravery; someone is not considered truly brave if they have never participated in cockfighting.(Nurhayat, Maulani, & Qaaf, 2023) Although cockfighting is often associated with illegal gambling prohibited by modern Indonesian law, this tradition is still preserved as part of the cultural heritage and local wisdom

that contains deep social, spiritual, and symbolic values. Even during the independence era, cockfighting was once used as a means of fundraising for village development, demonstrating its positive social role within the community. However, cockfighting also has a controversial side due to its association with money betting and potential conflicts, as recorded in the history of wars between kingdoms caused by cockfighting bets. Thus, cockfighting becomes an example of a tradition that, despite its close association with gambling, is still valued as part of Indonesia's rich cultural heritage and local wisdom, which is complex and layered with meaning.

From the above description, it can be seen that gambling is not merely understood as an act that violates criminal law. Still, on the other hand, it is also part of society's cultural heritage and traditions. Therefore, this research aims to address two legal issues, namely: (i) gambling in Indonesia from the perspective of the philosophy of law *volkgeist* by Carl von Savigny, and (ii) the *ius constituendum* of gambling regulation in Indonesia from the perspective of the philosophy of law *volkgeist* by Carl von Savigny.

## METHOD

This research is a normative legal study that analyzes legal philosophy related to gambling in Indonesia from the perspective of Carl von Savigny's *volkgeist* legal philosophy. (Eka N.A.M. Sihombing, 2022) The approach used is conceptual, legislative, philosophical, and historical. The primary legal materials used are the Old Criminal Code and the New Criminal Code in Indonesia, as well as other regulations that discuss gambling. The secondary legal materials used are books, journal articles, and research results that discuss gambling, legal philosophy, and Carl von Savigny's thoughts on *Volksgeist*. Non-legal materials include language dictionaries. The analysis of legal materials is conducted qualitatively and prescriptively by formulating future regulations related to gambling in Indonesia.

## RESULTS AND DISCUSSION

### Gambling In Indonesia from the Perspective of The Philosophy of Law, Volkgeist by Carl Von Savigny

According to the Great Dictionary of the Indonesian Language (KBBI), gambling is a game using money or valuable items as bets, such as playing dice or cards. (KBBI, 2023) Meanwhile, gambling refers to the act or process of gambling, which is wagering a certain amount of money or property in a game of chance, intending to obtain more money or property than the original amount. The complete definition states that gambling is wagering cash or property in a game whose outcome heavily depends on luck, not just skill. In the context of Indonesian law, gambling is considered an act that contradicts religion, decency, and the moral values of Pancasila, and poses a danger to society and the state. Therefore, gambling is regulated and prohibited under various laws and regulations, including the Criminal Code and Law No. 7 of 1974 on the Regulation of Gambling.



Countries that permit gambling, such as some Western nations, and countries that prohibit it, such as Indonesia and many countries in the East, have very different cultural, legal, social, and economic reasons. In Western countries such as the United States, England, and several European nations, gambling is often viewed as part of the legal entertainment industry. It is strictly regulated to control its negative impacts while harnessing its economic potential.(Silalahi, 2020) The legality of gambling in these countries is usually based on a liberal approach that considers that with proper regulation, gambling can become a source of state revenue through taxes and create jobs. For example, although gambling regulations vary by state in the United States, some states, like Nevada and New Jersey, allow casinos and online gambling with strict licensing and zoning restrictions. This approach also aims to reduce illegal gambling and oversee gambling practices to make them more transparent and responsible.

On the contrary, in Eastern countries like Indonesia, gambling is strictly prohibited because it is considered contrary to the religious, moral, and social values of a predominantly Muslim society that adheres to the Pancasila norms.(Banjaransari, 2022) Gambling is viewed as an activity that can disrupt social order, increase crime rates, and cause poverty.(Sitanggang et al., 2023) Therefore, the law in Indonesia strictly prohibits all forms of gambling, including online gambling. However, legal loopholes sometimes allow specific business licenses in the form of limited regulations. This prohibition is also supported by the view that the state must protect its citizens from the negative impacts of gambling that can ruin family and community life. However, challenges arise with the growth of online gambling, which is difficult to eradicate completely due to technological advancements and the internet.

The state's role also influences this attitude difference in citizens' lives. Western countries that tend to adopt a liberal legal system provide space for individuals to choose gambling activities under state supervision. In contrast, more conservative and religious Eastern countries prioritize social and moral protection, thus prohibiting gambling to maintain social stability and cultural values. Consequently, this difference reflects the varying legal, cultural, and social philosophies between Western and Eastern countries in addressing the phenomenon of gambling.

