

Transformation of Lex Sportiva into the Legal System Indonesian Sports

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Abstract

This research is motivated by the phenomenon of globalization of sports which has resulted in a shift in the focus of sports regulations from legal regulations to international sports federation regulations. This international sports organization controls and regulates international sports by making basic rules and playing rules for a sport, as well as making decisions that can have a big impact on the sustainability of the sport. They became an autonomous and independent international organization, and demanded that the governments of countries around the world not regulate sports matters by state laws and regulations, and asked for immunity from legal proceedings for sports problems that occurred in member countries of the federation. They asked for the enactment of global sports laws that apply universally to the sports they coach. This condition provides space for the development of the Lex Sportiva doctrine in the governance of international sports regulations. This doctrine adheres to the teaching that sports games and competitions are regulated and managed independently by independent regulations made by international sports federations, and rejects interference from the government or federation member countries. This causes frequent clashes in the implementation of Lex Sportiva with the laws and regulations of a country. In Indonesia, clashes between Lex Sportiva and statutory regulations still occur frequently. This is proven by the frequent occurrence of sports cases which cause legal injury, whether they contain administrative, civil or criminal aspects. One of the suspected causes is that the transformation of Lex Sportiva into the National Sports Law System has not yet been formulated. The aim of this research is to describe the position of Lex Sportiva in the international sports law system and formulate the transformation of Lex Sportiva into the Indonesian Sports Law System. The type of research chosen is juridical-normative, with an explanatory approach. According to the type of research, the data source is secondary data with data collection techniques through literature study complemented by interviews. The research results show that the development of Lex Sportiva is a phenomenon that continues to emerge. This doctrine has a strategic position as a source of global sports law that crosses the regulatory boundaries of member countries of international sports federations. In Indonesia, this doctrine has been adopted by the parent sports organization and some of its teachings have become material for statutory regulations, including in Law Number 11 of 2022 concerning Sports. This doctrinal teaching becomes a guideline in sports coaching, organizing competitions, and resolving sports disputes. However, the transformation formula is not yet clear, so that in its implementation there are often conflicts with applicable laws and regulations which prioritize the principle of state sovereignty. The solution offered as a research novelty is the preparation of a model of the Lex Sportiva transformation mechanism into the Indonesian Sports Law System which is existential, harmonious, and sustainable.

Keywords: transformation, lex sportiva, Indonesian sports law system.

I. INTRODUCTION

Sport has become a necessity of life for people of all nations and countries. In almost all societies in the world, sports activities are a way to balance their spiritual and physical lives. In many countries, sport receives primary attention from the state because it is the heart of human development and a bulwark of national resilience. The physical education and sports model was built to be able to shape community character and nation building. People who are fit, healthy, strong and have character are the determination of the country's progress. Above all, sporting achievements have become a measure of the success or failure of a country. Therefore, managing sports is an obligation for the government and society, because it will foster culture and boost the dignity of the nation in the global world.¹ Countries whose people like to exercise tend to have a better level of general welfare. This is widely reflected in the level of welfare of developed countries in the Americas, Europe, Australia and some Asian countries whose people exercise regularly. Even today, a country's sporting achievements can be used as a reflection of a country's progress and decline, as well as whether or not the people of the country in question are prosperous. Apart from that, there is a correlation phenomenon between the high level of sporting achievements of a country and the progress and prosperity of that country.²

Countries with advanced sporting achievements are generally recorded as having high gross domestic product (GDP) per capita. This is proven by the record of the top 10 ranked countries in the last 5 Olympic events, namely the 2004 Olympics in Athens, the 2008 Olympics in Beijing, the 2012 Olympics in London, the 2016 Olympics in Rio de Janeiro, and the 2020 Tokyo Olympics, which are developed countries and have a per capita income above US\$ 10,000 or above the world average. These countries are the United States, Russia, China, England, Germany, France, Japan, Italy and South Korea.³

At the international level, sport plays a major role in building achievement, honor and national spirit or nationalism and patriotism in a country. As is known, the national spirit of a country can be reflected through various symbols, such as the national flag, national anthem and national emblem.⁴ Athletes who compete in

¹ Toho Cholik Mutohir and Ali Maksum, *Sport Development Index: New Alternative to Measuring Development Progress in the Sports Sector Concept, Methodology and Application*, 2007, (Jakarta: Indeks Publisher), p.5.

