

ANALYSIS OF ISLAMIC CRIMINAL LAW AND POSITIVE LAW (CASE STUDY OF DICE GAMBLING FACILITATOR)

Dedi Arisandi Ritonga¹, Syaiful Asmi Hasibuan², T. Riza Zarzani³

Universitas Pembangunan Panca Budi, Indonesia

Email: Dediari0505@gmail.com¹, syaiful_asmi@dosen.pancabudi.ac.id²,
rizazarzani@dosen.pancabudi.ac.id³

Abstract

Gambling, a practice long prohibited and criticized in many legal and religious traditions, persists in various societies. In the District of Dolok, North Padang Lawas Regency, a unique phenomenon has emerged where dice gambling becomes a part of marriage rituals. Although only practiced by a few, the existence of this gambling raises legal and ethical questions. The discussion focuses on: What are the legal sanctions for facilitators of dice gambling in marital traditions according to positive law and Islamic law in Indonesia? This research was conducted with a qualitative approach, analyzing positive legal literature and Islamic law, and adopting local understanding from the District of Dolok to understand the tradition and its implications. Research Findings: According to Islamic law, gambling falls under the category of jarimah ta'zir, with reference from the Qur'an. Jarimah ta'zir can be in the form of whipping, imprisonment, or fines as per the head of government's regulations. Meanwhile, under Indonesian positive law, based on Article 303 paragraph (1) number 2 of the Criminal Code, perpetrators or facilitators of gambling can be sentenced to imprisonment or fines. The similarity between the two laws is that both establish the option of punishment in the form of imprisonment or fines. The author's suggestion is that local government and religious leaders in the District of Dolok should collaborate to provide education to the community about the negative impacts of gambling and the importance of respecting the applicable laws. Despite being bound by tradition, it is crucial for the community to understand and respect the limits of law and ethics.

Keywords: Legal Sanctions, Gambling Facilitator, Islamic Law, Marriage.

INTRODUCTION

Indonesia is a country of law as stated in article 1 paragraph 3 of the 1945 Constitution. According to Immanuel Kant, law is the totality of conditions for people's free will to be able to adapt to the free will of other people, by following the rules regarding freedom.¹ As a rule of law, Indonesia adheres to a system of legal sovereignty or supremacy of law, where the law has the highest authority in a country, and the distinctive characteristics of a rule of law can be seen in the practice of administering government, namely the existence of free and impartial judicial power and the recognition of Human rights. Although in practice its implementation is still not perfect and there are many misuses of the distinctive characteristics of the rule of law.²

In relation to the definition of law, Zinsheimer differentiates between normative law, ideal law and natural law, as follows:³

- a. Normative law is visible law and law that is not written in statutory regulations but is respected by society because of the belief that the rules of life naturally must be obeyed.

¹Wawan Muhwan Hairi, Introduction to Legal Science, Bandung: Pustaka Setia, 2012, p. 22.

²Jimly Asshiddiqie, Constitution and Constitutionalism (Jakarta: Sinar Grafa, 2010), p. 2

³Pipin Syarifin, Introduction to Legal Science, (Bandung: Pustaka Setia, 1998), p. 28.

- b. Ideal law is the law that is aspired to. This law is essentially rooted in the pure feelings of people from all nations. This law can fulfill the feelings of justice of all nations throughout the world. This law is truly objective.
- c. Reasonable law is law as it occurs and appears every day. It is not uncommon for laws that appear on a daily basis to deviate from normative law (stated in legislation) because they are not adopted by government power tools, these violations are gradually considered normal by the community concerned.

The legal definition according to legal experts is as follows:

1. According to Soedjono Dirdjosisworo

That the meaning of law can be seen from eight meanings, namely law in the sense of rulers, law in the sense of officials, law in the sense of attitude of action, law in the sense of a system of rules, law in the sense of a network of values, law in the sense of a legal system, law in the sense of legal science. , law in the sense of legal discipline. Several meanings of law from various points of view put forward by Soedjono Dirdjosisworo illustrate that law is not merely written statutory regulations and law enforcement officials as currently understood by the general public who do not know about gambling or gambling laws according to the Big Indonesian Dictionary is a game using money as a bet.⁴This means that every game where the prize money is strongly indicated is a criminal act of gambling. Gambling is betting a certain amount of money or property in a guessing game based on chance, with the aim of getting a greater amount of money or property than the original amount of money or property. In the interpretation of the Criminal Code, gambling is defined as: Gambling games must be interpreted in a broad sense and also include all bets on the winning or losing of a horse race or other match, or any betting, in competitions held between two people. who do not take part in the competitions themselves, for example totalizers and others.³

2. According to Prof. Dr. Van Kan

Law is all regulations that have a coercive nature that are established to regulate and protect the interests of people in society.⁵

3. According to Bellfoïd

Law is a rule that applies in a society that regulates the order of that society on the basis of the power that exists in society.