The prohibition of gambling in Indonesia can be viewed from three main aspects, namely legal, religious, and sociological, which complement each other in shaping the state's policy towards this activity. From a legal aspect, gambling in Indonesia is strictly regulated and prohibited by various laws and regulations, such as Article 303 and Article 303 bis of the Criminal Code (KUHP), which threaten gamblers with imprisonment for up to 10 years and substantial fines. In addition, Law Number 7 of 1974 on the Regulation of Gambling and Government Regulation Number 9 of 1981 emphasize the prohibition of granting permits for gambling operations, to eliminate all forms of gambling in the territory of Indonesia. In the digital era, the law also regulates online gambling through the Electronic Information and Transactions Law

(ITE Law), which imposes additional criminal penalties on online gambling offenders, including prison sentences and hefty fines, and blocks access to online gambling sites. This shows that legally, the Indonesian government takes a firm stance to prevent and eradicate gambling to maintain public order and national interests.

From a religious aspect, the prohibition of gambling is heavily influenced by the values of the majority religion in Indonesia, which is Islam, that explicitly forbids all forms of gambling because it is considered to damage the morals and ethics of the community. From an Islamic perspective, gambling is an act that contains elements of injustice and harms oneself and others; thus, it is strictly prohibited to maintain the purity and welfare of the community. (Rhofadli Prayitno et al., 2024) Additionally, the cultural values and social norms that have developed in Indonesia also reject gambling because it is considered to cause social damage, such as addiction, poverty, and family conflict. Therefore, the prohibition of gambling is also an effort by the state to protect society from negative impacts that contradict the widely held religious teachings and morality in Indonesia.

From a sociological aspect, gambling is viewed as an activity that can disrupt social stability and the well-being of society. Gambling has the potential to cause various social problems such as increased crime, poverty, and family disintegration due to gambling addiction. These social impacts are a primary concern for the government in regulating and prohibiting gambling to prevent the disruption of societal order. In addition, the prohibition of gambling also aims to prevent economic and social exploitation that often accompanies illegal gambling practices, which can exacerbate social inequality and harm vulnerable community groups. Thus, the prohibition of gambling in Indonesia is not only based on legal and religious aspects but also on social considerations that prioritize the welfare and security of society as a whole.

Overall, the prohibition of gambling in Indonesia results from a synergy between the juridical aspect, which provides a firm legal basis, the religious aspect, which emphasizes moral values and religious teachings, and the sociological aspect, which considers the negative social impact of gambling on society. This policy reflects the state's commitment to maintaining order, morality, and the welfare of its people by rejecting gambling practices deemed harmful and contrary to the values of the Indonesian nation.

The old Indonesian Penal Code (KUHP) specifically regulates gambling in Articles 303 and 303 bis. Article 303 of the KUHP addresses those who organize or offer gambling with a maximum prison sentence of 10 years or a fine of up to 25 million rupiah, while Article 303 bis regulates those who participate in gambling games with a maximum prison sentence of 4 years or a fine of up to 10 million rupiah. A critical aspect of the regulation of gambling in Articles 303 and 303 bis of the old KUHP is related to gambling games and making them a pursuit.

The substance of Article 303 of the old Criminal Code emphasizes that gambling is an activity involving games where the outcome heavily depends on luck. Suppose someone intentionally offers or provides an opportunity for such gambling games and makes it a source of income or livelihood. In that case, that person can be subjected to a prison sentence of up to 10 years or a maximum fine of 25 million rupiah. This article targets those who organize or conduct gambling, including those who run gambling businesses without official government permission. In addition, this article also stipulates that if gambling is undertaken as a livelihood, the perpetrator can have their right to engage in that livelihood revoked. In other words, Article 303 aims to strictly penalize gambling organizers who make gambling a business or primary source of income.

Meanwhile, Article 303 bis of the old Penal Code regulates participants in gambling games, namely those who take advantage of gambling opportunities held illegally or participate in gambling in public places without permission. The perpetrator in this article is threatened with a prison sentence of up to 4 years or a fine of up to 10 million rupiah, and if the perpetrator is a recidivist within two years, the penalty can increase to 6 years in prison and a fine of 15 million rupiah. This article emphasizes the role of players or users of gambling opportunities who violate legal provisions, not just the organizers. Thus, Article 303 bis serves as a legal tool to eradicate gambling practices from the perspective of participants or players. Overall, these two articles emphasize that gambling is not only prohibited as a mere entertainment activity but also as an endeavor or pursuit involving money or valuable goods, and violations of these provisions can be subject to severe criminal penalties to prevent and eradicate gambling practices in Indonesia.

