

Legal Analysis of the Investigation of Criminal Acts of Hong Kong Illegal Toto Gambling

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Abstract. Article 303 of the Criminal Code and Article 303 bis of the Criminal Code in conjunction with Law No. 7 of 1974 concerning the Control of Gambling, states that all forms of gambling are crimes. In addition, this statement is reinforced by the existence of Government Regulation No. 9 of 1981 concerning the Implementation of Law No. 7 of 1974 which is addressed to the Central Government and Regional Governments to prohibit or revoke gambling permits in any form and for any purpose. This study aims to determine and analyze the effectiveness of the investigation of illegal gambling in Hong Kong at the Grobogan Police, obstacles and solutions. The approach method used in this study is the sociological juridical approach method. Sociological juridical is by finding the legal reality experienced in the field or an approach that is based on problems regarding legal matters and existing realities. The analytical knife of this study uses the theory of legal certainty and the theory of legal effectiveness. The results of the study show that overall it is still less effective in terms of investigating illegal gambling in Hong Kong. Police obstacles in investigating illegal gambling crimes are: closed communities provide information when gambling crimes occur in their community as if they do not care about the activity, there is security from certain individuals. The perpetrators run away when the police want to raid a shop or house suspected of being the place where the gambling crime was committed, the perpetrators of this gambling are no longer there or have run away. The solutions taken by the police are: conducting counseling to the community, placing police personnel or security to prevent gambling crimes from occurring in the general public, coordinating with local officials, providing understanding to the community so that they are not interested in entering the world of gambling, for suspects (perpetrators/bookies) in their handling will be examined and interrogated at the nearest police station for further action.

Keywords: Effectiveness; Gambling; Investigation.

1. Introduction

The Republic of Indonesia is a country of law, as explained in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). Therefore, in the legal order of the state and nation based on legal provisions, the government forms and requires several law enforcement officers such as the police, prosecutors, courts and correctional institutions that play an important role in the law enforcement process. The regulations that are regulated can be classified into civil, administrative, criminal, community, people or legal entities that commit crimes or violations in the field are called criminal acts. Criminal acts in English are called criminal acts or criminal offenses, while in Dutch, they are called strafbaarfeit, meaning acts related to crimes.¹

In Indonesia, gambling is regulated in the Criminal Code (hereinafter referred to as the Criminal Code) Article 303 paragraph (3) defines gambling as every game that is based on the hope of winning, generally depending on luck alone and also if the hope becomes greater because of the intelligence and habit of the game. Also included in gambling is betting on the results of a race or other game that is not held by those who participate in the race or play, as well as all other games. If, looking at Article 303 paragraph (3) it can be perceived that the main element of gambling is luck which some experts also say depends on fate.²

Gambling is a game where players bet to choose one option among several options where only one option is correct and becomes the winner. The player who loses the bet will give his bet to the winner.³ Gambling is basically contrary to religious norms, morality, and Pancasila morals, and can be dangerous for the survival of society, nation and state. Gambling is a violation of social culture in Indonesia.

Law enforcement does not merely mean the implementation of legislation, although in reality in Indonesia the tendency is that way, so that the understanding of law enforcement is very popular. In addition, there is a strong tendency to understand law enforcement as the implementation of judges' decisions. It should be noted that these rather narrow opinions have

¹Rodliyah and Salim, 2017, *Special Criminal Law*, PT Raja Grafindo Persada, Depok, p. 11.

²Syaifullah Yophi. A and Widia Edorita, 2014, "Implementation of Law Enforcement of Criminal Acts of Togel Gambling Based on the Criminal Code in the Jurisdiction of the Kampar Police Resort", *JOM Journal of the Faculty of Law*, Vol. 1 No.2, p.2

³Budi Suhariyanto, 2019, *Cybercrime - Urgency of Regulation and Legal Loopholes*, Rajawali Pers, Jakarta, p. 1

weaknesses, if the implementation of legislation or judges' decisions actually disturbs peace in social life.⁴

