

## The Punishments for Online Gambling according to Islamic Mass Ulama

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**Abstract.** *This research aims to describe punishments for online gambling according to islamic mass ulama. The type of research used in this research is a field research approach. The primary data in this research are the opinions of Ulama at the Islamic Community Organization Muhammadiyah and Nahdhatul Ulama North Sumatra. And as secondary data, there is various literature in several books by several scholars Yusuf Al Qardhawi, Quraish Shihab, as well as other scientific works that support this research. The approach in this research also uses two approaches, namely the Statutory Approach and the Comparative Approach. The statutory approach (Statutory Approach) is carried out by analyzing and reviewing the legal regulations related to gambling sanctions, namely Law no. 7 of 1974 concerning Controlling Gambling, Article 303 bis Paragraph (1) of the Criminal Code, and Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions. The results of this study are the point of view of the Muhammadiyah Ulama of North Sumatra regarding punishments for online gambling perpetrators can be concluded that there are 3 punishments, namely; prison sentence, exile sentence and strict warning sentence. Meanwhile, according to the North Sumatra Nahdhatul Ulama Ulama, there are 2 punishments, namely Prison and Fine.*

**Keywords:** *Islamic Mass Ulama; Online Gambling; Punishment.*

### 1. Introduction

Humans as social and social creatures (zoon politicon) have attachments to each other. Therefore, each relationship between members of society gives rise to rights and obligations that must be fulfilled by each individual. In social relations, interactions between one another certainly have different interests, often even conflicting ones, resulting in clashes that cause chaos and losses accompanied by

violations of the rights and obligations of one party to another. In order to resolve conflicts that occur in society, legal means are needed to regulate and protect each other's interests. Law has an important role in creating a society that lives in a safe, peaceful, peaceful, just and prosperous manner.<sup>1</sup> The law has a binding nature so that the rules contained in the law must be obeyed by everyone. If the law is violated and not obeyed, a legal violation will occur which will result in sanctions. Sanctions in legal norms can be in the form of criminal penalties, fines or social penalties.

Criminal sanctions are special suffering imposed by a judge with a sentence on a person who violates the criminal law with the aim of providing a deterrent effect and correcting the person who has committed a crime so that he or she does not repeat the crime, which includes the death penalty, imprisonment, imprisonment, criminal punishment. fines, criminal penalties and additional penalties include revocation of certain rights, confiscation of certain objects and announcements and judge's decisions. One of the legal rules that must be avoided is the crime of gambling.

Gambling has existed since the existence of human civilization and has become a bad habit that can create social problems that are difficult to overcome and disrupt the social functioning of society. National development requires individuals who work hard and have a strong mentality. This is in contrast to the consequences of gambling, namely educating people to earn a living in unnatural ways and forming a lazy character. Therefore, gambling has become an obstacle to national development.<sup>2</sup> In essence, the practice of gambling is contrary to religion, decency and Pancasila morals and has a negative impact, namely harming the morals and mentality of the community, especially the younger generation.

The increase in modes of criminal acts of gambling can be seen from the proliferation of types of gambling, apart from lottery gambling, there are also cockfighting, lotteries, raffles, even gambling has also spread to cyberspace, namely in the form of online gambling (internet gambling). The influence of developments in information technology and communication currently has an impact on gambling game models, including payment methods. Past gambling games required players to meet face to face or it could be said to use real facilities and payments were made using cash directly. However, nowadays, gambling games can use cyber facilities, namely using the internet network so that gambling games are played online. In online gambling games, you don't just think about profits, you have to be proficient in utilizing the internet network and proficient in carrying out online gambling game strategies. In terms of

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<sup>1</sup> Lukman, Yahyanto Santoso AZ. (2021) *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika

<sup>2</sup> Simandjuntak B. (1980) *Pengantar Kriminologi Dan Patologi Sosial*. Bandung: Tarsito

transaction payments, online facilities are also used. People who win in online gambling games receive money in the form of electronic transactions, for example by sending via M-Banking. Online gambling games in Indonesia are increasing along with the increasing ease of supporting factors for accessing the internet, whether on computers, notebooks or via gadgets. One of the sites for accessing online gambling games is Domino 99 (kiukiu), online poker and online soccer gambling. Researchers interviewed an online soccer gambler with the initials RM<sup>3</sup> who explained that he gambled because he felt less exciting and challenged if he just watched the match and had no value to bet on. Usually RM creates a member account on a trusted gambling site and makes the first deposit. Then on the site, select the sports or sportsbooks menu and pay attention to the betting markets provided on the following site with the odds values<sup>4</sup> visible. For example -1.36 means that to bet IDR 100,000 you need IDR 136,000, while +115 means that if you bet IDR 100,000 then if you win, the money you receive will be IDR 115,000. After that, fill in the desired bet amount for the match. If it has been confirmed then just wait for the results of the game.

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ ﴿٩٠﴾ إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ فَهَلْ أَنْتُمْ مُنْتَهُونَ ﴿٩١﴾

"O you who believe, indeed (drinking) wine, gambling, (sacrificing to) idols, drawing lots of fortunes with arrows, are among the actions of the devil. So stay away from those actions so that you will get good luck. Indeed, the devil intends to cause enmity and hatred among you because of (drinking) wine and gambling, and prevent you from remembering Allah and praying; then stop (from doing that work)."

Through this verse, it can be concluded that there are several factors that cause the prohibition of gambling, namely that gambling is something bad, so it cannot be attributed to good qualities because it contains clear negative elements. In general, gambling has the potential to cause feelings of envy and envy which can lead to the birth of hostility between people, some of which even end in fights and even murder. Like one of the murder cases that occurred in Ogan Ilir, South Sumatra.<sup>5</sup> The suspect admitted that he was in debt due to online gambling

<sup>3</sup> RM, *Pemain judi bola Online*, Wawancara Pibadi, pada tanggal 18 Juni 2023, Pukul: 17.30 WIB.

<sup>4</sup> the value of an ongoing bet and how much winnings will be received if the soccer bet wins.

<sup>5</sup> M. Quraish Shihab, (2017) *Tafsir Al-Misbah. Tangerang: Lentera Hati*.

amounting to IDR 10,700,000 so he committed the crime of robbery and murder against the victim who was his friend.<sup>6</sup>

Indonesia has issued Law no. 7 of 1974 concerning Controlling Gambling to prevent the spread of gambling. Regulations related to gambling have been regulated in several articles, one of which regulates the gambling article, namely Article 303 bis Paragraph (1) of the Criminal Code, while the online gambling article is regulated in Article 27 Paragraph (2) of the ITE Law No.11 of 2008 and Article 45 of the Law. Paragraph (2) No.19 of 2016. In Islam there are also sanctions for perpetrators of this criminal act of gambling. In Islam, this crime is included in the category of jarimah ta'zir.

There are 905 gambling cases recorded throughout Indonesia on the National Police Criminal Investigation Unit page which have been successfully prosecuted from January to May 2022. The North Sumatra Regional Police is in the top position for the most prosecuted gambling cases, namely 134 cases, equivalent to 14.8% of the total national gambling cases.<sup>7</sup> Then, the East Java Regional Police took action on the next most gambling cases, with 109 cases. Then, as many as 84 gambling cases were revealed by the West Nusa Tenggara Regional Police. Central Java occupies the next position with a total of 80 gambling cases that have been successfully prosecuted. Then, 72 cases and 56 gambling cases respectively were successfully prosecuted by the West Kalimantan and Riau Regional Police. Furthermore, the Lampung Regional Police succeeded in taking action against 48 gambling cases. Followed by Polda Metro Jaya with 40 cases, South Kalimantan with 34 cases, and West Java with 30 cases.

