

THE MANPOWER ASPECT IN THE FIELD OF SPORTS

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Abstract

As a result of enhanced professionalism and commercialization in the field of sports, it has become an industry of its own. Professionalism and industrialization are correlated; therefore sports actors' performance achieved as a result of their professionalism lead to the commercialization, and even to the industrialization of certain (branches of) sports. On the other hand, it is considered that industrialization which involves the commercial aspect is able to maintain, and even enhance sports actors' professionalism/performance. In practice, such correlation is not always directly proportional, but inversely proportional. There have been cases of issues related to sports actors' welfare not being properly fulfilled, in fact, being far below the general manpower standards applicable to people doing work (workers/laborers). In general such cases include late or non-payment of wages, reducing bonuses, implementation of contract not accordance with the initial agreement, unilateral termination of contract without compensation for damages and others. The frequently arising question is whether sports actors, particularly athletes, have the status of 'nonemployee' professionals, or the status of 'employees'. The various existing opinions related to such issue of status raise certain legal implications, particularly from the manpower aspect which emphasizes the welfare and legal protection of 'workers', which are also often experienced by athletes. It is expected that this article will be able to provide to the readers a broader view regarding the status of athletes' 'manpower' status.

Keywords: professional sports, athletes, expertise, order, income

I. Introduction

The rapid developments taking place in the field of sports have brought along many changes. The sector which initially used to be predominantly marked by elements of interest and hobby has now been gradually shifting towards becoming an 'industry' of its own.² Parallel to that, the issues that arise are also becoming increasingly complex, starting from regulation, orga-

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² Moh. Nanang Himawan, "*Perkembangan Olahraga di Indonesia*" ("The Development of Sports in Indonesia"). <<http://umum.kompasiana.com/2010/03/06/perkembangan-olahraga-di-indonesia/>>, retrieved on June 20, 2012.

nization, sports actors, sportsmen (better known under the term athletes), training methods, development, supervision, industry, performance, contract value and bonus system, and even the personal life of athletes which are subject to continuous public attention.³ In practice, there has been frequent reporting about friction between athletes, clubs, leagues and national training centers. Furthermore, in a broader scope, there have been issues taking place at the level of sports organizations.⁴ In general, the essence of such frictions or issues has been the antinomy between the welfare, particularly the welfare of sports actors namely athletes, on the one hand, and performance, which is the basic guarantee for the sustainability of the said sector as an 'industry'.⁵ Therefore, it is expected that a study of the manpower aspect may be helpful in providing another perspective for enriching the various existing discourses related to the endeavors for the settlement of the above mentioned issues.

II. Characteristics and Related Parties

The operational scope of sports as an 'industry' includes athletes, trainers, agents, clubs, leagues and sports organizations. Law No. 3 Year 2005 concerning the National Sports System provides for type of sports categories, namely, educational sports, recreational sports, sports for people with disabilities, performance sports, amateur sports, and professional sports. Educational sports are defined as engaging in physical education and sports as part of a regular and continuing educational process, aimed at acquiring knowledge, character, skills, health, and physical fitness;⁶ at the same time, people engage in recreational sports as a hobby and to develop and increase their abilities, in accordance with the conditions and cultural values of the local community concerned, for purposes of health, fitness, and happiness.⁷ Sports for people with disabilities involve sports activities conducted according to the physical or mental condition of the person concerned.⁸ On the other hand, performance sports are sports which involve the training and development of athletes in a planned, gradual and sustainable manner through achievement-oriented competition, supported by sports science and technology.⁹ The last

³ Pangeran Siahaan, "Dari Pengurus Hingga Pemain: Merayakan Keriuhan Sepakbola Indonesia" ("From Managers to Players: Celebrating the Uproar in Indonesian Soccer"). <http://waspada.co.id/index.php?option=com_content&view=article&id=228122:dari-pengurus-hingga-pemain-merayakan-keriuhan-sepakbola-indonesia&catid=212:artikel-pangeran/>, retrieved on December 23, 2011. See also NN, "Bulutangkis Indonesia Alami Masalah Regenerasi" ("Indonesia's Badminton Facing the Issue of Regeneration"), <<http://olahraga.kompas.com/read/2011/12/03/11425274/>>, retrieved on March 29, 2012.

⁴ Daniel Tallu, "Kisruh PSSI: Akankah Terjadi Dualisme Pengurus PSSI?" ("Chaos at PSSI: Will There Be Dualism in PSSI's Management?"). <<http://olahraga.kompasiana.com/bola/2012/03/17/kisruh- PSSI-akankah-terjadi-dualisme-pengurus-pssi/>>, retrieved on March 17, 2012.

⁵ Adhyaksa Dault, "Tidak Ada Alasan Pulang Tanpa Medali, Adhyaksa Dault" ("There is No Reason for Returning Home Without a Medal, Adhyaksa Dault"). <<http://www.bulutangkis.com/mod.php?mod=publisher&op=viewarticle&artid=3329>>, retrieved on November 24, 2012.

⁶ Indonesia. *Undang-Undang tentang Sistem Keolahragaan Nasional*, (National Sports System Law), Law No. 3 Year 2005, State Gazette No. 89 Year 2005, Supplement to the State Gazette No. 4535, Article 1 sub-article (11).

⁷ *Ibid.*, Article 1 sub-article (12).

⁸ *Ibid.*, Article 1 sub-article (16).

