

## **Legal Analysis of Criminal Responsibility of Gambling Crime Perpetrators (Study of Decision Number 234/Pid.B/2024/Pn Jkt Pst)**

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**Abstract.** *Gambling is a game where players bet to choose one of several choices provided where only one choice is the winner. This action is clearly contrary to the provisions of positive law, religion, and morality which is very dangerous for the next generation. The crime of gambling or participating in gambling was originally prohibited in the criminal provisions of Article 542 of the Criminal Code, but based on the provisions stipulated in Article 2 paragraph (4) of Law No. 7 of 1974 concerning the regulation of gambling, its name has been changed to a crime regulated in Article 303 bis of the Criminal Code. The approach method used in this study is a normative legal approach. The normative legal approach is a legal research conducted by examining library materials or secondary data as only. The research specifications used are descriptive analysis, sources and types of data used are primary and secondary data. The data collection method is carried out by means of literature studies, including minutes of legislation, books, journals, research results. The problem is analyzed with the theory of criminal responsibility, the theory of legal certainty and the theory of justice. Criminal liability is liability for crimes committed by people. Based on Decision Number 234/Pid.B/2024/PN Jkt Pst which is based on the facts revealed in the trial that the criminal act of gambling was committed by the Defendants by referring to the evidence revealed in the trial, it can be concluded that the Defendants have been proven guilty of the crime of gambling. This action expressly violates Article 303 paragraph 1 of the Criminal Code, with all the elements contained therein fulfilled. The basis for the judge's considerations in making a decision can be divided into two categories, namely: Legal considerations, namely the judge's considerations based on legal facts revealed in the trial and by law specified as something that must be included in the decision, and non-legal considerations, namely the judge in making his decision looks more at the background of the defendant, the consequences of the defendant's actions and the defendant's personal condition and religion.*

**Keywords:** *Criminal Liability; Gambling; Justice.*

## 1. Introduction

That every person within the territory of Indonesia must obey and submit to the laws in force in Indonesia, in this case it can be explained that in the regulations in force in Indonesia no one is immune to the law, all actions must be based on and have consequences in accordance with the laws and regulations of the Republic of Indonesia, which aims to realize the life of society, nation, and state that is orderly, prosperous, and just in order to achieve the goals of the state as mandated in the opening of the 1945 NRI Constitution. This is expressly regulated in the Explanation of the 1945 NRI Constitution that the Republic of Indonesia is based on law (*rechtsstaat*), not based on mere power (*machstaat*).<sup>1</sup>

Law here has a very important meaning in the aspect of life as a guideline for human behavior in relation to other humans. In a state of law, law is used as the main basis in moving every joint of social, national and state life. Law is also used as a means of social control, so that law exists to ensure that society can remain in universally accepted behavioral patterns. In such a function, law not only maintains what exists and is accepted in society but outside of that law can still carry out its other functions, namely by making changes in society.<sup>2</sup>

To achieve this goal can be done by limiting and protecting these interests. Although all behavior and actions have been regulated in laws and regulations, crime is still rampant in this country, one of which is the crime of gambling. Gambling has existed since ancient times along with the development of human civilization. Encyclopedia Britannica notes that gambling has been found since primitive times, for example the Bushmen tribe in South Africa, the Aborigines in Australia and the Indians in America, where they have known the game of dice. Then gambling developed since the time of Ancient Greece. Various types of gambling games and their very easy techniques make gambling quickly develop throughout the world including Indonesia.<sup>3</sup>

Gambling activities have long been known in Indonesian society. This culture has even been passed down from generation to generation and, by some people, is no longer considered taboo. Gambling is not merely a momentary behavior, but has become ingrained as part of the mentality of some individuals. When the gambling mentality has strengthened, not only the numbers in mathematical games are used as betting objects, but also various events in everyday life can be bet on. This shows that gambling has become embedded in a mindset that deviates from social norms. In the consideration of Law Number 7 of 1974 concerning the Regulation of Gambling, it is implicitly stated that gambling practices are contrary to the values of morality and the nation's morals<sup>4</sup>.

In general, gambling is defined as a game that involves betting on something of value, by choosing one of several available options, where only one option will be declared the

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<sup>1</sup>CST Kansil, 2001, General and Indonesian State Science, PT Pradnya Paramita, Jakarta, p. 2.

<sup>2</sup>R, Soeroso, 2006, Introduction to Legal Science, Sinar Grafika, Jakarta, p. 15.

<sup>3</sup>Anton Tabah, 2001, Looking With the Eyes of the Heart at the Indonesian Police, PT Gramedia Pustaka Utama, Jakarta, p. 181.

<sup>4</sup>Law Number 7 of 1974 concerning the Regulation of Gambling, State Gazette of the Republic of Indonesia 1974 Number 38.

winner. Winning or losing in betting is determined before the game begins. Although gambling practices have been prohibited in the Indonesian legal system, the reality shows that gambling cases that occur today are still rampant. The methods and forms of gambling are increasingly diverse and easily accessible to various groups of people. Gambling cases that have developed in society recently have often been in the spotlight of the mass media, considering the many perpetrators who are tempted by ways to get money instantly<sup>5</sup>. In fact, such actions not only violate positive legal provisions, but also contradict religious teachings and moral norms, and endanger the future of the nation's next generation.

