

CORRUPTION IN MATCH-FIXING WITHIN SPORTS: THE NEED TO REGULATE FUTURE LEGISLATION

(A COMPARATIVE STUDY AND LESSON FROM THE AUSTRALIAN SYSTEM OF LAW)

Ranto Sabungan Silalahi*

* Judge, Tegal District Court, Central Java, Indonesia

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Corresponding author's e-mail : rantolahi@yahoo.com

Abstract

The Indonesian football league has been devastated greatly because of match-fixing, a problem that has caused the decline of the country's achievements in international events. The ongoing mechanism of using sports law or lex sportiva is considered ineffective because it provides no deterrent effect on offenders. The country may learn from Australia, who has gained many international sports achievements by previously eradicating match-fixing in sports, including football. Australia has included match-fixing among acts of sports corruption, and offenders may be sanctioned both by receiving criminal punishment from a law authority and disciplinary sanction from a sport or football authority. To prevent and address the involvement of gambling syndicates in many instances of match-fixing in football matches, the country has enacted a national policy on the codes of conduct and anti-match-fixing measures in sports and established a special unit to coordinate the law authority and sports authority. Although it has a different system of law, Indonesia may learn from Australia in eradicating match-fixing in football and may have many great achievements in international events as a result.

Keywords: match-fixing, Indonesian football, comparative law, Australian sport integrity

Abstrak

Liga Sepakbola di Indonesia secara keseluruhan telah mengalami masalah dengan pengaturan skor (match-fixing) yang menyebabkan merosotnya prestasi di tingkat internasional. Mekanisme selama ini dengan menggunakan "Hukum Olahraga" atau Lex Sportiva dianggap tidak efektif oleh karena tidak memberikan efek pencegahan dan jera bagi para pelaku. Belajar dari Australia yang telah mencatatkan banyak prestasi di kancah Internasional bagaimana telah berhasil memberantas praktek pengaturan skor di seluruh cabang olahraga termasuk sepakbola. Australia telah memasukkan pengaturan skor ke dalam korupsi dalam bidang olahraga di mana para pelaku mendapat sanksi pidana yang tegas dari penegak hukum dan sanksi internal dari otoritas olahraga. Oleh karena pengaturan skor sangat dekat dengan perjudian dari organisasi mafia, untuk menjaga integritas cabang olahraga dalam hal ini sepakbola dilakukan dengan menjaga integritas dari praktek perjudian olahraga yang ada dan dengan diadakannya kebijakan nasional terhadap perilaku athlete dan aturan anti pengaturan skor juga satu badan khusus yang mengkoordinasi penegak hukum dan otoritas olahraga (NISU). Walau berbeda system hukum, Indonesia bisa mencontoh Australia di dalam memberantas pengaturan skor dalam olahraga sepakbola dan mencapai prestasi olahraga yang terbaik di tingkat Internasional.

Kata kunci: match-fixing, sepak bola Indonesia, perbandingan hukum, integritas olahraga Australia

I. INTRODUCTION

With its diversity and multipopulated groups, Indonesia was able to perform well in two international sporting events, namely, the Asian Games and the Asian Para Games 2018. President Joko Widodo announced that the year 2018 was to be a moment when Indonesian sports would be revitalized. Unfortunately, such positive nuances were disrupted by several anti-graft cases under the aegis of officials within the Ministry of Sports and Youth Affairs, where corruption riddled the decisions of public officials within the environment of the law. Such corruption occurred between the Ministry of Sports and Youth Affairs, as well as the National Sports Committee of Indonesia.¹ With the allegations of match-fixing in the Indonesian football league, the suspects who were involved in match-fixing cases connected to the second- and third-tier leagues were arrested. The National Police's anti-match-fixing task force also summoned several Persatuan Sepakbola Seluruh Indonesia (PSSI, or the Indonesian Football Association) officials for questioning, including the deputy chief and secretary-general, prior to the resignation of Edy Rahmayadi as the chief of the PSSI.²

Recently, a panel of judges from Banjarnegara District Court reached a verdict and deemed Mansyur Lestaluhu, the former director of the Referee Committee of the PSSI, of being guilty of receiving bribes and entertaining and supporting the otherwise notorious "football mafia." Mansyur, together with Tjan Lin Eng, who is also known as Johar, in his capacity as the chief of the Indonesian Football Association of Regional Central Java, and members of the Disciplinary Committee named Dwi Irianto and Referee Nurul Safarid received bribes amounting to about 800 million rupiah from Lasmi Indrayani to promote the Persibara Club from the third-tier football league to the second-tier football league.³

Rusli Lutan, a well-known sports expert and professor from the Indonesian University of Education in Bandung, argued that Indonesia faces various problems that make the implementation of a national sports law difficult⁴. He also identified Australia, the United States, most European countries, China, Japan, and South Korea as countries with impressive sports⁵.

In Australia, corruption in sports has become a new area for public policy. In the foreword of her 2015 essay titled "Corruption in Australian Sports," Australian scholar Samantha Bricknell wrote that corruption in Australian sports is not a new issue and that many cases have shown the vulnerability of sports, opening several avenues that

¹ Abdul Majid, "Kaleidoskop 2018, Noda di Dunia Olahraga Indonesia: Dari Korupsi di Kemenpora Hingga Pengaturan Skor [Kaleidoscope 2018, Blemishes in Indonesian Sports: From Corruption in the Ministry of Youth and Sports to Score Fixing]", <http://www.tribunnews.com/sport/2018/12/31/kaleidoskop-2018-noda-di-dunia-olahraga-indonesia-dari-korupsi-di-kemenpora-hingga-pengaturan-skor>, accessed 8 January 2019.

