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Review Article

Legal Disharmony in Indonesia's Regulatory Framework: A Ratio Legis Analysis of the Classification of Gambling and the Standard Classification of Business Fields in Indonesia 92000 Vis-À-Vis Criminal Prohibition Under the Penal Code

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Abstract: This paper analyzes the legal disharmony between the Indonesian Standard Industrial Classification (KBLI) Code 92000, which classifies gambling as a business activity, and Article 303 of the Indonesian Penal Code (KUHP), which criminalizes gambling. Using a normative legal research method supported by theoretical foundations from legal certainty, legal harmonization, and sociological jurisprudence, the paper explores the philosophical, sociological, and juridical ratio legis behind this classification. The research concludes that the classification under KBLI is administrative and does not legitimize gambling activities. The paper suggests harmonization mechanisms to resolve legal contradictions and ensure regulatory coherence. Address the normative conflict and avoid further interpretive ambiguities, this paper proposes a series of harmonization mechanisms. First, there should be a revision or annotation of KBLI Code 92000 to clarify that its inclusion of gambling is not a recognition of its legality under Indonesian law. Second, greater inter-agency coordination is necessary, especially between the institutions responsible for economic classifications and those enforcing criminal law. Third, legislative synchronization efforts must be enhanced through the establishment of an integrated legal drafting mechanism to ensure that new or revised regulations do not conflict with existing criminal statutes.

Keywords: KBLI 92000; Gambling; Penal Code; Legal Disharmony; Ratio Legis

1. Introduction

The integrity of a legal system in a rule of law state (rechtsstaat) is heavily dependent on its internal consistency. In Indonesia, a notable case of potential disharmony emerges between KBLI 92000, which recognizes gambling as a line of business for administrative classification, and Article 303 of the KUHP, which criminalizes gambling. This raises fundamental questions regarding the interpretation of these regulations, the intent behind their creation, and their coexistence within Indonesia's plural legal system [1], [2]. Examines the legal disharmony that arises between two legal instruments within the Indonesian legal framework: the Indonesian Standard Industrial Classification (KBLI) Code 92000 and Article 303 of the Indonesian Penal Code (KUHP) that is:

Paragraph (1):

Any person who, without legal authorization:

- Offers or provides an opportunity for gambling to the public, or intentionally participates in the organization of gambling;
- Makes gambling a business or habitual occupation;
- Knowingly participates in gambling activities as referred to in point a and b, shall be punished with imprisonment for a maximum of 10 (ten) years or a fine of up to twenty-five million rupiah (Rp 25,000,000).

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Paragraph (2):

If the offender commits such acts as an occupation or with the intention of gaining profit, he or she shall be subject to a maximum imprisonment of 10 (ten) years and a maximum fine of twenty-five million rupiah (Rp 25,000,000).

Paragraph (3):

Gambling includes any game or contest, whether involving skill or chance, in which participants have the opportunity to win money or valuable items, and where winning is partially or entirely determined by luck or coincidence [3].

KBLI Code 92000 categorizes gambling as a legitimate business activity within Indonesia's economic classification system that is: KBLI 92000 about Gambling and Betting Activities, this classification includes:

- a. The operation of gambling facilities such as casinos;
- b. The provision of gambling and betting services through the internet (online gambling);
- c. The operation of lotteries and betting on sporting events or other games of chance;
- d. The manufacture and operation of gambling-related software and infrastructure;
- e. Other activities where participants stake money or valuables on an outcome predominantly determined by chance.

This category is part of the broader classification under Section R: Arts, Entertainment, and Recreation, particularly under Division 92: Gambling and Betting Activities. While Article 303 of the KUHP explicitly criminalizes gambling, prescribing criminal sanctions for those who operate or participate in gambling activities. This legal inconsistency poses serious concerns regarding legal certainty, the integrity of regulatory frameworks, and the coherence of law enforcement practices [4].

Employing a normative legal research method, this paper relies on doctrinal analysis supported by theoretical perspectives from the principles of legal certainty, legal harmonization, and sociological jurisprudence. These theoretical lenses are utilized to examine the philosophical, sociological, and juridical rationale (*ratio legis*) underpinning both the classification in KBLI and the criminalization in KUHP. Through this approach, the study aims to identify the foundational discrepancies between economic administrative classifications and the criminal law framework in Indonesia [5].

