

Juridical Review of Gambling Crimes

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ARTICLE INFO

Article history:

DOI:

[10.30595/pssh.v14i.1087](https://doi.org/10.30595/pssh.v14i.1087)

Submitted:

June 08, 2023

Accepted:

September 29, 2023

Published:

November 16, 2023

Keywords:juridical review, gambling,
criminal offense

ABSTRACT

The phenomenon of gambling is a form of game using bets that are fortuitous in nature. Gambling phenomenon is a form of game using bets that are fortuitous, to get a win it also requires playing skills are also required. Gambling in the historical process has not been easy to eradicated, although reality also shows that the gambling proceeds obtained by the government can be used for development efforts. Obtained by the government can be used for development efforts. But apart from that, the negative impact of gambling is greater than the positive impact. its positive impact. Criminal law is often used to solve social problems, especially in crime prevention. Especially the problem of gambling as a form of community disease. This research aims to examine the regulation of the prohibition of gambling in the Indonesian legal system and the application of the Indonesian legal system to gambling. The type of research that will be used by the author is normative juridical research. Normative juridical research is normative juridical research is research conducted using the library method and which bases its analysis on the applicable laws and regulations that are relevant to the legal issues that are the focus of the research. The focus of the research. By using normative juridical research, the author can find legal arrangements for gambling crimes in the Criminal Code regulated in Article 303 and Article 303 bis and further strengthened by Law No. 7 of 1974 concerning Gambling Control, which is conventional gambling. Meanwhile, unconventional gambling is a new type that has developed and is regulated by Law No. 11 of 2008 concerning Electronic Information and Transactions, namely in Article 27 paragraph (1) and Article 45 paragraph (1). The application of Articles 426 and 427 of the Criminal Code only covers gambling offenses that occur within the territory of the Republic of Indonesia.

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I. INTRODUCTION

Gambling has existed since time immemorial, even in certain indigenous communities gambling is considered a tradition of ancestral heritage that must be preserved. However, gambling is actually a social pathology because it contradicts the values and norms that exist in society. In essence, gambling is an act that is contrary to religion, culture, decency, Pancasila norms and morals and endangers society, nation and state in terms of national interests. Kartini Kartono defines gambling as "Deliberate gambling, which is betting a value or

something that is considered valuable by realizing certain risks and expectations on events, games, competitions and events that are not or have uncertain results.¹

Gambling causes various social problems and dependence to want to continue to try, thus forgetting their obligations and responsibilities in personal life and in society.² For players who lose gambling, it will cause curiosity to want to try again, resulting in debt and poverty which triggers an increase in crime rates. So both directly and indirectly gambling still has a negative impact that is detrimental to life. The Criminal Code or KUHP is the legal code that applies as the basis of criminal law in Indonesia. Regulations regarding gambling can be found in the Criminal Code, namely Article 303 of the Criminal Code and Article 303 bis of the Criminal Code. In a legal perspective, gambling is one of the criminal acts (delict) that disturbs the community. In connection with this, Article 1 of Law No. 7 of 1974 concerning the Control of Gambling states that all gambling offenses are crimes.

In approaching this problem using the Normative Juridical approach method. This approach is an approach to the applicable legislation. The Law approach (statue approach) is carried out by examining all laws and regulations related to the content of the law being handled.³ In addition, a conceptual approach is also used to look at legal concepts related to the existing problems.

In making this article, the author gets comparison and reference materials from previous research that is relevant to the topic discussed. In addition, to avoid the assumption of similarity with this research. So the author in making this scientific article lists the results of previous research as follows:

1. Research Results Sovi Alvian (2019)

The article charged by the public prosecutor is not in accordance with the actions of the defendant, who conducts gambling (togel gambling) online and is not ordinary or conventional gambling. The Public Prosecutor in this case did not apply the principle of *lex specialis derogat legi generalis* with the enactment of the Electronic Information and Transactions Law. In this case, the Public Prosecutor must adhere to the principle of *Lex Specialis Derogate Lex Generalis* as a principle of legal interpretation that special laws (*lex specialis*) override general laws (*lex generalis*) in addition to the provisions of Article 143 paragraph (2) of the Criminal Procedure Code regarding the requirements of an indictment which must meet material and formal requirements. The judge's legal consideration that the defendant was legally and convincingly proven guilty under Article 303 of the Criminal Code was not in accordance with the facts of the trial, because it was more in line with the criminal provisions of online gambling in Article 27 paragraph (2) of the ITE Law. From what is contained in Article 27 of the ITE Law, there are things that are more specific than the gambling provisions in the Criminal Code, namely that the perpetrators use online facilities or media to commit criminal acts containing gambling.⁴