The non-implementation of law enforcement against the crime of gambling Toto Gelap (Togel) as is inseparable from various problems faced in terms of several factors that influence law enforcement itself. If the implementation of this law enforcement is not in accordance with what is expected or the crime of gambling Toto Gelap (Togel) is allowed to occur, then it is not impossible that it will cause losses to the State or region and at the same time damage the morals of the Indonesian nation who depend more on their lives in games of chance that clearly violate religious teachings and applicable laws and regulations.⁵

The police are one of the government institutions that have an important role in a state of law. In a state of law, legal life is very much determined by the structural factor or legal institution, in addition to other factors, such as the legal substance factor and the legal culture factor. Thus, the operational effectiveness of the legal structure or institution is very much determined by its position in the state organization.⁶

Based on the background explanation above, the author formulates the problem as follows:

1. How is the investigation into the criminal act of illegal Hong Kong lottery gambling carried out at the Grobogan Police Resort?
2. How effective is the legal investigation into the criminal act of illegal Hong Kong lottery gambling at the Grobogan Police Resort?

2. Research methods

The approach method used in this study is the sociological legal approach method. Sociological legal is by finding the legal reality experienced in the field or an approach that is based on problems regarding legal matters and existing realities.⁷ Using qualitative descriptive is one of the types of research that is included in the type of Qualitative research. The purpose of this research is to reveal events or facts, circumstances, phenomena, variables and conditions that often occur during the research by presenting what actually happened.

⁴Soejono Soekanto, 2008, *Factors Influencing Law Enforcement*, PT. Raja Grafindo Persada, Jakarta, p.7

⁵Oktir Nebi, 2018, "Law Enforcement Against Criminal Acts of Illegal Toto Gambling (Togel) in Society", *Journal of Social Administration and Humanities*, Vol. 3 No. 1, p. 40

⁶Mahmud Mulyadi, 2009, *Police in the Criminal Justice System*, USU Press, Medan, p.31

⁷Hilman Hadi Kusuma, 2012, *Methods for Making Working Papers or Legal Thesis*, CV. Mandar Maju, Bandung, p. 34

3. Results and Discussion

3.1. Implementation of Investigation into the Criminal Act of Hong Kong Illegal Toto Gambling at the Grobogan Police Resort

The Indonesian National Police or often abbreviated as Polri in relation to the government is one of the functions of the state government in the field of maintaining public security and order, law enforcement, protection, shelter, and service to the community. Aimed at realizing domestic security which includes maintaining public security and order, order and upholding the law, implementing protection, shelter, and service to the community, and creating public peace by upholding human rights, this is contained in Article 4 of Law Number 2 of 2002 concerning the Indonesian National Police.⁸

Investigators are certain Indonesian National Police Officers who are given special authority by law to conduct investigations. Investigations are the actions of investigators to seek and collect evidence, to make statements about crimes that have occurred and to find suspects. As stated in Article 1 point (1) and Article 6 paragraph (1) of the Criminal Procedure Code, those who can be said to be investigators are Indonesian National Police Officers who are given special authority by law, so a person appointed as an investigator must meet the requirements that support this task, such as having knowledge, expertise in addition to rank requirements, however, the Criminal Procedure Code does not regulate this issue specifically but according to Article 6 paragraph (2) of the Criminal Procedure Code.⁹

The case of gambling committed by the perpetrator at around 20.00 WIB to 22.10 WIB, the suspect as a miner (waiting for the miners who came to the house where the suspect lived with his family, precisely in the guest room, the suspect also used it as a place to write Hong Kong lottery tickets) took the money from the sale or turnover of the Hong Kong lottery along with a summary of the coupons on that day. Where after being taken by Mr. H, with the knowledge of the suspect, it will be handed over by Mr. MAS E who then gave a wage of 15% of the sales or sales turnover to the suspect, for the tools that the suspect prepared, the tools/facilities were:

- a. 4 (four) ballpoint pens;
- b. 3 (three) bundles of filled coupons bearing the words PT. 33;
- c. 5 (five) bundles of blank coupons with PT. 33 written on them;
- d. 4 (four) sheets of fortune telling paper;
- e. 1 (one) calculator;
- f. 1 (one) staple;

⁸Budi Rizki Husin, 2009, Study of Law Enforcement Institutions, University of Lampung, Bandar Lampung, p. 15

⁹Article 1 Point 1, Article 1 Paragraph 6, Article 6 Paragraph 2, Criminal Procedure Code

g. 1 (one) black Redmi Note 4 cellphone.

