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A Criminal Policy Analysis of the Control of Online Gambling Crime in Aceh

Muhammad Ikbal[1], Munawarsyah[2]
Institut Agama Islam Ummul Ayman Pidie Jaya Aceh[1,2]
muhd.ikbalali@gmail.com

Abstrak: *Perjudian daring di Aceh berkembang pesat seiring dengan meluasnya akses internet, sementara Qanun Aceh Nomor 6 Tahun 2014 tentang Hukum Jinayat disusun sebelum modus kejahatan ini marak terjadi, sehingga kapasitasnya dalam menjangkau perjudian yang dilakukan melalui dunia maya masih dipertanyakan. Penelitian ini membahas bagaimana politik kriminal dapat digunakan untuk menanggulangi tindak pidana perjudian daring di Aceh, dengan rumusan masalah: upaya apa yang telah dilakukan Pemerintah Aceh untuk menanggulangi kejahatan perjudian daring di masyarakat, dan sejauh mana efektivitas Qanun Aceh dalam menanggulangi kejahatan perjudian yang dilakukan melalui internet? Penelitian ini merupakan penelitian kualitatif dengan metode yuridis-normatif yang menggunakan pendekatan kajian terhadap Al-Qur'an, hadis, peraturan perundang-undangan khususnya Qanun Aceh Nomor 6 Tahun 2014 serta pendekatan konseptual; peneliti bertindak sebagai instrumen utama yang menganalisis bahan hukum primer dan sekunder yang diperoleh melalui studi kepustakaan. Hasil penelitian menunjukkan bahwa penanggulangan kejahatan perjudian daring di Aceh belum maksimal karena elemen-elemen yang diperlukan untuk penegakan hukum seperti regulasi serta sarana dan prasarana pencegahan dan penanggulangan yang memadai belum tersedia sebagaimana diharapkan dalam konsep politik kriminal dan tujuan hukum; sejauh ini, penanggulangan hampir sepenuhnya bergantung pada pendekatan "penal" melalui Qanun, sementara pendekatan "non-penal", seperti pemblokiran situs web perjudian, belum dioptimalkan. Lembaga eksekutif, legislatif, dan yudikatif di Aceh perlu menyatukan persepsi, visi, dan misi agar situs web dan laman terkait perjudian dapat diblokir; jika tidak, Qanun Jinayat yang telah disahkan tidak akan efektif dalam mencegah dan menindak kejahatan perjudian daring di tengah masyarakat Aceh.*

Keywords: *Politik Kriminal, Judi Online, Aceh*

Title A Criminal Policy Analysis of the Control of Online Gambling Crime in Aceh

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Abstract: *Online gambling in Aceh has developed rapidly along with internet access, while Qanun Aceh Number 6 of 2014 concerning Jinayat Law was formulated before this mode of crime became widespread, so its capacity to reach gambling committed through cyberspace is still in question. This study addresses the problem of how criminal politics can be used to control the crime of online gambling in Aceh, with the research question: what efforts has the Aceh Government undertaken to control online gambling crime in society, and to what extent is the Aceh Qanun effective in controlling gambling crime committed through the internet? This is a qualitative study using a normative-juridical method, approached by examining the Qur'an, hadith, statutory regulations particularly Qanun Aceh Number 6 of 2014 and a conceptual approach, with the researcher as the primary instrument analyzing primary and secondary legal materials obtained through library research (studi kepustakaan). The findings show that the control of online gambling crime in Aceh has not been maximized because the elements required for law enforcement, such as regulation and adequate facilities and infrastructure for prevention and control, are not yet available as expected by the concept of criminal politics and the purpose of the law; control has so far relied almost entirely on the "penal" approach through the Qanun, while the "non-penal" approach, such as blocking gambling websites, has not been optimized. The Executive, Legislative, and Judicial branches in Aceh should unite their perception, vision, and mission so that gambling-related websites and sites can be blocked; otherwise, the enacted Jinayat Qanun will not be effective in deterring online gambling crime within Acehnese society.*

