

## **Law Enforcement Against Social Media Influencer Promoting Online Gambling Sites at Indonesia: A Normative Legal Study**

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### **ABSTRACT**

*The widespread use of social media platforms by influencers as a medium for promoting online gambling sites has become a serious concern within Indonesia's digital legal landscape. This study aims to analyze the positive legal framework governing the criminal act of online gambling promotion by instagram influencers, examine the forms of criminal liability that may be imposed, and identify the obstacles encountered in law enforcement. This study employs a normative legal method by examining primary legal materials comprising relevant legislation and court decisions, as well as secondary legal materials including legal literature and academic journals. The findings reveal that the act of promoting online gambling is expressly prohibited under Article 303 of the Criminal Code and Article 27 paragraph (2) in conjunction with Article 45 paragraph (3) of Law Number 1 of 2024 on Electronic Information and Transactions (UU ITE), carrying penalties of up to 10 years imprisonment and fines of up to 10 billion Rupiah. Criminal liability may be imposed upon influencers where the elements of actus reus and mens rea are established, whether through intentional conduct (dolus) or negligence (culpa). Nevertheless, law enforcement remains constrained by several structural and technical obstacles, including cross-border and anonymous transactions, limited digital forensic capacity, rapidly evolving criminal methods, low legal literacy among influencers, and slow responses from digital platforms. Gustav Radbruch's legal certainty theory, the current enforcement framework against influencers who promote online gambling has yet to meet the standard of legal certainty envisioned by the law, necessitating regulatory synchronization, strengthened inter-agency cooperation, and improved public legal literacy to foster a more orderly and just digital ecosystem.*

**Keywords:** *Law Enforcement, Social media Influencer, Online Gambling, Criminal Liability*

## **Penegakan Hukum Terhadap Selebgram yang Mempromosikan Situs Judi Online di Indonesia: Analisis Legal Normatif**

### **ABSTRAK**

*Maraknya penggunaan media sosial oleh selebgram sebagai sarana promosi situs judi online menjadi persoalan serius dalam lanskap hukum digital Indonesia. Penelitian ini bertujuan untuk menganalisis pengaturan hukum positif Indonesia terhadap tindak pidana promosi judi online oleh selebgram, mengkaji bentuk pertanggungjawaban pidana yang dapat dikenakan, serta mengidentifikasi hambatan dalam penegakan hukumnya. Penelitian menggunakan metode yuridis normatif dengan mengkaji bahan hukum primer berupa peraturan perundang-undangan dan putusan pengadilan, serta bahan hukum sekunder berupa literatur hukum dan jurnal ilmiah yang relevan. Hasil penelitian menunjukkan bahwa perbuatan mempromosikan judi online telah dilarang secara tegas melalui Pasal 303 KUHP dan Pasal 27 ayat (2) jo. Pasal 45 ayat (3) Undang-Undang Nomor 1 Tahun 2024 tentang ITE, dengan ancaman pidana penjara hingga 10 tahun dan denda hingga 10 miliar rupiah. Pertanggungjawaban pidana selebgram dapat dikenakan apabila terpenuhi unsur actus reus dan mens rea, baik berupa kesengajaan (dolus) maupun kelalaian (culpa). Namun demikian, penegakan hukum masih menghadapi berbagai hambatan, antara lain karakteristik transaksi lintas batas dan anonim, keterbatasan kapasitas digital forensik, perubahan modus operandi yang cepat, rendahnya literasi hukum di kalangan influencer, serta lambatnya respons platform digital. Dalam perspektif teori kepastian hukum Gustav Radbruch, penegakan hukum terhadap selebgram promotor judi online belum memenuhi prinsip kepastian hukum yang dikehendaki, sehingga diperlukan sinkronisasi regulasi, penguatan kerja sama antarlembaga, dan peningkatan literasi hukum masyarakat untuk menciptakan ekosistem digital yang lebih tertib dan berkeadilan.*

**Kata kunci:** *Penegakan hukum, Selebgram, Judi online, Pertanggungjawaban pidana*

## INTRODUCTION

Technological advances in information and communication have transformed the way people interact and transact. Social media, particularly Instagram, has now evolved into a boundless public space used not only for sharing information but also for economic activities, marketing, and even illegal activities. One increasingly concerning phenomenon is the widespread promotion of online gambling sites by social media influencers with a large number of followers on the Instagram platform.<sup>1</sup>

