

## **Juridical Analysis In Implementing Criminal Sanctions Against Gambling In Tangerang District**

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### **Abstract**

This study aims to discover the legal consequences of gambling crime and the Judge's considerations in deciding case number (2364/PID.B/2020/PN.TNG) regarding the corruption of gambling, which causes anxiety for the community. This research method uses a normative description approach according to the concept, legal basis, and legislation. Observation data collection techniques to research locations by observing actual events. Interviews with related parties, prosecutors, judges, lawyers, and defendants. Documentation studies include archives, electronic media containing gambling-related news, and archives. The research results conclude that the Defendant has been legally and convincingly proven guilty of committing the crime of gambling. That Defendant, in carrying out the Pakong and Togel type of gambling, did not have a special way to win the gambling game because it was only chance, and the Defendant placed the Pakong and Togel gambling without permission from the authorities.

Keywords: *Application of Sanctions, Crime, Gambling*

### **A. Introduction**

Gambling activity is a social phenomenon in human civilization that occurs worldwide, including in Indonesia, in various forms and definitions. Almost every country knows it as a game that can generate profits or losses. (Suharya, Reza, 2019). Gambling, in practice, is very difficult to eliminate or eradicate; even material forms and types of gambling always experience development and modification from time to time. Gambling is a social problem because the impact it causes is detrimental to the younger generation, especially in Indonesia. After all, it forces young people to tend to be lazy at work.

Lottery gambling is a number-guessing game that is very popular among gamblers in Indonesia and other countries worldwide. (Amin, Ma'ruf, 2015). The name lottery is only known in Indonesia, while in other countries, it is known as the lottery from Singapore. Togel gambling is a game to guess four numbers correctly, which means you have to choose one of the numbers 0000 to 9999.

An official agent under the government of Singapore, and any profits earned become state revenue for the welfare of Singaporeans. (Darsi and Halil Husairi, 2019) Apart from lottery-type gambling, there is also lottery or lottery-type gambling, which is a form of gambling that involves many prizes. At the beginning of the 20th century, most forms of gambling, including lotteries and betting, were declared illegal in several countries, including the United States and most of Europe. Still, after World War II, lotteries were gradually legalized. National or local governments usually run lotteries.

Online gambling has many choices and is easy to play; online gambling began in 1994, starting with the passage of free trade facts by the Caribbean. (Fuad, Ahmad Masful, 2016). Antigua, and Barbuda countries so that organizational permission could be granted to open online gambling. In 1997 online gambling became increasingly popular, so initially, only 15 gambling websites increased to 200. Gambling is progressing along with technological developments and is more modern, which was previously regulated in the Criminal Code of a general nature (*lex generalis*).

## B. Research Methods

This study uses qualitative descriptive empirical juridical, using a scientific way, to find truth in research with a focus on discussion with groups of researchers and resource persons. (Sugiyono., 2018). The research describes and describes clearly and carefully the object of research and analyzes it according to the subject matter under study.

### 1. Data Collection Techniques

- a. Literature Study as a scientific basis related to the subject matter studied with references from books, documents, papers, collections of laws, and legal journals.
- b. Field Study Researchers make observations to obtain real data by observing events at the research location, according to what researchers need from related parties, including the police.
- c. Interview with parties, such as police, prosecutors, judges, and lawyers who deal with lottery gambling problems, to take references to become accurate and valid data.

### 2. Data Analysis

The qualitative data analysis stage is the process of organizing data, sorting it into units to be managed, synthesizing it, and looking for and finding patterns. At this stage, the researcher has found the part that is considered important and what is learned.

So that researchers can make decisions about the parts that can and should be told to others about the phenomenon of gambling. The data analysis process from this research has its stages, as for these stages (Miles and Huberman, 1992: 15-21), among others.

## C. Results and Discussion

### 1. Analysis of the Application of Criminal Sanctions Against Togel Gambling Actors in Tangerang Regency

The steps specified are as follows: Active and positive actions, also called material actions, are called physical actions, which are manifested and require real movements of the body or body parts. (H. M, Sahid, 201). Such as hitting from hand movements and kicking from foot movements.

The group of actors who can be declared as perpetrators of criminal acts, among others, are as follows:

- a. The person who committed dagger plagen, this person acted alone to realize all the intentions of a crime.
- b. The person who ordered doen plagen. In this crime, at least two people are needed, namely the person who ordered the crime to be committed, but with the help of another person who is only a tool.
- c. People who also made plans. Participate in; the meaning here is to do together. In this crime, there must be two people who do it.
- d. People who, by giving wages, agreements, abuse of power or dignity, use coercion or people who deliberately persuade people to commit acts.
- e. The person in question must intentionally incite other people while instigating them by giving wages, agreements, abuse of power or dignity, and so on.

