

## **Juridical Analysis of Criminal Perpetrators of Electronic Gambling Transaction Information**

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### **Abstract**

The aim and use of the research is to analyze the legal regulation of gambling crimes. To analyze the Tangerang District Court Decision No.794/Pid.Sus/2018/PN.Tgn. against perpetrators of ITE crimes. To analyze legal obstacles in dealing with perpetrators of ITE crimes. The research method uses normative law which places law as a system of norms, regarding principles, norms, rules of statutory regulations, and court decisions. Data collection techniques in research include primary, secondary, and tertiary legal materials. Data analysis is the process of analyzing and sorting data into patterns, categories, and basic units of description so that themes can be found and formulated. Conclusion: The legal regulations 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 the Control of Gambling. analysis of the evidentiary system in force in Indonesia is that the Tangerang District Court judge in decision no. 794/Pid.Sus/2018/ PN.Tgn. Obstacles to law enforcement for perpetrators of special gambling crimes committed online consist of internal factors such as lack of mastery and understanding of information technology, means and facilities for finding evidence, and servers created by online bookies which are often located in countries where it is legal. gambling, as well as the ease of downloading VPN applications by online gambling players

**Keywords:** Juridical Analysis, Criminal Perpetrators, Electronic Transaction Information

### **A. Introduction**

The cross-border cyber world which is no longer subject to territorial boundaries and traditional law requires new laws, because certain articles in the Criminal Code (KUHP) are deemed inadequate to answer legal issues that arise as a result of activities in cyberspace. The development of information technology brings a change in society. The birth of social media caused society's behavioral patterns to experience a shift in existing culture, ethics, and norms. Indonesia, with its large population and diverse ethnic, racial, and religious cultures, has a lot of potential for social change. From various circles and ages, almost all Indonesian people have used social media as a means of obtaining and conveying information to the public.

Negative impacts cause social changes in society on the stability of the country, including frequent conflicts between certain groups with ethnic, racial, or religious backgrounds. In the name of religion, certain groups that have large numbers of followers on social media tend to take advantage of certain moments to mobilize Makmursa in certain activities. Social media directly

influences the formation of these social groups by instilling certain principles, values, and creeds to become system changers. With social media, these groups can easily influence the stability of a country.

ID and given the ID and password given on the site [www.maxbet.com](http://www.maxbet.com), then to make a deposit or top up the balance on the defendant's ID then chat on [www.vegas99.com](http://www.vegas99.com) and the site provides an account number, after that the defendant makes a transfer with the amount that the defendant wants, then processed to become the defendant's ID balance. The Defendant has been betting on soccer betting matches on the [sbobet.com](http://sbobet.com) site since 2017 has 6 (six) website IDs and has made more than 10 (ten) deposits on gambling at [www.sbobet.com](http://www.sbobet.com), [www.ibc.com](http://www.ibc.com), and [www.vinegg.com](http://www.vinegg.com) with a total deposit of IDR 10,000,000 (ten million rupiah) using an account in the name of the defendant. The defendant worked for the company PT. Harapan Makmur since October 2014 a staff officer and has undergone several transfers until he was finally assigned to Tangerang. The defendant often played online gambling with five PT employees. Harapan Makmur, all of whom are former employees of PT. Each of them has their ID on the [ibc.com](http://ibc.com) website.

## **B. Research methods**

The research approach method for this thesis is a statutory approach and a case approach. This legal approach is to study the consistency and conformity between one law and another law between laws and the Constitution or between regulations and laws. The results of this study are an argument to solve the issue at hand

### **1. Data Collection Techniques**

Data collection in research includes primary, secondary, and tertiary legal materials. The primary legal materials in this research are as follows:

- a. The 1945 Constitution of the Republic of Indonesia.
- b. Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations
- c. Law of the Republic of Indonesia Number 7 of 1947 concerning Controlling Gambling.
- d. Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law.

### **2. Data Analysis**

Data analysis is a process of analyzing and sorting data into patterns and basic description units so that themes can be found and work can be formulated according to the data. Data analysis can be classified using qualitative data.

Data analysis in this research is qualitative analysis which is data analysis that describes phenomena and events that arise in the research field and can provide verbal descriptions of researched, thus prioritizing the quality of the data.