² Editorial Board, "Fixing Match Fixing", <https://www.thejakartapost.com/academia/2018/12/14/fixing-match-fixing.html>, accessed 29 January 2019.

³ David Oliver Purba, "Terbukti Melakukan Suap, 2 Terdakwa Kasus Mafia Bola Divonis Berbeda [Proven Guilty of Bribery, 2 Soccer Mafia Defendants Have Been Sentenced Differently]", <https://regional.kompas.com/read/2019/07/11/16180161/terbukti-lakukan-suap-2-terdakwa-kasus-mafia-bola-divonis-berbeda>, accessed 14 July 2019.

⁴ Niken Prathivi, "Govt. Urged to Abide by National Law for Sport Betterment", <https://www.thejakartapost.com/news/2015/11/16/govt-urged-abide-national-law-sport-betterment.html>, accessed 29 January 2019.

⁵ *Ibid.*

include drugs and match-fixing, which have placed the integrity of sports on the line⁶.

As a close neighbor to Australia, Indonesia may learn much from Australia's experience in tackling the problems of match-fixing and improving its sports achievements. From a comparative perspective, this paper may explore the regulation of anti-match-fixing in Indonesia and Australia and how Australia has successfully dealt with match-fixing. Some lessons from this valuable exploration may be generally applied in Indonesian sports, particularly in Indonesian football.

II. UNREGULATED MATCH-FIXING IN INDONESIAN SPORTS CORRUPTION

A. Corruption in Indonesian Sports

Indonesia has suffered greatly because of corruption, and this has become a major reason Indonesia could not able to achieve the best position in every international sporting event. Siti Juliantari of the Indonesian Corruption Watch stated during a seminar held by the University of Indonesia that a significant amount of corruption cases are known to occur in the field of sports, with 69 cases implicating almost all sectors of the government and involving acts such as price-fixing.⁷ Aside from giving rise to the corruption of the state budget, Indonesian sports, especially football, has severely suffered because of match-fixing in the national football league, from the first-tier league to the third-tier league⁸. Match-fixing and the lack of any deterrent effect have become a serious problem in the Indonesian football league.

B. Regulation against Match-Fixing in Indonesia

In the Indonesian legal literature, only a few scholars have discussed match-fixing in the Indonesian football league. Lufi Avian Ananda, described match-fixing as follows⁹: "A football match is fixed to gain either material or immaterial profit because the result of the match fulfills the order from an individual or specific group in the national or international sphere."

Indonesian football history has been hindered greatly by match-fixing, and some instances are briefly described by Alexander Rinaldy and Dian Adrian Daeng Tawang. Such match-fixing involves several events in the PSSI football championship, such as the Surabaya incident, where an internal investigation revealed that relevant parties received bribes that sought to elevate certain teams in the Indonesian league.¹⁰

An Indonesian national named Nasiruddin was charged with match-fixing in

⁶ Samantha Bricknell, "Corruption in Australian Sport", *Trends & Issues in Crime and Criminal Justice* 49, no. 1 (February, 2015), accessed 8 January 2019, doi: <http://apo.org.au/node/52991>.

⁷ FISIP UI, "Menilik Korupsi Dalam Sektor Olahraga di Indonesia [Viewing Corruption in the Indonesian Sport Sector]", <http://fisip.ui.ac.id/menilik-korupsi-dalam-sektor-olahraga-di-indonesia/>, accessed 4 January 2019.

⁸ Editorial Board, "Fixing Match Fixing"

⁹ Luthfy Avian Ananda, "Match-Fixing dalam Sepakbola Indonesia ditinjau dari Perspektif Hukum Pidana [Match-Fixing in Indonesian Soccer Viewed from the Criminal Law Perspective]", <https://www.kompasiana.com/luthfyavian/5693d48e119773750970f220/match-fixing-dalam-sepakbola-indonesia-ditinjau-dari-perspektif-hukum-pidana?page=all>, accessed 17 July 2019.

¹⁰ Alexander Rinaldy and Dian Adriawan Daeng Tawang, "Kriminalisasi Match Fixing Dalam Pertandingan Sepakbola di Indonesia Berdasarkan Undang-Undang Nomor 11 Tahun 1980 tentang Tindak Pidana Suap [The Criminalization of Match-Fixing in Soccer Matches in Indonesia According to Law Number 11 of 1980 on Bribery]", *Jurnal Hukum Adigama*: 13-15, accessed 7 February 2019, doi: <https://journal.untar.ac.id/index.php/adigama/article/download/2204/1264+&cd=8&hl=id&ct=clnk&gl=id>.

football matches during the 2015 South East Asian Games in Singapore and received a 30-month custodial sentence.¹¹ The history of match-fixing in Indonesia has darkened national football achievements at home and even more so during international events.

