

Juridical Analysis of Electronic Transaction Information Crime Against Gambling

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Abstract

The research objective is. To find out the legal rules regarding gambling crimes. To find out the Decision of the Tangerang District Court at No. 794/Pid.Sus/2018/PN.Tgn. For perpetrators of ITE crimes against gambling crimes. Analyze the obstacles to law enforcement and efforts to address them. The research method uses a normative legal approach qualitatively, as a system based on principles, norms, and regulations that become stipulations and court decisions. Conclusion with legal norms on criminal acts of gambling crimes in accordance with Articles 303 and 303 bis of the Criminal Code, Law no. 7 of 1974. Criminal control of gambling crimes. Proof can be analyzed by Judges from the Tangerang District Court. Decision No. 794/Pid.Sus/2018/PN.Tgn. Considering the validity of the facts and norms that were revealed in the trial, the statements obtained from witnesses and from the testimony of the accused as well as evidence became a conviction for the Judge. So that the defendant has been proven and convincingly guilty of committing a crime. Obstacles in enforcing legal norms for perpetrators of online gambling crimes through internal means. Still lacking in understanding and mastery of ITE. And lacking facilities for searching for evidence, and how to track servers accessed by online gambling managers.

Keywords: Electronic Transaction Information, Crime, Against Gambling

Introduction

Crime in the cyber world that is cross-border which is no longer subject to territorial boundaries and traditional laws requires new rules because certain articles in the Criminal Code (KUHP) are considered inadequate to answer legal issues arising from cyberspace activity. The development of information technology brings a change in society. (Agung, Fakhruzy., 2020). The birth of social media made the pattern of community behavior experience a shift in culture, ethics, and existing norms. Indonesia, with a large population with various ethnic, racial, and religious cultures, has much potential for social change. Almost all Indonesian people from

different backgrounds and ages own and use social media to obtain and convey information to the public.

The negative impact causes a social change in the Community toward the stability of the country, including frequent conflicts between certain groups with ethnic, racial, or religious backgrounds. (Chazawi, Adami et al., 2015). Certain groups have many followers in social circles in the name of religion. They take advantage of certain moments to move Makmursa into certain activities. Social media directly influences the formation of these social groups by instilling certain principles, values, and beliefs to become system changers. With social media, these groups easily affect the stability of a country.

Based on information and data from witnesses that the defendant and the facts gathered and revealed in court that the defendant had been arrested on Friday, January 12, 2018, at around 11.30 WIB at the Company in Tangerang City. (Isamu, Gunadi, 2015). the arrest was made when the defendant was clarifying with his colleagues about the mixing of oil and water in the storage tanks at the company. The defendant was brought to trial with a single charge, violating Article 27, paragraph 2 Jo. Article 45 paragraph 2 of Law no. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions, so the Panel of Judges immediately considered the charges.

Research methods

This research uses a normative legal qualitative approach, namely legal analysis that places law as a system regarding principles, norms, rules of law and regulations, court decisions, agreements, and doctrines.

Data Collection Techniques

Using tools in collecting data in research which includes primary legal materials, (Simamora P, Fidelis., 2020). secondary and tertiary materials, are as follows:

- a. Interviews with prosecutors, judges, and gambling defendants by asking several informal questions, informal to formal conversations focusing on research.
- b. Observations at the research location observed and recorded the actual phenomenon of the incident.
- c. Study of documentation in the form of archives and case files from the public prosecutor and defense pleas from the lawyers of the suspects concerned

Data analysis

Data analysis is organizing and sorting data into patterns, categories, and basic descriptive units so that what is formulated can be found as collected into data. Data analysis can be classified into two types, which include data analysis in qualitative data analysis research which is an analysis that does not use numbers, but instead provides descriptions in words of findings related to the focus of the research and the problem under study, thus prioritizing quality from the collected data.

