

THE GAMBLING CRIME PREVENTION EFFORTS

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Abstract

The crime of gambling is regulated in Article 303 and Article 303 bis of the Criminal Code (KUHP), this crime is included in the category of crimes against decency. The sanctions for gambling crimes stipulated in the Criminal Code are of an alternative nature, that is, they are punishable by the main punishment in the form of imprisonment or a fine, in which the punishment is based on the qualification of the act committed by the perpetrator. Prevention efforts that can be made against the prevalence of gambling cases, especially in Wajo Regency, use a criminological approach which consists of pre-emptive, preventive and regressive efforts. The form of preventive efforts taken is in the form of structuring laws and regulations, providing legal counseling to the public and optimal law enforcement against gambling crimes.

Keywords: *crime, gambling, prevention.*

INTRODUCTION

Gambling is one of the oldest games in the world, almost every country recognizes it as a game of chance. Gambling has existed since ancient times, often the development of human civilization. Encyclopedia Britanica notes that gambling has been found since primitive times, for example in Bushmen in South Africa, Aboriginal tribes in Australis and Indian tribes in America, where they have been familiar with the game of dice.¹ Then gambling developed since the days of Ancient Greece. Various kinds of gambling games and their techniques are very easy to make gambling rapidly expand throughout the world, including Indonesia.

In essence, gambling is an act that is very contrary to religious norms, moral morality and legal norms. Gambling is also a social problem because the impact it causes is negative. Gambling games can create addiction and cause material and immaterial losses not only for players but also for their families. Apart from harming oneself, it can also harm society because poisoning one's soul also poison the country's economy at large. Apart from losing money, mental and health conditions can also encourage gambling players to become criminals to fulfill their gambling needs by committing theft crimes.

¹ Anton Tabah, 1991. *Menatap Dengan Mata Hati Polisi Indonesia*, Jakarta, PT Gramedia, Pustaka Utama, p. 181

Gambling or gambling games or gambling according to the Big Indonesian Dictionary are games using money as a bet.² Gambling is betting an amount of money or property in a game of guesswork based on chance, with the aim of getting an amount of money or property that is greater than the original amount of money or property.³ Meanwhile Kartini Kartono defines gambling as a deliberate gambling, namely risking one value or something that is considered valuable by realizing certain risks and expectations on events, games, competitions and events with uncertain/uncertain results.⁴

The forms of gambling also vary, ranging from traditional ones such as dice gambling, cockfighting, dexterity games, guessing numbers such as dark toto (lottery) to the use of advanced technology such as gambling using mobile phones or commonly known as online gambling. Even sports activities such as the world cup (world cup), the Indonesian league, and even the inter-village league are used as land for gambling.

This gambling practice needs to be tackled because in the Criminal Code (KUHP) Chapter XVI, gambling is categorized as a crime against decency because the consequences of this act have an impact on public order. Apart from that, in Law Number 7 Year 1974 concerning Gambling Control, it is stated that all forms of gambling are crimes. In addition, this statement is strengthened by the existence of Government Regulation Number 9 of 1981 concerning Implementation of Law Number 7 of 1974 which is aimed at the central government and local governments to prohibit or revoke gambling licenses in any form and purpose. All of these regulations are considered as clear legal instruments to prohibit gambling activities.

The case of gambling in Wajo Regency is getting more prevalent. This is evident from the fact that in March 2019, the Wajo Police secured 5 five players of kiu-kiu gambling, the five young men were secured by the Wajo Police Sabhara Unit Motorized Patrol Members, by confiscating 2 sets of domino cards and Rp. 509,000.00.⁵ Furthermore, the Wajo Police Sat Sabhara Patmor Team raided gambling using crickets at the Tempe Market, Tempe Village, Wajo Regency. The three suspects were AN, AT and A. From the results of the raid, a number of evidences were found, namely as many as 18 crickets and their places, 1 ouch arena unit and Rp. 1,190,000.00.⁶ In 2020 to be precise in January, the Wajo Police again secured 8 players of dice gambling and cockfighting along with a number of evidence, namely rooster, cockfighting arena, dice and dice gambling arena, cash, cellphones and clock guns.⁷ Based on the description above, the writer examines 2 (two) problem formulations, namely (1) How are the sanctions arrangements for gambling crimes in criminal law and (2) How are the efforts to prevent gambling crimes, especially in Wajo Regency?

