

GAPLE GAMBLING PRACTICE IN COMMUNITY CELEBRATIONS PERSPECTIVE OF CUSTOMARY LAW AND CRIMINAL LAW

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Abstract. *Article 18B paragraph (2) of the 1945 Constitution states that the state recognizes and respects the unity of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. Trucuk Village, Bojonegoro Regency, has a tradition of practicing gaple gambling during community celebrations. This study uses socio-legal research methods with historical and comparative approaches, and prescient analysis. The urgency of the discussion is that criminal law regulates that whatever form and method is used by the community in the practice of gambling is a criminal act. Based on local wisdom, the practice of gambling during community celebrations is a community activity that has been passed down from generation to generation. There is no criminal act, so the police cannot make arrests or criminal proceedings against the community. Laws and laws that live in the community (living law) have the same position as the source of national law. The state, through law enforcement apparatus, cannot directly arrest or dissolve the practice of gaple because it is a concrete form of the existence of community culture that is legally protected.*

Keywords: *Criminal Law; Customary Law; Gambling; Tradition.*

1. Introduction

Culture is the product of human creation, taste, and karsa that is formed through the process of social interaction in social life (Du et al., 2025). Etymologically, culture comes from the Sanskrit language *buddhayah*, which is the plural form of *buddhi*, which means mind or intellect, so culture can be understood as everything related to the ability of the human mind to create lifestyles, values, and various forms of social expression (Syakhrani & Kamil, 2022). In people's lives, culture has a very important role because it is a guideline in acting, behaving, and building social relationships. Through culture, a community group can maintain its identity, pass on values to the next generation, and create order in life together (Richerson et al., 2026). In the era of globalization, the rapid development of technology and the flow of information have a significant influence on

people's lives, including rural communities (Rolandi et al., 2021). The changes in lifestyles that occur today show a shift in values and habits compared to the past, which is largely influenced by the entry of outside culture and modernization (Nahak, 2019). Therefore, appropriate efforts are needed to maintain the sustainability of local culture so that it is not eroded by the development of the times. Culture itself includes various important elements, such as social values, social norms, knowledge, belief systems, social structures, and various intellectual and artistic works that are characteristic of a society (Rhemrev et al., 2023). Thus, culture not only functions as the identity of a community but also becomes the foundation for maintaining the sustainability of social life in the midst of the challenges of globalization.

Tradition is part of a custom, a magical and religious custom in a society that is passed down from generation to generation (Angkat, 2024). Each generation in a society bequeaths to the next generation abstract things (ideas, values, norms) and concrete things or things (Salamah et al., 2023). Bojonegoro Regency administratively has 419 villages spread across 28 sub-districts, and out of 419 villages, there is only one village, namely Trucuk Village which is included in the administrative area of Trucuk District, Bojonegoro Regency, which has one of the unique traditions in the form of *Gaple* or gambling during community celebrations (Purwanto et al., 2025).

Gambling is a social and economic activity that has existed for a long time and continues to develop, both in its form and its influence on society (Rassanjani & Rahmi, 2025). Gambling itself according to legal norms in laws and regulations is a prohibited act and has sanctions as stipulated in the provisions of the old Criminal Code in Articles 303 and 303 bis of the Criminal Code which have been replaced as well as the provisions of Articles 426 and 427 of the new Criminal Code and if gambling is carried out digitally, it can be subject to online gambling sanctions as the second amendment to the Electronic Transaction Information Law, And one of the most prominent negative impacts of online gambling is the economic deficit (Azis, 2025).

The position of customary law has been constitutionally strengthened as stipulated in Article 18B paragraph (2) and Article 28I paragraph (3) of the Constitution of the Republic of Indonesia in 1945. So that the position of customary law is equivalent to other national laws including state law (state law) (Pradhani, 2021). Gambling, also known as *Gaple* by the people of Trucuk Village, Bojonegoro Regency, is an activity involving playing cards and a certain amount of money, which is carried out only at certain events such as community celebrations (Purwanto et al., 2025). In practice, the rules of the game are based on tradition, *Gaple* same as gambling practices in general, and this situation makes the police in Bojonegoro Regency face problems from a different point of view.