## **C. Results and Discussion**

### **1. Criminal Gambling Crimes and Elements in Law Enforcement**

Law enforcement in the criminal justice system in Indonesia is the translation of legal ideas and ideals into concrete form. To realize law as an idea into a concrete form requires a fairly complex organization. These organizations such as the Court, Prosecutor's Office, Police, and Correctional Institutions are classic elements of law enforcement formed by the state. Law enforcement, which begins through the process of investigating criminal acts, means that the National Police as the main investigator and also as the state's tool for law enforcement, protector, and guardian of the community is obliged to maintain the upholding of law, justice and protection of human dignity as well as legal order and certainty.

In the case of the Tangerang District Court decision no. 794/Pid.Sus/2018/ PN.Tgn. The Tangerang City police have arrested the defendant at the PT office. Harapan Makmur Tangerang City and detained from January 12 2018 to January 31 2018 and confiscated:

- 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 an. Kendry Tandri,
- c. 1 (one) copy of BNI Taplus Bank account statement with account number 0507557775 in the name of Kendry Tandri, 1 (one) copy of BNI Taplus Bank account statement with no. account 1050011170716 in the name of Kendry Tandri.
- d. 1 (one) white Vivo Y69 cellphone, 1 (one) sim card No. 082279182173, 1 (one) sim card No. 082377375770, 1 (one) BNI Taplus ATM No. account 5371760030104300.

## 2. Elements of the Crime of Gambling

If the act carried out by the perpetrator does not meet the formulation of the law or has not been regulated in law, then the act is not an act that can be subject to criminal penalties.

According to Simons, against the law, 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.

The nature of unlawfulness can be divided into 4 (four) types, namely:

- a. The nature of being against general law is defined as the general conditions for being able to be punished in the formulation of the definition of a criminal act. Criminal acts are human behavior that is included in the definition, which is against the law and can be condemned.
- b. The specific nature of unlawfulness is that it is against the law, which is stated in writing in the formulation. So the nature of being against the law is a written requirement to be punished. The unlawful nature which is a written part of the -k formula is called the special unlawful nature. Also called facet unlawfulness.
- c. Formal unlawful nature This term means all written parts of the formula that have been fulfilled and can be punished.
- d. The nature of being against material law. The nature of being against material law means violating or endangering the legal interests that the legislators want to protect in a certain formulation.

There is no justification even though an act carried out by the perpetrator fulfills the elements of the law and the act is against the law, but if there is a justification, then the act is not a criminal act. The state in imposing criminal penalties must guarantee individual freedom and ensure that the human person remains respected. Therefore, punishment must have goals and functions that can maintain a balance between individuals and the interests of society to achieve common prosperity

## 3. Absolute Theory or Retaliation Theory

This theory provides the statement that a criminal sentence is imposed solely because someone has committed a crime or criminal act. Punishment is an absolute consequence that must exist as retribution for people who have committed crimes. The basis for justifying the imposition of a criminal sentence lies in the existence of the crime itself, therefore the criminal function has the function of eliminating the crime.

According to Johannes Andenaes, the main purpose of punishment is to satisfy the demands of justice, while other beneficial influences are secondary, so according to him, the punishment imposed is solely to seek justice by carrying out revenge.

Immanuel Kant further said that criminal law requires that every act against the law must be repaid because it is an absolute necessity that is justified as retaliation. Therefore, the consequence

is that any exceptions in punishment that aim to achieve certain goals other than retaliation must be set aside

The theory of retribution says that punishment does not have practical aims, such as reforming criminals. The crime itself contains the elements for which a sentence is imposed. Crime exists because a crime is committed. There is no need to think about the benefits of imposing the penalty. Every crime must result in a criminal sentence being imposed on the offender. For this reason, this theory is called absolute theory.

#### **4. Relative Theory or Goal Theory**

According to this theory, criminal imposition is not just for retaliation or retribution. Retaliation itself has no value but is only a means of protecting the interests of society. This theory further explains that the purpose of criminal imposition is as follows:

- a. Scary theory, namely the purpose of crime is to frighten someone so that they do not commit criminal acts against the perpetrator himself or against society (general preventive).
- b. The theory of improvement, namely that imposing a crime will educate the perpetrators of criminal acts so that they become good people in society (special preventive).

