

## ANALYSIS OF CRIMINAL LIABILITY FOR GAMBLING ON PUBLIC ROADS

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### ABSTRACT

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*This study aims to find out how the accountability for criminal acts of gambling on public roads and how the obstacles to accountability for criminal acts of gambling on public roads. The method used in this research is qualitative. The results of this study indicate that gambling is an act that is prohibited by the state and religion, so in this case it is necessary to consider how to respond to prohibited actions. As well as how to apply to the community, the forms of action that arise and unsettle the community after the regulations and laws in force have been slowly destroyed due to the factor of fear felt by members of the public and can harm themselves, their families and the community. The process of ongoing gambling cases disappeared instantly, making the community peaceful and families harmonious in the jurisdiction of the East Mesuji Police. The ending is so that the family economy is increasingly guaranteed with the family willing to work so that it produces better results than before. And is a result of peace efforts in creating a safe society.*

**Keywords:** *Accountability Analysis, Crime and Gambling*

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### 1. INTRODUCTION

Gambling is a deliberate gamble, namely risking a value or something that is considered valuable by being aware of certain risks and expectations in game events, matches, competitions and events that have no or uncertain results[1] As stated in article 6 number 1 of Law No. 11 of 2012, talking about *restorative justice* is to solve problems by prioritizing the principle of harmonization. As well as solutions involving perpetrators, victims and families to find a middle way with the principle of justice [2] Gambling was originally only a form of game or only as a free time filling game to entertain the heart, it was reactive and neutral. Starting from this neutral, gradually new element are added to stimulate excitement to play and increase tension and hope to win, which is usually in the form of betting items such as money or other valuable objects. This in the context of psychology is a psychological attitude by looking for a justification for the attitude of mistakes that must be corrected with human morals [3] Even in Islam, fundamentally the attitude of human psychology is to lead to a value of goodness and virtue in a more perfect direction [4][5]

Gambling in Indonesia is a criminal offense regulated in Article 303 of the Criminal Code and Law Number 7 of 1974. The law is a regulation on the issuance of gambling which involves changes regarding criminal threats and fines. The law contains changes to the existing basic provisions of Article 542 of the Criminal Code[6]

Looking at the formulation of criminal law regulations, it means that it is clear that gambling is prohibited by criminal law norms because it has fulfilled the formula as intended, for that it can be known as criminal sanctions whose implementation is processed in accordance with the criminal procedure law[7]. In fact, gambling grows and develops[7] and is difficult to overcome or eradicate as gambling in public, on the side of the highway there is even something done in a covert and diverse organized manner carried out by these gamblers which is actually prohibited and the general public is entitled to comfort and protection from such prohibited acts [8].

One of the problems that currently arises in the midst of society is what is the factor causing gambling crimes on public roads and what is the form of responsibility for perpetrators of gambling crimes on public roads. Criminal law provides the concept of punishment that in fulfilling the requirements for punishment, people who commit crimes must have mistaken[9]. In Roeslan Saleh's theory explains the definition of responsibility as follows:

"Accountability is something that must be held accountable for the actions that have been done. Accountability is a reprehensible act by society and it is accountable to the maker. For criminal liability, it must be clear in advance who can be held accountable. This means that it must first be ascertained who is declared to be the maker of a criminal act"[10]

Related to the above theory according to S.R. Sianturi states that:

"Whether or not accountability is requested is the second issue, depending on the policy of the interested party to decide whether or not it is necessary to claim responsibility. This issue concerns the subject of criminal acts that have generally been formulated by lawmakers. In fact, ascertaining who is guilty is in accordance with the process of the criminal justice system"[11]

Based on this theory, it can be seen that unlawful acts are not enough to impose a sentence. There must be a *dader* who is responsible for his actions. The maker must have an element of guilt and guilt that is accountable to the perpetrator and actually in this case the community at large needs assistance and counseling related to the problems they experience [12]. This liability is criminal liability.

According to Romli Atmasasmita explained that:

"Criminal responsibility is whether someone can be convicted or not because of the ability to account for their actions. In a foreign language it is known as *Toerekeningsvatbaarheid* and the accused will be relieved of responsibility if it does not violate the law" (Romli Atmasasmita 2001, p. 54).