Based on different realities of the same thing in relation to gambling, the public and the police are in their own confusion. Allowing the practice of gambling even if only at certain times is a point of view that provides its own discretion on the applicability of the principle of legality in criminal law. However, on the other hand, the practice of gambling (*gaple*) carried out by the people of Trucuk Village, Bojonegoro Regency, is a hereditary act from the ancestors that is carried out to maintain harmony and security at a time when the local community has events that require other community members in turn. The *gaple* tradition still applies to the people of Trucuk Village even though the legislation regulates

the prohibition of all forms and activities of gambling by the community, both conventionally and digitally.

From this description, the legal problem that is the focus of this research is the normative conflict between the *gaple* tradition which contains elements of gambling and has lived for generations in the community of Trucuk Village, Bojonegoro Regency and the provisions of the national criminal law that prohibit all forms of gambling as stipulated in Article 426 and Article 427 of the Criminal Code. The conflict raises questions about the position and legitimacy of the *gaple* tradition as a living law in indigenous peoples when faced with the principle of legality in criminal law, as well as how law enforcement officials should respond to the practice within the framework of legal certainty, justice, and respect for local cultural values recognized by the constitution.

2. Research Methods

This study uses a socio-legal qualitative methodology by Heliany and Tjandrawinata (2025), which integrates the analysis of legal doctrine with a contextual empirical review to examine the perspective of customary law and criminal law on gambling practices in the tradition of community celebrations in Trucuk Village, Bojonegoro Regency. By combining normative and empirical approaches, this study seeks to critically examine the gap between the applicability of state law and living law in the context of gambling practice.

A normative approach is used to examine various relevant laws and regulations, including the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 2023 concerning the Criminal Code, and Law Number 1 of 2024 concerning the Second Amendment to the Electronic Information and Transaction Law. The normative study is also focused on the analysis of gambling provisions as stipulated in Article 426 and Article 427 of the new Criminal Code as well as the previous provisions in Article 303 and Article 303 bis of the old Criminal Code. Meanwhile, an empirical approach is used to understand the application of legal norms in society by paying attention to the cultural values, habits, and views of the people of Trucuk Village, Bojonegoro Regency towards the *gaple* tradition.

The data analysis technique used is descriptive qualitative analysis by processing and interpreting primary legal materials, secondary legal materials, and empirical data obtained from various relevant sources. The analysis was carried out through the stages of identifying legal issues, grouping data based on themes, interpretation of applicable legal norms, and comparison between normative conditions (*das sollen*) and social practices that take place in the community (*das sein*) (Purwanda et al., 2023). Furthermore, the results of the analysis were used to assess the position of the *gaple* tradition in the perspective of customary law and criminal law and identify the forms of relationships and potential conflicts between living law and state law in the Indonesian legal system.

The practice of gambling carried out by the people of Trucuk Village, Bojonegoro Regency, is a social reality that has been going on for generations until now (*das sein*). However, the practice is contrary to the provisions of the national criminal law which prohibits all forms of gambling as stipulated in Article 426 and Article 427 of the new Criminal Code, which were previously regulated in Article 303 and Article 303 bis of the

old Criminal Code. Therefore, this study focuses on a critical examination of the existence of the *gaple* tradition as a local cultural heritage that is still maintained in the midst of Indonesian legal pluralism and its implications for law enforcement and legal recognition that live in society.

