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‘THE RIGHT TO GAMBLE’: AN ANALYSIS OF GAMBLING ‘INDUSTRIES’ IN MALAYSIA FROM CONSTITUTIONAL AND LEGAL PERSPECTIVES

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ABSTRACT

This article aims to analyse the gambling activities in Malaysia against the backdrop of human rights and federal constitution. It instigates for effective efforts to be carried out to, at least, minimise the gambling activities, if not to stop them totally. Based on limited sources in the existing literature, this article initially identifies the definitions of gambling and its status from the perspectives of Islam and other religions. It then examines whether gambling is consistent with the very notion of freedom of religion in this country which makes Islam as its religion. Furthermore, to get an accurate perspective of this ‘industry’ and the laws related to it, this article analyses some selected prominent gambling companies and the existing laws followed by some recommendations for solutions. In sum, this article affirms that gambling is neither a good habit nor does it represent the culture of Malaysian people. It in fact contributes towards social ills within the society and therefore needs to be strongly combated.

Keywords: *Gambling activities, freedom of religion, legal and Islamic perspectives*

INTRODUCTION

Demographically, Malaysia is well-known as a Muslim-majority country. Of the estimated 32.6 million populations currently living in the country (Department of Statistic Malaysia 2019), approximately 61.3% belong to the Islamic faith (Central Intelligence Agency, 2019). The Federal Constitution of Malaysia (hereinafter the “Constitution”), under Article 3, provides Islam as the religion of the country while at the same time guarantees the principle of freedom of religion for its multi-ethnic communities. Despite its Islamic identity, many may not realise that Malaysia is home to a fairly ‘prosperous’ gambling ‘industries’, although such activities are strongly prohibited in Islam. This is evidence for the fact that from the period of 2008 and 2011, the Government of Malaysia has managed to collect an amount of RM 9.3 billion in the form of taxes from gambling-based companies. This was clarified by the Ministry of Finance during a Parliamentary debate session (Nasir Zakaria, 2011). Such a big amount is more than enough to indicate how serious the gambling habit among Malaysians, be it small-scale at low level or large-scale at the high level, of societies. Gambling activities are no longer considered as a mere hobby to spend during the spare time, but it has now become a very lucrative business and industry which can generate billions of ringgit. Gambling addiction does not recognise ethnic groups, age, gender or socio-economic status. The infamous reason being used to justify the issuance of gambling permit or in other word to ‘legalise’ gambling is that “there is a need to consider the freedoms of Malaysia’s multi-ethnic community.” A total ban to gambling was claimed as an adverse intervention to freedom of religion of Non-Muslim Malaysians.

Nevertheless, it was very surprising that, in reality, there is no religion in Malaysia that encourages its adherents to involve in gambling. If there is such religion that supports gambling, then it cannot be called as a ‘religion’ in the first place, considering that such activity brings more harm than good. It is the mother to various social ills. Gambling is an activity that aims to get speedy wealth to serve those with greedy desires. Gambling addictions shall, if left uncontrolled, contribute towards the collapse of individual’s self-esteem as well as the institutions of family, society and the country. As such, the issuance of gambling permits by the Government does not fulfil the needs and rights of non-

Muslims in Malaysia, but it actually has become the main factor that has long ruined the community institutions in Malaysia. On the other perspective, issuing permits at certain tax rates has changed the nature of gambling from a leisure-time hobby to a multi-million industry. A question at hand, therefore - can the lucrative tax collections from gambling industries be used as an excuse to justify the legality of gambling in the country that makes Islam as its religion? Nonetheless, despite the claim that permitting gambling was meant for respecting non-Muslims, many are not aware of the fact that there are a significant number of Muslims who also actively involved in gambling (TERAS, 2011).

DEFINITION OF GAMBLING

In English language, there are many other terms that reflects gambling, among others; 'gaming' and 'betting'. In Arabic language, gambling was termed as: (القمار، الميسر، الرهان). A close look on Arabic dictionary – for example; *al-Qamus al-Fiqhi lughatan wa istilahan* explains the definition of al-Qimar as “every game aimed at acquiring certain property in which such property are gained by the winner by taking loser’s property” (Sa’di Abu Jayb, 1993, p.309). Other version of definition regards gambling as “addictive by nature, a practice that takes money from the poor with the perceived, yet illusive promise that they may "win" something without having to work for it” (El Sayed, S. S. and Royer, I. 2003).

