

CHARACTERISTICS OF PROFESSIONAL SPORTS IN INDONESIA IN CONTRACTS

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ABSTRACT

Legal studies have two types of research, namely normative legal research and empirical legal research. Normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal problems faced. Normative legal research is carried out to produce new arguments, theories or concepts as prescriptions in solving the problems at hand. The research of this article aims to compare the principles of contracts in civil law and the principles of contracts for professional sports actors in conducting a business agreement so that the contract principles contained in contracts carried out by professional sports actors are found. In theory, this article will examine the extent to which contracts in civil law that apply in general can be translated into contracts for professional sports players that will apply specifically or *lex specialis* because they contain elements of civil and business contracts into a special contract form that characterize the contract of professional sports players.

Keywords: General Contract Principles, Civil Law, Professional Sports Actors, Sports Law.

INTRODUCTION

Contract law is a very important field of law in the era of globalization, especially in supporting activities in the trade sector and business transactions at both national and international levels, including in the field of sports. Uniting the relationship between the parties in the national and international scope is not a simple matter. This involves differences in systems, paradigms, and the rule of law that applies as a coercive rule to be obeyed by the parties in each country.

Contracts are an inherent part of business transactions, both large and small, both domestic and international. Its function is very important to ensure that all expectations formed from the promises of the parties can be realized and fulfilled. In the event of a violation, compensation must be paid. In order for the contract to be valid, the parties must agree on everything contained in the agreement. Basically an agreement is a meeting or conformity of will between the parties in the

agreement. A person is said to give his consent or agreement if he really wants what was agreed upon. (Sudargo Gautama:1995:78)

Describes the notion of agreeing as a requirement of an agreed will (*overeenstemende wilsverklaring*) between parties. The statement of the party offering is called the offer. And the statement of the party who accepts the offer is called acceptance. Thus it can be said that the offer and acceptance are very important elements to determine the birth of the agreement. (Mariam Darus Badruzaman 1994: 24)

Conditions for the validity of the contract, regarding both the subject and object of the agreement. The first and second terms relate to the subject of the agreement and the cancellation for both conditions is voidable. While the third and fourth requirements regarding the object of the agreement and the cancellation for the two conditions mentioned above are null and void. Can be canceled (voidable) means that as long as the agreement has not been submitted for cancellation to the competent court, the agreement is still valid, while null and void means that the agreement has been invalid since the first time, so the law considers that the agreement never existed before. (Ridwan Khairandy 1990:90)

Before a contract is drawn up or before a business transaction takes place, there is usually an initial negotiation. Negotiation is a process of trying to reach an agreement with other parties. It is in this negotiation that the bargaining process takes place. The MoU is the recording or documentation of the results of the initial negotiations in written form. Although the MoU is not yet a contract, it is important as a guide for further use in further negotiations or as a basis for conducting feasibility studies or contracting. (Salim dan Abdullah 2009)

The legal principle of "*freedom of contract*" is contained in Article 1338 paragraph (1) of the BW which reads as follows: "*All agreements made legally are valid as law for those who makethem*". and in paragraph (3) it requires that: "*An agreement must be executed in good faith*". Thus, the parties are not only bound to the contents of the agreement (terms) that have been clearly agreed upon, but also to all the contents implied in their agreement. (Jason T. Erbo 1994:135)

This good faith does not only refer to the good faith of the parties, but must also refer to the values that develop in society, because good faith is part of society. This good faith ultimately reflects the community's standards of justice or propriety. With this meaning, it makes the standard of good faith a universal social force that regulates their social relations, namely that every citizen must have an obligation to act in good faith towards all citizens.

Good faith in contract execution refers to objective good faith. Standards used in objective good faith are objective standards that refer to an objective norm. With such an approach, the contextual meaning of good faith is determined by each individual because, lest one breach of duty to God by failing or refusing to keep's promise, it is important to act in a reasonable or reasonable way towards others. This is a subjective good faith concept that refers to a subjective moral standard because it is based on individual honesty.

