

Legal Status of PSSI Statute in Indonesian Legislation

Mochammad Erga Firmansyah

Tomy Michael

Erga.cute2002@gmail.com

tomy@untag-sby.ac.id

Fakultas Ilmu Hukum, Universitas 17 Agustus 1945 Surabaya

Abstract

The purpose of this research is to determine the status of the statutes held by the Indonesian Football Association (PSSI), which is a non-governmental organization, regarding the actual status of PSSI statutes in the national legal system. Article in the FIFA Statutes that prohibit any intervention, including intervention by a country through the government, in the problems faced by FIFA members and if it happens, there will be sanctions imposed on the country's football association. The problem in this thesis is the actual legal status of PSSI statutes because it is proven that PSSI and FIFA are mutually binding and PSSI is also subject to FIFA and how PSSI's responsibility to the country is reflected in the Kanjuruhan case. The data analysis method used in this research is descriptive qualitative method and the conclusion drawing method used is deductive method. The research results are presented descriptively to obtain an explanation of the issues discussed. The research results show that the status of PSSI Statutes is Lex Sportiva in the national legal system.

Keywords: Statuta; Lex Sportiva; Sistem Hukum di Indonesia

Abstrak

Penelitian ini bertujuan untuk mengetahui bagaimana status statuta yang dimiliki oleh suatu Asosiasi Sepak Bola Indonesia yang merupakan organisasi non-pemerintah (PSSI) tentang bagaimana sebenarnya status statut PSSI dalam sistem hukum nasional. Pasal dalam Statuta FIFA yang melarang apapun intervensi, termasuk intervensi dari suatu negara melalui pemerintah, terhadap permasalahan yang ada dihadapi oleh anggota FIFA dan apabila hal itu terjadi maka akan ada sanksi yang diberikan kepada asosiasi sepak bola negara. Permasalahan dalam skripsi ini adalah bagaimana sebenarnya status hukum statuta PSSI ini karena terbukti PSSI dan FIFA saling mengikat satu sama lain dan PSSI pun tunduk pada FIFA dan bagaimana bentuk tanggung jawab PSSI kepada negara jika berkaca pada kasus kanjuruhan. Adapun metode analisis data yang digunakan dalam penelitian ini adalah metode deskriptif kualitatif dan metode penarikan kesimpulan yang digunakan adalah metode deduktif. masalah terkait. Hasil penelitian disajikan secara deskriptif sehingga diperoleh gambaran penjelasan mengenai permasalahan yang dibahas. Hasil penelitian menunjukkan bahwa bagaimana status Statuta PSSI yang bersifat Lex Sportiva dalam sistem hukum nasional.

Kata kunci: Statuta; Lex Sportiva; Sistem hukum di Indonesia

Pendahuluan

As the highest authority in the administration of the sport of football, the Fédération Internationale de Football Association (hereinafter FIFA) has absolute power to resolve disputes that occur within the scope of its organization. This underlies FIFA to build its own judicial empire as outlined in an important document entitled FIFA Statutes. FIFA designs its judicial system into 3 (three) judicial bodies, namely the Disciplinary Committee, Appeal Committee, and Ethic Committee. The obligations and functions of these judicial bodies are based on the FIFA Disciplinary Code and the FIFA Code of Ethics and the decisions taken by these committees are inviolable. the name FIFA which is the name of the parent organization of football in the world or winning football in the world. As the parent of all football organizations in the world, FIFA has a long history as well as tasks that greatly affect the condition of football in the world (Suparman 2021).

In general, FIFA has a function to ensure the implementation of professional football competitions around the world properly. Not only that, FIFA is also ideally obliged to

design rules and regulations regarding football in the world. In addition, FIFA must also ensure the enforcement of these rules and control professional football in the world, especially in the 211 FIFA member countries (Hotman Bintang Parulian Aruan 2021). Likewise, the Indonesian Football Association (hereinafter referred to as PSSI) has the duty and function to organize, develop, and supervise football matches throughout Indonesia. In addition, PSSI is also tasked with promoting Indonesian football. PSSI controls all forms of matches that take place within its territory. Organizing various forms of national level football competitions. It also draws up rules and regulations and ensures their enforcement. FIFA, the governing body of international football, has its own constitution, laws, and legal system, the laws and rules of the international federation of sports in organizing sports competitions referred to as Lex Sportiva (Ramadhan and others 2023). The definition of the word Lex Sportiva is an international law that regulates athletic contests; such as the Olympic games or world cup; Lex Sportiva is the jurisdiction of the international court of justice related to sports; Lex Sportiva is one of the international instruments (Bryan and others 2019).