2. Siti Fatimah and Taun (2023)

Progress in the field of Science and Technology, apart from having a positive impact on people's lives, can also have a negative impact. Such as the creation of illegal sites that can be misused as a means of online gambling. The rise of online gambling in Indonesia can be seen that electronic media connected to the internet is not used wisely. In addition, there is a lack of supervision from parents towards their children. However, it is not certain that the perpetrators of online gambling are teenagers, adults can also be involved in online gambling. The role of the authorities is also needed to eradicate the perpetrators of online gambling. The perpetrator has the right to be sanctioned in accordance with the provisions in the existing article, such as in Article 303 of the Criminal Code, Article 303 bis of the Criminal Code, Article 2 paragraph (1), (2), (3) of Law No. 7 of 1974 concerning the Issuance of Gambling, as well as Article 27 paragraph 2 Jo. Article 45 paragraph 2 of the ITE Law. In addition, government action is also urgently needed to eradicate gambling sites that are spread on illegal platforms in Indonesia. The lack of cyber eradication has made online gambling sites that have been blocked by the government still exist. Therefore, community participation in responding to online gambling cases is needed. If people still see or get illegal sites for online gambling facilities, please immediately report to the authorities.⁵

II. RESEARCH PROBLEMS

1. How is the regulation of gambling crimes in the Indonesian legal system?
2. How is the implementation of the Indonesian legal system against Gambling?

¹ Kartini Kartono, *Patologi Sosial I*, PT Raja Grafindo Persada, Jakarta, 2005, hlm. 5

² Abi, Arsyah, & Laras Astuti. (2022). Faktor Yang Mempengaruhi Mahasiswa Yang Melakukan Perjudian Online. *Journal of Criminal Law and Criminology (IJCLC)* Volume. 3, 180-189.

³ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2011. h.93

⁴ Sovi Alfian. 2019. *Tinjauan Yuridis Tindak Pidana Perjudian*. Fakultas Hukum: Universitas Jember.

⁵ Fatimah, S., & Taun, T. (2023). Tinjauan Yuridis Terhadap Pelaku Tindak Pidana Perjudian Online Di Indonesia. *Innovative: Journal Of Social Science Research*, 3(2), 3224–3231.

III. RESEARCH METHODS

The method used is the Normative Juridical approach method. This approach is an approach to the applicable legislation. statute approach is carried out by examining all laws and regulations that are related to the content of the law being handled. The normative juridical approach is an approach used by conducting a statutory approach (statue approach), the approach conducts an assessment of laws and regulations related to the problem under study. In addition, a conceptual approach is also used to look at legal concepts related to existing problems.

IV. RESULT AND DISCUSSION

1. Regulation of Gambling Crimes in The Indonesian Legal System

The Criminal Code and Article 303bis of the Criminal Code as the basis for regulating the prohibition of gambling according to the criminal law system in Indonesia, in its development underwent changes based on Law No. 7 of 1974 concerning Gambling Control, which was passed and promulgated on November 6, 1974. Some of the considerations of Law No. 7 of 1974 concerning Gambling Control can be seen in the Considerance "Considering", as follows:

- a. That gambling is essentially contrary to religion, decency and Pancasila morals, and is harmful to the livelihood and life of the community, nation and state;
- b. That therefore it is necessary to make efforts to curb gambling, to limit it to the smallest environment, to eventually lead to its complete elimination from the entire territory of Indonesia;
- c. Whereas the provisions of the Ordinance of March 7, 1912 (Staatsblad of 1912 No. 230) as amended and supplemented several times, most recently by the Ordinance of October 31, 1935 (Staatsblad of 1935 No. 526), are no longer in accordance with the development of the circumstances;
- d. That based on the above considerations, it is necessary to formulate a Law on the Control of Gambling.

In accordance with these considerations, the substance of Law No. 7 of 1974 contains several thoughts, namely the regulation of gambling has long been recognized and enforced since the colonial era as evidenced by the existence of the 1912 Staatsblad, and the provisions of the Criminal Code itself.⁶ Another thought is that the development of the need to regulate the control of gambling is emphasized on its control, not on its prohibition. Meanwhile, Article 303 and Article 303bis of the Criminal Code emphasize the prohibition of gambling because it is threatened with imprisonment and fines.

