

Legal Studies: Law as a Deterrent Effect for Gambling Criminals

I Gusti Gede Maha Andika Jaya¹, Faisal Santiago², Zudan Arief Fakrulloh³
{dr_gustigede@yahoo.com¹; faisalsantiago@borobudur.ac.id², cclsis@yahoo.com³}

Universitas Borobudur, Indonesia

Abstract. At present, gambling is in an alarming stage. The development of gambling is getting faster and more varied, although the crime of gambling is a prohibited activity and is subject to sanctions, this crime is difficult to eradicate. In connection with the mentality of the community to pursue material in a fast and easy way, so choosing gambling is used as an alternative. Overcoming the crime of gambling must be done with repressive and preventive efforts that run in balance. Gambling is considered normal in society, so counselling needs to be done and a deterrent effect is needed for perpetrators and a fear effect is needed. In the criminal justice system, the police are gatekeepers, so they have a central role in overcoming gambling. The criminal justice system starts from the Police, so preventive and repressive efforts are needed to tackle the crime of gambling.

Keywords: countermeasures; crime; gambling

1 Introduction

Gambling is a violation of religious norms, decency, morals, and the law that poses a grave threat to community, nation, and state life. Because it has become accepted as a normal occurrence, the community frequently engages in a variety of forms of gambling, both covertly and openly. Gambling is a serious offense from a legal standpoint that deeply disturbs the community.

There are several problems that arise as a result of this gambling is that people will become addicted that can not stop and eventually lose a lot of money and property. So, gambling is very detrimental to oneself and society because in addition to poisoning one's soul, it can also poison the economy of the community at large. In addition to losing money, mental and health can also encourage gamblers to become lazy, which in turn will trigger other crimes such as stealing, corruption, and even murder. Based on the consequences or bad effects caused by gambling, many countries prohibit gambling by imposing severe sanctions. Gambling is called a crime and a crime that is the obligation of all parties to eradicate it to the highest level. Because basically there are laws and regulations that prohibit gambling, namely the Criminal Code.

Being aware of the risks and having certain expectations regarding game events, matches, competitions, and events whose outcomes are uncertain constitutes gambling, which is betting on purpose and entails risking something of value [1]. In the broadest sense of the word, it includes gambling games as well as all games that generally have the possibility to win depending on chance or fate, even though the possibility of winning can also increase due to the practice or skill of the player. Apart from that, it includes gambling games as well as all bets in horse racing, football competitions, betting between people who do not participate in the

competition themselves, and so on [2]. According to Durkheim in Stepnisky (2018), there are two kinds of social facts: (1) In material form, things that can be observed are captured and observed. The facts that make up this material are part of the real world. Examples are architecture and legal norms. (2) In the form of non-material that is something that is considered real (external). This type of social fact is an inter subjective phenomenon that can only emerge from within human consciousness. Examples are egoism, altruism, and opinion [3].

The issue examined in this study is the relationship between gambling-related criminal acts in Article 303 and Article 303 bis and the judge's consideration of these acts when deciding cases. The forms of criminal acts that are included in Article 303 and Article 303 bis concerning gambling are any act or game in any form without exception which involves betting to get excess profits included in the category of gambling game acts. There is no exception for games that are considered normal by the community but are inserted into the bet, then it is included in the form of actions that can be sentenced to criminal penalties by the authorities.

2 Methodology

A qualitative approach, which is a method of research that produces analytically descriptive data, is used in this kind of study. This paper employs a normative juridical research strategy to examine the relevant literature and legislation in light of the issues raised. This kind of research makes use of secondary data that has been gathered from legal library materials like: principal legal documents, including: statutory guidelines; secondary legal documents, such as: books on literature and legal and scientific works Materials related to tertiary law, such as: General Indonesian Dictionary and a Legal Dictionary. Qualitative and normative analyses of the collected legal materials were conducted.