METHOD

To answer the formulation of the problem, the author uses a normative juridical research type to examine legislation and literature. The type of legal material used is primary legal material sourced from legislation, namely Law Number 1 of 1946 concerning Criminal Law Regulations and secondary legal materials, namely books and journals that discuss gambling crimes. The technique of collecting legal materials uses library research. The primary and secondary legal materials that have been collected will then be inventoried and analyzed in order to draw conclusions from the problem.

ANALYSIS

The Regulation of Sanctions Against Gambling Crimes in Criminal Law

In the Criminal Code (KUHP) Chapter XVI, gambling is categorized as a crime against decency.

Based on Article 303 of the Criminal Code and Article 303 bis KUHP, it is categorized as a crime and is subject to criminal sanctions as outlined in the article below:

Article 303 of the Criminal Code

- 1) By a maximum imprisonment of ten years or a maximum fine of twenty-five million rupiahs, whoever without obtaining permission is punished:
 - a. Intentionally offering or providing opportunities for gambling games and making it a search for, or knowingly participating in a company for that purpose;
 - b. Intentionally offering or giving the general public the opportunity to play gambling or

² Poewadarminta, 1995. *Kamus Besar Bahasa Indonesia Edisi Kedua*, Jakarta, Balai Pustaka, p. 419

³ *Ibid.*

⁴ Kartini Kartono, 2005. *Patologi Sosial*. Jakarta, PT Raja Grafindo Persada, p. 56

⁵ <https://makassar.tribunnews.com/2019/03/28/main-kiu-kiu-tengah-malam-5-pemuda-di-desa-assorajang-wajo-ditangkap-polisi> accessed on Wednesday, July 1, 2020, at 1.00 pm

⁶ <http://fajar.co.id/2019/02/06/judi-pakai-jangkrik-di-pasar-tiga-pemuda-di-sengkang-diciduk-polisi/> accessed on Wednesday, July 1, 2020, at 1.00 pm

⁷ <http://www.tribunnews.com/regional/2020/01/28/polisi-gerebek-markas-judi-dadu-dan-sabung-ayam-di-sakkoli-wajo-8-pelaku-dan-20-motor-diamankan> accessed on Wednesday, July 1, 2020, at 1.00 pm

deliberately participating in the company for that matter, regardless of whether to use the opportunity there is a condition or compliance with any procedure;

- c. Making participating in gambling games a quest.
- 2) If the person guilty of this crime is in carrying out his search, then his right to carry out that search may be revoked.
- 3) The so-called gambling game is any game, where in general the possibility of making a profit depends on luck alone, also because the players are more trained or more proficient. It includes all bets regarding the decision of a race or other game not held between those who are competing or playing, as well as any other betting.

The object here in Article 303 paragraph (1) is "gambling game" in the foreign language "hazardspel". What is entered is bets about the decision of a race or other game not held by those who are competing or playing, as well as all other bets. What is commonly referred to as "hazardspel" is for example playing dice, playing blackjack, playing jemen, kemping keles, shaking, etc. Also included in totalizers on horse races, soccer matches and so on. Not included in "hazardspel", for example domino, bridge, Ceki, Koah, Pei and so on which are usually used for entertainment.⁸

In Article 303 paragraph (1) point a, what is meant by livelihood is that the perpetrator is able to make a profit, while the word "company" does not mean a company in the Indonesian Commercial Code but is sufficient if there are regulations and regulations. This article is aimed at the person providing the venue and the people involved in the procurement or operation of gambling. This article means that gambling is carried out in a limited environment.⁹

Furthermore, Article 303 paragraph (1) point b, if "public" has already played, being "participating in gambling" means being involved in the gambling. In general, gambling is distinguished from the lottery. Agility games and lottery betting are self-regulated outside the Penal Code. Dexterity games, for example bridge, domino, excluding gambling while betting has been formulated in Article 303 paragraph (3) as gambling.¹⁰

In Article 303 paragraph (2) of the Criminal Code, which is punished according to this article are:

- a) Providing or giving the opportunity to play gambling as a livelihood. So a dealer or other person who as a company opens gambling. People who interfere in this are also punished. Here there is no need for gambling in public places or for the public, even though in a closed place or a closed circle is sufficient, as long as the gambling has not received permission from the authorities.
- b) Deliberately holding or giving opportunities to play gambling to the public. Here it is not necessary as a means of income, but must be in a public place or which can be visited by the public. Even if there is permission from the authorities, it will not be punished.
- c) Participating in gambling for a living.¹¹

The perception of gambling has been formulated in Article 303 paragraph (3) of the Criminal Code, the main element of gambling is "chance". Those who are punished in this article are people who play gambling and are punished according to this article, so people who take part in the game are punished according to Article 330 bis. Previously, a person who as a company opened gambling was punishable under Article 303 of the Criminal Code, while people who used the opportunity to play gambling were charged under Article 303 bis KUHP.¹²

Article 303 bis paragraph (1) of the Criminal Code, explains:

1. By a maximum imprisonment of 4 (four) years or a maximum fine of ten million rupiahs:
 - a. Whoever uses the opportunity to play gambling, which is held in violation of the rules of Article 303;
 - b. Whoever takes part in gambling games that are held on a public road or on the side of it or in a place that can be accessed by the general public, unless to do so, there is permission from the competent authority.
2. If when committing an offense, it has not passed two years since there is a sentence which becomes permanent due to one of these violations, a maximum imprisonment of six years or a maximum fine of fifteen million rupiah may be imposed.

In Article 303 paragraph (2) bis KUHP, the criminal burden is regulated in the form of recidive (repetition of criminal acts), namely if the perpetrator of the gambling crime has not passed two years

⁸ R. Soesilo, 1995. *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal demi Pasal*, Bogor, Politeia, p. 222

⁹ Leden Marpaung, 2008. *Kejahatan Terhadap Kesusilaan dan Masalah Prevensinya*, Jakarta, Sinar Grafika, p. 81

¹⁰ *Ibid.*, p. 82

¹¹ *Ibid.*

¹² *Ibid.*, p. 223

since the existence of a conviction is proven to have committed a similar crime. Concerning gambling is also regulated in Law Number 7 of 1974 concerning Controlling Gambling, it states that "in essence, gambling is against the religious, moral and moral norms of Pancasila, as well as endangering the livelihoods and lives of the community, nation and state. Gambling is one of the ills of society which is combined with evil. The implementing regulations regarding the Gambling Control Law are strengthened by the existence of Government Regulation Number 9 of 1981 concerning the Implementation of Law Number 7 of 1974 which is aimed at the central government and regional governments to prohibit or revoke gambling licenses in any form and purpose. All of the above regulations are clear legal instruments to prohibit gambling activities.

The regulation of criminal sanctions against gambling crimes refers to Article 10 of the Criminal Code (KUHP). The types of criminal sanctions regulated in Article 10 of the Criminal Code are:

- a. Principal Punishment
 1. Death penalty
 2. Imprisonment
 3. The penalty of imprisonment
 4. Fines
 5. Cover penalty
- b. Additional Punishment
 1. Revocation of certain rights
 2. Confiscation of certain goods
 3. Announcement of the judge's decision¹³

Referring to Article 303 of the KUHP and Article 303 bis KUHP, for the crime of gambling, it is punishable with 2 (two) main sentences, namely imprisonment or a fine. In the principle of punishing a crime, only one main sentence is allowed. This means that the judge may not pass two or more of the basic sentences stipulated in Article 10 of the Criminal Code.

Furthermore, additional penalties in the criminal law can be imposed simultaneously with the basic penalty, but in principle, the additional punishment cannot be imposed alone but must be followed by a basic sentence. In the regulations related to gambling crimes, additional penalties that can be given to criminals are regulated, one of which is the revocation of certain rights as regulated in Article 303 paragraph (2) of the Criminal Code.

