

Building a Framework for Sports Dispute Settlement: Legal Mechanism and Alternative Approaches in Indonesia

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ABSTRACT

This study examines Indonesia's sports dispute resolution landscape as well as the potential for building a comprehensive sports dispute settlement framework in Indonesia, analyzing current regulatory practices, arbitration processes, and alternative dispute resolution (ADR) mechanisms in the context of sports activities in Indonesia. This research will use doctrinal legal research methods and employs secondary data. Those data especially in the form of several legal materials, such as primary legal materials like acts or regulations as well as secondary legal materials like some studies conducted by several researchers previously. Data analyze will be undertaken qualitatively. By analyzing these issues, the paper outlines the necessary adjustments to Indonesia's regulatory structure and the potential benefits of a dedicated sports dispute resolution body. It is important to harmonize arbitration processes with international standards to foster credibility especially after Indonesia has unified several arbitration institutions become only one institution, namely BAKI.

Keywords: Good Sport Governance, Legal Certainty, Sports Arbitration

ABSTRAK

Penelitian ini mengkaji lanskap penyelesaian sengketa olahraga di Indonesia serta potensi untuk membangun kerangka penyelesaian sengketa olahraga yang komprehensif di Indonesia, menganalisis praktik regulasi saat ini, proses arbitrase, dan mekanisme penyelesaian sengketa alternatif (ADR) dalam konteks kegiatan olahraga di Indonesia. Penelitian ini akan menggunakan metode penelitian hukum doktrinal dan menggunakan data sekunder. Data tersebut terutama berupa beberapa bahan hukum, seperti bahan hukum primer seperti undang-undang atau peraturan serta bahan hukum sekunder seperti beberapa penelitian yang telah dilakukan oleh beberapa peneliti sebelumnya. Analisis data akan dilakukan secara kualitatif. Dengan menganalisis isu-isu ini, makalah ini menguraikan penyesuaian yang diperlukan terhadap struktur regulasi Indonesia dan potensi manfaat dari badan penyelesaian sengketa olahraga khusus. Penting untuk menyelaraskan proses arbitrase dengan standar internasional untuk menumbuhkan kredibilitas terutama setelah Indonesia menyatukan beberapa lembaga arbitrase menjadi hanya satu lembaga, yaitu BAKI.

Kata Kunci: Tata Kelola Olahraga yang Baik, Kepastian Hukum, Arbitrase Olahraga

Introduction

Problems that usually arise related to the management of sports organizations, among others start from policy issues and the direction of performance of a sports organization to the problem of resolving disputes that arise in the sports sector. All of these problems need to be responded appropriately, so that the problems do not have a further impact on reducing the quality of sports achievements. Moreover, sports activities can also have an impact on the welfare or economic conditions of a country. For such reason, sports activities must also be linked to efforts to implement definite and fair laws and the principles of good governance (Wijaya & Silvana, 2024). A good governance system in the sports sector, especially in the Indonesian context, not only provides a framework of directed and measurable goals for organizations and sports activities, but can also help increase public trust in institutions and

all their activities (Coordinating Minister for the Economic Affairs of Republic of Indonesia, 2020). Good governance for an organization and sports activities involves various parties consisting of the government as regulator, national and international sports governing bodies, sports federations that oversee various sports within it, private parties who can facilitate sponsorship, and also the community. Furthermore, besides these legal subjects, good governance also involves various concepts that are important to implement, such as responsibility, regulation and policy, communication and transparency (Coordinating Minister for the Economic Affairs of Republic of Indonesia, 2020).

At the practical level, all of the ideals mentioned above are not easy to implement or realize completely without obstacles. There will be many factors that influence efforts to implement the concepts and principles of good governance in sports sector. In a concrete example, in the Indonesian context, it can be seen from the events that have emerged in recent times, namely the emergence of various kinds of problems that indicate the failure of sports management and organizations in Indonesia, such as corrupt practices, abuse of power, violations of regulations, and the involvement of elements politics in sports organizations (Coordinating Minister for the Economic Affairs of Republic of Indonesia, 2020).

In addition, as interest in the world of sports continues to grow, the flow of commercialization in the sports sector is also becoming increasingly influential. What we stated previously can be seen from the number of athletes who currently have managers to control their careers and activities in the sports sector. Under such circumstances, conflict of interest between athletes and their management and other athletes, between athletes and sports organizations, and even friction between sports organizations becomes difficult to avoid. In fact, such friction often leads to disputes.

