

REVIEW OF LEGAL UNCERTAINTY AND THEIR SOLUTIONS IN THE SETTLEMENT OF PROFESSIONAL FOOTBALL INDUSTRY DISPUTE BY NATIONAL DISPUTE RESOLUTION CHAMBER INDONESIA

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ABSTRACT

*This study aims to comprehend and find out the study of legal uncertainty and its solutions in resolving professional football industry disputes by the Indonesian National Dispute Resolution Chamber (NDRC). The collection of legal materials uses a literature study, which is obtained through an inventory of statutory directory databases, books, journals, and others in both printed and electronic form. This study shows that no matter how good the Indonesian NDRC's decision regarding the case of accumulating player salaries is, it will not provide justice, benefit, and legal certainty if PSSI as the executive institution is not consistent in carrying out its decisions. The most ideal legal solution is to socialize the law to all stakeholders of professional football in Indonesia, increase Human Resources (HR) in the legal field, and carry out legal transplants if *lex sportiva* cannot be applied professionally.*

Keywords: Lex Sportiva, Sports Law, PSSI, NDRC Indonesia

INTRODUCTION

Nowadays, conversation about football is not only limited to the field of sport and the most popular in the world, but also a very large industry that could be able to entertain all human beings, and build the economy in order to promote the general welfare.¹ As an industry, football involves clubs, leagues, agents and players.² Economically, the velocity of money in this industry which involves these 4 (four) components is really tempting. This can be possible because there are several sources of income that are quite large in this industry, where clubs are required to optimize revenue from 5 (five) aspects, namely sponsorship, television rights, match tickets, merchandise, and player transfer's sales.³

In the professional football industry in Indonesia, players and clubs have a professional working relationship based on an employment agreement. In generally, a professional football player's work agreement with a professional club refers to Article 1233 of the Civil Code, hereinafter referred to as the Criminal Code, which states that every engagement is born, either because of an agreement or by law. Basically, athletes including amateur athletes and professional athletes. Professional athletes are sports that are carried out to earn income in the form of money or other forms based on their sports skills.⁴

Athletes or soccer players get a salary from their club, so they are named professional soccer players. In the provisions of Law No. 3 of 2003 concerning Manpower, professional football players are workers. Labor itself in the sense of Article 1 point 3 of Law number 3 of 2003 concerning Manpower is everyone who works receives wages or other forms of remuneration. Regarding the status of professional soccer players as workers or not, it is still a debate because there are specifics that apply in the world of sports or the professional sports community, including the laws that govern the whole things. This specialty is often referred to as *lex sportive*.

Lex sportiva can be formulated as a sports law specifically regulating sports that is formed by the sports community itself and is enforced by the community institutions, without the intervention from the government or positive law in a country. Referring to article 1 paragraph (9) of the PSSI Regulation concerning the Indonesian National Dispute Resolution Agency (NDRC), a contract is a written agreement to play football which is agreed and signed by and between a football club or soccer school and the players. Thus, it is crystal clear that the agreement gives birth to an engagement. However, in the practice and implementation of the employment contract, problems arise such as the absence or unfulfillment of achievements by one of the parties; in the case of this research is the professional football clubs toward the athletes (professional football players).

In which, it automatically creates legal problems for each party to the agreement. Conflict or dispute derives from the terminology of the English word conflict, which means a dispute, wrangle, bicker or conflict. Conflict or dispute about something occurs between two or more parties. The communities are currently faced with several dispute resolution options, according to their level

¹ Hince Pandjaitan. *Memperkenalkan Lex Sportiva Di Indonesia: Problema dan Tantangan Dunia Olahraga di Indonesia dan Keterkaitannya Dengan Aspek Hukum [Introducing Lex Sportiva in Indonesia: Problems and Challenges in the Sports World in Indonesia and its Relation to Legal Aspects]*, makalah Seminar Pembangunan Hukum Olahraga Nasional (Depok: Fakultas Hukum Universitas Indonesia, 2010), p.6

² Harmon Gallant. *The Management of Sport: Its Foundation and Application*, McGraw-Hill Companies. Inc. 1221. p.306.