⁹ *Ibid.*, Article 1 sub-article (13).

two categories are amateur sports, defined as sports being engaged in as a hobby or passion for sports,¹⁰ and professional sports, which are conducted with the aim of obtaining income in the form of money or in some other form, on the basis of skill to engage in sports.¹¹ An athlete can certainly engage in sports that belong to one or more of the above described categories, depending on the purpose of such activity. Accordingly, the purpose of sports activity undertaken by an athlete constitutes the main factor in studying the context of relationship patterns occurring between the athlete concerned and the parties such athlete is interacting with.¹²

Viewed from the operational aspect, trainer is a person who has expert qualifications and certified competence as trainer in a certain field of sports, issued by the central organization of the sports branch concerned and or the relevant government authority, enabling him/her to train and develop athletes in a planned manner, through scientific approach and by applying the technology available to him/her.¹³ Trainers have the duty to train athletes according to their expertise and or authorities for various assigned purposes, generally to help athletes achieve the expected target or performance. Agents are people who possess a license from the sports organization concerned, usually for specific branches, who represent, act or negotiate for and on behalf of athletes in terms of registration, engagement, placement or transfer of players as provided for by the sports organization concerned;¹⁴ while clubs are organizations which engage and organize sports activities for their members, and are normally members of a certain sports organization.¹⁵ In addition to the above mentioned parties, there are also leagues, which are organizational entities in a broader scope, with the main activity of managing and organizing competitions in the context of professional industry for athletes, in accordance with the applicable regulations.¹⁶ The interrelatedness of the various parties begins when the status of an amateur athlete changes into the status of a professional based on the prevailing regulations. Parallel to the enhanced performance of the athlete concerned, sports as an industry is natu-

¹⁰ *Ibid.*, Article 1 sub-article (14).

¹¹ *Ibid.*, Article 1 sub-article (15).

¹² Article 53 paragraph (1) of National Sports System Law sets for the categories of amateur and professional athletes. Such approach has been taken in order to accommodate the need of athletes in practices in various activities undertaken by them.

¹³ There is another definition of trainer, namely a person who has the task of preparing the physical and mental condition of an individual or a group of athletes. Trainers are former athletes for the most part, while a minor portion of them are graduates of sports academy/higher educational institution. There are also expatriate trainers coming from other countries. Trainers determine tactics, strategy, physical training, and provide moral support to athletes. Trainers are professionals who train and develop athletes, and are generally assisted by assistant trainers. In large sports teams, chief trainers are often not involved in details such as technique and the placement of players in the field, all of which are delegated to assistant trainers, while the chief trainer concentrates on broader issues. Wikipedia Ensiklopedia Bebas, <<http://id.wikipedia.org/wiki/Pelatih/Wikipedia>>, retrieved on May 5, 2012.

¹⁴ Indonesia, *Peraturan Menteri Negara Pemuda dan Olahraga Republik Indonesia tentang Badan Olahraga Profesional Indonesia*, Permenpora No. PER-0342.J/MENPORA/IX/2009, (Regulation of the Minister for Youth and Sports of the Republic of Indonesia concerning Indonesian Professional Sports Agencies), Article 3 sub-article (8).

¹⁵ Poernomo Joko, "Berbicara Industri Olahraga di Indonesia" ("About the Sports Industry in Indonesia"), <<http://poernomojoko.blogspot.com/2010/12/berbicara-industri-olahraga-di.html>>, retrieved on January 20, 2013.

¹⁶ Wikipedia, *Op. Cit.*, retrieved on January 20, 2013.

rally bound to attract amateur athletes with achievements to enter the professional phase, whereby they no longer deal with the administrative aspects of their involvement in sports directly, but rather through the assistance of an agent's services. The agent will strive to have the athlete concerned enrolled as member of a club, or in the event of those who are already member of a club, to have them moved or transferred to a more 'prestigious' club. As member of a professional club, an athlete starts his/her work or 'debut' through competition in the context of the professional industry in a league which, on the one hand, has a higher level of organizational scope, and on other hand it is more industry oriented.

III. The Manpower Aspects

Labor law distinguishes between three patterns of relationships¹⁷ depending on the fact of where the person concerned does the work, based on an agreement or contract.¹⁸ First, agreement or contract to provide provisional services, characterized by the element of coordinative/equal relationship between the party requesting and the party providing such services, expertise possessed by the provider of services,¹⁹ and a certain honorarium based on rates which are generally applicable, are determined by the provider of services, or agreed upon by both parties.²⁰ An important element in this type of agreement or contract is the expertise of the service provider. Second, agreement or contract for contracting work which is characterized by the elements of coordinative relationship between the principal and the contractor, the existence of a specific time frame for work implementation, and payment of the determined price.²¹ An important element of the agreement or contract for contracting works is the completion of the work concerned, generally within the agreed time frame.²² And lastly, agreement or contract with the elements of a certain work, order by the employer to the employee to do such work,

¹⁷ Article 1601 of the Civil Code sets forth as follows:

"In addition to agreements to perform provisional services, ..., there are two types of agreement in which the parties bind themselves to perform work for the other party by receiving wages: labor agreement and contracting of work." [unofficial translation] *Kitab Undang-Undang Hukum Perdata [Burgerlijk Wetboek]* (Civil Code), translated [into Indonesian] by R. Subekti and R. Tjitrosudibio, edition 25, (Jakarta: Pradnya Paramita, 1992), p. 327.

¹⁸ Soetiksno, *Hukum Perburuhan*, (Labor Law), (Jakarta: no publisher, 1977), p. 76-77. See also Iman Soepomo, *Hukum Perburuhan bidang Hubungan Kerja*, Labor Law in Working Relationships) (Jakarta: Jambatan, 1983).