However, with the enactment of the new Criminal Code, which will come into full effect in 2026, the provisions regarding gambling will also change. In the new Criminal Code, gambling is still regulated as a criminal offense, but the articles have undergone adjustments in numbering and wording. One of the articles regulating gambling in Article 303 of Law No. 1 of 2023 on the New Criminal Code (KUHP) still retains the threat of imprisonment and fines for gamblers, as well as more detailed regulations regarding the types of gambling and their penalties. The new Penal Code also strengthens rules on online gambling by referring to the Electronic Information and Transactions Law (ITE Law), which imposes heavier penalties on online gambling offenders. In summary, in the old Criminal Code, gambling was regulated in Articles 303 and 303 bis. In contrast, in the new Criminal Code (which will come into effect in 2026), the regulation of gambling remains in Article 303 with adjustments to the content and sanctions that are more modern and comprehensive, including rules on online gambling. So, Article 303 remains the primary basis for regulating gambling in the new Criminal Code, despite technical changes and the addition of more specific articles related to gambling.



The substantial difference between Article 303 and Article 303 bis of the old Penal Code and Article 303 of Law No. 1 of 2023 on the new Penal Code lies in the scope, structure of sanctions, and legal approach towards gambling offenders. In the old Penal Code, Article 303 regulates explicitly organizers or those who offer and provide opportunities for gambling as a livelihood with a maximum prison sentence of 10 years and a fine of up to 25 million rupiah. Meanwhile, Article 303 bis separately regulates players or participants in illegal gambling with a maximum prison sentence of 4 years and a fine of up to 10 million rupiah, as well as provisions for aggravated penalties for recidivists. Thus, the old Penal Code clearly distinguishes between organizers and players of gambling and imposes different sanctions according to their roles.

Meanwhile, in the new Criminal Code regulated by Law No. 1 of 2023, gambling regulation is condensed into Article 303 without explicitly distinguishing between organizers and gamblers within the same article. However, the sanctions and definitions of gambling still retain the element of chance as the game's core. The threat of imprisonment in the new Criminal Code has slightly decreased to a maximum of 9 years for organizers. Still, the fine system has become more flexible and tiered, with fine categories that can reach massive amounts, far exceeding the acceptable limits of the old Criminal Code. Additionally, the new Criminal Code introduces additional penalties such as the revocation of business or professional rights for gambling offenders who make gambling their livelihood, which were not explicitly regulated in the old Criminal Code. This indicates a shift in focus from merely the main penalty to a more comprehensive and layered law enforcement approach, including social and economic aspects.

Another striking difference is that in the old Criminal Code, gambling conducted in public places or using gambling machines was regulated separately in Article 303 bis. At the same time, the new Criminal Code integrates these regulations into a single article with editorial adjustments to better align with technological developments and modern forms of gambling, including online gambling. However, criticism has arisen that the new Criminal Code has not specifically regulated online gambling in detail, thus still relying on supplementary regulations such as the Electronic Information and Transactions Law (ITE Law).

Overall, the new Criminal Code aims to simplify and strengthen the criminal provisions related to gambling by adjusting sanctions and law enforcement mechanisms to be more effective in facing contemporary challenges. The old Criminal Code more distinctly separated the roles of perpetrators and imposed stricter sanctions. The new Criminal Code's approach, which combines core criminal elements, category fines, and additional penalties, reflects Indonesia's efforts to modernize its criminal law in regulating gambling more comprehensively and responsively to social and technological developments.

Although gambling has been strictly prohibited under various laws and regulations in Indonesia, such as Article 303 of the Criminal Code and other supplementary regulations, the reality is that gambling practices continue to persist and have even become part of the traditions of communities in various regions. The history of gambling in Indonesia has been ongoing since ancient times and has become an inseparable part of the traditions of different ethnic groups in the archipelago. Archaeological evidence and ancient manuscripts show that the practice of gambling has existed since the era of kingdoms, such as the Mataram and Singosari Kingdoms, where gambling not only served as entertainment but also as a ritual medium and a tool for wagering power. For example, in the Pararaton Book and ancient inscriptions, records of cockfighting gambling, which was very popular, especially among the Javanese and Balinese communities, were found, serving various functions from tax objects, royal gifts, to complements of traditional ceremonies. (Juariyah & Adawiyah, 2022)