Data from the Ministry of Communication and Digital Affairs shows that as of November 2024, the government had addressed 5,128,871 cases of online gambling content across various digital platforms.<sup>2</sup> This figure reflects the massive scale of the spread of such illegal content and the seriousness of the law enforcement challenges in the digital age. Even more concerning, data from Good Stats indicates that as many as 16.3 million Indonesians are actively engaged in online gambling a figure that directly contributes to rising divorce rates, family conflicts, and household economic losses.<sup>3</sup>

Instagram influencers, who have a huge influence on public perception and the consumption habits of their followers, have become a powerful marketing strategy for online gambling platforms. The strategies employed vary widely, ranging from direct endorsements with links to gambling sites, the use of hidden referral codes, to the publication of entertainment content subtly embedded with gambling promotions. As found by Affan and Saefudin in their criminological study, this pattern indicates that many of the influencers involved do not even completely understand the legal consequences of their actions.<sup>4</sup>

By normative standards, promoting online gambling is prohibited and subject to criminal penalties under various legal instruments. Article 303 of the Criminal Code (KUHP) prohibits the organization of and participation in gambling. Meanwhile, Article 27(2) in conjunction with Article 45(3) of Law No. 1 of 2024 on the second amendment to Law No. 11 of 2008 on Information and Electronic Transactions (ITE Law) specifically prohibits the distribution, transmission, or making accessible of

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<sup>1</sup> L. Imogen, "Legal Efforts in Tackling the Spread of Online Gambling Promotions on Social Media in Indonesia," *INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY STUDY AND ANALYSIS* 8, no. 3 (2025), <https://doi.org/https://doi.org/10.47191/ijmra/v8-i03-55>.

<sup>2</sup> G. Alfarizi, "Hingga November 2024, Kemkomdigi Tangani 5.128.871 Konten Perjudian," 2024, <https://aptika.kominfo.go.id/2024/11/hingga-november-2024-komdigi-tangani-5-128-871-konten-perjudian/>.

<sup>3</sup> Elfira Maya Shofwah, "16 Juta Warga Indonesia Main Judi Online, Bikin Angka Perceraian Meningkat," Good Stats, 2025, <https://goodstats.id/article/16-3-juta-warga-indonesia-main-judi-online-angka-perceraian-akibat-judi-kian-meningkat-f5E8D>.

<sup>4</sup> V. Affan and Y Saefudin, "Tinjauan Kriminologis Terhadap Influencer Yang Mengiklankan Judi Online (Studi Putusan Nomor: 871/Pid.Sus/2022/PN Tjk)," *Amerta: Jurnal Ilmu Sosial Dan Humaniora* 3, no. 1 (2023).

electronic information containing gambling content, punishable by a maximum prison term of 10 years or a maximum fine of 10 billion rupiah.<sup>5</sup>

Several previous studies have examined law enforcement regarding the promotion of online gambling involving Instagram influencers. The study by Angellina and Prasetyo analyzed criminal liability for individuals promoting online gambling; however, this study remains general in nature and has not provided an in-depth analysis of the obstacles to law enforcement in the digital age, nor has it offered measurable policy recommendations to enhance effectiveness.<sup>6</sup> The second study, analyzed by Sari and Ravizki, discusses criminal offenses related to online gambling involving the role of Instagram celebrities; however, its focus is primarily on the typology of the crimes without comprehensively examining the implementation of law enforcement by police authorities and the practical obstacles encountered in the field.<sup>7</sup>

Cokronegoro and Prasetyo examined the optimization of law enforcement in cases involving online gambling promoters; however, their study lacks direct empirical data from law enforcement agencies, such as the Provincial Police, regarding the effectiveness of the enforcement strategies implemented.<sup>8</sup> The identified study gaps include the absence of an analysis that simultaneously integrates the implementation of law enforcement and technical obstacles. This study is designed to address these gaps through a normative legal approach. Against the previous study, this study aims to examine: how Indonesian positive law addresses the criminal offense of promoting online gambling by social media influencers; the form of criminal liability for social media influencers who promote online gambling sites; and the normative and structural challenges in enforcing law against social media influencers who promote online gambling in Indonesia.