In the applicable legal regulations, the application of sanctions in the crime of lottery gambling is regulated in the Criminal Code "KUHP" in Article 303 as follows: (Effendi, Tolib, 2017). (twenty-five million rupiahs), whoever without obtaining a permit:

- a. Deliberately offering or providing opportunities for gambling games and made as a search, or knowingly participating in a company for that;
- b. Deliberately offering or allowing the general public to play gambling or intentionally participating in companies, for that matter, regardless of whether to take advantage of the opportunity, there is a condition or the fulfillment of some procedure.
- c. I am making participating in gambling games a quest.

Included in understanding this gambling game is a game using money as a bet, which is not held between those who play alone or have no opponents in the game. Whereas in the decision, the perpetrators of the crime of lottery gambling (dark toto) were subject to criminal sanctions of 1 (one) year and 2 (two) months.

According to the author, this does not cause a deterrent effect and an element of justice in deciding the case because this type of lottery (dark toto) gambling is a disease for the community which can be carried out repeatedly by the Defendant or spread to other communities who have been involved in the scope gambling if the punishment imposed does not have a deterrent effect. (Effendi, Tolib, 2017). There is no element of justice in the sentence given to the perpetrators of the crime of gambling which, in the future, the Defendant or other members of the public, young children, women, or adult men may engage in lottery-type gambling ( dark toto) due to the punishment that is too light.

## **2. Analysis of Judge Considerations in Imposing Decisions in the Form of Punishment for the Crime of Togel Gambling**

Decisions not only represent the intellectual value and wisdom of the Judge who decides but will become part of a source of law that contains constructive principles for the development of law in the future. (Effendi, Tolib, 2017). It returns to the rights that other people control, but substantially the decision must provide a sense of justice for everyone who is litigating in court.

The Judge's considerations in adjudicating or passing a decision in the case are as follows

- a. Aggravating matters:
  - The Defendant's actions disturbed the community;
- b. Mitigating matters:
  - 1) The accused has never been convicted
  - 2) The Defendant behaved politely in court
  - 3) the Defendant admits his actions and regrets them;

According to the legal considerations the Judge considers in making a decision, it must reflect a sense of justice. (Ramadhani, Putri, 2021) To determine whether the accused is proven guilty or not, the Judge must base it on the evidentiary system as stipulated in Article 183 of the Criminal Code, as follows: Judges may not impose a sentence on someone except if with at least -at least two valid pieces of evidence he obtains confidence that a crime has occurred and that it is the Defendant who has the problem with committing it".

The Criminal Code is a system of proof according to the law in a combination of positive and negative proof systems. (Munawar, Said, 2019). The proof system consists of two components, namely as follows:

- a. Proof must be carried out according to the method and with valid evidence according to law.
- b. According to the law, the Judge's conviction must be carried out based on means and with valid evidence.

As regulated in Article 184 Paragraph (1) of the Criminal Code, valid evidence consists of the following:

- a. Witness statement;
- b. Expert statement;
- c. Letter;
- d. Instruction;
- e. Defendant's statement

Based on the provisions of Article 183 paragraph (1) of the Criminal Code, the author sees that all the evidence presented at trial in the form of witness statements and the Defendant's statements show compatibility with each other; (Ramadhani, Putri, 2021). besides that, there is also conformity obtained from the evidence and evidence submitted at trial so that The Defendant was proven and convincingly guilty at trial.

In this case, be considered by the Judge with valid evidence, namely the testimony of witnesses who stated under oath. And besides the witnesses who gave testimony, the Public Prosecutor submitted proof in the form of the following:

- a. 1 (one) black Samsung cell phone;
- b. Cash of IDR 30,000.00 (Thirty Thousand Rupiah)

During the trial of this case, the court did not find reasons that could be used as excuses or justifications. (Suciati, Devy and Supanto, 2015). Therefore, the Defendant must be held responsible for his actions. Based on the provisions of Article 22 paragraph (4) of the Criminal Code, the detention period that Defendant has served will be reduced by the length of imprisonment imposed on Defendant.