Results and Discussion

Elements of Criminal Acts in Law Enforcement

In the case of the decision of the Tangerang District Court No. 794/Pid.Sus/2018/PN.Tgn. The Tangerang City Resort Police have arrested the defendant at the PT. Harapan

Makmur Kec. Tangerang. (Aswan. 2019). Tangerang City and detention from January 12, 2018, to January 31, 2018, and confiscation of:

- a. 1 (one) Bank Mandiri ATM with No. 4097662819000616, 1 (one) BNI Taplus savings account book with account number 0507556665 Kendry Tandri,
- b. 1 (one) Bank Mandiri savings account with No. 1050011170176 s. Kendry Tandri,
- c. 1 (one) copy of Bank BNI Taplus checking account with account number 0507557775 in the name of Kendry Tandri, 1 (one) copy of Bank BNI Taplus checking account with no.

The evidence has been legally confiscated according to law, as have the witnesses and the defendant confirmed it, so it can be used in this case. (H. S, Salim, at al., 2016). The prosecution is the act of the public prosecutor to transfer a criminal case to the competent District Court in matters according to the method stipulated in the applicable criminal procedure law with a request to be examined and decided by a judge at trial.

Based on the provisions of Article 35 letter an of Law no. 16 of 2004 concerning the Attorney General's Office, it is determined that the Attorney General's Office, in its duties, establishes and controls law enforcement and justice policies within its scope and authority.

The Tangerang District Court has detained the defendant from March 21, 2018, to April 19, 2018, and extended the detention from April 20, 2018, to June 18, 2018, after seeing the facts revealed in court based on the statements of witnesses and statements the defendant and the evidence. (H. S, Salim., 2016). the Judge of the Tangerang District Court in the dictum decided that the defendant Kendry Tandri Alias Ken as the identity mentioned above, had been legally and convincingly proven guilty of committing the crime of "Intentionally and without rights making electronic document information that has gambling content accessible" as indicted by the public prosecutor.

- a. Judging from its significance, the legal system is directed at understanding the provisions governing human behavior, namely rules, norms, and community behavior patterns. Thus, the legal substance includes all written and unwritten legal regulations, such as court decisions that can become new regulations or new laws, material law (substantive law), formal law, and customary law. In other words, a substance also concerns living law and not just the rules in the law (law in books). (Varatisha, A. Abdullah., 2016). By Law no. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions are regulated in Chapter VII Article 27 paragraph 2 concerning Prohibited Actions, which states that: "Everyone intentionally and without rights distributes and transmits and makes electronic information and documents accessible. electronics that have gambling content".
- b. Legal culture (legal culture), legal culture is reflected in the legal awareness of the Community. Judging from the legal culture, it is more directed at the attitude of the Community, the beliefs of the Community, the values adopted by the Community, and their ideas or expectations of the law and the legal system. In this case, the legal culture illustrates attitudes and behavior towards the law and all the factors that determine how the legal system gets a place that is appropriate and acceptable to the Community within the framework of community culture.

Elements of the Crime of Gambling in Law Enforcement

- a. Action (matching the formula -k) means that the act is an act that is prohibited by law. If the act committed by the perpetrator does not fulfill the formulation of the law or

has not been regulated in a direction, then the act is not an act that can be subject to criminal threats.

- b. Against the law, according to Simons, is defined as "contrary to the law," not only related to other people's rights (subjective law) but also includes Civil Law and State Administrative Law. (Nafi, Mubarak., 2017). Unlawful nature can be divided into 4 (four) types, namely:
 - 1) Nature against general law This is interpreted as a general requirement to be punished as stated in the definition of a criminal act. Criminal acts are human behavior included in the formula -k, are against the law, and can be reprehensible.
 - 2) Specific unlawful nature Sometimes, "unlawful" is written in the formula -k. So nature against the law is a written requirement to be convicted. The illegal nature that becomes a written part of the -k formula is called the special unlawful nature. Also called "facet lawlessness."
 - 3) Nature against formal law This term means that all the written parts of formula-k have been fulfilled, so all the written requirements can be punished.
 - 4) The nature of material lawlessness The material nature of criminality means violating or endangering legal interests that the legislators wish to protect in certain k-formulations.

