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The Principle of Dispute Resolution Contract of Professional Football Player

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***Abstract*—Football is one of the most popular professional sports in Indonesia. For that reason, this study aims to examine and analyze the alternatives for the contract resolution of professional sport performers in Indonesia in order to find the essence of the dispute resolution of professional sport contractors in Indonesia by using the concept of Mediation and Arbitration and to classify that dispute contract into the concept of business dispute resolution. While the practical benefits are to provide input to the Government especially the Ministry of Youth and Sports with the National Sports Organization together with the Legislature in formulating a policy that regulates the principles of contracting for professional sports performers and as a contribution of thought in realizing the national sport to international achievement and to realize the national sports as an industry by providing guidance to professional sport performers about the model and form of dispute resolution among professional sport performers when making an agreement / contract in enriching the law material for academic development especially in Sport Law field which is useful to solve legal problems arising in the community related to the principle of contracting.**

Keywords— professional sport performers, dispute resolution contract, mediation and arbitration.

I. INTRODUCTION

The Indonesian Constitution 1945 which is also called the 1945 Constitution stipulates that Indonesia is a state of law. In line with that provision, all aspects of life in the field of society, nationality, and state including the government must always be based on the law. Sport is part of the process in achieving national development objectives so that the existence and role of sports in the life of society, nation and state must be placed in a clear position in the national legal system [1]–[6].

The dynamic of current and prolific professional development of sport will cultivate increasingly complex professional sports activities and become a battleground to pursue achievements at individual, group, community, national and among countries that will automatically generate employment opportunities which increase the income and the prosperity of the perpetrators [7]–[9]. Thus, the implementation and championship can run in accordance with the applicable legislation and also can be implemented well to improve achievement and income through employment including taxation for the perpetrators of sport individually, community and country.

In Indonesia, professional sports will still be towards the sport of industry and business because if it does not show achievements, in contrast, it shows the number of internal disputes / conflicts ranging from conflict management organization to the internal conflicts / disputes of professional sport players, especially football that one of the disputes is a dispute contract between professional sport performers.

Professional sport performers are people who are trained to compete in sports that involve physical strength, speed or endurance. Professional performers or amateurs, in other words, professional sport performers are all individuals who engage in sports activities that include members of professional sports organizations, Officials, Managers / Agents, Promoters and Physicians involved in all professional sporting events and championships while license is a certificate stating the status of professional sport officers legally issued by Badan Olahraga Profesional Indonesia or BOPI.

Sport as an industry will be in great agreement with contracts among professional sport performers. However, it increases the potential for conflict in a professional sport performer's contract when the dispute touches the basic rights and normative rights of professional sport performers who are deemed to be committing a breach of contract.

When the basic rights are not fulfilled, the conflicts or problems arise caused by one of the contracting parties who feel the rights contained in the contract are not realized when there is a one-sided contract termination from one of the parties as happened in the Indonesian Professional Football competition which is often sticking out in the mass media that one of the competing clubs cannot fulfill its obligations as stated in the contract by reason of not having the budget to fulfill the obligation.

It is for this reason that the contract of cooperation in the sporting world is regarded as a mere formality by some professional sport performers because there is no legal effort that can force the party to carry out the obligations set out in the contracts agreed upon by both parties when they sign the contract until a loss arises to a party whose rights are not fulfilled. The parties who do not keep the obligations listed in the contract is a default.

Conflict / dispute about players' contract and football clubs often lead to confusion over which party is most entitled to give the court. On the one hand, the organization of the

Indonesian Football Association (Indonesia: *Persatuan Sepakbola Seluruh Indonesia/PSSI)* hereinafter referred to as PSSI has a tribunal arbitration set out in the 2009 Statute

where a dispute between the player and the club may not be brought to the State Court.

In the case of a professional sport agent agreement, a dispute is resolved in Article 88 of UUSKN which explains if a dispute arises, the resolution is sought through deliberation and consensus made by the organization of the sport. In the case of deliberation and consensus are not reached, dispute resolution can be taken through Arbitrase or the alternative of dispute resolution which is in accordance with the laws and regulations. If dispute resolution is not reached, the dispute resolution can be made through a court in accordance with its jurisdiction.

Moreover, the resolution of disputes contract of professional sport performers through Mediation, which is a dispute resolution model in which outsiders are impartial and neutral (mediators) assisting the parties to the dispute to obtain dispute resolution agreed by the parties. The UUAAPS explains that the mediator is obligated to perform its duties and functions based on the will of the parties.

A contract dispute in a professional sport will have a negative impact on fans and team morale and is in dire need for a fast and effective dispute resolution technique, such as mediation or arbitration.