According to Article 1 of Law No. 7 of 1874, "All gambling offenses are declared as crimes". The provisions of this Article are not in accordance with the title of Law No. 7 of 1974 concerning Gambling Control, because the connotation of "Control even though it means regulating or organizing, but it also contains the possibility of determining gambling not as a criminal offense, especially if gambling is licensed by the authorities."⁷

The provisions of Article 2 paragraphs of Law No. 7 of 1974 concerning Gambling Control, in paragraph (1) there is a change in the amount of imprisonment and fines when compared to the original formulation of Article 303 of the Criminal Code, which originally carried a maximum penalty of two years and eight months, changing to a maximum of ten years, as well as a change in the threat of fines from a maximum of ninety thousand rupiah to twenty-five million rupiah. The change in the threat of imprisonment and fines according to Article 2 paragraph (1) of Law No. 7 of 1974 is an aggravation of imprisonment and fines, which also contains the intention of providing a deterrent effect for the perpetrators of gambling crimes and for potential perpetrators, because with the severity of the threat, they are afraid to participate in gambling, and the perpetrators can be deterred from repeating gambling.⁸

Article 2 paragraph (2) of Law No. 7 of 1974 which regulates the provisions of Article 542 paragraph (1) of the Criminal Code is amended which still requires further explanation and discussion because the provisions of Article 542 of the Criminal Code are actually in the Second Book of the Criminal Code, namely on crimes and made into Article 303 bis of the Criminal Code. According to Wirjono Prodjodikoro, the classification of criminal acts into crimes and offenses (misdrijven en overtredingen). It is further explained by Wirdjono Prodjodikoro that this classification can be seen in the Criminal Code which consists of three books. Book I contains general provisions (Algemeneleerstu en). Book II contains criminal acts that fall into the category of crimes (misdrijven). Book III contains criminal offenses (overtredingen).⁹ The consequence of the withdrawal of the provisions of Article 542 paragraph (1) of the Criminal Code into Article 303bis of the Criminal Code, in addition to being qualified as a criminal offense, is that the provisions of Article 542 of the Criminal Code become a dead article because it is revoked based on Article 2 paragraph (2) of Law No. 7 of 1974 concerning Gambling Control. This

⁶ Tuwo, Christy P. C. "Penerapan Pasal 303 Kitab Undang-undang Hukum Pidana Tentang Perjudian." *Lex Crimen*, vol. 5, no. 1, 2016

⁷ UU No. 7 Tahun 1974 tentang Penertiban Perjudian (Pasal 1).

⁸ Sugeng Tiyarto. 2015. *Penegakan Hukum Terhadap Tindak Pidana Perjudian*. Genta Press: Yogyakarta. h.28.

⁹ Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana di Indonesia*, RefikaAditama, Cetakan Ke-6, Bandung, 2014, hal. 12

discussion is questioned whether the elements follow the qualifications from the original offense to become a crime, as well as the new elements in accordance with the provisions of Article 303bis of the Criminal Code.¹⁰

Article 2 paragraph (2) of the Criminal Code is closely related to Article 2 paragraph (3) of the Criminal Code, because the center of attention in the amendment is the provisions of Article 542 paragraph (2) of the Criminal Code which changes from confinement to imprisonment and also changes the threat of imprisonment and fines to be greater and heavier. Meanwhile, Article 2 paragraph (4) of the Law No. 7 of 1974, only specifies the change in the title of Article 542 to Article 303 bis.

Law No. 7 of 1974 on the Control of Gambling also stipulates in Article 3 paragraph (1) that "The Government regulates the control of gambling in accordance with the spirit and intent of this Law." Article 3 paragraph (2) stipulates that "The implementation of paragraph (1) of this article shall be regulated by Laws and Regulations."¹¹The legislation referred to by the provisions of Article 3 paragraph (2) is Government Regulation No. 9 of 1981 concerning the Implementation of Law No. 7 of 1974 concerning the Control of Gambling, which was passed and promulgated on March 28, 1981 concerning the Implementation of Law No. 7 of 1974 concerning the Control of Gambling, which was passed and promulgated on March 28, 1981.¹²

The development of gambling practices is not only carried out by conventional gambling such as card gambling, guessing gambling and so on, but online gambling has also developed. Article 45 paragraph 2 of the ITE Law, which states that: "Every person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have gambling content as referred to in Article 27 paragraph (2) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah)." Referring to the regulation on the crime of gambling, it can be seen that gambling is an act prohibited by the applicable law in Indonesia. Because, in Government Regulation No. 9 of 1981 concerning the Implementation of Gambling Control, states: Article 1 paragraph (1) "The granting of licenses to carry out all forms and types of gambling is prohibited, whether gambling is held in casinos, in crowded places, or is associated with other reasons." This means that all forms of gambling, whether gambling conducted directly, or gambling conducted online, and various other types of gambling, are prohibited in Indonesia. If there are several parties or people conducting gambling, the authorities have the right to thoroughly investigate the gambling practice based on the applicable provisions.¹³

