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Legal Protection for Professional Athletes: The Perception of the Theory of Dignified Justice

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Abstract: This thesis explores the legal protection of professional basketball players in the Indonesian Basketball League (IBL), particularly concerning their right to transfer between clubs. It highlights the challenges faced by athletes due to IBL regulations that limit transfers to a specific period between the end of a season and 30 days before the next begins which contradicts general labor principles allowing employees to resign freely. The study examines two main issues: (1) legal norms on player transfers and dispute resolution based on the Manpower Law and Sports Law, and (2) the practical application of these rules in transfers both within and outside the IBL. Employing a normative-empirical method and analyzing relevant legal sources, the research finds that IBL players qualify as workers under labor law. Transfer restrictions infringe on their constitutional rights, and many do not receive lawful benefits like annual leave or severance. Legal dualism in dispute resolution creates further uncertainty for athletes.

Keyword: Professional Basketball; Regulations; Manpower Law; Sports Law; Dignifies Theory Justice

INTRODUCTION

According to Article 25 paragraph (1) of the Universal Declaration of Human Rights, everyone has the right to a standard of living suitable for his or her own health and well-being, as well as that of his or her family. The right to health is also stated in Article 28 H paragraph (1) of the Republic of Indonesia's 1945 Constitution, as amended, which states that every person has the right to live in physical and spiritual prosperity, to have a place to live, to have a good and healthy living environment, and to receive health services. The problem formulation contains article questions that must be explained in the discussion and answered in the conclusion. Sport, according to Putu Sudarma Sumadi, is any physical activity done for health, competition, friendship, games, and entertainment. It can be done for free (amateur) or for money (professional), and it is a right of every individual as long as it is founded on skill, honesty, and willpower. Sport is defined as any activity that integrates and systematically engages the mind, body, and soul in order to promote, foster, and develop physical, spiritual, social, and cultural potential.

There are two types of sports: team sports and individual sports. Sports with two or more players are referred to as team sports. Meanwhile, individual sports are those played by no more than one person. As previously explained, team sports include basketball, volleyball, and soccer. Meanwhile, examples of individual sports include golf, chess, tennis, badminton, swimming, and marathon running.¹ The All-Indonesia Basketball Association, or “PERBASI”, was established on October 23, 1951. In 1953, PERBASI became a member of the Fédération Internationale de Basketball, or “FIBA”. The Indonesian Basketball competition (“IBL”) is a professional basketball competition that was established by PERBASI in 2003. The DBL oversaw the IBL, which was renamed the National Basketball League (“NBL”) and operated from 2010 to 2015. The NBL, which had previously been run by the DBL, was renamed the IBL in 2016 after it was taken over by PT Bola Basket Indonesia. The IBL is currently Indonesia's only professional basketball league.²

Provisions governing the process and timeframe allowed for the transfer of professional basketball players from one IBL participating club to another (both IBL participating clubs and non-IBL participating clubs) are in place in professional basketball, more especially in the IBL professional basketball competition. These provisions also regulate the transfer fees that must be paid. The IBL Implementing Regulations Version 08 (“IBL Regulations”) contains the clauses pertaining to the transfer's procedure and timeline.³ But the IBL, the only professional basketball league, has actually created issues. One of these issues is the movement of IBL players, or professional basketball players, from one IBL-participating club to another (either an IBL club or a non-IBL club), a phenomenon known as player transfer.

Every employee who resigns voluntarily is entitled to remuneration under the Employment Law. The Republic of Indonesia's Government Regulation Number 35 of 2021, which addresses fixed-term employment agreements, outsourcing, working hours and rest periods, and termination of employment, further emphasizes this. It declares that workers who voluntarily leave their jobs and fulfill the necessary conditions are entitled to severance pay and compensation, the amount of which is determined by the collective bargaining agreement, employment contract, or corporate policies. Every employee who resigns voluntarily is entitled to remuneration under the Employment Law. The Republic of Indonesia's Government Regulation Number 35 of 2021, which addresses fixed-term employment agreements, outsourcing, working hours and rest periods, and termination of employment, further emphasizes this. It declares that workers who voluntarily leave their jobs and fulfill the necessary conditions are entitled to severance pay and compensation, the amount of which is determined by the collective bargaining agreement, employment contract, or corporate policies.