¹⁹ In general, there is a requirement to fulfill qualifications or standardized competence, either by attaining a certain level of education or certification of competence.

²⁰ Article 1601 of the Civil Code sets forth as follows:

"In addition to agreements for provisional services, as provided for in special provisions and based on the conditions agreed upon, and in the absence of such, based on practices,..." [unofficial translation]. Subekti, *loc.cit.*

²¹ Article 1601 b of the Civil Code provides as follows:

"Contracting work is an agreement, whereby one of the parties, the contractor, binds itself to perform work for the other party, the contracting party, receiving a certain determined price". [unofficial translation] *Ibid.*

²² FX. Djumialdji, *Perjanjian Pemborongan*, (Contracting Agreement) (Jakarta: Bina Aksara, 1987), p. 3-4.

specific time frames, and wages.²³ An important element which distinguishes this type of agreement from the aforementioned two types of agreement is the order by the party asking for the work to be done to the party accepting and implementing the work.²⁴ There is a subordination relationship which takes place between the two parties concerned.

A. The Category of Sports and Related Factors

Based on the above described definition of sports as an activity for various purposes, professional sports are the most appropriate for an analysis of the manpower aspect. Coincidentally, this category has been the most frequently reported as experiencing frictions or facing issues, being filled with rather heavy nuances of 'industry/commercialization' and welfare. One of the frequently asked questions is whether athletes belong to the category of workers/'laborers'²⁵ or professionals?²⁶ Is it possible to consider clubs as the equivalents of companies in the context of labor law?²⁷ As a further consequence of a dispute occurring between an athlete and a club, are the provisions of labor law applicable just like in a dispute between workers/'laborers' and the company management/entrepreneur concerned? Conversely, related to welfare, is the nominal/value of the contract comparable to workers/'laborers' wages? Assuming that the nominal/value of the contract is reduced due to a drop in the athlete's competition performance,²⁸ is that comparable to the reduction of workers/'laborers' wages in the context of labor law?²⁹

²³ Working agreement is defined in Article 1601 a of the Civil Code, namely as an agreement based on which one of the parties, the laborer, binds himself to, at the order of the other party, the employer, for a certain period of time, perform work by obtaining wages. Subekti, *loc.cit.*

²⁴ According to a different translation by Professor Iman Soepomo, working agreement is an agreement whereby one of the parties, the laborer, binds himself to work for the other party, the employer, for a certain period of time by obtaining wages, and whereby the other party, the employer, binds himself to employ the first party, the laborer, by paying wages, without expressly mentioning order as being a prerequisite element. Iman Soepomo, *Hukum Perburuhan Undang-undang dan Peraturan-peraturan*, (Labor Law, the Law and Regulations) (Jakarta: Jambatan, 1972), p. 37.

²⁵ Article 1 sub-article 3 of Law No. 13 Year 2003 concerning Manpower (hereinafter referred to as the Manpower Law) give the following definition of worker: "Any person who works and receives wages or pay in any other form." Indonesia, *Undang-Undang tentang Ketenagakerjaan*, (Manpower Law), Law No. 13 Year 2003, State Gazette No. 39 Year 2003, Supplement to the State Gazette No. 4279.

²⁶ The word 'professional' is defined as follows in Black's Law Dictionary:

"A person who belongs to a learned profession or whose occupation requires a high level of training and proficiency. Profession is a vocation requiring advanced education and training."

²⁷ Article 6 of the Manpower Law gives the following rather broad definition of company:

"Any form of business either incorporated or not incorporated as a legal entity, owned by an individual, by a partnership, or a legal entity, either private or state owned, employing workers/laborers by paying wages or some other form of remuneration;

Social and other businesses which have a management and employ other people by paying wages or some other form of remuneration." [unofficial translation] Indonesia, *Undang-Undang Ketenagakerjaan*, (Manpower Law), *Op. Cit.*, p. 9.

²⁸ Oryza A. Wirawan, "Empat Pemain Persid Kena Rasionalisasi Kontrak" ("Four Players of Persid Affected by Contract Rationalization"). <http://www.beritajatim.com/detailnews.php/5/Olahraga/2012-04-03/131425/Empat_Pemain_Persid_Kena_Rasionalisasi_Kontrak?kanal=5&article=&tgl=2012-04-03&newsid=131425&addkomentar>, retrieved on January 20, 2013. See also AAM/DIQ, "PBSI Upah Sistem Kontrak" ("PBSI Contract System Wages"), <<http://www.jpnn.com/m/news.php?id=112720>>, retrieved on January 20, 2013.

²⁹ In the context of labor law, it is possible to reduce the wages of workers/laborers as a result of applying the penalty mechanism, as provided for in Article 95 paragraph (1) of the Manpower Law in the form of:

Under the National Sports System Law, professional sports are defined as sports engaged in with the aim of obtaining income in the form of money or in some other form based on the skill to engage in sports.³⁰ Compared to various other existing sports categories, the distinguishing factors of professional sports include engaging in sports, obtaining income in the form of money or in some other form, and based on the skill to engage in sports. On the other hand, the important characteristics, or better known under the term essential elements of an agreement or contract which serve as a basis for creating a 'working relationship'³¹ include the elements of work, order, specific time and wages. Subekti defines working agreement as an agreement between 'laborer' and 'employer', with characteristic elements which include the agreement on a specific wage or salary, and the relationship of subordination (*dienstverhouding*), namely a relationship in which one of the parties/'employer' is entitled to give orders which must be obeyed by the other party/'laborer'.³² In order to understand whether professional sports activities conducted by an athlete (professional) are included in the pattern of a working agreement relationship, each of the distinguishing factors need to be analyzed, in comparison to the above mentioned four elements of a working agreement.