## **LITERATURE REVIEW**

### **The Theory of Legal Certainty**

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<sup>5</sup> Davin Gerald Parsaoran Silalahi, Ismunarno, and Diana Lukitasari, "Pengaturan Hukum Positif Di Indonesia Terkait Promosi Judi Online Di Media Sosial," *March: Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 1, no. 2 (2024), <https://doi.org/https://doi.org/10.62383/aliansi.v1i2>.

<sup>6</sup> P. Angellina and B Prasetyo, "Pertanggungjawaban Pidana Terhadap Pelaku Yang Mempromosikan Judi Online," *Ranah Study : Journal of Multidisciplinary Study and Development* 7, no. 2 (2024), <https://doi.org/https://doi.org/10.38035/rrj.v7i2.1395>.

<sup>7</sup> R. Sari and E Ravizki, "Tindak Pidana Kejahatan Judi Online Yang Melibatkan Peran Selebriti Instagram," *Legal Spirit* 9, no. 3 (2025), <https://doi.org/https://doi.org/10.31328/lv.v9i3.5893>.

<sup>8</sup> H Cokronegoro, H., Prasetyo, "Optimizing Law Enforcement in the Case of Online Gambling Promoters/Endorsements," *Media Iuris* 8, no. 1 (2025), <https://doi.org/https://doi.org/10.20473/mi.v8i1.59348>.

Legal certainty serves as the primary analytical framework for this study. Legal certainty is one of the fundamental objectives of law, requiring that legal norms be applied consistently, clearly, and in a manner that is predictable to every citizen. Gustav Radbruch states that legal certainty encompasses four key elements: law is positive law (statutes); law is based on factual reality; these facts must be clearly formulated; and positive law must not be easily changed.<sup>9</sup>

Jan M. Otto defines legal certainty in specific situations as requiring the existence of clear and easily accessible legal rules, consistent application by government agencies, compliance by the majority of citizens, judicial independence in the application of the law, and the concrete enforcement of court decisions. In the context of cyber law enforcement regarding the promotion of online gambling, this theory is relevant because it identifies the gap between the legal certainty intended by regulations and the reality of law enforcement on the ground.

The legal certainty referred to in Article 28D (1) of the 1945 Constitution affirms that every person has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law. This principle serves as the constitutional basis for the impartial enforcement of the law, including against highly popular social media influencers.<sup>10</sup>

## **RESEARCH METHODOLOGY**

This study used a normative legal study, which involves examining and analyzing written legal materials, including legislation, court decisions, and relevant legal literature. Normative study is used to analyze law as a system of norms that governs societal behavior, particularly in the context of law enforcement against individuals who promote online gambling sites. This study is referred to as a normative legal study because the author examines applicable legal provisions, namely Article 27(2) of Law Number 1 of 2024, which regulates the promotion of online gambling sites, and Article 45 (3) of the ITE Law, to analyze the law enforcement process normatively.

The data sources for this study include primary legal materials in the form of relevant laws and regulations and court decisions related to online gambling promotion cases, as well as secondary legal materials in the form of legal literature, academic journals, legal books, and other scholarly works related to the study topic. Data

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<sup>9</sup> Mahdiah Amelia et al., "Analisis Etika Profesi Dan Pertanggungjawaban Pidana Influencer Dalam Fenomena Penyebaran Judi Online Di Media Sosial," *Jurnal Teknik Informatika Dan Teknologi Informasi* 5, no. 3 (2025), <https://doi.org/10.55606/jutiti.v5i3.6202>.

<sup>10</sup> N. Bawembang et al., "Enforcement of the ITE Law and the Impact of Online Gambling Promotion by Influencers on the Youth in Tomohon," *SANTHET: Jurnal Sejarah, Pendidikan Dan Humaniora* 8, no. 2 (2024), <https://doi.org/https://doi.org/10.36526/santhet.v8i2.4662>.

collection was conducted through library study and documentary analysis, specifically by collecting, reviewing, and analyzing legal materials related to the study subject.

