



## **Dispute Resolution between Players and Clubs after the Enactment of Law Number 11 Year 2022 Concerning Sports**

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### **ABSTRACT**

Disputes between players and sports clubs usually occur because one of the parties violates the promise as agreed in the contract. There are differences in dispute resolution in similar cases in Indonesia. There were those who filed lawsuits at the District Court and there were those who complained to FIFA where FIFA then imposed sanctions on the club. This non-uniformity creates confusion especially for those who wish to question the rights that should be obtained. Based on this, the purpose of this study was to understand whether the courts have the authority to resolve disputes between players and sports clubs in Indonesia after the promulgation of Law Number 11 of 2022 concerning Sports. The research method used is normative law with a prescriptive analytical approach. The results of the study show that currently the court has no authority to adjudicate disputes between players and clubs. This has consequences, namely the resolution of disputes becomes more efficient in time but in terms of the right to obtain justice it becomes limited because the settlement by arbitration is final and binding so that no further legal action can be taken.

**Keywords:** *Sengketa, Pemain dan Klub, Olahraga*

### **1. INTRODUCTION**

Sports activities today are not just a means to nourish the body, but have become an industry. As an illustration, the Bali United football club, which won the Indonesian League 1 in 2022, has a valuation of Rp. 93.17 Billion.[1] This value consists of the accumulated market price of players based on performance on the field. In addition, the club gets funding from partners who sponsor the team for a certain period of time. As is usual in an industry, parties in the sports industry are always related to legal aspects, starting from contracts between players and clubs, insurance, transfers of players, permission to organize activities and so on.

In organizing activities, parties in the sports industry always want the implementation of activity programs in the sports sector to be harmonious so that organizational goals can be achieved. However, unfortunately, on several occasions, disputes still arose between players and football clubs which resulted in the aim of implementing the activity program in the field of sports

not being carried out. The first example is the case between Giancarlo Rodrigues, a soccer player from Brazil, and the Makassar Football Association (PSM). At the beginning of 2021, Giancarlo Rodrigues said that he did not receive six months of wages in 2020. For this incident, a report was made to FIFA and after going through an investigation process, FIFA imposed sanctions on PSM in the form of the following: First, a ban on registering football players both at the national and international levels with a maximum period of three registration periods or until the club's obligations can be completed. Second, based on a letter issued by PSSI, LIB will carry out the process of blocking the registration system for the PSM Makassar club until the club's obligations are fulfilled (Ref. FIFA Disciplinary Committee Decision Ref. nr. FDD-7297, FIFA 'Dispute Resolution Chamber' numbered Ref. nr. 20 -01217 and PSSI letter number 2053/UDN/836/I-2021). In another case, PT Sriwijaya Optimis Mandiri, which is a legal entity for the Sriwijaya FC football club, was sued by 28 players at the Palembang District Court on April 25

2019 for being in arrears in paying player wages for the 2018 season in the amount of Rp. 2.9 billion.[2] The players filed a lawsuit after previously trying to make non-litigation efforts but did not reach an agreement.

Looking at the two cases which have the same roots of the problem, it can be seen that the parties chose different paths in their resolution. In the Giancarlo Rodrigues case, the settlement agency that handled the case was FIFA and then decided sanctions against the club while in the Sriwijaya FC case, the parties (especially from the player's side) chose the litigation route, namely by filing a lawsuit to the local district court..

Differences in sports dispute resolution in similar cases are interesting to study. This is because the FIFA Statutes state that in the event of a dispute within the organization, it is the institution itself and the local government that is not allowed to intervene. On the other hand, the parties to the dispute are jurisdictionally located in the territory of Indonesia and considering that the dispute that occurs is in a civil area, the choice of the player as the injured party to file a lawsuit on the basis of default or violating the law is also very reasonable. However, so that there is no confusion among the disputing sportsmen, it is necessary to conduct research on the settlement of disputes in the field of sports after the enactment of Law Number 11 of 2022 Concerning Sports. Based on the background above, the purpose of this study is to understand whether the court has the authority to resolve disputes between players and sports clubs in Indonesia after the enactment of Law Number 11 of 2022

## 2. RESEARCH METHOD

This research uses normative legal research which is "concerned with the formulation of legal „doctrines“ through the analysis of legal rules"[3]. The normative legal research uses secondary sources of law or materials obtained from library materials.[4] Based on the above explanation, the research is conducted by looking at library materials related to research objects such as norms or rules[3]. This study will describe in a logic analysis of Dispute Resolution between Players and Clubs after the Enactment of Law Number 11 Year 2022 Concerning Sports.

## 3. RESULTS AND DISCUSSION

The development of sports in Indonesia does show changes in several aspects. Reform in sports can also be seen in aspects that are closely related to society, one of which is the legal aspect. Development of legal facilities in sports is very important to do. This is because the legal aspect is needed by every group for the parties,

especially parties who have an interest in sports activities. One of them is soccer which is a popular sport in Indonesia.

