



## LEGAL EFFORTS IN PREVENTING CRIMINAL ACT OF GAMBLING BY MINORS

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### **Abstract:**

The study aims to find out the act of crime attempted by the juvenile which is a gambling offense. This is considered as one of the problems that often occurs today where such criminal acts often become known to happen with minors as perpetrators, both in boys' and girls' groups, which result in material losses that change behavior in the juvenile to grow into deviant and so on. Adolescence is a period of change in behavior to be more anti-social which has the potential to also cause emotional loss. If not accompanied by the proper guidance and supervision from all parties, these delinquency symptoms on minors will become actions that lead to more criminal acts in nature. This is what brings up these children to commit crimes such as gambling.

**Keywords:** gambling crimes, crimes by minors, prevention

### **1. Introduction**

Every act or behavior of a minor under the age of 18 years and is not married is a violation of applicable legal norms and can endanger the personal development of the juvenile concerned. Delinquency of the minor will be seen when examining how prominent the characteristics or general physiognomies that are in the behavior of these pubescent children. There are two factors for a juvenile's mischief, namely:

- 1) intrinsic motives:
  - a. factor of intelligence (intelligence);
  - b. age factor;
  - c. sex factor;
  - d. position factor of children in the family.
- 2) extrinsic motives, namely:

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- a. household factors;
- b. educational and school factors;
- c. child social factors;
- d. mass media factor.

Children are state assets that can advance the nation in the future. This nation will be damaged if the child who becomes the successor of this nation from an early age has become a criminal offender. Currently, it is often found that minors commit more gambling crimes. Gambling is done diverse, from card gambling, lottery gambling, to online gambling, although it is regulated in the Law that the prohibition of gambling is regulated in Article 303 of Book II of the Criminal Code (KUHP) Article 2 of Law no. 7 of 1974 concerning Control of Gambling.

Basically, there are many efforts taken by the government and law enforcers to prevent and crack down on gambling crime. If not accompanied by the proper guidance and supervision from all parties, this minor's delinquency symptoms will become actions that lead to criminal acts in nature. This is what refers minors to commit crimes, one of which is gambling. Based on the above background, the researcher is interested in further researching. The problems faced in this study can be formulated in the form of the main questions as follows:

- 1) What is the rule of law against gambling crimes committed by minors?
- 2) What is the legal effort that must be done to prevent gambling crimes by minors?

## **2. Research Methods**

In this paper, the method used by the author in this discussion is called Normative Juridical. This is an approach based on the main legal material by examining theories, concepts, principles of law and legislation relating to this research. This research is used by reading books and legal experts and regulations / laws to discuss writing problems in accordance with the theory and legal basis. The author limits the discussion of minor crime which is only in the domain of gambling which is based on the study of literature, and the development of previous studies. In order to facilitate the discussion, the writer conducted a systematic writing in accordance with the outline.

## **3. Discussion**

### **A. Legal Rules Regarding Gambling Crimes**

Before discussing gambling, it is necessary to know about criminal acts, because if gambling is declared as an evil act, it is necessary to know about the crime. In order to be able to say the existence of a criminal act according to Moeljatno (2000), the following elements must be fulfilled:

- a) act;
- b) prohibited (by law);
- c) criminal threat (for those who violate the prohibition).

According to R. Tresna (1990), to formulate the elements of a criminal offense, the following substances must be met, such as:

- a) Acts / series of human actions;
- b) Contrary to the rules of the statute;
- c) Punishment is carried out.

From the third element, the sentence is carried out an act of punishment; there is a sense that as if every prohibited act is always followed by a sentence (punishment), this is different from what was conveyed by Moeljatno who stated that each criminal act does not always have to be punished by the criminal.

The types of criminal offenses are distinguished on certain basis, as follows:

- a) According to the Criminal Code (KUHP), it is distinguished among others, crimes contained in Book II and Violations contained in Book III. The division of criminal acts into "crimes" and "violations" is not only the basis for the distribution of our Criminal Code into Book II and Book III but also is the basis for the entire criminal law system in the legislation.
- b) According to the way they are formulated, they are distinguished in formal criminal acts (*formeel Delicten*) and material criminal acts (*Materi Delicten*). Formal crime is a criminal act which is formulated that the prohibited formulation is to do certain actions. For example, Article 362 of the Criminal Code is about theft. The main material prohibition of criminal acts is to have a prohibited effect, therefore those who cause the prohibited effect are the ones responsible and convicted.
- c) According to the form of error, criminal acts can be divided into deliberate criminal acts (*dolus delicten*) and unintentional criminal acts (*culpose delicten*). Examples of intentional criminal acts (*dolus*) regulated in the Penal Code include the following: Article 338 of the Penal Code (homicide), namely intentionally causing the loss of another person's life, Article 354 of the Penal Code that intentionally injures another person. In the case of negligence (*culpa*), people can also be convicted if there is an error, for example Article 359 of the Criminal Code which causes someone to die, other examples as regulated in Article 188 and Article 360 of the Criminal Code.
- d) According to the type of action, it is an active (positive) crime,; an active act also called a material act is an act occurred as indicated by the physical movements of those who commit, for example, theft (Article 362 of the Criminal Code) and fraud (Article 378 of the Criminal Code). Passive criminal acts are divided into pure and impure criminal acts. Pure criminal acts, namely criminal acts that are formulated formally or criminal acts which are basically elements of his actions in the form of passive acts, for example regulated in Articles 224, 304 and 552 of the Criminal Code. Impure criminal acts are criminal acts that are basically in the form of positive criminal acts, but can be carried out inactive or criminal acts that contain prohibited elements without having performed it regulated in Article 338 of the Criminal Code, for instance, the mother does not breastfeed her baby so the child dies.