Keywords: *Criminal Politics, Online Gambling, Aceh*

INTRODUCTION

One of the regional regulations that prohibits and punishes gambling, or *maisir*, is found in Aceh Province, where the prohibition is set out in Qanun Number 6 of 2014 concerning Jinayat Law. Gambling or *maisir* is, from the perspective of Islamic law, a serious criminal offense (*jinayat*). Gambling also belongs to the category of *jarimah hudud* offenses, the punishment for which has already been determined by *syara'*. Gambling is strictly prohibited in Islam because it can cause loss, damage the social order, and bring harm to human beings in this world and the hereafter. Preventive and control measures are therefore needed so that Muslims do not fall into the criminal act of gambling.

Existing regulations have not yet accommodated gambling offenses committed through cyberspace or the internet, even though the presence of internet technology cannot be held back as human needs continue to grow. Internet technology can facilitate human activity and save effort and time in completing various tasks. Behind its unique features, modern technology has both positive and negative contributions. Its positive contribution is felt mainly by businesses, industries, the government, and other parties in providing services to consumers, generating value that is useful and beneficial. Meanwhile, the negative impact of internet development can be predicted to drive various forms of deviance and crime within society.

Almost the entire population now has the ability to access the internet, which offers various products that are sometimes prohibited by religion, one of which that must be watched closely is online gambling in its various forms and models. Some take the form of games such as poker, while others take the form of betting,

such as football betting. Such unrestricted access makes it difficult for the government to control the criminal act of online gambling.

This shows that information technology today has become a double-edged sword, because besides contributing to improved welfare and the advancement of world civilization, it has also become an effective means of committing unlawful acts[1], one of which is the crime of gambling or *maisir*. Referring to the concepts of criminology and aetiology, the symptoms of deviance and crime in society arise from weak legal politics, economic pressure, education, and environmental influence, so that the victims are not only individuals but also groups within society[2]. Efforts to control crime (*politic criminal*) in the field of internet technology, particularly online gambling, are therefore needed.

Based on the description above, it is important to re-examine how efforts to control crime (*politic kriminal*) of online gambling are carried out in Aceh, considering that Qanun Aceh Number 6 of 2014 concerning Jinayat Law was formulated before this mode of crime became widespread through the internet, so that its reach with respect to online gambling is still questionable. Based on this, the research problems addressed in this study are: (1) what efforts have been made by the Aceh Government to control online gambling crime in society; and (2) to what extent is Qanun Aceh Number 6 of 2014 effective in controlling gambling crime committed through the internet. The purpose of this study is to answer both of these problems, while also contributing ideas toward the

[1]Ahmad M. Ramli, Cyber Law Dan Haki Dalam Sistem Hukum Di Indonesia (Bandung: PT Refika Aditama, 2004), p. 1.
[2]Topo Santoso and Eva Achjani Zulfa, Kriminologi (Jakarta: PT. Raja Grafindo Persada, 2001), p. 17.

formulation of a more effective criminal policy for controlling online gambling in Aceh.

METHODS

This is a qualitative study with a normative-juridical (doctrinal legal research) design, examining law as written norms by reviewing the principles, concepts, and legal rules related to the control of online gambling crime. The approaches used include the syar'i approach, examining the Qur'an and hadith; the statute approach, applied to Qanun Aceh Number 6 of 2014 concerning Jinayat Law; and the conceptual approach, applied to the theories of criminal politics and maqashid syari'ah.

Because this study is normative in nature, no population or sample was used as would be the case in empirical research. The data sources used are legal materials, consisting of primary legal materials in the form of the Qur'an, hadith, and Qanun Aceh Number 6 of 2014 concerning Jinayat Law, as well as secondary legal materials in the form of books, prior research findings, and scholarly writings related to criminal politics, criminology, and online gambling, as well as the broader discourse on the continuous renewal of Islamic law in Indonesia to keep pace with evolving social realities.[3] Data collection was carried out through library research, namely by tracing, reading, and citing these legal materials, with the researcher serving as the primary instrument in identifying and selecting relevant materials.