3. Results and Discussion

3.1. History of the “gaple” tradition of gambling in the people of Trucuk Village, Bojonegoro Regency

The very complex life journey of the Indonesian nation is an inseparable part of making the Indonesian nation a pluralistic nation from various aspects. Gambling is a frequent occurrence in various parts of the world, including in Indonesia. Indonesia has a variety of ethnic groups with cultural differences that are reflected in their respective patterns and lifestyles. This difference led to different regional cultures (Mana & Syukur, 2024). The plurality of the Indonesian nation can be seen from many aspects, including the cultural diversity in each tribe spread throughout Indonesia. Many factors shape the cultural diversity of the Indonesian nation, including geographical factors and historical factors of civilization to the spread of religion. Cultural diversity is a concept that reflects differences and richness in value systems, norms, languages, customs, and artistic expressions in a society. In the context of Indonesia, cultural diversity is an identity as well as a social force that underlies the life of the nation and state (Sugianto, 2023).

Social, cultural, traditional, and religious diversity is a necessity of life, because every person or community must have differences as well as similarities. On the other hand, the plurality of cultures, traditions and religions is a wealth in itself for the Indonesian nation. However, if such conditions are not understood with tolerance and mutual respect, then the plurality of cultures, religions or traditions tends to give rise to conflicts and even violence (Parapat et al., 2024). Cultural diversity in Indonesia is not only present in symbolic form, but also manifest in social practices, traditions, language, art, and daily life of the community. The existence of this diversity shows complex social dynamics as well as proof that Indonesia is a nation that is able to survive and develop through its cultural wealth (Saputra et al., 2025).

Based on an examination of empirical data obtained through an interview with the Head of Trucuk Village, Bojonegoro Regency. That, the tradition of gambling games when the community has a big event which is often referred to as the *gaple* tradition is a gambling game using card media like gambling games in general which is played by several people (on average 4 to 5 people) in one group accompanied by the availability of small denominations including the nominal IDR 2,000, IDR 5,000, IDR 10,000, and from the game results are obtained like gambling in general for the winner. However, what needs to be known is that the sociological basis for the practice of gamble gambling is not solely as an act that is carried out in general by the entire community, but is carried out at a certain time in the form of a tradition *jagongan*, where there are members of the community who have a big event and the proceeds of the Main *Gaple* bet will be donated to residents who have wishes. The cultural traditions of the people of Trucuk Village in the context of the *jagongan* in the homes of residents who have wishes. *Jagongan* is a tradition of the people of Trucuk Village, which is carried out specifically to enliven the celebration events that are being held by the community (neighbors, family, and others). *Jagongan* without being asked by the community will come by itself, the crowd or

loneliness of people who participate in the *jagongan* can be measured and seen from the habits of people who have wishes. If those who have wishes often participate in the *jagongan* and Javanese traditional terms, there must be many *jagongan*, but on the other hand, if those who have wishes rarely participate in the celebration of *coro jowone sikile abot polah*, there will be few people who will join the *jagongan*.

The gambling game that has taken place until now is interpreted as a positive thing by the people of Trucuk Village because it is only carried out at a certain time and is not a permanent source of income for the community. Based on the information of the Chairman of the Trucuk Village customary institution. Tradition *Gaple* which has existed since the early days of independence, is not an actual gambling event just as a means to stay up late/prevent from falling asleep at the time of the *jagongan*, because the actual function of the *jagongan* is to help residents who have a desire to take care of goods outside the house, so that residents who have a wish can rest, besides that *gaple* is also to entertain themselves, Because there is usually a ridiculous chatter for the loser, and there is a thick bond of harmony between residents. So if you look at it from a legal point of view, it is indeed wrong, but because this is a tradition that is not written and passed down from generation to generation, and is not done every day, only done when there are residents who have a wish, then we hope that this tradition will continue to run according to the previous ancestral customs. Based on the following observations, the following is an example of the implementation of the *gaple* tradition practice in Trucuk Village, Bojonegoro Regency.



