

## Gambling in the Perspective of Criminal Law Policy

Lailatul Mustaqimah and Toetik Rahayuningsih  
mustaqimah.lailatul@gmail.com  
Universitas Sari Mulia

---

**Keywords:**

Gambling;  
Criminal Law;  
Legal Policy.

**Abstract**

Gambling is an act that is prohibited in both the Criminal Code and social norms. However, the application of Article 303 and Article 303bis of the Criminal Code and Government Regulations related to controlling gambling only covers gambling crimes that occur within the territory of the Republic of Indonesia. The application of gambling as a crime can lose the nature of an unlawful act if the gambling gets permission from the authorities so that the gambling becomes legal or legal. In practice, there are still customs or cultures that think that gambling is part of the culture and is difficult to eradicate and even spreads to use technology. This study aims to evaluate the enforcement of gambling laws in the perspective of criminal law policy. This research is a doctrinal research using a conceptual approach and a legal approach. This study was conducted by looking at whether the development of law enforcement and the provisions stipulated in the Criminal Code can reach the crime of gambling and increase public awareness efforts related to gambling. The results show that it is necessary to establish an ideal enforcement model based on the principles of legal certainty, justice and avoid the emergence of a gambling perspective legalized in the name of culture.

---

Copyright © 2023 Lailatul Mustaqimah and Toetik Rahayuningsih.  
Published in Media Juris. Published by Universitas Airlangga, Magister Ilmu Hukum.



### Introduction

Gambling is an act that is prohibited in both the Criminal Code and government regulations. Gambling has not only developed in society but has become a culture for some people, even gambling games are provided online. Gambling is one of the diseases of society which in the process is not easily eradicated, efforts are needed so that law enforcement can conduct socialization with the aim of increasing public awareness of the impact of gambling. To anticipate the development of society in relation to changes in the form of the crime, it is possible to plan efforts to make criminal law that accommodates all the dynamics of society. This is a policy issue regarding the selection of facilities in regulating social life.<sup>1</sup> Criminal law is often used to solve social problems, especially in crime

---

<sup>1</sup> Kartini Kartono, *Patologi Sosial* (Rajawali Pers Jakarta 1981).[53].

prevention, especially the problem of gambling, which is a form of social disease or a form of social pathology.<sup>2</sup>

Criminal law enforcement for gambling law enforcement as a deviant behavior must continue to be carried out, this is very reasonable because gambling is a real threat to social norms that can cause individual tensions as well as social tensions.<sup>3</sup> Gambling is a real or potential threat to social order. Meanwhile, development requires individuals who are hard-working and mentally strong. Efforts that need to be made are to find rational ways and solutions for a solution because it is clear that gambling is a social problem that can interfere with social functions in society, one of the rational efforts that can be used to tackle gambling is the criminal law policy approach.<sup>4</sup>

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 members of the community to comply with legal norms or the current legal order. In addition, criminal law can also be used as a means to change or shape society in accordance with the form of society that is aspired to.

The application of Article 303 of the Criminal Code only covers gambling crimes that occur within the territory of the Republic of Indonesia.<sup>5</sup> The application of gambling as a crime can lose the nature of an unlawful act if the gambling gets permission from the authorities so that the gambling becomes legal or legal. The regulation regarding the prohibition of gambling in the Indonesian legal system is in the Criminal Code and outside the Criminal Code. The Criminal Code is regulated in Article 303 and Article 303bis of the Criminal Code and strengthened again by Law no. 7 of 1974 concerning Gambling Control, which is a conventional gambling. Meanwhile, non-conventional gambling is a new type that is developing

---

<sup>2</sup> Saparinah Sadli, *Dalam Teori-Teori dan Kebijakan Pidana, oleh Muladi, & Barda Nawawi Arief* (1998).[148].

<sup>3</sup> *ibid.*[354].

<sup>4</sup> Kartini Kartono (n 1).[53].

<sup>5</sup> Enik Isnaini, 'Tinjauan Yuridis Normatif Perjudian Online Menurut Hukum Positif di Indonesia' (2017) 5 *Jurnal Independent* 23.[1].

and regulated by Law no. 11 of 2008 concerning Information and Electronic Transactions, namely in Article 27 paragraph (1) and Article 45 paragraph (1).