On the other hand, the word *al-maisir* from Islamic perspective is defined to mean a game of haphazard in all matters particularly a game of chance by means of divinatory arrows. *Maisir* is of various categories. Some of these types of *maisir* are seeking omen or fortune by divinatory arrows, back gammons, chess, lottery and many others. The word *maisir* is derived from the root ‘*yasara*’, means to become gentle, to draw lots by arrows or ‘*yasaar*’, means affluence because *maisir* brings about profit or *yusr*, that is convenience, ease because it is an earning without toil and exertion or *yasr*, means dividing a thing into a number of shares and distributing them among themselves.

Gambling is called *maisir* because those who partake in the games of chance divide the meat of sacrificial animal among themselves (Siddiqi, M. I. 1981, pp.130-131). All the above connotations are vividly found in the word *maisir*. According to Imam *Malik* gambling is of two categories that are; a game of chance that is partaken in with a view of sport (fun) and the game of chance which involves gambling. To make it clearer, gambling means all dealings in which people are require making a bet and every dealing which involves some aspects of gambling is *maisir*.

GAMBLING FROM THE PERSPECTIVES OF ISLAM AND OTHER RELIGIONS

Gambling from Islamic Perspective

Gambling is *haram* or prohibited and there is no dispute on such prohibition among Muslims scholars. There are verses from the Qur’an which highlighted the prohibition of gambling and the wisdom behind its prohibition. Allah says: “*They asked the Prophet (S.A.W) about khamr (intoxicants) and games of chance (gambling). Say, in both of them there is great harm although there is some advantage as well in them for men, but their harm is much greater than their advantages.* [Al-Baqarah: 219]. In another verse, Allah mentions: “*O ‘you who believe, verily wine and game of chance, ungodly shrines, and divining devices are abomination of Satan’s work. Avoid them, that you may prosper. Only would Satan sow hatred and strife among you, by wine and games of chance, and turn you aside from, the remembrance of Allah and from prayer. Will you not, therefore abstaining from them?’* [Al-Maidah: 90-91]. In the Hadith, the Prophet (PBUH) said: “*Whoever says to his companion, come let us play a game of haphazard should give alms (as an atonement).* [Bukhari and Muslim].

It connotes that a mere invitation to gambling is such a serious sin as to warrant atonement thereof by charity. What is more the position of a man who indulges in gambling. The Prophet (S.A.W) further said: “*Whoever plays backgammon as if he dyes his hands with the flesh of swine and its blood.*” [Muslim]. Ibn Abi Al Dunya has reported Yahya b. Kathir as saying: “*Allah’s Messenger passed by people playing backgammon. He said, “their hearts are preoccupied in sport, their hands are ill and their tongues make absurd utterances. Every game which involves gambling or mischief is a game of chance (maisir).*” From the above verses and hadiths, it is clear that the prohibition of gambling is absolute and indisputable. It is also obvious that *maisir* entails great sins and promises petty benefits

and that *maisir* is an abominable act of Satan. It is therefore imperative to avoid gambling in order to achieve success and happiness in our lives. Although it entails some benefits as mentioned in the verse, we have to bear in mind that its harmful effects outweigh the benefits to individual as well as people at large.

Gambling From The Perspective of other Religions

In addition to Islam that imposes a total ban on gambling, other religions such as Buddhism, Christianity, Hinduism and Judaism have similarly regarded gambling as an act of evil and a bad habit (Disa, M.N. 2011).

Buddhism

According to the traditional view of Buddha Hinayana, gambling is vehemently prohibited. However, the modern view of Buddha Mahayana did not specifically prohibit gambling, but rather it gives a harsh warning to those who involve in games of chance / haphazard, avoiding responsibilities to the family thus losing out on their property and source of income. In the Book of Buddha Hinayana, Buddhists are prohibited to commit the five major sins namely; “murdering, stealing, cheating, raping, drinking alcohol and gambling”. In addition, in the chronicle of *Gambler’s Lament*, lesson can be learned when a gambling addict, not only lost his money but also his family due to his gambling habit. Meanwhile, in the Book of Buddha Tipitaka, six evil consequences of gambling have been mentioned. First, the winner begets hate; second, the loser grieves for lost wealth; third, his word is not relied upon in a court of law; fourth, he is despised by his friends and associates; fifth, he is not sought after for matrimony, for people would say he is a gambler and is not fit to look after a wife; and sixth, wagering of money through games of chance and gambling will cause catastrophe to the losers (Disa, M.N. 2011).