² Tono Suratman, *National Sports Strategy for the 21st Century*, 2016, (Jakarta: Raja Grafindo Persada Publisher), p.7.

³ In the *Strategic Plan Document of the Indonesian Ministry of Youth and Sports for 2020-2025*, published by the Ministry of Youth and Sports Planning Bureau in 2019, it is stated that the ten countries that received the top medals were countries with per capita incomes above US\$ 10,000, namely (1) USA (46 medals/US\$ 48,000),

⁴ See Efridani Lubis and Mulyono, *Juridical Analysis of the State's Position in International Trade Relations (Acta Iuri Imperii Vs. Acta Iuri Gestionis)*, *Veritas Journal No.6 Vol. 1 of 2020*. In this

international events will carry the name of the country and have the country's symbol and/or flag attached to their clothes/uniforms. Therefore, an athlete or sports team will fight as hard as possible to win the match so that they can bring glory to the name of their country. If they win the match, the athlete will have the honor of standing on the podium, receiving a medal/trophy, and raising the country's flag accompanied by the singing of the national anthem. These are symbols of nationality or nationalism of a country in the modern era.⁵

Meanwhile, athletes or sports teams who win will be greeted with a rousing welcome of honor like a warrior or war hero. In the millennial era, sport has surpassed all aspects of physical exercise and socio-cultural aspects. Sport is no longer just a game or competition and winning or losing on the field, not just waving the flag and singing the national anthem when winning a match at the international level, but has the role of pleasing all mankind, building the economy in order to advance general welfare, and most importantly creating world peace.⁶

Currently, sports activities are not only part of an individual's daily physical routine, but have become a global industry. In the early 21st century sport has become a giant industry. According to research by sports consultant A.T. Kearney, the world sports industry in 2013 reached 620 billion US dollars. There are several sports that have phenomenally become giant global industries, namely professional boxing, football (soccer), tennis, basketball, golf, car racing, motorbike racing, American football (football), cricket and track. This can be seen from salaries, promotional costs, allowances, bonuses, transfer values, etc. for athletes in this sport. In 2021, the most highly paid athletes will come from these sports. The above sports branches have a high level of competition and are held in a carefully planned and scheduled manner, with a very high quality level of play.⁷

Apart from issues related to health, culture, nationalism and economics, the management and implementation of sports is substantially related to legal aspects. Sports activities take place effectively in accordance with strict rules made by the

article it is said that sovereignty is the basic capital, main principles and code of ethics that form the basis of relations between countries in international relations. Initially, state sovereignty was interpreted as absolute sovereignty that was immune to any foreign power based on the principles of territorial sovereignty, reciprocity and equality between sovereign states.

⁵ Hince IP Pandjaitan, *Introducing Lex Sportiva in Indonesia: Problems and Challenges of the World of Sports in Indonesia and Their Relation to Legal Aspects*, Seminar paper on the Development of National Sports Law, Faculty of Law, University of Indonesia, Depok, 2010, p.27

⁶ Hince IP Pandjaitan, *State Sovereignty vs FIFA Sovereignty, How to Settle the Problem of PSSI and the State (Indonesian Government)*, (Jakarta: Gramedia Publishers, 2011), p. 26.

