

POLITICAL LAW IN SETTLING SPORTS DISPUTES IN INDONESIA

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ABSTRACT

This research aims to examines political law in sports disputes and efforts to regulate the future of political law in settling disputes in the Act Number 11,2022 concerning Sports within progressive legal perspective. The research shows that the problems of legal politics in sports disputes is that the principles of *lex sportiva* and *lex ludica* have not been implemented in the settlement of sports disputes by involving the main sports' branches organization. In addition, the politics of law in sports disputes are also related to the potential for dualism in the sports arbitral bodies that are National Sport Committee (KONI) and National Olympic Committee (KOI). The efforts to regulate sports dispute require a legal reform in the form of a revision of the provisions of the Sports Law in emphasizing three important aspects, namely providing definitions and boundaries regarding sports disputes, affirming the main role of sports branch organizations as an implementation of the *lex sportiva* and the principle of *lex ludica*, as well as affirmation to guarantee legal certainty regarding the potential dualism of sports arbitral bodies.

Keyword: Progressive Law, Sports Disputes, Sports Law, Indonesia

INTRODUCTION

The sports have become a trend in developing countries as the sports aspect fulfills three interrelated aspects, namely the aspect of entertainment, solidarity, and togetherness,

and aspects of the industry whose orientation is profit (Patel, 2021). In the element of entertainment, sport is an alternative for the community after carrying out daily routines in the form of work or study, requires certain refreshing and entertainment make it is one of the aspects that can relieve people's fatigue. In solidarity and togetherness, sports can be a meeting place for various parties at the village, city, and international community levels, which can meet at sports events. (Di Marco, 2022) Messages of peace and enthusiasm to uphold sportsmanship are the main echoes that are always echoed in various sporting events. From the industrial aspect, it can be seen regarding the development of sports, especially in European countries, the United States, the Middle East, and China, that have begun to optimize sports as an industry that has an orientation towards sustainable profits. (Adamus, 2020)

The fulfillment of three aspects, namely entertainment, solidarity, and industry, makes sport not just a private event between people. However, the sport has metamorphosed into a public dimension so that there is a role for the state to participate in building a sports climate that is conducive and sporty in line with the goals of the Indonesian state. The importance of the state's role in the sporting aspect has made countries worldwide begin to regulate the sporting aspect in the laws and regulations in each country. (Suarsa & Utama, 2020) In Indonesia, arrangements regarding sports aspects are regulated in Act Number 11, 2022 concerning Sports (hereinafter Sports Law) that has regulated all sport aspects including its disputes comprehensively. The Sports Law was passed on March 16, 2022, as a revision of Act Number 3, 2005 concerning the National Sports System. (Kemenpora, 2022)

The passing of the Sports Law is one of the people's expectations regarding a responsive, progressive, and productive national sports system so that national sports goals can be achieved by optimally. (Sirait & Noer, 2021) However, problems regarding aspects of sports in Indonesia, especially those related to the regulation of sports disputes have not been vanished and resolved as Article 102 of the Sports Law related to the regulation of sports disputes, it still creates a blurring of legal rules in the form of unclear definitions and character of sports disputes, and the authority to regulate sports disputes has not been widely granted through each main branch of sport. This ambiguity resulted from the dualism of sports bodies in Indonesia that are BAORI (Sports Arbitration Body) and BAKI (Indonesian Sports Arbitration Board). Article 102 of the Sports Law only focuses on regulations on

optimizing sports dispute resolution by deliberation, conciliation, and mediation, as well as the urgency of establishing a sports arbitration body at the national level.

This legal ambiguity of Article 102 of the Sports Law, which has not specifically regulated the definition, type, and further authority for each main sports branch to resolve sports disputes has contributed to uncertainty. Sports industry players want sports disputes to be resolved quickly, effectively, and fairly. (Lindholm, 2020) This research analyzes the ambiguity of legal rules in the form of unclear definitions and characteristics of sports disputes and the lack of authority to regulate sports disputes broadly through each sports branch. This study answers legal and political problems in sports disputes and efforts to regulate the politics of sports dispute law in the future. The progressive legal perspective is used as an analysis tool which is intended as an orientation to building sports law disputes based on Indonesian moral values and based on sports law principles such as the *lex sportiva* principle and other sports law principles.