As stated above, football in League 1 with a large valuation is a measure of the size of a sporting event. Behind the size of the event, there are various disputes that occur from various parties who have an interest, especially disputes between players and clubs. Legal aspects, especially sports law, are needed in overcoming disputes that occur. The definition of dispute in the Indonesian dictionary means conflict. Conflict means there is opposition or conflict between people, groups, or organizations against one problem object..[5] Ali Achmad argues that "Disputes are conflicts between two or more parties that originate from different perceptions of an interest or property rights which can have legal consequences for both".[6]

Along the way, the legal aspects of the world of sports, especially in accommodating interests in dispute resolution, continue to grow. This development was marked by Law Number 3 of 2005 concerning the National Sports System (hereinafter referred to as the SKN Law) which has now been replaced by Law Number 11 of 2022 concerning Sports. In the dispute resolution regulations stipulated in the SKN Law, in accordance with article 88 of the SKN Law stipulates that dispute settlement prioritizes deliberation for consensus which if it is not successful will proceed to the general court in accordance with its jurisdiction. However, what is regulated in the SKN Law turns out to be very contrary to what is regulated by the FIFA statutes, where FIFA adheres to the *Lex Sportiva* principle which indicates that the state is prohibited from intervening in a problem that occurs in a sport which is the responsibility of the federation.

The principle of *Lex Sportiva* is a principle known as global sports law. According to Ken Foster "Global sports law, by contrast, may provisionally be defined as a transnational autonomous legal order created by the private global institutions that govern international sport". It is a *suigeneris* set of principles created from transnational legal norms generated by the rules, and the interpretation thereof, of international sporting federations. This is a separate legal order that is globally autonomous. This implies that international sporting federations cannot be regulated by national courts or governments. They can only be self-regulated by their own internal institutions or by external institutions created or validated by them. Otherwise they enjoy diplomatic-type immunity from legal regulation".[7] This statement means that *Lex Sportiva* is a rule made by the Sports Organization Board and must be obeyed by its members.



Law Number 11 of 2022 concerning Sports is an answer regarding the need for legal aspects that are required to adapt to the rules in sports federations, one of which is FIFA. The existence of the *lex sportiva* which is adhered to by various world sports federations means that district courts are not allowed to participate in deciding disputes in a sport. These problems made the sports law repeal the SKN law abolish provisions regarding dispute resolution through district courts and are required to use non-litigation settlements as stipulated in article 102 paragraph (3) of the Sports Law, namely through mediation, conciliation or arbitration. The elimination of the district court as a venue for player dispute resolution is an answer to the need for harmonization of national sports laws. This is because the SKN Law still conflicts with FIFA rules regarding dispute resolution, where dispute resolution in district courts can be an indication that a country is intervening in sports issues within a sports federation..

Disputes between players and clubs often occur, considering that each party has their own interests in it. Rules regarding dispute resolution are very important in dealing with the phenomenon of disputes in the world of sports so as to provide legal certainty for players and clubs in carrying out dispute resolution. Settlement of disputes between football players and clubs is only permitted through mediation, conciliation or arbitration, and it is not permissible to settle disputes through district courts, can be seen in article 68 of the FIFA statutes which states that "2. Resource to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations. Resource to ordinary courts of law for all types of provisional measures is also prohibited." which shows a strict prohibition regarding the resolution of disputes in football in district courts.

The dispute resolution mechanism between football players and clubs in Indonesia is divided into two regulations, namely Law Number 11 of 2022 concerning Sports and Regulations from the National Dispute Resolution Agency or commonly known as the Indonesian National Dispute Resolution Chamber, hereinafter referred to as NDRC Indonesia. Furthermore, in the regulations of the National Dispute Resolution Board or commonly known as the Indonesian National Dispute Resolution Chamber, hereinafter referred to as NDRC Indonesia, there is NRDC jurisdiction in Article 2 which states that NDRC Indonesia is an arbitration institution that has the authority to resolve problems between football clubs and players who have a working relationship that is in accordance with FIFA and PSSI rules. NRDC Indonesia also regulates training compensation disputes and contributions between football clubs and football clubs with football schools. The NRDC is expected to be able to take over and resolve disputes over problems in the

field of football in Indonesia because they are considered more effective, dynamic and less time-consuming.[8] The clause for resolving disputes between football players and clubs is regulated in Article 3 which states that any dispute whether it is a demand or an interpretation of the terms of the contract which cannot be resolved using amicable deliberations to reach a consensus, it is mandatory to submit it to the NDRC Indonesia so that it can be further examined, and decided how to resolve the dispute and the decisions made are binding and final.

In football, arbitration is a step in the dispute resolution mechanism in Indonesia. In 2021, FIFA issued a sanction because the PSM Makassar football club had not paid wages for 6 months in 2020 to a former foreign player named Giancarlo Rodrigues. The sanction was issued in letter number 024/LIB-KOM/II/2021 which contains the firmness of FIFA's decision in handling the dispute between Giancarlo Rodrigues and PSM Makassar. Disputes or conflicts often occur because both parties have their own interests. Based on the description of the case above, Giancarlo Rodrigues, who acts as a former PSM Makassar football player, chose to use the arbitration route in accordance with the procedure for the mechanism for resolving football disputes in Indonesia.