⁷ Every year Forbes Magazine publishes the report "The World's Highest-Paid Athletes", which contains a list of athletes with the highest incomes. In June 2022 this magazine released the List of Highest Earning Athletes. In the top 10 list listed: 1. Lionel Messi (football) 2. LeBron James (basketball), 3. Cristiano Ronaldo (football), 4. Neymar Jr. (football), 5. Stephen Curry (basketball), 6. Kevin Durant (basketball), 7. Roger Federer (tennis), 8. Saul Canelo Alvares (boxer), 9. Tom Brady (American football), and 10 Giannis Antetokounmpo (basketball).

institutions responsible and authorized for that sport. Sport can even be called a super regulatory activity because almost all sports movements are qualified based on accurate and measurable technical regulations.⁸ The rules in every sport provide rights and obligations for a person in games and matches. Apart from that, regulations in sports also include other norms such as field size, rules for categorizing opponents according to age, weight or gender, rules prohibiting the use of stimulants or doping, and so on. Other sports regulations relate to public law, such as regulations on the establishment of sports organizations, authority to develop athletes, organize sports weeks and championships, and sports funding.

The results of studies on the nature of sport show that sport is actually a very fertile field for the development of legal disciplines. J. M. Brohm said that the sports system is basically a world of rules and regulations. Meanwhile, according to G. Simon, the sports system is a legal world.⁹

However, the world of law in the field of sports does not form a world that is completely separate from the world of state law. Because after all, the rules governing sports are made by sports organizations and cannot avoid the application of the laws of the country where the sport is played or competed. Sports players are not only subject to sports rules, but also to general rules implemented by the state/government such as health, security, citizenship, employment, treaties, taxes, immigration, intellectual property rights, and/or special rules that determined by public authorities.¹⁰

With the development of rules in the field of sports, legal experts developed a separate field of legal science called Sports Law. This Sports Law is interpreted as an independent substantive law that regulates sports activities, and becomes a valid legal rule of the legal system that regulates sports practices.¹¹ Professor Dimitrios Panagiotopoulos defines Sports Law as a law whose substance consists of legal regulations for sports activities that can affect special problems/issues in the field of sports, institutional autonomy rules for individual sports activities, and basic regulations for regulating issues or more general physical education and sports related issues.¹² Dimitrios said *Sports Law consist of rules of law for sport*

⁸ Hınca IP Panjaitan, *State Sovereignty vs FIFA Sovereignty, How to Settle the Problem of PSSI and the State (Indonesian Government)*, op.cit., p.26.

⁹ *Ibid.*, p. 27.

¹⁰ Timothy Davis, What is Sport Law?, (2001), *Marquette Sport Law Review Journal*, Vo.11: 2001,p.212.

¹¹ Michael Beloff, Tim Kerr, dan Marie Demetriou, 1999, *Sports Law*, (Oxford-Portland Oregon: Hart Publishing), p.6.

¹² Dimitrios P. Panagiotopoulos and Wang Xiaoping, editors, 2012, *Sports Law: Structures, Practice, Justice Sports Science and Studies*, 18th IASL Congress Proceedings, published by

*activities affecting special issues of sport live, rules of institutional autonomy of private sport activities, and rules of law for the regulation of more general issues concerning sport and physical education.*¹³

Meanwhile, Robert Siekmann said that Sports Law is an independent field of substantive law that regulates sports activities.¹⁴ Meanwhile, Michael Beloff, Tim Kerr, and Marie Demetriou say that the term sports law is a valid description of the legal system that regulates sports practices.¹⁵

And Simon R. Gardiner said that Sports Law is a mixture (amalgam) of various areas of law that apply to sportsmen and the sports they play.¹⁶ In line with the development of Sports Law studies, at the world level the phenomenon of globalization of sports is currently emerging. This phenomenon has resulted in a shift in the focus of sports regulation from legal regulation to international sports federation regulation. This international sports organization controls and regulates international sports by making basic rules and playing rules for a sport, as well as making decisions that can have a big impact on the sustainability of the sport. They became an autonomous and independent international organization, and demanded that the governments of countries around the world not regulate sports matters according to state laws and regulations, and asked for immunity from legal proceedings for sports problems that occurred in member countries of the federation. They asked for the enactment of global sports laws that apply universally to the sports they coach.¹⁷ This condition provides space for the development of the Lex Sportiva doctrine in the governance of international sports regulations. This doctrine teaches that sports games and competitions are regulated and managed independently by independent regulations made by international sports federations, and rejects interference from the government or federation member countries in the event of sports disputes. This causes frequent clashes in the implementation of Lex Sportiva with a country's domestic laws and regulations.