METHOD

Normative (doctrinal) and empirical (non-doctrinal) legal research are the two categories of legal study. Normative legal research examines secondary data or library resources, which encompass a range of primary and secondary legal publications.⁴ Generally speaking, law is defined as what is stated in legislation or as a standard that serves as a guide.⁵ According to Nitaria Angkasa et al., legal synchronization is the subject that needs to be

¹ Gandang Eka Prayoga, Anung Priambodo, Noortje Anita Kumaat, “, Budapest International Research and Critics in Linguistics and Education (BirLE) Journal, Vol. 5, No. 2, Mei 2022. DOI: <https://doi.org/10.33258/birle.v5i2.5334>

² IBLIndonesia.com, “About Us”, <https://iblindonesia.com/about> diakses pada 14 November 2024

³ Peraturan Pelaksanaan Indonesian Basketball League Version 08, September 2023.

⁴ Soerjono Soekanto & Sri Mamudji, *Penulisan Hukum Normatif: Suatu Tinjauan Singkat*, PT Raja Grafindo Persada, Jakarta, 2003, h. 13.

⁵ Amiruddin & H. Zainal Asikin, *Pengantar Metode Penelitian Hukum*, PT. Raja Grafindo Persada, Jakarta, 2006, h. 118.

investigated in normative research.⁶ The composition of the rules that will be enforced demonstrates this synchronization since it is crucial to read the laws in writing and they must not conflict with one another. Both primary and secondary data were used in this study. Data gathered directly from primary sources is referred to as primary data.⁷ Three legal materials, primary, secondary, and tertiary, as well as primary data comprise the secondary data that the author employed to finish this study. Legal research uses a case study approach to study law through the analysis of relevant cases. In this approach, researchers analyze various legal aspects related to the case, such as statutes, regulations of relevant organizations, and other legal documents. Normative-empirical legal research may use a case study approach to collect data and analyze legal formulations.

RESULTS AND DISCUSSION

Since justice is an equal right for all parties in court, Gustav Radbruch believed that the law must have three (three) principles: a) the principle of legal certainty (*rechmatigheid*), which is examined from a juridical perspective; b) the principle of legal justice (*gerechtigheid*), which is examined from a philosophical perspective; and c) the principle of legal utility (*zwechmatigheid*), which is examined from a *doelmatigheid* or utility perspective.⁸ When there is a tangible force behind the law in question, it is said to be certain, according to the principle of legal certainty. The existence of the legal certainty principle protects those who seek justice from capricious behavior, meaning that in some situations, they will and can achieve what is expected of them.⁹ Legal positivism, according to Erlyn Indarti, considers law as "law as what it is written in the books," essentially positive norms that apply generally in abstracto at a specific time/place; it can be said that law is viewed as *ius constitutum*, which is law that exists and applies. This notion of legal certainty is derived from dogmatic legal doctrines based on the positivist school of thought, which regards law as autonomous and independent, because for adherents of this school of thought, law is nothing more than a set of rules. Law, as a general legal system, maintains legal certainty. The overall character of the rule of law indicates that it does not pursue justice or fairness, but rather legal certainty.¹⁰

The objectives of justice, according to Gustav Radbruch, are utility, certainty, and fairness. Security and legal advantages cannot be overlooked, even though fairness in the application of the law is essential.¹¹ A law that incorporates these three components for the benefit and prosperity of the state is considered effective. Justice in this sense refers to equal rights for all people before the courts, and the content of the law can be used to illustrate its usefulness. Contrarily, certainty necessitates that the law be construed as a rule that all individuals in their position must abide by.¹²

Indonesia, a country founded on the rule of law, is still working to establish justice that takes into account all facets of life. This suggests that Western legal theory has a significant influence on Indonesian legislation, claim Lili Rasjidi and Liza Sonia Rasjidi. Additionally, the philosophy of dignified justice was developed by a legal expert from Indonesia. This idea

⁶ Nitaria Angkasa *et al.*, *Metode Penelitian Hukum Sebagai Suatu Pengantar*, CV. Laduny Alifatama (Penerbit Laduny), Metro, 2019, h. 8

⁷ Agus Budianto, "Legal Research Methodology Reposition in Research on Social," *International Journal of Criminology and Sociology* 9, no. 1 (2020): 1339–1346.