## 2. Research Methods

The type of research used in this research is a field research approach.<sup>8</sup> The primary data in this research are the opinions of Ulama at the Islamic Community Organization Muhammadiyah and Nahdatul Ulama North Sumatra. And as secondary data, there is various literature in several books by several scholars Yusuf Al Qardhawi, Quraish Shihab, as well as other scientific works that support this research. The approach in this research also uses two approaches, namely the Statutory Approach and the Comparative Approach. The statutory approach

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<sup>6</sup> Dwipayana, Agung. 2023. 'Kakak Bunuh Adik Angkat Di Ogan Ilir, Kena Pasal Pembunuhan Berencana, Terancam Penjara 20 Tahun' <<https://sumsel.tribunnews.com/2021/12/17/kakak-bunuh-adik-angkat-di-ogan-ilir-kena-pasal-pembunuhan-berencana-terancam-penjara-20-tahun>>.

<sup>7</sup> 'Sejak Awal 2022, Ratusan Kasus Perjudian Ditindak Polri' (Jakarta, 2022) <[https://pusiknas.polri.go.id/detail\\_artikel/sejak\\_awal\\_2022,\\_ratusan\\_kasus\\_perjudian\\_ditindak\\_polri](https://pusiknas.polri.go.id/detail_artikel/sejak_awal_2022,_ratusan_kasus_perjudian_ditindak_polri)>.

<sup>8</sup> Soekanto, Soerjono. (2010) *Pengantar Penelitian Hukum* Jakarta: UI Press.

(Statutory Approach) is carried out by analyzing and reviewing the legal regulations related to gambling sanctions, namely Law no. 7 of 1974 concerning Controlling Gambling, Article 303 bis Paragraph (1) of the Criminal Code, and Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions. Comparative legal study itself is "the activity of comparing the law of one country with the law of another country or the law from a certain time with the law from another time. The purpose of this comparison is to obtain legal similarities and differences. In this research, the author provides several explanations from Islamic Mass Organization scholars in North Sumatra regarding punitive sanctions that provide a deterrent effect for online gambling perpetrators. With this comparative approach, it will certainly really help the author in completing this research.

### **3. Results and Discussion**

#### **3.1. Islamic Criminal Law**

There are 3 sources of values and norms in Islam, namely the Al-Qur'an, as-Sunnah and Ijtihad. These three sources are the main guide in studying Islamic criminal law. In general, the aim of Islamic criminal law is to bring benefits to the people and prevent them from harm from 5 fundamental aspects of human life, namely the religious aspect, the intellectual aspect, the soul aspect, the property aspect and the hereditary aspect. Several terms commonly used in discussing criminal law in Islam, namely Jarimah, Jinayah and Ma'shiyat. Jarimah is an act that violates orders or does things that are prohibited by Allah with the threat of hudud and takzir punishment.<sup>9</sup> Jinayah is an act that harms life, property or anything else that is prohibited by the Shari'a which is punishable by hudud and qisas punishment (does not include acts which are threatened by takzir punishment).<sup>10</sup> Meanwhile, Ma'siyat includes elements of actions that are prohibited by law, namely carrying out actions that are prohibited by law or prohibited by Islamic law.<sup>11</sup>

There are 3 classifications of criminal acts in Islam, namely Hudud, Qisas, takzir.

1. Hudud in short is a certain punishment that has been determined by the syara', either in the Al-Qur'an or the Sunnah of the Prophet Muhammad. In the Al-Qur'an, the phrase ḥad or ḥudūd does not mean punishment, but it means a command or prohibition, or is related to Allah's law, where if the ḥudūd is violated then he will receive Allah's punishment. Thus, the meaning of ḥudūd as

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<sup>9</sup> Ahmad Hanafi, (1990) *Asas Asas Hukum Pidana Islam*. Jakarta: Bulan Bintang.