In this case, the fulfillment of salaries by the club to players who have not been fulfilled even though the contract period of the player's work in the agreement that has been made has expired. The club bears debts for the salaries of players, coaches, management, as well as for teamoperational funds. The player should get his rights in accordance with the contract that has been agreed by the player with the club. Because the player has carried out his achievements in accordance with the agreed agreement. In accordance with the provisions of Article 1338 paragraph (1) BW. And as regulated in Article 1234 BW, an agreement is a legal relationship to do something, give something and not do something.

Where the player has carried out his achievements, then there is an obligation for the club to fulfill his achievements also to the players as previously agreed. The player's work agreement or contract creates a legal relationship because it has been regulated in the BW regarding agreements and engagements. Professional Football Players, of course, do not want to be equated with most 'factory workers'. Football players with their talents, of course, are not equal to factory workers who only rely on handyman work because they actually cannot be compared with any other profession. Football Player Profession, is a specific profession. Thus, the meaning of 'professionalism' or the understanding of 'rights and obligations' must also have a specific meaning, so there is no need to idiom with other professions, such as labor for example.

If the 'meaning' of professionalism, rights and obligations has not been widely felt, we need to expand that meaning so that the dignity of football players is not as narrow as the meaning of 'labor'. The players are like 'spoiled children' who don't want to know the difficulties of their parents in meeting all their needs. Their obligations, narrowly interpreted only by training and playing, nothing more than that. Even though as part of the club, they must also be concerned if the club lacks spectators or lacks sponsors.

Very few footballers have a 'high loyalty' to their club with a career and work throughout their life there, such as becoming a coach or manager of their club in the future. There are many examples in the world, players who are loyal and continue to work until retirement at their club. Professionalism in the normative sense is everything as stipulated in the employment contract. Professionalism in sports, must be able to create heroism based on loyalty and oriented towards the survival of the players and their clubs.

Survival must also be defined as 'hard work' to survive when it is difficult or deprived, and develop oneself when well-off, all of which have to be done with the club. Cannot be separated, there is no meaning for players without a club, and vice versa.

METHOD

The type of research used by the author is an empirical legal research method, namely a legal research method that serves to see the law in a real sense and examines how the law works in the community as the title of this article about the principle of contracts in the professional sports business.

In this study, the author uses empirical legal research methods and conducts research by obtaining the data needed for processing in answering the problems studied in the research. The research method is a method used in collecting research data and comparing it with a predetermined standard size. Based on this the author uses several appropriate research tools in research methods in order to obtain maximum results. In an empirical legal research, of course the author will conduct a document study by conducting a literature study which will become legal materials supporting the author in completing this article.

DISCUSSION

a. Contract Principles in Civil Law

General Principles of Law in sport are principles that apply in all countries or in the majority of the country's legal systems in the world. General law principles are known through surveys and inventories of various national laws to find principles that generally apply in various countries. International Contracts (*International Contracts*) should be interpreted in the broadest sense possible. That is, the U P (*Unidroit Principle*) is simply not suitable for use in business contracts that do not contain foreign elements at all. This means that these international elements can appear in the form of: place of business, citizenship or domicile of the parties who are in different countries. (Subekti 2003:8)

The general legal principles of contract law apply to sports contracts. Managers, agents, and executives in the sports industry are asked to examine, draft, and interpret contracts often as part of their job. A player agent must be familiar with standard player contract terms as well as other supporting documents to properly represent his or her clients.

In general, in international contract law there are two fundamental principles consisting of: 1) the principle of sovereignty/supremacy of national law; and 2) the basic principle of freedom of contract (*freedom of the contract or the party's autonomy*). This reflects that national law plays a very important role in the formation of international contracts and cannot be contested. The binding power of national law is absolute and its position is as the most important law. Every subject, object, action, event, and legal consequence including trade transaction as outlined in a contract that occurs within the territory of a country is absolutely subject to the said national law.