4. According to Duguit

Law is the behavior of members of society, rules whose use at certain times is ignored by a society as a guarantee of common interests against people who violate the rules.

5. According to the Law plateau

Law is all regulations that are well structured and orderly which have the nature of binding on judges and society.

6. According to Van Apeldoorn

⁴Poerwadarminta, Big Indonesian Dictionary, Second Edition, (Jakarta: Balai Pustaka 1995), p. 419.

⁵Dali Mutiara, Interpretation of the Criminal Code, (Jakarta: Ghalia Indonesia, 1962), p. 220.

Law is a regulation connecting human life, a social phenomenon is that there is no society that does not know the law, so that law becomes an aspect of culture, namely religion, custom, morality and customs. Legal sanctions are suffering or suffering imposed on people who commit acts that meet certain requirements, while Roeslan Saleh emphasized that legal sanctions are a reaction to an offense and take the form of suffering that the State deliberately bestows on the perpetrator of the offense.

Judi/al-maisir contains several meanings, including: soft, submissive, necessary, easy, easy, rich, shared, and so on. Some say that the word *maisir* comes from the word *yasara* which means necessity. It is mandatory for whoever loses in gambling to hand over something at stake to the winner. Some say that *al-maisir* comes from the word *yusrun* which means easy. With the understanding that *maisir/gambling* is an effort and a way to get sustenance easily, without effort. In Arabic, *maisir* is often called *qimar*, so *qimar* and *maisir* have the same meaning. *Oimar* itself originally means betting or competition.⁶

Punishment in Arabic is called *uqubah* which means to accompany it. The definition of punishment as stated by Abdul Qadir Awdah is retribution that is determined for the benefit of society, because of a violation of the provisions of *Sharia*.⁷

Regarding the various types of punishment, HA Djazuli divides them as follows: First, in terms of the presence and absence of texts in the Koran or Hadith, the punishment is divided into two, namely:

- a. The punishments that have texts are *hudud*, *Oisas*, *diyat* and *kafarah*.
- b. Punishment for which there is no text, this punishment is called *ta'zir* punishment.

Second, viewed from the perspective of the relationship between one punishment and another, there are four main points:

- 1) Basic punishment (*al-uqubat al-asliyyah*), namely the main punishment for a crime, such as the death penalty for murderers who kill intentionally, *diyat* punishment for perpetrators of unintentional murder, *dera* (volumes) a hundred times for adulterers *ghairu muhsan*. The main purpose of punishment is to maintain and create the benefit of humans and protect them from *mafsadah* things, because Islam is a *rahmatan lil alamin*, to provide guidance and lessons to humans. Punishments are determined in such a way to improve individuals to maintain social welfare and order. For Allah SWT Himself, it will not make things easier for him if humans on this earth commit crimes and it will not benefit Allah SWT if humans on earth obey Him.
- 2) Replacement punishment (*al-uqubat badaliyyah*), a punishment that replaces the position of the main punishment (original punishment) which for some reason cannot be carried out, such as the *ta'zir* sentence imposed for deliberate murder which is forgiven by the victim's family. In this case, the *ta'zir* punishment is a substitute for the main punishment which cannot be imposed, then the *diyat* punishment is a substitute for the *Qisas* punishment which is forgiven.

⁶Tri Adrisman, Principles and Basic Rules of Indonesian Criminal Law, (Bandar Lampung, Ula, 2009), p. 6.

⁷Yusuf Qardhawi, Halal Haram in Islam, Translator: Wahid Ahmad, etal. (Surakarta : Era Intermedia, 2000), p. 433-434.