According to Sudarto's theory, criminal responsibility or guilt in a broad sense has three areas, namely:

- 1) The ability to be responsible for the person who does the deed.
- 2) The inner relationship (Psychic attitude) of the person who performs the action with the deed;
  - a. Intentional acts, or
  - b. The act of alpa, default, lack of caution.
- 3) There is no reason to remove criminal liability for the maker (R. Sudarto 1997, p. 93).

Moeljatno stated that criminal responsibility is not enough with the commission of criminal acts alone, but there must be guilt, or an inner attitude that can be reproached, it turns out that in the unwritten principle of law it is not punishable if there is no guilt (*green Straf zonder schuld, ohne schuld keine straf*) [15]

The concept of legal responsibility for someone who has committed unlawful acts in Indonesia is inseparable from the concept of the rule of law which is the main basis for law enforcement in Indonesia. Amendment of the Constitution of the Republic of Indonesia Year 1945, in the fourth amendment in 2002, the conception of the State of Law or *rechtsstaat* which was previously only listed in the explanation of the 1945 Constitution, was formulated expressly in Article 1 paragraph (3) which stated that "the State of Indonesia is a State of Law" (1945 Constitution Article 1[16]).

The principle of *the rule of law, not of man*[17] so-called government is essentially law as a system, not a person who only acts as an object of the system that governs it[18] The idea of the rule of law [19] was built by developing the legal apparatus itself as a functional and just system, developed by arranging the superstructure and infra structure of political, economic and social institutions that are more orderly and orderly, after being fostered and building a national and impersonal culture and legal awareness in the life of society, nation and state. For this reason, the legal system needs to be built (*law making*) and enforced (*law enforcing*) as it should, starting with the constitution as the law of the highest position[15] With an emphasis on law enforcement becomes a positive legal study [20][21][22] Then as a legal state, one of which also provides a vehicle for each region to determine a regional legal standard or a regional autonomy (HAW Wijaya 2002, p. [23][24] The goal is to achieve effectiveness and efficiency in service to the community. It can be a value that should be used entirely in the positive aspects of security, peace, peace and common welfare[25]

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Criminal Law as an independent part of public law is one of the most important legal instruments of its existence since antiquity. Criminal law is very important in ensuring public security from the threat of criminal acts, maintaining state stability and even being a moral institution that plays a role in rehabilitating criminal offenders. Even a transformation in the state must determine how in the future a rule is used for society universally. There are religious values and norms as a form of renewal and strengthening into religious and state communities [26]. And also, criminal law will continue to develop in accordance with the demands of criminal acts that exist at all times.

## 2. METHODS

Legal research studies are a study where law as a process and systematics is intended to find a rule and legal governance, legal principles and even accompanying legal doctrines [27] In this study, researchers used empirical legal studies or rules. Where legal research uses clans and real data or facts (empirical) and is used as a research variable raised. These variables can be taken from human behavior, either interviews or observations and review conditions in an *updated* or direct manner. And this empirical data can also contain data studies in the form of archivist studies of

physical relics or archives as a result of observing a data [28]. By using the method of sociological juridical research approach that seeks to identify and conceptualize law as a real social institution media in life.

### 3. RESULTS AND DISCUSSION

Gambling itself is a form of community disease that must be eradicated its existence; therefore, it is very necessary for participation from the community to work together with the police to eradicate all forms of games, in order to create a safe, efficient and prosperous community environment. The success of law enforcement is basically influenced by several factors, where these factors have a close relationship and influence each other. These factors are[29];

1. Own legal factors
2. Law enforcement factors, which include officials or institutions that form and implement laws[30]
3. Law enforcement support factors
4. Community factors
5. Cultural factors are the result of creation and taste based on humans and social life[31]

Criminal law enforcement efforts require a special strategy so that law enforcement efforts can really be realized, law enforcement efforts are carried out by taking 3 (three) stages, namely:

- 1) Formation stage, which is the stage of formulation or determination of crime by law (as legislative policy).
- 2) Application stage, which is the stage of criminal provision or criminal application by law enforcement (as a judicial policy)
- 3) Executive stage, which is the stage of criminal implementation by authorized agencies (as executive policy).