In general, sports activities, including football, are regulated in Law Number 3 Year 2005 concerning the National Sports System. This law regulates the provision of crime in sports in only one article; Article 89 is written to compartmentalize the understanding that all individuals who do not adhere to the law will be punished, and the same assertion will be applied in a heightened predicament that damages or nullifies sports venues¹². Hence, without criminal provision, no regulation currently concerns match-fixing in Law Number 3 Year 2005 concerning the National Sports System, and legal enforcers must seek a legal avenue from other sources of law. In reality and in practical terms, some different perspectives have been presented in sports law. Professor Topo Santoso briefly described the terms of sports law in his working paper by comparing the notion of domestic sports law, global sports law, and national sports.¹³ Professor Santoso also reiterated the notion of *lex sportiva*, which states that sports law should have a national, regional, and international component.¹⁴ Furthermore, a crucial understanding of sports law would involve the harmonization of legal norms and the current situation in sports, arising from the notions of rules as regulations enacted by Parliament as written by Alexander Rinaldy and Andriawan Daeng Tawang.¹⁵ It should be understood that when it comes to their understanding of the implementation of sanctions, a conflict exists between national sports law and criminal law as guided by International Sports Law, where the idea of *lex specialis* would hinge into the enforcement of the international community.

Therefore, in practical terms, two groups of sports law exist, and each has a different perspective in applying criminal law in the world of sports. However, Rinaldy and Tawang argued that in addressing match-fixing issues, FIFA, as the top international football organization, has consented to enforce of criminal law. FIFA has cooperated with Interpol and other elements, including states, in tackling the issues of match-fixing. FIFA has argued that international organized crime groups are involved in football match-fixing.¹⁶ Adam Masters and Adam Graycar also supported the statement above in greater context in which the United Nations Convention Against Corruption is being referred to, where the criminalization of a subject needs to have an adequate scope¹⁷ Recently, some sanctions have been imposed by the PSSI by using *lex sportiva* in an endless effort to tackle match-fixing in the Indonesian football league. The Jakarta Post reported that one of these sanctions is a Rp. 150 million fine for Hidayat, a member of the executive committee who attempted to bribe the Madura FC coach.¹⁸

¹¹ *Ibid.*, p. 15.

¹² Indonesia, *Undang-Undang tentang Sistem Keolahragaan Nasional*, UU No. 3 Tahun 2005, LN No. 89 Tahun 2005 [Law Number 3 of 2005 on National Sport System], art. 89.

¹³ Topo Santoso, "Prosecuting Sports Violence: The Indonesian Football Case," *Asean Law Institute, Working Paper series No. 019* (February 2011) : 3, accessed 21 February 2019, doi : <https://law.nus.edu.sg/asli/pdf/WPS019.pdf>

¹⁴ *Ibid.*, p. 3-4.

¹⁵ Rinaldy & Tawang, "Kriminalisasi Match Fixing," p. 16.

¹⁶ *Ibid.*, p. 17.

¹⁷ Adam Masters and Adam Graycar, "Corruption In Sport – A New Field For Public Policy," *Conference: Anti-Corruption Academic Initiative Symposium*, accessed 4 January 2019, doi : https://www.researchgate.net/publication/304541091_Corruption_in_Sport_A_new_field_for_public_policy/.

¹⁸ Board, *loc. cit.*

In Indonesia, no existing provision of law rules specifically and especially against match-fixing in the Indonesian national football league. As mentioned earlier above, Indonesian sports activities are regulated by a limited criminal provision in Law Number 3 Year 2005 regarding the National Sports System. Thus, when talking about criminal offenses concerning match-fixing, the law authority should look from other regulations and laws. Again, Rinaldy and Tawang proposed the need to use the instrument of criminal law in tackling the problems of match-fixing in the Indonesian football league, especially by applying Law Number 11 Year 1980 or The Anti-Bribery Law. They explained the need to implement national criminal law instead of *lex sportiva* to achieve convergence between criminal and sports law, where the criminalization of illegal acts in the field of law will refer to the relevant criminal law in Indonesia. This situation can thus be correlated to the bribery cases, although the anti-corruption law can be related into the realm of the private sector.¹⁹ The Minister of Law and Human Rights' official website²⁰ shows that Law Number 11 Year 1980 or The Anti-Bribery Law (*Undang-Undang Tentang Pidana Suap*) was signed by former President Suharto on October 27, 1980, and enacted on the same day in the State Gazette Number 58 Year 1980. The law consists of six articles, with explanations of each article. The crime of bribery is defined in Article 1 of this law:²¹ "The crime of bribery, which is assumed in this law, is regulated outside the provision of the present regulations." This law seems out of date and the amount of the fine is small. However, because no specific law rules against match-fixing in Indonesian football or other fields of sports, this law should to be applied against match-fixing in the Indonesian football league or other field of sports.

The idea of using not only sports laws but also The Anti-Bribery Law is supported by the experience of Italian football in the endless effort to fight match-fixing, with Italy being one of the football giants in the world. Rinaldy and Tawang described that the investigation of the facts involves parties and stakeholders on the sidelines of the football world, including brokers and those that seek to profit from the sport through aggressive means. Another example of how a body has exercised such a role concerns the Federazione Italiana Giuoco Calcio, who worked with the relevant legal authorities.²²

III. CORRUPTION IN SPORTS AND MATCH-FIXING IN AUSTRALIA

A. Corruption in Australian Sports

Australia's legal system has some regulations against sports corruption. Adam Masters and Adam Graycar quoted Martin De Sanctis in explaining the history of corruption in sports from the ancient Olympics to Australian sports, saying that corruption has always been integrated within sports and that match-fixing has a long history.²³ They also argued for the importance of fighting corruption in sports by emphasizing the latest situation in an international event that has grabbed public attention and was previously utilized as an avenue for the corruption of public

¹⁹ Rinaldy & Tawang, "Kriminalisasi Match Fixing," p.17-18.

²⁰ Indonesia, *Undang-Undang tentang Tindak Pidana Suap*, UU No. 11 Tahun 1980, LN No. 58 Tahun 1980 [Law Number 11 of 1980 on Bribery].