Actually, the cases that occur in soccer matches under the auspices of PSSI are not without clear sanctions. PSSI itself has a General Match Regulation which is the basis for the implementation of sanctions in the event of events such as violence in the field. The sanctions are regulated more clearly in Article 55 PSSI General Match Regulations. The contents of the Statute must be understood by all members of the organization so that there is no misunderstanding in carrying out their duties in accordance with the applicable rules and regulations (Smolka 2022). In Article 3 letters (a.) & (e). & Article 4 paragraphs 1, 2 & 3 of the FIFA disciplinary code regarding FIFA association members & the scope of application of the FIFA disciplinary code where if the association members do not comply with FIFA, they will be subject to further sanctions. In the Indonesian state, the presence of sports legislation has been interpreted by FIFA and or adherents of lex sportiva in Indonesia as a form of state interference or intervention in the organization of football which is its authority, so it must be rejected. intervention by the state against the authority and authority of FIFA can have legal consequences for the country's national football association, namely the removal of the membership of the national football association of the country concerned from FIFA membership based on the provisions of Article 14 paragraph 3 of the FIFA Statute *"Violations of par. 1 i) may also lead to sanctions, even if the third-party influence was not the fault of the member association concerned. Each member association is responsible towards FIFA for any and all acts of the members of their bodies caused by the gross negligence or wilful misconduct of such members"*. PSSI believes that the Indonesian National Sports Law is centered on Law No. 11 of 2022 concerning Sports (hereinafter referred to as Law No. 11/2022) and its three Government Regulations, and other laws and regulations may only regulate matters relating to sports from the public interest side. This is with the caveat that the legal norms of the laws and regulations made by the Indonesian Government do not interfere with the Lex Sportiva. If Law No. 11/2022 on Sports and other laws and regulations go too far and enter the realm of lex sportiva, then it is certain that sports in Indonesia are not recognized as part of international sports (Aziz and others 2020).

In a different form, and on a smaller scale, FIFA's stance that rejects the interference of the government of a country's national law has the potential to cause a clash of authority

between the state on the one hand and the international sports federation on the other. The state has the obligation to uphold its authority in carrying out national law in accordance with its sovereignty to realize the state's goals of promoting public welfare and educating the nation's life, while on the other hand the international federation of sports feels it has full authority over the organization of the sports it leads according to its statutes, even feeling sovereign over the national federations of sports that are its members. This clash of authority must be given the right and directed legal solution. On the one hand, the Government must be given the space to exercise state sovereignty with the authority to carry out the constitutional mandate to promote public welfare through the implementation of the national sports system. While on the other hand, the international sports federation must also be given space to exercise its authority to implement, supervise, control, and control the sports it fosters and the national federations of sports that are its members (Husain 2022). International sports federations should not be allowed to interpret their own authority over the national sports system which is subject to the Indonesian national legal system. Because it could mean placing the dominance of the sovereignty of the international sports federation over the sovereignty of the Republic of Indonesia.

The pros and cons of applying national law are caused by two reasons. The first views the state as interfering too far in sports law, especially soccer. While the second view considers the application of national law is necessary because of the poor organization of soccer in Indonesia, and also the number of cases that can be subject to criminal sanctions. The difference between the two pandangan pada dasarnya occurs antarara PSSI as an organizer of soccer which represents the first pandangan about Lex Sportiva as a Lex Specialis with the Government as a organizers of the country who represent the second pandangan bahwa all legal problems that occur in the territory of the country of Indonesia are their responsibility as a manifestation of the sovereignty of a country. PSSI as the parent of Indonesian football believes that the legal problems that occur in the football world are within the authority of the olahraga law which is called Lex Sportiva and not within the scope of national law, but the government is the opposite. The difference in view is related to the extent to which the nasional law can enter the ranah of the olahraga law and also the conflict that occurs between the nasional law and the olahraga law or in this case the FIFA statuta and the PSSI statuta with the nasional law how exactly is the legal status of the PSSI Statute. It also raises questions about the actual legal position of the organization or in this case the PSSI statute in the legal system in Indonesia. Because considering the Kanjuruhan tragedy that killed ratusan people is still being discussed to this day. The Lex Sportiva school of thought as one of the most important schools of thought in Sport Law shows that the tragedy of Kanjuruhan could have been avoided or need not have happened if only the parties understood and correlated with the correct implementation in practice. With the status of the state that cannot intervene in PSSI regulations, then what is the form of PSSI's responsibility to the state in the Kanjuruhan case? Because considering the results of the trial verdict, the defendant was charged with Article 359, Article 360 paragraph 1, and Article 360 paragraph 2 of the Criminal Code, namely because his negligence resulted in the death of another person or injury, not using Lex Sportiva / Lex Specialis / Sport Law.