Specifically, mediation is adequate alternative of dispute resolution for sport dispute especially contract dispute as it provides a forum for open communication, which is currently missing in sport contract negotiations. This gives both parties a sense of confidentiality, which can be used to strengthen their working relationships. The neutral environment that accompanies mediation has proven to be very helpful in resolving disputes as well. In short, the ease and flexibility of the mediation process, the unique qualities of trained mediators and the high level of successful mediation prove that mediation is adequate to resolve various disputes in sport. The application of this technique will be financially and emotionally beneficial to all involved sport performers.

In addition to Mediation, Arbitration is an alternative dispute resolution in sport as contained in Article 88 UUSKN. Basically arbitration is a special form of court. An important point that distinguishes the court and arbitration is when a judicial resolution uses a permanent court or standing court, whereas arbitration uses a tribunal forum set up specifically for the activity. In arbitration, the arbitrator acts as a "judge" in the arbitral tribunal, as a permanent judge, for cases such as contract disputes of sport performers, especially football players between players and clubs.

II. RESEARCH METHODS

Thus, the focus of this study is to provide an overview of the professional contractor's dispute resolution efforts on the most prevalent sport in a professional football competition, particularly through the alternatives of dispute resolution.

This research is a normative law research which aims to examine the legal materials in accordance with the formulation of the problem which consist of primary legal materials such as legislation and secondary legal materials such as books, research reports, articles and the results of seminars.

The approach of this research are (1) the statute approach where it is administered by reviewing all laws and regulations related to legal issues and seeking the logical ratios and ontologism basis of the birth of the law, (2) the conceptual approach which is conducted by reviewing the updated and connected thoughts (3) the historical approach which is conducted by examining the background of what is learned and the development of the arrangement, and (4) the comparative approach of the Law with other States is also conducted to obtain equality and differences about the development of contract law.

The research steps are carried out by: (1) collecting primary and secondary material of law materials, (2) classifying legal materials, and (3) reading, understanding and analyzing and relating to legal issues to be reviewed or examined

III. RESULTS AND DISCUSSION

A. Principles of Mediation

Mediation is a non-binding, "non-prejudicial" consensual process whereby a neutral third party helps the parties in dispute to reach a mutually agreed resolution without recourse to court or arbitration. Mediation differs from litigation and arbitration because a judge or arbitrator does not impose a binding decision on the parties. This allows the parties to work with mediators to come to their own solutions.

Conceptually reviewed, the mediating characteristics of some of the expert opinions on mediation mentioned above are:

In every mediation there is a central feature; (1) the existence of processes and methods, (2) there are opposing parties, and / or their representatives. (3) with the assistance of a third party called mediator, (4) seeks to hold discussions and negotiations for a decision that can be agreed by the parties. In brief, mediation can be considered a decision-making process with the help of a particular party, decision-making facility or negotiation facility. It can also be described as a system in which the mediator regulates the process and the parties control the outcome, although this seems too simple.

Mediation, from a given definition, clearly involves the existence of a neutral and impartial third party (both individual and in the form of an independent body), which will serve as a mediator. and as a neutral third party, independent, impartial and appointed by the parties (directly or through a mediation institution), the mediator is obligated to perform its duties and functions based on the will and the will of the parties.

Mediation is a way of dispute resolution through negotiation process to gain agreement of the parties with the help of mediator. The elements of mediation are as follows: Mediation is a dispute resolution process based on the principle of volunteerism through a negotiation.

The involved mediator is in charge of assisting the parties to the dispute to seek resolution, the mediator

involved must be accepted by the parties to the dispute. The mediator shall not authorize decision-making during the negotiations. The purpose of mediation is to achieve or produce acceptable conclusions from the parties to the dispute**.**

The mediating principles used are as follows: 1) The obligation of participation of all parties in the mediation process, 2) The maximum effort to reach consensus, 3) The use of restructuring approach with the best commercial practice pattern, and 4) Respect the rights of any parties involved. Mediation aims to assist in finding alternative solutions to disputes arising between agreed parties and is acceptable to the disputed parties.

Thus the negotiation process is a forward looking process and is not a backward looking. What is to be achieved is not seeking truth and / or legal basis applied but rather to problem solving. "The goal is not truth finding or law imposing, but problem solving" [10].

Through the mediation process, it is expected to achieve better communication between the disputed parties. Making the disputed parties to hear, understand the reason / explanation / argumentation on the basis / consideration of the other party. With a face-to-face meeting, it is expected to reduce the anger / hostility between one party with another. Understanding the respective deficiencies / strengths, and this is expected to bring the perspective of the disputants closer to a compromise acceptable to the parties.