1. Do (professional) sports constitute a specific work?

Even though the existence of a specific work is one of the important or essential elements of a working agreement which serves as a basis (prerequisite) for the creation of a working relationship, the labor/manpower law and regulations do not provide for a definition of the term work. In principle, work is intended to mean an activity conducted by a person, who is requested or ordered to conduct such activity based on a (work) agreement or contract, for the employer's purposes, in compliance with the contents of the work agreement or contract concerned.³³ Also, in general, work is done with the aim of obtaining income in the form of money or in other form of benefit. Accordingly, it can be concluded that athletes engaging in professional sports are performing a certain 'work'.

In addition to the above, related to the other elements of a working agreement, the question that arises is whether there is an order element in the performance of sports as a certain work? The structure and contents of the articles in an agreement or contract between a professional athlete and a club are basically the same as the structure and contents of any other agreement

"Violations committed by workers/laborers due to deliberateness or negligence may be imposed with penalty." [unofficial translation] Indonesia, *Undang-Undang Ketenagakerjaan* (Manpower Law), *Op. Cit.*, p. 51.

³⁰ Indonesia, *Undang-undang Sistem Keolahragaan Nasional*, (National Sports System Law), Law No. 3 Year 2005, State Gazette No. 89 Year 2005, Supplement to the State Gazette No. 4535, Article 1 paragraph (15).

³¹ Article 1 sub-article 15 of the Manpower Law defines working relationship as follows: "Relationship between entrepreneur and worker/laborer based on working agreement, which contains the elements of work, wages, and order." [unofficial translation] Indonesia, *Undang-Undang Ketenagakerjaan*, (Manpower Law), *Op. Cit.*, p.5.

³² R. Subekti, *Hukum Perjanjian*, (Contract Law) (Jakarta: Intermedia, 1987), p. 63.

³³ Abdul Rachmad Budiono, *Hukum Perburuhan di Indonesia*, (Labor Law in Indonesia), edition 3, (Jakarta: RajaGrafindo Persada, 1999), p. 35. See also R. Emmett Murray, *The Lexicon of Labor*, (New York: The New Press, 1998), p. 186. Black's Law Dictionary defines 'work' as "an activity or pursuit, in which a person is engaged; esp., a person's usual or principal work or business."

or contract in general. There are specific articles setting forth the athlete's obligations, primarily the preparedness to follow and act upon the orders/instructions of the club's management related to non-technical administrative membership matters, whereas related to the technical implementation of the work/sports concerned, the athlete concerned is to receive orders/instructions from his/her trainer or assistant trainer.³⁴ Sanctions may be imposed against athletes if they are negligent and or violate any of the above mentioned two types of orders/instructions. Sanctions range from verbal reminder, written reprimand, suspension, to the unilateral termination of agreement or contract. For the time being it may be concluded that there is the element of order/instruction in the technical as well as in the non-technical implementation of work, which may come either from the trainer and assistant trainer, or from the club's management.

The time frame is almost always indicated in the agreement or contract between a professional athlete and a club. At the end of the term of contract or agreement, the athlete concerned is free to either move to another club or to extend/renew the contract with the previous club.³⁵ However, this characteristic element is not the main factor used in distinguishing a working agreement from relationship patterns for performing other types of work, due to the fact that time frame is also usually included in the articles of agreements in general.

2. Does the income of athletes constitute wages?

Professional sports are defined as 'athletes' engaging in sports with the aim of earning income in the form money or in other forms of benefit. In the operational context of manpower law, wages are provided for in various laws and regulations as follows:

"The entitlement of a worker/laborer, received and stated in the form of money, as remuneration from the entrepreneur or employer to the worker/laborer concerned, which is determined and paid in compliance with the working agreement, consent, or laws and regulations, including allowances to the worker/laborer concerned and their family for certain work and or services performed or to be performed".³⁶

"Revenue, remuneration from the entrepreneur to the laborer, for certain work or services performed or to be performed, stated or denominated in the form of money, as set out in an agreement or in laws and regulations, and paid based on a working agreement between the entrepreneur and the laborer concerned, including allowances, either to the laborer or his/her family".³⁷

³⁴ Article 1603 sub-article (b) of the Civil Code provides as follows:

"The laborer shall be required to comply with the rules in performing work as well as the rules for a more orderly functioning of the employer's company, within the boundaries, provisions, Law or Agreements, as well as rules, or in the absence of the foregoing, according to practices." [unofficial translation] Subekti, *loc. cit.*

³⁵ KPL/DEN, "Atlet Bulu Tangkis Indonesia Perpanjang Kontrak di Spanyol" (Indonesian Badminton Athlete Extends Contract in Spain). <<http://m.bola.net/bulutangkis/atlet-bulu-tangkis-indonesia-perpanjang-kontrak-di-spanyol.html>>, retrieved on January 20, 2013.

³⁶ Article 1 sub-article 30 of the Manpower Law. Indonesia, *Undang-Undang Ketenagakerjaan*, (Manpower Law). *Op. Cit.*, p. 7.