Along with the development of technology and the times, gambling practices are carried out with various mechanisms and forms. Although the forms are increasingly diverse, in essence gambling is still seen as a form of crime. In the context of Indonesian criminal law, the crime of gambling was initially regulated in Article 542 of the Criminal Code. However, with the issuance of Law Number 7 of 1974, these provisions have changed as stated in Article 2 paragraph (4), and reformulated in Article 303 bis of the Criminal Code<sup>6</sup>. This change confirms the state's commitment to categorizing gambling as a serious criminal offense.

The criminalization of perpetrators of gambling crimes as regulated in Article 303 and Article 303 bis of the Criminal Code, and reinforced by the explanation in Article 1 of Law Number 7 of 1974, shows that all forms of gambling are classified as crimes. Therefore, the threat of criminal penalties for perpetrators of gambling is increased. However, in practice, the legal threats that have been determined are not considered effective enough to create a deterrent effect, considering that gambling practices are still ongoing. Gambling that depends on the uncertainty of winning and losing tends to form a lazy and unproductive character in society, because they rely solely on luck to earn income<sup>7</sup>.

Kartini Kartono defines gambling as a form of betting using something of value, and is done consciously by the perpetrator, with awareness of the risks and hopes for victory whose results are uncertain. Gambling is not only done by those who become players, but also by those who consciously provide a place to gamble. In fact, in some cases, this activity is used as a hobby, habit, and even a livelihood<sup>8</sup>. This phenomenon is a serious concern in law enforcement because it damages the moral and social order of society.

Regarding the case of gambling case Decision Number 234/Pid.B/2024/PN Jkt Pst on Monday, November 13, 2023, defendant SP alias SN bin (the late) DWI PRIYADI (hereinafter referred to as defendant SP) saw an empty land in the field of Jalan Kramat VII No.33 RT07/RW01, Kenari, Senen, Central Jakarta, then defendant SP together with defendant TJ played gambling on the empty land until the evening, because defendant SP could play until the evening, it gave rise to defendant SP's intention to organize gambling games for the public. That then defendant SP alias SN contacted and offered Defendant TJ, Defendant DW, Defendant AS, Defendant HR, Defendant ATIN, Defendant MS and Defendant PV to become

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<sup>5</sup>Suharsanto, R. (2020). The Impact of Gambling on the Social Order of Society. *Indonesian Journal of Criminology*, 17(2), 115–128.

<sup>6</sup>Lestari, S. (2022). *Special Criminal Law: Gambling Crimes in the Perspective of the Criminal Code and the Gambling Control Law*. Jakarta: Prenadamedia Group.

<sup>7</sup>Rahman, A. (2021). Gambling and its Impact on National Morality. *Journal of Law and Morality*, 8(1), 75–88.

<sup>8</sup>Kartono, K. (2007). *Social Pathology*. Jakarta: Rajawali Press.

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employees to organize gambling games in the field of Jalan Kramat VII No.33 RT07/RW01, Kenari, Senen, Central Jakarta.

In organizing gambling, the defendant SP received a profit of Rp10,000,000.00 (ten million rupiah), with the profits that the defendants, as supervisors and collectors received wages of Rp250,000.00 (two hundred and fifty thousand rupiah) to Rp300,000.00 (three hundred thousand rupiah) every day, as a Tasiau dice shaker whose job is to shake the dice in the Tasiau gambling game, he received wages of Rp150,000.00 (one hundred and fifty thousand rupiah) to Rp200,000.00 (two hundred thousand rupiah) every day as a cashier in Tasiau Gambling whose job is to collect the money from the losing players and also give the results to the winning players, he received wages of Rp150,000.00 (one hundred and fifty thousand rupiah) to Rp200,000.00 (two hundred thousand rupiah) every day. The defendants in offering or providing the opportunity for gambling and making it a search or intentionally participating in a company for which they do not have permission from the authorities and gambling practices are prohibited in the territory of Indonesia.

Based on the problems above, regarding the many phenomena of gambling crimes so that people who do not know the rules for the community are careful and vigilant, such as the case registered at the Central Jakarta District Court Number 234 / Pid.B / 2024 / pn. Jkt Pst, so that it becomes a special attraction for the author to study this in more depth by conducting research, for writing a thesis entitled "JUDICIAL ANALYSIS OF CRIMINAL RESPONSIBILITY OF GAMBLING CRIMINAL PERPETRATORS (Study of Decision Number: 234 / Pid.B / 2024 / PN Jkt Pst)".

## **2. Research Methods**

The approach method used in this study is the normative legal approach. The normative legal approach is a legal research conducted by examining library materials or secondary data as mere sources. Normative legal research is a legal research that places law as a normative system. The normative system in question is regarding the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings).<sup>9</sup>

## **3. Results and Discussion**

### **3.1. Criminal Responsibility for Perpetrators of Gambling Crimes in Decision Number 234/PID.B/2024/PN JKT PST**

Criminal liability is a fundamental issue in criminal law, fault, liability and criminal are expressions and everyday conversations in morals, religion and law. These three elements are interrelated and rooted in the same condition, namely both covering a series of rules about behavior followed by a group from the similarity of giving birth to the concept of fault, liability and criminal. This shows the birth of a concept based on a normative system.<sup>10</sup>

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<sup>9</sup>Ibid, pp. 12-13

<sup>10</sup>Amir Ilyas, 2014, Principles of Criminal Law, Rangkang Education, Yogyakarta, p. 73.