[11] put forward the Principles contained in the mediation:

Voluntary Principles. The voluntary principle is the principle whereby everyone who takes part in the mediation process must agree and can decide at any time if he wishes. They can not force to accept a result of mediation because they feel the outcome of such mediation is unfavorable or self-satisfying.

Principles of Confidential. The principle of confidential is the principle of mediation in which the parties wish to feel free to declare anything and be open to the mediation process. All things opened in the mediation process are a secret part. Everything that the parties express in the process of submitting their opinions to the mediator is all closed. Not open to the public as in court proceedings.

Facilitative Principles. The facilitative principle is one of the principles of mediation in which mediation is a creativity and problem-solving approach to the problems faced and depends on the mediator to help the parties reach agreement by remaining impartial. The mediator is a third party involved in a negotiated process at the request of the parties voluntarily and must be neutral. According to Article 1 Sub-Article 6 of Supreme Court (of Justice) of Government Regulation Number 1 of 2008 the mediator is a neutral party assisting the parties in the negotiation process to seek possible dispute resolution without using a disconnect or completion of a resolution. In mediation, the mediator shall not judge who is right and who is wrong among the conflicting parties.

Basically this voluntary principle is contained in article 12 paragraph (2) of Court (of Justice) of Government Regulation Number 1 Year 2008 which stipulates that "one party may declare from the mediation process if the opponent is mediating with good faith", but this voluntary principle is not fully reflected in Court (of Justice) of Government Regulation Number 1 Year 2008.

In Court (of Justice) of Government Regulation No. 1 of 2008, the mediation is not carried out on the basis of volunteerism of the parties, but is an obligation that must be taken by the parties to mediation related to the process of litigation in the Court. All civil disputes submitted to the Court of First Instance shall be first attempted by means of peace with the assistance of the mediator, except cases settled through commercial court proceedings, cases settled through industrial relations courts, cases of objections to the decision of Consumer Dispute Settlement Agency (*Badan Penyelesaian Sengketa Konsumen)* and the objections to the Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha).*

As regulated in Article 4 of the Supreme Court (of Justice) of Government Regulation Number 1 of 2008, if this mediation procedure is not pursued by the parties, it will result in the decision being null and void. As regulated in article 2 of Supreme Court (of Justice) of Government Regulation Number 1 of 2008 concerning the scope and strength of Supreme Court (of Justice) of Government Regulation, this regulation shall only apply to mediation relating to the litigation process in the Court that every judge, mediator and parties shall follow the dispute resolution procedure through the mediation. This regulation does not undergo mediation procedures under this rule is a violation of the provisions of Article 130 HIR and or Article 154 Rbg which resulted in the decision null and void, and the judge in the consideration of the decision of the case shall state that the case concerned has been sought peace through mediation by contesting name of the mediator for the case concerned.

The confidential principle is reflected in article 1 number 12 of Supreme Court (of Justice) of Government Regulation Number 1 Year 2008, which provides an understanding of the closed mediation process, namely that mediation meetings are only attended by the parties or their attorneys and other mediators or parties permitted by the parties and the dynamics which occurs in the meeting shall not be communicated to the public except by the parties' consent.

Article 6 of Supreme Court (of Justice) of Government Regulation Number 1 Year 2008 also provides that principally the mediation process is closed unless the parties wish for another. In addition, this principle is reflected in Article 19 paragraph (1), (2), and paragraph (3) of Supreme Court (of Justice) of Government Regulation Number 1 Year 2008 which regulates the separation of mediation from litigation. Article 19 of Supreme Court (of Justice) of Government Regulation Number 1 Year 2008 provides that if the parties fail to reach an agreement, the statement and acknowledgment of the parties in the mediation process can not be used as evidence in the proceedings of the case concerned or other matters, the Mediator Notes shall be destroyed, and the Mediator shall not be requested be a witness in the court proceedings concerned, and the Mediator can not be subjected to criminal or civil liability

for the content of the peace agreement resulting from the mediation process.