Philosophically, the coexistence of these contradictory provisions raises fundamental questions about the consistency and moral basis of Indonesia's legal system. From a sociological standpoint, the public perception of gambling regulation is fragmented; while some economic or administrative documents may implicitly suggest tolerance or acceptance, the criminal law simultaneously treats such conduct as a public offense. Juridically, this contradiction can undermine public trust in the law and open avenues for legal uncertainty, especially when administrative authorities issue permits or licenses that could be misinterpreted as legitimizing criminal conduct [6].

The research concludes that KBLI's classification of gambling under Code 92000 is purely administrative in nature. It serves as a statistical and bureaucratic tool intended for categorizing economic activities and does not confer legal legitimacy on the activities it lists. Thus, it must be interpreted strictly within the administrative domain, without prejudicing the criminal law provisions that prohibit gambling [7].

To address the normative conflict and avoid further interpretive ambiguities, this paper proposes a series of harmonization mechanisms. First, there should be a revision or annotation of KBLI Code 92000 to clarify that its inclusion of gambling is not a recognition of its legality under Indonesian law. Second, greater inter-agency coordination is necessary, especially between the institutions responsible for economic classifications and those enforcing criminal law. Third, legislative synchronization efforts must be enhanced through the establishment of an integrated legal drafting mechanism to ensure that new or revised regulations do not conflict with existing criminal statutes [8].

Ultimately, resolving this legal disharmony is essential to uphold the principle of legal certainty, enhance the credibility of legal institutions, and ensure that the regulatory system operates coherently. Without such harmonization, the legal system risks generating confusion, facilitating misuse, and diminishing the authority of criminal law provisions.

2. Proposed Method

This study employs normative legal research, focusing on statutes, legal principles, and doctrines. Three approaches are applied [9], [10]:

- a. Statutory Approach: Analysis of Article 303 KUHP and KBLI 92000.
- b. Conceptual Approach: Examination of legal certainty and harmonization theories.
- c. Analytical Approach: Investigation of the legal effects and potential conflicts arising from the simultaneous application of these norms. Primary legal materials include KUHPidana, KBLI, and Online Single Submission (OSS) regulations. Secondary materials involve scholarly works and journal articles, while tertiary sources include legal dictionaries and encyclopedias.

Theoretical Framework

Legal Certainty Theory (Hans Kelsen) According to Kelsen, a coherent legal order must avoid internal contradictions to ensure predictability and enforceability.

3. Results and Discussion

Gambling Classification under KBLI 92000 KBLI 92000 as regulatory framework for economic activity so classifies gambling under "Gambling and Betting Activities." The classification is intended for administrative purposes, such as licensing and statistical recording [11], [12]. This inclusion does not equate to legalization but reflects the pragmatic need to account for all economic activities, including those that may be restricted or conditional. In stark contrast, the KBLI to compiled and administered by the Central Statistics Agency (Badan Pusat Statistik or BPS) in collaboration with the Ministry of Investment/BKPM for categorizes various economic activities in Indonesia, functioning as a crucial reference for business licensing and statistical measurement. Under KBLI 92000, gambling and betting activities are listed as a business sector within the broader classification of "recreational and entertainment activities."

This classification encompasses:

- a. Casino operations
- b. Online betting which is regulated in
Article 27 paragraph (2) of Law Number 11 of 2008 on Electronic Information and Transactions (as amended by Law Number 19 of 2016)
Article 27 (2):
Any person who knowingly and without authority distributes, transmits, and/or makes accessible Electronic Information and/or Electronic Documents containing gambling content shall be subject to criminal sanctions.
Criminal Sanction (Article 45 paragraph (2)):
Article 45 (2):
Any person who violates the provision referred to in Article 27 paragraph (2) shall be punished with imprisonment of up to 6 (six) years and/or a fine of up to Rp 1,000,000,000 (one billion rupiah).
- c. Lottery operations
- d. Gambling-related software and services

The inclusion of such activities in KBLI suggests an implicit acknowledgment of gambling as a legitimate business activity, at least for statistical and investment categorization purposes. It may serve the following administrative rationales:

- a. Alignment with International Standards: The KBLI reflects harmonization with the International Standard Industrial Classification (ISIC) used by the United Nations.
- b. Statistical Comprehensiveness: Including gambling ensures the completeness of economic data, regardless of the legality of such activities.
- c. Foreign Investment Registration: Several foreign investment entities—especially in digital entertainment—may require classification under KBLI to register with the Online Single Submission (OSS) system. So that the KBLI classification, though administrative in nature, creates an aura of regulatory acceptance which stands in contradiction to the criminal status of gambling under the KUHP.