As a process of criminal law enforcement mechanism, these three stages are expected to be a link that is interrelated in a single stem[32]. Review in Law No. 303 [6]Law No. 303, KUHP):

*First*, Threatened with a maximum imprisonment of four years or a maximum fine of ten million rupiah:

- a) Whoever uses the opportunity to play gambling, which is held in violation of the provisions of Article 303.
- b) Whoever participates in gambling on a public street or on the side of a public road or in a place that can be visited by the public, unless there is permission from the competent authority who has given permission to hold the gambling.

*Second*, if when committing an offense, it has not passed two years since there is a conviction that becomes permanent for one of these violations, it may be subject to imprisonment for a maximum of six years or a maximum fine of fifteen million rupiah.

Law enforcement has the connotation of enforcing, implementing laws that apply to society. In a broader sense, law enforcement means the continuity of the realization of abstract concepts into reality. In the context of law enforcement in general, it is always influenced by factors that are positive and can also be negative, depending on the content of the factors themselves[33] Factors that can affect law enforcement, namely; 1) Legal factors themselves, 2) Law enforcement factors, 3) Facilities and facilities factors, 4) Community factors and 5) Cultural factors[31]

Based on the results of an interview with the Babinkamtimnas Polsek Mesuji Timur that factors affecting law enforcement;

a) Legal factors (Legislation)

The practice of law administration in the field often occurs a contraction between law and justice, this is because the conception of justice is an abstract formulation, while the certainty of justice is a procedure that has been determined normatively. As is known that law has elements such as legislation, *trakat law*, jurisprudence law, customary law, scientific law or doctrinal law. In an ideal state, these elements must be harmonious, meaning that they do not conflict, either *vertically* or horizontally between one law and another [34]

b) Law enforcement factors

Law enforcers are those (people) who are directly and indirectly involved in efforts to implement laws and regulations that have been made by the central government and legitimate local governments[35] The role of law enforcement must be able to guarantee between a sense of justice, usefulness or expediency and certainty in the implementation of law enforcement to find satisfaction for those who crave justice. Law enforcement should be guided by justice that is beneficial or provides benefits and legal certainty and equitable benefits.

The law enforcement function is shared in two subsystems, namely investigation and prosecution, investigation is the main function of the police subsystem while prosecution is the prosecution subsystem[36] Law enforcers in the criminal sector who have a major influence in law enforcement against crimes of violence against children are those who serve in the police, prosecutors, judiciary, lawyers and corrections.

## 5. CONCLUSION

Conceptually from various types of culture when viewed based on the development and scope in Indonesia, the existence of super culture, *subcultural culture*, and counter culture. Such a large variety of cultures can give rise to certain perceptions of law enforcement. Such diversity is difficult to uniformize. Therefore, law enforcement must be adapted to local conditions[29]

These five factors are interrelated and the main thing in law enforcement efforts and is a measure of effectiveness in law enforcement, crime comes from the community and the goal is to achieve peace in society as a whistleblower witness who must get protection by the state state for his human rights.

Looking at the formulation of criminal law regulations, it means that it is clear that gambling is prohibited by criminal law norms because it has fulfilled the formula as intended, for that it can be known as criminal sanctions whose implementation is processed in accordance with the criminal

procedure law. In fact, gambling grows and develops and is difficult to overcome eradicated such as gambling in public, on the side of the highway, there is even something done in an organized and covert and diverse manner carried out by these gamblers which is actually prohibited.

Gambling is one of the actions prohibited by the state and religion, so in this case it is necessary to consider how to respond to the prohibited acts and how to apply to the community that the forms of actions that arise and disturb the community after the applicable regulations and laws have slowly disappeared due to factors of fear felt by unscrupulous people and can harm themselves, family and community.

The process of gambling cases disappearing instantly makes the community calm and the family becomes harmonious in the jurisdiction of the East Mesuji Police Station so that the family economy is more secure with the existence of families who are willing to work which produces better results than before.

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