International Association of Sport Law and China University of Political and Law Beijing China (Athena: Ekead), p.18.

¹³ Hince IP Panjaitan, *State Sovereignty vs FIFA Sovereignty, How to Settle the Problem of PSSI and the State (Indonesian Government)*, op.cit., p. 137.

¹⁴ Robert C.R. Siekmann, 2011, *What is Sports Law? Lex Sportiva and Lex Ludica: a Reassessment of Content and Terminology*, The International Sport Law Jurnal (ISLJ), Vol.3-4/2011 ASSER International Sports Law Centre, Rotterdam, Netherland Introduction to International and European Sport Law (Capita Selecta), merupakan bagian dari ASSER International Sports Law Series, diterbitkan oleh Penerbit Springer dan TMC ASSER Press, Amsterdam, Netherland.

¹⁵ Michael Beloff, Tim Kerr, dan Marie Demetriou, 1999, *Sports Law*, (Oxford-Portland Oregon: Hart Publishing), p.6.

¹⁶ Simon R. Gardiner as quoted by Timothy Davis, *What's Sport Laws*, *Marquette Sport Law Review Journal*, Vo.11: 2001, p.212-215

¹⁷ Ken Foster, *Is There a Global Sports Law?*, *Entertainment and Sports Law Journal*, University of Warwick, 2003: Vol.2 No.1, p.3-4.

In Indonesia, clashes between Lex Sportiva and statutory regulations still occur frequently. This is proven by the frequent occurrence of sports cases at the national level which cause injury to the function and goals of sports, whether they contain administrative, civil or criminal aspects. For example, in the last 10 years there have been legal incidents involving the suspension of PSSI's management by the Minister of Youth and Sports (2016), the freezing of PSSI's membership by FIFA and the prohibition of the Indonesian Football Team's participation in all international football events (2016), the PSSI Management's lawsuit against the Minister of Sports in response to the punishment for freezing management. PSSI by the Minister of Youth and Sports (2016-2017), resolution of the protracted PTMSI management dispute (2018-2022), dismissal of the PSSI management by the Government as a result of the Malang Kanjuruhan Stadium incident which killed 178 supporters (2022), and finally Indonesia's removal of sanctions as one of the hosts of the 20 Year Old Football Championship or FIFA U-20 Cup (2023). One of the strong suspicions that the cause is that the transformation of Lex Sportiva into the National Sports Law System has not been formulated so that government/regional government officials and other sports stakeholders do not fully understand the teachings of Lex Sportiva which contains the principles of autonomy and independence of sports regulations prepared and published by sports federations international.

This research seeks to answer the problem of the position of Lex Sportiva in international sports governance, and how Lex Sportiva is transformed into the Indonesian Sports Law System. In line with this, the aim of this research is to describe the position of Lex Sportiva in the international sports law system and formulate the transformation of Lex Sportiva into the Indonesian Sports Law System.

II. LITERATURE REVIEW

The term Lex Sportiva was popularized by Franck Latty and F. Rigaux. They used this Latin term in their writings. Lex means the legal aspects of sports) and sportiva means the physical aspects of sports activities. In general, Lex Sportiva is interpreted as Sports Law or legal aspects relating to sports (sports and the law). They use the term Lex Sportiva in researching aspects of sports law.¹⁸ In simple terms, Lex Sportiva can be formulated as a law that specifically regulates sports which is formed by the sports community institution itself and applies and is

¹⁸ Hince IP Panjaitan, *State Sovereignty vs FIFA Sovereignty, How to Settle the Problem of PSSI and the State (Indonesian Government)*, op.cit., p.19.

enforced by the sports institution itself without intervention from the positive law of a country and without intervention from international law.¹⁹

Dimitrios Panagiotopoulos, Professor at the University of Athens, Greece, and President of the International Sport Law Institute said:

*“... Lex Sportiva is a legal order, which incorporates state-adopted law and the law adopted by the national and international bodies representing organized sport. These bodies operate to the standards of unions and in the context of the autonomy granted to such bodies and operate within states in a pyramid-like fashion and at international level in the form of a special relationship linking them to the relevant international sports federation. The law produced in this manner is thus a law which is, in essence, non-national law, which claims for itself direct and preferential application within sports legal orders and the par excellence law in sports life”.*²⁰

Thus, it can be said that Lex Sportiva are regulations made by international sports federations which are autonomous and must be obeyed by their members. Lex Sportiva applies and is enforced by the sports institution itself without intervention from the positive law of a country and without intervention from international law.²¹ This doctrine adheres to the teaching that sports games and competitions are regulated and managed independently by independent regulations made by international sports federations, and rejects interference from the government or federation member countries. This causes frequent clashes in the implementation of Lex Sportiva with the laws and regulations of a country.

In academic debates, Lex Sportiva is understood as a legal system that is neither within the national legal system nor within the international legal system, but enters the area of the transnational legal system. However, this does not mean that national law, international law and sports law are separate from each other, because all three are integrated with each other. Sports law needs national law, sports law also needs international law.²² For example, when playing a match, national law applies there, regulating security, immigration, health, employment and so on. Likewise, sports law still uses international law, such as the use of the principle of freedom of contract (*pacta sunt servanda*) in player contracts, as well as other legal principles. In practice, Lex Sportiva takes the form of sports game rules, international sports federation statutes, dispute resolution regulations, and other international sports federation regulations. Each member must comply with these rules. Meanwhile, the

¹⁹ Dimitrios P. Panagiotopoulos and Wang Xiaoping, *op.cit.* p.20.

²⁰ *Ibid.* p.21.

²¹ Ashari Setya, Lex Sportiva Autonomy Linked to Bribery in Sports in the Criminal Code Bill, [http:// www. Hukumpedia.com.](http://www.Hukumpedia.com), accessed January 8, 2023

²² Hinca Pandjaitan, *State Sovereignty vs FIFA Sovereignty, How to Settle the Problem of PSSI and the State (Indonesian Government)*, *op.cit.*, p.135.

principle of autonomy is reflected in the provisions that do not allow interference by the law of a country or international law in internal sports affairs/problems. An example of this can be seen in Article 13 of the FIFA Statute, which states that if there is intervention from a third party (government) in football affairs/problems, member countries will automatically be given strict sanctions by FIFA.

Lex Sportiva developed in line with the phenomenon of globalization of sports which has resulted in a shift in the focus of sports regulation from legal regulations to international sports federation regulations. This doctrine has resulted in the role of international sports federations increasing. International sports federations control and regulate international sports by making basic rules and playing rules for a sport, as well as making decisions that can have a big impact on the sustainability of the sport. They became an autonomous and independent international organization, and demanded that the governments of countries around the world not regulate sports matters according to state laws and regulations, and asked for immunity from legal proceedings for sports problems that occurred in member countries of the federation. They asked for the enactment of global sports laws that apply universally to the sports they coach.²³

According to Ken Foster, Professor of Law from the University of Warwick, Lex Sportiva is global sports law and is part of international sports governance. In his article entitled *Is There a Global Sports Law*, Foster said that sports governance arrangements can be classified into four types, including: (a) the rules of the game, (b) ethical principles of sports, (c) international sports law, and (d) global sports law.²⁴ First, the rules of the game. Each type of sport has its own technical rules and game laws. Without rules there is no sports game. These rules are usually set by international sports federations. Therefore, the core and foundation of sport is the existence of agreed playing rules. The rules of the game are the constitutive core of a sport. The rules of this game definitively cannot be challenged during the game. Second, the principles of sports ethics, namely a special type of regulation that regulates the essence or spirit of sports, namely justice. Sports ethics are not formal technical rules but regulate issues of fairness and integrity. They cover what is usually referred to as the 'spirit of the game'. These principles represent different orders of 'law' with their own characteristics specific to each sport. Third, international sports law, namely the general principles of international law which can automatically be applied to sports. These principles contain basic protections, so they can be applied by national courts once recognized or ratified, for example due process and the right to a fair hearing as part of the implementation of the 'rule of law' in sport. And fourth, global sports law, namely the sports organization order

²³ Ken Foster, *Is There a Global Sports Law?*, *Entertainment and Sports Law Journal*, University of Warwick, 2003: Vol.2, No.1, p.1.