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Criminal liability is the liability for crimes committed by a person. Criminal liability for a person who commits a crime. Criminal liability is basically a mechanism created by the Criminal Code to address violations of a "contrary agreement" for a particular act.<sup>11</sup>

The concept of responsibility plays an important role in determining the outcome of a criminal case, as it relates to the decision whether a person should be acquitted or punished.<sup>12</sup>In particular, when assessing a person's criminal responsibility, when assessing a person's criminal responsibility, certain criteria must be met to establish their capacity to be responsible. These elements are as follows:

1. The existence of errors (intentional and negligent) The element of error itself is divided into two forms, namely:

a. Intentionally (dolus)

There are three types of deliberate divisions, namely:

1) The concept of intent, as applied in the context of a criminal act, relates to the will and awareness of the perpetrator, who has the desire and awareness of the act and its consequences.

2) Intentionally and consciously, this form of deliberation occurs when the perpetrator in carrying out his actions does not intend to realize the expected results, but rather views the action as a means necessary to achieve a different goal. This implies that the action is intentional, and the perpetrator is aware of the intended action, even though they do not want the consequences resulting from the action they do.<sup>13</sup>

3) With deliberate awareness of the high probability of occurrence (opzet met waarschijnlijkbewustzijn), the perpetrator, although not wanting the consequences of his actions, has prior knowledge of the potential for such consequences to occur. Nevertheless, the perpetrator continues his actions, bearing the associated risks.

b. Negligence

Leden Mapaung also explained that in general, negligence (culpa) is divided into 2, namely:<sup>14</sup>

1) Intentional negligence, as exemplified in this case, relates to a scenario where the perpetrator has mental awareness or suspicion of the potential for a consequence to occur, but fails to take sufficient action for its manifestation.

2) Unconscious negligence, also called "ombewuste schuld" in Dutch legal terminology, refers to a situation where the perpetrator has no awareness or foresight of the occurrence of a prohibited and legally criminal consequence. It is important for him to consider the occurrence of a certain result.

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<sup>11</sup>Chairul Huda, 2006, From No Crime Without Fault Towards No Criminal Responsibility Without Fault, 2nd ed., Kencana, Jakarta, p. 70

<sup>12</sup>Susetiyo, Zainul Ichwan, M.Iftitah, and Dievar, 2022, Legal Certainty of the Job Creation Law in the Health Sector Following the Constitutional Court Decision Number 91/PUU-XVIII/2020, Jurnal Supremasi, Vol 12 Number 2, 2022, pp. 27-36

<sup>13</sup>Agus Rusianto, 2016, Criminal Acts and Criminal Responsibility, Jakarta Prenadamedia Group, p. 157

<sup>14</sup>Leden Mapaung, 2002, The Process of Criminal Acts against Life and Body (Eradication and Prevention), Jakarta, Sinar Grafika, p. 86



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## 2. Having the Ability to Be Responsible

The mental state of the perpetrator must be in a state of responsibility so that it can be said to be normal and healthy. This is what can regulate his behavior according to standards that are considered good by society. If not, the perpetrator cannot be responsible for his actions.<sup>15</sup>

## 3. The Existence of Justification and Forgiveness

One of the determinants of criminal responsibility is whether or not there is a justifiable motive for committing a crime. The Criminal Code is covered in Chapter I Book III, which is part of the first comprehensive book that discusses the basic rules. Justifying reasons are stated in Article 164 of the Criminal Code to Article 166 of the Criminal Code, Article 186 of the Criminal Code, Article 314 of the Criminal Code. While forgiving reasons are stated in Article 44 of the Criminal Code, Article 48 of the Criminal Code to Article 51 of the Criminal Code.

In a crime, more than one person can be involved. Criminal law regulates this in the matter of participation in committing a crime. Article 55 of the Criminal Code mentions several ways to participate in committing a crime, namely:

1. The perpetrator (dader)
2. The orderly (doenpleger)
3. Participate in doing (madedader / medepleger)
4. Persuading (job seeker)

Then Article 56 mentions the assistant (medepllichtige). In Article 55 of the Criminal Code above, it is punished as the person who does it. So the person who orders, persuades, and the person who participates in doing it are considered as the perpetrator or maker of the crime, so the criminal threat is the same. While for the assistant who commits the crime, the criminal threat is reduced by one third.<sup>16</sup>

In the form of participation in doing, cooperation between those who do (pleger) and those who participate in doing (medepleger) is absolutely necessary. In other words, only with cooperation can the crime be realized or without cooperation the crime will not occur. The authors use the term "close cooperation" to describe this, although it is also acknowledged that not all of them have to realize the act together and be in the same place.