Meanwhile, special prevention means that punishment is a renewal of the essence of the crime itself. Meanwhile, the protective function in corrective theory can be in the form of criminal deprivation of liberty for some time. In this way, society will be protected from crimes that will occur. Therefore, punishment must provide education and provisions for community purposes. Furthermore, Van Hamel, who supports the special prevention theory, provides details as follows:

- a. Punishment must contain a frightening element so that the perpetrator does not carry out bad intentions.
- b. Sentencing must contain elements that improve the convict's behavior which will later require reclessness.
- c. Punishment must contain an element of destruction for criminals who are completely irreparable.
- d. The sole purpose of punishment is to maintain legal order.

#### **5. Perpetrators of Gambling Crimes Gambling Crime Cases**

In the case of people who are not involved, the criminal legal process will not continue. On the other hand, if the person caught red-handed is someone involved or involved in gambling, of course, the criminal legal process will continue until trial. The state in imposing criminal penalties must guarantee individual freedom and ensure that the human person remains respected. Therefore, punishment must have goals and functions that can maintain a balance between individuals and the interests of society to achieve common prosperity.

The aim of criminal policy, namely determining a crime, cannot be separated from criminal political objectives. In its overall meaning, namely protecting society to achieve prosperity. Therefore, to answer and understand the purpose and function of punishment, it cannot be separated from existing theories about punishment. Because the crime causes suffering to the victim.

- a. Relative or doel theorieen (doel/mean, goal). In this teaching, what is considered the legal basis for punishment is not *Velgelding*, but the aim (doel) of the crime. So this school of thought relies on punishment on the aims and objectives of the punishment, meaning that this theory seeks benefits from punishment (*nut van de straf*).
- b. The combined theory is a reaction to previous theories which were less able to satisfactorily answer the nature of the purpose of punishment. According to the teachings of this theory, the legal basis for punishment lies in the crime itself, namely retribution or

torture, but apart from that, he also admits that the basis for punishment is the aim of the law.

## 6. Forms of Gambling

For social purposes, the nominal price of the draw is no more than Rp. 3,000. This lottery must be notified to the competent government agency, in this case, the Regional Head. Permission to hold a lottery can only be granted for general social purposes.

At Makmura many forms of games are difficult and require perseverance and skill to be used as gambling tools. For example, athletics matches, badminton, football, boxing, wrestling, and various other sports. Also races such as horse racing, dog racing, sheep racing, and cow racing or ox racing. There are many countries where forms of betting and gambling are legal, for example, the United States, England, France, Australia, Belgium, Canada, Cuba, India, Italy, Mexico and Monaco. The main reason is that gambling tables and casinos are a source of state income and billions of dollars in wealth that never runs dry. The most modern gambling casinos in the world are Monaco and Monte Carlo.

The habit of gambling conditions a person's mentality to become careless, lazy, easy to speculate, and quick to take risks without consideration. Further excesses include the following:

- a. Work became neglected because all his interest was devoted to gambling
- b. Children, wives and households are no longer considered
- c. His heart becomes very fragile, irritable, and quick-tempered, often even blindly explosive
- d. He was mentally disturbed and became sick, while his personality became very unstable
- e. People become motivated to commit criminal acts to "find capital" to satisfy their uncontrolled gambling appetite.
- f. People began to dare to steal, lie, cheat, pickpocket, muggle, muggle, rob, embezzle, rape, and kill to get additional capital for gambling.

## 7. Prevention of Gambling Crime Perpetrators

In the context of criminal policy as a rational effort to tackle crime, which can be carried out both through penal and non-penal measures, the use of criminal law is part of criminal policy, which is called penal policy.