So it is clearly that sports play a vital role in modern society, promoting physical health, social cohesion, and economic growth. Beyond its recreational appeal, sports have evolved into a professional arena involving complex regulations and legal disputes. In Indonesia, the rise of sports as a professional field underscores the need for an effective dispute resolution framework that safeguards the interests of athletes, organizations, and governing bodies. Based on that background, then this paper will examine the potential for building a comprehensive sports dispute settlement framework in Indonesia, analyzing current regulatory practices, arbitration processes, and alternative dispute resolution (ADR) mechanisms in the context of sports activities in Indonesia. The background of this research identifies gaps in Indonesia's sports law system, particularly where the existing regulations lack of specific provisions for dispute resolution mechanisms tailored to the sports sector. These gaps often leave stakeholders with limited and inconsistent recourse. The study's primary questions include: (1) What strengths and weaknesses exist within Indonesia's sports regulatory framework? (2) How can Indonesia improve its arbitration and ADR mechanisms to better align with international standards, such as those of the Court of Arbitration for Sport (CAS)?

Methods Resesach

This research will use doctrinal legal research methods and employs a qualitative methodology, including secondary data analysis. Those data especially in the form of several legal materials, such as primary legal materials like acts or regulations as well as secondary legal materials like some studies conducted by several researchers previously. Then, to draw a conclusion, data analyze will be undertaken qualitatively.

Result and Discussion

Disputes in the sports can become increasingly complicated and complex, so that resolving them requires institutions that have special competence, knowledge and skills in resolving sports disputes (Saputra & Nurhayati, 2020). This then also indicates the urgency of the availability of a dispute resolution system or mechanism in the sports sector that is relatively fast, simple, low cost and also able to fulfill a sense of fairness and propriety in decision making which must also be in accordance with the spirit of the sports community. Conventional courts, which in the Indonesian context are realized in the form of General Court (Peradilan Umum) institutions, are clearly not capable of resolving disputes in the sports sector quickly, precisely and completely. The conventional court system is already filled with judges who have very general abilities and understanding in the field of law, so of course they are not suitable to be used as a reference if a dispute occurs in the sports community (Saputra & Nurhayati, 2020). In fact, to deal with and resolve sports disputes, the mechanisms currently practiced in arbitration institutions are much more suitable compared to the mechanisms commonly practiced in the General Courts, namely through a tiered dispute resolution process from the District Court, High Court to the Supreme Court. Moreover, it is also understood that the dispute resolution mechanism in arbitration institutions is a much simpler and shorter process, and this is coupled with the qualifications of the arbitrators which are sought from experts in their fields (Saputra & Nurhayati, 2020).

In the field of sports, arbitration is known as a general mechanism for resolving problems and disputes involving athletes, known as the Court of Arbitration for Sport (CAS). And one of the disputes that often occurs in the sports sector and which is often resolved through CAS is the athlete transfer dispute (Saputra & Nurhayati, 2020). In connection with the existence of special arbitration institutions in the sports sector, in the Indonesian context, in 2022, the Government has issued Law Number 11 of 2022 concerning Sports (Sports Law) which in Article 102 also includes the use of arbitration institutions in settlements sports dispute. The complete text of Article 102 of the Sports Law is as follows:

- (1) Settlement of sports disputes is sought through deliberation discussion and consensus carried out by the holding organization of the sports branch.
- (2) In the case that deliberation discussion and consensus as referred to in paragraph (1) are not reached, the parties to the dispute shall make a written agreement regarding the dispute to be selected.
- (3) Dispute resolution as intended in paragraph (2) is carried out through:
 - a. mediation;
 - b. conciliation; or
 - c. arbitration.
- (4) In the case that mediation and conciliation as referred to in paragraph (3) letter a and letter b are chosen by the parties to the dispute, the parties can request assistance from the Central Government and/or Local Government to facilitate the mediation and conciliation process.
- (5) Dispute resolution as referred to in paragraph (3) letter c is carried out by 1 (one) sports arbitration body which is independent and whose decision is final and binding, and is formed based on the Olympic Charter.
- (6) The Central Government facilitates the establishment of a sports arbitration body as intended in paragraph (5) in accordance with the provisions of statutory regulations.

Article 102 of the Sports Law clearly states that sports disputes can be resolved through arbitration institutions. Initially, in Indonesia there were 3 (three) arbitration institutions that had the authority to resolve sports disputes, namely: the Indonesian Sports Arbitration Board (Badan Arbitrase Olahraga Indonesia or BAORI) which was formed through the Indonesian National Sports Committee (KONI); Indonesian Sports Arbitration Board (Badan Arbitrase

Keolahragaan Indonesia or BAKI) which was formed by the Indonesian Sports Commission (KOI); and the National Dispute Resolution Chamber (NDRC) which specializes in resolving football disputes.

Thus, the legal basis regarding the process of sports dispute resolution through arbitration has been clearly regulated in the Indonesian legal system through the Sports Law. However, in reality the existence of a special sports arbitration institution in Indonesia is still felt to be less effective and efficient. Existing arbitration institutions are still considered not a solution, because of institutional dualism. Furthermore, the problem of high costs and the lack of clarity regarding the court apparatus when resolving disputes is also still an inhibiting factor which makes many parties reluctant to take problems to sports arbitration in Indonesia (Silvana, *et al.*, 2024).