Some normative provisions regulated both in laws and government regulations are considered unable to solve problems that develop in society. So we need a new idea so that law enforcement can distinguish how to overcome gambling crimes. The new idea is inseparable from a criminal law policy both in the design of its rules and social approaches to the community.

The use of legal remedies including criminal law as an effort to overcome social problems, including in the field of law enforcement policies. In addition, because the goal is to achieve the welfare of society 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 including policy, new ideas are needed in forming norms that are inviting. while still not eliminating the function of law as a tool for regulating, social control, and coercion.

### **Method Research**

The research method in this journal is normative legal research, using a legal approach, analyzing legal concepts and historical approaches. Analysis of legal sources uses juridical interpretation and is analyzed by describing, interpreting, and systematically compiling logically according to the research objectives.

### **The concept of criminal law in gambling**

In Law no. 1 of 1946 concerning the Criminal Code (KUHP), the crime of gambling according to article 303 and article 303 bis states that Article 303 paragraph (1) is punishable by a maximum imprisonment of ten years or a maximum fine of twenty five million rupiahs (anyone without obtaining permission). Permits meant, among others, are intentionally offering or providing opportunities for gambling games and making them a livelihood, or intentionally participating in a company for that. Deliberately offering or giving an opportunity to the general public to play gambling or intentionally participating in a company for that, regardless of

whether to take advantage of the opportunity there are certain conditions or the fulfillment of certain procedures. And make participating in gambling games as a livelihood. Then it is regulated in paragraph (2) if the guilty person commits the crime while carrying out his search, his right to carry out the search can be revoked. The last is paragraph (3) which is called gambling games are any games, 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.<sup>6</sup>

Article 303 bis of the Criminal Code paragraph (1) states that a maximum imprisonment of four years or a maximum fine of ten million rupiahs shall be imposed, including: 1. Anyone who takes advantage of the opportunity to play gambling, which is held in violation of the provisions of Article 303. 2. Anyone who participates in and playing gambling on public roads or on the side of public roads or in places that can be visited by the public, unless there is permission from the competent authority who has given permission to carry out the gambling. Paragraph (2) states that 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.

Article 303 paragraph (3)<sup>7</sup> of the Criminal Code states that what is meant by a gambling game is any game, where the possibility of winning generally depends on mere luck, also because the players are more trained or more proficient. In the sense of gambling games, it also includes all bets on the decisions of competitions or other games that are not held between those who are participating in the competition or playing, as well as all other bets.

---

<sup>6</sup> Undang-Undang Nomor 1 Tahun 1946 tentang Peraturan Hukum Pidana jo Undang-undang Nomor 73 Tahun 1958 tentang Menyatakan berlakunya undang-undang Nomor 1 Tahun 1946 Republik Indonesia tentang Peraturan Hukum Pidana untuk seluruh wilayah Republik Indonesia dan mengubah Kitab Undang-undang Hukum Pidana (Lembaran Negara Tahun 1958 Nomor 127, Tambahan Lembaran Negara Nomor 1660).

<sup>7</sup> *ibid.*

Gambling in a legal perspective is one of the crimes (delict) that disturbs the public. In connection with this, there is also Article 1 of Law no. 7 of 1974 concerning Gambling Control, it is stated that all gambling crimes are crimes. The criminal threat of gambling is actually quite heavy, namely with a maximum imprisonment of 10 years or a maximum fine of Rp. 25,000,000.00 (Twenty five million rupiah). Article 303 of the Criminal Code jo. Article 2 of Law no. 7 of 1974 states that it is threatened with a maximum imprisonment of ten years or a maximum fine of twenty five million rupiahs, whoever without obtaining permission from the competent authority/ authority. And whoever deliberately offers or provides opportunities for gambling games and makes it a livelihood, or intentionally participates in a company for that.

Deliberately offering or giving an opportunity to the general public to play gambling or intentionally participating in a company for it, regardless of whether to take advantage of the opportunity there are conditions or the fulfillment of certain procedures.

So that all forms of gambling are considered crimes that violate applicable legal norms in accordance with the principle of legality. The principle of legality is stated in Article 1 paragraph (1) of the Criminal Code which reads “no act may be punished, but on the strength of the criminal provisions in the existing law before the act. Of course, the norms governing gambling need to be evaluated considering the methods used in gambling are growing.