- 3) Additional punishment (al-uqubah al-takmiliiyyah), namely punishment to complement the main sentence that has been imposed, but must be made by a separate decision by the judge. This complementary punishment is separate from additional punishments that do not require a separate decision, such as dismissing an employee from a position for committing a certain crime or placing a severed hand around a thief's neck.
- 4) Complementary punishment (al-uqubah al-takmiliiyah), namely punishment that has been used as a complement to the punishment that has been imposed, such as tying up the hand of a thief whose throat has been cut. This punishment must be based on the judge's own decision.⁸

In a society there are values which are a series of abstract conceptions that live in the minds of most groups of society. Behavior by individuals that is not in accordance with existing norms, violates the interests of other people or society and disrupts social order constitutes a crime or violation. Legal formulations and legal sanctions have developed into a system of enforcing criminal law rules. regarding crime is increasingly developing into a system of enforcing criminal law rules.⁹

Legal rules are often violated by the community itself, as is often the case in society and is easily found, namely gambling. In essence, gambling is contrary to religion, decency and Pancasila morals and endangers society, the nation and the state and is viewed from the national interest. Various types and forms of gambling have become so widespread in people's daily lives, both openly and secretly, that some people tend to view gambling as if it were something normal.

Gambling has a negative impact on the moral and mental health of society, especially the younger generation. On the one hand, gambling is a social problem that is difficult to overcome and the emergence of gambling has existed since the existence of human civilization.¹⁰ Gambling is a type of crime that violates decency which is not decency as regulated in Chapter XIV of the Second Book of the Criminal Code. The crime of intentionally carrying out as a business, acts of offering or providing opportunities to gamble or participate in such businesses, is regulated by the legislators in Article 303 of the Criminal Code.¹¹

In various places, many lottery and other gambling agents have opened which have actually sucked up quite large amounts of public funds. Meanwhile, on the other hand, there is an impression that law enforcement officials are not very serious about handling this gambling problem and what is more worrying is that several gambling places are suspected of having backing from security forces.¹²

In essence, gambling is an act that is contrary to religious, moral, decency and legal norms, and is dangerous to the livelihood and life of the community, nation and state.

⁸Abdul Qadir Audah, *At Tasyri'Al Jina 'I Al Islami*, Beirut: (Dar Al-Kitab Al-'Araby), p. 67

⁹Murofiqudin, *Criminal Justice System in Indonesia*, (Surakarta: Muhammadiyah University of Surakarta, 1999), p.19-20.

¹⁰Sugeng Tiyarto, *Law Enforcement Against Gambling Crimes*, (Yogyakarta: Genta Press, 2015), p. 15.

¹¹PAF Lamintang and Theo Lamintang, *Special Offenses for Crimes of Violating Moral Norms and Compliance Norms*, (Jakarta: Sinar Pungganga, 2009), p. 280.

¹²PAF Lamintang and Theo Lamintang, *Special Offenses for Crimes of Violating Moral Norms and Compliance Norms*, (Jakarta: Sinar Pungganga, 2009), p. 280.

Judging from the national interest, the implementation of gambling has negative and detrimental impacts on the morals and mentality of society, especially the younger generation. Gambling is one of the diseases of society which is combined with crime, which in the historical process from generation to generation is not easy to eradicate. Therefore, efforts need to be made so that people stay away from gambling, limit gambling to the smallest possible environment and avoid more serious negative excesses so that they can finally stop gambling.

From a legal perspective, gambling is a criminal act (delicacy) that disturbs society. In this regard, in Article 1 of Law no. 7 Tahun 1974 concerning gambling control.¹³ Enforcement of criminal law to tackle gambling as deviant behavior must continue. This is very reasonable because gambling is a real threat to social norms which can cause individual and social tensions. Gambling is a real or potential threat to the maintenance of social order.¹⁴

A facilitator is someone who helps a group of people understand their common goals and helps them make plans to achieve those goals without taking a particular position in the discussion. Gambling is a game using money or valuables as a bet (such as playing dice, cards). This means that a gambling facilitator is someone who helps a group of people to help create a game where the prizes or bets are in the form of money or other valuable items.

This article contains the rules for controlling gambling. Where gambling is something that includes every game that makes a profit (usually due to luck, bro). Including betting on the results of matches or competitions (where they are not players in the match), along with betting in other forms. Not only about forms of gambling. This article also explains that all forms of gambling are a crime. This is because gambling is contrary to moral norms and endangers livelihoods as well as the nation and state.