The existence of arbitration institutions in Indonesia is conceptually and practically in accordance with and supports the upholding of the principles of good governance in the sports sector. This is because the role of arbitration institutions specifically in the sports sector actually applies the principles of professionalism, democracy, transparency and accountability, effectiveness and efficiency in resolving sports disputes in Indonesia (Silvana, *et al.*, 2024). In fact, several disputes related to sports in Indonesia are still resolved through various means, ranging from resolution through mechanisms provided by the government (the scope of executive power) to those through legal channels (litigation process within the scope of judicial power). In this regard, examples can be seen, for example in the football mafia case, where the resolution took the criminal law dispute resolution mechanism (through General Court process) (TFQ & RHR, 2023).

Then, for the dispute between the Government and the Indonesian Football Association (PSSI) which resulted in the suspension of PSSI through the issuance of Decree of the Minister of Youth and Sports Number 01307 of 2015, the resolution took the route of settlement within the scope of executive power and then continued to the Administrative Court (Pengadilan Tata Usaha Negara or PTUN). And finally, in the Kanjuruhan case, Malang, East Java, which claimed many lives, the resolution was carried out within the judiciary (litigation) through the District Court with 2 (two) types of cases, namely criminal and civil cases (Hardiantoro & Firdaus, 2023). Regardless of the characteristics and complexity of each of those cases so that they are finally resolved through the courts, the actual resolution of such cases can be criticized, especially because of the litigation route through the courts that has been taken. The criticism that is commonly leveled at resolving disputes through the courts is that the process goes through long stages, involves multiple levels of legal action, and takes a lot of time and money (Tektona, 2011; Aripriabowo & Nazriyah, 2017; Kasim, 2018). In the context of the Indonesian legal system, the weaknesses inherent in the dispute resolution mechanism through the courts have been responded to with several alternative dispute resolutions outside the courts, and one of them is by utilizing arbitration institutions.

Arbitration institutions actually exist in the Indonesian legal system since a long time ago, so such kind of institutions are not totally new, and their position is strong because of the legal basis in the form of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This law regulates the absolute competence of arbitration. From the legal perspective, the absolute competence of arbitration arises when the parties make an agreement in which they expressly state that they will resolve their dispute through arbitration if a dispute arises. With an agreement like that, the legal consequence is that the court no longer has the authority to adjudicate or to process the dispute (Pujiyono, 2018). Regarding the absolute competence of the arbitration institutions, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution has regulated it in Article 2, Article 3, Article 5 and Article 11.

Recent developments show that arbitration institutions are also striving to be increasingly able to reach more varied dispute objects according to real needs in society. Therefore, several arbitration institutions were formed whose competence to adjudicate was more specific and focused only on cases in certain fields, such as the Indonesian Sports Arbitration Board (BAORI), the Indonesian Sports Arbitration Board (BAKI) and the National Dispute Resolution Chamber (NDRC), all three of which have the authority to resolve certain sports disputes. The three sports arbitration institutions were formed based on different legal bases. BAORI was formed based on KONI's Articles of Association and Bylaws, and BAKI was established referring to the results of the Special Congress of the Indonesian Olympic Committee (KOI) on 26 May 2010. BAKI is affiliated to the Court of Arbitration for Sport (CAS). Meanwhile, NDRC is an arbitration body formed by PSSI on July 23 2019 and is affiliated to FIFA (Kristiyanto, 2018; Nugroho & Wardana, 2023). In connection with these dynamics, it is clear that pluralism has occurred regarding the existence of sports arbitration institutions in Indonesia (Kristiyanto, 2018; Saputra & Nurhayati, 2020).

However, pluralism regarding sports arbitration institutions in Indonesia has now been overcome with the merger of BAORI into BAKI. The merger is based on the Decree of the Minister of Youth and Sports Number 89 of 2024 concerning the Appointment of the Indonesian Sports Arbitration Board as the Single Indonesian Sports Arbitration Body, which is a mandate from the provisions of Article 102 of Law Number 11 of 2022 concerning Sports. Thus, currently in Indonesia, especially for sports other than football, dispute resolution can only be handled by one arbitration institution, namely BAKI. Such a merger is intended so that legal certainty and simplicity in processing sports disputes can be realized so that the interests of athletes, the ideals of improving performance and welfare through the sports sector in Indonesia can also be achieved optimally.

Conclusion

In conclusion, to carry out good governance for sports activities in Indonesia, it is necessary to apply the principles of Good Sport Governance, including that there must also be an established sports dispute resolution institution. This is intended to further increase positive achievements in the sports sector in Indonesia, both from the achievement and financial or economic aspects. Then, this research offers actionable recommendations: *first*, establish a dedicated sports dispute resolution body in Indonesia; *second*, strengthen ADR mechanisms to provide accessible options for all sports stakeholders; *third*, harmonize arbitration processes with international standards to foster credibility especially after Indonesia has unified several arbitration institutions become only one institution, namely BAKI; and *fourth*, integrate clear regulatory pathways within existing laws to enable timely resolutions. Such reforms are essential to support the growth and integrity of Indonesia's sports sector.

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