3 Results And Discussion

Crime in Gambling

Criminal acts in terms of gambling are formulated in two articles, namely Articles 303 and 303 bis, both of which are crimes [4]

a. Providing an Opportunity to Play Gambling

The crimes referred to above are formulated in Article 303, which in full are as follows

- 1) Compromised with a most extreme detainment of a decade or a greatest fine of 25 million rupiahs, whoever without getting consent: a) knowingly promotes or facilitates gambling games with the intention of earning a living from them, or knowingly participates in a related business; b) knowingly providing opportunities for the general public to gamble or knowingly participating in such business activities, regardless of whether the opportunity requires the fulfillment of certain conditions or procedures to take advantage of; c) Engage in gambling as a means of earning a living.
- 2) If the guilty commits the crime in carrying out his livelihood, his right to carry out his livelihood can be revoked.
- 3) Any game in which the likelihood of making a profit is largely determined by luck, as well as by the players' level of training or expertise, is considered a gambling game. It includes all other bets as well as all bets on the outcome of a race or other game that is not held between players or competitors.

Article 303's definition of a crime includes five types of gambling (hazardspel) offenses in paragraph 1, the basis for criminal aggravation in paragraph 2, and an explanation of the gambling games intended by paragraph 3 in paragraph 3.

There are elements of illegality in each of the five types of gambling crimes that are inherent to the illegal nature of the gambling crime. However, if there is no element without permission or there is a permit, if it has obtained approval from the official or agency entitled to give permission, then the act in the formulation is no longer or nullifies its unlawful nature which cannot be punished. Why is the inclusion of this unlicensed element by the legislators? Because in the case of gambling there is an intention so that the government or certain government officials can still carry out supervision and regulation of gambling games.

- b. Using the Opportunity to Play Gambling Held by Violating Article 303.
The crime of gambling referred to above is formulated in Article 303 bis as follows. threatened with a maximum four-year prison sentence or a ten million rupiah fine;
- anyone who takes advantage of the opportunity to play a gamble, which is held in violation of the provisions of Article 303;
 - anyone who engages in gambling on a public road, on the side of a public road, or in a location that the general public is able to access, unless the competent authority has granted permission to do so.
- c. A maximum sentence of six years in prison or a fine of five million rupiahs may be imposed if, at the time of the offense, two years have not passed since the permanent sentence was imposed for one of these offenses [5]. The crime that was originally outlined in Article 303 was a violation that was outlined in Article 542. However, by means of Law no. 7 of 1974, which dealt with gambling control, was made a crime and incorporated into Article 303 bis. The criminal threat, which was previously limited to a maximum of one month in prison or a maximum fine of Rp. A maximum sentence of four years in prison or a fine of Rp. 4,500.00 was added. ten million rupiah (\$10,000).
The crime of gambling is mentioned in paragraph 1, and its repetition is the basis for criminal aggravation in paragraph 2. As stated in points 1 and 2, paragraph (1) contains two types of crime, namely:
- 1) prohibiting people from playing gambling by using the opportunity held in violation of Article 303;
 - 2) prohibit people from participating in gambling on public roads, on public roads, or in other places that can be visited by the public; unless there is permission from the authorities in the case of holding the gambling.

Category of Gambling Criminal Elements

From the explanation above regarding gambling, there are 3 elements that must be fulfilled so that an act can be said to be gambling, the three elements are [6]:

- a. Games / competitions, the games carried out are usually in the form of games or competitions. This act is done solely for fun or busyness to fill spare time to entertain the heart. So basically it is recreational, but here the actors do not have to be involved in the game, because they may be spectators or people who participate in betting on the course of a game or competition.
- b. Luck, To win a race or game, it is more dependent on speculative elements/ coincidence or luck, or the victory factor obtained due to the habits or intelligence of players who are very accustomed or limping.

- c. There are bets in games or competitions, there are bets or competitions, there are bets placed by the players or dealers, either in the form of money or other property, even the wife is made a bet. As a result of these bets, then of course there are parties who benefit and there are parties who are disadvantaged. This element is the most important element to determine whether an action can be called gambling or not.

From the description above, it is clear that all actions that meet the three elements above, even though they are not mentioned in PP RI number 9 of 1981, are included in the gambling category even though they are replaced by other names that appear to be donations, such as social generous donations with prizes (SDSB). Even football, table tennis, badminton, volleyball and chess can be categorized as gambling, if in practice they fulfill these three elements.