Dolok District, North Padang Lawas Regency has several villages that hold wedding parties, so the host or organizer of the party will invite a dice bookie to enliven the event at the wedding party when it is customary if the community holds this or that, so that the party owner can automatically be called a gambling facilitator. dice. With a focus of discussion on several things, how has the culture of dice gambling facilitators developed in Dolok District, North Padang Lawas Regency, North Sumatra Province? What are the legal sanctions for dice gambling facilitators in the analysis of Islamic Criminal Law? And what are the legal sanctions for dice gambling facilitators in positive legal analysis?

METHOD

This research was carried out using a field approach or field research which aims to explain and describe phenomena in situations that occur in the field. Specifically, this research is qualitative, taking on the characteristics of sociological research which examines law in society by going directly into the field. According to Soetandyo Wingjosoebroto, as quoted by Bambang Sunggono, this research aims to find theories about the process of

¹³Article 1 Law no. 7 of 1974 concerning Controlling Gambling states that all criminal acts of gambling are crimes.

¹⁴Saparinah Sadli, in Muladi and Barda Nawawi Arief, Criminal Theories and Policies, Cet II, Bandung: Alumni Publishers, 1998, p. 148.

occurrence and operation of law in society. In carrying out research, the approach used is a qualitative approach. This aims to understand the phenomenon being researched and present the necessary data in descriptive form, without the need to quantify it. This research was conducted in September 2020 in Dolok District, North Padang Lawas Regency.

Data sources in this research are divided into two: primary and secondary. Primary data was obtained through direct interviews with informants. Meanwhile, secondary data is obtained from references to written works, journals, magazines, books and other references. Data collection methods used include interviews, where there is an exchange of information between the interviewer and the informant, as well as documentation, by looking at documents or notes on the subject or research location.

RESULTS AND DISCUSSION

Cultural development of dice gambling facilitators in Dolok District, North Padang Lawas Regency, North Sumatra Province

Providing dice gambling during weddings has been around for a long time and seems to be a tradition for the people of the district. Dolok District. North Padang Lawas. Dice gambling is only done by a few people and not too many people. Because dice gambling during weddings is part of entertainment that is fun in nature, it is not uncommon for neighbors, relatives and invited guests to take part in dice gambling activities. The temple expert at the wedding event will be the facilitator at the dice gambling event, by making his own house or the location of the party the location where the gambling is held.

District community interest. Dolok District. North Padang Lawas to play dice gambling at weddings because they think it is just entertainment, have fun and luck, they will get multiple profits from their capital in between laughing and laughing amidst the excitement of the wedding event and for the people of the district. Dolok District. North Padang Lawas, dice gambling at wedding parties is a means of strengthening relationships between people and between villagers in the district. Dolok remembered that outside of this event there were rarely any social activities that often brought fellow residents together because people were busy with their daily work in farming, gardening and trading.¹⁵

During dice gambling activities, people will compete to place gambling dice numbers with estimates and guesses so that they can come out and win, some even predict the numbers, because the more people who participate, the more excitement there will be and of course the profits they will get. there will be more and more.

Generally, during dice gambling activities at weddings in the district. Dolok District. North Padang Lawas is being held, beforehand there will be a work plan meeting regarding a wedding party with a regional term called "martahi" which will take place, such as forming a committee, providing donations to temple experts and so on. At Mnartahi, those present apart from the relatives of the temple experts, also involved the local community, including the local community including village administrators and sub-district offices.

In this activity all forms of wedding preparations will be discussed, from the budget, security duties, decoration equipment, cooks and food hiding and so on, and it is also not

¹⁵Interview with Zainuddin Siregar, the people of Kec. Dolok, North Padang Lawas Regency. September 20, 2023

uncommon to discuss the entertainment that will be provided, such as kibot, and dice gambling has also become a common thing to discuss. And even though it's not mentioned, people think that dice gambling must have been provided by the wedding ceremony expert. As mentioned earlier, the martahi event involves the local community, including village and sub-district administrators. Dice gambling has never been rejected or prohibited, this is due to the opinion that dice gambling activities which are only carried out during weddings are community entertainment. However, if it is done outside of the event, the village administrators and community will impose a ban.¹⁶

Legal sanctions for dice gambling facilitators in the analysis of Islamic Criminal Law

The criminal act of gambling, whether it is a gambler or a bookie or provider of gambling venues, is all included in the judimah ta 'zir. It would be appropriate to combine khamr and gambling in verses and laws, because they are equally dangerous to the person, family, homeland and morals. There is no difference between someone who is drunk because of gambling and someone who is drunk because of wine, in fact it is rare to find one without the other. The Qur'an is absolutely correct when it states that alcohol and gambling are acts of the devil.¹⁷

