

Legal Policy on Gambling Crime

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ABSTRACT

Gambling is a form of social pathology that poses a real and potential threat to social norms so that it threatens social order. Thus, it will greatly impact on national development with material-spiritual aspects which must therefore be addressed in a rational way. One of these rational efforts is the policy approach to criminal law enforcement regulated in the Criminal Code (KUHP) in accordance with the amendments by Law no. 7 of 1974 concerning the regulation of gambling. However, the policy formulation of laws and regulations has several weaknesses. At the applicative stage, the judge is not free to determine the types of criminal sanctions that will be imposed on the perpetrators of gambling crimes. This is due to the general minimum system and the general maximum system adopted by the Criminal Code, so that any type of criminal sanctions contained in the law must be applied by judges. Policies for dealing with gambling crimes in the future must still be carried out by means of a penalty. Policy formulation of criminal law must be more optimal and able to reach the development of criminal acts of gambling with advanced technology.

Keywords: Legal regulations, Gambling, crime



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INTRODUCTION

Gambling is one of the oldest games in the world, almost every country knows it as a game of chance (Griffiths, 2018). On the other hand, gambling is also a social problem because the impact it has on the national interest is very negative, especially for the younger generation which causes them to tend to be lazy at work and the funds flowing in this game are quite large. Gambling is also against religion, morals and ethics because it creates dependence and material losses not only for the players but also for their families (Sulkunen et al., 2018).

In Indonesia itself, gambling is not a new thing for the community, because this gambling has been known since the days of the kingdoms in Java and outside Java with various types and forms (Keeler, 2017). Types and forms of bets in the form of movable and immovable objects. Gambling is essentially an act that is

contrary to religious, moral, decency and legal norms. The Criminal Code or the Criminal Code is a book of legal laws that apply as the basis of criminal law in Indonesia. Regulations regarding gambling can be found in the Criminal Code, namely, Article 303 of the second book (crime) chapter XIV on Crimes against Politeness (Ormerod & Laird, 2018).

To anticipate the development of society in relation to changes in crime, it is possible to plan efforts to make criminal law that accommodates all the dynamics of society (Serin et al., 2016). This is a policy issue, namely regarding the selection of facilities in regulating social life.

Criminal law is often used to solve social problems, especially in crime prevention. Especially the problem of gambling as a form of social disease, a form of social pathology (Spector & Kitsuse, 2017).

Criminal law enforcement to tackle gambling as a deviant behavior must continue (McCaghy et al., 2016). This is very reasonable because gambling is a real threat to social norms that can cause individual tensions as well as social tensions. Gambling is a real or potential threat to the ongoing social order (Downes et al., 2014).

Thus, gambling can hinder national development with material-spiritual aspects. Because gambling educates people to earn a living improperly and forms a "lazy" character (Jironet, 2019). Meanwhile, development requires individuals who work hard and have a strong mentality (Toyama, 2017).

It is reasonable then that gambling must be a rational solution in its solution considering the problems that can disrupt the social functioning of society. One of the rational efforts used to tackle gambling is a criminal law policy approach (Xiao & Henderson, 2021).

The use of this criminal law is in accordance with the legal function as social control or social control, which is a process that has been planned in advance and aims to encourage, invite, order or even force community members to comply with legal norms or legal orders that are currently in effect (Brown, 2015).

The use of legal remedies, including criminal law, as an effort to overcome social problems, including in the field of law enforcement policies. Besides that, because the goal is to achieve public welfare in general, law enforcement policies and even then are included in the field of social policy, namely all rational efforts to achieve public welfare. As a matter of policy, the use of criminal law is not actually a necessity (Laxminarayan et al., 2013).

The enforcement of criminal law for the prevention of gambling is experiencing quite interesting dynamics. Because gambling is often considered a natural and legal thing. But on the other hand, these activities have a very negative impact and threaten the social order of the community (Reiman & Leighton, 2015). This can be seen from the policy through Law no. 22 of 1954 concerning lotteries, so that the lottery with prizes does not cause various national evils, the government legalized Porkas, namely donations of funds for sports. At the end of 1987, Porkas changed to KSOB (Sports Contribution Coupon with Prizes). In the middle of 1988, KSOB or SOB (Sport Donations with Prizes) was disbanded because it had a negative impact, namely the absorption of small community funds and affecting the local area. Finally, in mid-July 1988, the Minister of Social Affairs, Haryati Subadio, in a working meeting with Commission VIII of the DPR, terminated the

KSOB. After the dissolution of KSOB, a new face of disguised gambling was born on January 1, 1989 under the name SDSB (Social Generous Donations with Prizes). SDSB donated in good faith. However, it is alleged that donations contain elements of gambling and fraud against the public. On November 25, 1993, the government revoked and canceled the license for the 1994 SDSB (Stotzer, 2014).