If there is a buyer/installer of Hong Kong lottery gambling who wants to place/buy, then the suspect writes it on a coupon paper that says PT. 33 as many as 2 (two) sheets that the suspect provides where 1 (one) sheet is brought by the bettor and 1 (one) sheet the suspect brings along with the bet money which will then be taken by Mr. H, age + 30 years, Male, occupation unknown, Address. Dsn. - Ds. Penawangan Kec. Penawangan Kab. Grobogan (as the person who takes the proceeds of the Hong Kong gambling sales that I do and the person who gives money to the suspect if there is a bettor who gets money from the bet but has not been caught yet)., that in a day the Hong Kong lottery gambling is played only once a day to serve buyers/installers.

1. Witness J, explained that the person who had carried out the gambling was named Mr. W, Place of birth in Grobogan, September 5, 1971 (52 years old), Religion Islam, Self-employed, Indonesian Citizenship, Male, Last education: Elementary School (Failed), Address: Dsn. Pedak Rt. 01 Rw. 03 Ds. Leyangan Kec. Penawangan Kab. Grobogan because he had carried out a business selling gambling coupons of the Hong Kong Togel type.
2. Witness MAW explained that Mr. W sold Hong Kong lottery gambling in his own house.

Suspect W explained that he had been selling Hong Kong lottery numbers/figures since the day and date he forgot the month, but in 2022 until now when he was arrested by Grobogan Police officers, it had been running for approximately 1 (one) year, starting to serve Hong Kong lottery buyers at around 20.00 WIB to 22.10 WIB, the suspect as a miner (waiting for the miners who came to the house the suspect occupied with his family, precisely in the guest room, the suspect also used it as a place to write Hong Kong lottery numbers) at 22.10 WIB it was deposited to Mr. MAS E, from the results of the Hong Kong lottery gambling, the suspect received a wage of 15% of the sales turnover.

The investigation process carried out by the Grobogan Police in handling gambling cases includes the following stages:¹⁰

1. Gamblers caught red-handed

Caught in the act is when someone is caught while committing a crime, or immediately after the crime has been committed or shortly afterwards is called out by the public as the person who committed it, or if shortly afterwards an object is found on him which is strongly suspected of having been used to commit a crime which indicates that he is the perpetrator or participated in or helped commit the crime.¹¹

¹⁰Results of an interview with AIPDA Asiyanto, Criminal Investigation Unit, Grobogan Police, on February 2, 2024

¹¹Article 1 Number 18, Regulation of the Chief of the Republic of Indonesia National Police Number 14 of 2012 concerning Management of Criminal Investigations

2. The officer made a Model A Police Report (Because the perpetrator was caught red-handed).
3. Police Report Model A is a Police Report made by a member of the Indonesian National Police who experienced, knew about or directly discovered the incident that occurred.¹²
4. Make a crime scene sketch (crime scene)

The scene of the crime, hereinafter abbreviated as TKP, is the place where a crime was committed or occurred and other places where suspects and/or victims and/or evidence related to the crime can be found.¹³
5. Conducting an examination (minutes of examination) of the reporting witness
6. Conducting an examination (minutes of examination) of witnesses

A witness is a person who can provide information for the purposes of investigation, prosecution and trial regarding a criminal case that he/she has heard, seen and/or experienced himself/herself.
7. Conduct an examination (minutes of examination) of the suspect.
8. Appointing a legal advisor if the suspect is not accompanied by a legal advisor.
9. Completing the investigation administration:
 - a. Assignment letter.
 - b. Investigation warrant.
 - c. Letter of Notification of Commencement of Investigation (SPDP).
1. Make an arrest warrant and send it to the suspect's family after making an arrest report.
2. Make a Detention Order and send it to the Suspect's family, then make a Detention Report.
3. Confiscating evidence of gambling complete with
 - a. Seizure warrant.
 - b. Minutes of Confiscation.
 - c. Letter of Receipt.
 - d. Minutes of wrapping or sealing evidence.
 - e. Application Letter for Permission to Approve Confiscation of Evidence.