2. Implementation of the Indonesian Legal System Gambling Crime

The application of Article 303 of the Criminal Code by formulating the subjective elements and objective elements is a part that is closely related to proof, whether the elements are proven and fulfilled or not. According to the author, the application of Article 303 of the Criminal Code is aimed at conventional gambling offenses, while the application of non-conventional gambling will be discussed after the discussion of the application of the provisions of Article 303bis of the Criminal Code, which reads as follows:

1) Shall be punished with a maximum imprisonment of four years or a maximum fine of ten million rupiahs:

1. Any person who uses the opportunity to play gambling, which is conducted in violation of the provisions of Article 303;

2. Any person who participates in a game of chance on a public road or on the side of a public road or in a place where the public may visit, unless a license has been obtained from the competent authority which has granted such license.

2) If during the commission of the misdemeanor two years have not yet elapsed since an earlier conviction on account of one of these misdemeanors has become final, he shall be punished by a maximum imprisonment of six years or a maximum fine of fifteen million rupiahs."

The application of Article 303 bis of the Criminal Code has the effect of invalidating Article 542 of the Criminal Code, and based on Law No. 7 of 1974 concerning Gambling Control, according to the provisions of Article 4, it is stated that as of the entry into force of the laws and regulations in the context of controlling gambling referred to in Article 3 of this Law, the Ordinance dated March 7, 1912 (Staatsblad of 1912 Number 230) as amended and supplemented several times, most recently by Ordinance dated October 21, 1935 (Staatsblaad of 1935 Number 526).

The author has previously explained that the provisions prohibiting and criminalizing gambling in the Criminal Code, especially in Article 303 and Article 303 bis of the Criminal Code, only cover conventional

¹⁰ Kartika, Wulan Sari. (2018). Perbandingan Formulasi Tindak Pidana Judi Dalam Kitab Undang-Undang Hukum Pidana Di Indonesia Dengan Hukum Islam. JOM Fakultas Hukum Volume V Nomor 1,

¹¹ UU. No. 7 Tahun 1974 tentang Penertiban Perjudian (Pasal 3 ayat (2))

¹² PP. No. 9 Tahun 1981 tentang Pelaksanaan Undang-Undang No. 7 Tahun 1974 tentang Penertiban Perjudian.

¹³ Enik Isnaini. 2017. *Tinjauan Yuridis Normatif Perjudian Online Menurut Hukum Positif Indonesia*. Universitas Islam Lamongan: Jawa Timur. Jurnal Independent Vol 5 No. 1

gambling, and do not reach non-conventional gambling. Along with the development of information technology, there have also been various forms or types of gambling that use the basis of information technology such as the use of computers or the internet, which has several legal implications in its application in Indonesia.

The development of information technology with the emergence of many new criminal acts that are different from the criminal acts regulated in the Criminal Code, namely online gambling. The legal implication in its application is that online gambling is not covered by the provisions in the Criminal Code which cannot be applied to online gambling in the context of law enforcement due to the emergence of new crimes that are not covered by the provisions of the Criminal Code, laws and regulations outside the Criminal Code have emerged and developed which contain threats of imprisonment and fines against perpetrators and / or violators of criminal provisions. The enactment of Law No. 11 of 2008 on Electronic Information and Transactions (ITE), regulates and threatens the criminalization of gambling which it qualifies as a prohibited act, which in Article 27 paragraph (2) states that "Every person intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have gambling content."¹⁴

V. CONCLUSION

The regulation on 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 further strengthened by Law No. 7 of 1974 concerning the Control of Gambling, which is conventional gambling. Meanwhile, unconventional gambling is a new type that has developed and is regulated by Law No. 11 of 2008 concerning Electronic Information and Transactions, namely in Article 27 paragraph (1) and Article 45 paragraph (1). The application of Article 303 of the Criminal Code only covers gambling offenses that occur within the territory of the Republic of Indonesia. The application of gambling as a criminal offense can lose the nature of the illegal act if the gambling is licensed by the authorities so that gambling becomes legal or legal.

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¹⁴ Tuwo, Christy P. C. "Penerapan Pasal 303 Kitab Undang-undang Hukum Pidana Tentang Perjudian." *Lex Crimen*, vol. 5, no. 1, 2016.

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