Gambling is regulated by two articles in the Criminal Code: Article 303 and Article 303 bis. Meanwhile, the division of types of gambling according to the Criminal Code, is [7]:

The crime of offering or providing an opportunity to play gambling, the crime is more fully formulated in article 303 of the Criminal Code, are:

- a. Threatened with a maximum sentence of ten years in prison or a fine of Rp 10,000. 25,000,000, or twenty-five million rupiah, to anyone without permission, or knowingly participate in the undertaking. Second, whether a person chooses to take advantage of an opportunity to gamble or participates in the business with intent, there are conditions that must be met and specific procedures must be followed. The third option is to make gambling a source of income.
- b. If the guilty commits the crime in carrying out his livelihood, his right to carry out his livelihood can be revoked.
- c. Any game that, in addition to being more skilled or proficient, also relies on luck for profit is considered a "gambling game." It includes all other bets as well as all bets on the outcome of competitions or other games that are not held between players or competitors.

In the formulation of Article 303 of the Criminal Code contains 5 crimes regarding gambling contained in paragraph (1). The five crimes mentioned above contain elements without permission, in the elements without permission there are elements against the law of the five crimes above [5].

- a. First Crime

This crime is contained in the first point, namely a crime that prohibits those without permission to intentionally provide or offer opportunities to play gambling and make it a livelihood. From this description, the elements of this crime are;

- 1) Objective Elements:

- His deeds: Offer and provide opportunities;
- Object: To gamble without permission;
- Used as a livelihood.

- 2) Subjective Elements:

In this first crime, the maker does not gamble. In this crime there is no prohibition against playing gambling, but the prohibited acts are:

- Offering gambling opportunities;
- Provide gambling opportunities.

Offering an opportunity here means that the maker does everything to invite or invite people to play gambling, by providing a certain place or time. In this case, no one has gambled yet.

b. Second Crime

The second crime which is also contained in point I is without permission to intentionally participate in a gambling game business activity. Thus it consists of the following elements:

1) Objective Elements.

- Actions: Participate;
- Object: in an unlicensed gambling game business activity.

2) Subjective Elements.

Purposely. In this second type of gambling crime, the act is participating, meaning that he is involved in a gambling game business with other people. As in the first form, in the second form it also contains an element of intentionality, but this intentionality is more of an element of participation in gambling game business activities, meaning that the maker wants to take part in the act and basically that his participation is a gambling game activity.

c. Third Crime

This third form of gambling crime is without permission to intentionally offer or provide an opportunity for the general public to play gambling. The elements are:

1) Objective Elements:

- Actions: offering or giving an opportunity;
- Object: To the general public;
- To play gambling without permission.

2) Subjective Elements.

- Purposely. This third crime of gambling is very similar to the crime of gambling of the first form. The similarity is the element of action, namely offering or providing opportunities to play gambling
While the differences are as follows: [8]
- In the first form, the act of offering or giving an opportunity is not stated to whom it is directed, it can be to a person or several people, while to the general public, so this third form of crime does not apply if it is only directed at a person or a few people.
- In the first form, it is explicitly stated that the two actions are used as a livelihood, while in this third form there is no element of livelihood.

d. Fourth Crime

The prohibition on intentionally participating in carrying out gambling business activities without a permit is the fourth form of gambling crime in Article 303 paragraph (1) of the Criminal Code, and its elements are as follows:

1) Objective Element

- Actions: Participate;
- The object: in the business activities of gambling games without a permit;

2) Objective Element

Purposely.

This fourth form is also almost the same as the second form, the difference lies in the element of participation. In the second form, the element of participation is aimed at gambling business activities as a livelihood, while in this fourth form, the element of participation is not intended for livelihood.

e. Fifth Crime

In this fifth form there is also an element of participation, but in this fifth form it is no longer about participating in offering or providing opportunities to play gambling, but participating in the gambling game itself. Using the opportunity to play gambling held in violation of Article 303 of the Criminal Code. The gambling referred to above is regulated in Article 303 bis, plus the Law. No. 7 of 1974 whose formulation is as follows:[9]

- 1) Threatened with a maximum four-year prison sentence or a ten million rupiah fine; First, whoever plays gambling with the opportunity provided by Article 303. Second, anyone who engages in gambling activity on a public street or in a location open to the public, unless the gambling activity has been authorized by the appropriate authority.
- 2) If at the time of committing the crime two years have not elapsed since the previous conviction which has become permanent due to one of these crimes, the danger can be detainment for a limit of six years, or a greatest fine of fifteen million rupiahs.