A person can be said to have made a mistake if when committing a criminal act, seen from the perspective of society, it can be blamed because of that, namely why do acts that harm society when they are able to know the meaning of the act and therefore can and should avoid such acts. Mistakes are the blameworthiness of the perpetrator of the crime because seen from the perspective of society, they could actually do something else if they did not want to do the act.<sup>17</sup>

Roeslan Saleh stated that "criminal responsibility is defined as the continuation of objective blame that exists in a criminal act and subjectively fulfills the requirements to be punished

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<sup>15</sup>Andi Matalatta, 2001, *Victimology: A Collection*, Jakarta, Sinar Harapan Center, p. 167

<sup>16</sup>Muladi Barda Nawawi Arief, 1992, *Criminal Theories and Policies*, Bandung, Alumni, p. 46.

<sup>17</sup>Roeslan Saleh, *Basics of Criminal Law*, Sinar Grafika, Jakarta, 2012, p. 157.

for that act."<sup>18</sup>The purpose of objective charges is that the act committed by a person is actually prohibited. The indicator is that the act violates the law both formally and substantively. What is meant by subjective accusations relates to the person who committed the prohibited act. Even though the prohibited act is committed by a person, he cannot be blamed for his mistake, but there is no criminal responsibility.

Specifically regarding objective and subjective complaints, Sudarto said that it is not enough to punish someone if he commits an unlawful act (objective denunciation). Therefore, the law fulfills the elements of law and is not justified, but does not fulfill the requirements for criminal prosecution. Criminalization still requires the imposition of criminal law requirements. This means that the person who committed the act made a mistake and is guilty (subjective accusation). The person must be responsible for his actions, or in the case of his actions, his actions can only be held accountable for himself.<sup>19</sup>

Close cooperation alone is not enough to convict the participants of the crime. The cooperation must arise from their awareness or knowledge (*willen en wetens*). In other words, cooperation in participation must be done intentionally (*opzettelijke*). Furthermore, after it can be proven that there is an intention in cooperation in participation, then it must also be followed by an intention towards the crime itself. In the Criminal Law literature, this is referred to as "double intention" or "double opzet". The first intention, earlier, was directed towards the cooperation, namely the awareness or knowledge of those involved in a cooperation between them. The second intention was directed towards the crime itself, namely the awareness or knowledge of them that all of them were involved in realizing a crime.

Referring to the facts revealed in the trial against the verdict that the author researched and reviewed, it can be concluded that the defendants Defendant I SN, Defendant II TJ, Defendant III DW, Defendant IV AS, Defendant V HRY, Defendant VI ALN, Defendant VII MLN, Defendant VIII PV were convincingly proven to have committed an intentional mistake. This is manifested by the existence of a criminal act as regulated and threatened in Article 303 paragraph 1 point 1 of the Criminal Code where all the elements regulated in the article are fulfilled in the context of the actions carried out, namely:

#### 1. Whoever

What is meant by "whoever" here is to determine who the perpetrator of the crime is as a legal subject who has committed the crime and has the ability to be responsible for his actions.

In this case, the Public Prosecutor has presented and charged the Defendants, namely defendant SP, defendant TJ, defendant DW, defendant AS, defendant PV, defendant HRY, defendant ATN and defendant MSL, where the Defendants whose identities were questioned during the examination at the trial were in accordance with the identities of the Defendants as stated in the Public Prosecutor's Indictment and during the examination of the Defendants, no matters were found that eliminated criminal responsibility, either as a

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<sup>18</sup>Roeslan Saleh in Hanafi Amrani and Mahrus Ali, 2015, Criminal Responsibility System: Development and Implementation, Rajawali Press, Jakarta, p. 21

<sup>19</sup>Sudarto in Hanafi Amrani and Mahrus Ali, 2015, Criminal Responsibility System: Development and Implementation, Rajawali Pers, Jakarta, p. 22

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reason for forgiveness or a reason for justification so that the Defendant was able to be held responsible for his criminal acts, thus the element of Whoever has been proven legally and convincingly.

2. Without rights intentionally offering or giving the opportunity to play gambling and making it a livelihood

That what is meant by the element of gambling is every game, which generally depends on the possibility of obtaining profit on the factor of chance, also if the opportunity becomes greater with higher training or with higher dexterity of the player. Included in the definition of gambling is also betting or the results of matches or other games, which are not held between those who participate in the game themselves, as well as every other bet.

Based on the statements of the witnesses, the Defendant's statement is known that the *tasiao* type of dice game is played by the players guessing 3 dice writings/pictures that will come out of the dealer with the dealer shaking 3 dice in the bowl then the players place bets by placing money on the stall according to the desired picture/writing after the bowl is opened to see the 3 dice to see what picture/writing is at the top to be declared the winner. If the bettor's guess is correct, he wins and gets money depending on the bet value and if he loses, the money is lost.

This intention is related to the intention or inner attitude of the perpetrator and it is quite difficult to know the inner attitude or intention of the perpetrator when or before committing an act. However, the intention or inner attitude can be concluded from the external circumstances or actions that are visible from the outside. Based on the legal facts in the form of the actions of the Defendants who facilitated third parties (the general public) to install or participate in gambling games, according to the panel, there was a will or the result of the will of the Defendants to be able to participate in the general public playing *tasiao* gambling and the actions were realized by the defendants as unlawful actions, so that there appeared to be intent.