[3]Zulhamdi, "Pembaharuan Hukum Islam Di Indonesia Dan Tokoh-Tokohnya," Jurnal Ilmiah Islam Futura 19, no. 2 (2019): 239, https://doi.org/10.22373/jiif.v19i2.4414.

Data were analyzed descriptively and qualitatively using a prescriptive method of analysis, in which the primary and secondary legal materials collected were systematized, interpreted, and related to one another to assess their conformity with the concepts of criminal politics and maqashid syari'ah. The validity of the legal materials was examined through source triangulation, namely by comparing the provisions of the Qanun, Islamic legal views, and the opinions of criminal law scholars, in order to obtain a comprehensive picture of efforts to control the crime of online gambling in Aceh.

RESULTS AND DISCUSSION

A. Criminal Politics as Crime Control in Perspective

Crime or criminal behavior is deviant conduct, a threat to the norms that form the foundation of social order. Crime can generate individual tension as well as social tension. Crime is also related to humanitarian issues, which are likewise social issues. Therefore, in order to deter, control, prevent, and limit the spread of crime, a criminal policy, or criminal politics, is absolutely necessary.

Practically speaking, criminal politics is the rational arrangement and formulation of society's efforts to control crime[4]. Theoretically, Sudarto defines criminal politics as the entirety of policies carried out through legislation and official institutions that aim to uphold the central norms of society[5].

[4]Muladi and Barda Nawawi Arief, Teori-Teori dan Kebijakan Pidana (Bandung: PT. Alumni, 1998), p. 157.
[5]Heru Permana, Politik Kriminal (Yogyakarta: Universitas Atma Jaya Yogyakarta, 2007), p. 5.

The main purpose of this theory is to achieve the happiness of citizens, a healthy and refreshing cultural life, the welfare of society, and to achieve balance[6]. The efforts pursued to achieve the purpose of this theory require integration between criminal politics and social politics, as well as integration between crime prevention through "penal" and "non-penal" means, so that crime-prevention efforts and social planning can be integrated with overall social policy and national development planning.

In essence, criminalization policy is part of criminal policy that uses criminal law as its instrument, consisting of the formulation or legislative policy stage, the judicial or applicative policy stage, and the execution or administrative policy stage. None of these sub-systems stands alone; rather, they are interrelated and may not operate without being directed by criminal policy, as they form part of criminal law policy[7].

Legislative policy, or statutory policy, can functionally be seen as part of the planning and mechanism for crime prevention[8], so that legislative policy forms a highly effective part of criminal policy for combating crime. According to La-Patra, a *Crime Policy* is effective if it is able to reduce crime, both in the sense of prevention and in the sense of being able to rehabilitate offenders[9].

The understanding of legislators regarding the types of criminal sanctions is still largely influenced by the old view that anyone who commits a crime must be punished with a commensurate penalty, while newer forms of sanctions

[6]Teguh Prasetyo, Kriminalisasi Dalam Hukum Pidana (Bandung: Nusa Media, 2010), p. 158.
[7]Ibid., p. 133.
[8]Ibid., p. 198.
[9]Ibid., p. 199.

developing within modern criminal law, such as restitution, are not yet fully understood in terms of their underlying ideas[10].

Referring to Islamic law, the politics of Islamic criminal law can be understood as general guidance on the purpose for which the law is enacted. This relates to the legal principle stating that the existence of a law depends on the existence of its 'illah (underlying reason). This means that every law that is issued must have an intent and purpose, commonly known as maqashid syari'ah.

The core of the *maqashid syari'ah* concept is to realize good while avoiding harm, or to attract benefit and reject detriment. The main purpose of this concept is to preserve and achieve the welfare of the community or society[11].