²¹ *Ibid.*, art. 1.

²² Rinaldy & Tawang, "Kriminalisasi Match Fixing," p. 11

²³ Masters & Graycar, "Corruption in Sport," p. 1 .

officials.²⁴ They also gave their own definition of corruption in sports and described its elements, stating that corruption is present in the actions of stakeholders in the private and public sectors and that it involves deviant behavior that leads to decision-making based on a corrupt or false pretense, leading to the misuse of various sources.²⁵ Bricknell mentioned that Maening's definition of sports corruption is often limited to the act of match-fixing as a behavior that would affect the performance of sporting officials in carrying out their duties.²⁶

Other interpretations of what can be known as corruption exist. For example, it can be considered an illegal and unethical activity that seeks to disrupt a sports competition for the gain of one or multiple stakeholders²⁷ and defined as "any illegal, immoral or unethical activity that attempts to deliberately distort the result of a sporting contest for the personal material gain of one or more parties involved in that activity."

The above definition has four subcategories of corrupt behavior:

- Match-fixing (related to betting), where the outcomes are manipulated to secure financial reward through betting operators for those involved;
- Match-fixing (related to non-betting), where results are fixed to ensure a match over a rival or to influence the actions of officials to ensure victory for one party;
- Doping; and
- Inside information, or the (mis)use of information to determine betting patterns."

Bricknell also mentioned risk factors that increase the opportunity for sports corruption.²⁸

- the closed environment in which athletes and sports officials operate;
- differential responses to what is regarded as illegal;
- negligible pay and lack of financial security, especially among second- and low-tier players and officials; and
- the link between sport and creating money; crucially, the increased options available for betting and wagering (e.g., betting on defeats, specific plays) and the rise of online gambling.

These factors are slightly different from another perspective adopted by Ashutosh Misra, Jack Anderson, and Jason Saunders. They argued that the subsequent patterns and variants of corruption in Australian sports are discernable. They identified the evolving sophistication of the betting market as the first pattern in sports corruption.²⁹

Traditional forms of gambling fixes, such as a boxer "taking a dive" or the "nobbling" of the favorite in a horse race, seems somewhat quaint to the modern eye. In horse racing, the fix had to be quite elaborate. The horse in question had to be interfered with physically; the money should be placed on the favorite or to back

²⁴ *Ibid.*, p-2.

²⁵ *Ibid.*

²⁶ Bricknell, *op.cit.* p.2.

²⁷ *Ibid.*

²⁸ *Ibid.*, p.5.

²⁹ Ashutosh Misra, *et al.*, "Safeguarding Sports Integrity Against Crime and Corruption: An Australian Perspective" in *Match-Fixing in International Sports Existing Processes, Law Enforcement and Prevention Strategies*, (Switzerland: Springer, 2013), p. 141-142.

another horse, or both had to be put on in a conspiratorial manner so as not to attract the suspicions of an irregular betting pattern by the relatively small and highly risk-aware bookmaker community; finally, the fix had to be effective in the sense that the preferred horse had to lose. This situation can be contrasted with today's online gambling environment. The "where, when, and what" a punter can bet on is virtually unlimited. Wireless and telecommunication developments allow a customer to bet incessantly on various multimedia platforms from their home, the sports bar, or at the event itself. This flexibility and anonymity lend themselves to gambling conspiracies. Furthermore, unlike in the traditional form of betting, where the punter wagers on the decisive result of the event, i.e., who might or might not win, today's various in-play forms of betting allow punters to engage in bets on much more defined aspects of the game itself, such as sports bets or spread betting (pertaining to just one particular aspect, such as the first free kick, foul, or a penalty in soccer and first no-ball or a boundary in cricket, and not the final outcome of the match). The above-mentioned match-fixing cases and the investigation of Declan Hill, among other cases, indicate that a third party can encourage a player to perform a specific action at a particular time in a game, which not necessarily has an effect on its ultimate result (and therefore cause no major ethical issues for the player). This inside information can be utilized for third-party benefit in gambling exchanges. Once more, a detail that must be emphasized is that, although bets of the kind defined seem rather "exotic" in nature, a quick perusal of online gambling exchanges and spread gambling facilities shows a broad combination and category of bets available to modern punters. Simply put, no matter how exotic a bet seems, an online market for the punters' money is almost always available.

They also explained patterns of sports corruption within the sports system.³⁰

a) Vulnerable players

Player education and consciousness, accompanied by strict enforcement action and punishment against misconduct, is a core preventive measure in dealing with match-fixing. Players are sometimes ignorant that apparently inoffensive information, such as positional or tactical changes for an upcoming game, may be used to the betting benefit of third parties. Players also needed to be instructed as to the undue influence that might be identified on them for such information, whether it is through a commercial agent or their wider social network. Matters such as the outlining of vulnerable players (like those from countries where corruption is already an aspect of everyday life) and the ruling of sports agent is significant here. The correct ruling of sports and financial accountability is central in the wake of the admission of private equity into sports and ownership of individual clubs by private entities. Elite players in well-paid leagues, for instance, the English Premier League, are unlikely to be targeted in this regard, except if they have a gambling problem or related debts. These players are generally well paid. However, players further down the league or playing in semi-professional leagues may be more vulnerable. Further, in a league that has salary caps, primary players are well paid, but the rest of the team may not be. Therefore, the resulting inequality might increase the vulnerability of the latter to illegal gambling approaches.

b) Vulnerable games

Sports that draw high betting volumes, such as football, may be targeted by illegal

³⁰ *Ibid.*, p. 142-143.

gambling syndicates to cover otherwise irregular betting patterns in the general weight of money bets on the specific game or event.