The mediator only plays as a facilitator facilitating the ongoing process of negotiation between the parties or negotiators representing the interests of the parties. In the process of mediation, the mediator exercises a role to mediate the parties to the dispute. This role is manifested through the work of mediators who actively assist the parties in giving their true understanding of the disputes they face and providing an alternative, the best solution for dispute resolution that must be obeyed. This principle then demands that the mediator be a person who has a sufficiently broad knowledge of the related fields in dispute by the parties

The Facilitative Principle in Supreme Court (of Justice) of Government Regulation No. 1 of 2008, contained in article 7, paragraph (3), stipulates that "Judges, by lawyers or directly to the parties, encourage the parties to take direct or active role in the mediation process". In addition, the facilitative principle of the mediation process is also contained in the regulation of mediatorial duties set forth in Article 15 of Supreme Court (of Justice) of Government Regulation No. 1 of 2008, which provides that the mediator shall prepare a proposal of a mediation meeting meeting to the parties to be discussed and agreed upon. The mediator shall encourage the parties to directly play a role in the mediation process. If deemed necessary, the mediator may conduct a caucus. The mediator shall encourage the parties to explore and explore their interests and seek the best possible solutions for the parties.

Principles that are often listed in the philosophy of mediation include: client empowerment, confidentiality, effectiveness of neutrality and trust. A mediation philosophy will usually go into detail about the subject matter, discussing specifically how the mediator implements these parties.
The principle of secrecy (confidentiality), which means that the process of carrying out mediation takes place in secret. The principle of secrecy of the mediation process can be seen in Article 6 paragraph (6) of Law Number 30 Year 1999 stating that the settlement of disputes through the mediation path holds confidentiality. In addition, this principle of secrecy can also be seen in Supreme Court (of Justice) of Government Regulation Number 02 Year 2003 Article 14 paragraph (1) which expressly states that the mediation process is basically not open to the public, unless the parties to the dispute wish for another.

The principle of individual empowerment, which means that in the mediating process the disputing parties are encouraged to find their own best solution to the best of their problems. Article 9 paragraph (4) Supreme Court (of Justice) of Government Regulation Number 02 Year 2003 which explains that mediators are obliged to encourage parties to explore and explore their interests and seek the best possible solutions for the parties-indirectly explaining the principle of empowerment.

The principle of neutrality or impartiality is explained indirectly in article 1 point (5) which explains that the mediator is a neutral and impartial party, which serves to assist the parties in searching for various possible resolution cases. That is, a mediator as a third party who designs and leads the course of the mediation process must be neutral and impartial.

However, the existing regulations do not clearly explain voluntary principles, which means that the parties come into the mediation process voluntarily. Article 2 Supreme Court (of Justice) of Government Regulation No. 02 Year 2003 which explains that all civil cases submitted to the court of first instance shall first be settled through peace with the help of the mediator in no way reflects the existence of this voluntary principle.

The existing legislation also does not explicitly explain another principle that distinguishes between mediation and dispute resolution in court. They do not explain, for example, the principle of mediation which in the process of implementation does not place material proof because it is not to win one party and defeat the other. He does not explain in detail the principles of mediation is certainly an important record for the existing laws.

B. The Arbitration Principle

The resolution of contract dispute of players and football clubs often leads to confusion over which parties are most entitled to give court. PSSI has an arbitration tribunal set out in the 2009 Statute where a dispute between player and club may not be brought to the State Court.

The development of sports disputes involving cross-country legal subjects requires an international sports dispute resolution institution. For this reason, the international sports community established the Court of Arbitration for Sport (CAS) in 1984 via the International Olympic Committee (IOC) with the aim of creating a neutral and impartial body capable of resolving sporting disputes.
In Indonesia, the resolution of contract dispute of professional sports players through arbitration encountered obstacles and steep roads. The unfinished conflicts of the management of the parent organization of the sport that the sudden dualism of the arbitration body as an alternative to dispute resolution in Indonesia also experienced dualism.

It is difficult to trace the existence of two organizations, Indonesian Sports Arbitration Board / *Badan Arbitrase Olahraga Indonesia* (BAORI) and Indonesian Sports Arbitration Board (BAKI) / *Badan Arbitrase Keolahragaan Indonesia* (BAKI) via the internet. This is because the attitude of KONI will bring the conflict PSSI to BAORI and, however, PSSI reluctance prefers BAKI.

In articles 38 and 39 AD / ART KONI explained about the position, duty and authority of BAORI. As for the existence of BAKI follow up on the results of the KOI Special Congress on May 26 with the decision number 03 / KI-KOI / IV / 2010, BAKI was established and approved on June 4, 2010 which consists of 8 people and the principle becomes a legal bastion for Indonesian sportsmen.

"So starting from athletes, coaches, builders and other sports actors will get legal protection whenever experiencing legal issues. Because so far many of our

athletes who have problems with the law but always harmed, "said Chairman of KONI / KOI, Rita Subowo told reporters at the office KONI Jakarta, Friday (11/06/2010).