⁸ Amanda Chairunnisa, "Analisis Terhadap dissenting Opinion Dalam Penyelesaian Sengketa Kepailitan Di Indonesia", JOM Fakultas Hukum Universitas Riau, 2018, Volume V Jilid 02

⁹ Sudikno Mertokusumo, "Bab-Bab Tentang Penemuan Hukum", Citra Aditya Bakti, Bandung, 1993, halaman 2.

¹⁰ Tami Rusli, *Pengantar Ilmu Hukum*, Universitas Bandar Lampung Press, Bandar Lampung, 2017, h. 45

¹¹ M. Muslih, "Negara Hukum Indonesia dalam Perspektif Teori Hukum Gustav Radbruch," *Jurnal Hukum Legalitas* IV, no. 1 (2013): 143.

¹² *Ibid.*

is the result of Indonesia's pressing need to advance philosophy, science, theory, and jurisprudence in order to tackle the country's main issues. They need to quit relying on the solutions of others to address their own issues. Expert opinions from other nations are too antiquated and irrelevant to Indonesia's current situation.¹³ Rather than merely analyzing the underlying legal layers, the theory of dignified justice, in keeping with its philosophical traits, aims to uncover the ancient roots or principles that lie beneath the surface of a recently built legal system. The legal system is based on the long-standing foundations found in the nation's soul, which support the entire system's structure and help it achieve its objective of justice, according to the philosophy of dignified justice. The theory of dignified justice assesses values in a similar way to legal philosophy. This idea is essential as a legal philosophy since the Pancasila legal system is made up of principles that have been refined to create values. The goal of this idea is to make positive law easier for Indonesians to comprehend.¹⁴

Work agreements and internal rules set by the parent sports organization (in this example, Perbasi) or league managers (in this case, IBL managers) still have certain leeway under positive legislation. Therefore, to maintain legal certainty and safeguard players' rights as employees, professional sports regulations and labor standards must be harmonized. According to Article 2 paragraph 1 of the Industrial Relations Dispute Law, which stipulates that all industrial relations disputes must be settled by discussion in order to come to an agreement (bipartite negotiations), this is the mechanism for resolving disputes between professional athletes and clubs. The Sports Law, as the primary legal source for governing professional sports, including clubs and athletes, does not specifically regulate the transfer of professional athletes between clubs. The Sports Law delegates the technical arrangements for the transfer of professional athletes to the parent sports organization or international federation. Meanwhile, the IBL actually hinders IBL players from changing clubs by regulating the transfer mechanism for IBL players only after the end of the competition season and 30 (thirty) days before the start of the next competition season (transfer window). Thus it could create a gap in legal certainty if it comes into contact with the constitutional rights of IBL players as workers.

However, the author's research indicates that there are issues with IBL players moving between IBL Clubs in the form of barriers. For instance, an IBL player named Dimaz Muharri and an IBL club called CLS Knights got into a fight in 2021. Regarding the execution of Dimaz Muharri's Resignation Letter dated December 4, 2015, CLS Knights filed a complaint against him in the Surabaya District Court. As stated in the resignation letter, it was agreed that Dimaz Muharri would have to compensate CLS Knights if he had continued to play in the IBL after the employment contract between the two parties ended. It is reported that in 2019, more than three years after the employment agreement ended, Dimaz Muharri joined another IBL Club called Louvre Surabaya, which is currently known as Dewa United Surabaya. As mentioned in his Resignation Letter dated December 4, 2015, the CLS Knights then claimed compensation payments from Dimaz Muharri in connection with his joining Louvre Surabaya. The CLS Knights' complaint against Dimaz Muharri was filed in Surabaya District Court on April 7, 2021, under case number 365/Pdt.G/2021/PN.Sby. CLS Knights sued Dimaz Muharri, demanding that he be deemed in breach of contract and pay CLS Knights Rp. 393,600,000 (three hundred ninety-three million six hundred thousand Rupiah). The Surabaya District Court determined that the CLS Knights action was inadmissible because they lacked legal standing to sue Dimaz Muharri.

