

Legal Principles Against Gambling Establishments

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Abstract

Gambling establishments are the root of the problem of gambling and become a source of other violations of the law by the rules of criminal law with Law No. 7 of 1974 on the control of gambling, gambling is a very clear action in the rule of Law Article 303 of the Criminal Code as a complement by its implementing regulations such as Government Regulation No. 9 of 1981 on the implementation of Law No. 7 of 1974 on the regulation of gambling. so that all actions related to gambling are strictly prohibited in Indonesian law, whether carried out by legal entities or government and private. Decisive action is the right step in the handling of gambling facilities and infrastructure. This research method using normative juridical methods

Keywords: Impact, law, localization of gambling

1. INTRODUCTION

The source of the causes of community diseases in terms of gambling is started from places or facilities and infrastructure that in reality seem to have legality. Violation of the law on localization of gambling regulated in Article 303 of the Criminal Code has been amended by Law No. 7 of 1974 on the regulation of gambling, as a complement to the implementation of regulations such as Government Regulation No. 9 of 1981 on the implementation of Law No. 7 of 1974 on the regulation of gambling. The legislation is a positive law that regulates, prohibits and threatens criminal acts of gambling in Indonesia in the sense of the word as gambling conventionally, because it has long been known and practiced among the public.

Organized crime against gambling is firmly and strongly rooted in the existence of managers who are like legal in operating and becoming a culture within a particular group.

Regulated in the rules on gambling acts in Indonesia in Law Number 7 of 1974. The law is a regulation on the control of gambling which also involves changes regarding criminal threats and fines. The law contains changes to the basic provisions in Article 542 of the Criminal Code regarding the type of offense (from offense to crime) as well as criminal

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threats from 1 (one) month to 4 (four) years (article 542 paragraph (1)) and 3 (three) months to 6 (six) years (article 542 paragraph (2)).

Gambling is a past custom in Egypt in China whether by finger guessing or lottery coins and even dice. King nero and Claudine dice game is a required drama royal activities. The emergence of card games in the 14th century with 78 idah paintings was reduced to 56 images in the 15th century in France. Performance Sharia maisir is a term for gambling which is a for profit activity to benefit one party.

Socially gambling and gambling advice is an action that harms individuals and groups and even interactions with them. The impact associated with such activities will interfere with family activities and the socialization of society and its work. According to the views of various groups, the consequences caused by both the individual and the environment will cause an atmosphere that will damage or harm the environment.

Three types of games:

a. Game / race. Activities in a race of dexterity and entertainment and gambling actors should not be as players but hanyasebagai spectators .

b. Good luck. With expertise and speculation in a game to win and with the habits in the game.

c. There's a bet. The bet given is a requirement in a game against bookies with profits and losses which in this case are more profitable for the city.

From the description above, this paper will discuss what the consequences of gambling and gambling localization and how the solution closes gambling and gambling locations

2. RESEARCH METHOD

The type of research chosen is normative legal research that is research establish the law as a system of norms. The system of norms in question is about the principles, norms, rules and regulations. Peter Mahmud Marzuki that: 'normative legal research is a process of finding a rule of law, principles of law, as well as legal doctrines to answer legal problems faced. Normative legal research conducted to produce argumentation, theory or a new concept as a prescription in solving the problem at hand. research normative law is also called doctrinal legal research, namely research aimed at to provide a detailed systematic explanation of the rule of law governing the field of specific legal rules, analyze the relationship between the rules of law one denhan the other, explaining the elusive parts of a rule of law and it also includes predictions of the future development of a particular rule of law. Doctrinal legal research is library-based research whose focus is analysis of primary legal materials. This type of research is based on the thought that this study to analyze a system of norms or rules.

3. RESULT AND ANALYSIS

Gambling has long been a social problem. Gambling has existed since the 1500 century BC in the kingdoms of China and Egypt. Gambling is not a new thing for the community, because this gambling has been known since the days of the kingdoms in Java and kingdoms outside Java with various types and forms are accompanied by bets, both movable and immovable objects.

From the results of his research in a village in East Java, Danish anthropologist Sven Cederroth suggests that the root of 'bad habits' is the cause of 'strategies for survival' which involves how people understand the narrow channels of 'halal' livelihood alluded to by care-earners.