Three previous researchers have carried out research on sports disputes. Nurhayati (2020), which focuses on the aspect of dualism in resolving sports disputes, namely between BAORI (Sports Arbitration Body) and BAKI (Indonesian Sports Arbitration Board). The strength of this research is an in-depth conceptual analysis of the authority of BAORI and BAKI in resolving sports disputes. The weakness of this research is that it has not comprehensively described the advantages and disadvantages of each sports dispute resolution at BAORI and BAKI. (Saputra & Nurhayati, 2020) Furthermore, research conducted by Zulhidayat (2021) discusses anomalies and legal uncertainties in the dissolution of BOPI through Presidential Decree Number 112 of 2020. (Zulhidayat, 2021) The advantage of this research is that it holistically explains the existence of legal defects in the dissolution of BOPI through Presidential Decree Number 112 of 2020. The weakness of this research is that it has not offered legal remedies or legal policies that should be carried out regarding the dissolution of BOPI through Presidential Decree Number 112 of 2020. Subsequent research was conducted by Sumertajaya (2023), that analyzed aspects of passing the Sports Law in regulating professional athletes. (Sumertajaya, 2023) The advantage of this research is a comprehensive discussion of the legal implications of passing the Sports Law for professional athletes. The weakness of this research is that no legal solution is offered regarding the legal implications after the passing of the Sports Law.

Of the three previous studies, research on the ambiguity of legal rules in the form of unclear definitions and characteristics of sports disputes and the lack of authority to regulate sports disputes broadly through each main branch of sport in a progressive law perspective has not been carried out comprehensively. Therefore, this research is original because it offers novelty that has not been discussed and researched. Research with an orientation towards the analysis of the ambiguity of legal rules in the form of unclear definitions and characteristics of sports disputes and the lack of authority to regulate sports disputes broadly through each main branch of sport in a progressive legal perspective is normative legal research focusing on the study of the Sports Law.

RESEARCH METHOD

This research is normative legal research with primary, secondary, and non-legal sources . The primary legal sources in this study are the 1945 Constitution of the Republic of Indonesia, the Sports Law, and the Constitutional Court Decision Number 19/PUU-XII/2014. Secondary legal sources in this study include journal articles, books, and the results of studies that discuss sports disputes and sports law. The non-legal sources used is a legal dictionary. the conceptual and statutory approach are used in this research in analysing the data, qualitative-prescriptive analysis which aims to produce legal solutions to a problem or legal issue is applied.

RESEARCH OUTCOME AND DISCUSSION

1) The Political Law of Sports Disputes: A Problematic

Black's Law Dictionary defines dispute, which is principally related to conflict, disagreement, and claims of rights from one party to another (conflict, contest, or disagreement).(Garner & Black, 2019) Political law or legal policy is generally interpreted as a planned policy toward realizing the state's goals.(Herlindah, 2022) In this context, a sports dispute is a form of conflict, disagreement, or a claim on the rights of one party to another in a sports law relationship. This means that to be called a sports law dispute, and there must be a relationship within the scope of sports between one party and another.(Futaki, 2021) An understanding of sports relations must also be specifically formulated so that not every dispute involving parties involved in sports can be called a sports dispute.(Romadhon & Suhartono,

2023) Political law regarding sports disputes is an important study in legal science, especially concerning sports law.(Duval, 2021) The study and field of sports law in Indonesia are less compared to other countries, especially in Europe and the United States, where the sport has become a professional to industrial competition.(Windholz, 2022) It does not mean that there is no study of sports law in Indonesia, it requires optimal studies in the future, both in quantity and quality.