Episodic games, such as lawn tennis or snooker, where an individual player can have a substantial amount of control over whether a specific set or frame is won or, obviously, lost, have been known to have resulted in betting-related conspiracies.

Similarly, games where little is at stake, for instance, such as “dead rubbers” or games between teams who are untroubled by the playoffs but safe from demotion, can be at risk.

c) Referees

As some case studies also reveal, a referee can control the point range in a high scoring game and therefore said those who bent on spread betting or point handicap betting markets. In a moderately low-scoring game such as football, one decision (the award of a penalty kick) can resolve or materially alter the result of a game; some observed examples of this situation exist. In 2005, a scandal was reported in Germany based on the confession of a second division referee, Robert Hoyzer, who admitted to fixing and betting on matches in league and cup football matches. This case prompted a large-scale review of match-fixing in football. Overall, in games as diverse as cricket, rugby, and boxing, how the referee calls a game can be crucial. Therefore, protecting referees, who are generally the lowest paid person on the pitch, in professional sports is critical.

d) Poor regulatory ethos

A sport’s central governing authority who is weak or sets a poor example may diminish the effect of its integrity regulations on participants and make that organization vulnerable to being targeted by criminal syndicates. The secretary-general of Interpol, Ronald K. Noble, noted that corruption in international football is widespread because the public has low trust in FIFA’s capability to police itself. In August 2011, Transparency International issued a document entitled “Safe Hands: Building Integrity and Transparency at FIFA,” which sets out an “integrity audit” agenda for FIFA. The proposals include the formation of a multistakeholder group, an independent investigation of past cases, and a zero-tolerance policy toward bribery. In Australia, however, notwithstanding the increasing concern with sports corruption, the history of inquiries of drugs in sports by Australian Sports Anti-Doping Authority (ASADA) and the present legislative and regulatory gaps, international policing agencies such as the Interpol recognize the country’s international image as positive and commendable. Dale Sheehan, director of capacity building and training at Interpol, said that Australia’s gambling regulation, enforcement of law, and executive response mechanism have set a high standard for safeguarding integrity in sports. Sports organizations likewise have to resolve their integrity issues related to gambling with the significant sponsorship fees they receive from online gambling corporations. Furthermore, a potential conflict of interest may occur in a gambling company that is sponsoring a club or league on which it takes bets.”

Aside from the definition and necessary explanations about corruption in sports, another important task is to discuss how Australia dealt with sports corruption in the past. Misra, Anderson, and Saunders linked sports corruption and the involvement of

organized crime³¹. They wrote that Australia also suffers from the trend of growing corruption and involvement of organized criminal identities in sports. In February 2013, the Australian Crime Commission (ACC) titled “Organized Crime And Drugs In Sport: New Generation Performance and Image Enhancing Drugs and Organized Criminal Involvement in their use in Professional Sport” revealed that organized criminal identities and groups were involved in the distribution of new generation PIEDs. The report was the outcome of a 12-month investigation conducted by ACC with the support of the ASADA and the Therapeutic Goods Administration. The report concluded that organized crime syndicates pose a significant threat to the integrity of sports in Australia. In 2011, Jacque Rogge, the president of the International Olympic Committee, described gambling-related corruption as the biggest single threat to the integrity of international sports. The ACC report emphasized that Australian sports is not immune to this corruptive influence and that the threat is not confined to sports. Online gambling platforms allow well-known international criminal organizations to engage in money laundering and assorted secondary financial criminality, such as identity theft, economic conspiracy, and fraud. According to the ACC’s conservative estimate, serious organized crime costs the Australian community up to \$15 billion annually. ACC argues that organized crime is facilitated by globalization; increased cross-border movement of people, goods, and money; international markets; and rapidly developing technology. Groups offend in one jurisdiction, launder in another, and enjoy the proceeds in a third country.

B. Match-Fixing in Australia: Situation and Solutions

Bricknell differentiated match-fixing into two categories: match-fixing related to betting and match-fixing related to non-betting. She also explained how betting-related match-fixing was found in one case in Australian soccer and then resolved via criminal sentences. She described the case of the Victorian Premier League,³² which is the most prominent case of match-fixing in Australia to date. This case was revealed in September 2013 and included players and staff involved with the Southern Stars FC, a football club in the second-tier Victorian Premier League. Sportradar, the Internet betting integrity monitoring agent, detected unusual betting patterns related to at least five Southern Stars games, which were characterized by “unusually poor play” by some of the players. Victoria police later charged six people—the coach, four players from the United Kingdom, and a Malaysian national—with match-fixing offenses. The latter operated as a liaison between the coach and players and a gambling syndicate located in Hungary and Malaysia. The syndicate reportedly made an estimated \$2 million on the five thrown games played between July 21 and September 13. On October 25, 2013, the Football Federation of Australia (FFA) suspended the coach and the four players for breaching the FFA’s National Code of Conduct and then banned them following criminal charges for alleged match-fixing. All the four players subsequently pleaded guilty to three of four match-fixing charges and were found guilty and fined between \$1,200 and \$3,000 each. The coach was given a four-month suspended custodial sentence and a \$3,000 fine. Poor salaries were the motivating factor for the players’ involvement; the coach also mentioned he took part in the fix to ensure the club could pay their players. The Malaysian national pleaded guilty to one count of engaging in conduct that corrupts a betting result. In 2014, he was given a

³¹ *Ibid.*, p. 136-137.