Figure 1. "Gaple" Gambling Practice in Trucuk Village, Bojonegoro Regency

The findings show that the *gaple* tradition in Trucuk Village has strong social legitimacy because it is seen as part of local wisdom that functions to maintain environmental security, strengthen social solidarity, and help organize community celebrations. This practice has been passed down from generation to generation and is accepted as a collective custom that has social value for the local community. From the perspective of customary law, the sustainability of a habit that continues to be practiced and receives

recognition from the community can be categorized as living law (Lestarini, 2023). Therefore, the people of Trucuk Village do not solely view *gaple* as a gambling activity, but as a means of maintaining togetherness, mutual cooperation, and order during social activities.

However, the existence of these social functions does not necessarily eliminate the gambling element contained in the practice of *gaple* (Sirola et al., 2021). Regardless of the underlying social purpose, the use of money as a wager still places the practice in the category of gambling as regulated and prohibited in Article 426 and Article 427 of the Criminal Code. This condition creates a normative conflict between the law that lives in society (living law) and the state law that applies nationally. Thus, the legal issue that is the focus of this study is not only about the sustainability of the *gaple* tradition as a local cultural heritage, but also about the boundaries of recognition of customary law in the Indonesian legal system (Pradhani, 2018). These issues are important to analyze in order to understand the extent to which a tradition accepted and maintained by the community can acquire legal legitimacy when the substance of its practice is contrary to the prevailing criminal law norms, as well as how state law should respond to the existence of such traditions within the framework of legal certainty, justice, and respect for local cultural values (Rubiati, 2024).

On the other hand, the recognition of customary law and local culture has obtained a constitutional basis in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that the state recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia (Negara & Ringgi, 2026). The provision shows that the state provides space for the sustainability of social values, norms, and practices that develop in indigenous peoples (Arifin et al., 2025). However, the recognition is not absolute because it must remain within the corridor of national law and must not contradict the applicable laws and regulations. Therefore, the existence of the *gaple* tradition that contains elements of betting raises questions about the limits of state tolerance for cultural practices that have a social dimension and have the potential to violate criminal law.

The conflict between local cultural values and state law basically reflects the challenges in realizing legal pluralism in Indonesia (Jayus, 2020). In practice, people often view a tradition based on the social values, solidarity, and togetherness contained in it, while state law assesses an act based on juridical elements that have been determined in laws and regulations. These differences in perspectives can cause tension if a cultural practice contains elements that are legally categorized as criminal acts. Therefore, a proportionate and contextual approach is needed in assessing the existence of the *gaple* tradition, so that law enforcement efforts do not ignore the cultural values that live in the community but still ensure the creation of legal certainty and protection of the public interest. Thus, the study of the *gaple* tradition is important as an effort to find a balance point between respect for local culture and criminal law enforcement in the Indonesian legal system.

3.2. A critical examination of the gambling practice of the “gaple tradition” in the perspective of customary law and new criminal law

Gambling practices that occur in the country, both conventionally and electronically, are important issues that must be studied in depth. The normalization of gambling can be interpreted as the process by which deviant activities such as gambling begin to be considered a regular part of daily life. With normalization, people no longer see gambling as an activity that needs to be opposed (Syarifudin, 2020). In gambling, certain symbols, such as playing cards or craps, not only serve as betting tools but also carry a deeper social meaning to the individuals involved (Sirait & Sunggara, 2025). Considering gambling as a cultural phenomenon is a challenge for the study of gambling, therefore, we will examine some facts about gambling, religion, and cultural background that are necessary for us to explain its cultural adaptation (Brešan, 2020).

Gambling Tradition (*Gaple*) which is one of the characteristics carried out by the people of Trucuk Village, Bojonegoro Regency and has existed since the beginning of independence until now which is an ancestral heritage, analyzed with the legal system that applies in Indonesia is a form of local wisdom that is recognized by the state in the form of laws that live in the community as an integral part of the national legal system that cannot be castrated by the rights inherent in indigenous peoples. Article 18B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms that the state recognizes the unity of indigenous peoples and respects customary laws that remain in force, as long as they are in harmony with community development and state principles. In the Unitary State of the Republic of Indonesia, where these norms are recognized, underlying customary rights must be protected. This recognition is not only a formality but represents the understanding that the laws that exist in society, as articulated by Soepomo, are a true reflection of the sentiments of the people's law. In this context, Customary Law is not something static; It continues to grow along with the dynamics of society (Toatubun, 2024).