Christianity

In Christianity, warnings related to gambling have been mentioned in Bible. For example; “*For the love of money is a root of all kinds of evil. Some people, in their eagerness to get rich, have wandered away from the faith and caused themselves a lot of pain*” (Timothy 6:10) and “*Keep your lives free from the love of money and be content with what you have, because God has said, “Never will I leave you; never will I forsake you”*” (Hebrew 13:5). It is indeed evident that majority of the church have jointly agreed on the evil of gambling but some of them only allow welfare lottery initiated by the government as well as the ‘Bingo’ type of gambling. The two types of gambling are very popular among the pensioners. Nevertheless, majority of the church disapproved the establishment of large-scale gambling centre such as casino arguing that such project as ‘excessive’. On the other hand, the Presbyterian Church has completely disapproved and prohibited any kind of gambling including lottery. This is because, gambling will take the money from the poor and people with low-income who aim lucrative and speedy accumulation of wealth from gambling (Disa, M.N. 2011).

Judaism

Gambling is not cited in Torah or in any Jewish scriptures. But it is clearly stated that a professional gambler could not be trusted as a witness in court. But many rabbis allow occasional gambling, mainly during festivals like Purim, Chanukah gambling is permitted (Religion and Casinos, 2011). Such permission reflects gambling as a form of leisure and entertainment during festival time. However, participating in any forms of gambling after such festival are not allowed. Thus, it could be clearly observed that Judaism did not impose a total ban on gambling. There are instances stating that Rabbis were also involved in some form of gambling. This shows that gambling is not a sin in Judaism.

Hinduism

Similarly, gambling is not approved in Hinduism (Ibnu Hasyim, 2011). The prohibitions of gambling have been mentioned in many Hindu scriptures. Among other, they include the following sections; “*A Gamester / gambler says, ‘My wife holds me aloof, my mother hates me’. The wretched man finds none to comfort him.*” (Rigveda 10:34:3) “*Play not with dice: No, cultivate thy corn land. Enjoy the gain and deem that wealth sufficient*”. (Rigveda 10:34:13). “*Drinking, gambling, women (not lawfully*

wedded wives) and hunting, in that order, he should know to be the very worst four in the group of (vices) born of desire” (Manu Smriti 7:50)

Gambling is also prohibited in several verses of the *ManuSmriti* including: Manu Smriti Chapter 7 Verse 47, Manu Smriti Chapter 9 Verses 221-22 and Manu Smriti Chapter 9 Verse 258. As such, it can be seen that Hinduism does not approve gambling as a lawful activity. However, in other sections of Hindu scriptures, there are suggestions that there been gambling activities carried out in Hindu culture. Mahabharata is a famous epic story and scripture in Hinduism. In this epic there are numerous instances of gambling activities. The epic states that gambling in the form of dice games was a source of entertainment for Kings. There are also other Hindu scriptures which indicate that gambling activities were carried out in Hindu empires. Thus, the scriptures seem to be both prohibit gambling, and also acknowledge it as a religious norm. Contradictions in the scriptures are naturally not uncommon (Bergler, E. 2011).

From the above comparative analysis, it was clear that gambling activity, regardless of its form, is strongly prohibited by majority of the religions in this world. This is because, such habit could lead to many social ills such as theft, murder etc. which will finally contribute towards the collapse of family and social institutions. Considering that no religion permits gambling, then the notion of ‘freedom of religion’ cannot be used as an excuse to legalise it. In fact, being involved in gambling will not make one a religious person, but it will rather make such person ‘free’ from his or her religion. Free in the sense that they are not actually complying with but going against the teaching of their respective religions. So, if there is any person that attempts to use the notion of ‘freedom of religion’ to justify the needs to make gambling as a legal activity, such a person is actually speaking and acting on behalf of his or her evil desire but not the religion.