Based on the facts above, in the context of overcoming gambling problems, a criminal law policy (penal policy) is needed (Rubin, 2018). The policy must be concentrated in two directions, the first leading to applicable policies, namely policies for how to operationalize the current criminal law legislation in order to deal with gambling problems. While the second is formulative policies or policies that lead to criminal law reform (penal law reform), namely policies for how to formulate regulations in criminal law laws (related to the concept of the new Criminal Code) which are precisely in order to tackle gambling in the future (Molas-Gallart et al., 2021).

RESEARCH METHOD

This study uses a normative juridical approach, namely by examining or analyzing secondary data in the form of secondary legal materials by understanding law as a set of regulations or positive norms in the legal system that regulates human life. So this research is understood as library research, namely research on secondary data.

This research includes normative legal research, so the type of data used is secondary data. The secondary data studied are as follows:

1. Primary legal materials, namely binding legal materials;
2. Secondary legal materials, namely materials that provide an explanation of primary legal materials; namely in the form of documents or minutes of legislation;
3. Tertiary legal materials that provide a more in-depth explanation of primary legal materials and secondary legal materials include:
 - a. Indonesian Encyclopedia;
 - b. Legal Dictionary;
 - c. English-Indonesian Dictionary;
 - d. Various magazines and legal journals.

In accordance with the use of secondary data in this study, data collection was carried out by collecting, reviewing and systematically processing library materials and related documents. Secondary data, both concerning primary, secondary and tertiary legal materials, are obtained from library materials, taking into account the principles of updating and relevance.

RESULT AND DISCUSSION

A. Criminal Law Policy for Combating Gambling

The problem of law enforcement in Indonesia seems to be starting to face obstacles related to the increasingly rapid development of society. Various cases illustrate the difficulty of law enforcement in finding ways to make the law appear to be in line with societal norms. After all, the problem of gambling,

whether it is profitable or detrimental, cannot be separated from humans and their behavior in social life. Gambling is one of the results of human work and engineering in meeting the needs of life both spiritually and physically in a society full of competition and crises and pressures.

Gambling behavior is also widespread in Indonesian society, but the law in Indonesia does not allow gambling, so this activity is carried out secretly. Gambling in Indonesian society can be found in various levels of society. There are various forms of gambling, from traditional ones such as dice gambling, cockfighting, agility games, guessing songs to the use of advanced technology such as gambling via mobile phones or the internet. Even sporting activities such as the 2006 World Cup (Worldcup 2006) which had just taken place were not left behind as a place for gambling. Online gambling on the internet has also been visited by many gamblers, although no data is obtained whether Indonesian internet users often browse to these sites. webstakes.com and aceshigh.com are two names of online gambling sites that have been visited by millions of visitors, as reported by Computer Info Magazine (glorianet.org).

The rise of gambling in various forms and manifestations mentioned above, was responded to by some regions by compiling a draft regional regulation (Raperda) on Anti-gambling. Others held a demonstration against law enforcement and the local government (Pemda) who seemed to let it go. However, gambling crimes are increasingly widespread which is the result of the government's failure to fulfill the spirit of the law and the spirit of the gambling law which has been around for more than 30 years. This legislation was born during the New Order era which was an alternative to overcome the problem of gambling crime, then Law Number 7 of 1974 concerning Gambling Control was born. This law clearly states that the threat of punishment in the Criminal Code (KUHP) for gambling is no longer appropriate and therefore needs to be increased. In fact, the article on gambling offenses was made a crime and the sentence was increased from one month to four years (Article 542 paragraph 1), and from three months to six years (Article 542 paragraph 2). Although the threat of punishment is increased and the type of offense is changed (from a violation to a crime), this community problem cannot be solved.

The enactment of Law Number 7 of 1974 concerning Gambling Control is a statutory provision or regulation that stipulates and changes several provisions in the Criminal Code. The formulation and stipulation of provisions for criminal sanctions by legislators is regulated in Articles 303 and 303 bis, both of which are crimes.