Metode Penelitian

This research method uses a normative legal research design/model (Marzuki 2019). The normative juridical research method is a type of research that examines a legal problem based on legal research, this type of research also examines the government's authority in the transfer of PSSI legal entities for and for the welfare of football players, this research approach uses legal research approaches to applicable laws and regulations, as well as legal approaches in terms of legal theory, legal collection of materials or data from laws and regulations, legal journals, and books, as well as data analysis techniques analyzing the government's authority related to the transfer of PSSI legal entities and using relevant legal theories and laws and regulations, to assist in analyzing in this research.

Hasil dan Pembahasan

Status Hukum Statuta PSSI dalam Hukum Nasional

International figures who were very familiar with the international world's rules or laws pioneered the development of statute theory. Statute comes from Latin *statum* which is a rule or law. Meanwhile, the word *statutum* itself is a derivative form derived from *statuere* which means to organize, decide, and regulate. The statute theory itself arose due to the increasing growth of trading cities (*stadstaten*) which initially occurred in Italy (11th-12th century AD, especially the 13th century AD) so as to cause a shift in the personality system rather than law (Bayu 2013). The Italian statute theory is the oldest of the other statute theories, and it is the beginning of the development of statute theory. The emphasis of the Italian statute theory is the existence of a renewal of the territorial principle that initially applied in Italy due to the high trade between cities in Italy. "If a person who comes from a certain city in Italy, is sued in another city, then he cannot be prosecuted under the law of that other city, because he is not the subject of the law of that other city". Accursius, a Post Glossator, was actually the person who started the spread of Statute theory in Italy. (Hotman Bintang Parulian Aruan 2021). The FIFA Statutes are a set of rules and regulations that govern the activities of the International Federation of Association Football (FIFA). These statutes establish the organizational structure, duties, powers, and procedures necessary to carry out international football activities.

A legal concept shared by PSSI and FIFA is known as *lex sportiva*, or world sports law. It is an autonomous international legal framework created by a worldwide organization with the mission of policing, overseeing, and controlling international and national sporting events. *Lex Sportiva* is basically the laws and regulations that govern sports and are created, implemented, and enforced by sports institutions/ or organizations, without input/ or intervention from national or international state laws (Casini 2020).

To put it simply, *Lex Sportiva* is a law that regulates sports specifically, created by the institutions of the sports community itself, and that is applied and enforced by the sports institutions themselves, independent of national positive law and independent of international law. According to Franck Latty, in addition to F Rigaux who used the Latin expression *Lex Sportiva* in examining aspects of sports law, Th. Summerer has also conducted a study in which he qualified the articles of association of international sports organizations as *Lex Sportiva Internationalis sui generis* (de Oliveira 2020). Franck Latty distinguishes the emergence of an autonomous international sports law that is distinct from state law and that transcends the division of the world into sovereign legal systems, despite

the existence of an international *Lex Sportiva* shaped by transnational sports law systems. The expression and term *Lex Sportiva* can easily be found in the jurisprudence of the Court of Arbitration for Sport (CAS).

Regarding the debate on its position, Franck Latty describes the position of *Lex Sportiva* as neither within the national legal system nor within the international legal system, but within the transnational legal system (Utama and Sinduwiatmo 2022). Hince Pandjaitan in his book also expressed the same opinion, he described in an example of a case in a disciplinary law enforcement mechanism against a professional soccer competition, one of the sanctions is a sanction prohibiting the use of certain stadiums due to riots and riots of home supporters to cause casualties which are considered a failure of the organizing committee of a soccer competition match based on the FIFA Disciplinary Code (citation). The case is an example of the latest case that occurred in Indonesia. The PSSI disciplinary commission also imposes similar penalties for the same offense in football competitions under its jurisdiction as a judicial body based on the PSSI disciplinary code which is in line with the FIFA Disciplinary Code.