¹²Article 5 Paragraph (2), Regulation of the Chief of the Republic of Indonesia National Police Number 14 of 2012 concerning Management of Criminal Investigations

¹³Article 1 Number 19, Regulation of the Chief of the Republic of Indonesia National Police Number 14 of 2012 concerning Management of Criminal Investigations

4. Sending a Letter of Notification of Commencement of Investigation (SPDP) to the prosecutor's office.
5. Sending case files to the Grobogan District Attorney's Office (Stage 1)
6. After P21 (Case files are declared complete by the Prosecutor's Office).
7. Submitting Suspects and Evidence (stage 2)

The application of sanctions for gambling perpetrators in accordance with the Criminal Code, the Police only apply Article 303 of the Criminal Code in the examination report, however, the imposition of sanctions is the authority of the prosecutor and the judge who processes the Defendant's trial.¹⁴

4.2. Effectiveness of the Law on Investigation of Criminal Acts of Illegal Toto Gambling in Hong Kong at the Grobogan Police Resort

1. Police Obstacles in the Implementation of Investigations into Criminal Acts of Hong Kong Illegal Toto Gambling at the Grobogan Police Resort
 - a. Closed communities provide information when gambling crimes occur in the community. They seem not to care about the activity. This has an impact on the lack of reports received by the Police regarding gambling crimes. From the statements of several residents, they did not report gambling because of sociological pressure, they were afraid of being hated by the gamblers or the families of the perpetrators and also because of the close relationship between fellow villagers so that reporting is unlikely to be carried out by local residents.¹⁵
 - b. There is security from certain individuals. Gambling as one of the diseases of society must be handled seriously. The police as the main force in fostering public order and security have done various ways to overcome and eradicate this gambling.¹⁶The success in eradicating gambling will be in vain if there is backing from certain individuals by using and abusing their authority. The existence of backing against gambling perpetrators is not a new thing in society. Polres Grobogan always finds backing individuals in every operation.¹⁷If this happens, it is not uncommon for individuals to try to make peace with the police by offering cash and some try to fight back because they feel that they have not been reached by the law. The actions of these backers are intolerable and must be dealt with immediately for the sake of upholding the law and creating a sense of security and peace in society. The

¹⁴Results of an interview with AIPDA Asiyanto, Criminal Investigation Unit, Grobogan Police, on February 2, 2024

¹⁵Results of an interview with AIPDA Asiyanto, Criminal Investigation Unit, Grobogan Police, on February 2, 2024

¹⁶Results of an interview with AIPDA Asiyanto, Criminal Investigation Unit, Grobogan Police, on February 2, 2024

¹⁷Results of an interview with AIPDA Asiyanto, Criminal Investigation Unit, Grobogan Police, on February 2, 2024

backers of this crime can be categorized as the perpetrators of the crime themselves, not just as accomplices to the crime.¹⁸

- c. In gambling cases, a person who backs can be equated with bookies who in the Criminal Code are threatened with a maximum prison sentence of 10 (ten) years. This reference comes from the statement of an Indonesian legal expert. Moeljatno, who stated that even though the act committed by a person is not an act of settlement, if the cooperation with the perpetrator of the act is very close, then the person's actions can be categorized as a perpetrator of a crime, not as an assistant to a crime.¹⁹
- d. The perpetrators fled. What is meant by the perpetrators fled is that when the police wanted to raid a shop or house suspected of being the place where the gambling crime was committed, the gamblers were no longer there or had fled. This was because someone leaked or told the perpetrators that the police would be conducting a raid, so the perpetrators quickly fled. However, the police's actions did not stop there. The police would continue to pursue until the perpetrators were caught.²⁰

2. Solutions to Obstacles in the Implementation of Investigations into Criminal Acts of Hong Kong Illegal Toto Gambling at the Grobogan Police Resort

a. Conducting outreach to the community.