²⁴ *Ibid.*, p.2.

containing the principles, rules and regulations of international sports federations as private and independent organizations based on contracts with national sports federations.

Foster further stated that global sports law can be compared to Lex Sportiva. Foster said:²⁵

“I argue that Lex Sportiva should be equated with global sports law, which seeks to regulate sports independently by international sports federations. Global sports law implies a claim of immunity from national law. This demand asks that there be no intervention in sports regulation either by a country's national legal system or by international sports law, because any form of intervention would be contrary to the supremacy of law in regulating international sports”.

Foster's view above implies Lex Sportiva as global sports law which is transnational in nature because its jurisdiction crosses national borders. Foster's view is different from the opinion of J. Nafziger and M. Beloff who state that Lex Sportiva is part of international sports law because its normative basis is the statutes of international sports federations and its source is public international law.²⁶

The problem of transforming Lex Sportiva into the Indonesian Sports Law System can be approached using Transformation Theory. This theory is usually used in the application of International Law which originates from International Agreements. This theory teaches that in order to be enforced and respected as a national legal norm, international law must go through a transformation process, both formally and substantially. Formally, this means that international law must be in accordance with national legal provisions and regulations. Meanwhile, substantially means that it must not conflict with the basic principles of national law. The transformation theory is based on the positivist view, that the rules of International Law cannot be directly and "ex proprio vigore" applied in National Law. Vice versa, International Law and National Law are completely separate legal systems, and structurally they are different legal systems. To be implemented into National Law, it requires a special adoption or special incorporation process.²⁷

This theory is considered relevant for analyzing the Lex Sportiva transformation problem for several reasons. First, Lex Sportiva is Global Sports Law or Transnational Sports Law which is part of International Law which originates from the self-binding agreement between national sports federations (parent sports organizations) with international sports federations. National sports federations are

²⁵ Ibid., p.3

²⁶ Michael Bellof, Tim Kerr, and Marie Demetriou, *Sports Law*, (New Zealand; Harts Publisher). p.45.

²⁷ Mohd. Burhan Tsani, *Status of International Law and International Agreements in the National Law of the Republic of Indonesia (In the Perspective of Constitutional Law)*, as quoted in Damos Dumoli Agusman's blog, in Law Of Treaties (International Agreements): Issues In Indonesia, [https://perkerjaan-internasional .blogspot](https://perkerjaan-internasional.blogspot), accessed 1 February 2014

bound to comply with the statutes and other regulations made by international sports federations in the form of game rules, coaching, organizing, competitions, codes of ethics and organizational provisions. Second, the Lex Sportiva transformation process into the National Sports Law System has stronger legal force compared to the harmonization process.

The choice to use Transformation Theory is different from the opinion of several Sports Law experts and observers who use Harmonization Theory as an analytical tool. Harmonization theory teaches that international law and national law must be interpreted in such a way that there is harmony between the two. In short, the existence of international and national law is in a harmonious relationship. The sports law expert in question includes Hinca Pandjaitan.²⁸ This harmonization theory often receives little response because in practice it is difficult to harmonize International Law with National Law, each of which has different characteristics, objectives, legal sources and interests. This theory is also often rejected because its application tends to conflict with state interests which prioritize state sovereignty and legal sovereignty.