In Indonesia, it is generally common for law enforcement to be carried out in a dualistic manner between public and private law. This can be seen from the scope of sports, such as the legal relationship between sports athletes which is private in nature, while in other aspects of sports law policies which require state intervention are public in nature. Sports law has a public law orientation and private law.(Star & Kelly, 2021) From the public aspect, sports law mandates the government's role in establishing a structured, planned, responsive and progressive national sports system. This confirms that the public dimension in sports law places the government's main role in building a national sports system. Constitutionally, the important role of sports law is the implementation of Article 28C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which emphasizes the role of the state to provide guarantees for the community through science, art, and technology for personal development while simultaneously empowering the community communally. This public dimension of sports law in the Indonesian context is also manifested in the formulation of Sports Law, one of which is to meet the demands of the community's legal needs in the sports aspect.(Kristiyanto, 2018)

The private dimension regarding sports law is also growing massively, such as professional agreements or contracts for athletes, dispute resolution based on the internal provisions of each sport, to provisions on specific legal principles in the field of sports law.(Hanafie, Amin, & N., 2021) In the perspective of law, it is known about general legal principles and special legal principles. At least there are four principles of sports law *lex sportiva*, *lex ludica*, *lex mercatoria*, and propriety (fairness principle).(Prasetyo, 2022) Citing the views of Leonardo V. P. de Oliveira, the principle of *lex sportiva* means that sport has its

legal autonomy. Therefore, any disputes in sports are resolved by the internal mechanism of the sport and not based on positive legal provisions determined by the state.¹

According to Ken Foster, the principle of *lex ludica* is an aspect of harmonization and facilitation between sports law, international law, and national law in a country.(Konstantinidis & Panagiotopoulos, 2020) In this context, every sport that is hierarchically subject to sports at the international level is not subject to public international law but is a transnational law. Even though its scope crosses state boundaries, it is not a subject of international law.(Pandjaitan, 2013) In the context of national law, sports law is an autonomous law or *lex specialis*. Therefore, the arrangements made by the state are limited to facilitating, and the state does not have the authority to regulate beyond the authority regulated by sports law.(Szatkowski, 2022) if it is associated with a hierarchical system of legal norms, then sports law is not completely the subject to state law (both to the rules above it and the constitution of a country) but it is the subject to specific legal principles in the field of sports.(Husain, 2022)

The principle of *lex mercatoria*, according to L. I. Zakharova, is an unwritten dimension of sports law commonly referred to as the convention of sports law or customary of sports law in the form of customary law that develops in sports practice.(L.I, 2019) At the same time, this confirms that sports law also applies habits that are unwritten and developed in sports practice. The next principle is the principle of propriety in sports, commonly referred to as the fairness principle.(Sroka, 2022) This principle emphasizes that sports should be able to provide benefits not only for sports actors but also for other parties so that sports can be a means for the welfare of society.² With the specificity of the four "special" principles in sports law, the state as a facilitator must certainly provide space for implementing the four principles of sports law, one of which is in the aspect of sports disputes.

The political law of sports law can be seen from the formulation of the Sports Law by the state, which is expected to facilitate the application of the principles of sports law, especially in sports disputes. Judging from the philosophical aspect of the formulation of the Sports Law is to implement the goals of the state, one of which is an effort to provide general welfare for the community. That can be seen from the state's goal in formulating the Sports Law, which

¹ (Serra, 2020b) Lihat juga dalam (Serra, 2020a)

² (OECD, 2021) Bandingkan dengan (OECD, 2021)

is for the welfare of society where the sport is expected to have a domino effect on society. From a sociological perspective, the Sports Law seeks to improve the national sports system in terms of two aspects: internally trying to present sports professionalism through planning, coaching, and actualizing policies, including improving infrastructure to sports facilities and infrastructure. Externally, the Sports Law is expected to be able to optimize sports aspects in terms of the economy and business so that it can empower the community, including orientation to create jobs to reduce unemployment in Indonesia. from a juridical aspect, the formulation of the Sports Law is aimed at correcting the deficiencies contained in the previous law, namely Act Number 3,2005.

According to Indonesian Dictionary, sport means everything or all aspects related to sports.(KBBI, 2022) That is certainly different from the previous law, Law no. 3 of 2005, which uses the nomenclature "National Sports System." In the author's opinion, the nomenclature of "sport" in Sports Law has a broad (extensive) meaning so that it has an orientation that sport is expected to have a domino effect in society, especially in the aspect of economic empowerment. One of the aspects that the Sports Law corrects is related to sports disputes, especially what agency or institution is appropriate for handling sports disputes The Act Number 3,2005, specifically in Article 88 paragraph (3), states that sports disputes are resolved through state court institutions according to their jurisdiction. Of course, the provisions of Article 88 paragraph (3) of Act Number 3, 2005 contradict the principles of sports law, in particular the principles of *lex sportiva* and *lex ludica*, which emphasize that sport has its own "legal autonomy" system which cannot be haphazardly integrated with the national legal system which in this context is through state court institutions.