Judges' Considerations in Deciding Cases Related to Gambling

The process in determining whether or not someone is guilty of an act committed by a person is all under the jurisdiction of the judiciary, so that only the ranks of this department are authorized to examine and adjudicate every case that comes. [10]

The facts of the trial are the basis/material for compiling the considerations of the panel of judges before making a legal analysis which is then used to assess whether the defendant can be blamed which was revealed at the trial and to obtain a conviction whether the accused deserves to be blamed, deserves to be punished for his actions as revealed at the trial. Simply put, a decision must be based on the facts of the trial and followed by a decision that reflects a sense of justice.

The judge's considerations in deciding a case regarding gambling are based on the trial examination process in which evidence is also carried out for a criminal act in order to confirm that the facts that occurred in the criminal act are in accordance with what is suspected, what is meant by the theory of evidence, among others: [11]

- a. Judge's Confidence System, what is meant by a judge's belief system is that judges make decisions based on belief, but are limited by the applicable rules that have previously been determined in the law.
- b. Rational based belief (Argumentation), which is meant by rational based belief (argument) is a theory that is almost the same as the judge's belief theory but the judge's decision must be based on rational logic.
- c. Positive Law System, what is meant by this theory is proof according to this theory is carried out using evidence that has previously been determined in the law.
- d. Negative Law System, what is meant by this theory is proof that in addition to using the evidence stated in the law, also uses the judge's conviction. Even though the judge's belief is used, the judge's belief is limited to the evidence determined by law. In the event that the preliminary assessment is considered to have been finished, he/she welcomes the public examiner to peruse out his requests [12]. (regerevatoir) after that it is the turn of the defendant or the defendant's legal advisor to read his memorandum of defense which can be replied by the Public Investigator gave that the respondent or his lawful guide triumphs ultimately the last turn (Article 182 passage (1) of the Criminal Method Code (KUHAP).

Based on what is explained above, the judge in making his decision uses several considerations as follows:

- a. Considerations based on the available evidence, one of the pieces of evidence considered by the judge is the testimony of witnesses.

- b. Consideration based on the elements in the articles of the indictment by the prosecutor. The judge considers based on the elements contained in the articles of prosecution by the prosecutor.
- c. Considerations based on aggravating and mitigating things. The judges consider aggravating things and mitigating things. Namely the considerations in the indictment by the prosecutor and also the facts in the trial.
- d. Considerations based on the indictment. That the judge sees whether the defendant has ever committed a legal act or has been convicted before

Based on the considerations in the trial that has been carried out, what must be done by the panel of judges is to draw up the concept of the decision/determination of the case in hand, which is sourced from the results of the examination which are recorded in full in the Minutes of the Trial (BAP) then drafted a decision/stipulation which contains : Regarding the case, which describes the implementation of the judge's duties in evaluating the truth of the facts or events proposed. Legal considerations that describe the main thoughts of the judge in evaluating the proven facts and finding the law for the event/action, here formulate in detail the chronology and relationship to each other based on the law or statutory regulations. A decision that contains the final result as a constitution or legal determination of events or facts that have been proven.

4 Conclusion

Betting is a customary wrongdoing however truly affects society. Betting is directed in Article 303 of the Lawbreaker Code and Article 303 bis of the Crook Code Jo. Regulation No. 7 of 1974 concerning Betting Control, it is expressed that all types of betting are violations. Likewise, the assertion is built up by the PP No. 9 of 1981 concerning the Execution of Regulation no. 7 of 1974 which is addressed to the Focal Government and Provincial Legislatures to disallow or disavow betting licenses in any structure and reason.

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