Ken Foster rejects the idea that *Lex Sportiva* is a component of international law, defining it instead as a global sports law a separate, autonomous body of law that exists outside of state jurisdiction and is established by international private organizations that independently regulate sport. According to Ken Foster, the primary feature of international sports law is contractual regulation, meaning that its legal force is established by an agreement to transfer rights and powers to the international sports federation's authority and jurisdiction. Moreover, national laws do not govern *Lex Sportiva*, a global sports law (Nugraheni and Aime 2022). The viewpoint expressed by G. Teubner in his work "A Global law without a state" concurs with Ken Foster's position. According to him, *Lex Sportiva* is a *sui generis* collection of rules derived from international sports federations' interpretations of transnational legal standards produced by legislation. As a global sports law, *Lex Sportiva* is a distinct body of law that operates independently and autonomously worldwide. This demonstrates that State courts are ineligible to oversee sports federations. Only external institutions that they have established or approved, or their own internal institutions, are capable of governing them (Feda and others 2023).

The development of National Sports Law in Indonesia is marked by the existence of laws and regulations that specifically regulate the course of sports, namely Law No. 11/2022 on Sports and Government Regulation No. 16/2007 on the Implementation of Sports (hereinafter referred to as PP No. 16/2007) Both laws and regulations regulate all aspects related to the field of sports. Both Law No. 11/2022 on Sports and Government Regulation No. 16/2007 on the Implementation of Sports can be considered as part of the National Sports Law instrument. Another instrument of National Sports Law in Indonesia is the decision of the Surabaya District Court Number 13/Pid.B/2023/PN Sby The decision was given to Abdul Harris as the Chairman of the match organizing committee. The aftermath of the supporter riot that occurred after the match between arema against persebaya football Indonesia League Premier Division at Kanjuruhan Stadium Malang, on October 01, 2022. In this decision, the panel of judges stated that the rules made by PSSI as the parent of soccer are only rules of the game in the game of soccer, and are not rules of the law contained in Law Number 10 of 2004 concerning the Formation of Legislation so that the rules of the

game are considered unable to override the existing rules of the law. The perpetrator was still punished using Indonesian law / applicable national law. The perpetrator is charged with Article 359, Article 360 paragraph 1, and Article 360 paragraph 2 of the Criminal Code (hereinafter referred to as the Criminal Code), namely because his negligence resulted in the death of another person or injury, not using Lex Sportiva.

This raises the question of what the legal status of the PSSI Statute actually is in the national legal system in Indonesia. The adherents of Lex Sportiva see the enactment of the principle of *lex specialis derogate lex generali* as a basis for overriding other laws and regulations in the Indonesian legal system. However, the view that Lex Sportiva itself or in this case the PSSI Statute is not in the hierarchy of laws and regulations in the Indonesian legal system. Related to the hierarchy, there is a theory of legislation developed by Hans Kelsen's student, namely Nawiasky called *theorie von stufenaufbau der rechtsordnung*. According to A. Hamid S. Attamimi, Nawiasky describes the arrangement of norms as follows: (Arifin 2020).

- Norma fundamental negara (Staatsfundamentalnorm);
- Aturan dasar negara (Staatsgrundgesetz);
- Undang-Undang formal (Formell Gesetz);
- Peraturan pelaksanaan dan peraturan otonom (Verordnung En Autonome Satzung).