That what is meant by "without rights" is that the act committed by the perpetrator is not based on law but is contrary to the applicable laws and regulations, where in this case the act of gambling is required to obtain prior permission from the authorized party for that, therefore in the absence of such permission, that is where the unlawful nature lies, however if a valid permit from the authorized party already exists, the unlawful nature of the provisions of this regulation will automatically disappear or not exist. Based on the considerations above, all elements in Article 303 Paragraph (1) Ke-1 of the Criminal Code as contained in the Public Prosecutor's indictment have been fulfilled.

That in the trial the following evidence was presented:

1. 1 (One) Unit Vivo Mobile Phone, Light Blue
2. Cash Rp.10,000,000
3. Cash Rp.100,000,-
4. 1 (One) Redmi cellphone in dark blue
5. Cash Rp.37,0000,
6. 1 (One) White Samsung Mobile Phone
7. Cash Rp.154,000,-



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8. 1 (One) Oppo Mobile Phone in White Gold Color

9. 1 (One) Blue Oppo Mobile Phone

Items used or the result of a crime but which have economic value must be confiscated for the state and evidence in the form of 1 (one) gambling stall, 1 (one) dice shaker, 3 (three) dice, 1 (one) whiteboard, tools used to commit the crime must be destroyed.

Based on Decision Number 234/Pid.B/2024/PN Jkt Pst which is based on the facts revealed in the trial that the criminal acts of gambling committed by the Defendants obtained benefits if the player or bettor lost the bet and the Defendants did not have permanent jobs and only earned money or income from lottery gambling activities alone. So that it can be known to what extent the perpetrators were involved in committing violations. If this is known, then the appropriate criminal responsibility can be determined to be imposed on the perpetrators.

To determine whether the perpetrators of the crime can be held accountable for their actions, it must first be proven that there is an element of error. Based on the concept of criminal responsibility, this element of error adheres to the doctrine of *mens rea*. In addition, this concept of criminal responsibility refers to the mental state of the perpetrators in carrying out their actions so that the actions can be blamed. Thus, the concept of criminal responsibility is "always related to errors, either in the form of errors or intent".<sup>20</sup>

Criminal liability must have the ability to be responsible. The ability to be responsible must be proven that the perpetrators are able to be responsible which is proven through the mental state of the perpetrators. Furthermore, in order to be held accountable for an act, the perpetrators must also fulfill other elements, namely the absence of excuses and justifications. The absence of an excuse element that can eliminate criminal liability is often associated with the existence of compelling circumstances in committing a crime.

Referring to the evidence revealed in the trial, it can be concluded that the Defendants have been proven guilty of the crime of gambling. This action clearly violates Article 303 paragraph 1 of the Criminal Code, with all the elements contained therein fulfilled. Given this situation, the Defendants cannot submit a reason for forgiveness to reduce the mistakes they have made. Thus, the Defendants deserve to be held criminally responsible in accordance with the provisions of Article 303 paragraph 1 of the Criminal Code which regulates gambling.

After carefully examining the testimony and summarizing the evidence in the trial, the Panel of Judges decided to sentence Defendant SP to 10 (ten) months in prison and Defendant TJ, Defendant DW, Defendant AS, Defendant PV, Defendant HRY, Defendant ATN and Defendant MSL to 8 (eight) months in prison each. This decision, as reflected in the chronology of the case, is interpreted as a manifestation of the sense of justice that is to be upheld. The Panel of Judges' considerations involve an assessment of the severity and potential threats arising from the criminal acts committed by the Defendant. The imposition of this sentence is not merely a form of sanction, but rather as an educational and coaching

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<sup>20</sup>Syawal Abdul Dan Anshar, 2010, *Criminal Responsibility of Military Command for Serious Human Rights Violations (A Study in Criminal Reform Theory)*, Laksbang Pressindo, Yogyakarta, p. 31.

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step for the perpetrator. Thus, the prison sentence is considered a balanced response to the actions that occurred.

That the actions of the Defendants constitute a Criminal Act, then the Defendants must be held criminally responsible based on the magnitude of the error they have committed so that punishment not only creates legal order but can also achieve justice in society. An important principle in criminal law is that the purpose of punishment is not merely an act of revenge from giving pain and suffering but more importantly that punishment aims to make the convict aware of his mistake so that he does not do the same thing again in the future, so that punishment aims as a form of learning and awareness.

Formulating criminal responsibility negatively is mainly related to the repressive function of criminal law, in this case, holding someone responsible under criminal law means being punished, thus the concept of criminal responsibility is a requirement needed to impose a penalty on someone who commits a crime while starting from the idea of Monodualism (daad en dader strafrecht), a fair process (due process) of determination.