In addition to the aforementioned concerns, some IBL clubs refuse to approve the movement of IBL players from their clubs. For example, in 2023, IBL player Abraham Damar

¹³ Teguh Prasetyo et al., *Hukum dan Keadilan Bermartabat: Orientasi Pemikiran Filsafat, Teori dan Praktik Hukum* (Yogyakarta: K-Media, 2023).

¹⁴ Teguh Prasetyo, *Keadilan Bermartabat - Perspektif Hukum* (Bandung: Sinar Nusa Media, 2019).

Grahita transferred from IBL club Prawira Bandung to professional basketball club Veltex Shizuoka, a Japanese B-League team. The transfer posed a dilemma because Abraham Damar Grahita was still under contract with Prawira Bandung to play in the IBL until 2026. However, it was known that Abraham Damar Grahita had a letter of clearance ("LOC") from FIBA to play in the B. League, and the work agreement between Abraham Damar Grahita and Prawira Bandung included a clause stating that Prawira Bandung would grant permission if Abraham Damar Grahita obtained an agreement to play in a professional basketball club that competed in basketball competitions abroad.

The practice of IBL Clubs implementing a clause stating that IBL Players are still bound to the IBL Club until the end of the work agreement and requiring other IBL Clubs to continue paying compensation to the previous IBL Club even though they are no longer bound by the work agreement violates the provisions of Article 27 paragraph 1 and Article 28D paragraph 2 of the Republic of Indonesia's 1945 Constitution. This conduct plainly breaches the terms of Article 1 paragraph 22.7 of Chapter I of the IBL Regulations, which says that a free agent is a player who is no longer under contract with any club and has been proclaimed free to transfer. The practices and regulations in the IBL Regulations that prevent IBL Players from moving clubs are contrary to the provisions in Article 162 of the Employment Law, which states that workers can resign of their own free will as long as they meet the following requirements: (i) submit a written resignation application no later than 30 (thirty) days before the effective date of termination of employment, (ii) are not bound by a work contract, and (iii) continue to carry.

The practices of IBL Clubs, as well as the provisions in the IBL Regulations that prevent IBL Players from moving IBL Clubs, are clearly inconsistent with the provisions in Article 162 of the Manpower Law, creating legal uncertainty for IBL Players regarding the implementation of their rights to move IBL Clubs. Furthermore, the IBL Regulations' practices and regulations governing the transfer mechanism of IBL Players clearly violate IBL Players' human rights under Article 27 paragraph 1 and Article 28D paragraph 2 of the Republic of Indonesia's 1945 Constitution, which require decent work and fair treatment in employment relations. Regarding the practice of big clubs in the IBL buying IBL players but not including them in the roster and not playing them, just so that the IBL players do not join their competing IBL clubs, this is detrimental not only to the IBL players who are recruited but not played, but also to other IBL clubs who miss out on the opportunity to get quality players, as well as the IBL itself because the competition being run is not competitive. That the practice of concentrating IBL players in one club plainly jeopardizes the rights of IBL players who are not on the roster since IBL players have the same playing possibilities as their IBL club colleagues.

Furthermore, based on interviews with sources Dian Heriyadi and Diftha Pratama, it was discovered that when the agreement between IBL Players and IBL Clubs was terminated (whether due to the expiration of the agreement period or transfer), the IBL Players were never compensated for the termination of the employment agreement. Furthermore, it was determined that IBL players were never given the ability to quit or recompense for rights and severance pay based on. According to Article 15 paragraph 1 of PP 35/2021, IBL Clubs (as employers) must offer compensation to IBL Players (workers) whose employment relationship is based on a PKWT.

Teguh Prasetyo defines the idea of dignified justice as a legal theory with several key postulates in the legal realm. These postulates include the concept that law is a system. A system is a coherent whole made up of multiple interconnected pieces. A system consists of multiple interrelated pieces or components that work together to achieve a common purpose. Another hypothesis is that justice humanizes people. The concept of dignified justice is built on the spirit of the nation. Pancasila represents the soul of the Indonesian people. Pancasila is the state's fundamental rule and a key component of the Pancasila Legal System. The values expressed in Pancasila serve as standards for virtue in legal systems. The Pancasila Legal

System also includes the purpose of law. According to the perspective of Dignified Justice, the goal of law is justice that humanizes humans. Within the concept of humanizing justice, there are justice itself, utility, and legal certainty. These three components of humanizing justice are always present in every rule, legal principle, concrete legal regulation, and also legal discovery. According to the perspective of Dignified Justice, a system does not permit conflict within it. Therefore, in the philosophy of Dignified Justice, there is no antinomy. There is no conflict between justice and utility. Similarly, there is no conflict between utility and legal certainty. Justice, certainty, and utility as the goals of law are a mutually balanced unity. Every time the law is discussed, it automatically contains the meaning of justice, as well as certainty, and utility.