According to Siem gambling as a recreational activity is prohibited. Papu defines gambling as behavior that involves the risk of losing something of value and involves social interaction and an element of freedom to choose whether to risk such loss or not.

A similar definition was proposed by Stephen Lea, et al .in the book *The Individual in the Economy, a Textbook of Economic Psychology*. According to them, gambling is nothing but a condition where there is the potential to lose something valuable or everything that contains risk. However, the act of taking risks in gambling behavior needs to be distinguished from other actions that also contain risks. The three elements below may be a factor that distinguishes gambling behavior from other behaviors that also contain risk:

1. Gambling is a social activity with money and valuable possessions and winnings from losers. Gambling is a social activity involving a sum of money (or something of value) where the winner gets money from the loser.
2. Risk by depending on the time that will come without known profit and loss.
3. The risk that is done is not what should be done a loss and defeat can be avoided if you do not gamble.

Webster represents an element of risk involved in gambling and Robert Carson & James Butcher fit the book *Abnormal Psychology and Modern Life* gambling as a game with the expectation of profit by giving bets valuables. Not easy in eradicating gambling in Indonesia is reflected when Governor ali Sadikin legalized the localization of gambling and localization of pristusi which was used as a regional development budget but far from good results.

The emergence of gambling due to psychological factors that show the dominant leads to crime when it occurs in a condition. Indonesia is a country based on the principle of law not on power based on the rule of law in force so that it is reflected in the preamble to the 1945 Constitution of the fourth paragraph as a guide to law enforcement. To criminalize an act is usually done through a process that begins with the establishment of an act committed by a person or equated with a person, which by law is declared a

prohibited act and is threatened with sanctions. This process ends with the formation of a law in which the act is threatened with a sanction in the form of a crime. Discussing the criminalization policy contained in Law No. 7 of 1974 on the control of gambling will be further elaborated on, the scope of acts that constitute gambling offenses.

A country with the concept of the rule of law always regulates every action and behavior of its people based on applicable law to create, maintain and maintain peace of life, in order to comply with what is mandated in Pancasila and the 1945 Constitution, namely every citizen has the right to a sense of security and freedom from all forms of crime.

Law enforcement is essentially a part of criminal politics which is essentially an integral part of social policy (social policy), then this policy is implemented into the criminal justice system (criminal justice system), according to Muladi, the criminal justice system has a dual functional dimension. On the one hand, it serves as a means of society to contain and control crime at a certain level (crime containment system), on the other hand, the criminal justice system also serves for secondary prevention (secondary prevention), which is to try to reduce criminality among those who have committed crimes and those who intend to commit crimes through the process of detection, conviction.

Togel is a form of dark toto game that is a form of game by betting money by guessing the numbers that will come out .Lottery gambling is a crime that makes money betting, namely as a lottery coupon tool where in the coupon there are numbers that will be wagered with money.

The impact of localised gambling :

1. Lead to criminalization in society
2. Causing moral damage to society
3. Provokes laziness
4. Causing prostitution
5. Pose away from religion

Consequences of gambling:

1. Easy to obtain sustenance .
2. Suddenly poor.
3. Dispute among gamblers .
4. Selfish and cunning .
5. Illness due to diet, sleep patterns, wrong mindset.
6. Without regard to property and family.
7. Grow thieves, prostitutes, robbers, swindlers.

Gambling criteria:

1. With dice
2. By card
3. Race

4. Coupons fighting luck
5. Animal fighting
6. Man fighting
7. Multi level marketing
8. Forex
9. Insurance

In the positive law in force in Indonesia, both those regulated in the Criminal Code and those regulated outside the Criminal Code as in law No.7 of 1974 on the regulation of gambling and PP No.9 of 1981 on the implementation of Law No.7 of 1974, all of them established that gambling is such a crime that its practice is necessary to prevent and overcome. Efforts to prevent and overcome the crime of gambling can be done through penal efforts (means of criminal law) and non-penal efforts (means outside the criminal law).

In the Sunnah there is also the word of the Prophet sallallaahu 'alaihi wa sallam in Sahih al-Bukhari,: "which means: He who says to his brother, 'come, I will bet with you. so let him be the one who gives charity." The explanation of this hadith rasulullah Jia adanyataruhan then by replacing it with alms or expiation in view of ijma was all muamalah on fortune fell on gambling so called maisir, gharar because of the luck of fate.