In Bali, cockfighting is known as "lagan sawung," which has strong religious and social significance. Epic tales like the Mahabharata, which are widely known in Indonesia, also contain stories of gambling that illustrate how gambling has long been a part of society's culture. (Pageh Wibawa, Swandi, & Agus Indram Bayu Artha, 2024) During the Dutch colonial period, gambling became more varied with the introduction of card and dice games brought by immigrants and cockfighting gambling that continued to thrive in rural areas. Even during the New Order era, gambling was briefly legalized in the form of prize lotteries packaged as social programs. However, it was later banned again due to its adverse impacts. In various tribes in Indonesia, gambling is still maintained as a hereditary tradition, especially in the form of animal fights such as cockfighting, pigeon racing, or other traditional games that often become part of cultural celebrations and community rituals. This tradition shows that although gambling is legally prohibited, culturally and socially, gambling is still considered a part of the identity and life of the community in some areas, which is difficult to separate without understanding the historical context and inherent local values. Therefore, efforts to combat gambling in Indonesia must consider cultural and traditional aspects to avoid strong social resistance.

The issue of gambling in Indonesia is very complex due to the duality between gambling, which is explicitly prohibited by criminal law, and gambling, which is still maintained as part of the cultural traditions of specific communities. Legally, gambling is regulated under Article 303 and Article 303 bis of the Indonesian Penal Code (KUHP) as well as Law Number 7 of 1974 on the Regulation of Gambling, which states that any form of gambling without official permission is a criminal offense and can be subject to imprisonment and fines. Article 303 of the KUHP targets organizers or parties who offer and make gambling a business, with a prison sentence of up to 10 years and fines, while Article 303 bis regulates players or participants in gambling with

lighter penalties. This prohibition aims to protect society from the negative impacts of gambling, such as crime, poverty, and moral decay. However, on the other hand, in Indonesian socio-cultural practices, several tribes and communities have inherited gambling traditions deeply embedded in their customs and rituals, such as cockfighting in Java and Bali, bird fights, or other traditional games that often become part of cultural celebrations and social symbols. This tradition is considered a part of cultural identity and a means of strengthening social bonds among community members, making it difficult to eradicate through legal approaches alone. This situation creates a dilemma between strict law enforcement and respect for local cultural values. As a result, although gambling is illegal by law, traditional gambling practices continue to exist. Authorities sometimes overlook them because they are considered part of local wisdom and do not always cause widespread social harm. Therefore, the issue of gambling in Indonesia requires a holistic approach that not only focuses on law enforcement aspects but also takes into account the socio-cultural context so that policies can be accepted by the community and effectively reduce the negative impacts of gambling without eliminating existing traditional values.

The issue of gambling in Indonesia, which is related to the existence of gambling as part of local tradition, is highly relevant to the concept of *Volkgeist* proposed by Friedrich Carl von Savigny, a prominent figure in classical German legal thought. The concept of the *Volkgeist* legal philosophy proposed by Friedrich Carl von Savigny is one of the essential ideas in the historical school of law, which emphasizes that law is not merely a product of the ruler's command or a result of legislative engineering, but instead grows and develops organically from the collective spirit or soul of a nation, referred to as *Volkgeist*, which means "the soul of the people" or "the soul of the nation." (Azizah & Rosita Risma Yanti, 2022) According to Savigny, law emerges from the collective consciousness of society, which is intuitive and historical, not from political decisions or separate customs; thus, law must be understood as a manifestation of the culture, customs, morals, and values that live within that society itself. (Aulia, 2020) In other words, law is an expression of the sense of justice inherent in the nation's soul, which develops along with that society's history and life experiences, making law dynamic and continuously changing by social and cultural developments.

Savigny rejected the view of legal positivism that sees law as an artificial product that can be created and changed arbitrarily, and emphasized that law must be in harmony with the *Volkgeist* to be accepted and effective in society. (Pari, 2014) This concept also emphasizes the importance of understanding a nation's historical and cultural context in shaping an authentic and sustainable legal system, as each nation has a unique *Volkgeist* that distinguishes its law from that of other countries. Therefore, Savigny's idea of *Volkgeist* is highly relevant in positioning law as an integral part of the social and cultural life of society, rather than as a mechanical product of

power, so that good law is law that grows from the roots of the culture and spirit of the society itself, reflecting the values and norms that live within its community.(Sundawa, Muthaqin, Hawari, & Baeihaqi, 2022)

Volkgeist means "the spirit of the people" or the collective spirit of a nation, which is reflected in its society's customs, habits, and cultural values.(Dicky Eko Prasetyo, Fradhana Putra Disantara, Nadia Husna Azzahra, 2021) In the context of gambling in Indonesia, although gambling is strictly prohibited by national criminal law, traditional gambling practices continue to exist. They are accepted as part of local wisdom in various indigenous communities. For example, the tradition of buffalo fighting in Toraja, which involves betting and elements of gambling, continues despite being contrary to Article 303 of the Criminal Code, because the Toraja people view this gambling as an integral part of their customs and not in violation of their customary law. Similarly, the tradition of cockfighting or *tajen* in Bali, rooted in religious rituals and cosmic symbolism, makes gambling not just an economic activity or entertainment, but also a part of the cultural and spiritual identity of the Balinese people.