Based on the description above, it can be seen that the types of criminal offenses consist of criminal violations and criminal offenses, formal criminal and material criminal offenses, deliberate and unintentional acts and active and passive crimes. The elements of a criminal offense are as follows:

- a) Behavior and consequences (deeds);
- b) Concerns or circumstances that accompany actions;
- c) Additional circumstances that incriminate the criminal;
- d) Objective unlawful element;
- e) Elements against the law are subjective.

Gambling is an act that is contrary to religious, moral and legal norms and has a negative impact on the economy. Regardless, there are still many types and forms of gambling today that we find in community life, both practiced in openly or clandestinely manner. Gambling game service providers usually provide convenience for the perpetrators to conduct gambling transactions.

In the Criminal Code Chapter XIV concerning crimes against decency, Article 303 paragraph (3) of the Criminal Code explains the definition of gambling meant by paragraph (1). The meaning of gambling is in each game where in general the possibility of making a profit depends on mere luck, also because the players are better trained or more proficient.

The regulation concerning the second gambling crime in force in Indonesia is regulated in Law No. 7 of 1974 concerning Gambling Control. This law states that all gambling activities are crimes. The third regulation concerning the gambling crime in Indonesia is regulated in Government Regulation Number 9 of 1981 concerning the Implementation of Law Number 7 of 1974 concerning the Controlling of Gambling. This government regulation is intended to limit gambling to the smallest possible environment to eventually lead to the elimination of all forms and types of gambling in all regions of Indonesia.

The regulation concerning the fourth gambling crime in Indonesia is regulated in Act Number 11 of 2008 concerning Information and Electronic Transactions. The development of the world of information technology with the internet raises many new forms of crime that change conventional crime into more modern, including internet gambling. The practice of internet gambling in cyberspace (cyber-crime) has some fundamental differences apart from the conventional gambling activities regulated in the Criminal Code. It is mainly on the type of evidence. If examined, the Site / Website of the gambling operator through the internet, e-mail and Short Messages Service of the judge is part of electronic information that can be considered as legal evidence, and is an inseparable part of the provisions regarding evidence and proof as stipulated in the Criminal Procedure Code. Regarding gambling crime, there are many factors causing this, one of which is the desire to get rich instantly without having to work in a common mannerism which requires ethics and endurance. Those doers are identified to be in the sense of wishing to be wealthy in a brief of time.

## **B. Legal Regulations against the Age of Children**

Children are the future generation of Indonesia. Every child must be protected and monitored particularly on their growth and development. Children's better growth is the vision of every parent. Children as potential successors of the ideals of the nation have a strategic role and have special characteristics. They require coaching and protection in order to ensure their growth in physical, mental and social development as a whole in order to develop harmoniously and in balance.

There are several legal arrangements regarding the age of a person declared as a minor, namely:

- a) The Criminal Code itself contains several articles regulating if a child commits a crime, namely Article 45, 46, and 47. All three articles state that if a person who is not yet 16 years old commits a criminal offense then there is three alternative punishments that can be handed down, namely returning the child to his parents, putting him in the detention center of offended children and punishing them by reducing one third of the basic crimes threatened.
- b) Law No. 1 of 1974 concerning Marriage Article 47 paragraph 1 states that minors who have not reached the age of 18 years or have never been married are under the authority of their parents as long as they are not revoked by their parents. Article 50 paragraph 1 reads minors who have not reached the age of 18 years or have never been married, who are not under the authority of parents under the authority of the guardian.
- c) Civil Law guarantees the basic rights of the child even since he was still in the womb. The understanding of children in civil law is intended to mean immaturity. Because according to civil law an immature child can take care of his civil interests. To fulfill this interest, a regulation on *hendlichting* is held, a statement about someone who has not yet fully reached adulthood. The *hendlichting* institution was deemed not to have followed and was not in accordance with the developments that existed in today's society, so it was eventually revoked especially after the stipulation of age limit in Law No.1 of 1974 concerning Marriage Article 330 of the Civil Code, children are people who have not reached the age of 21 (twenty one) years and are not married. According to this article all people who are not yet 21 years old and have never been married are considered immature and incompetent in law.
- d) In Law No. 3 of 1997 concerning Juvenile Courts, there are definitions of mMinors, Mischievous Children, and Correctional Students. Children are people who in the case of mischievous children have reached the age of 8 (eight) years but have not reached the age of 18 (eighteen) years and have never been married (Article 1 number 1).
- e) Law Number 11 of 2012 concerning the Criminal Justice System for Minors states the definition of a minor as a child in conflict with the law. As for juvenile who are dealing with the law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts.