ISLAM AS THE COUNTRY’S RELIGION AND THE CONCEPT OF FREEDOM OF RELIGION

The Federal Constitution of Malaysia, under its Article 3, has clearly provided Islam as the religion of federation but not an ‘official’ religion as has widely been misunderstood by many quarters. In fact, the term ‘*rasmi*’ or ‘official’ has never been stated in any versions of the Constitution. Our common mistake in translating Islam as an official religion of the country has narrowed down the scope of our understanding about Islam. Such an understanding has made Islam - which is universal in nature, as a religion that only relates to ritual and ceremonial aspects (Awang, M 2011). This kind of understanding is clearly against the spirit of Islam as the way of life covering all aspects of human’s life. Furthermore, it is also inconsistent with the philosophy of Article 3 which, *inter alia*, provides that; “*Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.*” As such, our understanding of Article 3 should be widened to cover every aspect of our daily life and not just for rituals aspects only. This premise was strengthened by the judgments made by the court, such as, in the cases of *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan* (2007) 4 MLJ 585 and *Meor Atiqurrahman v. Fatimah Sihi* (2006) 4 CLJ 1.

In the case of Azalina Jailani or Lina Joy, for example, the Chief Justice Tun Ahmad Fairuz defined Islam as “*not only an assortment of dogma and ritual but it is also a complete way of life covering all aspects in human’s life, individually and in public, legal, politic, economy, social, cultural, moral and judiciary.*” The definition made by the Honourable Chief Justice has affirmed Islam as a comprehensive way of life. Therefore, ideally speaking, every policy made by the government should reflect this understanding thus ensuring its consistency with the Islamic principles as well as the spirit of Article 3. If such an understanding were to be considered, then any policy that permits gambling could be seen as inconsistency and against the spirit of Islam as the religion of federation. Nevertheless, in reality, Malaysian laws does not provide a total ban to gambling but rather seek to regulate and limit its disadvantages. As mentioned earlier in this paper, the main reason or excuse being used to justify the legality of gambling is the fact that Malaysia is not only populated by Muslims but also a significant number of non-Muslims from different ethnic and religious groups. So, some people have seen that imposing Islamic values on non-Muslims - such as prohibiting gambling, as a form of religious

violation on them. The notion of freedom of religion was stated in Article 11 of the Constitution which, among others, provides; *“Every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.”*

A total ban on gambling was seen as a form of violation to the principle of freedom of religion of non-Muslims. However, if we examine gambling from the views of Islam and other religions, it was clear that gambling has nothing to do with, nor has it been approved by, any religions due to its harmful nature. For that reason, as far as the gambling issue is concerned, it was not the notion of ‘freedom of religion’ that is supposed to be used by the proponents of gambling, but it should be ‘freedom from religion’, instead. As such, the use of the freedom of religion notion, was not only out of context, but also has no merit and basis. In fact, it is clearly against the very objective of Article 3 and moral principle of human being. Such notion also does not enjoy the protection provided by Article 11 which provides freedom of religion for Malaysian citizens. Article 11(5), among others, stipulates that; *“This Article does not authorise any act contrary to any general law relating to public order, public health or morality.”* Although gambling may cause adverse negative social impacts to the public order, public health and morality, but currently it is still permitted in the country as long as it complies with the laws that govern it.

GAMBLING ‘INDUSTRY’ IN MALAYSIA AND ITS IMPACT TO SOCIETY

Gambling in Malaysia

Gambling activities in Malaysia may take many forms. It could be a small-scale gambling played by low-class society which involves small amount of money or property. However, there is also large-scale gambling played by high-profile personalities which involves multi-million ringgit worth of properties and wealth. Among famous types of gambling are; cyber gambling, gambling in cybercafé, online poker, SMS or text gambling, cruise casinos, lottery, gambling in coffee shops, gambling syndicate, casino in Genting, 4-digit lottery number, horseracing betting, sports betting, election betting, video game machine, kids gambling (*‘tikam’* and slot machine), domino games and many more.

Generally speaking, there are about 1200 (TERAS, 2011) gambling premises across the country except the State of Kelantan. The cash flow of Malaysians money to the gambling activities was recorded as more than RM 1.4 billion each year. In a week, in a single district, between RM1.2 million to RM 3.6 million worth of wealth and properties have been used by Malaysians (TERAS, 2011). Nowadays, gambling in Malaysia has turned to be a very prosperous and profitable ‘industry’. The most fortunate entities are the gambling operators and companies who have accumulated a huge amount of money. Unforgettably, the Government has also gained the gambling ‘fruit’ through the average RM 1 billion worth of tax collection per annum (TERAS, 2011). The less-fortunate and the hugely impaired entities are none other than the majority of ordinary Malaysians who have been plagued with the gambling addicts.