### **Criminal liability in gambling law enforcement**

The concept of criminal responsibility is actually not only a matter of law alone, but also concerning the question of moral values or general decency adopted by a society or groups in society, this is done so that criminal responsibility is achieved by fulfilling justice. The problem of criminal liability is another aspect of the subject of a crime that can be distinguished from the problem of the maker (who committed the crime). This means that the definition of the subject of a

crime can include two things, namely who committed the crime (the maker) and who can be accounted for.<sup>8</sup>

In general, those who can be accounted for in criminal law are the maker, but this is not always the case. This problem also depends on the method or system of formulating accountability adopted by legislators.<sup>9</sup> This means that the determination of the issue of criminal liability is who can be accounted for. This problem concerns the subject of criminal acts which have generally been formulated by lawmakers for the crime in question.

Determining legal subjects who can be held criminally responsible means that it must be based on the formulation policy of a crime and who is responsible, in determining and reconstructing the subject responsible for the occurrence of a gambling crime. So the legal basis or legal system on which to base it must be examined. In the case of a gambling crime, the reference used is the provisions or legal system in the Criminal Code, although specifically for gambling problems have been perfected through Law no. 7 of 1974. However, because it is only partial in the sense that it only adds provisions regarding the weight of criminal sanctions that will be imposed on gambling crimes. Issues concerning the issue of criminal liability are still guided by the Criminal Code. The Criminal Code, which is still in effect, is oriented towards the subject of criminal acts in the form of individuals and not corporations.<sup>10</sup>

The application of criminal sanctions to gambling cases is an effort to make criminals aware of their actions, and return them to be good citizens, obey the law, uphold moral, social and religious values, so as to achieve a safe, orderly and peaceful society. The judge's decision or court decision is an important and necessary aspect to resolve criminal cases. Through his decision, a judge can

---

<sup>8</sup> Chairul Huda, *Dari tiada pidana tanpa kesalahan menuju kepada tiada pertanggungjawaban pidana tanpa kesalahan : tinjauan kritis terhadap teori pemisahan tindak pidana dan pertanggungjawaban pidana* (Prenada Media Group 2006).[68].

<sup>9</sup> Barda Nawawi Arief, *Masalah Pemidanaan Sehubungan Dengan Perkembangan Delik-Delik Khusus Dalam Masyarakat Modern* (BPHN 1982).

<sup>10</sup> Dwidja Priyatno, *Kebijakan legislasi tentang sistem pertanggungjawaban pidana korporasi di Indonesia* (Utomo 2004).[51].

convict, transfer someone's ownership rights, revoke the freedom of citizens, declare the government's arbitrary actions against the community illegal, up to ordering the removal of a person's right to life. Everything must be done in the context of law enforcement and justice.

In the case of gambling, criminal liability is the ability of a person to be responsible for his mistakes having committed actions that are prohibited by law against the law where playing games or which contain elements of gambling and is not justified according to the public's view, this is a crime while mistakes are elements of criminal events or criminal acts. and between the two there is a close relationship, the imposition of criminal sanctions against conventional gambling crimes is very intertwined with sanctions that are not deemed sufficient so that perpetrators are deterrent, in the case of lottery, dice or card gambling there is still injustice in terms of criminal sanctions where those who have a gambling business, Some gambling cases have not yet been able to determine the punishment according to the classification of their actions, whether they are gamblers or those who have a gambling business, or even those who circulate if they are related to gambling that is not licensed. In this case, there is also no consideration of the nominal gambling with the severity of criminal sanctions. The imposition of criminal sanctions against gambling crimes through the electronic system also experiences difficulties in terms of proving the case even though in this case it has been linked to Article 27 paragraph (2) jo, Article 45 paragraph (2) of the ITE Law.<sup>11</sup>

In the application of criminal sanctions against gambling crimes through the electronic system, it is felt that it has not been maximized or properly resolved due to the prevalence of gambling through electronic systems in public places, applications that can be accessed anywhere, lack of law enforcement officers and the expertise of law enforcement officers in the field of law enforcement. cybercrime or crime in cyberspace that makes it difficult to implement the law and uncover cases of gambling crimes through electronic systems. The obstacles that

---

<sup>11</sup> Stevin Hard Awaeh, 'Pertanggungjawaban Hukum Atas Tindak Pidana Judi Online Ditinjau Dari Prespektif Hukum Pidana' (2017) 5 *Lex et Societatis*. [160].



occur in the application of the law to the crime of gambling through the electronic system and its supervision are more focused on the weak coordination between the relevant agencies in eradicating gambling through the electronic system.