³² Bricknell, “Corruption in Australian Sport,” p. 2-3.

custodial sentence of three years, with a two-year suspension.

From all the arguments above, we can easily conclude that match-fixing has become a great problem in Australia that usually involves organized crime. This idea was also confirmed by the ACC's 2013 report³³, which states that criminals can misuse the association between athletes and organized crime individualities to corrupt the athlete and provide some social status to the criminal, in the same way that steroid marketing has been used by organized crime to corrupt law enforcement officers. Organized criminal groups involved in match-fixing are increasingly targeting sub-elite athletes because they are easier to exploit and also draw less scrutiny from integrity authorities. These criminal groups would develop their relationship with athletes over the years and then exploit it for match-fixing.

Initially, most controls in tackling sports corruption were held by sports authorities. However, this situation did not produce a satisfactory result, as discussed below:³⁴

"With minimal consideration given by public policing, nationally or internationally, monitoring and intelligence gathering have remained mainly within the domain of sport controlling bodies and regulators. Police would become involved only on a reactive basis to specific incident/s of gambling-led corruption. There was also a high level of distrust and lack of sharing of information between the enforcement of law and the sport controlling bodies."

Realizing that the war against match-fixing is a war against all stakeholders, the priority has changed recently. Misra, Anderson, and Saunders again depict the progress in this issue³⁵:

"In recent years, like in some places in the world, the traditional view and priorities of Australian law enforcement agencies have changed, including those relating to gambling-led corruption in sport and its relevance to and potential impact on organized transnational crime. Likewise, with swift progress in technology, cybercrime and online fraud have also been strategically a priority issue. The multiplication of online betting and gambling and the swift progress of exotic or sports betting have exposed the sport to vulnerabilities of transnational and organized crime involvement. Police agencies in Australia now recognize the threat in light of the emerging instances of gambling-led corruption in sports in Australia. In February 2013, the Victoria Police formed a Sporting Integrity Intelligence Unit and a specialized unit to investigate the allegation of organized crime in sport. Earlier in 2011, the ACC's strategic intelligence assessment also found the significant vulnerability of the sector to infiltration and exploitation by organized crime and some associations between organized crime and individual sports and individuals. The ACC supplied several briefings to partner law enforcement agencies, major sporting bodies, and regulators and the government. A number of converging vulnerabilities in the sector were recognized. Convergences include the exponential growth of the online gambling market, 'spot betting,' inconsistent approaches to market monitoring and surveillance, the continued internationalization of sports, and the natural attraction the sports and leisure market has for organized crime. An additional \$A3.6 million was allocated by the government in the 2013–2014 budget for the ASADA and the National Integrity in Sports Unit (NISU) to help with the recent investigations and also assist in strengthening integrity systems in various sporting

³³ Misra et al., *op.cit.*, p. 144.

³⁴ *Ibid.*, p. 146.

³⁵ *Ibid.*, p. 146-147.

codes. The government currently invests \$A169 million in a high-performance sports system through the Australia Sports Commission and another \$A1.7 million for NISU through 2014–2015 to advance and safeguard the integrity of sports in Australia.”

Bricknell explained the role of NISU in the war against match-fixing.³⁶ NISU was created by the Commonwealth in 2012, and it has a broad range of coordination, monitoring, compliance auditing, and advisory roles with respect to anti-doping legislation and policy; the development of integrity strategies and frameworks to prevent and respond to doping and match-fixing, and the promotion of information-sharing arrangements between relevant bodies.

NISU is also mandated to introduce whistleblowing instruments to enable the disclosure of information on corrupt practices. An announced expansion of the NISU’s role saw the recruitment of specialist investigators from the Commonwealth and state/territory law enforcement in 2013. NISU joins existing or similarly recently established integrity units in Australia’s major sporting code, (such as the AFL, Australian Rugby Union, Cricket Australia, and Netball Australia. Added to these are codes of conduct or rules of engagement established by sporting codes and articulated in private contracts between players and their club/sporting body. These established standards of behavior and sanctions may be applied where behavior does not meet stipulated principles of conduct. Codes of conduct and contracts, in particular, have been used as a primary sanctioning mechanism for sports such as the AFL and NRL and arguably act as a first line of defense (and means of deterrence) against inducement to engage in corrupt behavior.

Aside from the importance of NISU, how Australia has promoted national policy on the codes of conduct and anti-match-fixing measures in Australian sports has been commended. Misra, Anderson, and Saunders describe the process as follows:³⁷

“Several sports organizations at the national and international levels, in light of emerging integrity threats, are already applying sophisticated risk assessment strategies to tackle the problem of corruption in sports. Many of these strategies are based on those that were first founded in the horse racing industry and typically combine programs that have three central elements: education, investigation, and sanctioning. Dedicated player education programs; codes of conduct; more clauses in player contracts, anti-corruption compliance, and investigative units; and lengthy sanctions are essential to the anti-corruption policy of any leading sport-governing body. In Australia’s highly regulated horse racing industry, requirements that jockeys do not bet, statute-based investigative units and lengthy sanctions, characterized by the ‘warning-off’ penalty, are well established, as is the fact that administrators within racing’s integrity units provide specialized advice, and even personnel experienced in compliance matters, to other sport... The mutual benefits of the relationship between sporting codes and the law enforcement agencies remain central to the effective policing of match-fixing. As was seen to good effect in the Ryan Tandy case study outlined earlier, where substantial bets are taken on unusual, exotic bets, this can alert the receiving operator and that information can be passed on to the rest of the betting community and to the sports authorities in question. It is in the licensed betting operators’ interest that their industry is not taken advantage of by match-fixers as much as it is in the interest of sport itself.”