There is no justification reason even though an act committed by the perpetrator fulfills the elements of the law and the show is against the law, (Ikhamuddin, R. Siregar., 2017). But if there is a "justifiable reason," then the act is not a "criminal act." In imposing punishment, the state must guarantee individual independence and maintain respect for the human person. Therefore, sentences must have goals and functions that can support personal balance with the interests of society to achieve common prosperity.

Absolute Theory As A Theory Of Revenge About Criminal Gambling In Law Enforcement

Furthermore, Immanuel Kant said that the criminal wants every unlawful act to be repaid because it is an absolute necessity justified as retaliation. (Huda, Chairul., 2016). Therefore, the consequence is that any exceptions in sentencing that aim to achieve certain goals other than retaliation must be ruled out.

Another figure who adheres to this fundamental theory is Hegel, who argues that punishment is a logical necessity as a consequence of crime. Crime is a denial of the legal order of a country that embodies moral ideals, so punishment is retaliation. Furthermore, Hegel said that no crime must be eliminated by carrying out punishment as a retaliation proportional to the severity of the actions committed.

Following Pythagoras's opinion, Hugo de Groot wrote that we should not impose a sentence because someone has committed a crime but to prevent people from committing crimes again.

According to Vos, the fundamental theory or theory of revenge is divided into personal and objective revenge. Personal revenge is revenge for the perpetrator's mistakes, while objective revenge is revenge for what the actor has created in the outside world.

The theory of retaliation says punishment is not aimed at practical things, such as fixing criminals. The crime itself contains the elements for imposing a sentence. Criminal exists because a crime is committed. There is no need to think about the merits of imposing the sentence. Every offense must result in a penalty being imposed on the offender. Therefore, this theory is called the fundamental theory.

Gambling Crime Cases in Law Enforcement

In gambling cases where the perpetrators are caught red-handed, evidence of gambling equipment is found. In the case of people who are not involved, the criminal justice process will not be continued. (Anang, Sugeng, Cahyono., 2019). On the other hand, if those caught red-handed are people involved or perpetrators of gambling, the criminal justice process will continue to trial.

In imposing punishment, the state must guarantee individual independence and maintain respect for the human person. Therefore, sentences must have goals and functions that can support personal balance with the interests of society to achieve common prosperity.

Forms - Forms of Gambling in Law Enforcement

At Makmura now, many forms of games are difficult and require perseverance and skills to be used as gambling tools. (Hanafi, Mahrus., 2015). For example, athletics matches, badminton, football, boxing, wrestling, and other sports. In many countries, betting and gambling are legal, for example, the United States, United Kingdom, France, Australia, Belgium, Canada, Cuba, India, Italy, Mexico, and Monaco. The main reason is that the gaming tables and casinos are a source of revenue for the state and an endless stream of billions of dollars of income. The most modern and famous gambling casinos in the world are Monaco and Monte Carlo

In fact, at first, these kinds of games were purely recreational in nature and served as a channel for the tension caused by hard daily work. (Putu, T. Permana., 2018). However, adults ultimately abuse these activities for gambling and betting activities. Gambling habits condition one's mentality to be careless, lazy, easy to speculate, and quick to take risks without consideration. Further excesses include:

- a. The mind becomes chaotic because the hopes of winning always tempt it. Work becomes neglected because all his interest is devoted to the preoccupation with gambling. Children, wives, and households are no longer cared for
- b. His heart becomes very fragile, irritable, and quick-tempered, often even explosively exploding blindly
- c. He is mentally disturbed and becomes sick, while his personality becomes very unstable. People become compelled to commit criminal acts in order to "find capital" to satisfy their uncontrollable gambling appetite.
- d. People began to dare to steal, lie, cheat, pickpocket, snatch, hold, rob, embezzle, rape, and kill to get additional capital to gamble.