Gambling / maisir is a job without working hard and with actions that can harm and even endanger the lives of perpetrators and other people and their families. Mentioned Kartini Kartono "with deliberate betting", where with a value with a Value Bet da realized the risks and expectations of an activity without yet known results .

Mentioned by Malik, " two types of maisir namely Game (lahwi) or betting (qimar) Malik said, "Maisir there are two kinds, maisir lahwi (maisir in the form of games, cards, dice etc.) and maisir qimar (maisir in the form of betting, horse racing, dog racing, ball, boxing). Ibn Taymiyyah explains it this way . With a system of speculation with a very dangerous risk with a bias to cause sudden poverty and dangerous and widespread conflict in society.

According to the Quran a Muslim is one who has absolutely surrendered to Allah and his commands and believes in pure Tawhid (the oneness of God) that isn't tainted with any shirk and this is why the Almighty has introduced Prophet Abraham as a true:

1. Imam Shafi'i is anything whose consequences are hidden in our view and the consequences that are most likely to appear are the ones we fear the most (not wanted, pen.)
2. Wahbah al-Zuhaili; an appearance that causes damage or something that seems pleasant but in essence causes hatred.

3. Ibn Qayyim; which can not be measured, whether the goods are there or not, such as selling runaway slaves and stray camels. According to Islam, this gharar corrupts the contract.

Thus Islam safeguards human interests in this aspect. Imam an-Nawawi stated that the Prohibition of gharar in Islamic business has a great role in ensuring justice. Gharar is a business activity that is not clear the quantity, quality, price and time of the transaction is not clear. Business activities that contain gharar are businesses that contain high risk, or transactions carried out in uncertain business or the certainty of this business is very small and the risk is quite large. Examples of businesses that contain elements of gharar are:

1. Ijon system
2. Buy and sell for an uncertain outcome.
3. Sell the cattle that are still in the womb.
4. Buy and sell fruit or plants that have not been harvested.
5. Sale and purchase of which the object of the transaction does not exist (Ma'dum).

Gharar in the context of this transaction object occurs if it is supported by the following:

1. Vagueness of the type of transaction object.
2. Vagueness in the transaction sorts.
3. Vagueness in the nature and character of the object of the transaction.
4. Uncertainty in the size of the object of the transaction.
5. Vagueness in the material or substance of the object of the transaction.
6. Vagueness of the timing of the delivery of the object of the transaction.

In the Criminal Code of problem gambling is regulated in Article 303 which reads: (1) punishable by imprisonment for a maximum of ten years or a maximum fine of twenty-five million rupiah, anyone without permission 1. Knowingly offering or providing an opportunity for gambling and making a living from it, or knowingly participating in an enterprise for it. 2. Knowingly offering or giving the general public the opportunity to gamble or knowingly participate in the company for that purpose, regardless of whether to take advantage of the existence of a condition or the fulfillment of an ordinance. 3. Play the game of life as a Jew.

If the guilty person commits the crime in carrying out his livelihood, he may be deprived of the right to carry out his livelihood as well as the so-called gambling game is each game, where in general the possibility of getting money depends on sheer luck, also because the players are more trained or more proficient.

The Prohibition of gambling because without hard work and is profitable by way of speculation and expertise and cunning in this case a person will gain and lose by betting which in this type of gambling all types of gambling bets and lottery or lottery sales are strictly prohibited in Islam. The prohibition is due to profit, speculation and estimates of gambling not with hard work as prohibited in Islam.

The Prohibition of the sale and purchase of camels by pregnant women who are in accordance with their gender is then carried out in the days of jahiliyah as quoted by Abdullah bin Omar about the prohibition by the Prophet Muhammad. "Mohd Fadzli Yusof, explaining the maisir element in conventional insurance occurs because there is a gharar factor in it, he said: "the element of al-maisir (gambling) due to the gharar element, especially in the case of life insurance. If the life insurance holder dies, before the end of the insurance policy period, but has paid part of the premium, the insured will receive a certain amount of money. How to obtain money and where it comes from is not told to the policyholder. This is what is seen as al-maisir (gambling) in conventional insurance".