Data analysis in this study was conducted qualitatively using a descriptive-analytical method. The collected legal materials were reduced, presented, and conclusions were drawn based on the normative findings.<sup>11</sup> The stages of analysis include: first, data reduction, which involves sorting legal materials relevant to the study problem; second, data presentation, which involves systematically describing normative findings; and third, drawing conclusions, which involves interpreting legal materials in relation to applicable normative provisions. This approach allows the studyer to gain a deep understanding of the normative framework for law enforcement against social media influencers who promote online gambling within the jurisdiction of Indonesian law.

## **RESULT AND DISCUSSION**

### **Legal Regulations on the Criminal Offense of Promoting Online Gambling by Instagram Influencers**

Under domestic law, online gambling is classified as a criminal offence with implications under criminal and cyber law. The following are the legal regulations regarding the prohibition of online gambling and the associated penalties in Indonesia:

1. The Criminal Code (KUHP and Law No. 1 of 2023)

The Indonesian Criminal Code has long criminalized gambling. Article 303 of the Criminal Code prohibits any person who intentionally offers or provides the public with the opportunity to gamble, organizes gambling games, or participates in a gambling enterprise, punishable by imprisonment for a maximum of 10 years or a fine of up to Rp25 million. This provision is relevant to social media influencers because the promotion of online gambling sites is, in essence, a form of “offering the opportunity to gamble” to the public through digital means.

Law No. 1 of 2023 on the new Criminal Code, which will come into full effect in 2026, updates these provisions through Articles 426 and 427, with harsher criminal penalties and wording that is more adaptable to technological developments. Article 426(1) of Law No. 1 of 2023 provides for a maximum prison sentence of 10 years for operators of unlicensed gambling, while the Explanatory Notes to this Article clarify that “license” refers to a license issued by the government in accordance with the

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<sup>11</sup> M. B. Miles and J. Huberman, A. M., Saldaña, *Qualitative Data Analysis: A Methods Sourcebook (3rd Ed.)* (SAGE Publications, 2014).

prevailing social norms.<sup>12</sup>

2. The ITE Law (Law No. 1 of 2024)

The legal instrument most often applied in cases involving the promotion of online gambling on social media is the ITE Law, as last amended by Law No. 1 of 2024. Article 27(2) of Law No. 1 of 2024 states that any person who intentionally and without authorization distributes, transmits, or makes accessible electronic information that contains gambling content is prohibited from doing so. The criminal penalties are stipulated in Article 45(3), which carries a maximum prison sentence of 10 years or a maximum fine of Rp10 billion.

Revised Law No. 1 of 2024 represents a significant departure from the previous ITE Law, which only carried a maximum penalty of 6 years' imprisonment and a fine of Rp1 billion (Article 45(2) of Law No. 11 of 2008 as amended by Law No. 19 of 2016). This increase in criminal penalties reflects the state's growing seriousness regarding cyber gambling crimes and provides stronger legal legitimacy for law enforcement officials to take action against online gambling promoters, including social media influencers.<sup>13</sup>

The definition of "distribute" includes sending and/or disseminating electronic information to a large number of people through an electronic system; 'transmit' means sending electronic information intended for another party; and "make accessible" includes all other acts that result in electronic information being made available to the public. These three categories of acts are particularly applicable to influencers who post online gambling promotional content on their Instagram accounts, as such content is simultaneously disseminated, sent, and made accessible to hundreds of thousands to millions of followers.

3. Law No. 7 of 1974 on the Prohibition of Gambling

As a historical foundation, Law No. 7 of 1974 on the Regulation of Gambling stipulates that all forms of gambling are prohibited in Indonesia. This law is significant in affirming the policy of criminalizing gambling as a consistent intent of the legislature since the New Order era. Although this law does not explicitly regulate online gambling, the principles contained

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<sup>12</sup> E. Hasibuan, "The Police Are Indecisive: Online Gambling Is Rising. Facts about the Eradication of Online Gambling in the Field," *Journal of Social Study* 2, no. 10 (2023), <https://doi.org/https://doi.org/10.55324/josr.v2i10.1405>.