Criminal liability is not only carried out by considering the interests of the community, but also the perpetrators themselves, the process depends on the fulfillment of the requirements and conditions that can be blamed for the perpetrator of the crime. Criminal liability for online gambling in the perspective of criminal law is where a perpetrator of online gambling can be sentenced to criminal punishment by first considering the perpetrator's fault (liability based on fault) in the actions of the suspect in online gambling. Eligibility for receiving this punishment must meet the elements of criminal liability itself which include: the ability to be responsible, the existence of errors or negligence and the absence of excuses or justifications for the criminal acts committed by the perpetrator of online gambling.

In relation to this, it is known that the elements of criminal responsibility consist of: Ability to be Responsible, Ability to be responsible is a state of mental normality and maturity that brings 3 (three) abilities, namely: Understanding the consequences/real consequences of one's own actions; Realizing that his actions are not permitted by society (contrary to public order); Being able to determine his will to act.

Being able to take responsibility can be interpreted as a psychological condition such that justifies the determination of a criminalization effort, both from a general perspective and from the individual, that a person is able to take responsibility if his soul is healthy, namely if: he is able to know or realize that his actions are against the law, and he can determine his will according to that awareness. The panel of judges considered that the defendant was an adult and was able to take responsibility because the defendant could make judgments with his thoughts and feelings. Then the defendant admitted that all the witness statements were true and regretted all his actions.

### **3.2. Judge's Considerations in Sentencing Gambling Criminals in Decision Number 234/PID.B/2024/PN JKT PST**

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The judge's decision is the crown and peak of a case being examined and tried, therefore the judge in giving a decision on a criminal case, the judge's decision must contain reasons and considerations that can provide a sense of justice for the defendant. Where in these considerations can be read a clear motivation from the purpose of the decision taken, namely to uphold the law (legal certainty) and provide justice.<sup>21</sup> Judges have complete freedom to determine the type of punishment and the severity of a crime. Judges have the freedom to move to the minimum and maximum limits of punishment as regulated in the law for each criminal act.<sup>22</sup>

The basis for the judge's considerations in making a decision can be divided into two categories, namely: Legal considerations, namely the judge's considerations based on legal facts revealed in the trial and stipulated by law as something that must be included in the decision, and non-legal considerations, namely the judge in making his decision looks more at the background of the defendant, the consequences of the defendant's actions and the defendant's personal condition and religion.<sup>23</sup>

The judge's decision that needs to be considered is the legal considerations, so that anyone can assess whether the decision handed down has sufficient objective reasons or not.<sup>24</sup> A court decision that is not based on sufficient legal considerations will be the same as a decision without soul and essence. This is as stated by M. Yahya Harahap who said that legal considerations are the soul and essence of a decision which must contain clear and detailed reasons. A decision that does not contain these provisions will result in a decision that does not have sufficient considerations. The legal reasons that can be used by judges to form the basis for consideration are certain articles in statutory regulations, customary law, jurisprudence and doctrine.<sup>25</sup>

The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, in addition to also containing benefits for the parties concerned so that the judge's consideration must be addressed carefully, well, and carefully. If the judge's consideration is not careful, good, and careful, then the judge's decision derived from the judge's consideration will be canceled by the High Court/Supreme Court.<sup>26</sup>

The basis for judges' considerations in issuing conditional criminal sentences must be based on theories and interrelated research results so that maximum and balanced research results are obtained in terms of theory and practice. One effort to achieve legal certainty with strict law enforcement is through judicial power, where judges are law enforcement officers who through their decisions can be a benchmark for achieving legal certainty.

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<sup>21</sup>Nanda Agung Dewantara, 1987, *The Problem of Judicial Freedom in Handling a Criminal Case*, Aksara Persada Indonesia, Jakarta, p. 50.

<sup>22</sup>Soedarto, 1986, *Selected Chapters on Criminal Law*, Alumni, Bandung, p. 78.

<sup>23</sup>Potang Mourad, 2005, *Formation of Law Through Court Decisions in Criminal Cases*, Alumni, Bandung, p. 73

<sup>24</sup>Muh. Ibnu Fajar Rahim, Attorney Dr. Ibnu, 2022, *Notes on 3 Years of Prosecution* (Edition of the Bekasi Regency District Attorney's Office, H Makasar: umanities Genius, p. 292

<sup>25</sup>Soraya Parahdina, et, all, 2022, *Optimization of Inheritance Case Mediation: In-depth Study of an Interlocutory Decision and the Decision of the High Religious Court*, Pekalongan, Nasya Expanding Management, p. 59

<sup>26</sup>Mukti Arto, 2004, *Civil Case Practice in Religious Courts*, 5th edition, Pustaka Pelajar, Yogyakarta, p. 140

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In the case of decision Number 234/Pid.B/2024/PN Jkt Pst, the defendants' actions began on Monday, November 13, 2023, defendant SONY PEGASUS alias SONY bin (the late) DWI PRIYADI (hereinafter referred to as defendant SONY PEGASUS) saw an empty land in the field of Jalan Kramat VII No.33 RT07/RW01, Kenari, Senen, Central Jakarta, then defendant SP together with defendant TJ played gambling on the empty land until the evening, because defendant SP could play until the evening, it gave rise to defendant SP's intention to organize gambling games for the public. That then defendant SP alias SP contacted and offered Defendant TJ, Defendant DW, Defendant AS, Defendant HRY, Defendant ATN, Defendant MSL and Defendant PV to become employees to organize gambling games in the field of Jalan Kramat VII No.33 RT07/RW01, Kenari, Senen, Central Jakarta.