A legal system is essentially a network of legal elements that are interrelated and influence each other by one or several principles. The legal system is composed of a number of subsystems whose components are interconnected and interact.²⁹ According to Mochtar Kusumaatmadja, the components of the legal system consist of (a) legal principles and rules, (b) legal institutions, and (c) processes of realizing the rules in reality. The legal system is essentially a network of interrelated legal elements and influences. -influence each other by one or more principles. The legal system is composed of a number of subsystems whose components are interconnected and interact.³⁰ Meanwhile, Mahfud MD said that the Indonesian legal system is a unity of laws and regulations consisting of many interdependent components.³¹

Based on the opinions above, the Indonesian Sports Law System is essentially a unity of laws and regulations in the field of sports which consists of many interdependent components, which were built to achieve state goals based on the

²⁸ See Hinca IP Pandjaitan in his dissertation which was later published under the title *State Sovereignty vs FIFA Sovereignty - How to Position the Problem of PSSI and the State (Indonesian Government)?*, 2010, (Jakarta: Gramedia Publishers), p.434. In his conclusion, Hinca stated that the solution to the conflict between Lex Sportiva and the National Sports Law was harmonization.

²⁹ Ni'matul Huda, *Legal Politics and Development of the National Legal System*, 2023, (Jakarta: Sinar Graphic Publishers), p.75.

³⁰ Ni'matul Huda, *ibid.*, p.87.

³¹ Ni'matul Huda, *ibid.*, p.93.

legal foundations and ideals contained in the Preamble to the 1945 Constitution and its articles.

Each country develops its own Sports Law System based on its characteristics and characteristics. Indonesia has also developed an Indonesian Sports Law System which is based on elements or components of national law, international law and transnational law. Sports Law in Indonesia is manifested in the form of statutory regulations in the field of sports, parent regulations of sports organizations which are derivatives of international sports federation regulations, rules/regulations issued by national sports organizations, as well as court decisions and sports arbitration.

III. METHODOLOGY

The type of research chosen is juridical-normative, with an explanatory approach. The aim is to explain the phenomenon of globalization of world sports which has resulted in a shift in sports regulations from legal regulations to international sports federation regulations, which has provided an opportunity for the development of Lex Sportiva as the only regulation chosen in regulating games, organizing and resolving sports disputes. This phenomenon is associated with the process and mechanism of its transformation into the Indonesian Sports Law System.

According to the type of research, the data source is secondary data. This data was obtained through literature and document studies. The types of data collected include the Olympic Charter, international sports federation statutes, related laws and regulations, official sports planning documents, as well as court decisions and decisions of sports arbitration bodies. To enrich information, data collection was complemented by structured interviews conducted with sports law experts, drafters/drafters of sports laws and regulations, and sports actors as objects implementing sports regulations. The collected research data is then processed and analyzed qualitatively with predetermined indicators and parameters. Next, the data is presented descriptively in accordance with research principles.

IV. RESULTS AND DISCUSSION

1. Development of Lex Sportiva in Sports Governance

Lex Sportiva developed from the teachings of sports law experts. The thoughts of sports law experts, most of whom are spread across Europe, America and Australia with different backgrounds, have colored the meaning of Lex Sportiva from various points of view. The thoughts of sports law experts reflect developments in the preparation of sports rules/regulations carried out by international sports federations.

According to Foster, the development of Lex Sportiva began as an independent, transnational legal order created by private global institutions to regulate international sports. The main characteristics are: First, these rules are contractual in nature, the binding force of which comes from agreements given to the authority and jurisdiction of international federations. Second, these provisions are not subject to and regulated by national law. Global sports law is "global law without state". It is a separate and globally independent legal code. Implicitly, this implies that international sports federations cannot be regulated by governments and courts of national legal jurisdiction. They govern themselves and by their own internal institutions or by external institutions they create.³²

According to A. Rigozzi, Lex Sportiva developed into a series of private law norms taken from the interaction between sports law norms and general legal principles in accordance with the state legal system as manifested in sports arbitrations.³³ Meanwhile, Frank Latty explained that Lex Sportiva later developed into a series of national laws that were suitable to be applied to free the laws that apply in sports disputes from the grip of various national laws.³⁴ J. Nafziger in his article entitled Nafziger Globalizing Sports Law expressed a similar view. Nafziger stated that Lex Sportiva as global sports law has developed into an authoritative process for making legal disciplinary decisions. Nafziger differentiates global sports law from international sports law. For him, international sports law is a branch of international law, one of the main aspects of which is using jus commune which is a general principle of international law.³⁵