Whereas based on Article 222 paragraph (1) of the Criminal Code, because the Defendant was legally found guilty and sentenced to confinement (prison), the Defendant was charged with court fees, the amount of which would be decided under this decision. (Awash, Stevin Hard, 2017). However, according to the author, the Judge did not pay attention to the things that were aggravating to the Defendant, and the actions carried out by the Defendant were very disturbing to society, which could damage further regeneration. Therefore the author considered that the Judge's considerations in imposing a sentence on the Defendant did not fulfill the elements of justice and did not have an effective deterrent to the Defendant who committed the crime of lottery-type gambling (dark toto), which was only sentenced to 1 (year) and 2 (two) months in prison.

## D. Conclusions and Suggestions

### 1. Conclusion

- a. Application of criminal sanctions against perpetrators of the crime of lottery gambling (dark toto) in decision NO.2364/PID.B/2020/P.N.TNG That the decision of the Majelis Judge given to the Defendant did not deter the Defendant, who was sentenced to 1 (one) year and 2 (two) months. In this case, the decision given to Defendant was not to the expectations of the public, who wanted every perpetrator who committed the crime of gambling, especially the type of lottery (dark toto), to be punished according to the crime he had committed.
- b. The Judge's considerations in deciding on the perpetrators of the crime of lottery gambling (dark toto) in the decision case NO.2364/PID.B/2020/P.N.TNG. The Majelis Hakim, in giving decisions on criminal acts to the Defendant, did not fulfill the elements of justice in society and did not pay attention to the consequences that would arise in the future as a result of gambling, so it did not provide a deterrent effect as the aim of imposing a criminal sentence on the perpetrators of criminal acts or punishment.

### 2. Suggestion

- a. Application of criminal sanctions against perpetrators of the crime of lottery-type gambling (dark toto) in decision NO.2364/PID.B/2020/P.N.TNG. The application of criminal sanctions against perpetrators of gambling crimes in the decision of the Tangerang District Court requires attention from law enforcement officials in handling cases of gambling crimes because this gambling is a crime that disturbs the community. So, law enforcement officers must provide special treatment to perpetrators of gambling crimes to prevent and provide a deterrent effect against perpetrators of gambling crimes.
- b. The Judge's considerations in deciding on the perpetrators of the crime of lottery gambling (dark toto) in the decision case NO.2364/PID.B/2020/P.N.TNG. In making a decision, the Judge must pay more attention to the things that are aggravating to the Defendant and things that are mitigating the Defendant so that the Judge's consideration in imposing a crime on the perpetrators of this gambling crime will fulfill the elements of justice and provide a deterrent effect to the perpetrators of gambling crimes. To minimize the crime of gambling, an activity that is positive and has permission from a government institution should be carried out at the time the lottery (dark toto) type gambling game starts, for example, forming a forum at the majlis ta'lim whose activities are in religious terms, for example, reciting the Koran, dhikr together, and deepening spiritual knowledge.

## Reference

- Amin, Ma'ruf, 2015, *Fatwa Association of the Indonesian Ulema Council in social and cultural fields*, Jakarta: Erlangga.
- Anton, Muhammad, 2019, "Application of Law Number 7 of 1974 concerning Controlling Gambling Against Controlling Togel Gambling in Malang Regency", *Dynamics: Scientific Journal of Legal Sciences*, Vol. 25, no. 10, p. 1-10.
- Awash, Stevin Hard, 2017, "Legal Responsibility for Online Gambling Crimes From a Criminal Law Perspective," *Journal of Lex et Societatis*, Vol. 5, No. 5, July, p. 159-166.