As a result, the crime rate has increased dramatically, and the security of cities and suburban areas has become very vulnerable and insecure. (Riawan. B., and Mahartayasa. I. M. 2015). The people's economy is experiencing shocks because people are speculative and chancy and are not serious in their business. Dragged by a protracted desire for gambling, they lack faith in God, so they are easily tempted to commit immoral acts. It is clear that the common people suffer the most from the excesses of gambling.

Based on the five factors that influence law enforcement, it can be concluded that several factors inhibit law enforcement for perpetrators of specific online gambling crimes:

- a. The Cyber Crime Unit because online gambling relies heavily on internet facilities to carry out its criminal actions. (Ende, H. Nassarudin., 2016). The capability possessed by Police personnel both in mastery in the information technology sector is not balanced with the rise of cases related to online gambling that occurs in society because online gambling can occur anytime and anywhere so. That this is what causes

Makmurih many online gambling cases that the parties have not handled. Police Cyber Crime Unit.

- b. Server external factors . Related to online gambling crimes, the server is a place to play online gambling in the form of a website. This website is a gathering place for gambling players worldwide to play online gambling games. Servers made by online bookies are often placed in countries where gambling is legal, such as Cambodia, Thailand, the Philippines and Singapore.
- c. External Factors Using a Virtual Private Network (VPN). Cyber Crime Unit that has collaborated with the Ministry. (M. Ali, Zaidan., 2016). Communication and Informatics, through cyber patrols tracking sites that contain negative and incorrect content related to online gambling, the Cyber Crime Unit will immediately report to the Ministry of Communication and Informatics to block the site after meeting these online gambling sites. The ease of downloading this VPN application makes it difficult for the Police Cyber Crime Unit to handle and eradicate online gambling crimes.
- d. Law enforcement originating from the Community aims to achieve peace and a sense of security within the Community. Prasetyo, Teguh., 2015. Here the role of the Community has a great influence on the handling of criminal cases, especially gambling, but the Community's concern for assisting the police in uncovering criminal acts of gambling is lacking. In this gambling case, the most affected by gambling is the family because it is the family that will feel the effects of gambling if the perpetrator loses playing gambling. The Community should be more sensitive and participate in helping the Police in handling the eradicate of gambling crimes around them. Sometimes there are also some people who are worried about gambling, but on the other hand, there are also people who are indifferent to it.

Handling of Criminal Gambling Actors in Law Enforcement

In the context of criminal policy as a rational effort to tackle crime, which can be carried out through penal and non-penal efforts, criminal law is part of criminal policy, which is referred to as penal policy. (Budhijanto, Danrivanto., 2018). Efforts to overcome the criminal act of gambling can be carried out by penal efforts and non-penal efforts, namely:

- a. The police's task, in this case, begins with a report from the local Community that there has been an incident suspected of gambling, be it gambling via the internet (online) or gambling in general. After hearing and receiving the report, several members of the police immediately conducted an investigation. Most of the messages received by the police are in the form of verbal descriptions or via cell phone (telephone network)..
- b. Preventive methods provide motivation, guidance, and direction to the Community, especially regarding the consequences of gambling and the legislation, so that the Community understands and realizes it. (Idik, S. Bahri., 2020). The purpose of prevention is to prevent or protect the general public from gambling and make them aware of the effects of the dangers of gambling. In this method, what is meant is how to prevent the emergence of gambling facilities before the gambling itself occurs. In this case, supervision is intended as a control to suppress the emergence or spread of gambling in an established social environment. As in the world of medicine, we are often advised to prevent disease from occurring rather than treating it.
- c. Efforts in this case, what should we do before gambling becomes contagious and epidemic; of course, before we act, we first conduct therapy and diagnose the causes. For this reason, in terms of describing this method, a principle is known which will

later become the main guideline, namely the guide of prevention. However, this preventive effort is more important than repressive efforts. Therefore, the seeds of the Community's disease are growing amid the Community, so this prevention effort is also found and realized in the Community, either directly or indirectly.