- f) Law Number 23 of 2002 concerning Child Protection article 1 paragraph (1) of this law, says that a minor is someone who is not yet 18 (eighteen) years old, including children who are still in the womb which means that all interests in the effort to protect children have been carried out when the child is in the womb until the child is 18 years old.

### **C. Legal arrangements for the crime of gambling by children**

According to Kartini Kartono gambling is as a "*deliberate bet, which is risking one value or something that is considered valuable by realizing the existence of certain risks and expectations on events, game play, competitions which results are uncertain*".

Based on Article 303 of the Criminal Code on several gambling subjects;

- a) people who deliberately offer or provide opportunities to play gambling;
- b) people who deliberately participate in gambling companies;
- c) people who make gambling as a livelihood;
- d) people who deliberately offer or give opportunities to the general public to play gambling;
- e) people who gamble so that others participate in the gambling game as a livelihood;
- f) people who deliberately use gambling opportunities, which are used as livelihoods violate article 303 of the Criminal Code;
- g) people who take part in gambling on public streets or places visited by the public.

Gambling criminal offenses where the offender is a minor cannot be separated from the existence of legal rules that have been established in Law No. 3 of 1997 concerning Juvenile Court and Law Number 23 of 2002 concerning Child Protection. Indonesian law regulates children as perpetrators of crime must get legal treatment for their 'imperfect' situation as legal subjects, namely Law No. 3 of 1997 concerning Juvenile Court. The arrest of children who are playing gambling has led the public needs to have used the perspective of the Criminal Law according to Article 303 of the Criminal Code (KUHP).

Likewise, in carrying out legal proceedings against minors, besides referring to Law No. 8 of 1981 concerning Criminal Procedure Law, the legal process for minor suspects must be based on Law No. 3 of 1997. For the detention of a minor suspect is justified by Law No. 3 of 1997 concerning Juvenile Court, as long as sufficient preliminary evidence is found. In Article 44:

- a) for the purpose of Investigation, the Investigator as referred to in Article 41 (1) and (3) letter has the authority to detain a minor who is allegedly committing a crime based on sufficient preliminary evidence;
- b) the detention referred to in paragraph (1) is only valid for a maximum of 20 (twenty) days;
- c) the period of time as referred to in Paragraph (2) if necessary, for the sake of unfinished examination, at the request of the Investigator may be extended by the competent Public Prosecutor, for a maximum of 10 (ten) days.

Criminal law enforcement system against gambling crimes committed by minors, as referred to in Article 303 bis Paragraph (1) 2e of the Criminal Code, on the basis of these elements, minors may be sentenced to imprisonment for 2 (two) months prison, namely with the aim that minors become deterrent towards committing gambling crimes. The act can be denounced or accounted for the crime committed (the principle of culpability or error) so that he deserves the criminal, namely the ability to be responsible to the maker.

#### **D. Legal arrangements for the crime of gambling by children**

Efforts that can be taken to tackle gambling crimes by minors are moral lessons provided by parents, improving the quality of individual law enforcement officers (police) and fostering awareness and concern as well as the active role of the community in providing information to the authorities. Efforts to tackle child gambling crime consist of several ways as in the following:

- a) Pre-Emictive Efforts. Early prevention efforts are carried out to find the root of the problem through educational activities with the target of influencing the community to not intend to commit gambling crimes if children. Pre-emulation efforts carried out are the role of all members of the community according to the children of gambling offenders. Children know that gambling is a bad thing, but they don't know that gambling is a crime and can be sentenced to prison.
- b) Preventive Efforts. Preventive effort is an attempt made to eliminate the opportunity to commit a crime. This effort is a follow-up to the non-optimal pre-emptive efforts that cause the intention to commit a crime. Preventive efforts carried out such as conducting legal counseling to the community and conducting sudden check, not only carried out in schools.
- c) Repressive Efforts. This effort is an effort made when both pre-emptive and preventive efforts cannot prevent a crime from occurring so that a repressive effort must be made, namely strict action against the perpetrators of crime. The only repressive action carried out is to conduct sudden check on places prone to gambling, especially among children, for example where children often skip school.

#### **4. Conclusion**

- 1) In Article 303 bis Paragraph (1) 2e of the Criminal Code, on the basis of these elements, the child may be sentenced to imprisonment for 2 (two) months in prison, with the aim that the child becomes a deterrent against committing gambling crimes. In carrying out legal proceedings against minors, besides referring to Law No. 8 of 1981 concerning Criminal Procedure Law, the legal process for child suspects must be based on Law No. 3 of 1997. The legal arrangements for the crime of gambling by minors are based on the provisions of Law No. 3 of 1997 concerning Juvenile Justice in Chapter I regarding General Provisions, Article 1 Paragraph 2.

- 2) Efforts that can be taken to tackle gambling crimes by minors are moral lessons provided by parents, improving the quality of individual law enforcement officers (police) and fostering awareness and concern as well as the active role of the community in providing information to the authorities. Efforts to tackle child gambling crime consist of several ways. such as: Pre-Emictive Efforts, Preventive Efforts, and Repressive Efforts.

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