The legal propositions governing the legal sanctions for drinking wine are revealed by Allah in the Qur'an in stages regarding legal status. This is expressed as follows. Surah al-Baqarah (2) verse 219 and Surah al-Maa'idah verses 90-91:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْأَمْوَالُ الَّتِي كُفِّرْتُمْ قُلُوبُكُمْ لَعَلَّكُمْ تُفْلِحُونَ إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاةَ ضَاءً فِي
الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ

O you who believe, indeed drinking alcohol, gambling, (sacrificing to) idols, and drawing lots of fortunes with arrows are abominable acts (and) are among the acts of Satan. So, stay away from those (actions) so that you will be lucky. Indeed, Satan only intends to cause enmity and hatred among you through drinking and gambling and (intends to) prevent you from remembering Allah and (performing) prayer, so don't you want to stop?(QS Al Maida Verse: 90-91)

The basis for the prohibition on maysir is in the hadith, including those narrated from Abu Musa al-Asy'ari, Rasulullah SAW said: "From Abi Mussa Al-Asyari, whoever gambles, then he has truly disobeyed Allah and his Messenger. (HR. Ahmad , Malik, Abu that Rasulullah SAW said, Daud and Ibn Majah, Al-Albani said Hasan).¹⁸

Islam basically allows various kinds of useful games and entertainment, but it is prohibited if the game contains elements of gambling. The Messenger of Allah said, "Whoever calls out to his friend, "Let's gamble," should give charity." (HR. Bukhari and Muslim).¹⁹An act is considered to be a crime or criminal act, because the act is detrimental

¹⁶Wawan Cara Muniruddin Ritonga, community of Kec. Dolok, North Padang Lawas Regency. September 22, 20203

¹⁷Yusuf Qardhawi, Halal and Haram, Cet. 9, Translator: Abu Sa'id al-Falahi and Aumir Rafiq Shaleh Tamhid, (Jakarta: Robbani Press, 2010), p.352.

¹⁸Muhammad Syafi'i Hadzami, Taudhihil Adillah, Fatwa-Farwa adjutant KH. Syafi'i Hadzami Explanation of the Muamalah Propositions (Muamalah, Marriage, Jinayah, Food/Drink, and Others, volume 6 (Jakarta PT Elex Media Komputindo, 2010), p.254.

¹⁹Yusuf Qaradlawy, Al-Halal and Haram in Islam (Singapore: Hmpunan Belia Islam, 1980), p.410.

to society, religion, property and good name. Punishment is established to prevent people from doing it again, because a prohibition or order does not work well, if it is not accompanied by sanctions against violators. Punishment is something that is not good, but necessary because it can bring benefits to society.

Jarimah ta'zir The number is very large, that is, all the *jarimah*, apart from being threatened with the punishment of *had*, *kifarat*, and *qishas diyat*, are all *Jarimah ta'zir*. *Jarimah ta'zir* is divided into two: First, *Jarimah* whose form and type have been determined by the texts of the Qur'an and *hadith* but the law is left to humans.

Second, the *Jarimah*, regardless of shape or form, as well as the punishment, are handed over to humans. *Syara'* does not determine the type of punishment for each *ta'zir* radius but only mentions a set of punishments from the lightest to the heaviest. The type of punishment is in the form of whipping or binding.²⁰

Ta'zir punishment is divided into five types, including the following:

1) Death penalty

Punishment *ta'zir* According to Islamic law the aim is to educate. Punishment *ta'zir* if implemented, it will be safe from bad consequences. It means *ta'zir* not to damage. Most of the *fuqaha* provide exceptions to this general rule, namely allowing the death penalty as a *ta'zir* punishment when the public good requires it or the damage caused by the perpetrator cannot be avoided except by killing him, such as imposing the death penalty on a spy or an accomplice, heretics (slanderers) and dangerous recidivists. Because the death penalty is an exception to the general rule of *ta'zir* punishment, the sentence may not be expanded or handed over entirely to the judge as is the case with other *ta'zir* punishments. This is because the authorities must determine the types of crimes that can be sentenced to death.²¹

2) Voluntary punishment (flogging)