³⁷ Indonesia, *Peraturan Pemerintah tentang Perlindungan Upah*, (Government Regulation Concerning the Protections of Wages), Peraturan Pemerintah No. 8 Tahun 1981, (Government Regulation No. 8 Year

Wages are remuneration for work performed by the party implementing/receiving the work.³⁸ Accordingly, professional sports constitute certain work or at least services for which a payment is made in return upon completion, in the form of money or in some other form. Based on the provisions of Article 12 paragraph 2 of Government Regulation No. 8 Year 1981 concerning the Protection of Wages, payment for a portion of wages may be made in other forms with the exception of alcoholic beverages, medicine, or medical substances, provided that the value may not exceed 25% (twenty per cent) of the wages that should be received.³⁹

Up to this point, it has been established that, in general, athletes are doing certain work in the form of professional sports, based on a contract/agreement between athletes and (the management of) clubs, upon the order/instruction of trainers or assistant trainers and the club management for non-technical administrative matters, for a certain period of time in compliance with the contract entered into between athletes and (the management of) clubs, and receive income in a certain amount of money from (the management of) clubs, and in certain conditions possibly from sponsors, or the Trustee organization.⁴⁰

B. The Skill to Engage in Sports

In view of the third factor, namely skill, the issue arises whether it is applied that once an athlete undertakes professional sports activities, it can no longer be considered as a working agreement or contract relationship, but rather an agreement or contract for provisional services. As mentioned above, skill is identical to expertise,⁴¹ which includes certain qualification and competence requirements, proven specifically by an academic degree or certification. Working competence is the ability of an individual, which includes the aspects of knowledge, skill, and working attitude in accordance with established standards.⁴² The current competence standard for several types of work (even though not all) at the national level is known as Standar Kompetensi Kerja Nasional (National Working Competence Standard - SKKNI).⁴³ The standard

1981), Article 1 sub-article a.

³⁸ Koko Kosidin, *Perjanjian Kerja, Perburuhan dan Peraturan Perusahaan*, (Working Agreement, Labor Affairs and Company Regulation), (Bandung: CV. Mandar Maju, 2002), p. 152-153.

³⁹ On the other hand, Article 94 of the Manpower Law provides as follows:

"In the event that the wage components consist of basic wage and fixed allowances, the amount of basic wage shall be not less than 75% (seventy-five percent) of the basic wage and fixed allowances." [unofficial translation] Indonesia, *Undang-Undang Ketenagakerjaan*, (Manpower Law), *Op. Cit.*, p. 51.

⁴⁰ Prasetyo Utomo and Fitri Supratiwi, "Sponsor Individu Diharapkan Pacu Prestasi Atlet", ("Individual Sponsors Expected to Spur Athletes' Performance"), < <http://www.antaranews.com/berita/355630/sponsor-individu-diharapkan-pacu-prestasi-atlet>>, retrieved on January 20, 2013.

⁴¹ In the National Sports System Law it is stated that professional athletes are athletes engaging in sports activities as a profession in accordance with their respective expertise. Indonesia, *Undang-undang Sistem Keolahragaan Nasional*, (National Sports System Law), Law No. 3 Year 2005, State Gazette No. 89 Year 2005, Supplement to the State Gazette No. 4535, Article 55 paragraph 1.

⁴² Indonesia, *Peraturan Menteri Tenaga Kerja dan Transmigrasi Republik Indonesia tentang Tata Cara Penetapan Standard Kompetensi Kerja Nasional Indonesia*, (Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia concerning the Procedure for the Stipulation of Indonesian National Work Competence Standard), *Permenakertrans* No. 21 Year 2007, Article 1 paragraph 1.

⁴³ SKKNI is a formulation of work capacity which includes the aspects of knowledge, skill and/or expertise, as well as the work attitude which is relevant to the implementation of the determined tasks and

determined for each of these types of work sets forth competence units which are considered to reflect the qualification or skill, either at the basic or advanced level, required for the performance of certain work. It is closely related to expertise, an important and distinguishing element which sets apart an agreement or contract for provisional services from a working agreement or contract. Competence is further proven or assessed through the process of competence test as a requirement for obtaining certification. In principle, sports competence standard and the competence test and certification mechanism are recognized in the National Sports System Law. This is evident from the provisions of Article 1 paragraph 27, setting forth that the national sports standard is the minimal criteria applicable to the various aspects of reform and development in the field of sports. Furthermore, the provisions of Article 1 paragraph 30 jo. Article 83 paragraph 1 sub-paragraph a and paragraph 3 of the said Law set forth that certification is the process of granting recognition for compliance with national sports standards and it is conducted for the purpose of determining an individual's competence in sports through a series of competence tests. On the other hand, from the operational point of view, the Ministry for Youth and Sports of the Republic of Indonesia has not put forward a proposal for establishing national sports standard to date.⁴⁴ At the national level, competence standard is formulated and stipulated by the relevant technical Ministry, which is then proposed to the Ministry of Manpower and Transmigration of the Republic of Indonesia. The competence and certification test is conducted by or under the coordination of the National Agency for Professional Certification and or the appointed Professional Certification Institute.⁴⁵ Accordingly, the technical operational aspects of skills or expertise in the field of sports as articulated in the National Sports System Law are yet to be provided for in the form of a detailed competence standard consisting of competence units, the validity of which also needs to be proven through the mechanism of competence test and certification, although such condition is not to negate automatically the factor of existing skills and expertise, particularly those possessed by professional athletes.