With some of the things mentioned above, the form of criminal liability regulated in laws and government regulations must be firm and not provide exceptions to gambling actors, and use technology to develop public knowledge about the adverse effects arising from gambling. Evaluation of the law, the function of law and law enforcement as well as elements of the community and government need to be involved so that prevention objectives can be carried out optimally.

### **Criminal law policies in eradicating gambling in an effort to prevent and raise public awareness**

Legal certainty as one of the goals of law and can be said to be an effort to realize justice, the real form of legal certainty is the implementation and enforcement of the law against an action regardless of who does it. With legal certainty, everyone can predict what will happen if they take legal action, certainty is needed to realize justice. Certainty is one of the characteristics that cannot be separated from law, especially for written legal norms. Law without the value of certainty will lose its meaning because it cannot be used as a behavioral guide for everyone.<sup>12</sup>

Development in the field of law, especially the development of criminal law, does not only include structural development, namely the development of legal institutions that are engaged in a mechanism, but must also include substantial development in the form of products that are the result of a legal system in the form of criminal law regulations. and cultural ones, namely attitudes and values that affect the enactment of the legal system.<sup>13</sup>

Legal development efforts and legal reform must be carried out in a directed and integrated manner. Codification and unification of legal fields and

---

<sup>12</sup> Christine S T Kansil, *Kamus Istilah Hukum* (2009).[385].

<sup>13</sup> Nyoman Serikat Putra Jaya, *Relevansi hukum pidana adat dalam pembaharuan hukum pidana nasional* (Citra Aditya Bakti 2005).[67].



the preparation of new legislation is urgently needed. This legal instrument in the form of legislation is very much needed to support development in various fields in accordance with the demands of development as well as the level of legal awareness and public views regarding the assessment of a behavior.<sup>14</sup>

The development of a legal system that aims to form laws according to their norms requires a balance between needs and law enforcement. The needs of the growing community in the 4.0 era must get legal protection, especially in law enforcement. Needs and enforcement can provide a sense of justice and benefit if the legal system built involves several stakeholders. The stakeholders in question are the government, the community, and law enforcement. The government together with the legislature need to make a reconstruction of the laws and regulations related to gambling. Reconstruction in question is prevention before the crime of gambling is carried out. The government also makes regulations related to gambling permits so that the relationship between the regions and the center in this regard can be carried out properly in order to achieve the goal. Permits can be granted if they meet the requirements so that they are not just in the name of custom or culture.

The existence of new regulations and laws related to the prevention of gambling crimes is also inseparable from the role of the community and law enforcement. The public needs to be given an education about the impact caused by the crime of gambling, both in criminal law and Islamic law. Technological developments are very fast influencing people to move so that with technology it is expected to be able to share information and benefits related to the prevention of gambling criminal acts.

In the context of preventing gambling crimes, it is necessary to balance it with reforming and developing a comprehensive criminal law system in a form of legislative policy or known as policy formulation. The formulation policy is expected to be able to formulate and determine the stages of prevention carried

---

<sup>14</sup> Romli Atmasasmita, *Teori dan kapita selekta Kriminologi* (Refika Aditama 2007).[20].

out by the community, government and law enforcement. The formulation policy is reinforcement before criminal law actions are carried out.

At this stage, a policy line for the prevention of criminal acts and punishment is formulated which also serves as the legislative basis for the following stages, namely the pre-law enforcement stage by involving the local government, the community, and law enforcement. Local government regulations will be the basis for exceptions to gambling in the name of custom or culture. The new law that will be made later will also involve the local community to participate in supervising or reporting matters related to gambling by the police.

