

Analysis of Togel Gambling Law in the Jurisdiction of Indramayu Police Resort: Positive Legal Perspective

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Abstract

Efforts to combat gambling crimes can be carried out in practice through preemptive measures, widespread public awareness campaigns, preventive actions (before the occurrence of any gambling crime), and repressive actions to enforce the law against individuals engaged in gambling activities. These three prevention efforts are interdependent and form an inseparable chain in combating criminal activities in general, including specifically Togel gambling crimes. How does the Indramayu Police Resort undertake efforts to prevent Togel gambling crimes from a positive legal perspective? In this research, the author employs a normative method. In legal studies, the normative method refers to an approach that focuses on determining what "should be" law or legal policy based on moral criteria or widely recognized values. Law enforcement efforts to prevent and eradicate gambling crimes, especially Togel gambling, are necessary to prevent its proliferation and maintain social harmony. Law enforcement is the process of implementing legal desires for society to obey and is an obligation to do so. The goal of law enforcement is to enhance societal order and legal certainty. This is achieved by regulating institutions tasked with enforcement according to their respective scopes and through effective cooperation contributing to goal achievement.

Keywords: Crime, gambling, law enforcement, positive law, togel.



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Introduction

Gambling has evolved into a social issue¹ that attracts considerable attention from various parties, including the general public and law enforcement agencies. Given the complexity of the gambling issue, solutions are needed that go beyond social norms and laws. This is because gambling fundamentally violates religious, moral, ethical, and legal norms.² As far as betting involves intentionally wagering, particularly gambling with value or something deemed significant, by assessing risks and certain assumptions during games, matches, competitions, and events that are uncertain or not truly predetermined outcomes.³ Gambling has been practiced in Indonesia since the Dutch colonial era. Gambling is usually associated with entertainment and nightlife. Various forms of gambling have emerged among the Indonesian community, resulting in rapid expansion of gambling in Indonesia. Gambling enthusiasts are even more inventive in creating new forms of gambling. For example, the same gambling game played in Singapore and Sumatra is called "togel" or dark toto. The practice of playing togel gambling is now so widespread in various regions of Indonesia that it cannot be eradicated.

The most famous form of gambling, togel or dark toto (a game of guessing numbers), is often played by the general public. Totoan, when translated into Indonesian, means "placing," "betting," or "wagering" in Javanese language.⁴ Togel is a variant of the dark toto game, where players bet money on outcomes by guessing numbers. The simplest definition of gambling is a game that involves betting with material stakes, whether money, goods, or other materials, so that the wagered assets then become the property of the winner.⁵ According to Article 303, paragraph (3) of the Indonesian Penal Code regarding Criminal Acts of Gambling, gambling is any game, where in general the possibility of profit depends solely on luck, also because the players are more trained or skilled, including all bets on the outcome of a competition or other game that is not held between those who participate in the competition or game, and all other bets.

The existence of social relationships or daily routines is the foundation of the proliferation of lottery gambling, which is now prevalent in society. Social interactions that can result in social exchanges are reflected in long-term social relationships. The outcomes of interactions that result in social exchanges among humans in the social

¹ Naomi Muggleton and Neil Stewart, "Gambling Interventions," *New Scientist* 249, no. 3321 (February 2021): 23, [https://doi.org/10.1016/S0262-4079\(21\)00233-5](https://doi.org/10.1016/S0262-4079(21)00233-5); Anise M. S. Wu and Joseph T. F. Lau, "Gambling in China: Socio-historical Evolution and Current Challenges," *Addiction* 110, no. 2 (February 19, 2015): 210–16, <https://doi.org/10.1111/add.12710>.

² Ifan Tri Gunawan, Andriado, "Rasionalitas Pembentukan Perilaku Judi 'Togel': Studi Kasus Masyarakat Desa Sambigede, Kecamatan Sumberpucung, Kabupaten Malang," *Jurnal Sosial Humaniora Dan Pendidikan* 15, no. 1 (2021): 82.

³ Septiana Erika Gubiono, "Praktik Perjudian (Studi Kasus 'Judi Kupon Togel' Di Kecamatan Tobelo, Kabupaten Halmahera UtaraProvinsi Maluku Utara)" 24, no. 2 (2015): 177–78.

⁴ Ayu Miracahya Intan Azania, "Strategi Adaptasi Bandar Judi Togel (Toto Gelap) Di Kota Pasuruan" 2, no. 1 (2013): 177.