³ Eko Noer Kristiyanto, Implementasi Peraturan Menteri Dalam Negeri Nomor 13 Tahun 2006 Tentang Pedoman Pengelolaan Keuangan Daerah Dalam Pengalokasian Dana APBD Kepada Klub Sepakbola Peserta Liga Indonesia [Implementation of the Minister of Home Affairs Regulation Number 13 of 2006 concerning Guidelines for Regional Financial Management in Allocating Regional Budget Funds to Indonesian League Participant Football Clubs]. Bandung: UNPAD Press, 2008. p. 9

⁴ Pasal 1 ayat (15) Undang-Undang Nomor 3 Tahun 2005 tentang Sistem Keolahragaan Nasional [Law Number 3 of 2005 concerning the National Sports System].

of interest and fulfillment of their basic needs in view of the conflict or dispute itself. Conflicts or disputes can be resolved through litigation, non-litigation and advocacy mechanisms.⁵

Prior to the Indonesian NDRC, the settlement of legal disputes in the football industry, especially regarding arrears in the salaries of professional football players in Indonesia through the Indonesian Sports Arbitration Board (*BAKI*) and the Indonesian Arbitration Board of Sports (*BAORI*). *BAKI* is a special arbitration body regarding sports formed based on the results of the special congress of the Indonesian Olympic Committee (*KOI*) on 26 May 2010. The legal basis for selecting dispute resolution through *BAKI* is included in Article 88 of Law Number 8 of 2006 concerning the National Sports System or what is familiarly called the SKN Law.

Meanwhile, *BAORI* was formed by the *KONI* (Indonesian National Sports Committee) through the agreed articles of association. It was only on July 28th, 2019 that the Indonesian Football Association (*PSSI*) formed NDRC Indonesia as a pilot project of the Federation International de Football Association (FIFA) related to the settlement of legal disputes in the field of professional football. The legal protection for the formation of the Indonesian NDRC is the *PSSI* (Indonesian Football Association) Regulations of the Indonesian National Dispute Resolution Chambers ("NDRC"). NDRC Indonesia is expected to become a national arbitral tribunal in the field of football sport that has the competence to resolve disputes for disputing parties. However, there are still various issues in the implementation ranging from decisions that have not been carried out by clubs related to legal disputes, the non-existence of legal certainty given by the *PSSI* as the main head or the organization of professional football in Indonesia.

How then can an institution under *PSSI* act independently, accountably, and the decision can be carried out by the core organization? Is there really monitoring and evaluation activities on the implementation of these recommendations or does it just stop right there? What are the ideal legal solutions to the aforementioned problems? Based on these rhetorical questions, the researcher then views that there are legal issues, urgencies, and excesses regarding the importance of this research to be carried out.

RESEARCH METHODS

In this study, the author implemented the type of normative legal research. Normative legal research has the same definition as doctrinal research, namely library-based research that focuses on reading and studying primary and secondary legal materials. So that legal research is carried out to produce arguments, theories or new concepts as prescriptions in solving problems at hand.⁶ The nature of this legal research is prescriptive, which means that as a prescriptive science, legal science studies the purpose of law, legal concepts, legal norms, legal rules, validity of the rule of law and values of justice.⁷

The technique of collecting legal materials used is literature study, which is obtained through a directory database inventory of laws and regulations, books, journals, and others in printed and electronic form. The data analysis technique in this research is using prescriptive legal research, in order to get an argument for the results obtained through research sources.⁸

A. TYPES OF GST

a. Legal Uncertainty in the Settlement of Football Industry Disputes through Indonesia's National Dispute Resolution Chamber

Non-litigation efforts (arbitration) are taken as a last resort to obtain fulfillment and protection of the rights of soccer players who experience arrears in player salaries or termination of employment contracts. Arbitration disputes that occur in the world of sports or more specifically in professional football go through various layers or stages. In general, arbitration is a way of resolving a civil dispute outside the general court based on an arbitration agreement (agreement on the inclusion of an arbitration clause in an agreement) which is made in writing by the disputing parties.⁹ If dispute arises in a formal context, people usually choose to resolve it in court or out of court, such as arbitration as an alternative forum.¹⁰

The FIFA statute which does not require the involvement of the state including the judicial organ makes arbitration the most logical choice for the parties to resolve disputes, the institutionalization of arbitration has been doing well in countries whose football climate has developed.¹¹ Before the birth of NDRC Indonesia, the player represented by APPI filed a lawsuit to the Gresik Industrial Relations Court with a claim value of Rp. 458,810,118.00- (four hundred fifty eight million eight hundred ten thousand one hundred

⁵ Rachmad Syafa'at. *Mediasi dan Advokasi Konsep dan Implementasinya* [Mediation and Advocacy of Concepts and Its Implementation]. Malang: Agritek YPN Malang Kerjasama dengan SOFA Press. 2006. p.33.