A rigid legal approach that does not consider the Volkgeist often creates tension between law enforcement and indigenous communities, as traditional gambling is seen as an expression of values and social solidarity that is difficult to eradicate without damaging the local social and cultural order. Therefore, the concept of Volkgeist teaches that the prevailing positive law must respect and accommodate the cultural values that live within society so that legal policies can be accepted and effective. In this case, the handling of gambling in Indonesia cannot solely focus on formal legal aspects; it must also understand and appreciate local wisdom as part of the national spirit that shapes society's behavior patterns and social norms. An approach that integrates law with cultural values will be more capable of creating a balance between law enforcement and preserving traditions meaningful to indigenous communities, thereby minimizing social conflicts and finding more sustainable solutions. Thus, the issue of gambling in Indonesia serves as a concrete example of how Volkgeist plays a crucial role in understanding the dynamics of law and culture in a pluralistic society like Indonesia.

Gambling in Indonesia, from the perspective of the Volkgeist legal philosophy proposed by Friedrich Carl von Savigny, can be understood as a legal phenomenon that is not only formally juridical but also as a manifestation of the collective spirit or soul of a society living within local traditions and culture. Von Savigny asserts that law is not merely a product of legislation or state orders, but instead grows organically from the Volkgeist—the spirit of the nation that encompasses customs, social values, and collective consciousness that develop within society throughout its history.

In the context of gambling in Indonesia, although national positive law strictly prohibits gambling and imposes criminal penalties, traditional gambling practices such

as cockfighting in Bali, buffalo fighting in Toraja, or betting during certain tribal rituals continue to exist because they have become ingrained in the Volkgeist of those communities as part of their cultural identity and social rituals. This shows the tension between formal law, which is universal, and living law, which is rooted in local wisdom and traditional values.

From Savigny's perspective, effective and legitimate law must reflect the Volkgeist to be accepted and implemented by society, so that an absolute ban on gambling without considering cultural roots can lead to social resistance and ineffective law enforcement. Therefore, the approach to gambling in Indonesia should not only be repressive but also accommodate the cultural values and traditions within society, so that legal policies can align with the nation's spirit and function as a tool for social unity. Thus, the philosophy of Volkgeist law provides a framework for understanding that the phenomenon of gambling in Indonesia reflects the dynamics between the positive law of the state and customary law that arises from the soul of society, both of which must be considered equally in the effort to create justice and social order.

### **The *Ius Constituendum* of Gambling Regulation in Indonesia from the Perspective of The Philosophy of Law Volkgeist by Carl Von Savigny**

*Ius constituendum* is a legal science term originating from Latin, meaning the law that will be formed or the law that should exist. Simply put, *ius constituendum* refers to the concept or idea of a law that does not yet exist or is not yet in effect but is expected or planned to be created and applied in the future. (Ermanto Fahamsyah, 2022) This term is often used in law-making, legal reform, or the development of new legal systems aimed at improving or adjusting existing laws to meet society's needs and developments better. So, *ius constituendum* focuses on the normative and prospective aspects of law, namely the ideal law that is expected to serve as a guideline in the future. In this study, the *ius constituendum* is intended to renew and forward regulations related to gambling in Indonesia.

The issue of law enforcement related to Article 303 and Article 303 bis of the old Criminal Code, with Article 303 of Law No. 1 of 2023 on the new Criminal Code in the context of gambling in Indonesia presents quite a complex challenge, especially when linked to gambling as part of the community's traditions and local wisdom. Legally, Article 303 of the old Criminal Code regulates strict criminal sanctions for organizers of gambling with a prison sentence of up to 10 years and a maximum fine of Rp25 million, while Article 303 bis regulates gamblers with a maximum prison sentence of 4 years and a maximum fine of Rp10 million. In the new Criminal Code, which will come into effect in 2026, the regulation of gambling remains in Article 303 with a prison sentence of up to 9 years, but accompanied by a fine system that can reach massive amounts up to billions of rupiah and additional penalties in the form of revocation of business or professional rights, indicating an effort to strengthen



financial and social sanctions even though the prison sentence is slightly lighter compared to the old Criminal Code. However, in law enforcement practice, this difference has not fully addressed the issue because traditional gambling that has become ingrained in local wisdom, such as cockfighting in Bali, buffalo fighting in Toraja, and various forms of betting in certain tribal ceremonies, remains difficult to eradicate.