From the perspective of customary law, the state constitutionally strengthens the regulation and protection of indigenous peoples and their traditions. The sectoral law was formed as an effort to strengthen state recognition as the 1945 Constitution of the Republic of Indonesia on the traditions and culture that exist in the community, including the tradition of gambling games during community celebrations in Trucuk Village, Bojonegoro Regency. Article 6 Paragraph (1) of Law No. 39 of 1999 concerning Human Rights stipulates that: “The State recognizes and respects the cultural identity and rights of indigenous peoples, including their traditions”. As well as the provisions of Article 5 of Law (UU) Number 5 of 2017, which regulates the Object of Cultural Advancement, which includes ten main aspects: “oral traditions, manuscripts, customs, rites, traditional knowledge, traditional technology, art, language, folk games, and traditional sports, all of which aim to preserve the nation's cultural wealth”.

Meanwhile, from the perspective of criminal law, as stipulated in Articles 426 and 427 of Law Number 1 of 2023 concerning the Criminal Code, namely:

1. “Article 426 Paragraph (1), that: Sentenced to a maximum prison sentence of 9 (nine) years or a maximum fine of category VI, Every person without a permit:

- a. offer or provide opportunities to gamble and make as a livelihood or participate in the gambling establishment.
 - b. offer or provide opportunities to the public to gamble or participate in gambling companies, regardless of whether there is a condition or procedure that must be met in order to use such opportunities.
 - c. making participating in gambling games a livelihood.
2. If the Criminal Offense as intended in paragraph (1) is committed in carrying out the profession, an additional penalty may be imposed in the form of revocation of rights as intended in Article 86, letter f.
 3. Article 427: Any person who uses the opportunity to play gambling held without a permit shall be sentenced to imprisonment for a maximum of 3 (three) years or a maximum fine of category III”.

This provision regulates criminal sanctions against conventional gambling practices, including the practice of *gaple* gambling in Trucuk Village, as previously regulated in Articles 303 and 303bis of the old Criminal Code.

The written law stipulated by the government in the laws and regulations, both the old Criminal Code and the new Criminal Code which regulates the crime of gambling, contains provisions that make it very possible to ensnare gamblers in Trucuk Village even though it is carried out during a celebration event which is a tradition in the local community but is still part of the unlawful act that must be ordered by the police. However, empirically, at a time before the new Criminal Code was enforced, starting January 2, 2026, the people of Trucuk Village who were practicing gambling games had been subjected to a surprise inspection and patrol by the Trucuk Sector Police led directly by the local Police Chief. With the communication and arguments conveyed by the village head and the head of the village customary institution, strengthening the existence of gambling carried out by the local community is not purely part of the crime of gambling as regulated in the law, but only part of a tradition of maintaining harmony and security during the celebration of the local village community.

Departing from two opposing norm regimes, namely customary law as living law and criminal law as state law, law enforcement of the *gaple* tradition in Trucuk Village shows the complexity of legal pluralism in Indonesia (Hariri & Babussalam, 2024). From the perspective of the theory of living law put forward by Eugen Ehrlich, the laws that people actually live and obey are not always identical to the laws written in laws and regulations (Fuchs, 2021). The *gaple* tradition that has been going on for generations is accepted collectively and has a social function in maintaining the security and solidarity of the community, showing characteristics as a living law. However, from the perspective of legal certainty, the state is still obliged to ensure the consistent enforcement of criminal provisions for every act that meets the elements of a criminal act, including gambling as stipulated in Article 426 and Article 427 of the Criminal Code (Purba & Rattanapun, 2025). Therefore, the conflict that occurs is not only related to the existence of the *gaple* tradition but also concerns the conflict between the demand for legal certainty and the recognition of the law that lives in society.