Efforts to overcome the crime of gambling can be carried out with penal and non-penal measures, namely as follows:

- a. Penal Effort. In cases of criminal acts of gambling, penal measures are carried out by the application of Article 303 and/or 303 bis of the Criminal Code to the perpetrators who then examine them according to the Criminal Procedure Code and applicable laws and regulations, similar to criminal acts of gambling via the internet (online). which is regulated. The police's task in this case begins with a report from the local community that an incident that is suspected of gambling has occurred, whether it is gambling via the internet (online) or gambling in general. After hearing and receiving the report, several police officers immediately carried out an investigation. Most reports received by the police are in the form of verbal reports or via cell phone (telephone network), and by the provisions in Article 103 Paragraph 2 of the Criminal Procedure Code, these reports are then recorded by investigators and signed by the reporter and investigator.
- b. Non-Penal Efforts Non-penal measures that can be carried out against perpetrators of criminal acts of gambling are divided into two: Preventive measures (preventive) preventive methods aim to provide motivation, guidance, and direction to the community, especially regarding the consequences of gambling as well as regarding legislation so that the community understand and realize it. Prevention aims to prevent or protect the wider community from gambling and make them aware of the impacts of the dangers of gambling. In this method, what is meant is how to prevent the emergence of gambling

facilities before gambling itself occurs. Supervision in this case is meant 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 rather than treat it.

- c. In this case, what should we do before gambling becomes contagious and endemic? Of course, before we do anything, we must first carry out therapy and diagnose the causes. For this reason, in describing this method, a principle is known which will later become the main guideline, namely the principle of prevention. However, preventive efforts are more important than repressive efforts. Therefore, the seeds of society's diseases are germinating in society, so these prevention efforts are found and realized in society as well, both directly and indirectly.

In this case, efforts that can be made by the government to realize this method include the following:

- a. Suppressing population growth and urbanization
- b. Increasing education and skills efforts
- c. Expanding job opportunities
- d. Increased lighting and surveillance efforts.

In this prevention method, only a small part is possible. There are many other things that we can do to prevent the emergence or increase in the number of gamblers, both online and gambling in general. But the most important thing in this case is the human factor too. Life is not a day, but it is a long road that requires various provisions to get through it or at least advice to see which way to go so that one does not fall into a dark life.

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 the Police) to monitor cyber crimes. This cyber patrol is a form of law enforcement effort carried out by the Cyber Crime Unit to prevent and monitor actions involving gambling in cyberspace.

The Cyber Crime Unit Team, to prevent activities related to online gambling games from occurring, coordinates with the Ministry of Communication and Information to block websites that are indicated to carry out online gambling game activities. If it is proven that there are online gambling game activities on a website, the Cyber Crime Unit will immediately coordinate with the Ministry of Communication and Information regarding blocking these websites to prevent anyone from playing online gambling because sooner or later gambling will harm the people who play in it.

## **D. Conclusions and recommendations**

### **1. Conclusion**

Based on the results and discussion above, several conclusions can be drawn, including the following:

- a. The legal rules for criminal acts of gambling 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.
- b. Has considered the validity of the facts and the validity of the norms by looking at the facts revealed in the trial which were obtained through the statements of witnesses and the defendant's statement as well as the evidence and the judge's belief so that he stated that the defendant had been legally and convincingly proven guilty of committing a criminal act "intentionally and without the right to make "access to electronic document information containing gambling content" as intended 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 special gambling crimes committed online consist of internal factors such as lack of mastery and understanding of information technology, means and facilities for finding evidence, and servers created by online bookies which are often located in countries where it is legal. gambling, as well as the ease of downloading VPN applications by online gambling players to unblock online gambling sites that have been blocked and people who tend to be passive and do not dare to report that there are people who play gambling games and there are places that are used for gambling activities. Efforts (efforts to prevent criminal acts of gambling).

## 2. Suggestion

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

- a. The legal rules for the criminal act of deliberately and without rights making electronic document information accessible with gambling content as regulated in the ITE Law cannot be separated from the provisions that regulate the same thing, namely in the Implementation of Gambling Control, so that with the completeness of these substances it is hoped that criminal acts of gambling in all regions of Indonesia can be eradicated.
- b. Law enforcement by the Tangerang District Court judge in decision no. 794/Pid.Sus/2018/PN.Tgn. is an effort that can provide a deterrent effect for perpetrators of criminal acts of gambling when prevention efforts such as education about the consequences of gambling no longer provide awareness for perpetrators of gambling crimes.
- c. Steps that must be taken as an effort to eradicate criminal acts of gambling at its roots are by using a social approach by Community Police starting from the smallest community environment to environments that can open up opportunities for criminal acts of gambling to be carried out. This is done to prevent the development of criminal acts. gambling in society.

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