Dispute resolution through arbitration which is included in the non-litigation method in disputes between players and clubs has advantages and disadvantages. This happens because each method of dispute resolution has different characteristics. Dispute resolution using non-litigation methods, especially by arbitration, which is now increasingly being used in resolving disputes. Arbitration promotes the win-win solution principle and tends to be more flexible than litigation. The parties can resolve the dispute according to the wishes of the parties, both in terms of confidentiality of the dispute, to determine a trusted arbitrator.[9] Arbitration also has a relatively short travel time compared to litigation which can take a very long time. This is because the decision of the arbitration is final and binding,[10] so that the dispute resolution process is limited to the issuance of an arbitral award and no other legal remedies that can be taken. The time used is shorter so that the resolution of disputes between players and clubs is more efficient in terms of time than litigation dispute resolution.

The loss of a dispute resolution mechanism in the world of sports, especially in disputes between players and clubs through district courts has its own consequences. The existence of arbitration as a mechanism for resolving disputes between players and clubs has the potential to limit justice for players who are in dispute. Players do not have a higher position than the club so

that the chances for players to get justice in disputes will be smaller. The character of arbitration that prioritizes a win-win solution is very dependent on the arbitrator who is required to have the ability to provide decisions that give satisfaction to the parties to the dispute, because basically the club which has a position above the player will feel it has a bigger interest than the player. The nature of the final and binding arbitral award also precludes the player from pursuing other legal remedies, if he has not received justice in the arbitral award.

#### 4. CONCLUSION

Sports activities today are not only an alternative to keep the body healthy, but have become a growing industrial area. The industry allows parties to have problems that lead to disputes. There are a number of disputes whose resolution is also different, namely through litigation, which is resolved in the local district court and non-litigation, namely through the arbitration process. Football is closely related to the legal aspects of sports and is marked by Law Number 3 of 2005 concerning the National Sports System, hereinafter referred to as the SKN Law and replaced with the Sports Law. The SKN Law stipulates that dispute resolution is carried out by deliberation and if it is not successful it will proceed to the District Court. This is contrary to the FIFA statutes which adhere to the principle of *lex sportiva* which prohibits government interference in a sporting activity. The Sports Law is in line with the principle of *lex sportiva* which excludes the District Court as a means of resolving disputes so that the district court does not have the authority to resolve disputes between players and football clubs. Dispute resolution mechanisms between players and football clubs in Indonesia are divided into two, namely the Sports Law and the Indonesian NDRC. The Sports Law facilitates the NDRC to carry out settlements by mediation, conciliation and arbitration. The NDRC focuses on arbitral settlement to resolve disputes. Arbitration has a final and binding nature and is considered effective. The loss of a dispute resolution mechanism in the world of sports, especially in disputes between players and clubs through district courts, has consequences. Players do not have a higher position than the club so that the chances for players to get justice in disputes will be smaller.

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#### REFERENCES

- [1] T. B. Mukti, "5 Tim Liga 1 Indonesia dengan Valuasi Tertinggi, Persib Ungguli Persija," *Bola Bisnis.com*, 2022. .
- [2] CNN Indonesia, "Tunggak Gaji Rp2,9 Miliar, Sriwijaya FC Digugat Pemain," *CNNIndonesia.com*. .
- [3] S. Soekanto, Soerjono and Mamudji, *Normative Legal Research, A Brief Overview*. Jakarta: First Printing, PT. Raja Grafindo Persada, 2007.
- [4] P. Langbroek, K. Van Den Bos, M. S. Thomas, M. Milo, and W. Van Rossum, "Methodology of Legal Research : Challenges and Opportunities," *Utr. Law Rev.*, vol. 13, no. 3, pp. 1–8, 2017, doi: 10.18352/ulr.411.
- [5] Departemen Pendidikan Nasional Republik Indonesia, *Kamus Besar Bahasa Indonesia*. Jakarta, 2015.
- [6] A. A. Chomzah, *Seri Hukum Pertanahan III Penyelesaian Sengketa Hak Atas Tanah Dan Seri Hukum Pertanahan IV Pengadaan Tanah Instansi Pemerintah*. Jakarta: Prestasi Pustaka, 2003.
- [7] K. Foster, "Is There a Global Sports Law?," *Entertain. Sport. Law J.*, vol. 2, no. 1, pp. 1–18, 2016, doi: 10.16997/eslj.146.
- [8] G. G. Sihasale, S. Setyadji, and Hufron, "Legal Protection of Fundamental Rights in Indonesian Footballers," vol. 02, no. 01, pp. 17–28, 2021.
- [9] I. Sari, "Keunggulan Arbitrase Sebagai Forum Penyelesaian Sengketa Di Luar Pengadilan," *J. Ilm. Huk. Dirgant.*, vol. 9, no. 2, pp. 47–73, 2014, doi: 10.35968/jh.v9i2.354.
- [10] N. Siregar and R. Saragih, "Penyelesaian Sengketa Para Pihak di Bidang Bisnis melalui Arbitrase," *To-Ra*, vol. 2, no. 1, p. 305, 2016, doi: 10.33541/tora.v2i1.1133.