The crimes referred to above are formulated in Article 303 of the Criminal Code which in full are as follows:

1. Threatened with a maximum imprisonment of ten years or a maximum fine of twenty five million rupiah, whoever without obtaining permission:
 - a. Intentionally offering or providing opportunities for gambling games and making it a livelihood, or intentionally participating in a business activity;
 - b. Intentionally offering or giving an opportunity to the general public to play gambling or intentionally participating in that business activity, regardless of whether to take advantage of the opportunity there is a condition or the fulfillment of a procedure;

- c. take part in gambling games as a livelihood.
2. If the guilty commits the crime in carrying out his livelihood, his right to carry out that livelihood can be revoked.
3. What is called a gambling game is any game, where in general the possibility of making a profit depends on sheer luck, also because the players are more trained or more proficient. It includes all bets on the decision of a race or other game not held between those participating in the competition or playing, as well as all other bets.

The act which is considered as a form of criminal act of decency in the case of gambling is using the opportunity to play a gamble which is held in violation of Article 303 bis. The crime regarding gambling referred to is formulated in Article 303 bis which is formulated as follows:

1. Threatened with a maximum imprisonment of four years or a maximum fine of ten million rupiah;
 - a. Any person who takes advantage of the opportunity to play gambling, which is held in violation of the provisions of Article 303;
 - b. Any person who participates in gambling on a public road or on the side of a public road or in a place that can be visited by the public, unless there is permission from the competent authority who has given permission to carry out the gambling.
2. If at the time of committing the offense two years have not elapsed since the sentence has become permanent due to one of these offenses, a maximum imprisonment of six years or a maximum fine of fifteen million rupiahs may be imposed.

The basis for consideration of an act that is made a criminal act according to Law Number 7 of 1974 concerning Gambling Control, in particular cannot be separated from the reasons for the formation and drafting of the law. In the consideration of Law Number 7 of 1974 concerning Gambling Control:

1. That gambling is essentially contrary to Religion, Morals and Pancasila Morals, and is dangerous to the livelihoods and lives of the community, nation and state;
2. That therefore it is necessary to make efforts to curb gambling, limit it to the smallest possible environment, to ultimately lead to its complete elimination from the entire territory of Indonesia;
3. That the provisions in. The Ordinance dated March 7, 1912 (Staatsblad Year 1912 Number 230) as has been amended and added several times, most recently with the Ordinance dated October 31, 1935 (Staatsblad Year 1935 Number 526), is no longer in accordance with the development of the situation;
4. That the threat of punishment in the articles of the Criminal Code regarding gambling is deemed no longer appropriate so that it is necessary to make changes to make it more severe;
5. That based on the above considerations, it is necessary to draw up a Law on Gambling Control.

The provisions regarding the weight of criminal sanctions that will be imposed on the makers of gambling crimes can be seen from the formulation of the

provisions contained in Article 303 and Article 303 bis of the Criminal Code in accordance with Law no. 7 of 1974. The sounds of those articles are:

1. Article 303

- a. Threatened with a maximum imprisonment of ten years or a maximum fine of twenty five million rupiah, whoever without obtaining permission:
 - 1) Intentionally offering or providing opportunities for gambling games and making it a livelihood, or intentionally participating in such a business activity;
 - 2) Intentionally offering or providing opportunities for the general public to play gambling or intentionally participating in such business activities, regardless of whether to take advantage of the opportunity there are certain conditions or the fulfillment of certain procedures; c. take part in gambling games as a livelihood.
- b. If the guilty person commits the crime in carrying out his livelihood, his right to carry out his livelihood can be revoked.
- c. What is called a gambling game is any game, where in general the possibility of making a profit depends on sheer luck, also because the players are more trained or more proficient. It includes all bets on the decision of a race or other game not held between those participating in the competition or playing, as well as all other bets.

2. Article 303 bis

Threatened with a maximum imprisonment of four years or a maximum fine of ten million rupiahs;

- a. Any person who takes advantage of the opportunity to play gambling, which is held in violation of the provisions of Article 303;
- b. Any person who participates in gambling on a public road or on the side of a public road or in a place that can be visited by the public, unless there is permission from the competent authority who has given permission to carry out the gambling.