With almost the same argument, Shafi'i Antonio said that the maisir element means that one party is profitable but the other party actually suffers losses. This is obvious if the policyholder for some reason cancels the contract before the reversing period, usually the third year (for certain products), then the person concerned will not receive back the money paid except for a small part.

Shafi'i Antonio gave an opinion about maisir in conventional insurance as follows: Maisir is a form of understanding between several parties, but the resulting ahir only one or a small part of the benefits. While maisir (gambling / profit-profit) in conventional insurance occurs in three things:

1. When a policyholder is suddenly hit by a disaster so as to obtain the results of a claim, even though he has only been an insurance client for a short time and has only paid a small premium. If this happens, the customer benefits
2. Conversely, if until the end of the agreement, nothing happens, while he has paid the premium in full. Then it is the company that benefits.
3. If the policyholder for certain reasons cancels the contract before the reserving period, then the person concerned will not receive back the money that has been paid (cash value) except for a small part, even the money is considered forfeited.

Muhaumain Iqbal insurance expert and insurance practitioner, ACII mentioned; gambling in insurance elements is also not approved in conventional insurance theory because insurance contracts are based on financial interests or insurable interests and have pure risk guarantees or pure risk in the sense of temporary replacement in rugio conditions before

the risk event or indemnity principle in this case do not benefit. On the other hand gambling must be insurable interest is dispelled only speculation and such views yangmembangkan similarity of insurance and gambling.

The view of the Saudi Arabian scholar haiah kibar, mentioned the Prohibition of insurance, "is an insurance bet because with the profits in the transaction and without compensation if there is no proportional amount.."Iqbal's view of differences in theory and practice and looks to lead to profit without seriousness and with various systems to avoid gambling, in the view of the company is not deep enough to have insurance interest, if it occurs in a loss position is temporarily replaced by pre-event or indemnity. But it should be worth it in case of risk or equitable. In Indonesia, there is a statistical system using a risk profile of at least five years.

What happens in the field is that of dozens of types of insurance products (especially general insurance), only one insurance product, namely Fire Insurance, whose statistics are sufficient to calculate equitable premium rates. The rest of the premium rates are largely determined by experience and market forces so it is difficult to be sure that the premium rates paid by a customer or a group of customers will be sufficient to compensate disadvantaged customers. Even adequate statistics in fire insurance are often ignored by market participants. The attitude of insurance players who ignore the basic theory itself is what brings insurance practice very close or even mixed with elements of maisir (gambling).

The declaration of war on gambling / maisir and drugs (khamr) has been echoed in every country and efforts to combat gambling and drugs in two ways, namely; familiarly because kinship is the basis of goodness and vice versa.

According to Muladi, law enforcement is essentially part of criminal politics which is essentially an integral part of social policy, then this policy is implemented into the criminal justice system, that operationally criminal legislation has a strategic position in the criminal justice system. Because it provides a definition of what acts are formulated as criminal acts. Controlling government efforts to eradicate crime and convict the perpetrator, providing limits on the penalties that can be applied to each crime. In other words, criminal law creates a legislated environment that regulates all procedures and procedures that must be followed at various levels of the criminal justice system.

The application of Article 303 of the criminal code on companies that run gambling businesses by offering ,running personally and corporately all elements of the business entity involved in it., SAMPESINI example if a legal entity in accordance with law no.40 2007, referred to as the organs of a Limited Liability Company which includes the General Meeting of

shareholders (GMS), Board of Directors, and Board of Commissioners. According to Article 92 BIS criminal code formulated that the so-called entrepreneur is every person who runs the company. profit-oriented or profit, and run regularly continuously. A business entity that sear corporation running its business in violation of Article 303 of the Criminal Code will be acted upon in accordance with applicable rules.

4. CONCLUSION

Localization of gambling is one of the sources of the emergence of gambling and other impacts caused by other criminal crimes. Gambling localization manager in Indonesia is managed by the government, private business entities and individuals who have support in running their business despite the legal rules in Indonesia that prohibit it .So that the prevention and eradication of gambling localization both managed by private business entities, private and even the government must be implemented with the implementation of binding and firm laws with the support of government officials and the role of the community and non-governmental organizations and social institutions and supported by legislative and judukatif begutu also the Executive itself.

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