At the same time Criminalization of Gambling under Article 303 KUHP Article 303 KUHP criminalizes the facilitation, participation, and organization of gambling. The provision is rooted in moral, religious, and social grounds, treating gambling as a social ill that disrupts public order. Gambling under the Penal Code: A Normative Prohibition because the Indonesian Penal Code, inherited largely from Dutch colonial rule, has long criminalized gambling activities. Articles 303 and 303bis of the KUHP explicitly prohibit gambling in both physical and digital forms, penalizing organizers, facilitators, and participants. The primary legal rationale (*ratio legis*) of these prohibitions stems from considerations of public order (*orde public*), moral values, and the prevention of social deviance. Gambling is associated with addictive behavior, economic vulnerability, and disruption of familial and social cohesion. Accordingly, the Penal Code reflects a normative stance rooted in moral conservatism and a social protectionist approach [13].

The criminalization of gambling serves multiple purposes:

- a. Protection of Public Morality: The prohibition embodies the moral values prevalent in Indonesian society, particularly those influenced by religious norms.
 - b. Preventive Justice: Criminalizing gambling aims to deter individuals from engaging in economically and socially detrimental behavior.
 - c. Maintaining Social Order: Unregulated gambling is seen as a catalyst for criminality, debt, corruption, and social unrest.
- So that the KUHP expresses a strong normative message: gambling is fundamentally inimical to societal values and order, and therefore, must be suppressed by state authority.

Ratio Legis Analysis to understand this legal disharmony, one must delve into the respective *ratio legis* of each instrument. The Penal Code adopts a normative-functional approach, rooted in value-based legal traditions and societal protection. It functions to deter, punish, and delegitimize behavior that endangers moral order. Conversely, the KBLI adopts a technical-bureaucratic approach, rooted in administrative necessity rather than normative validation. It aims to categorize all possible economic activities, including those which may be illegal, under a standardized code system for policy planning, statistical clarity, and licensing pathways [14].

The fundamental disconnect lies in the purpose:

- a. KUHP = Normative Prohibition (what ought not to be done)
- b. KBLI = Economic Classification (what could be done for data purposes)

This divergence in objectives leads to conceptual confusion and enforcement ambiguity. Stakeholders especially investors, regulators, and law enforcers are left uncertain as to whether gambling constitutes a criminal activity or a licensable business sector. Implications of the Disharmony of these contradictory norms yields several critical implications [15]:

- a. Regulatory Uncertainty: Investors might be misled by the inclusion of gambling under KBLI 92000 into assuming legality or potential permissibility, only to face criminal sanctions under KUHP.
- b. Selective Enforcement: The lack of harmonization opens the door for arbitrary or inconsistent enforcement, influenced by regional discretion, corruption, or political pressure.
- c. Erosion of Legal Certainty: Legal certainty (*rechtzekerheid*) a cornerstone of rule of law is undermined when different legal instruments convey mutually contradictory messages.
- d. Policy Incoherence: The contradiction reflects a lack of policy integration between administrative-economic institutions and legal-judicial frameworks.
- e. Moral and Cultural Tensions: The implicit normalization of gambling through KBLI could be seen as clashing with religious and cultural resistance, especially in provinces with strong Islamic legal influence.
- f. Regulatory Confusion: Enforcement agencies may struggle to reconcile administrative permits with criminal statutes.

4. Conclusions

The classification of gambling under KBLI 92000 must be understood as administrative in nature and subordinate to criminal law prohibitions under the KUHP. The coexistence of these norms indicates a pressing need for regulatory harmonization. Possible

steps include clarifying KBLI annotations, aligning OSS licensing mechanisms with penal provisions, and public education campaigns on the legal status of gambling, because the tension between KBLI 92000 and the KUHP regarding gambling reflects more than a technical oversight; it symbolizes the underlying challenge of legal pluralism in Indonesia. While the KBLI serves bureaucratic and statistical needs, its lack of normative clarity risks legitimizing an activity that is explicitly criminalized. This disharmony jeopardizes legal certainty, undermines the coherence of law, and could potentially erode public trust in the regulatory system. The ratio legis of both regimes must be aligned. Administrative classifications should not mislead stakeholders into violating penal norms, and criminal law must be consistently enforced in light of evolving economic realities. Through legislative reform, administrative clarification, or judicial adjudication, Indonesia must resolve this normative conflict to uphold the integrity, coherence, and credibility of its legal system.

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