The Efforts to Prevent Gambling Crimes in Wajo Regency

The rise in gambling cases, especially in Wajo Regency, requires preventive efforts based on the factors that cause the occurrence of the gambling crime. In criminology as the study of crime, criminal prevention can be divided into 3 (three), namely:

1. Pre-emptive measures; What is meant by preemptive measures are initial efforts made to prevent the occurrence of a criminal act. The effort made is by instilling good values / norms so that these values and norms are internalized in a person. Even if there is an opportunity to commit a crime but if there is no need, there will be no crime. So it is a pre-emptive effort, the intention factor that is omitted. This method of prevention comes from the NKK theory, namely: Intention + Opportunity then crime occurs.
2. Preventive measures; is a follow-up to pre-emptive efforts which are still at the level of prevention prior to the occurrence of crimes. In preventive efforts, the emphasis is on eliminating the opportunity to commit crimes.
3. Repressive efforts; is an effort made when there has been a criminal act / crime in which the action is law enforcement by imposing a sentence.¹⁴

Pre-emptive and preventive efforts exist in the context of prevention efforts before the occurrence of crime, while repressive efforts are efforts after the occurrence of a crime. gambling which constitutes a crime against decency needs serious handling by taking preventive measures in the form of:

1. Arrangement of legislation

Arrangement of legislation is one form of prevention (prevention) of a crime. The criminal act of gambling has started with the issuance of Law Number 7 Year 1974 which regulates Article 303 and Article 303 bis KUHP. According to Soerjono Soekanto, "The arrangement of legislation should not stop but should be continuously tasked with always planning improvements/amendments/enhancements to each article so that it remains effective so that at any time the public interest or the

¹³ R. Soesilo, *Op.Cit.*, p. 34

¹⁴ A.S. Alam, 2010. *Pengantar Kriminologi*, Makassar, Pustaka Refleksi Books, p. 79-80

interests of the community is always protected".¹⁵

Criminal law rules or regulations that do not protect public / community interests, will not be applied or obeyed so that their validity will disappear by themselves. This can be avoided if the statutory arrangement is carried out regularly.

Reforms related to the regulation of criminal sanctions against gambling crimes in the latest Draft Criminal Code (RUU KUHP) are important to prevent the rampant gambling cases. One of them is by setting the minimum and maximum threats in the rules. As is known in Article 303 KUHP and Article 303 bis KUHP, what is regulated is only the maximum limit of the duration of the sentence that is threatened so that a judge in deciding a case can start from 1 (one) day up to a predetermined limit. Of course this will result in disparities in punishment in the judge's decision.

2. Legal education

One of the factors that influence the effectiveness of law enforcement, namely the community factor, the community plays an important role in the realization of optimal law enforcement. Public understanding of the applicable law must be evenly distributed because since the enactment of a law, all levels of society are considered to know the law (*presumptio iures de iure*). This can be done by providing legal counseling to the surrounding community to provide knowledge and understanding of applicable regulations.

This legal counseling effort is a preventive effort in overcoming criminal acts. In this case, the legal counseling that is carried out requires coordination between the police and the local government by involving local religious and traditional leaders to prevent gambling crimes.

3. Optimal law enforcement

Law enforcement is a form of prevention as well as an effort to repress a crime, especially gambling crimes. It is said that preventive efforts are made because with good law enforcement, other people who have the potential to become criminals will be afraid/deterred from committing crimes by seeing the imposition of crimes against the perpetrators, this is correlated with the purpose of punishment, namely the goal theory (*doeltheorien*) which is general prevention.

Meanwhile, law enforcement is said to be a repressive effort because with the maximum imposition of crimes against criminals it will deter the perpetrator from committing similar crimes or not becoming recidivists (special prevention). Before law enforcement officers take action against gambling perpetrators, other repressive measures can be made by periodically conducting raids on places where gambling crimes are likely to occur.

CONCLUSION

Gambling crime is not a new crime, but has existed since ancient times. In Indonesian legal arrangements, the inclusion of gambling as a crime against decency based on Article 303 and Article 303 bis Criminal Code (KUHP) has a legal consequence that all perpetrators of gambling crimes who violate these rules will be punished in accordance with the applicable rules. Sanctions that can be given to the perpetrators of gambling crimes are an alternative between imprisonment or a fine, because in the principle of imposing a sentence in the Criminal Code, 2 (two) principal crimes are not allowed to use simultaneously. The magnitude of the impact caused by gambling crimes requires crime prevention efforts that are not only centered on law enforcement officers but also involve the entire community, including local government and religious and traditional leaders.

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¹⁵ Leden Marpaung, *Op. Cit.*, p. 8

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