Based on the views above, it can be concluded that legislative policies or formulations occupy the most important position in the overall effort to implement criminal sanctions. In addition to being the basis for the following stages, it is also the legal basis for sentencing policies. However, what is important from this policy formulation is the extent to which the strategic position of the policy can influence the process and mechanism of law enforcement in preventing crime, especially gambling offenses. Law Number 7 of 1974 concerning Gambling Control is a form of formulation and determination of criminal sanctions by legislators. As a formulation policy for practical purposes for law enforcement officers in dealing with problems related to gambling crimes. The formulation in preventing gambling crimes by legislators in formulating the basic provisions of gambling as a crime is based on the concept that gambling is contrary to religion, decency, and Pancasila morals, and is dangerous to the livelihoods and lives of the community, nation and state.

### **Conclusions**

The criminal law policy on gambling is inseparable from the idea that gambling is a crime that is not visible in real terms but has a major impact on the social environment. This is a strong reason why laws and regulations on gambling crimes need to be evaluated and developed. The evaluation and legal development of the new formulation policy on gambling involves several stakeholders. These stakeholders will limit the movement and monitor people's behavior so they don't

gamble. This policy formulation is in the form of prevention or law enforcement before legal action is taken. This formulation was developed in collaboration between the government, the community, and law enforcement.

## **Bibliography**

### **Books**

Barda Nawawi Arief, *Masalah Pidanaan Sehubungan Dengan Perkembangan Delik-Delik Khusus Dalam Masyarakat Modern* (BPHN 1982).

ChairulHuda, *Dari tiada pidana tanpa kesalahan menuju kepada tiada pertanggungjawaban pidana tanpa kesalahan : tinjauan kritis terhadap teori pemisahan tindak pidana dan pertanggungjawaban pidana* (Prenada Media Group 2006).

Christine S T Kansil, *Kamus Istilah Hukum* (2009).

Dwidja Priyatno, *Kebijakan legislasi tentang sistem pertanggungjawaban pidana korporasi di Indonesia* (Utomo 2004).

Kartini Kartono, *Patologi Sosial* (Rajawali Pers Jakarta 1981).

Nyoman Serikat Putra Jaya, *Relevansi hukum pidana adat dalam pembaharuan hukum pidana nasional* (Citra Aditya Bakti 2005).

Romli Atmasasmita, *Teori dan kapita selekta Kriminologi* (Refika Aditama 2007).

Saparinah Sadli, *Dalam Teori-Teori dan Kebijakan Pidana, oleh Muladi, & Barda Nawawi Arief* (1998).

### **Journals**

Enik Isnaini, 'Tinjauan Yuridis Normatif Perjudian Online Menurut Hukum Positif di Indonesia' (2017) 5 Jurnal Independent.

Stevin Hard Awaeh, 'Pertanggungjawaban Hukum Atas Tindak Pidana Judi Online Ditinjau Dari Prespektif Hukum Pidana' (2017) 5 Lex et Societatis.

### **Regulations**

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang Nomor 1 Tahun 1946 tentang Peraturan Hukum Pidana jo Undang-undang Nomor 73 Tahun 1958 tentang Menyatakan berlakunya

undang-undang Nomor 1 Tahun 1946 Republik Indonesia tentang Peraturan Hukum Pidana untuk seluruh wilayah Republik Indonesia dan mengubah Kitab Undang-undang Hukum Pidana (Lembaran Negara Tahun 1958 Nomor 127, Tambahan Lembaran Negara Nomor 1660).

Undang-undang Nomor 7 Tahun 1974 tentang Penertiban Perjudian (Lembaran Negara Republik Indonesia Tahun 1974 Nomor 54, Tambahan Lembaran Negara Nomor 3040).

Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (Lembaran Negara Republik Indonesia Tahun 2008 Nomor 58, Tambahan Lembaran Negara Republik Indonesia Nomor 4843).

Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (Lembaran Negara Republik Indonesia Tahun 2016 Nomor 251, Tambahan Lembaran Negara Nomor 5952).

Peraturan Pemerintah Nomor 9 Tahun 1981 Tentang Pelaksanaan Penertiban Perjudian (Lembaran Negara Tahun 1981 Nomor 10, Tambahan Lembaran Negara Nomor 3192).

**How to cite:** Lailatul Mustaqimah and Toetik Rahayuningsih, 'Gambling in the Perspective of Criminal Law Policy' (2023) 6 Media Iuris.