Within the framework of legal certainty theory, the abandonment of gambling practices on the grounds of tradition has the potential to cause inconsistency in the application of the law and unequal treatment before the law (Mustaqimah et al., 2023). If a form of

gambling is not acted upon for reasons of local custom, while another form of gambling is subject to criminal sanctions, then the purpose of the law is to create certainty and predictability is reduced. On the other hand, the theory of legal pluralism asserts that state law is not always the only system of norms that governs people's behavior (Swenson, 2018). Rigid law enforcement against practices that have strong social legitimacy has the potential to cause community resistance, disrupt social harmony, and reduce the legitimacy of the state in the eyes of local communities (Brink et al., 2025). Thus, the dilemma faced by the police is not solely a matter of law enforcement or neglect, but a question of how to balance legal certainty with recognition of the social reality that lives in society (Putra & Raspati, 2023).

In this context, the attitude of the police who tend not to take repressive action can be understood as a form of law enforcement discretion in dealing with conflicts between state law and living law (Turner, 2026). However, such discretion should not be interpreted as a disregard for criminal law. The absence of clear and measurable action has the potential to create legal uncertainty regarding the limits of state tolerance for gambling practices wrapped in cultural traditions (Soeradji et al., 2025). Therefore, a more structured policy is needed to determine the parameters of when a tradition can still gain recognition as part of local wisdom and when elements that are contrary to criminal law should remain subject to restrictions. Thus, resolving the problem of *gaple* tradition is not enough to be carried out through a repressive approach or mere neglect, but requires a balance between the protection of local cultural values, respect for living law, and the enforcement of the principle of legal certainty as one of the main goals of criminal law.

4. Conclusion

This study shows that there is a normative conflict between the *gaple* tradition, which contains elements of gambling as a living law in the community of Trucuk Village, Bojonegoro Regency, and the provisions of the national criminal law that prohibit all forms of gambling stipulated in Article 426 and Article 427 of the Criminal Code. From the perspective of customary law, the *gaple* tradition has gained social legitimacy because it has been going on for generations, is accepted collectively by the community, and has a social function to maintain security, strengthen solidarity, and support the implementation of community celebrations. However, from a criminal law perspective, the existence of an element of betting still places the practice in the category of gambling that is normatively prohibited by laws and regulations. Therefore, the main problem that arises is not only about the existence of the *gaple* tradition, but about the limits of the recognition of living law when dealing with the principle of legality and the principle of legal certainty in the national legal system. This research contributes to the development of legal studies on the relationship between living law and state law in the context of legal pluralism in Indonesia. The findings of the study show that the existence of a tradition that has social legitimacy does not automatically preclude the enactment of criminal law, but also cannot be responded to solely through a repressive approach that ignores the social reality of society. Thus, this study offers an understanding that the conflict between legal certainty and recognition of living law needs to be managed through a balanced approach, so that law enforcement is maintained without ignoring the social and cultural values that live in society. Based on these findings, clearer guidelines are needed for law enforcement officials in dealing with cultural practices that contain elements of criminal acts so as not to cause legal uncertainty or the impression

of neglect. In addition, the local government, traditional leaders, and the people of Trucuk Village need to evaluate the implementation of the *gaple* tradition by reducing or eliminating the element of betting so that the social, cultural, and mutual cooperation values that are the main goals of the tradition can still be maintained without contradicting the provisions of the national criminal law. This step is important to realize harmonization between the recognition of living law and the principle of legal certainty in the Indonesian legal system.

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Interview:

Interview with Mr. Subadri as informant on the history of the “Gaple” gambling tradition, on 2026.

Interview with Mr. Sunoko as Head of Trucuk Village, Bojonegoro Regency, on the historical tradition of gambling in Trucuk Village, on 2026.