This tradition is part of the *Volkgeist*, or the spirit of the community, that has grown historically and culturally, so repressive law enforcement without considering cultural values often leads to social resistance and ineffective law enforcement. (Cahyadi, 2005) In addition, the development of technology and the emergence of online gambling add complexity to supervision and law enforcement, requiring additional regulations such as the Electronic Information and Transactions Law (ITE Law) to impose stricter sanctions on online gambling. Thus, the issue of law enforcement against gambling in Indonesia is not only related to the normative provisions in the old or new Criminal Code, but also must take into account the socio-cultural context of society so that legal policies can be accepted and effective. A legal approach that integrates formal juridical aspects with respect for local wisdom and community traditions becomes essential to balance law enforcement and preserving cultural values, so that efforts to eradicate gambling can proceed more optimally and justly.

The issue of law enforcement against gambling in Indonesia, which involves the provisions of Article 303 and Article 303 bis of the old Penal Code as well as Article 303 in Law No. 1 of 2023 on the new Penal Code, cannot be separated from the dynamics between formal criminal law and the local traditions or wisdom of the community that are inherent in gambling practices. Legally, these provisions impose strict penalties on organizers and participants of illegal gambling, with the threat of imprisonment and substantial fines as the state's efforts to maintain social order and prevent the negative impacts of gambling that can damage the moral and economic fabric of society. However, in reality, traditional gambling such as cockfighting in Bali, buffalo fighting in Toraja, or betting during certain tribal ceremonies continues and is considered part of the cultural identity that lives in the *Volkgeist* or the spirit of the nation, reflecting the social values and customs of the local community.

From the perspective of the *Volkgeist* legal philosophy proposed by Friedrich Carl von Savigny, law is not merely a product of formal legislation. Still, it grows organically from society's collective consciousness, rooted in customs, morals, and habits inherent in the nation's soul. Therefore, repressive law enforcement without considering cultural values and local wisdom often leads to social resistance and ineffectiveness in combating gambling. Moreover, technological advancements and the emergence of online gambling add complexity to law enforcement, as technical aspects such as server locations abroad, the use of fictitious accounts, and the limited resources of law

enforcement become real obstacles. Thus, law enforcement against gambling in Indonesia must integrate a formal legal approach with a deep understanding of the Volkgeist community so that legal policies can be accepted and effective while maintaining social harmony and preserving local culture.

This holistic approach will create a balance between the supremacy of law and respect for tradition, so law enforcement becomes a tool of coercion and a means of just and sustainable social development. The future regulation of gambling in Indonesia, when viewed from the perspective of the philosophy of law Volkgeist proposed by Friedrich Carl von Savigny, must consider that law is not merely a product of formal norms, but rather an expression of the collective spirit and soul of a society living within local traditions and culture.

In this context, although the government strictly prohibits all forms of gambling, including online gambling, which has now become a serious threat to the social and economic order of society, with losses estimated to reach trillions of rupiah, law enforcement efforts must still respect the local wisdom values inherent in traditional gambling practices in various indigenous communities in Indonesia. A legal approach that is merely repressive and normative without understanding the Volkgeist has the potential to cause social resistance and ineffectiveness in law enforcement, because traditional gambling, such as cockfighting in Bali or buffalo fighting in Toraja, is not just an economic activity, but part of cultural identity and social rituals that have historically been rooted.

Future regulations must integrate formal legal aspects with respect for cultural values and community traditions so that legal policies can be accepted and effective while maintaining social harmony and cultural preservation. In addition, the government also needs to strengthen cross-agency collaboration and enhance digital literacy and public education to eradicate online gambling that harms the younger generation and the national economy, as evidenced by efforts to block millions of online gambling contents and freeze accounts related to online gambling activities. Thus, future gambling regulations must be holistic, combining strict law enforcement against modern illegal gambling with a cultural approach that respects the Volkgeist of indigenous communities, thereby creating a balance between the supremacy of law and the preservation of local values for sustainable justice and social order in Indonesia.