⁶ Peter Mahmud Marzuki. *Penelitian Hukum [Legal Research]*. Jakarta: Kencana. 2011, p.3

⁷ *ibid*

⁸ Mukti Fajar ND dan Yulianto Achmad. *Dualisme Penelitian Hukum: Normatif dan Empiris [Dualism of Legal Research: Normative and Empirical]*. Yogyakarta: Pustaka Pelajar. 2010, p.183.

⁹ Pasal 1 angka 1 Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa [Article 1 point 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution]

¹⁰ Yansen Darmanto Latip. *Pilihan Hukum dan Pilihan Forum Dalam Kontrak Internasional [Choice of Law and Choice of Forums in International Contracts]*. Jakarta: UI. 2002. hlm. 243.

¹¹ Eko Noer Kristiyanto. *Urgensi Pembentukan Badan Penyelesaian Sengketa Antara Klub Sepak Bola dan Pesepak Bola Profesional Dalam Rangka Mendukung Pembangunan Ekonomi Nasional [The Urgency of Establishing a Dispute Resolution Body Between Football Clubs and Professional Footballers in Order to Support National Economic Development]*. Jurnal Rechtsvinding, Volume 7, Number 1, April 2018.

and eighteen rupiahs) Prior to filing the lawsuit, the APPI had submitted mediation efforts through the Manpower Office (Gresik Regency Government).

This effort gave birth to a referral via legal letter number 567/835/437.58/2019. Through case number 9/Pdt.Sus-PHI/2019/PN Gsk, dated Monday, July 8th 2019 on behalf of Plaintiff Ade Suhendra et. al. and defendant PT. Pesegres Jaka Samudra issued a petition that granted the plaintiffs' claim in its entirety. Especially in the field of professional football, there is an arbitration institution or alternative forum called NDRC Indonesia. This institution turns to be a national arbitration tribunal in the field of football, which has the competence to resolve disputes arising from between players and professional football clubs or soccer schools (*SSB*), disputes between soccer clubs, and disputes between soccer clubs and football schools, in which is also expected to be a solution or a FIFA pilot project in the field of legal disputes. Football-specified arbitration institutions have layers of various stages.

First, it is passed in stages through the Indonesian NDRC (level one and the level of appeal), the second is at the FIFA or AFC level called DRC. The legal basis for this particular formation of Indonesia's NDRC is FIFA Circular Regulation No. 1129 National Dispute Resolution Chamber (NDRC) Standard Regulation, Standard Electoral Code, and Standard Corporation Agreement. The provisions for the use of Indonesian NDRC arbitration are regulated in a concrete and specific manner by mentioning the settlement of disputes in the employment contract.¹² In the contract clause of the soccer player, it obliges the parties to submit to the NDRC if the consensus mechanism contained in Law Number 3 of 2005 concerning the National Sports System is not resolved. However, this leaves various basic questions because there are Indonesian NDRC decisions that have not been implemented by some of Indonesian football clubs, especially Indonesian League 2 clubs.

There are cases of arrears in the salaries of soccer players by Indonesian League 2 clubs PSPS Pekanbaru (Pekanbaru United Football Club), Mitra Kukar, Kalteng Putra (Putra Central Kalimantan Football Club), and PSMS Medan (Medan United Football Club). PSPS was in arrears on the salaries of 20 players for the 2018 season. As a result, the NDRC decided to impose a ban on player registration for 3 (three) transfer periods, before making payments regarding the rights (achievements) of the players. The total arrears of salaries of professional players made by PSPS Pekanbaru reached Rp. 781,000,000.00 (seven hundred and eighty one million Rupiah).¹³