⁵ Solihin, *Gaul TeknoTanpa Error* (Jakarta: Gemalnsani Press, 2007).

environment of society. These interactions cause people to absorb knowledge that they obtain from interpreting their life experiences, making them part of the lives of lottery gamblers.

The problem will escalate if the money used to play lottery gambling is borrowed from loan sharks who charge high interest rates, and the business will become even more difficult if not repaid. However, unlike losers, winners of lottery gambling will continue playing to get more money, which means their money doubles from before but is depleted in just a few hours, because a gambling addict will do anything for it, to win the game, even if it means borrowing and bearing the consequences, someone who gambles indirectly puts themselves in danger even though they always win. They are almost certain to lose in lottery gambling even more than the winnings they obtain. Losses in lottery gambling lead someone involved in other crimes such as violence through beatings, confiscations, or worse, to kill.

Law enforcement efforts to prevent and eradicate criminal acts of gambling, especially lottery gambling, need to be undertaken to prevent its expansion, in order to maintain peaceful social life.⁶ Law enforcement is the process of implementing legal requirements so that society complies with them, and it becomes an obligation to do so. The goal of law enforcement is to improve the order and legal certainty of society. This is done, among other things, by regulating the institutions responsible for implementing it according to their respective scope and based on an effective system of cooperation that contributes to achieving the goals.

In Islamic Sharia, it has been established that gambling is a form of wrongdoing, and its prohibition has been stipulated in Sharia, which is equated with the prohibition of consuming alcoholic beverages (*khamar*). The legal basis for the prohibition and prohibition of gambling offenses according to Islamic Sharia is based on the texts or evidence found in the Qur'an.

Stipulated in paragraph (1) Article 2 of Law Number 7 of 1974 concerning Control of Gambling: The punishment threat in paragraph (1) of Article 303 of the Criminal Code, from the maximum punishment of two years and eight months imprisonment or a fine of ninety thousand rupiahs, is amended to be punishable by imprisonment for a maximum of ten years or a fine of up to twenty-five million rupiahs. Cases of lottery gambling in Indramayu Regency and other regions of Indonesia will hinder the material and spiritual progress of the nation, as gambling teaches people how to earn a living and makes them "lazy." Strong mental and physical capabilities are required for development. Therefore, the community along with the Indramayu District Police need to find immediate ways to address or eliminate it because it is evident that lottery gambling is a problem that potentially disrupts the social function of society.

To encourage more people to participate in combating lottery gambling, it is advisable that those involved in lottery gambling should be subject to a maximum penalty of ten years imprisonment. This way, lottery gambling can be suppressed and eradicated within the community, although it is feared that it may cause social problems

⁶ Johan Jasin, *Penegakan Hukum Dan Hak Asasi Manusia Di Era Otonomi Daerah*. (Yogyakarta: Deepublish, 2019).

and become a negative habit in society's life. However, in reality, it is generally accepted by society that the efforts of authorities to eradicate and prevent lottery gambling are inadequate, because the way this type of gambling is handled is not the best, as evidenced by: Lottery gambling still occurs frequently in Indramayu Regency, and the efforts of the Indramayu District Police to thwart lottery gambling still persist.

The gambling of this type of lottery is also carried out by the younger generation, which has a negative impact on their morals and mentality. Lottery gambling is one of the societal problems and constitutes a crime. Therefore, efforts must be made to prevent people from engaging in it. Similarly, the officers of the Indramayu District Police must strive to apprehend the perpetrators involved in lottery gambling to be prosecuted and held accountable for their actions, but there are still people in Indramayu who gamble on lottery. Therefore, the writer is very interested in analyzing; How are the prevention efforts against the criminal act of lottery gambling conducted by the Indramayu District Police from the perspective of positive law?

METHOD

In this research, the author employs a normative method. In legal studies, the normative method refers to an approach that focuses on determining what "should be" law or legal policy based on moral criteria or widely recognized values. This approach often involves analyzing ethical principles, justice, and individual freedoms to evaluate laws, policies, or legal actions. To facilitate the smooth progress of this research, the author utilizes library research, which involves searching for data or information through books, articles available in the library, or web resources related to this research.

RESULT AND DISCUSSION

Law enforcement theory

When viewed from a policy process perspective, the enforcement of criminal law essentially involves implementing policies through several stages.⁷

1. The formulation stage, namely the stage of law enforcement in abstracto by the legislative body, is called the legislative stage.
2. The application stage, namely the stage of applying criminal law by law enforcement agencies starting from the police to the judiciary, is called the judicative policy stage.
3. The execution stage, which involves the concrete implementation of criminal law by law enforcement agencies, is referred to as the executive or administrative policy stage.