The punishment of whipping (flogging) is the basic punishment in Islamic law. For *hudud*, there are only a few *jarimah* that are subject to punishment, such as adultery, *qadzaf*, and drinking *khamr*. For *finger ta'zir* can be applied in various fields. Even for dangerous *ta'zir jarimah*, the punishment of the volume is preferred. Regarding the provisions prohibiting *ta'zir* from exceeding ten lashes, in the *hadith* of *Hani'bin Nayyar* that he heard the Messenger of Allah say:

Meaning: "There is no lashing, more than ten lashes except in punishment (*had*) from Allah's punishments."⁶ This provision is supported by *Ahmad*, *Laits*, *Ishak*, and adherents of the *Shafi'i madzab*. They said there should be no more than ten lashes. This is what is stipulated in the *Shari'a*. An addition exceeding ten lashes is permitted in *ta'zir*, but may not reach the lowest level of *hudud*. *Ta'zir* related to immoral acts must not reach the limits of *hudud*. Thus, *ta'zir* which is applied regarding immorality through direct sight and sight does not reach the sanction of adultery, acts of theft which do not reach the provisions of cutting off hands, nor does it relate to insults which are not included in the accusation with the prescribed punishment. The tool used for punishment in this volume is a medium whip

²⁰ Ahmad Hanafi, *Principles of Islamic Criminal Law* (Jakarta: Bulan Bintang 1990), p.

²¹ Abdul Qair Audah, *Al-Tasyri 'Al-Jina i Al-Islamy Mugaranan pil Qonunnil Wad 'iy*, Volume I, Terj. Tim Tsalisah, *Encyclopedia of Islamic Criminal Law* (Bogor: PT Karisma Ilmu, 2007), p.87.

(medium, not too big and not too small) or a cane. This opinion was put forward by Imam Ibn Taymiyah, with the reason that the best thing is the middle. The nature or method of carrying out the sentence is still disputed by the jurists. According to the Hanafiyah, the volumes as ta'zir must be whipped more harshly than the volumes in the had so that with ta'zir the punished person will be deterred, in addition to the fact that the number is still less than in the had 'zir with the nature of the volume in the hudud. If the person sentenced to ta'zir is a man, the clothes that prevent the whip from reaching the skin must be removed. However, if the person being punished is a woman, her clothes cannot be removed, because if so, her private parts will be exposed. The whip should not be directed at the face, forehead and head, but should be directed at the back. Imam Abu Yusuf added that it is not permissible to flog the chest and deter people. However, the clerics are increasingly upset, because this part can endanger the safety of the person being punished.

3) Prison sentence

Prison sentences in Islamic law are divided into two parts, namely:

- a) A limited prison sentence is a prison sentence whose length of time is strictly limited. This limited prison sentence is applied for insulting insults, selling wine, consuming usury, violating the honor of the holy month of Ramadan by breaking the fast during the day without any obstacles, irrigating the fields with water from a neighbor's channel without filling it, insulting two people who are disputing before the court, and false witnesses. There is also no agreement on the upper limit for this limited prison sentence among the jurists. According to Syafi'iyah, the highest limit for this limited prison sentence is one year. The opinion quoted by Abudullah Az-Zaubari is that the prison sentence is set at one month or six months.
- b) Indefinite imprisonment. The sentence of unlimited imprisonment is not limited in time, but is repeated continuously until the person is convicted

4) Punishment of exile

Exile punishment includes the had punishment applied to perpetrators of the crime of hirabah (robbery). Even though exile is a had, in practice, this punishment is also applied as a ta'zir punishment. Among the ta'zir jarimah who were subject to the punishment of exile (banishment) were people who behaved as mukhannats (transvestites), which the Prophet had done by throwing them out of Medina. This punishment of exile is imposed on perpetrators of jihad who are feared to have influence on other people so that the perpetrator must be exiled (exiled) to avoid this influence.

5) Fine penalty

One thing that is agreed upon by the jurists is that Islamic law punishes some ta'zir crimes with fines. The jurists differ in their opinions as to whether legal fines can be imposed for every criminal act. Some jurists believe that financial fines can be used as ta'zir punishment. Some of the jurists of the group that allow it to be enforced by means of a fine must be a threat, namely by withdrawing the convict's money and withholding it from him until the perpetrator's condition improves. If he is well again, his wealth will be returned to him but if it doesn't become good, his wealth will be invested for good. However, the jurists who support fines as a general punishment stipulate that fines can only be applied to minor crimes. They do not try to set minimum and maximum amounts for fines because this is left

entirely to the authorities. Penalty tightens fines as a general rule under certain conditions. They require the condemned person to die or until he repents. In other terms it could be called life imprisonment. This life sentence in Islamic criminal law is imposed on very dangerous criminals. For example, someone who holds another person captive to be killed by a third person. The second type of unlimited prison law until he repents is imposed, among other things, on people accused of murder and theft, homosexuality, or witchcraft, stealing for the third time according to another priest.