The Act Number 3, 2005 were later amended by the Sports Law as emphasized in Article 102. Although, in general, the provisions in the Act Number 3, 2005, the Sports Law still creates legal problems, especially in efforts to uphold the *lex sportiva* and *lex ludica* principles in resolving sports disputes by involving the major sports branch organizations.(Kurnia, 2018) Even though the provisions of Article 102 paragraph (1) of the Sports Law has regulated the main role of sports branch organizations in resolving disputes by deliberation to reach a consensus. The provisions of Article 102 paragraphs (3) and paragraph (4) of the Sports Law emphasizes the role of the government, both central and regions and does not provide independent facilitation and regulatory efforts for the parent organization of sports branches.

Referring to the applicability of the principles of *lex sportiva* and *lex ludica*, the enforceability of the legal principles that apply specifically in the field of sports needs to be emphasized in the Sports Law. The provisions of Article 102 of the Sports Law is failed to provide an affirmation to provide flexibility for the parent organization of sports branches to arrange settlements separate dispute according to the provisions of each sport.(Irianto, 2020)

Another problem in sports disputes is related to the dualism of sports arbitration bodies, that is *Badan Arbitrase Keolahragaan Indonesia* (hereinafter BAKI), formed by *Komite Olimpiade Indonesia* (hereinafter KOI), and *Badan Arbitrase Olahraga Indonesia* (BAORI), formed by *Komite Olahraga Nasional Indonesia* (hereinafter KONI). This results in the Constitutional Court Decision Number 19/PUU-XII/2014, which confirms that the national sports committee must be interpreted broadly to recognize KONI and include other national sports committees.(Rizki, 2020) The substance of the Constitutional Court (*Mahkamah Konstitusi* or MK) Decision Number 19/PUU-XII/2014 also missed being considered by the Sports Law's drafters, even though it is related to sports disputes. MK Decision Number 19/PUU-XII/2014 should be used as a reference and able to influence the formulation of norms in Article 102 of the Sports Law. In the provisions of Article 102, paragraphs (5) and (6) in the Sports Law, it is emphasized that the central government must facilitate the establishment of a sports arbitration body. The problem of legal ambiguity in Article 102, paragraphs (5) and (6) of the Sports Law is whether the provisions of Article 102, paragraphs (5) and (6) of the Sports Law only require the establishment of one sports arbitration body or can more than one be formed. If referring to the Constitutional Court Decision Number 19/PUU-XII/2014, which recognizes KONI and KOI as national sports committees, this has the potential to lead to the existence of more than one sports arbitration body. Referring to the Constitutional Court Decision No. 19/PUU-XII/2014 above, ambiguity occurs because in its decision the Constitutional Court actually applies more than one institution to handle sports disputes.

The potential for more than one sports arbitration body can also be seen from the formulation of Article 102, paragraphs (5) and (6) in the Sports Law, which use lowercase letters for sports arbitration bodies. In legislative drafting rules, using lowercase letters marks the nature or character and is not the official name of the body or institution.(Grabham, 2022) That means that the use of lowercase letters in sports arbitral bodies, as in the formulation of Article 102 paragraphs (5) and (6) in the Sports Law, has the potential to regenerate the

dualism of sports arbitral bodies which were formed by KONI and KOI respectively. Based on the description above, the problem of legal politics in sports disputes is that the principles of *lex sportiva* and *lex ludica* have not been implemented in settling sports disputes by involving the main sports branch organization. Even though the provisions of Article 102 paragraph (1) of the Sports Law it has been regulated regarding the main role of sports branch organizations in resolving disputes by deliberation to reach a consensus. But, in the provisions of Article 102 paragraphs (3) and paragraphs (4) of the Sports Law it emphasizes the role of the government, both central and regions and does not provide independent facilitation and regulatory efforts for the parent organization of sports branches. In addition, the political, and legal problems in sports disputes are also related to the potential for dualism in sports arbitration bodies which is marked by the use of lowercase letters in sports arbitration bodies as in the formulation of Article 102 paragraphs (5) and (6) in the Sports Law which has the potential to regenerate dualism sports arbitral bodies were formed by KONI and KOI.