In the types of laws and regulations mentioned by Article 7 Paragraph (1) of Law number 12 of 2011 concerning the Formation of Legislation (hereinafter referred to as Law No. 12/2011), it does not state the Statute of a Sports Organization as part of the types of laws and regulations. Thus, the author views that the PSSI Statute is only a rule of the game that cannot override the position of the rule of the law, namely positive law contained in the Indonesian legal system. This is because the sports statute, in this case the PSSI Statute, is not mentioned as one of the types of laws and regulations. In addition, Maria Farida explained that in the Indonesian legislative system, only one type of law is known, namely decisions formed by the House of Representatives (hereinafter referred to as the DPR), with the joint approval of the President, and passed by the President. There are no laws formed by other institutions both at the center and in the regions, so that in Indonesia there is no term Central Law or Local Law (Hatami 2020). Article 20 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) states that, "Every bill shall be discussed by the House of Representatives and the President for joint approval". It is not without reason why the formation of laws must obtain the approval of the DPR. This is because the DPR, which is a legislative body that represents the people of Indonesia, has a legislative function mandated by Article 20 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, namely, "The House of Representatives has the power to form laws." Therefore, every law must go through the DPR as a legislative body authorized to form laws (Ferianto 2023). This description shows that the PSSI Statute is not a law, because it is not a decision formed by the House of Representatives (DPR), with the joint approval of the President, and authorized by the President. The PSSI Statute itself is a product produced by the PSSI Congress, and not a product produced by the DPR or the President. PSSI Statute itself is a proposal submitted by a Delegate representing PSSI Members supported in writing by at least 2 (two) other

Delegates representing PSSI Members and approved by $\frac{3}{4}$ (three quarters) of all Delegates representing PSSI Members.

From this, it shows that the PSSI statute as *Lex Sportiva* cannot automatically free all aspects of professional football activities from positive legal ties in the legal system in Indonesia. Given its status as the progenitor of professional football in Indonesia, PSSI autonomy as stipulated in its law will always be acknowledged as *Lex Sportiva*. All other rules found in the Indonesian legal system must still apply to the PSSI law as *Lex Sportiva*. This is undoubtedly based on the PSSI statute's position, which is that it is only intended to serve as a guideline rather than a legal statute, as specified by the law on the formation of laws and regulations. This law describes the various categories of laws and regulations in Indonesia and is not a formal document created by the President or the DPR.

The clash of authority that occurs between the PSSI statute and its derivative regulations with statutory regulations in the legal system in Indonesia has caused various problems until now. Seeing that there are several major problems related to the clash of authority that have emerged, including those related to persecution in matches, State intervention when there is PSSI dualism, and which has recently become a hot topic of conversation, namely related to match-fixing. This clash of authority certainly causes disruption in the organization of professional football in Indonesia. When FIFA imposed sanctions on PSSI, it was believed that the State had interfered excessively with the federation's authority in attempting to resolve the dualism issue that had arisen. This had a negative impact on the trajectory of Indonesian professional football. The emergence of the National Sports System Law must basically be interpreted as an effort by the state to carry out the mandate of the constitution to promote welfare for all Indonesian citizens and is an elaboration of the concept of welfare state, in this case through sports. The authority of the Government given in the National Sports System Law to regulate, implement, foster, supervise, and control the implementation of sports is a manifestation of State sovereignty and is also a manifestation of the concept of welfare state, which is framed in the national sports system within the framework of the Indonesian national legal system. However, the emergence of this national sports system law has actually led to conflict in Indonesian football because it is considered to intervene in all aspects of professional football activities in Indonesia considering that there is a PSSI statute which also regulates the course of football matches in Indonesia.

Kesimpulan

A rule that governs general governance, implementation, and dispute resolution pertaining to the operation of professional football in Indonesia is the PSSI Statute, which is a component of the FIFA Statute. One may say that *Lex Sportiva* is a part of the PSSI Statute in Indonesia. Nonetheless, all the regulations included in Indonesia's legal system must still apply to the PSSI legislation as *Lex Sportiva*. This is based on the position of the PSSI statute which is only as a rule of the game and not as a rule of the law as stated in Law No. 12/2011 concerning the Formation of Legislation which contains the types of laws and regulations in Indonesia. In addition, it is not a legal product produced by the President or the DPR. Thus, although recognized as *Lex Sportiva*, the position of the PSSI statute cannot necessarily override the position of national law. Setting up a division of jurisdiction between the State

and PSSI will allow for future arrangements pertaining to the PSSI statute's status as Lex Sportiva in the Indonesian legal system. One way to implement the division of authority is to grant PSSI complete control over the management and organization of Indonesian football. Furthermore, in order to give the PSSI statute a clear legal standing under national law, the application of criminal sanctions concerning the appropriate delegation of authority and the application of criminal sanctions must be included in laws and regulations that are compliant with Indonesian legal frameworks.

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