<sup>10</sup> Amran Saudi and Mardi Chandra, (2016) *Politik Hukum Perspektif Hukum Perdata Dan Pidana Islam Dan Ekonomi Syariah*. Jakarta: Prenada Media Grup.

<sup>11</sup> Saudi and Chandra.

punishment is a term given by fiqh scholars. He further explained that ḥudūd punishment must be applied based on faith, piety and justice. According to Wahbah Zuhaili, there are 8 criminal acts of ḥudūd, namely: ḥad adultery, ḥad qaḏaf, ḥad intoxication, ḥad theft, ḥad ḥirābah, ḥad rebellion, ḥad apostasy and ḥad intentional murder.<sup>12</sup>

2. Qisas is giving punishment to the perpetrator of an act similar to what was done to the victim, or imposing legal sanctions on the perpetrator of a criminal act exactly the same as the criminal act committed, replacing life with life and other body members with a similar reward. There are two types of crimes for which Qisas is punished, namely murder and torture.

3. Takzir is a punishment that is not specified in the text and is the policy of the local government. In the sense of a criminal act where the type of action and the punishment obtained from that action are not provided for in the previous text. So, the punishment is based on Ijma' which relates to the state's right to determine general provisions and determine punishment. Islamic jurisprudence scholars gave birth to the concept of ta'zīr punishment which can be applied by law enforcement governments to regulate it and also to judges to decide by adhering to the principles of justice and benefit. The ulama have formulated various types of ta'zīr punishments that can be regulated by the government and decided by judges, namely:

a. Punishments related to the body such as the death penalty and flogging. The death penalty is the maximum punishment in the ta'zīr Jarīmah for very dangerous Jarīmah perpetrators. The Hanābilah, Mālikīyah and Syāfi'iyah schools of thought allow the application of the death penalty in major cases where if the perpetrator is sentenced to death it will provide benefits or a positive impact on society.

Caning is a physical punishment that is quite effective in providing a deterrent effect for perpetrators of jarimah ta'zir because it can be felt directly physically. The number of lashes in the ta'zīr punishment is not specified as in the ḥudūd jarīmah. Therefore, the judge has the authority to impose the punishment in an amount that he thinks is fair and has a maslahah effect but must not exceed the hudud radius.

b. Punishments related to a person's freedom are imprisonment and exile.

Prison sentences are punishments that have an impact on the psychology of criminals. The purpose of this punishment is to isolate the criminal from the

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<sup>12</sup> Al-zuhaili, Wahab. (1986) *Ushul Fiqh Al-Islamy*. Beirut: dar al-fikr.

social environment so that he has limited access to interact with other people. In Islamic law, prison sentences are divided into two, namely limited prison sentences whose length of time is strictly limited and unlimited prison sentences which are not limited by time, that is, they continue until the person sentenced dies or repents.

Exile punishment is a punishment that requires the perpetrator of a crime to go to a distant place because it is feared that it will have a bad influence on other people so that the perpetrator must be exiled.<sup>13</sup> The length of the exile period cannot be more than one year so that it does not exceed the period of exile in the case of zina which is a hudud law.

c. Ta'zīr punishment can take the form of action against a number of assets owned by the perpetrator of the crime, but this punishment is not agreed upon by the ulama.<sup>14</sup> According to Abū Hanīfah and Muhammad, the punishment of ta'zīr by paying property cannot be carried out. Likewise, according to Imām Syāī'ī, Mālik and Aḥmad who are of the opinion that imposing a penalty of ta'zīr in the form of assets is not in accordance with the Shari'a. However, a different opinion was expressed by Ibn Taimiyah. According to him, ta'zīr punishment in the form of certain actions against the perpetrator's property can be carried out. Actions against the perpetrator's assets can be taken in three ways, namely: Destroying or destroying the assets so that they cannot be repossessed; Changing the property into another form; and Eliminating ownership rights.