³⁶ Bricknell, “Corruption in Australian Sport,” p. 6.

³⁷ Misra, *et al.*, “Safeguarding Sports Integrity,” p. 147-148.

III. INDONESIA LEARNING FROM AUSTRALIA IN CONFRONTING MATCH-FIXING IN FOOTBALL: A COMPARATIVE LAW PERSPECTIVE

Many definitions of comparative law exist in the field of legal studies. Zweigert and Kötz as mentioned by Peter De Cruz, described the essence of comparative law as “an intellectual activity with law as its object and comparison as its process.”³⁸ Peter De Cruz has his own definition of comparative law.³⁹

“Comparative law can be said to describe the systematic study of particular legal traditions and legal rules on a comparative basis. To qualify as a true comparative law enterprise, it also demands the comparison of two or more legal systems, or two or more legal traditions, or of selected aspects, institutions, or branches of two or more legal systems”.

In his book *Perbandingan Ilmu Hukum*, the Indonesian scholar Munir Fuady quoted another term of comparative law as happy plagiarism and defined it as follows:⁴⁰ “Comparative law is an *ecole de veritate* which extends and enriches the ‘supply of solutions’ and proposes the scholars of critical capacity the opportunity of finding the ‘better solution’ for his time and place.” From this perspective, Indonesia may learn a valuable lesson from Australia’s experience in eradicating match-fixing in their sport and then thriving as a great nation with impressive achievements in many international sporting events.

Australia applies the common law system, whereas Indonesia, which was occupied by the Netherlands, applies the civil law system. Munir Fuady explained the common law system from a historical perspective.⁴¹

“Common law system came from English law tradition, although some historical pieces of evidence have shown that the system of law had been influenced by ancient Roman law. Many countries were occupied or influenced by the British with its common law, such as the United States of America, Australia, India, Malaysia, and Singapore. The common law system is younger than the civil law system and is considered to have been born in 1066 A.D. in the era of the Norman conquest.”

Unlike Australia, Indonesia applies the civil law system. Peter De Cruz describes this system of law as follows:⁴²

*“Civil law, in one sense, refers to the whole system of law that presently operates in most Western European countries, Latin America, Near East countries, large parts of Africa, Indonesia, and Japan. It is derived from ancient Roman law and originated in Europe on the basis of the Roman *jus civile*, the private law that is applicable to the citizens and between citizens within the boundaries of a state in a domestic context. It was also called *jus quiritum*, the opposite of *jus gentium*, the law applied internationally, that is, between states.”*

Misra, Anderson, and Saunders briefly described the uniqueness of the Australian system of law, especially in imposing the law against match-fixing.⁴³

“Australia is a federal system in which the responsibility for criminal law and policing

³⁸ Peter De Cruz, *Comparative Law in A Changing World*, (London : Cavendish Publishing Limited, 1999), p. 3.

³⁹ *Ibid.*

⁴⁰ Munir Fuady, *Perbandingan Ilmu Hukum*, (Bandung : Refika Aditama, 2007) p. 19-20.

⁴¹ *Ibid.*, p. 33.

⁴² de Cruz., *Comparative Law*, p. 43.

⁴³ Misra, *et al.*, “Safeguarding Sports Integrity,” p. 148-149.

is apportioned across the Commonwealth, states, and territories. The Federal Agencies have restrained jurisdiction, limited to the fields of legislation competence granted under the Constitution. With no general power to enact national criminal laws (unlike other federations, such as Canada), the federal parliament can only enact national criminal legislation where the Commonwealth Constitution grants that authority by a head of power, either expressly or by implication."

Munir Fuady describes the application of civil law in Indonesia as follows:⁴⁴

"Indonesia applies the civil law system. Its Civil Code, which was translated from the Dutch Civil Code, was enacted in the year 1848. The family sphere is ruled by Islamic law in general. Islamic criminal law is also applied in Aceh. Some parts of the region apply their customary laws."

In Indonesia, judges are also bound by the legality principle.⁴⁵ When handing down a verdict, they must proceed according to the indictment letter and everything that has been proved in the court session.⁴⁶

Therefore, despite some differences in the two countries' legal systems, Indonesia may learn and follow some good methods from Australia in the war against match-fixing in sports, particularly football. Some methods that can be learned and followed are proposed in this legal article.

First, Indonesia may learn to fight match-fixing in its football competitions by using not only *lex sportiva* from sports authorities or the PSSI but also The Anti-Bribery Law, which was regulated because of gambling and football match-fixing in the past. This step must be conducted immediately in the short term to anticipate the enactment of a more comprehensive anti-match-fixing law for Indonesian football and any other field of sports. Learning from Australia on how to combine sporting codes and the enforcement of the law remains central to the effective policing of match-fixing.⁴⁷

Second, the government and the Parliament must agree to amend Law Number 3 Year 2005 concerning the National Sports System, because the present law rules for only some limited criminal provisions and the law itself is already out of date. The future law should also rule on corruption in sports, in this case, the provision against match-fixing in Indonesian football and other fields of sports. Indonesia may learn from Australia's broad and comprehensive term of corruption in sports and to take the matter seriously to improve its sports achievement.