2) The Political Law of Sports Disputes in a Progressive Legal Perspective

Politics of Law is legal policy lines established by the state to implement state objectives within the framework of legal products.(Ermanto Fahamsyah, 2022) Political Law substantively relates to the planning, implementing, and evaluating of a lawful provision.(Dicky Eko Prasetyo, 2021) In the context of sports law, legal politics is oriented towards planning, implementing, and considering the conditions of sports law, in this case, especially Sports Law. One of the aspects that concerns legal politics is regarding future arrangements or *ius constituents*. Future arrangements are an effort to implement legal politics, especially in evaluating an existing lawful provision. In future arrangements, various measures can be taken, including changing the rules and issuing lower legal regulations that specifically broaden or narrow the requirements in the direction of law. One of the interesting and relevant paradigms to be oriented to legal political aspects is the progressive legal paradigm or perspective.

A Progressive law is an idea of legal thought that was "officially" put forward by Satjipto Rahardjo in which advanced law stretches and emphasizes the aspect of "legal transformation" in which law is like an organism that always grows, develops, and changes to adapt to the times.(Imam Asmarudin, 2022) Progressive law has the main postulate that law

is for humans.(Suteki, 2018) The orientation of the postulates of law for humans can be practically oriented to three aspects. *First*, law for humans emphasizes that law is a temporary means by which when the legal needs and conditions of society have changed, who must also change the law. It becomes something unfair if the situation of society has changed while the law is still the same and maintains the status quo. Therefore, the "progressive" character of this law means that the law must become an "ear" for society's conscience and legal needs. Efforts to break the status quo in law while simultaneously emphasizing the dimension of legal rejection of the final and definite clauses of the law (finitive scheme).(Andriawan, 2022)

Second, the characteristics of law for humans emphasize expanding the legal dimension, which normally focuses on norms and written legal rules. Still, in a progressive direction, apart from concentrating on norms, the law must also pay attention to aspects of behavior (behavior).(Dicky Eko Prasetyo Adam Ilyas Felix Ferdin Bakker, 2021) The behavioral element in advanced law has an important position because, with structured, systematic, and steady behavior, the behavioral aspect can invalidate the law in an informal manner (sleeping law).(Riyanto, 2019) This means that even though legal norms and regulations strictly regulate certain legal substances, deviant behavior occurs in practice, so the goals and provisions of these legal norms will be difficult to manifest in society. Therefore, progressive law does not only focus on legal certainty embodied in the formulation of legal standards and rules in the form of laws and regulations but also focuses on legal behavior, which is a "driving engine" in optimizing legal norms.

Third, law for humans emphasizes the essence and nature of humanity in the form of personal autonomy and the utilization of morality in formulating and implementing the law. This autonomy includes efforts to guarantee human rights, both in the form of human rights and basic rights that affect maintaining the existence of human life.(Markus Marselinus Soge, 2022) In addition, progressive law also emphasizes consideration and moral assessment of a legal rule or provision. These ethical considerations and judgments are intended. Thus, law does not become an institution that is "morally impermeable" and "impermeable to human values."(Erlina & Sinaulan, 2021) Laws that are not based on morality are not laws but only coercive regulations. Based on the three practical aspects of the legal postulates for humans above, we can conclude that progressive law emphasizes human needs and interests above the law itself.(Kurniawati, 2022) Progressive law rejects the "sacralization of law" so that the law

can be revised, replaced, or even not enforced in society if needed.(Disantara, 2021) In the context of sports law politics, progressive law mandates the need for efforts and "extraordinary (progressive) steps" to reconstruct it so that the politics of sports law can be optimal and follow the principles of sports law and the needs of society.