In the trial of the case of Decision Number: 234/Pid.B/2024/PN Jkt Pst, the following legal facts were obtained:

1. That the Defendants were arrested by Police officers from Polda Metro Jaya on Wednesday, November 22, 2023 at 17.00 WIB, on Jalan Kramat VII No. 33, RT 07 RW 01, Kenari, Senen, Central Jakarta City for holding a dice game or tasiau and a card game or Peqiu with the stakes being money.
2. That apart from the defendants, several people were also arrested who took part in the tasiao dice game as bettors or players.
3. That the way the dice game is played is by the dealer shaking 3 dice in a bowl, then the players place bets by placing money on the table according to the desired image/writing after the bowl is opened to see the 3 dice to see what image/writing is at the top to be declared the winner.
4. That in organizing the dice game the defendants had the following roles:
  - a. SP as the capital owner and pays the other defendants
  - b. TJ as Supervisor and Organizer gambling
  - c. DW as the dice shaker of the tasiau gambling.
  - d. US as a gambling cashier tasiau.
  - e. PV as a doorman
  - f. HRY as the cashier of the tasiau gambling den.
  - g. ATN as a dice scribe on the board
  - h. MSL as a player seeker to play gambling.
5. That in this dice game, the bettors are not necessarily going to win and can lose, and if they lose, the bet money will be lost.
6. That the dice gambling game carried out by the defendants did not have permission from the authorities.

Then the Public Prosecutor submitted the Charges which in essence were as follows:

1. Declaring the defendant SP, defendant TJ, defendant DW, defendant AS, defendant PV, defendant HRY, defendant ATN and the defendant MSL was proven legally and convincingly guilty of committing the crime criminal acts as regulated and threatened in Article 303

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paragraph 1 point 1 of the Criminal Code as charged in the indictment of the Public Prosecutor;

2. Sentencing the defendants to 10 (ten) months imprisonment each. the prison sentence was reduced while the defendant was being held with an order that the defendant remain in detention

3. State evidence in the form of:

a. 1 (One) Mobile Phone Unit Vivo Light Blue Color

b. Cash Rp.10,000,000

c. Cash Rp.100,000,-

d. 1 (One) Redmi cellphone in dark blue

e. Cash Rp.37,0000,

f. 1 (One) Mobile Phone Samsung White Color

g. Cash Rp.154,000,-

h. 1 (One) Oppo Mobile Phone in White Gold Color

i. 1 (One) Mobile Phone Oppo Blue Color

(confiscated for the State)

a. 1 (one) Gambling Stall

b. 1 (one) Dice Shaker

c. 3 (three) dice

d. 1 (One) Whiteboard

(seized for destruction)

4. Ordering the defendant to pay court costs of Rp. 5,000 (five thousand rupiah).

The judge's considerations which are of a legal nature are the judge's considerations which are based on the legal facts revealed in the trial and which have been determined by law as something which must be included in the decision. The author will describe the legal analysis of the judge's decision with the following description:

#### 1. Public Prosecutor's Charge

The indictment is the legal basis for criminal procedure because it is based on that the examination in the trial is carried out. In addition to containing the identity of the defendant, the indictment also contains a description of the crime charged by stating the time and place where the crime was committed. In the case of decision Number 234 / Pid.B / 2024 / PN Jkt Pst, the Defendants were charged with a single charge, namely being proven legally and convincingly guilty of committing a crime as regulated and threatened in Article 303 paragraph 1 point 1 of the Criminal Code.

#### 2. Defendant's Statement

That in organizing gambling, the defendant SONY PEGASUS received a profit of Rp. 10,000,000.00 (ten million rupiah), with the profits that the other defendants received in organizing gambling in the form of wages/salaries, with the following nominal amounts:



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- a. **Defendant TJ**, as a supervisor and collector, they receive wages of Rp. 250,000.00 (two hundred and fifty thousand rupiah) to Rp. 300,000.00 (three hundred thousand rupiah) per day.
- b. **Defendant DW**As a Tasiau dice shaker whose job is to shake the dice in the Tasiau gambling game, he gets a salary of Rp. 150,000.00 (one hundred and fifty thousand rupiah) to Rp. 200,000.00 (two hundred thousand rupiah) every day.
- c. **US Defendant** as a cashier in Tasiau Gambling whose job is to collect the money from losing players and also give the winnings to players who get a salary of Rp. 150,000.00 (one hundred and fifty thousand rupiah) to Rp. 200,000.00 (two hundred thousand rupiah) every day
- d. **Defendant HRY** as a cashier in Tasiau Gambling whose job is to collect the money from losing players and also give the winnings to players who get a salary of Rp. 150,000.00 (one hundred and fifty thousand rupiah) to Rp. 200,000.00 (two hundred thousand rupiah) every day
- e. **Defendant ATN** as a dice scribe on the board and also a cashier in Tasiau Gambling whose job is to write the dice on the board that has been shaken by the Tasiau Dice Shaker, he gets a salary of Rp. 150,000.00 (one hundred and fifty thousand rupiah) to Rp. 200,000.00 (two hundred thousand rupiah) every day
- f. **Defendant MSL**As a player seeker whose job is to pick up players who will enter the gambling location, he will receive a wage of Rp. 150,000.00 (one hundred and fifty thousand rupiah) to Rp. 200,000.00 (two hundred thousand rupiah) every day.
- g. **Defendant PV** as a doorman whose job is to guard the entrance and maintain security while gambling is taking place, he gets a salary of Rp. 150,000.00 (one hundred and fifty thousand rupiah) to Rp. 200,000.00 (two hundred thousand rupiah) every day