According to al-Syatibi, the interests referred to in this concept are divided into three forms: *al-daruriyyah*, which covers efforts to preserve religion, life, lineage, property, and intellect; *al-hajiyyah*, which is directed toward perfecting *al-daruriyyah* so that balance and fairness are achieved without giving rise to extremity (*al-ifrat wa al-tafrit*); and *al-tahsiniyyah*, which culminates in the refinements that complete the principles of *al-maslahah al-daruriyyah* and *al-maslahah al-hajiyyah*, namely the effort to realize beauty, comfort, and propriety

[10]Sholehuddin, Sistem Sanksi Dalam Hukum Pidana (Ide Dasar Double Track System dan Implementasinya) (Jakarta: PT. Raja Grafindo Persada, 2007), p. 171.
[11]Ahmad Zaenal Fanani, "Maqashid Syari'ah Sebagai Metode Interpretasi Teks Hukum: Telaah Filsafat Hukum Islam," accessed May 11, 2013, http://www.scribd.com/doc/35265501/Maqashid-Syari-ah-Sebagai-Metode-Interpretasi-Teks-Hukum-Telaah-Filsafat-Hukum-Islam.

in the relationship between the servant and God and among fellow human beings[12].

Based on the explanation above, what is fundamental to Islamic legal thought is maslahat (public benefit) the welfare of human beings as a whole, or social justice according to the theory of ijtihadi. Islamic legal policy aimed at realizing human welfare must be realized in any and all circumstances in a convincing manner so as to guarantee the welfare of the ummah; if a law instead leads to harm (mudarat), it is considered fasid (defective), such that Muslims, individually or collectively, are bound to prevent it. This maslahah-oriented mode of reasoning has similarly been applied to analyze the conformity of contemporary economic transactions with Islamic legal principles.[13]

B. A Criminal Policy Analysis of the Control of Online Gambling Crime in Aceh

According to Qanun Aceh Number 6 of 2014 concerning Jinayat Law, gambling or *maisir* is defined as an act containing an element of wagering and/or an element of chance, carried out between two or more parties, accompanied by an agreement that the winning party will receive a certain payment or benefit from the losing party, either directly or indirectly[14].

[12]Asmawi, "Memahami Konsep Maslahah Sebagai Inti Maqashid al-Syariah" (paper presented at the Workshop Tafsir Asnaf Zakat Kontemporer, Institut Manajemen Zakat, Ciputat, August 9, 2012), p. 12.
[13]Athailah Junaidy, Muhammad Ikbal, and Zulhamdi, "The Concept of Profit in Syirkah Al-'Inān Islamic Economic Perspective: Study at People's Banks Ipoh, Perak Malaysia," Al-Hiwalah: Journal Syariah Economic Law 2, no. 2 (2023): 167–90, https://doi.org/10.47766/alhiwalah.v2i2.1948.
[14]See Qanun Aceh Number 6 of 2014 concerning Jinayat Law, Chapter I, General Provisions, Point 22.

Furthermore, the forms of gambling (maisir) and their punishments are regulated in the second part of the Qanun, from Article 18 to Article 22. The penalties set out in the Qanun consist of caning, fines, and imprisonment, covering gambling offenses such as wagering, providing gambling facilities, financing gambling, and organizing gambling.

Based on the provisions of Qanun Number 6 concerning Jinayat, the control of the criminal offense of gambling or *maisir* has not yet reached gambling conducted online, as can be understood from the content of Article 20: "Any person who intentionally organizes, provides facilities for, or finances the Jarimah of Maisir…". The phrase "providing facilities" in Article 20 can be understood as referring to a specific physical place used to organize gambling or *maisir*, whereas internet technology facilities such as *wifi* in coffee shops, internet cafes, and mobile data packages, through which *online gambling websites* in Aceh can be freely accessed, appear to escape the reach of criminal or jinayat law.

The control of gambling crime in Aceh remains predominantly "penal" in nature, that is, crime control through the Qanun, while control through "non-penal" means, such as creating employment opportunities and shutting down gambling-related websites, has not been maximized by the Aceh Government. As a result, the use of internet technology allows unrestricted access to websites for gambling. From the standpoint of criminal politics, it can be identified that cross-sectoral cooperation (executive, legislative, judicial, and specially formed agencies) at the Aceh level has not been maximized in uniting their vision and mission for the control of online gambling.