<sup>13</sup> O. P. Y. Mawei and V. D Bawole, H. Y. A., Kasenda, "Penegakan Hukum Judi Online Berdasarkan Pasal 27 Ayat (2) Undang-Undang Informasi Dan Transaksi Elektronik," *Lex Administratum* 13, no. 1 (2025).

therein serve as the foundation for legal interpretations that adapt to new forms of gambling.

4. Regulation of the Minister of Communication and Information Technology on Electronic System Operators

Ministry of Communication and Information Technology Regulation No. 5 of 2020, as amended by Ministry of Communication and Information Technology Regulation No. 10 of 2021, on Private-Sector Electronic System Operators (PSE) requires digital platforms to filter and remove illegal content, including gambling content. This regulation grants the Ministry of Communication and Digital Affairs the authority to order platforms such as Instagram, TikTok, and YouTube to block accounts or content promoting gambling. As of November 2024, Komdigi has addressed 5,128,871 instances of gambling content, yet this figure also highlights the significant volume of illegal content that continues to circulate.<sup>14</sup>

### **Criminal Liability for Instagram Influencers Who Promote Online Gambling Sites via Instagram or Other Social Media**

Criminal liability is one of the fundamental concepts in criminal law that determines whether a person can be subject to criminal sanctions for their actions. In criminal law doctrine, criminal liability is defined as a situation in which a person can be held legally accountable for committing an act prohibited by criminal law, accompanied by the element of fault and in the absence of justifying or exculpatory grounds.

According to Andi Hamzah, criminal liability is a person's liability for an act committed that, under criminal law, is punishable because it meets the elements of a criminal offense and is unlawful. In other words, criminal liability is a manifestation of the principle that not everyone who commits a criminal act is automatically subject to criminal punishment; rather, it must be determined whether that person meets the criteria for being subject to criminal liability.

The following are the main requirements for criminal liability under the Indonesian legal system:

1. Criminal Act Has Occurred (actus reus)

The act committed must constitute a criminal offense as defined in criminal law.

2. Fault (mens rea)

Criminal law recognizes two forms of fault: intent (dolus) and negligence (culpa). Fault is a subjective element of a criminal offense.

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<sup>14</sup> Alfarizi, "Hingga November 2024, Kemkomdigi Tangani 5.128.871 Konten Perjudian."

3. There Are No Justifying or Excusing Reason

Justifying reasons such as coercive defense (*noodweer*) and excusing reasons such as incapacity to be responsible (psychological/psychiatric) can remove a person's criminal liability.

4. The Perpetrator is Legally Responsible

A criminal must have the capacity to be legally responsible, in other words, they must be of legal age and not be suffering from a mental disorder.

In order to clarify, when an Instagram influencer promotes an online gambling site, the above elements must be thoroughly examined: whether the influencer committed an unlawful act (the promotion of the gambling site), whether they did so intentionally or through negligence, and whether they are liable to criminal punishment or if there are grounds to exempt them from liability. Criminal liability is not merely a form of retribution, but also a means of education and general and special prevention to deter the public from engaging in prohibited acts. Therefore, this principle must be enforced fairly and proportionally

### **Challenges to Law Enforcement**

Despite the existence of a comprehensive normative framework, the enforcement of law against social media influencers who promote online gambling in Indonesia continues to face significant structural and normative challenges, these challenges can be identified across five interrelated factors: First challenge: The Nature of Cross-Border and Anonymous Transactions. Online gambling operations typically involve complex transnational networks, with servers and operators frequently located in foreign jurisdictions beyond the reach of Indonesian law. Bantu, Franciska, and Mau note that the limitations of Indonesia's mutual legal assistance (MLA) agreements with countries where online gambling servers are hosted pose a serious obstacle to the legal process. Social media influencers who promote such sites are, in most cases, only the visible element of a far more complex criminal network, rendering comprehensive prosecution structurally difficult.<sup>15</sup>

Second Challenge: Limited Digital Forensic Capabilities. Investigating cybercrime requires advanced digital forensic expertise, including the ability to track crypto transactions, analyze metadata, and break through the encryption techniques used by online gambling operators. Budiman state that low digital literacy among law