In general, the developments of gambling industries in Malaysia are spearheaded by a number of companies, namely; Genting Berhad (casino), Resort World Berhad (entertainment and gambling), Magnum Corporation (4-digit lottery), Metroplex Berhad (subic bay casino), Leisure Management Berhad (4-digit lottery and horseracing), Berjaya Sports Toto (4-digit lottery) and Tanjong Public United Company (horseracing betting). The rapid development in this sector was seen as catalyst to the economic growth as well as a new tourism icon of the country. (TERAS, 2011). Taking Genting Berhad for example, it was recorded that the group’s combined market capitalisation amount to RM115 billion (US\$39 billion), as at 31 August 2011 (Genting Berhad 2011). Casinos in Genting operate 24 hours per day and are visited by more than 14 million people per year.

Social Impacts of Gambling

Gambling habit may happen within any religious and ethnic groups, gender, age and social level. Gambling for fun or as a leisure activity can easily be an addictive habit which will eventually lead to mental, social and physical problems. The money, which was supposed to be used to pay bills, taxes

and other family needs, has instead been used for gambling. Gambling addiction has also caused staggering loss of money including the money meant for funding the children's education, housing, retirement and for other important and emergency purposes. Due to insufficient fund, the gamblers will normally and deceitfully borrow the money from friends and relatives citing an excuse to use for their daily needs, but actually for fulfilling their gambling desire. The worst case is when they sought the money from *ah long* or loan shark which will expose them and family with dangerous consequences.

In addition, financial problems caused by gambling addiction can also contribute towards depression, demoralization and loss of motivation to continue life. People with such problems will take a short-cut solution by committing suicide. A statistic by the Ministry of Home Affairs revealed that between the periods of 2001-2010, 4118 cases of suicide have been recorded. Major contributing factors to such problem include failure in life, family problem, death of loved ones and financial problems associated with gambling (Utusan Online 2011a). Gamblers also, in order to keep their gambling habits, may be exposed into committing crimes which will put their families and people around them in danger. There has been numerous news in the newspaper and mass media which reported and thus affirmed the adverse evil consequences of gambling to the society (Utusan Online 2011b). Indeed, billions in profit were gained by the gambling companies at the expense of the people's public health and morality. The social cost affected by the people is far greater than the economic benefits gained by the Government. In average, problems caused by a gambler may give impact to between 7 to 17 people around him. Such impacts include loss of property, family breakdowns, domestic violence, theft, depression and suicide (Mohamad Idris, SM 2011). Bearing in mind that gambling addiction may implicate serious social impacts, there is therefore a pressing need for such activities to be thoroughly controlled.

GAMBLING AND THE LAWS

Gambling from the Perspective of Law in Malaysia

Gambling activities in Malaysia are considered lawful as long as they meet and fulfill certain Acts passed by Parliament in connection with the affairs of gambling. In Malaysia, there are a number of Acts which govern matters related to gambling, whether in practice or prevention, such as Lotteries Act 1952, the Common Gaming Houses Act 1953, the Betting Act 1953, the Racing (Totalisator Board) in 1961, Syariah Criminal Offences (Federal Territories) 1997 and Syariah Criminal Offences Enactments of States. Based on the provisions of the law, authorized gambling activities are gambling with a permit or license (Disa, M.N. 2011, p.7). This can be seen based on Section 3 of the Lotteries Act 1952 which provides as follows:

“Lotteries unlawful except with permit of Minister of Finance

3. Subject to section 16, any lottery promoted or conducted without a permit granted by the Minister of Finance under this Act or otherwise than in accordance with this Act shall be unlawful.”