The current implementation of IBL Player transfers between IBL Clubs favors IBL Clubs based on a formal contractual basis rather than a sense of justice for IBL Players. This contradicts the principle of dignified justice, as it negates the context of IBL Players as human beings who also desire career development. Meanwhile, clearly based on Article 28E paragraph 1 of the 1945 Constitution of the Republic of Indonesia, it states that everyone is free to choose a job. This right is further emphasized by Article 38 paragraph 2 of the Human Rights Law, which states that everyone has the right to freely choose the job they like and also has the right to fair employment conditions. When IBL Players are not given the opportunity to move freely and fairly, their dignity and basic human rights are violated and IBL Players are treated like assets or property of the IBL Club.

The practice by IBL Clubs that does not provide IBL Players with their rights in the form of the right to leave, the right to replacement money and the right to compensation when the employment agreement is terminated also contradicts the principle of dignified justice, because it negates the human rights of IBL Players. Based on Article 28D paragraph 2 of the 1945 Constitution of the Republic of Indonesia, it is stated that everyone has the right to work and receive fair and proper compensation and treatment in employment relations. Likewise, Article 38 paragraph 2 of the Human Rights Law states that everyone has the right to freely choose the work they like and also has the right to fair employment conditions. Based on the Employment Law and its implementing regulations, workers have the right to leave, the right to replacement money and compensation when the employment agreement is terminated. The condition of IBL Players who do not receive their rights under the Employment Law is clearly a form of injustice because there is different treatment for IBL Players compared to other professions. Regarding the dispute resolution mechanism between IBL Players and IBL Clubs, the fact that there are two legal mechanisms for IBL Players and/or IBL Clubs to pursue legal action creates legal uncertainty and can create ambiguity and confusion for IBL Players and/or IBL Clubs when seeking to defend their rights. Furthermore, the available dispute resolution mechanisms are often out of reach for IBL Players and more accessible to IBL Clubs with a better understanding of the law and financial capabilities. Legal remedies such as mediation, conciliation, and arbitration are processes that are not easily understood by IBL Players. Therefore, a harmonization of the provisions of the Employment Law and the provisions of the Sports Law is needed, involving representatives of IBL Players, IBL Clubs, IBL management, and Perbasi to ensure legal certainty and fairness regarding the legal mechanism to protect the rights of the parties.

CONCLUSION

Based on the above, it can be concluded that a Klub IBL that does not provide normative rights to its members, such as health care, wages, and compensation for work-related expenses, is a violation of Indonesian labor law. In the context of Martabat, law is not only intended to achieve success and utility, but it must also be capable of protecting human life, i.e., increasing the level of safety and security. The concept of keadilan in this theory does not imply that there

is a conflict between keadilan, kepastian hukum, and kemanfaatan, because ketiganya is positioned as a single point of harmony in all hukum regulations. The club's denial of IBL players' basic rights indicates a structural imbalance in workplace relations that undermines players' dignity as legal subjects with fundamental rights. This contradicts Article 28D paragraph (2) of the 1945 Constitution, which proclaims every citizen's right to labor and be treated and compensated fairly and appropriately. Furthermore, Article 38 paragraph (2) of the Human Rights Law states that every individual has the right to fair working circumstances, which include the ability to choose a job and protection in employment interactions. This approach also discriminates against athletes, notably IBL players, who, under the Manpower Law, should be treated equally with workers in other fields. As a result, a legal system that permits this behavior contradicts the principles of a just and dignified law. As a result, systemic improvements in regulating employment relations between professional athletes and clubs, including strict law enforcement, are required to achieve justice that is not only formalistic but also substantive, prioritizing humanitarian values, respect for human rights, and equal workplace treatment.

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