C. Conditions, Rights and Obligations

The National Sports System Law sets for the conditions for becoming a professional athlete, which include previous experience as amateur athlete taking part in competitions periodically, meeting certain medical requirements, obtaining a written statement on giving up the amateur athlete status acknowledged by the central organization of the relevant sports branch,

requirements for the post concerned, in accordance with laws and regulations, as provided for in Article 1 paragraph 3 of *Permenakertrans* No. 21 Year 2007.

⁴⁴ Result of the interview by Hari Prasetyo with Aris Hermanto, B. Eng., staff of the Subdirector-ate for the Development of Competence Standardization, Directorate for Competence Standardization and Training Program, Ministry of Manpower and Transmigration of the Republic of Indonesia, on December 14, 2012 conveyed to the Author.

⁴⁵ For more detailed provisions concerning the competence test mechanism and certification process refer to the National Profession Certification Agency (BNSP) Guidelines No. 201 Rev. 1 Year 2006 concerning the Assessment of Compliance – General Requirements of the Profession Certification Institute, BNSP Guidelines No. 208 Year 2007 concerning the Licensing Procedure of the Profession Certification Institute, BNSP Guidelines No. 304 Year 2008 concerning the Implementation of Competence Test by the BNSP Technical Committee, and BNSP Guidelines No. 202 Rev 2 Year 2009 concerning the Guidelines for the Preparation and Licensing of the Profession Certification Institute.

and complying with the requirements of manpower provisions.⁴⁶ The rights of professional athletes are provided for as follows: being accompanied by (among others) a manager, trainer, medical staff, psychologist and a legal expert; participating in competitions at all levels in accordance with the provisions; obtaining training and development from the central organization of the relevant sports branch, from the professional sports organization, or the functional sports organization concerned; and obtaining proper earnings. On the other hand, the obligations of professional athletes include compliance with the regulations and the code of ethics applicable to any sports branches they involve in and/or which become their profession.

D. Protection Viewed from the Manpower Aspect

The discourse on the relationship pattern between athletes and (the management of) clubs in the context of manpower law revolves around the issue of determining whether such relationship is a working relationship or a relationship of providing provisional services. Consequently, the determination of this issue will be decisive in the application of legal provisions in dispute settlement: labor law with the massive-comprehensive principle of workers/'laborers' protection as a result of the existing subordinative / imbalanced conditions between workers/laborers and entrepreneurs, or civil law with its predominantly contractual coordinative conditions.⁴⁷

With reference to the foregoing, in a broad outline, the characteristics of working relationship between athletes and clubs are evident in the relationship between athletes and clubs. There are the elements of work in the form of professional sports activities, the time frame as generally indicated in contracts with athletes, and income the amount of which is based on the contract nominal value. Specifically in view of the element of order being the main requirement for a working relationship, there is a difference at the conceptual level. In the context of labor affairs, the government serves as an element related to instruction/instruction concerning the manner in which certain work must be performed. At the same time, an order may only be given by an employer/entrepreneur. In the context of the relationship between athletes and clubs, the orders or 'obligations' given/imposed by the (management of the) club as generally articulated in contracts with athletes as well as in the club's rules, are non-technical administrative in nature. Technical operational orders/instructions concerning the manner in which athletes are expected to perform work/activities in professional sports are given by trainers and or assistant trainers. Furthermore, given the element of expertise with system-

⁴⁶ Indonesia, *Undang-undang Sistem Keolahragaan Nasional*, (National Sports System Law), Law No. 3 Year 2005, State Gazette No. 89 Year 2005, Supplement to the State Gazette No. 4535, Article 55 paragraph 2.

⁴⁷ The definition of contract/agreement based on Article 1313 of the Civil Code is as follows:

"An act by which one or more persons bind themselves to one or more persons." [unofficial translation] Wirjono Projodikoro defines agreement as a relationship concerning property between two parties, whereby one of them promises or is deemed to promise, to do something (or refrain from doing something), while the other party has the right the demand the implementation of such promise." Wirjono Projodikoro, *Asas-asas Hukum Perjanjian*, (The Basic Principles of Contract Law), Edition 14, (Bandung: Bale Bandung, 1977), p. 9. Sudikno Mertokusumo gives another definition of agreement, which is more or less the same, namely a legal relationship between two or more parties, based on consent, to cause a legal consequence to be created. Sudikno Mertokusumo, *Mengenal Hukum*, (Understanding the Law) (Yogyakarta: Liberty, 1999), p. 18.

atically codified competence qualifications and certifications, the relationship between athletes and their respective clubs tends to fall under the scope of agreement or contract for provisional services. There is concern, therefore, that the factor of protection, particularly for professional athletes in the field of sports as an 'industry', will be based merely on the 'agreement' of the parties concerned as is generally the case with the relationship pattern in agreements or contracts for provisional services.