Based on the above provision, lotteries are illegal unless obtained a permit from the Minister of Finance. This is also consistent with what the judge decided in the case of *PP vs Kit Chee Wan* [1998] 5 CLJ 582. In this case, the Court has explained the use of Section 14 (4) in which the Minister may grant a permit of lottery, whether publicly or privately, for the purpose of providing compassionate assistance to the people, the purpose of a religion other than Islam, the purpose of education or welfare for the society as follows :

“4.(1) The Minister of Finance may, in his discretion, grant a permit to any person or society for the promotion of a lottery, whether public or private, for the purpose of raising funds to be applied in aid of any philanthropic, religious, educational or welfare organisation, institution, body or service, or in carrying out any philanthropic, religious, educational or welfare scheme or project, or any specific work beneficial to the community or any part thereof or for the improvement of the social condition or for the advancement of the welfare of the community or any part thereof in some specified way or ways or for any other purpose of a charitable nature:

Provided that no funds so raised shall be applied for any purpose connected with the religion of Islam:

Provided further that where a private lottery is to be promoted by a society whose objects are predominantly of a social or sporting character, the purpose for which the funds are to be raised may include the furtherance of the objects of such society.

(2) Such permit may be granted either in respect of a particular lottery or in respect of a series or number of lotteries to be promoted within such period of time as the Minister of Finance may specify in the permit...”

In addition, there are provisions of Section 27 of the Common Gaming Houses Act 1953 which states as follows:

“Saving

27. Nothing in this Act contained shall affect any lottery authorized or licenced under the provisions of the Social and Welfare Services Lotteries Board Act 1950–1962 [Act 252], or of the Lotteries Act 1952 [Act 288] or any sweepstake promoted by a racing club established in Peninsular Malaysia on the result of a horse race; and any reference in this Act to gaming or to a lottery shall be deemed not to include a reference to any form of gaming or to any lottery so authorized or licensed.”

Based on the two provisions mentioned above, it is clear that gambling in Malaysia is not totally banned. Illegal gambling refers to those without permits whereas those with permits and licence will be considered as legal and not against any law.

Addressing Gambling Issues through Law

Despite being legally permitted by laws in Malaysia, there are still some parties and gamblers who conduct and involve in illegal gambling i.e. gambling without permit. This is based on newspaper reports that show the success of the authorities in combating illegal gambling activities involving horse racing and football with the high stakes. This shows that illegal gambling operators are not afraid of the actions taken by the authorities. Sadly though, many of such arrests involve Malay community (Disa, M.N. 2011, p.10). This occurs, probably due to the minimum punishment compared to the profits gain by the gambling operators. If we examined sentence towards illegal gambling operators, the penalties and fines are lightweight which allows for the parties to continuously conduct illegal gambling activities.

For Muslims, gambling offences have been provided in the Act / Criminal Offences Enactment of States. For example, Section 18 of the Syariah Offences (Federal Territories) Act 1997 provides a fine of RM3, 000 or imprisonment not exceeding two years or both to anyone who gambles, or is found in a gaming house. Apart from the above provision, there are also provisions in the laws of Malaysia applicable to Muslims and non-Muslims for their gambling-related offences. For example, Section 4(A) Common Gaming Houses Act 1953 provides that anyone who assists in the carrying on of a public lottery shall be guilty of an offence and shall, on conviction, be liable to a fine not less than RM20, 000 and not more than RM200, 000 and imprisonment not more than five years.

In Section 9 (1) of the same Act, it was also provided that anyone who purchases lottery, either personally or through agents, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM5, 000 or imprisonment not more than six months or both. In Section 7, it was further mentioned that those who committed the offense in relation to gaming machines, the punishment is a fine of not less than RM10, 000 and not exceeding RM11, 000 for each machine seized and imprisoned not less than 5 years. However, there are still cases where the offender has been brought to justice and convicted, but, after an appeal made to higher courts, the offender was acquitted and discharged. The best example is the case of *Lau Mooi Choo vs. Public Prosecutor* (1996) 1 LNS 45 where appellant was originally found guilty under Section 4A (a) Common Gaming Houses Act, 1953 and sentenced to imprisonment of two (2) weeks and fined RM 5 000. If not paid, the period of imprisonment shall be increased to nine (9) months. Nonetheless, in the appeal case, the Court ruled that the conviction and sentence is based on the charge and the evidence cannot be supported by law. In the case of *Tan Kok*

Siong @Tan Koh Heng vs. Public Prosecutor (1994) 1 LNS 158, the appellant has appealed against the fine of RM60, 000 and a year imprisonment imposed for offences under Section 4A (a) Common Gaming Houses Act 1953. Judge in this case then allowed the appeal on the grounds that there is reasonable doubt.