If at the time of committing the violation two years have not passed since the application of criminal sanctions against the perpetrators of the crime of gambling related to the problem of applying the types of crimes and the length of the sentence imposed on the perpetrators of the crime. In practice, the application of minimum criminal sanctions that have been imposed and the judge's decision (convict) still applies to the Criminal Code as the main system.

The criminal liability policy contained in the Criminal Code will be related to the principle of criminal responsibility or the principle of error in criminal law, which determines that in principle there is no crime without guilt. In principle, a person can be convicted if it has been proven to have committed a crime and there is an error. This principle of error is one of the fundamental principles in criminal law and is a partner of the principle of legality.

The grouping of gambling as a form of decency offense is still being continued and maintained by the drafters of the new Criminal Code. The regulation regarding the Crime of Morals in the 2004/2005 Criminal Code Concept is contained in Chapter XVI. The formulation of the crime of gambling

as regulated in Article 522 to Article 523 in the Draft Criminal Code. The articles that regulate the gambling problem are: punishment which becomes permanent due to one of these offenses, may be subject to a maximum imprisonment of six years or a maximum fine of fifteen million rupiahs.

a. Policy on the Implementation of Criminal Law in Combating Gambling

1) Article 522 Paragraph (1)

Sentenced to a maximum imprisonment of 9 (nine) years, any person who:

a. Offer or provide opportunities to play gambling and make it their livelihood or participate in gambling companies; b. Offer or provide opportunities for the public to play gambling or participate in gambling companies, regardless of the absence of any conditions or procedures that must be met to use the opportunity; or c. Make participation in gambling games as a livelihood.

2) Article 522 Paragraph (2)

If the perpetrator of the crime as referred to in paragraph (1) commits the act in carrying out his profession, he may be subject to additional punishment in the form of revocation of the right to exercise the profession.

3) Article 523

Everyone who uses the opportunity to play gambling, shall be sentenced to a maximum imprisonment of 4 (four) years or a maximum fine of Category IV.

The formulation of the main types of crime in the Criminal Code Concept is not much different from the Criminal Code concept (WvS). The difference lies in the addition of social work crimes which have not been recognized in the Criminal Code. The formulation of the main types of punishment that will be imposed on the perpetrators of gambling crimes is the threat of imprisonment and fines. As can be seen in the formulation of the following article:

Although the main types of crime that are threatened in the provisions governing the crime of gambling are based on imprisonment and fines. However, judges have the discretion to determine and choose sanctions, whether criminal or appropriate actions for the objective conditions of the perpetrators. So there is a need for flexibility or elasticity of punishment. However, there are still restrictions. The limits of freedom for judges to determine sanctions according to the concepts of the Criminal Code are as follows:

1. The sanctions available in the concept are in the form of crime and action.

However, in its application the judge can impose various alternative sanctions as follows:

- a. Impose only the principal punishment,
- b. keep away from additional penalties only
- c. drop the action only;
- d. impose the principal punishment and action;
- e. impose the principal and additional penalties;
- f. imposing the main punishment, additional punishment and action.
- g. Although in principle the sanctions that can be imposed are the main crimes listed (Book II), but the judge can also impose other types of sanctions (basic

penalties / additional penalties / actions) that are not listed, as long as it is possible or permitted according to Book I.

CONCLUSION

Starting from the formulation of the problem and the description of the results of research and analysis presented in the previous chapters, in this thesis several conclusions can be drawn, as follows: (1) The policy formulation of criminal law in Indonesia can already be used to overcome the crime of gambling, but it contains several weaknesses or obstacles, namely: (a). This "unlicensed element" is inherent in the unlawful nature of the gambling crime. This means that there is no element without permission, or if there is permission from an official or agency that has the right to give permission, all actions in the formulation are no longer or nullify their unlawful nature and therefore are not punished. This provision opens the opportunity for the legalization of gambling. Because gambling games are only against the law or become a ban if done without permission. (b). Criminal liability for gambling crimes is only borne by individuals (natuurlijke person) and does not adhere to a system of accountability imposed on corporations (rechtspersoonlijkheid). (2). The application of criminal sanctions against gambling with a general minimum system and a special maximum system can distribute other criminal powers at lower levels. However, with this system, judges do not have the freedom to determine the types of crimes that are suitable for the perpetrators and must apply or determine the provisions of criminal threats that have been provided in the legislation against the crimes committed.

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