### **3.2. Nahdhatul Ulama and Muhammadiyah**

In 1926, a new Islamic organization was founded in Indonesia with the aim of developing more moderate and open Islamic religious teachings. This organization is known as Nahdlatul Ulama (NU) and since then, NU has become a major force in Indonesian Muslim society. However, not long after that, in 1912, the Muhammadiyah organization was also founded with a vision and mission that was almost the same as NU. Even though these two organizations have the same goals, there are several significant differences between NU and Muhammadiyah, among others

#### **Approach to Islamic teachings**

NU tends to adhere to traditional and conservative views in implementing Islamic teachings, prioritizing local cultural heritage and religious traditions that have existed for a long time. On the other hand, Muhammadiyah has a more

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<sup>13</sup> As-Sābiq, Sayyid. (1998) *Fiqh As-Sunnah*. Mesir: Dar al-fath.

<sup>14</sup> As-Sābiq.

modern and open approach to Islamic teachings. They focus more on purifying Islamic teachings from local cultural influences which are considered contrary to Islamic values.

### **Organizational structure and leadership**

NU has a more centralized organizational structure, with Kiai (ulama) as the main leaders who have authority in making decisions. On the other hand, Muhammadiyah has a more decentralized organizational structure, with a democratic leader election system. Decisions in Muhammadiyah are taken through deliberation and elections, so that every member has the same voting rights.

### **Education**

NU has an extensive network of Islamic boarding schools throughout Indonesia, which are centers of religious education and places for the development of ulama. NU Islamic boarding schools are known for their more traditional approach to teaching Islamic teachings. On the other hand, Muhammadiyah also has a wide educational network, but they prioritize formal and modern education. Muhammadiyah has universities and schools that follow the national curriculum, with an emphasis on general education and modern science.

### **3.3. Opinions of Muhammadiyah and Nahdhatul Ulama Ulama regarding punishments for online gambling**

Furthermore, in order to find out the Ulama's views on law in a more concrete way, the author interviewed several North Sumatran ulama, considering that these ulama were figures from several leading Indonesian community organizations. Regarding Muhammadiyah Ulama, Dr. Sulidar, M.Ag. Argues that "the punishment is appropriate to the situation, the condition he is in. For example, if we are here, 'what is the deterrent effect?'

The same thing was also conveyed by North Sumatra Nahdhatul Ulama Ulama, H. Marahalim Harahap, S.Ag, M. Hum, of the opinion that "what punishment is appropriate is what has been decided by the government, (namely prison) because it is based on research studies that ripe for the development of crime cases in this republic".

We can see that there is a similarity of opinion on this matter by Muhammadiyah and Nahdhatul Ulama scholars, namely prisons. This means that this takzir sanction is a sanction related to a person's independence. In Arabic, prison has two terms, namely الحبس and السجن which both mean المنع which means prevention/detention. According to Ibnu Qayyim, alhabsu, which was meant



during the time of the prophet Muhammad and Abu Bakr, meant detaining someone from committing legal acts, whether the detainee was detained at home, a mosque or another place. During the reign of Umar bin Khattab, where the number of followers of Islam increased and the Islamic territory became wider, at that time a special house was purchased to be used as a prison.<sup>15</sup>

Based on this, there are different views of ulama regarding the permissibility of prison sentences in takzir. There are scholars who do not allow it because the prophet Muhammad and Abu Bakr did not create prisons but instead the prophet detained takzir perpetrators in the mosque and at home. But the majority of ulama allowed prison sanctions because they argued with the policies of the khulafaurrayidin who followed. During Umar's reign, Umar's policy as explained above was to buy a house to be used as a prison where the perpetrators of takzir were held, as well as Usman's actions in imprisoning Zabi' bin Harist, a pickpocket from the Bani Tamim, and Ali's actions in imprisoning Abdullah bin Zubair in Mecca.