BAKI is led by Dr. M Idwan Ganie SH with members, Anangga W Roosdiono SH, Arief T Surowidjojo SH, Prof. Hikmahanto Juwana SH, Leliyana Santosa SH, Nursjahbani Kantjasungkana SH, Pradjoto SH and Yosua Makes SH.

Rita added that this BAKI is the only sport arbitration body in Indonesia so that the existence of BAORI is considered non-existent. "So now there is only BAKI as the sole arbitration institution in the country," he said.

BAORI was formed as part of AD / ART KONI, while the BAKI formed by the Indonesian Olympic Committee intends to match its parent IOC which adopts the existence of the *Badan Arbitrase Olahraga Internasional* (CAS) as the national arbitration body of sport.

The existence of two sports arbitration bodies is not separated from the emergence of *Komite Olimpiade Indonesia*, which is a change of form from *Komisi Hubungan Luar Negeri* KONI. The function of KOI is to carry out Indonesian participation in international sports week such as Olympic, Asian Games, Sea Games, and others. This function was previously part of the function of the *Komite Olahraga Nasional Indonesia* (KONI) and was separated from KONI in accordance with the SKN Law and PP 17 of 2007 on the Implementation of the Week and the Sports Championships.

The purpose of the Arbitration Guidelines is to present an arbitration procedure before the Court of Arbitration for Sport (CAS), not a set of rules. This is not binding on the courts, nor in the International Council of Arbitration of Sports (ICAS), and may in no case be interpreted contrary to the Arbitration-related Sports Code.

Arbitration is a private, independent and impartial legal institution by the state legal system, which allows disputes under private law to be resolved. There are two important aspects to private equity: the contracting aspect: the parties together wish to file a dispute with the arbitrator under the express agreement for this effect, this agreement may be the result of a contractual clause or statute, and jurisdictional aspect: arbitration is real justice, institutionalized with a view to resolving private disputes (in the same way as ordinary civil justice), pronounced according to the proper rules of procedure and expressed through an award that has the same effect implemented as an assessment of the usual civil court.

CAS is an arbitration institution whose mission is to secure the resolution of sports related disputes. For this purpose, it entrusted the arbitrator with the task of pronouncing the verdict. The CAS consists of two Divisions (Ordinary Arbitration Division and Appeals Arbitration Division), both placed under the responsibility of the President of the Division. Arbitration filed with a CAS allocated to one or other division depends on the nature of the dispute between the parties, among others, the Ordinary Arbitrage Division sets in the Operations Panel, whose job it is to resolve all disputes subject to the usual arbitration procedure and the Arbitration Appeal Division set in the Operating Panels on duty to resolve disputes subject to comparative arbitration procedures.

The football world under FIFA sometimes results in the existence of a FIFA State within its member States, where in many aspects the regulatory synchronization is required so that FIFA rules are enforceable in the member State.

In accordance with national legislation, disagreements between clubs and players on this matter of employment contract shall be submitted to independent and impartial arbitration comprising equal representatives of each party (employers and workers) under the members of the association of legislation and regulations, or CAS. The verdict is final. In the conditions mentioned in the FIFA rules on the status and transfer of players, disputes may be resolved by Chambers Dispute Resolution, with an appeal to the CAS.

It is clear that for conflict resolution mechanisms between clubs and professional footballers must be arranged in a Professional Football Contract, and it is also clear that it is subject to positive law applicable in Indonesia. Article 29 of UU PHI expressly stipulates: "The resolution of industrial relations disputes through arbitration includes interest disputes and disputes between unions / trade unions within a single company."

IV. CONCLUSION

The agreement shall be carried out in good faith which implies that the parties to a treaty must exercise the substance of the contract or achievement based on a firm belief or conviction and the willingness of the parties to achieve the objectives of the agreement. While professionalism is the commitment of professionals to the profession. The commitment is demonstrated by the pride as a professional, a constant effort to develop professional skills. Professional Sport Performer. The sport performer is any person and / or group of people directly involved in sports activities that include sports, sports coaches, and sportsmen. Conventionally, the process of dispute resolution that takes a long time to cause the company or the parties to the dispute experienced uncertainty. In addition to the conventional dispute resolution model through litigation of the justice system, in practice Indonesia is introduced negotiations, mediation and arbitration. The use of the ADR model in non-litigation dispute resolution does not rule out the possibility of settling the case in a litigation manner. Thus the use of ADR is one of the mechanism for dispute resolution outside the court by considering all forms of its efficiency and for future purposes as well as beneficial to the parties to the dispute.

Considering the professional contract dispute resolution of professional football players in the civil field, it is necessary to adopt the settlement of contract dispute professional football player through the concept of responsibility and anti-loss which then this approach is formulated in the legislation.

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