Aceh has specifically been granted the authority to implement or administer Islamic law, so there is nothing to prevent it from regulating (penal) and controlling (non-penal) its society so as not to fall into immoral acts, one of which is gambling or *maisir*. The problem of gambling using internet technology, or online gambling, arises not merely because a person is poor or wealthy, but because of the presence of enabling factors or loopholes that can be used as a means for gambling.

Based on the description above, when linked to the concept of *maqashid syari'ah*, this issue falls under *al-daruriyyah*, which covers efforts to preserve religion, life, lineage, property, and intellect, given that internet access has already reached every social group in society. For *al-daruriyyah* to be realized, the ability to bring about ease and remove hardship which usually leads to difficulty and the loss of the intended goal is required, such as by closing internet access related to gambling activities and creating employment opportunities. If *al-hajiyyah* is neglected, difficulties will arise with respect to religion, life, property, intellect, and lineage for the future of the Muslim generation as a result of the misuse of internet technology.

Closing access to online gambling is very much within the government's capability, in the same way that access to pornographic sites has been blocked nationally. Should the closure of gambling sites prove impossible on a national scale in Indonesia, then at the very least Aceh, which specifically holds the right and authority to do so, could block such sites. This is in line with the authority granted by the central government to Aceh Province to implement Islamic law. This right and authority can strengthen the argument of Aceh's Executive, Legislative, and Judicial branches in seeking to protect the future of the Muslim

generation in Aceh. If this is not carried out, the Qanun that has already been enacted will not be effective as a deterrent against crime within Acehnese society.

As for technical matters, the government can make use of, or recruit, human resources with competence in information technology. In this way, implementation can be made more effective and efficient, since prohibited sites can be blocked directly by IT personnel, rendering them inaccessible or producing an error when accessed by the public or users. In turn, officers such as the wilayatul hisbah would no longer need to carry out raids at every coffee shop offering internet access, at internet cafes, or against individual internet users.

CONCLUSION

Based on the analysis above, the following conclusions can be drawn:

1. The control of gambling crime committed through the internet or online in Aceh has not been maximized, because the elements required for law enforcement such as regulation and adequate facilities and infrastructure related to the prevention and control of online gambling crime have not been made available as expected by the concept of criminal politics and the purpose of the law.

2. The control of online gambling in Aceh remains dominated by the "penal" approach through the Qanun, while the "non-penal" approach such as blocking gambling websites and creating employment opportunities has not been implemented to its full extent.

3. The Executive, Legislative, and Judicial branches in Aceh should unite their perception, vision, and mission in an integral manner so that websites and sites related to gambling can be blocked; if this is not carried out, the Jinayat Qanun that has already been enacted will not be effective as a deterrent against gambling crime committed through the internet or online within Acehnese society.

Based on these conclusions, this study recommends the following measures for practical implementation: (1) the Aceh Government should promptly formulate implementing regulations or technical policies that explicitly govern the control of online gambling, including a mechanism for blocking sites by the competent authorities in cooperation with internet service providers; (2) an information-technology unit within the relevant Aceh institutions should be established or optimized to continuously monitor and block gambling sites as a form of non-penal approach; and (3) cross-sectoral synergy is needed among the Executive, Legislative, Judicial branches, and the wilayatul hisbah in uniting their vision for the control of online gambling as part of the implementation of Islamic law in Aceh.

This study remains limited to a normative examination of regulations and the concept of criminal politics, and has therefore not yet covered empirical data on the implementation of online gambling control in the field. Further research is thus recommended to empirically examine the effectiveness of non-penal policies that have or have not been implemented by the Aceh Government, including the technical and institutional obstacles to blocking online gambling sites, in order to complement the normative framework of analysis developed in this study.

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