Indeed, in cases where there is a fragmentation of relationship patterns in work agreements or contracts, labor law recognizes the practice of applying two optional theories, namely the theory of totality or the theory of absorption. The theory of totality is based on the argument that if two or more relationship patterns occur, all provisions concerning the relationship pattern in the work agreement concerned are applied simultaneously in the context of workers/'laborers' protection. The said theory is articulated in the Civil Code, Article 1601 c in the first sentence which reads as follows:

"If an agreement contains indications of a work agreement as well as indications of another type of agreement, the provisions of the work agreement, as well as the provisions concerning other matters indicated therein shall both be applicable ..." [unofficial translation]

Furthermore, based on the absorption theory it is argued that in the event of a conflict between the provisions in each of the patterns which are applied simultaneously as described above, provisions concerning working agreements (particularly the Manpower Law and various implementing regulations thereof) shall prevail. It is provided for in the Civil Law, Article 1601 c, in the second sentence:

"... in the event of a conflict among such provisions, the provisions concerning labor agreements shall prevail." [unofficial translation]

In addition to the above, there is also the Lighthouse Effect theory which can be applied if the discourse on the legal provisions in the field of sports, particularly professional sports, is the option providing the greatest level of protection and welfare to the parties concerned, especially to athletes. According to such theory, the provisions in the field of labor (or manpower) law can be applied in other fields of agreement or contract law to the extent that the purpose is to provide better protection to the parties that are considered to be in a weaker bargaining position.⁴⁸ The principle of the greatest benefit to workers/laborers that happen to be in need of greater protection compared to the industry/entrepreneurs/employer is articulated in Article 1320 of the Civil Code, which is a significant article in the context of contract or agreement law, particularly related to the requirement of a lawful purpose (*sebab yang halal*).⁴⁹ In general, there are three types of protection in the context of man-

⁴⁸ For an in-depth discussion on this subject, refer to Michael C. Harper and Samuel Estreicher, *eds. Labor Law: Cases, Materials, and Problems* (USA: Aspen Publishers, Inc, 1996).

⁴⁹ There are certain conditions which must be observed at the formulation or drawing up of a contract/agreement in order for it to be considered valid, namely as follows:

- Consent between the parties entering into an agreement
- Consent must be genuinely based on the intent/wish of the parties concerned, free from and without duress by any party whatsoever in giving such agreement/consent, and without any error or fraud.
- Capacity of the parties to enter into an agreement

It is stated in Article 1329 of the Civil Code that every person shall have the capacity to enter into an agreement, unless stated by law as not having such capacity.

power affairs, namely technical, social and economic protection.

IV. Conclusion

The manpower aspect in the field of sports is closely related to the characteristics of sports activities conducted by athletes, as well as the rights and obligations pertaining thereto based on the specific legal provisions which can or should be applied to the relationship patterns that occur. Labor (manpower) law, particularly the Manpower Law and the various implementing regulations or bylaws thereof need to be recognized as a legal instrument which provides for the greatest level of technical, social and economic protection to the parties performing certain work or providing certain services. In practice, there has been substantial proof indicating success as well as a positive correlation between the implementation of labor (manpower) law and the protection of workers/laborers. The field of sports contains relationship patterns which provide for various 'manpower related' rights and obligations. The characteristics of contract, commercialism, and professionalism in field of professional sports do not eliminate the manpower aspect in such field. Therefore, related to the discourse for applying protection as provided for or which is at least similar to the protection in the context of manpower, the above described legal and theoretical basis may be considered.

Bibliography

Books

- Budiono, Abdul Rachmad. (1999). *Hukum Perburuhan di Indonesia, (Labor Law in Indonesia)*, ed. 3. Jakarta: RajaGrafindo Persada.
- Djumialdji, F.X. (1987). *Perjanjian Pemborongan. (Contracting Agreement)*. Jakarta: Bina Aksara.
- Garner, Bryan A. (1996). Ed. *Black's Law Dictionary*. Texas: West Publishing Co.
- Harper, Michael C and Samuel Estreicher. (1996). Eds. *Labor Law: Cases, Materials, and Problems*. USA: Aspen Publishers, Inc.
- Kosidin, Koko. (2007). *Perjanjian Kerja, Perburuhan dan Peraturan Perusahaan. (Working Agreement, Labor Affairs and Company Regulation)*.

A specific subject matter

A specific subject matter in an agreement is the object or the performance prescribed under such agreement. It may be in the form of a certain object, either tangible or intangible, or a certain conduct/act in the form of providing something, doing something, or not doing something.

A lawful cause

In this case, cause is intended to imply the purpose of formulating or making an agreement. The agreement must set forth a cause which is permitted, which is not contradictory to the law, morality and public order, as further provided for in Article 1337 of the Civil Code.

In the context of the fulfillment and legal consequences of the above mentioned four conditions, it is provided that the first two conditions are subjective conditions which, if not fulfilled, cause the agreement to be voidable. The next two conditions are objective conditions which, if not fulfilled, cause the agreement to be void by law.

- Bandung: CV Bandar Maju.
- Mertokusumo, Sudikno. (1999). *Mengenal Hukum. (Understanding the Law)*. Yogyakarta: Liberty
- Murray, R. Emmet. (1998). *The Lexicon of Labor*. New York: The New Press.
- Projodikoro, Wirjono. (1977). *Asas-Asas Hukum Perjanjian. (The Basic Principles of Contract Law)*. Ed. 14. Bandung: Bale Bandung.
- Soetiksno. (1977). *Hukum Perburuhan. (Labor Law)*. Jakarta: without publisher.
- Soepomo, Iman. (1972). *Hukum Perburuhan Undang-undang dan Peraturan-peraturan. (Labor Law, the Law and Regulations)*. Jakarta: Jambatan.
- _____. (1983). *Hukum Perburuhan bidang Hubungan Kerja. (Labor Law in the Field of Industrial Relations)*. Jakarta: Jambatan.
- Subekti, R and R Tjitrosudibio. (1992). *Kitab Undang-Undang Hukum Perdata [Burgerlijk Wetboek]*. Translation. Ed. 25. Jakarta: Pradnya Paramita.
- Subekti, R. (1987). *Hukum Perjanjian. (Contract Law)*. Jakarta: Intermasa.