In this case, the efforts that the Government can make to realize this method include:

- a. Suppress population growth and urbanization
- b. Improving education and skills efforts
- c. Expanding employment opportunities
- d. Improvement of information and supervision efforts.

As a follow-up to this preventive method, the police are trying to tackle the spread of gambling by means of, for example, increasing religious observance and increasing legal awareness. (Siregar, Gomgom, T. P., 2020). One form of effort to deal with perpetrators of gambling crimes is through cyber patrols, namely cyber patrols used by the Cyber Crime Unit (at Police) to supervise cyber crimes.

Repressive Handling in Law Enforcement

What this method means is how and what efforts must be made so that they return to the midst of society to live a decent and humane life as before. (Totok Sugiarto. 2017). In the context of overcoming this community disease in a reformMakmuri way, the parties concerned have created a repressive management program which includes:

- a. Raids
- b. Blocking of online gambling sites, and
- c. Skills Granting

Conclusions and recommendations

Conclusion

Based on the discussion above, several conclusions can be drawn, namely as follows:

- a. The legal rules for gambling crimes in Indonesia are regulated in the provisions of Articles 303 and 303 bis of the Criminal Code, Law no. 7 of 1974 concerning Controlling Gambling, Government Regulation no. 9 of 1981 concerning the Implementation of Gambling Control, and the provisions of Article 27 paragraph 2 Jo. Article 45 paragraph 1 of Law no. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions.
- b. Based on the evidentiary system in force in Indonesia, an analysis can be carried out by the Tangerang District Court judge in decision No. 794/Pid.Sus/2018/ PN.Tgn. has considered the validity of the facts and the validity of the norms by looking at the truths revealed in the trial, which were obtained through the statements of the witnesses and the statements of the accused as well as evidence and the conviction of the Judge so that the defendant has been proven legally and convincingly guilty of committing a crime "Intentionally and without rights makes access to electronic document information that has gambling content" as referred to in Article 27 paragraph 2 of Law No. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions.

- c. Obstacles to law enforcement for perpetrators of specific gambling crimes committed online consist of internal factors such as a lack of mastery and understanding of mastering information technology, means and facilities for finding evidence, and servers created by online bookies are often placed in countries that legalize gambling, as well as the convenience in downloading VPN applications by online gambling players to unblock online gambling sites that have been blocked and the public who tend to be passive and don't dare to report that there are people who play gambling games. There are places used for gambling activities. Efforts to overcome the criminal act of gambling can be carried out both through penal efforts (enforcement of criminal law) and non-penal efforts (efforts to prevent criminal acts of gambling).

Suggestion

Based on the discussion and conclusions above, some suggestions are given, namely as follows:

- a. The criminal law rules that deliberately and without rights make electronic document information accessible that has gambling content as stipulated in the ITE Law are inseparable from the provisions governing the same matter, namely in the Criminal Code, Law No. 7 of 1974 concerning Controlling Gambling, Government Regulation no. 9 of 1981 concerning Implementation of Gambling Control, so that with the completeness of these substances it is hoped that gambling crimes in all regions of Indonesia can be eradicated.
- b. Law enforcement by judges at the Tangerang District Court in decision no. 794/Pid.Sus/2018/ PN.Tgn. is an effort that can provide a deterrent effect for perpetrators of gambling crimes when prevention efforts such as education about the consequences of gambling no longer provide awareness for perpetrators of gambling.
- c. Steps must be taken to eradicate the crime of gambling to its roots, namely by using a social approach by the Community Police, starting from the smallest community environment to environments that can open up opportunities for gambling crime to be carried out; this is done to prevent the development gambling crime amid society.

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