The problems in Article 102 of the Sports Law that against the role and position of the main sports branch organizations in resolving sports disputes comprehensively have denied the essence of progressive law, namely the spirit of autonomy and guaranteeing rights and freedoms as the essence of humanity. Referring to the principles of sports law, namely the regulations of *lex sportiva* and *lex ludica*, it is best if the provisions in Article 102 of the Sports Law can optimally apply the principles of *lex sportiva* and *lex ludica*, namely trying to provide space for the parent organization of sports branches to resolve sports disputes separately. It means that the formulation of Article 102 of the Sports Law still applies the principles of *lex sportiva* and *lex ludica* in summary and substantively still weak.(Dashkovska, Yavor, Brovchenko, Huz, & Barabash, 2020)

The optimal implementation of the *lex sportiva* and *lex ludica* principles is also seen from the absence of comprehensive limitations or definitions of sports disputes in the Sports Law. The lack of regulation regarding sports disputes impacts not guarantee legal certainty in society. In practice, it can also lead to disparities regarding sports disputes, such as whether the postponement of athletes' salaries is a matter of sports disputes or an employment dispute. in addition, it is still questioned whether this is a sports dispute or other legal problem if the government stops a sports competition and then impacts various aspects of sports,. The thing that becomes crucial is the direction in which the community or parties who are disadvantaged concerning sports should have sports rights that have not been fulfilled, whether to go through the mechanism of sport or the mechanism of the national justice system. This is important because it refers to the principles of *lex sportiva* and the *lex ludica* - sports law has specific characteristics of its *lex specialis* compared to national law.

Another problem related to sports disputes is the potential for dualism in sports arbitral bodies. That is marked by the use of lowercase letters in sports arbitration bodies as in the formulation of Article 102 paragraphs (5) and (6) in the Sports Law, which has the potential to regenerate the dualism of sports arbitration bodies, each of which -respectively formed by KONI and KOI. it means that instead of Sports Law being a solution to the current sports law problems, it

creates new problems as stipulated in Article 102 paragraphs (5) and (6) . The problem of the dualism of sports arbitration bodies, BAKI, which formed by KOI, and BAORI, which formed by KONI , is serious and deserves mutual attention. With the potential for the dualism of sports arbitration bodies as stipulated in Article 102 paragraphs (5) and (6) in the Sports Law, the essence of progressive law in managing sports disputes in the Sports Law has not been fulfilled. Especially the essence of protecting humanity, in this case, guaranteeing legal certainty, regarding sports arbitration bodies as stipulated in Article 102, paragraphs (5) and (6) in the Sports Law.

Based on the facts above, the politics of law in settling disputes under Sport Law from the progressive legal ideas require a legal reform in the form of a revision of the provisions of the Sports Law. Therefore, Article 102 which emphasize three important aspects, provision of definitions and limitations regarding sports disputes, affirmation of the main role of sports branch organizations as an implementation of the *lex sportiva* and *lex ludica* principles, and affirmation and efforts to guarantee legal certainty regarding the potential dualism of sports arbitral bodies needs to be revised..

CONCLUSION

The legal politics in sports disputes is that the principles of *lex sportiva* and *lex ludica* have not been implemented in the settlement of sports disputes by involving the main body of the sports branch. Although Article 102 paragraph (1) of the Sports Law has regulated the main role of sports branch organizations in resolving disputes by deliberation to reach a consensus and Article 102 paragraphs (3) and paragraph (4) of the Sports Law emphasize the role of the government, both central and regions, it has not provided an independent facilitation and regulatory efforts for the parent organization of sports branches. The political and legal problems in sports disputes are also related to the potential for dualism in sports arbitration bodies which is marked by the use of lowercase letters in sports arbitration bodies as in the formulation of Article 102 paragraphs (5) and (6) of the Sports Law which has the potential to regenerate dualism.

There should be efforts to regulate the politics of law in settling sports disputes from a progressive legal perspective. it is necessary to have a legal reform in the form of a revision of the provisions of the Sports Law, particularly in Article 102 emphasizing three important

aspects. *Firstly*, provision of definitions and limitations regarding sports disputes. *Secondly*, affirmation of the main role of branch organizations sport as an implementation of the *lex sportiva* and *lex ludica* principles, as well as affirmation and efforts to guarantee legal certainty regarding the potential dualism of sports arbitration bodies. *Finally*, the revision of the provisions of Article 102 of the Sports Law.

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