Third, Indonesia may establish another government body similar to Australia's NISU, which may coordinate with and supervise the present PSSI and other sports authorities. The proposed Indonesian version of NISU would have a broad range of coordination, monitoring, compliance auditing, and advisory roles with respect to anti-doping legislation and policy; the development of integrity strategies and frameworks to prevent and respond to doping and match-fixing; and the promotion of information-sharing arrangements between relevant bodies.

The process of establishing Indonesia's version of NISU should also be supported by establishing the Indonesian national policy on the codes of conduct and anti-match-fixing measures in Indonesian sports. The future Indonesian version of NISU

⁴⁴ Fuady, *Perbandingan Ilmu Hukum*, p. 49.

⁴⁵ Indonesia, *Kitab Undang-Undang Hukum Pidana [Indonesian Penal Code]*, art. 1.

⁴⁶ Indonesia, *Undang-Undang tentang Hukum Acara Pidana*, UU No. 8 Tahun 1981 LN. No. 76 Tahun 1981 [Law Number 8 of 1981 on Criminal Procedural Law], art. 182.

⁴⁷ *Ibid.*, p. 148.

and the future Indonesian national policy on the codes of conduct and anti-match-fixing measures in Indonesian sport will safeguard the integrity of Indonesian sports.

Finally, Indonesia has no regulations concerning offline and online sports betting. Betting on sporting events and Indonesian football is not allowed by law because of cultural reasons; Indonesia may regulate this to make sports betting legal. Recent match-fixing cases in Indonesian football involved gambling syndicates, similar to what happened to Australia in dealing with match-fixing in the past. Dex Gleniza described this situation,⁴⁸ saying that players, referees, and club administrators are all involved in rigging matches, adding that even though gambling is illegal in Indonesia, fans often bet via international gambling websites or local bookies. The regulation about sports betting can be provided in the future amended law concerning the National Sports System. This development is crucial, as argued by Misra, Anderson, and Saunders on the importance of regulating sport betting.⁴⁹

“The ethical stance towards, even the understanding of, gambling and the associated risks to integrity, is not widely acceptable. For instance, there are problems in many countries in Asia where integrity threats originate from betting’s illegal and thus unregulated status due to cultural reasons, making it difficult for the authorities to legalize it for better regulation.”

This idea may bring some controversies, particularly because of cultural reasons but also because transparency and integrity in sports betting may prevent the threat of match-fixing that involves gambling syndicates in the future.

IV. CONCLUSION

Indonesia has suffered greatly because of match-fixing in its football league. For decades, some sanctions have been imposed using *lex sportiva* or sports law, which is ineffective in eradicating match-fixing. This gap in Indonesian law exists because no specific law against match-fixing exists. In dealing with this threatening situation, Law Number 11 Year 1980 or The Anti-Bribery Law is a short-term solution against match-fixing in the Indonesian football league and other fields of sport. This solution is possible because the Indonesian judiciary, through a panel of judges at the Banjarnegara District Court, delivered a judgment based on Law Number 11 Year 1980 or The Anti-Bribery Law in the case of the football mafia being involved in promoting the Persibara Club from the third-tier football league to the second-tier football league.

Australia, which has dealt with serious match-fixing in many fields of sports, including football, has been applying criminal law from law authority and safeguarding the integrity in sport from the sports authority. In maintaining the integrity of football leagues, the sports authority and the law authority must cooperate to ensure the integrity of sports betting because match-fixing in sports is too often related with gambling syndicates.

Indonesia, through comparative law, may learn from Australia in eradicating match-fixing. By learning from Australia, Indonesia may consider these specific

⁴⁸ AFP, “Football: Corruption-Scarred Indonesian Football Grapples With New Match-Fixing Scandal”, <https://www.straitstimes.com/sport/football/football-corruption-scarred-indonesian-football-grapples-with-new-match-fixing>, accessed 22 January 2019.

⁴⁹ Misra, *et al.*, “Safeguarding Sports Integrity,” p. 151.

programs to fight the ongoing match-fixing in the Indonesian football league:

- a. Indonesia may learn to fight match-fixing in its football competition by using not only *lex sportiva* from sports authority or PSSI but also Law Number 11 Year 1980 or The Anti-Bribery Law. This step must be performed immediately in the short term to anticipate the enactment of a more comprehensive law to fight match-fixing in Indonesian football and any other field of sports. Learning about the mutual relationship between sporting codes and the law enforcement agencies from Australian cases remains central to the effective policing of match-fixing.
- b. The government and Parliament must mutually agree to amend Law Number 3 Year 2005 regarding the National Sports System. Indonesia may learn from Australia's broad and more comprehensive term of corruption in sports and to take the matter seriously to improve its sports achievement. In the future, match-fixing should be regulated and recognized as a form of sports corruption where offenders can be judged in corruption cases instead of an ordinary criminal case.
- c. Indonesian authorities should establish a government body similar to Australia's NISU. This proposed body should coordinate with and supervise the PSSI and other sports authorities. The process of establishing the Indonesian version of NISU should be supported by establishing the Indonesian national policy on the codes of conduct and anti-match-fixing measures in Indonesian sports. The future Indonesian version of NISU and the future Indonesian national policy on the codes of conduct and anti-match-fixing measures will safeguard the integrity of Indonesian sports.
- d. All the stakeholders should reconsider the possibility of regulating sports betting in the Indonesian football league. This proposal seems controversial, but it may reduce and even eliminate match-fixing because of the involvement of gambling syndicates.

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