- Darsi and Halil Husairi, 2019, "Ta'zir in the Perspective of Jinayah Jurisprudence," *Al-Qisthu: Journal of the Study of Legal Sciences*, Vol. 16, No. 2, p. 62-60-64.
- Effendi, Tolib, 2017, *Fundamentals of Criminology The Science of the Causes of Crime*, Malang: Setara Press.
- Fuad, Ahmad Masful, 2016, "Qiyas as a Method of Istinbat Al-Hukm," *Mazahib: Journal of Islamic Legal Thought*, Vol. 15, No. 1, June, p. 42-60.
- Grasindo, Team, 2017, *UUD 1945 & Amendments*, Jakarta: PT Grasindo Publisher
- Gunawan, Hendra, 2020, "Cyber Crime in the Perspective of Jinayah Jurisprudence", *el-Qanuniy: Journal of Islamic Sciences and Social Institutions*, Vol. 6, No. 1, June 2020, p. 96-110.
- Hamzah, Andi, 2019, *Indonesian Criminal Procedure Code*, Jakarta: Sinar Graphic.
- H. M, Sahid, 2015, *Epistemology of Islamic Criminal Law*, Surabaya: Idea Library.
- Iqbal, Muhamad, Suhendar and Ali Imron, 2019, *Criminal Law*, Banten: Unpam Press.
- Jendraningrat, Bintang Artsena, 2021, "Effectiveness of Enforcement of Cyber Gambling Endorsement Crime Laws in Indonesia," *Yustisia Tirtayasa: Final Journal*, Vol. 1, No. 1, August, p. 58-68. 97
- Lewokeda, Kornelia Melansari D, 2019, "Criminal Responsibility for Crimes Related to the Delegation of Authority," *Journal of Justice Mimbar*, Vol. 14, No. 28, January, p. 183-196.
- Marsaid, 2020, *Comparative Jinayah Law (Positive Criminal Law and Islamic Criminal Law) Understanding Crime from the Point of Positive Law and Islamic Law*, Palembang: CV. Trust. Muhammadiyah, Central Executive
- Muhammadiyah, 2017, *Association of Tarjih Decisions*, Yogyakarta: Voice of Muhammadiyah.
- Munawar, Said, 2019, "Criminal Law Enforcement Policies Against Gambling Crimes", *Journal of Legal Institutions*, Vol. 2, No. 1, February, p. 1-18.
- Paryadi, 2021, "Maqashid Syariah: Definition and Opinions of Ulama," *Cross-border Journal*, Vol. 4, No. December 2, p. 359-374.
- Pramartha, Pande Putu Rastika, A. A. Sagung Laksmi Dewi and I Putu Gede Seputra, 2021, "Criminal Sanctions Against Installers and Promotion of Ads Loaded with Online Gambling Content," *Journal of Legal Preferences*, Vol. 2, No. 1, February, p. 156-160.
- Priyatno, Dwidja, 2018, *Anthology of Indonesian Criminal Law Renewal*, Bandung: Pustaka Reka Cipta Publisher.
- Ramadhani, Hernanda, Muhammad Fauzi and Alexandro Martin Tiga, 2020, "Law Enforcement in Eradicating Online Gambling Sites in Indonesia," *Lex Suprema Journal*, Vol. 2, No. 2, September, p. 66-81.
- Ramadhani, Putri, 2021, "Criminal Elements in the Higgs Domino Online Game Where Chips/Coins Are Traded in a Review From the Perspective of Islamic Criminal Law and Positive Law," *Journal of the Medan Polytechnic Institution Juripol*, Vol. 4, No. 2, September, p. 331-341.
- Ritonga, Dedi Arisandi, 2021, "Sanctions for the Law of Dadu Gambling Facilitators in Dolok District in Analysis of Islamic Criminal Law and Positive Law," *Journal of Al-Qanun: Journal of Social Studies and Islamic Law*, Vol. 2, No. 1, March, p. 63-79.
- Sahid, Mochamad, 2018, "Policy Formulation of Criminal Sanctions in Combating Cyber Crime Based on the Information and Electronic Transaction Law," *Actualita Journal*, Vol. 1, No. 1, June, p. 205-221.

- Siregar, H.M., 2014, "Analysis of Disparities in Judge's Decisions in Sentences Against Gambling Crimes," *Journal of Legal Institutions*, Vol. 9, No. 1, p. 71-78.
- Suciati, Devy and Supanto, 2015, "Online Football Gambling Regulations as a Cyber Crime in Indonesian Criminal Law," *Recidive Journal*, Vol. 4, No. 2, August, p. 175- 183.
- Suharya, Reza, 2019, "The Phenomenon of Gambling Among Youth in Samarinda Seberang District," *Sosiastry-Sociology*, Vol. 7, No. 3, September, p. 326-340.
- Sugiyono., 2018. *Quantitative qualitative research methods and mixed methods*. Remaja Rosdaarya Publishers. Bandung
- Suharyadi, Said Sampara and Kamri Ahmad, 2020, "Cyber Crime in the Perspective of Islamic Law," *Journal of Lex Generalis (JLS)*, Vol. 1, No. 5, October, p. 761-772. 101
- Surbakti, Sudaryono, and Natangsa, 2017, *Criminal Law Basics of Criminal Law Based on the Criminal Code and the Criminal Code Bill*, Surakarta: Muhammadiyah University Press.
- Syarbaini, Ahmad, 2018, "Ta'zir Theory in Islamic Criminal Law," *Journal of Ius Civile*, Vol. 2, No. 2, p. 1-10.