The contract deals with the concept of forming and enforcing an agreement between the parties. Contracts provide stability to the market so that business people can rely on the goodwill of others when planning and engaging in business. Not all promises are enforced as contracts. A contract has been defined as an agreement between two or more parties that creates an obligation to do or not to do certain things.

Many sports contracts are executed through a process of bidding by one party and counter-offering by the opposing party. Negotiations can continue until the parties reach an agreement and have a meeting of minds, thus creating a binding and enforceable contract. Many contract negotiations are initiated by a team making an offer with an "offer sheet" which the

player must respond to within a certain time frame established by the collective bargaining agreement.

Contracts in sports are no different than contracts in everyday life. Athletes are compensated for their services with a paycheck just as anyone else. This section examines the nature of personal services contracts of professional athletes. Contracts in sports are no different from contracts in everyday life. Athletes receive compensation for their services at a salary like everyone else. This section discusses the nature of professional athlete personal service contracts. Perhaps the most important relationship in the field of professional sports is that between individual players and team owners. This contractual relationship is governed by the basic principles of the contract. Most sports leagues now have Standard Player Contracts that serve as a model for employment contracts between players and owners. The contract model can be modified to accommodate the specific needs and individual talents of players.

b. Contract Principles in Professional Sports

With the rise in salaries in professional sports, most players are now represented by agents. Typically, this relationship is governed by a Standard Contract Representation which defines the duties and compensation of the agent. In an effort to regulate agency activities, many state legislatures now require agents to register with some type of administrative body.

The position of professional athlete has become recognized as one of the most financially lucrative professions. Sponsors often pay thousands of dollars for an athlete to promote their product. Sports contracts can impact the lives of thousands of people. Many athletes are being urged to abandon their amateur status in order to be compensated for their services as professionals. Employment contracts with athletes must always be in writing and must include requirements by the athlete such as promising to refrain from certain actions, which are harmful to the athlete. According to Article 55 of Law Number 3/2005 concerning the National Sports System, it explains that professional sports actors are people who carry out their professions according to their expertise who meet the requirements such as having been an amateur athlete, passing mediate tests and receiving a certificate of waiver of rights as an amateur athlete who has the right to be accompanied by, inter alia, managers, trainers, medical personnel, psychologists and legal experts; participate in the championship at all levels in accordance with the provisions; obtain guidance and development from the parent sports organization, professional sports organization, or functional sports organization; and earn a decent income.

Most sports contracts are express contracts. An express contract is a contract in which the agreement of the parties is proven by their words, either spoken or written. There are hardly any more implied contracts in the sports industry. An implied contract is a contract in which the agreement is not proven by written or oral words, but by the actions and behavior of the parties.

Based on the explanation above, the author divides the principle of contract in professional sports consisting of the principle of trust, the principle of justice, the principle of

legal certainty, the principle of legal protection, and the principle of compensation.

1. The principle of trust, this principle implies that everyone who will enter into an agreement will fulfill every achievement that was held between them behind the day because both parties already know the ability of the player to be contracted and the player knows the target or achievement of the club in competing so that in making a contract both parties trust each other.
2. The principle of justice, this principle implies that legal subjects who enter into an agreement have the same position, rights and obligations under the law. They should not be differentiated from each other, even though the legal subjects are of different skin color, religion, and race so that in making the contract later it will be fair and both parties are able to fulfill their achievements without any party feeling pressured in making the contract.
3. The principle of legal certainty The agreement as a legal figure contains legal certainty. This certainty is revealed from the binding power of the agreement, namely as a law for those who make it.
4. Legal Protection Principle. This principle implies that the debtor and creditor must be protected by law. However, what needs to be protected is the player because this party is in a weak position and is disadvantaged in making a contract.
5. Compensation/Indemnification Principle, this principle implies that every party who enters into a work agreement within a certain period of time, and the contract period has not expired, one party terminates the other party's contract, in this case the club terminates the player's contract and no longer performs its obligation to pay the player's rights within the remaining time of the contract ending, the party who has made the default is obliged to provide compensation to the party who was harmed as a result of the unilateral termination of the contract.