First of all, it must be noted that the person targeted by the communication understands (to secure understanding). If it can be ascertained that he understands, it can be interpreted as he accepts. In this context, understanding is interpreted as "being able to receptively capture what is received" while what is meant by understanding is "being able to capture reflectively" meaning that someone can receive a message, understand the message he receives and know its relationship to other things. Therefore, in order for the message to be understood and comprehended by the communicant, certain skills and/or expertise are required in "processing" the communication. In other words, a communicator must master communication techniques in counseling activities.

b. Deploy police or security personnel to prevent criminal acts of gambling in the general public.

The Indonesian National Police in carrying out its duties must also act as a protector who provides protection and services to the community to achieve the target so that the Law remains in effect and the law is upheld. In providing this protection, it is carried out within the limits in accordance with

¹⁸Results of an interview with AIPDA Asiyanto, Criminal Investigation Unit, Grobogan Police, on February 2, 2024

¹⁹Anton Tabah, 1991, Looking with the Eyes of the Heart at the Indonesian Police, PT Gramedia Pustaka Utama, Jakarta, p. 250.

²⁰Results of an interview with AIPDA Asiyanto, Criminal Investigation Unit, Grobogan Police, on February 2, 2024

the Law and is applied without favoritism. The police will be faced with a dilemma in carrying out their duties, namely the police are required to always respect the sense of ethical justice, in addition, the police in the realization of their duties are limited by doctrine and regulations.

c. Coordinated by local officials.

Coordination patterns are vital for all leaders at various levels to achieve team goals. If the coordination pattern is good, then the team's goals will have a greater chance of being achieved compared to poor coordination patterns. Sometimes it must be confusing why the coordination that has been planned is not implemented properly or at times it can run smoothly but the execution time often goes poorly..

d. Providing understanding to the public so that they are not interested in entering the world of gambling.

Providing an understanding to the public that gambling is very illegal and can be prosecuted under the Criminal Code with penalties and can be thrown in prison, even though by gambling the public cannot find the things promised, namely instant profits.²¹

e. To overcome the problem of backing, both the Chief of Police and the TNI Commander should be able to provide a firm ultimatum for individuals who abuse their authority to back crimes, including gambling. So that the Police as law enforcement officers and the main force for fostering public order and security no longer encounter obstacles in preventing and overcoming gambling practices in society.²²

f. For suspects (perpetrators/dealers) in their handling, they will be examined and interrogated at the nearest police station for further action.

g. The suspects/dealers receive different sentences because of their gambling capacity. Also, the dealers usually receive heavier sentences than the perpetrators (players). As a consequence, the perpetrators will be interrogated at the nearest police station.²³

4. Conclusion

Referring to the existing legal regulations that have been implemented as well as possible by the Police, it can be said that the implementation of the investigation of illegal gambling crimes has been effective. However, there are other factors to determine the effectiveness of law enforcement, namely awareness and obedience to the law. Legal awareness and obedience to the law regarding illegal

²¹Results of an interview with AIPDA Asiyanto, Criminal Investigation Unit, Grobogan Police, on February 2, 2024

²²Results of an interview with AIPDA Asiyanto, Criminal Investigation Unit, Grobogan Police, on February 2, 2024

²³Results of an interview with AIPDA Asiyanto, Criminal Investigation Unit, Grobogan Police, on February 2, 2024

gambling have not yet been implemented by the community, meaning that there are still many people who violate the rules regarding gambling. Therefore, overall it is still less effective in terms of investigating illegal gambling crimes in Hong Kong. Police obstacles in investigating illegal gambling crimes are: closed communities provide information when gambling crimes occur in their community as if they do not care about the activity, there is security from certain individuals. Gambling as a social disease must be handled seriously, the perpetrators run away when the police want to raid a shop or house suspected of being the place where the gambling crime was committed, the perpetrators of this gambling are no longer there or have run away. The solutions taken by the police are: conducting counseling to the community, placing police personnel or security to prevent gambling crimes from occurring in the general public, coordinating with local officials, providing understanding to the community so that they are not interested in entering the world of gambling, for suspects (perpetrators/bookies) in their handling will be examined and interrogated at the nearest police station for further action.

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Regulation:

Criminal Code

Criminal Procedure Code

Law Number 2 of 2002 concerning the National Police of the Republic of
Indonesia

Law Number 7 of 1974 concerning Controlling Gambling

The 1945 Constitution of the Republic of Indonesia.