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<sup>15</sup> Sherly Bantu, Wira Franciska, and Hedwig Adianto Mau, "Criminal Liability of Online Gambling Perpetrators in Indonesia According to the Electronic Information and Transactions Law," *Jurnal Impresi Indonesia* 3, no. 9 (2024), <https://doi.org/https://doi.org/10.58344/jii.v3i9.5414>.

enforcement officials is one of the factors undermining the effectiveness of law enforcement.<sup>16</sup>

Third Challenge: The Rapid Evolution of Modus Operandi. Online gambling operators and the social media influencers promoting them continue to adapt with increasingly covert strategies, such as the use of disguised referral codes, short-lived social media stories that are difficult to save as evidence, and the rapid switching of platforms when an account is blocked. Abdurrazzaq and Rizka found that although regulations prohibit gambling advertisements, operators continue to find technological and legal loopholes to avoid legal consequences.<sup>17</sup>

Fourth Challenge: Lack of Legal Literacy Among Influencers. Many Instagram influencers are unaware that accepting compensation for promoting online gambling sites constitutes a criminal offense. Affan and Saefudin found that some influencers involved in online gambling promotions do not understand the legal consequences of their actions. This situation makes it difficult to prove the element of intent (*dolus*) and opens the door to a defense based on legal ignorance.<sup>18</sup>

The Fifth Challenge: Slow Responding Digital Platforms. Although Ministry of Communication and Information Regulation No. 5 of 2020 requires PSE to remove illegal content, social media platforms are often slow to respond to requests to remove content, citing user privacy or technical limitations. This allows sufficient time for online gambling promotional content to spread widely before it is finally removed.

Analyzed through Gustav Radbruch's theory of legal certainty, the foregoing challenges demonstrate that law enforcement against social media influencers who promote online gambling has not yet achieved the standard of legal certainty envisioned by the applicable regulations. Three principal deficiencies underlie this condition: first, the absence of specific technical regulations governing the obligations of influencers to verify the legality of products they promote; second, the inconsistent application of sanctions, whereby influencers proven to have promoted online gambling are in some instances subject only to administrative warnings rather than criminal prosecution; and third, the insufficient coordination among relevant authorities including the National Police, the Ministry of Communication and Digital Affairs, and social media platforms in responding to illegal content, a condition that creates significant structural loopholes enabling perpetrators to repeat their conduct with impunity

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<sup>16</sup> R. Budiman et al., "The Impact of Online Gambling Among Indonesian Teens and Technology," *IAIC Transactions on Sustainable Digital Innovation (ITSDI)* 3, no. 2 (2022), <https://doi.org/https://doi.org/10.34306/itsdi.v3i2.559>.

<sup>17</sup> S. A Abdurrazzaq, M. N., Rizka, "Perlindungan Hukum Terhadap Sistem Elektronik Atas Iklan Judi Online Yang Beredar Di Instagram Berdasarkan UU No. 1 Tahun 2024" (Universitas Muhammadiyah Surakarta, 2024).

<sup>18</sup> Affan and Saefudin, "Tinjauan Kriminologis Terhadap Influencer Yang Mengiklankan Judi Online (Studi Putusan Nomor: 871/Pid.Sus/2022/PN Tjk)."

## CONCLUSION

This study concludes that law enforcement against social media influencers who promote online gambling sites in Indonesia has a strong legal basis under Article 303 of the Criminal Code and Article 27(2) in conjunction with Article 45(3) of Law No. 1 of 2024 on Information and Electronic Transactions. Social media influencers who intentionally distribute or make gambling content accessible via social media may be held criminally liable if the elements of fault are met, whether in the form of intent (*dolus*) or negligence (*culpa*), with penalties of up to 10 years' imprisonment and a fine of up to Rp10 billion.

However, the effectiveness of law enforcement remains far from ideal. Technical obstacles such as limitations in digital forensics and the rapid evolution of *modus operandi* legal barriers in the form of the absence of specific technical regulations for influencers, and weak inter-agency coordination have resulted in law enforcement failing to meet the principle of legal certainty as envisioned by Gustav Radbruch's theory. Therefore, it is necessary to strengthen regulatory synchronization, enhance the capacity of law enforcement officials in the cyber domain, and provide legal education to the public and social media industry stakeholders so that the promotion of illegal content, such as online gambling, can be prevented and addressed more effectively.

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