The five principles mentioned above gave birth to the concept of a contract in professional sports, which is motivated by a theory regarding when an agreement will occur so that at that time the contract is considered to have entered into force which academically, there are various theories about contracts, each of which tries to explain based on its grouping. and the criteria for each. Contract law in professional sports comes from several sources, such as general law, and federal and state laws. Contracts are formed in every area of the sports industry. There are contracts for broadcasting deals, sponsorship, ticket sales, rental of facilities, merchandising and licensing, and players and coaches. (Athiyah 1983:5)

This is reflected in the existence of the concept of Sports Law as part of the National Legal System, which is a legal entity consisting of legal elements that are interconnected and work together as a unit to achieve certain goals which consist of: (1) Regulations regarding human behavior in social interactions., (2) Regulations are made by authorized bodies. (3) Regulations

are coercive. and (4) Sanctions for violators of these regulations

c. Characteristics of Contracts in Professional Sports

Contracts in professional sports define the rights and responsibilities of the various participants in the professional sports business. The previous standard player contract was an appendix, namely an employment contract that specified the player's rights. Standard Player Contracts (SKP) can be modified if certain players have "unique abilities (*advantages that can increase selling points such as high technical skills in sports and also good looks so that they have a selling point for private party advertising products*) namely the ability to explore based on technical abilities and through existing popularity. The more "unique" the player is the greater the ability to modify SKP by attaching standard modifications, such as: no cuts, no trades or attendance articles. Management usually does not give anything to the players in this case, unless it has been agreed in the contract of both parties.

Sports player contracts consist of several kinds of agreements and are found in all professional sports, one of which is in football, including: Contracts between professional players and professional club management, contracts between professional coaches and professional clubs and contracts between professional players and third parties (*private*) in terms of right image and advertisement. (Walter T. Champion 2005:4)

In the context of designing a contract for professional sports players, the parties referred to are professional sports actors consisting of athletes and coaches represented by agents with professional sports competition participating clubs whose professional status is a legal entity in the form of a Limited Liability Company (*hereinafter referred to as PT*) which represented by the board of directors or management.

The party who is given the power in professional sports is also called the Agent where, the power given is given through an agreement as outlined in the contract and regulated in article 1799 BW. Parties who can become agents are parties who understand and understand sports management and know about contract law and get recommendations from the association of sports organizations where the party is domiciled.

In protecting the interests of professional football, FIFA itself has made the references contained in CL No. 1171 clearly regulates the clauses that must be regulated in a work contract between a professional footballer and a professional club.

Supervision of Professional Contract Content is One of the protections for professional footballers is to hold a direct supervision system by an institution recognized by the football association in this case PSSI.

The provisions of point 1.2 CL No.1171 stipulates as follows: Each official party must receive a photocopy of the contract and one photocopy must be given to the Professional Association and/or Member Association for registration based on the provisions of the competent football team) The essence of this provision is the obligation of PSSI in supervise

professional contracts which not only aim to protect footballers but also monitor whether the clauses in the contract are in accordance with the statutes and regulations of the FIFA and PSSI organizations as well as the provisions of labor law applicable in Indonesia.

Professional Clubs As Parties to Professional Footballers Contracts and in relation to the status of professional clubs, the provisions of Point 1.4 CL No.1171 clearly state the following: The agreement states the full official club name (including registration number) and full address as well as name, surname, and the address of the person who officially represents the club.

Professional football players can only be used by football clubs and official associations. The union is defined as the National Club Permission Rules/Manual as legal applicants. The persons must be direct or indirect members of the national football association and/or professional association and properly registered. Other official unions cannot use player contracts without the approval of the competent national football team and/or FIFA.”

However, specifically regarding employment law, FIFA as regulated in point 3.1 CL No. 1171 which clearly recognizes the applicable labor law, as reads as follows: “The agreement regulates the employment contract of professional players. The national law of the country whose club is supposed to be registered enforces the agreement, if the law is not approved. National labor laws may provide for mandatory provisions, which are irreversible by the parties and must be considered”.