According to Sudarto, law enforcement in the context of crime prevention through the use of criminal law must pay attention to the following aspects:

1. The utilization of criminal law must take into account the goals of national development, which are to realize a fair and prosperous society with balanced material and spiritual well-

⁷ Muladi, *Kapita Selektta Hukum Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 1995).

being based on Pancasila. In this regard, the aim of criminal law is to combat crime and provide sanctions against measures for its prevention, for the welfare and protection of society.

2. Actions sought to be prevented or addressed through criminal law must be undesirable actions, namely actions that cause harm (material and/or spiritual) to members of society.
3. The use of criminal law must also take into account the principles of cost and benefit analysis.
4. The utilization of criminal law must also consider the capacity or capability of law enforcement agencies, ensuring there is no overloading of responsibilities (overloading).

Gambling

Gambling can be defined as one of the acts of gambling. Gambling is defined as risking a sum of money or assets in a guessing game based on chance with the aim of obtaining a larger sum of money or assets than the original amount. And according to Maylis Fontaine et al., Gambling is an activity whose outcome is based mainly or entirely on chance and involves an irreversible prior stake of money or something of value.⁸ Gambling is a form of social pathology, namely a violation of the norms and rules prevailing in society, which poses a real threat to social norms and thus affects the maintenance of social order.⁹

Gambling has become a social issue that receives significant attention from various parties, ranging from the general public to law enforcement. Considering the complexity of the gambling issue, it is assumed that addressing the problem of gambling requires solutions not only from the legal perspective but also from social norms and regulations.¹⁰ The contribution of sociology that highlights individual aspects is suspected to have an influence on the formation of gambling behavior. The understanding of gambling itself is actually a concept that is always evolving and changing. What is considered gambling at one time may be viewed as non-gambling at another time and place. In terms of terminology, gambling is a deliberate wagering, risking a value or something considered valuable, with an awareness of certain risks and expectations in events such as games, matches, races, and occurrences that may or may not have definite outcomes.¹¹ Various types of gambling have developed at present, and one of the most well-known and commonly practiced types is the lottery or "togel" (a form of guessing numbers). Totoan, in Javanese, when translated into Indonesian, means "betting" or "wagering".¹² Togel is a form of "totoan gelap" game, which involves betting money by guessing the numbers that will come out.¹³

⁸ Maylis Fontaine et al., "Gambling and Aging: An Overview of a Risky Behavior," *Behavioral Sciences* 13, no. 6 (May 23, 2023): 437, <https://doi.org/10.3390/bs13060437>.

⁹ Kartini Kartono, *Patologi Sosial* (Jakarta: Rajawali Pers, 2003).

¹⁰ F Damayanti, *Proses Pembentukan Perilaku Ketergantungan Pada Judi Togel*, skripsi (Surabaya: Damayanti, F. 2009. *Proses Pembentukan Perilaku Ketergantungan Pada Judi Togel*. Skripsi, Surabaya: Psikologi Universitas Katholik Widya Mandala., 2009).

¹¹ Kartono, *Patologi Sosial*, 1st ed. (Jakarta: PT Raja Grafindo Persada, 1999).

¹² Ayu Mircahya Azania, "Strategi Adaptasi Bandar Judi Togel (Toto Gelap) Di Kota Pasuruhan," *Journal Antro Unair* 2, no. 1 (2013): 177.

¹³ Kartini Kartono, *Patologi Sosial*.

The positive legal perspective on the prevalence of the phenomenon of lottery gambling

The country has taken notice of the proliferation of gambling phenomena in the realm of the internet in Indonesia. The government has enacted numerous regulations regarding gambling, and it has also taken several steps to regulate gambling in Indonesia, from legal regulations to local ordinances. Additionally, the government has strengthened law enforcement in Indonesia. Law enforcement is an effort to realize these ideals (law, legal certainty, and interests). The process of implementing these ideas is the essence of law enforcement. Concrete policing involves the application of law and positive practices on how they should be followed.¹⁴ So certainty in this regard means a joint legal decision in supporting and enforcing substantive law in a manner determined by procedural law. Generally, law enforcement in this country is carried out in 2 (two) ways, namely:

1. Preventive, measures to prevent illegal regulations or actions. Cited by Rusli Muhammad and the opinion of Muladi that law enforcement in relation to the political process is essentially the implementation of policies in several stages, namely:
 - a. Formulation Phase, which is the phase where laws are enforced by parliament in an abstract sense, referred to as the legislative-political phase during that phase.
 - b. Application Phase, which is the phase where criminal law is enforced by the police apparatus, starting from the police to the court, this stage is referred to as the legal-political stage.
 - c. Implementation Stage, which is the phase where criminal law is truly enforced with the assistance of the prison system, this phase is referred to as the administrative or administration phase.
2. Repressive efforts, enforcement of this form of law enforcement is actions when or after committing a crime. Prosecution involves a sequence of initial steps, from investigation to court, including:
 - a. Investigation, particularly a series of investigative activities to search for and detect an alleged criminal event to determine whether or not an investigation can be conducted.
 - b. Inquiry, specifically a series of investigative activities to search for/hunt down and gather evidence that is obtained and useful for obtaining suspects.
 - c. Arrest, specifically the investigator's job to temporarily detain suspects/defendants free of charge if there is sufficient evidence for investigation or prosecution and legal process.
 - d. Detention, specifically where investigators and prosecutors or judges place suspects or defendants in certain places on their orders.
 - e. Criminal prosecution, specifically the action of the prosecutor's office that adjudicates a criminal case in a district court authorized to request the district court judge to examine and decide.

¹⁴ S Rahardjo, *Penegakan Hukum* (Genta Pub, 2009).

- f. Execution of punishment, enforcement of court decisions, the judge's job to accept, investigate, and settle criminal cases with the principles of freedom, honesty, and impartiality before the court.
- g. Judge's decision, the judge's statement in public examination, which can be a verdict/acquittal, acquittal of all charges.¹⁵

In addition to law enforcement, the government also provides views on the proliferation of gambling, thus the enactment of legislation on criminal gambling, and society should comply with the regulations that have been established. Article 1(3) of the 1945 Constitution of the Republic of Indonesia states that "Indonesia is a state based on the rule of law," which means that every citizen within the unitary state of the Republic of Indonesia is obliged to obey and comply with the applicable regulations. If there are citizens who do not follow the rules or engage in actions prohibited by the law, legal proceedings will be pursued. Because the purpose of law must be affirmed and enforced, law cannot be said to be a legal product if there is no enforcement.

Efforts to prevent criminal acts of lottery gambling conducted by the Indramayu District Police from the perspectives of Maqasid Shariah and positive law.

The efforts of law enforcement agencies in combating lottery gambling among the community. In all matters, there are always problems, and often in performing a task, we are confronted with various issues that were previously unforeseen. Therefore, the efforts to combat the criminal act of lottery gambling consist of:¹⁶

Like Police Report¹⁷, dated January 1, 2023. The Criminal Investigation Unit of Jatibarang immediately initiated an investigation into the report filed by the community and promptly moved to ambush so that the perpetrators were brought to the Jatibarang police station along with the evidence.

1. Panel efforts

In cases of gambling crimes, penal efforts are carried out in accordance with the application of Article 303 and/or 303 of the Criminal Code to the perpetrators, then they are examined according to the Criminal Procedure Code (KUHAP) and applicable regulations, similar to gambling crimes as clearly stipulated in Article 45 of the Law, which explains that anyone who intercepts electronic information transmissions and/or electronic documents containing gambling content as referred to in Article 27 paragraph (2) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of up to Rp1,000,000,000.00 (one billion Indonesian Rupiah).

In this penal effort, there must be swift prevention where the Police play a crucial role in carrying out penal efforts where they obtain information based on public reports. Upon hearing and receiving such reports, several police officers immediately conduct investigations.

¹⁵ R Muhammad, *Hukum Acara Pidana Kontemporer* (Jakarta: Citra Aditya Bakti, 2007).

¹⁶ Lamintang, *Hukum Penitensier Indonesia* (Jakarta: Sinar Grafika, 2010).

¹⁷ LP/A/01/I/2023/SPKT.UNITRESKRIM/POLSEK JATIBARANG/POLRES INDRAMAYU/POLDA JAWA BARAT

Most of the reports received by the police are in the form of verbal reports or through mobile phones (telephone networks), and in accordance with the provisions stipulated in Article 103 paragraph (2) of the Criminal Procedure Code (KUHAP), these reports are then recorded by the investigator and signed by both the reporter and the investigator.

In conducting the investigation, the police promptly proceed to the scene to determine the accuracy of the public report regarding the occurrence of gambling activities. Subsequently, the police apprehend those involved in the gambling offense and gather evidence and witnesses. In this case, the perpetrator is caught red-handed. The term "caught red-handed" as defined in Article 1 paragraph 19 of the Criminal Procedure Code (KUHAP) means:

- 1) The apprehension of someone at the time of committing a criminal act or immediately after a short period following the commission of the criminal act.
- 2) The apprehension of someone if shortly thereafter an object suspected of being used in the commission of the crime is found, indicating that they are the perpetrator or have participated or assisted in the commission of the crime.