As explained above, when viewed in terms of time, prison sentences are divided into two, namely limited prison sentences and unlimited prison sentences. If we look at the law that regulates online gambling, it is regulated in Article 27 Paragraph (2) of the ITE Law No.11 of 2008 and Law Article 45 Paragraph (2) No.19 of 2016, namely "every person intentionally and without the right to distribute and /or transmitting and/or making accessible Information or Electronic Documents containing gambling content shall be subject to imprisonment for a maximum of six years and/or a fine of a maximum of IDR 1 billion." So it can be concluded that here it is a limited prison sentence, namely a prison sentence whose time limit is strictly limited. In Islamic criminal law, there is no agreement on the length of prison sentences. According to Imam Al-Mawardi, prison sentences in takzir vary because they depend on the perpetrator and the type of finger. Imam Al-Zaila'i, quoted by M. Nurul Irfan, believes that the length of imprisonment could be two or three months; it could even be less or more than that. But still, the length of time is determined by the judge. Regarding the maximum limit of a limited prison sentence, there is also no agreement among the jurists, but according to Shafi'iyah scholars the maximum limit is one year in terms of referring to the punishment of exile in the case of adultery which is only one year long and the punishment for takzir cannot exceed the had sentence. According to Ibn Qudamah, there are no definite provisions regarding the minimum and maximum limits of prison sentences because they are handed over to the authorities or, if the prison sentence (takzir) is determined, it is equal to had; and that means there is no difference between had and takzir punishments. Therefore, this matter is handed over to the judge

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<sup>15</sup> Irfan, M. Nurul (2016) *Hukum Pidana Islam*. Jakarta: Amzah.

by paying attention to the type of crime, perpetrator, place, situation and conditions.

Next, Dr. Sulidar, M.Ag believes that, "That's why regulations are made to improve them. 1) People who gamble are exiled. 2) Warnings are given to people who gamble".

In this case, what is meant is a punishment related to a person's freedom. The punishment of exile (disposal) includes the punishment imposed on the perpetrator of the crime who is feared to have a bad influence on other people so that the perpetrator must be exiled. In determining the place of exile, Ulama have several opinions, including; 1) According to Imam Malik bin Anas, exile means removing (throwing) the perpetrator from an Islamic country to a non-Islamic country. 2) According to Umar bin Abdul Aziz and Said bin Jubayyir, exile means being thrown from one city to another. Imam Al-Syafli said that the distance between the city of origin and the city of exile is the distance of travel, qasar. The purpose of the exile was to keep him away from his family and place of residence. 3) According to Imam Abu Hanifah and one opinion from Imam Malik, exile means imprisonment. In this case, it seems that the sentence of throwing prisoners to Nusa Kambangan Island meets the requirements and intent, considering that Indonesia is an archipelagic country that has thousands of small islands, so it is very effective if this punishment takes advantage of these islands. This punishment is carried out until the condemned person repents and in the place of exile he must always be watched so that he does not escape. There is also no agreement on the length of the exile period among the jurists. According to Syafi'iyah and Hanabilah, the period of exile cannot be more than one year so as not to exceed the period of exile for committing adultery which is a had punishment. According to Imam Abu Hanifah, the period of exile can be more than one year because exile here is a takzir punishment, not a book of had. This opinion was also expressed by Imam Malik. However, they did not state a time limit and left this matter to the consideration of the authorities or judges. Giving warnings to people who gamble is also another form of punishment. There are several other forms of punishment that are exciting, namely, giving advice, censure, exclusion, dismissal and public announcement of mistakes such as being notified in print and electronic media.

#### **4. Conclusion**

From the explanation above, the author can conclude that: The opinion of the Muhammadiyah Ulama of North Sumatra regarding punishments for online gambling perpetrators can be concluded that there are 3 punishments, namely; prison sentence, exile sentence and strict warning sentence. Meanwhile, according to the North Sumatra Nahdhatul Ulama Ulama, there are 2 punishments, namely Prison and Fine.



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