## CONCLUSION

The phenomenon of gambling in Indonesia, when viewed from the perspective of the philosophy of law of Volkgeist by Friedrich Carl von Savigny, shows that law cannot be understood merely as a product of formal legislation, but must be seen as an expression of the collective spirit of a society living within local traditions and culture. Although gambling is legally prohibited, the existence of traditional gambling practices embedded in the cultural identity of various ethnic groups indicates a tension

between formal law and customary law rooted in the Volkgeist. Therefore, law enforcement against gambling must accommodate cultural values and local wisdom so legal policies can be accepted and effective while maintaining social harmony. Thus, a legal approach integrating positive law and Volkgeist becomes key in creating sustainable justice and social order in Indonesia.

The future regulation of gambling in Indonesia should be based on the understanding that law is not merely a formal rule, but a reflection of the collective spirit and soul of a society living within local traditions and culture, as emphasized in the legal philosophy of Volkgeist by Friedrich Carl von Savigny. Although the government prohibits gambling, including online gambling, which has significant adverse impacts, law enforcement needs to respect and accommodate the local wisdom values inherent in traditional gambling practices as part of the cultural identity of indigenous communities. A purely repressive approach without considering the Volkgeist risks causing social resistance and legal ineffectiveness; therefore, legal policies must integrate formal juridical aspects with respect for traditions and culture, supported by cross-institutional collaboration and community education to combat online gambling effectively. With this holistic approach, it is hoped that a balance will be created between the supremacy of law and the preservation of local values that can realize justice and sustainable social order in Indonesia.

## REFERENCES

- Akbar, N. A. (2025). *PPATK: Perputaran Uang Judi Online Tembus Rp 1.200 Triliun pada 2025*.
- Aulia, M. Z. (2020). Friedrich Carl von Savigny tentang Hukum: Hukum sebagai Manifestasi Jiwa Bangsa. *Undang: Jurnal Hukum*, 3(1), 201–236. <https://doi.org/10.22437/ujh.3.1.201-236>
- Azizah, A., & Rosita Risma Yanti. (2022). Pseudo Demokrasi Dalam Perspektif Keadilan Bermartabat. *Sinda*, x(x), 1–11.
- Banjaransari, A. P. R. P. (2022). Investment Effect on Wage System in Pancasila Industrial Relations based on Job Creation Law. *Jurnal Hukum Prasada*, 9(1), 45–52. <https://doi.org/10.22225/jhp.9.1.2022.45-52>
- Cahyadi, A. (2005). People, Savigny Law. Mda Freeman. Floyd's. "In Production to Jurisprudence." *Journal of Law and Development*, 35(4).
- Dicky Eko Prasetyo, Fradhana Putra Disantara, Nadia Husna Azzahra, D. P. (2021). The Legal Pluralism Strategy of Sendi Traditional Court in the Era of Modernization Law. *Rechtsidee*, 8(1), 4.
- dw.com. (2024). *8,8 Juta Orang Main Judol di 2024, Mayoritas Anak Muda*.

- Eka N.A.M. Sihombing, C. H. (2022). *Penelitian Hukum* (1st ed.). Malang: Setara Press.
- Ermanto Fahamsyah, R. C. (2022). Ius Constituendum Of Suistainable Agricultural Policy: The Aftermath Of Job Creation Act. *IUS Kajian Hukum Dan Keadilan*, 10(3), 513.
- Fitriya, D., Hidayah, N., Febrianty Putri, D., Salsabila, F., Yunaenti, S. R., Nuryanti, T., & Nurjaman, A. R. (2024). Menelaah Fenomena Judi Online (Slot) Di Kalangan Mahasiswa Dalam Perspektif Hukum Islam Di Indonesia. *Jurnal Kajian Agama Dan Dakwah*, 2(3), 1–18.
- Juariyah, J., & Adawiyah, P. R. (2022). Tanoker community as a counter culture movement to communicate traditional games in Ledokombo Jember Indonesia. *Informasi*, 52(2), 307–320. <https://doi.org/10.21831/informasi.v52i2.49039>
- KBBI. (2023). *Kamus Besar Bahasa Indonesia Online*.
- Lisma, L. (2019). Internalisasi Nilai Hukum Islam dalam Rancangan KUHP di Indonesia (Studi terhadap Tindak pidana perzinahan dalam KUHP dan RKUHP ). *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan*, 18(1), 721–733. <https://doi.org/10.30863/ekspose.v18i1.281>
- Mofea, S., & Tamara, B. (2023). Juridical Analysis of Electronic Transaction Information Crime Against Gambling. *The International Journal of Review and State Administration*, 1(1), 30–38.
- Nafisah, S. (2023). Electronic Information and Transaction Law, a means of information control in libraries. *Jurnal Kajian Informasi & Perpustakaan*, 11(1), 57. <https://doi.org/10.24198/jkip.v11i1.35354>
- Nurhayat, M. A., Maulani, M., & Qaaf, M. A. (2023). Acculturation and Preservation of Islam-Bugis Culture of Makarti Jaya River Basin, South Sumatra. *Khazanah Sosial*, 5(3), 478–487. <https://doi.org/10.15575/ks.v5i3.26916>
- Pageh Wibawa, A., Swandi, I. W., & Agus Indram Bayu Artha, I. G. (2024). The Education Meaning of Cockfighting Cartoons in Nusa Bali Newspapers. *Jomantara: Indonesian Journal of Art and Culture*, 4(1), 17–38. <https://doi.org/10.23969/jijac.v4i1.10939>
- Peari, S. (2014). SAVIGNY'S THEORY OF CHOICE-OF-LAW AS A PRINCIPLE OF 'VOLUNTARY SUBMISSION. *The University of Toronto Law Journal*, 64(1), 106–151.
- Ramadhani, A. (2025). *Kuartal Pertama 2025 dari Transaksi Judi Online Turun Hingga 80%*.
- Rhofadli Prayitno, T., Aruan, T., Akbar, K., Akmaja, R., Anggasari Mahendri, A., &