On the other hand, point 11.2 CL No.1171 stipulates that Clubs and players must comply with statutes, regulations including codes of ethics, decisions of FIFA, Guilds, member associations and also Professional Associations (if necessary) which form an integral part of this agreement. Both parties expressed their appreciation through signatures.

After seeing the draft contract for professional football players that have been standardized by the Indonesian League Agency and PT. Liga Indonesia seems that Professional football players in Indonesia in contracting with clubs without being represented by agents or managers as representatives of players who should understand the law of contracts or agreements and the principles contained in a contract or agreement and understand the wishes and talents of players which he represents so that the player only concentrates on physical strengthening and developing techniques and skills without thinking about the administrative matters contained in the contract. Regarding the contents of the draft contract, it appears that there is no article regarding insurance for the player where this is really needed by the player to carry out his obligations as a professional player for the club that signed him for the duration of the contract. This is very contrary to the provisions or regulations issued by FIFA where insurance is a mandatory thing that must be stated in a contract in professional football.

Regarding the image rights contract, it must be regulated in the contract with the club. This club has the right to use the image of the player in connection with the Club's promotions, playing activities, club branding, and football-related products or services. In addition, it does not prohibit or prevent players from entering into other settings in relation to advertising, marketing

or promotion. This Agreement (Agreement) was made on (date) by and between Athletic Equipment Manufacturer (hereinafter AEM), a company regulated and under the laws of the state (name of country), with its principal office located at (street address, city, area, country, postal code), herein referred to as AEM, and (Athlete's Name from (street address, city, county, country, postal code), hereinafter referred to as Athlete.

AEM agrees that neither the use of the Athlete Identification nor the items used in connection with the Athlete Identification will be made under this Agreement unless and until the same has been agreed by the athlete. Athlete agrees that any material, advertising or otherwise, submitted for approval as provided for in this Agreement may be deemed by AEM to have been approved under this Agreement if the same is not approved in writing within (number of days) business days after receipt of the material. Athlete agrees that material submitted under this Agreement will not be unreasonable to refuse.

Upon expiration of the Contract Term, all of AEM's rights with the use of the Athlete Identification will cease altogether and AEM will not subsequently use or reference the Athlete Identification in any advertising or promotion in any way. It further agrees that upon the expiration of the Contract Term, AEM will not advertise, promote, distribute or sell any goods in connection with the use of any names, figures, designs, logos, trademarks or trade names similar to or consistent with the Athlete Identification.

This agreement does not constitute and should not be construed as an association, partnership, joint venture or principal and agent or employer and employee relationship between Athlete and AEM. Neither party shall have the right to oblige or bind the other party in any way, and except as provided for in this Agreement, nothing contained in this Agreement shall confer, or is intended to grant, any right to any third Party.

Since many sports contracts affect parties from different countries, agreeing on laws can resolve jurisdictional issues. This Agreement will be governed by, construed and enforced in accordance with the laws of the Country (Name of Country).

CONCLUSION

1. From this understanding, it can be concluded that the principle of law is not a concrete rule of law, but a fundamental thought that is general in nature or in other words, is "asbabul nuzul" from the concrete feelings contained within and behind a legal system. So that this legal system is based on a universal nature for the birth of a legal regulation. This means that legal regulations can eventually be returned to these principles.

2. Contracts executed either between professional players and professional clubs, between professional players and third parties (private) or between professional clubs and third parties (private) in terms of distribution of match broadcasting rights are an inherent part of business transactions both on a large scale and small, both domestic and international. Its function is very important to ensure that all expectations formed from the promises of the parties can be realized

and fulfilled. In the event of a violation, compensation must be paid. Thus the contract is a means to ensure that what the parties want to achieve can be realized in a working relationship.

3. This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind prior to the date of this Agreement shall be non-binding to either party except to the extent incorporated in this Agreement.

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