As a result, PSPS Pekanbaru continued to participate in the competition that was held in the competition year 2019, even though the NDRC had issued a decision on the sanction. The execution party in the NDRC decision is *PSSI* themselves. From these facts aforementioned, it is clear that there is no clear legal certainty regarding the fate of football players in cases of arrears in player salaries. According to Gustav Radbruch, there are 3 (three) ideal goals of law, namely justice, expediency, and legal certainty. Obviously, in the case of the PSPS Pekanbaru club salary arrears, it does not provide justice, benefit, and legal certainty for the football players (professional athletes). The decision of the NDRC Indonesia regarding the legal disputes over salary arrears or the termination of professional soccer player contracts is final and appealed, meaning that it has permanent legal force. In this case, it is *PSSI* who has the authority to carry out the recommendations made by the NDRC Indonesia with various institutions including the *komdis* (disciplinary committee), player status committee, ethics committee, and so on and so forth.¹⁴

The executorial institution of the Indonesian NDRC Decision is *PSSI* as the highest position in the hierarchical order because this institution is a pilot project from FIFA. By continuing to give permission to play (to participate in official competitions) for football clubs that still have player salaries in arrears, it creates legal uncertainty for players whose rights have not been fulfilled. Legal certainty as one of the goals of law and can be said to be an effort to realize justice. The real form of legal certainty is the implementation and enforcement of the law against an action regardless of who does it. With the existence of legal certainty, everyone can predict what is going to happen if they take legal action, certainty is needed to realize justice. Certainty is one of the characteristics that cannot be separated from law, especially for written legal norms.

Law without certainty value will lose its meaning because it cannot be used as a behavior guide for everyone.¹⁵ Legal certainty demands that the executorial agency (*PSSI*) relinquish any strings attached or personal or group interests in making decisions. Legal certainty demands the rules or legal products to be applied equally to all stakeholders in the professional football industry in Indonesia so that the goal of absolute legal certainty is to be achieved in order to protect the public interest (which includes personal interests) with a function as the main motor for upholding justice in society (order), upholding citizens' trust upon the authorities (government), and upholding the authority of the rulers in the eyes of citizens.¹⁶

b. Ideal Solution in Professional Football Industry Legal Dispute Resolution by NDRC Indonesia

To sharpen the research and writing of this thesis, then the role of national law in resolving legal disputes in arrears in professional soccer salaries is considered important enough to be discussed. Whereas in a good system should not exist a conflict between the system parts. Additionally, there should be no duplication or overlap among the parts. A system contains several principles that

¹² Pasal 3 Regulasi NDRC Indonesia [Article 3 of Indonesia's NDRC Regulation]

¹³ Quoted from the statement by Eko Noer Kristianto, sports law researcher at the Ministry of Law and Human Rights of the Republic of Indonesia in the National Webinar "Football Player Contracts and Their Relation to the Covid-19 Pandemic." ["Kontrak Pemain Sepakbola dan Kaitannya Dengan Pandemi Covid-19."] On June 23rd, 2020, 13.00 WIB via Zoom Meeting Application.

¹⁴ The data was obtained from the results of an online interview with the Chairman of NDRC Indonesia, Amir Burhanuddin, S.H. on August 26th, 2021.

¹⁵ Cst Kansil. *Kamus istilah Hukum* [Dictionary of Legal Terms]. Jakarta: Gramedia Pustaka. 2009. p.270.

¹⁶ A. Ridwan Halim. *Evaluasi Kuliah Filsafat Hukum* [Evaluation of the Philosophy of Law Lecture]. Ghalia Indonesia. Jakarta. 1987, p.166.

guide its formation.¹⁷ There are various factors in the occurrence of salary arrears or legal disputes in the professional football industry in Indonesia. In these factors, low legal awareness of the parties (football players) in carrying out an engagement or agreement is included.