### 3. Witness Statement

A witness is someone who gives testimony before a judge who saw and heard the event being contested. Witness testimony is one of the pieces of evidence in a criminal case in the form of testimony from a witness regarding a criminal event that he heard himself, saw himself and experienced himself by stating his reasons and knowledge.

In the case of decision number 234Pid.B/2024/PN Jkt Pst, the following witnesses were asked for information:

- a. Witness Rosalina
- b. Witness Fikri Lazuardi

### 4. Evidence

Evidence is something to confirm the truth of a proposition, position or accusation. Evidence is an effort to provide evidence through tools that are permitted to be used to prove arguments or in criminal cases charged at court, for example the defendant's statement, testimony, expert testimony, letters and instructions, while in criminal cases this includes allegations and oaths.<sup>27</sup>

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<sup>27</sup>Andi Hamzah, 2006, Indonesian Criminal Procedure Law, Sinar Grafika, Jakarta, p. 254.

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The type and appearance of evidence considered by the judge, namely according to the type of crime committed by the defendant regarding the crime of embezzlement, the public prosecutor submits the following evidence:

- a. 1 (One) Unit Vivo Mobile Phone, Light Blue
- b. Cash Rp.10,000,000
- c. Cash Rp.100,000,-
- d. 1 (One) Redmi cellphone in dark blue
- e. Cash Rp.37,0000,
- f. 1 (One) White Samsung Mobile Phone
- g. Cash Rp.154,000,-
- h. 1 (One) Oppo Mobile Phone in White Gold Color
- i. 1 (One) Blue Oppo Mobile Phone

(confiscated for the State)

- a. 1 (one) Gambling Stall
- b. 1 (one) Dice Shaker
- c. 3 (three) dice
- d. 1 (One) Whiteboard

Judges deciding a case must look at several existing considerations and must not deviate from the applicable legal rules, so that the judge's considerations can be accepted by other parties. So judges in deciding a case must be objective, meaning in considering the interests of the various parties involved. Between the interests of the injured party, the interests of the defendant and social interests in order to achieve justice for all parties. Therefore, judges must seek truth, justice, and legal certainty.

In accordance with Article 4 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which states that "the court adjudicates according to the law without discriminating between people". Each judge has his/her considerations which according to the judge are correct, resulting in a conviction of the judge. Perhaps that is one of the factors behind the judge in giving a verdict for his/her actions.

In providing considerations for handing down a verdict on a criminal case of embezzlement, the judge looks at 3 aspects, namely:

- a. Legal considerations, the judge in this case is related to the principle of legality as regulated in Article 1 paragraph (1) of the Criminal Code, namely that no act may be punished except by the force of criminal provisions in existing legislation before the act was committed. And it must also be considered whether the defendant's actions fulfill the elements of the crime charged.
- b. Philosophical considerations, the judge must consider whether the verdict to be handed down to the defendant has fulfilled the sense of justice of various parties, especially the sense of justice for the victim, the sense of justice for the defendant and also the sense of justice for the community.

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c. Sociological considerations, judges consider whether the punishment imposed can achieve the general objective of criminal procedural law, namely to create order in society or create public order.

#### 4. Conclusion

1. Criminal liability for perpetrators of gambling crimes in Decision Number: 234/Pid.B/2024/PN Jkt Pst has fulfilled the value of criminal liability in accordance with the provisions of the actus because the defendant, namely ARF alias Jawa, has committed a prohibited act in accordance with that contained in Article 303 paragraph 1 of the Criminal Code. That the panel of judges decided his actions stating that the defendants, namely Defendant SP, therefore with a prison sentence of 10 (ten) months and Defendant TJ, defendant DW, defendant AS, defendant PV, defendant HRY, defendant ATN and defendant MSL each with a prison sentence of 8 (eight) months. 2. Legal considerations of the judge in sentencing the criminal case Decision Decision Number: 234/Pid.B/2024/PN Jkt Pst. By the panel of judges, the Defendants, namely Defendant SP, therefore, with a prison sentence of 10 (ten) months and Defendant TJ, defendant DW, defendant AS, defendant PV, defendant HRY, defendant ATN and defendant MSL each sentenced to 8 (eight) months in prison because they were proven guilty of committing a criminal act of gambling in Article 303 paragraph 1 of the Criminal Code. The judge's considerations in applying criminal provisions to the perpetrators in this case have been appropriate where the judge has considered both legal and non-legal considerations, facts in the trial, witness statements, existing evidence, the judge's beliefs and supporting matters and the criminal sanctions imposed.

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