- Setyadi Bawana, A. (2024). Analisis Remaja Sebagai Bandar Judi Online dalam Perspektif Teori Kontrol Sosial. *EKOMA: Jurnal Ekonomi*, 3(3), 893–898.
- Silalahi, R. S. (2020). Corruption in Match-Fixing Within Sports: the Need To Regulate Future Legislation (a Comparative Study and Lesson From the Australian System of Law). *Indonesia Law Review*, 10(1). <https://doi.org/10.15742/ilrev.v10n1.546>
- Sitanggang, A., Sari, B. P., Sidabutar, E. D., Halimah, Cahya, M., & Nababan, R. Y. (2023). Penegakan Undang-Undang ITE Terhadap Kasus Judi Online. *Mediation: Journal of Law*, 2(4), 16–22.
- Sukerna, I Nyoman, A. S. (2023). Mabarang Jegog Contestation in Music Competitions in Jembrana, Bali, Indonesia. *International Society for the Study of Vernacular Settlements*, 10(11), 259–276. <https://doi.org/10.61275/ISVSej-2023-10-11-17>
- Sundawa, D., Muthaqin, D. I., Hawari, K., & Baeihaqi, B. (2022). Legal Covariance Model: Volkgeist-Based Legal Learning Design in Civic Education in the New Normal Era. *Proceedings of the Annual Civic Education Conference (ACEC 2021)*, 498–502. <https://doi.org/10.2991/assehr.k.220108.089>
- Tandiangga, P., Suma, I. M. M., Palinoan, F. F., Dama, A., & Riwardi, R. (2025). The impact of the Paramisi phenomenon in Torajan culture on the weakening of the religiosity and economic life of Catholics in Simbuang-Mammak. *Satwika : Kajian Ilmu Budaya Dan Perubahan Sosial*, 9(1), 53–61. <https://doi.org/10.22219/satwika.v9i1.37640>
- Tasya Jadidah, I., Milyarta Lestari, U., Alea Amanah Fatiha, K., Riyani, R., Ariesty Wulandari, C., Studi Pendidikan Guru Madrasah Ibtidaiyah, P., ... H Zainal Abidin Fikri, J. K. (2023). Analisis maraknya judi online di Masyarakat. *JISBI: Jurnal Ilmu Sosial Dan Budaya Indonesia*, 1(1), 20–27.
- Tempo.co. (2025). *PPATK: Ada 1 Juta Pemain Judi Online di Indonesia pada Kuartal Pertama 2025*.
- Tondi, A., Situmeang, R., Ariska, T., & Mabar, A. (2023). Tinjauan Hukum Tentang Pengaruh Judi Online Terhadap Perceraian. *Innovative: Journal of Social Science Research*, 3(4), 3808–3817.
- Trini Hastuti, L. (2023). Navigating Legal Boundaries: A Cross-Jurisdictional Comparison of Qanun Jinayat on Non-Muslims in Aceh and Brunei Darussalam. *Diktum: Jurnal Syariah Dan Hukum*, 21(2), 147–158. <https://doi.org/10.35905/diktum.v21i2.5339>
- Zandonai, S. S. (2025). Of broken promises cities are made. Gambling, urbanisation, and belonging in Macau. *Urban Studies*, 62(7), 1464–1479.





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