There are still some professional soccer players who do not possess copies of the contract, so when disputes occur, they do not have sufficient evidences or are problematic when submitting cases through the Indonesian NDRC arbitration body. The ideal legal solution for this particular problem is to socialize the importance of understanding the law to all actors or stakeholders of professional football in Indonesia. PSSI or APPI can work together with various universities, especially the Faculty of Law in increasing legal awareness of professional football industry performers in Indonesia. Resolving legal disputes through mediation procedures in addition to reducing the potential for negative news about a professional football club also serves to protect business potential because it has effect toward investors. Football is not only limited to the field of sport and the most popular in the world, but also a very large industry that can entertain all human beings, and build the economy in order to promote the general welfare.¹⁸

The character of Indonesian national law is in the form of a mixed legal system, but is mostly filled by western legal traditions, both in public and private law. A country also has an original legal system that is influenced by the world's major legal systems that influence each other equally strong. Variations of the meeting of the legal system according to Esin Orucu¹⁹ are possible to happen at the level of ideas, concepts, and solutions as well as at the level of structure, institutions, and methods. In a system, legal regulations do not stand alone, but instead are interconnected, as a consequence of the interrelationships between aspects of life in society.

The unity of a legal system can be done by adopting a legal system. Adoption stands for the entry of foreign legal institutions that have different legal systems referring to the transfer of legal norms or certain legal provisions from a certain country to another during a law-making process. Legal transplants are relevant in providing an ideal legal solution, if Indonesia's NDRC does not provide justice, benefits, and legal certainty to the parties experiencing disputes in the current era of the professional football industry. The strength of the decision from the NDRC Indonesia is in the execution stage, no matter how good the decision is, it will be meaningless if it cannot be executed. Improvement of Human Resources (HR) can be developed by the collaboration between institutions such as the Ministry of Law and Human Rights and the Faculty of Law at the University.

Legal certainty is able to create conducive situation and make the professional football industry ecosystem in Indonesia develop more rapidly. Through the growing professional football industry, it can promote public welfare and be hand in hand with the goals of the State contained in the 1945 Constitution of the Republic of Indonesia. Legal certainty is the clarity of behavioral scenarios that are general and binding on all citizens, including the consequences of the laws. Legal certainty can also mean things that can be determined by law in concrete matters.²⁰

CLOSING

1. Conclusion

The results of the NDRC Indonesia's decision which have been recommended not to be carried out by clubs that experience a dispute over salary arrears to players related to its implementation. That way it can create legal uncertainty about the fate or salary (rights) of players who are in arrears or unilaterally terminated contracts. Another problem found is that PSSI as the highest parent organization of professional football in Indonesia does not have a firm character in classic problems that keep repeating itself every year.

It is clear that the field of sports dispute resolution is an evolving field. Sports disputes are inevitable, and the needs of the sports community cannot fail to develop more rapidly. Coming out of the NDRC's not yet maximal role in the settlement of football industry disputes in Indonesia, the increase in human resources (HR) who are proficient in the field of sports law must be increased all over again.

2. Suggestion

The decision by the NDRC Indonesia must be carried out objectively without being polluted by the interests of certain parties, including one from PSSI itself or another party (*nobais*) by upholding the principles of legal justice, legal benefits, and legal certainty.

The NDRC decision must contain reasons and be consistent through systematic reasoning and legal logic (reason and argumentations of decision), where the arguments must be monitored and followed and can be accounted for in order to ensure the nature of openness and legal certainty in the professional football industry in Indonesia.

¹⁷ Inu Kencana Syafii. *Sistem Administrasi Negara Republik Indonesia (SANRI)* [Republic of Indonesia State Administration System]. Bumi Aksara. Jakarta. 2003, p.2.

¹⁸ Hinca Pandjaitan. *Memperkenalkan Lex Sportiva Di Indonesia: Problema dan Tantangan Dunia Olahraga di Indonesia dan Keterkaitannya Dengan Aspek Hukum* [Introducing Lex Sportiva in Indonesia: Problems and Challenges in the World of Sports in Indonesia and Its Relation to Legal Aspects], *makalah Seminar Pembangunan Hukum Olahraga Nasional*. Fakultas Hukum Universitas Indonesia. Depok. 2010, p.6.

¹⁹ Esin Orucu. *Critical Comparative Law: Considering Paradoxes for Legal System in Transition*. Vol. 4(1). June 2000. Netherlands Comparative Law Association, p.27

²⁰ Van Apeldoorn. *Pengantar Ilmu Hukum* [Introduction to Legal Studies]. Cetkan Kedua Puluh Empat. Jakarta: Pradnya Paramita. 2009, p.24.

Professional football players mainly have to be more proactive in understanding the contents of their contractual agreements with professional clubs and seek information or advice from people with expertise in sports law in particular.

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