From the preceding analysis, it was observed that, despite having been in the system for ages, the laws meant for controlling gambling activities are still suffering with two major shortfalls namely; the minimum amount of fine / year of imprisonment and the failure of the Court in making use of the existing laws in the quest to control and reduce these gambling activities. The two shortfalls indicate the inadequacies of the existing laws in minimizing the negative impacts from gambling activities. Hence, stricter laws and thorough studies need to be implemented to guarantee sustainable solutions to this issue and ultimately in the future, it is hoped that gambling activities will gradually be disappeared from the society.

RECOMMENDATIONS FOR SOLUTIONS

Indeed, gambling habit has nothing to contribute towards a dynamic and excellent community, in particular from the aspects of character and personality. In addition, gambling activities do not augur well with the government's aspiration to take Malaysia to greater heights as a prosperous and developed nation. Thus, all parties should hand-in-hand play their respective roles in the pursuit to curb gambling activities regardless of whether such activities fall under the category of legal or illegal.

Individual

An individual could play his/her part in curbing gambling by strengthening his/her integrity, moral values and ethics. Religious education is also pertinent to educate a person in becoming a good personality.

Community

Member of the community may control gambling activities by reporting to the authorities should any gambling activities happen in their places. They may make a collective memorandum or lodge a complaint to the authorities if gambling permit was issued to gambling operators in their community. In addition, they may also practise self-regulation by reminding and advising people not to gamble.

Non-Governmental Organizations

NGOs may play their roles by urging or suggesting the authorities to review the existing gambling-related laws which have long been implemented in this country. They also can contribute towards abolishing gambling habit within the society by educating them through campaign etc. about the dangerous impacts of gambling.

Enforcement Agency

The enforcement agencies have to fully utilise their enforcement power by comprehensively and fairly carrying out their enforcement roles. To ensure its effectiveness, frequency of enforcement actions should be increased in tandem with the increase of gambling activities. This will help avoiding people from involving with gambling activities.

Government

Government plays a vital role in formulating policies and enacting laws in the country. There is a need for the Government to review or revamp any irrelevant existing laws and at the same time try to make such laws more stringent by increasing the fines and other penalties. On the other hand, taxes imposed on gambling operators should be increased every year to discourage them from developing and growing their gambling industries. The government, despite gaining a huge amount of taxes every year, should instead consider how much damages being suffered by many Malaysians due to gambling. It is not quite right for the Government to victimize the society particularly at the lower level just for the sake of feeding the gambling tycoons. The more incentives and facilities given to gambling operators, the

more social problems will occur within the society. Therefore, public health of the society should no longer be compromised just for the sake of money.

Judiciary

Judges who hear cases involving gambling should be more sensitive and decisive in the interpretation of gambling preventive laws that have been established and at the same time ensuring that justice can be upheld.

CONCLUSION

In sum, we can conclude that gambling habit and gambling-based industries do not have any positive contribution for Malaysian people as a whole, except to those who love to manipulate others’ weaknesses for own benefits. The myths which have always been used to justify the permissibility of gambling, such as; “gambling is a personal matter”, “allowing gambling shall meet the rights of non-Muslims in Malaysia”, “lawful gambling (with permit) can abolish or control illegal gambling (without permit/licence)”, “a total ban on gambling shall reduce the country’s income and impede the country’s economic growth”, “gambling is important to attract foreign tourists” and “banning gambling will lead to unemployment” are all extremely irrelevant and baseless. If we look from the perspectives of Constitution, freedom of religion and moral principle, none of the above excuses could be used to support and justify the need to legalise gambling activities.

In fact, the issuance of permit to gambling operators is totally against the spirit of Article 3 of the Constitution which made Islam as our country’s religion, contrary to freedom of religion concept which prohibits gambling and also inconsistent with basic moral principle of human being which against all negative social impacts of gambling. A question that needs to be pondered by everyone, therefore, is; can the billion ringgit-worth profit gained through gambling industries be used as an excuse for us to continuously let this activity to flourish in this country without any affirmative attempt to stop it in the future? Isn’t it the price of public health and the wellbeing of Malaysian people are far more expensive and valuable compared to an average of RM1 billion taxes gained by Government from gambling sector? Thus, cooperation of Malaysian people, from all walks of life, is very important to help reducing and eventually abolishing gambling habit from continuously weakening the social institutions of Malaysian people.

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