Laws and Regulations & Guidelines

- Badan Nasional Sertifikasi Profesi. (National Profession Certification Agency). (2006). *National Profession Certification Agency (BNSP) Guidelines No. 201 Rev. 1 Year 2006 concerning the Assessment of Compliance – General Requirements of the Profession Certification Institute*. Jakarta: Badan Nasional Sertifikasi Profesi.
- _____. (2007). *National Profession Certification Agency (BNSP) Guidelines (BNSP) No. 208 Year 2007 concerning the Licensing Procedure of the Profession Certification Institute*. Jakarta: Badan Nasional Sertifikasi Profesi.
- _____. (2008). *National Profession Certification Agency (BNSP) Guidelines (BNSP) No. 304 Year 2008 concerning the Implementation of Competence Test by the BNSP Technical Committee*. Jakarta: Badan Nasional Sertifikasi Profesi.
- _____. (2009). *National Profession Certification Agency (BNSP) Guidelines (BNSP) Rev 2 Year 2009 concerning the Guidelines for the Preparation and Licensing of the Profession Certification Institute*. Jakarta: Badan Nasional Sertifikasi Profesi.
- Indonesia. *Manpower Law, Law No. 13 Year 2003, State Gazette No. 39 Year 2003, Supplement to the State Gazette No. 4279*.
- _____. *National Sports System Law, Law No. 3 Year 2005, State Gazette No. 89 Year 2005, Supplement to the State Gazette No. 4535*.
- _____. *Government Regulation concerning the Protections of Wages, Government Regulation No. 8 Year 1981*.
- _____. *Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia concerning the Procedure for the Stipulation of Indonesian National Work Competence Standard. Permenakertrans No. 21 Year 2007*.
- _____. *Regulation of the Minister for Youth and Sports of the Republic of Indonesia concerning Indonesian Professional Sports Agencies, Permenpora No. PER-0342.J/MENPORA/IX/2009*.

Retrieved Pages

- AAM/DIQ. "PBSI Upah Sistem Kontrak (PBSI Contract System Wages)" <http://www.jpnn.com/m/news.php?id=112720>, Retrieved on January 20, 2013.
- Dault, Adhyaksa. "Tidak Ada Alasan Pulang Tanpa Medali, Adhyaksa Dault (There is No Reason for Returning Home Without a Medal, Adhyaksa Dault)" http://www.bulutangkis.com/mod.php?mod=publisher&op=view_article&artid=3329. Retrieved on November 24, 2012.
- Himawan, Moh. Nanang. "Perkembangan Olahraga di Indonesia (The Development of Sports in Indonesia)" <http://umum.kompasiana.com/2010/03/06/perkembangan-olahraga-di-indonesia/>. Retrieved on June 20, 2012.
- Joko, Poernomo. "Berbicara Industri Olahraga di Indonesia (About the Sports Industry in Indonesia)" <http://poernomojoko.blogspot.com/2010/12/berbicara-industri-olahraga-di.html>. Retrieved on January 20, 2013.
- KPL/DEN. "Atlet Bulu Tangkis Indonesia Perpanjang Kontrak di Spanyol (Indonesian Badminton Athlete Extends Contract in Spain)" <http://m.bola.net/bulutangkis/atlet-bulu-tangkis-indonesia-perpanjang-kontrak-di-spanyol.html>. Retrieved on January 20, 2013.
- NN. "Bulutangkis Indonesia Alami Masalah Regenerasi (Indonesia's Badminton Facing the Issue of Regeneration)" <http://olahraga.kompas.com/read/2011/12/03/11425274/>. Retrieved on March 29, 2012.
- Siahaan, Pangeran. "Dari Pengurus Hingga Pemain: Merayakan Kericuhan Sepakbola Indonesia (From Managers to Players: Celebrating the Up-roar in Indonesian Soccer)" http://waspada.co.id/index.php?option=com_content&view=article&id=228122:dari-pengurus-hingga-pemain-merayakan-kericuhan-sepakbola-indonesia&catid=212:artikel-pangeran/. Retrieved on December 23, 2011.
- Tallu, Daniel. "Kisruh PSSI: Akankah Terjadi Dualisme Pengurus PSSI? (Chaos at PSSI: Will There Be Dualism in PSSI's Management?)" <http://olahraga.kompasiana.com/bola/2012/03/17/kisruh-pssi-akankah-terjadi-dualisme-pengurus-pssi/>. Retrieved on March 17, 2012.
- Utomo, Prasetyo dan Fitri Supratiwi. "Sponsor Individu Diharapkan Pacu Prestasi Atlet (Individual Sponsors Expected to Spur Athletes' Performance)", <http://www.antaranews.com/berita/355630/sponsor-individu-diharapkan-pacu-prestasi-atlet>. Retrieved on January 20, 2013.
- "Wikipedia Ensiklopedia Bebas", <http://id.wikipedia.org/wiki/Pelatih/Wikipedia>. Retrieved on May 5, 2012.
- Wirawan, Oryza A. "Empat Pemain Persid Kena Rasionalisasi Kontrak (Four Players of Persid Affected by Contract Rationalization)" http://www.beritajatim.com/detailnews.php/5/Olahraga/2012-04-03/131425/Empat_Pemain_Persid_Kena_Rasionalisasi_Kontrak?kanal=5&article=&tgl=2012-04-03&newsid=131425&addkomentar. Retrieved on January 20, 2013.