Legal Sanctions for Dice Gambling Facilitators in Positive Legal Analysis

Indonesia is a country of law as stated in article 1 paragraph 3 of the 1945 Constitution. According to Immanuel Kant, law is the totality of conditions for people's free will to be able to adapt to the free will of other people, by following government regulations, namely the existence of free and impartial judicial power.

In positive law, gambling is an ordinary criminal act. As in Article 1 of Law Number 7 of 1974 concerning Controlling Gambling, "all criminal acts of gambling are crimes". In the Criminal Code, gambling is contained in Article 303 concerning crimes against decency and Article 542 concerning violations of decency. The crime of modesty in matters of gambling is formulated in two articles, namely Articles 303 and 303 bis of the Criminal Code. In Article 303 paragraph (3) of the Criminal Code, what is said to be gambling is any game that involves luck, because the players are more trained or skilled.

The criminal sanctions in Article 303 of the Criminal Code are:

- 1) Any person without permission shall be subject to a maximum imprisonment of ten years or a maximum fine of twenty-five million rupiah:
 - a. Deliberately offering or providing opportunities for gambling games and making it a pursuit, or deliberately participating in an enterprise.
 - b. Deliberately offering or giving the general public the opportunity to gamble or deliberately take part in the company, regardless of whether to take advantage of the opportunity to meet certain conditions or fulfill certain procedures.
 - c. Make participating in gambling games a pursuit. If the person guilty of committing the crime while carrying out their activities can be deprived of their right to earn a living, to carry out that work.
- 2) What is called a gambling game is any game, where in general the possibility of making a profit depends on sheer luck, also because the player is more trained or more skilled. This includes all bets on the results of competitions or other games that are not held between those competing or playing, as well as all other bets.

In Article 303 bis the formulation is:

- 1) Threatened with a maximum imprisonment of four years or a maximum fine of ten million rupiah:
 - a) Anyone who uses the opportunity to gamble violates the provisions of Article 303 of the Criminal Code.
 - b) Anyone who participates in gambling on a public road or on the side of a public road or a place that can be visited by the public, unless there is permission from the authorities to carry out gambling. The authorized person who has given permission to

- 2) If it has not been two years since the time of committing the offense which has become permanent for one of these offences, a maximum prison sentence of six years or a fine of up to five million rupiah can be imposed.

So it can be concluded as regulated in Article 303 paragraph (1) 2 of the Criminal Code, the elements of which are as follows:

- 1) Whose element
- 2) Elements without permission from the authorities
- 3) The element of deliberately offering or giving the general public the opportunity to play gambling games or participate in a company for that purpose, regardless of whether to use the opportunity, there are conditions or the fulfillment of certain procedures.

What is meant by "whoever" is anyone as a legal subject who commits an act as formulated in this Article, from whom criminal liability can be held. Furthermore, if we compare the punishment for perpetrators of criminal acts of gambling, Islamic law and positive law have similarities, namely in Islam it is called jarimah ta'zir, which includes prison sentences or fines, as well as positive law that perpetrators of criminal acts of gambling are punished with prison or fines.

CLOSING

In Dolok District, North Padang Lawas Regency, dice gambling during weddings has become a kind of tradition, even though it is only done by a handful of people. Courtiers of wedding events often act as gambling facilitators, using their own locations as places where gambling takes place. In Islamic law, the criminal act of gambling, including the organizers and players, falls into the category of jarimah ta'zir, with reference to the Koran, Surah al-Baqarah (2) verse 219 and Surah al-Maa'idah verses 90-91. Jarimah ta'zir can take the form of flogging, imprisonment, or a fine, with specific conditions determined by the head of government. According to Article 303 paragraph (1) 2 of the Criminal Code, the perpetrator or facilitator of gambling can be sentenced to prison or a fine. If you look at it, the punishment for criminal acts of gambling in Islamic law and positive law has similarities, both of which stipulate punishment options in the form of imprisonment or a fine.

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