After the suspect is apprehended and proven guilty, and witnesses have been gathered, the suspect and the existing evidence are then handed over to the investigator for the purpose of conducting further investigation. The issue found in combating crime through punitive measures emphasizes a repressive nature (suppression, oppression, and eradication) after the crime has occurred. In other words, someone can be punished after being proven to have committed a crime. The two central issues in criminal policy using penal measures (criminal law) are the issues of determination:¹⁸

- a. What acts should be considered criminal offenses; and
- b. What sanctions should be used or imposed on the offender.

In essence, the criminalization policy is part of criminal policy, utilizing penal means, and therefore falls within the realm of penal policy.¹⁹ Efforts to combat criminal acts must always be pursued. The criminal law policies that have been implemented so far are nothing but continuous steps that are researched and studied to ensure that efforts to combat crime can anticipate maximally the factual increase in criminal acts. The use of criminal law as a means to address social issues (crime) falls within the realm of law enforcement (specifically criminal law enforcement).

Therefore, it is often said that criminal law policy or politics is part of law enforcement policy.²⁰ Thus, it can be said that criminal policy essentially is also an integral part of social policy.²¹

The operationalization of penal policy or penal-law enforcement policy occurs through several stages: formulation stage (legislative policy), application stage (judicial policy), and execution stage (executive/administrative policy). Among these stages, the formulation stage is the most

¹⁸ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Bandung: Citra Aditya Bakti, 1996).

¹⁹ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana* (Bandung: Citra Aditya Bakti, 2010).

²⁰ Dipo Lukmanul Akbar, "Criminal Law Policy in Handling Digital Asset-Based Money Laundering in Indonesia," *Journal of Law and Legal Reform* 1, no. 1 (October 28, 2019): 129–76, <https://doi.org/10.15294/jllr.v1i1.35543>.

²¹ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana*.

strategic phase in the effort to prevent and combat crime through criminal law policy. Errors or weaknesses in legislative policy are strategic mistakes that can hinder efforts to prevent and combat crime in the application and execution stages.²²

2. Non-Penal Efforts

In accordance with the existence of Government Regulation No. 9 of 1981 regarding the Implementation of Gambling Regulation, problems and obstacles are found within it, which are divided into three major parts as follows:²³

- a. When applying heavy criminal sanctions to defendants, they are often confronted with young age and low economic status.
- b. There is a lack of consistency in actions taken to combat gambling, leading to instances where law enforcement officials may differ in their interpretation and application of the government regulation.
- c. Within our society, there are two distinct attitudes towards gambling. The first attitude, represented by law enforcement or the police, views perpetrators as lawbreakers who are suspected and, if necessary, arrested. On the other hand, the medical community perceives gambling perpetrators as individuals suffering from an illness in need of treatment.

In addressing efforts that can be undertaken in non-penal measures, namely: Prevention Efforts (Preventive) Since the inception of the campaign against gambling, wherein the role of the police needs to be enhanced to comply with applicable laws. Combating the issue of online gambling, which poses significant risks to the overall economy of society, is almost similar to combating traditional gambling.

One of the efforts to combat gambling is by implementing preventive methods. This involves providing motivation, guidance, and direction to the community, especially regarding the consequences of gambling as well as its legal aspects, so that people understand and become aware of them. The goal of prevention is to prevent or protect the general public from gambling and to raise awareness about the harmful effects of gambling.

CONCLUSION

The efforts to combat gambling offenses can be implemented through three distinct approaches: preemptive, preventive, and punitive measures. Preemptive efforts involve widespread dissemination of warnings and advisories to the entire community, aimed at deterring potential instances of gambling offenses. Preventive measures are enacted prior to the occurrence of any gambling offense, aiming to mitigate the likelihood of such occurrences. Meanwhile, punitive actions are taken against individuals found engaging in gambling activities. These three approaches are interdependent and form an inseparable chain in the overall effort to combat criminal activities, including gambling offenses, particularly those related to Togel.

²² Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Penanggulangan Kejahatan* (Bandung: Citra Aditya Bakti, 2009).

²³ Mulyana W. Kusumah, *Kejahatan Dan Penyimpangan, Suatu Perspektif Kriminologi* (Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia, 1988).

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