The struggle for thought regarding the above concepts led to the publication of three points of conclusion from the 12th International Congress on Sport Law conference held in Ljubijana, 2006 which stated:³⁶

1. Lex Sportiva is a legal order adopted by national and international sports bodies and is an important, fundamental issue for the academic discipline in the field of sports law.
2. The law contained in the Lex Sportiva rules is completely non-national, of a direct nature, its application takes precedence in the provisions of national sports law and is the primary law of the world of sports.

³² Ken Foster, *op.cit.* p.4.

³³ Hincin Panjaitan, *State Sovereignty vs FIFA Sovereignty, How to Settle the Problem of PSSI and the State (Indonesian Government)*, *op.cit.*, p.138.

³⁴ Frank Latty, *Transnational Sport Law*, *The International Sport Law Journal*, 2011, Vol.1 No.2. p.34.

³⁵ James AF. Nafziger, *Globalizing Sports Law*, *Marquette Sports Law Review Journal*, 1999, Vol.9 Issue 2 spring.

³⁶ Dimitrios P. Panagiotopoulos and Wang Xiaoping, *op.cit.* p.25.

3. The institutional autonomy of international sports federations and the provisions of the Lex Sportiva serve as a reference for legal regimes and sports bodies and are key issues in the academic discipline of sports law.

These three points of thought are expressed with the aim and purpose of ensuring that there is no longer any overlap in enforcing regulations on and off the field. Because there is often overlapping in the enforcement of regulations which are not actually the domain of the positive law department but are carried out, it often even results in loss of life for reasons of upholding the supremacy of the law.

Lex Sportiva as part of Sports Law has subsequently become one of the pillars of international sports governance because it has developed into global sports law. Ken Foster, said that Lex Sportiva as global sports law is one of the four main elements of international sports governance. According to Foster, there are 4 elements that are the pillars of international sports governance, namely the rules of the game, the ethical principles of sports, international sports law and global sports law.³⁷

Regarding these four elements, Foster explains: First, the rules of the game. Each type of sport has its own technical rules and game laws. Without rules there is no sports game. These rules are usually set by international sports federations. Therefore, the core and foundation of sport is the existence of agreed playing rules. The rules of the game are the constitutive core of a sport. The rules of this game definitively cannot be challenged during the game. Second, the principles of sports ethics, namely a special type of regulation that regulates the essence or spirit of sports, namely justice. Sports ethics are not formal technical rules but regulate issues of fairness and integrity. They cover what is usually referred to as the 'spirit of the game'. These principles represent different legal orders with their own characteristics specific to each sport.

Third, international sports law, namely the general principles of international law which can automatically be applied to sports. These principles contain basic protections, so they can be applied by national courts once recognized or ratified, for example due process and the right to a fair hearing as part of the implementation of the 'rule of law' in sport. And fourth, global sports law, namely the sports organization order containing the principles, rules and regulations of international sports federations as private and independent organizations based on contracts with national sports federations.

Foster further concluded that global sports law can be compared to Lex Sportiva. Foster said:³⁸

³⁷ *Ibid.*, p.5.

³⁸ Ken Foster, *op.cit.*, hlm.7.

“I am of the opinion that Lex Sportiva should be equated with global sports law, which seeks to regulate sports independently by international sports federations. Global sports law implies a claim of immunity from national law. This demand asks that there be no intervention in sports regulation either by a country's national legal system or by international sports law, because any form of intervention would be contrary to the supremacy of law in regulating international sports.”

According to Foster, Lex Sportiva should be equated with global sports law. In general, he provides an understanding of global sports law as a cloak for the continuation of self-regulation by international sports federations. This is a claim of non-intervention by both national legal systems and international law. This is contrary to the rule of law in international sports settings. Foster felt it was important to first differentiate the concept of international sports law. International law is concerned with relations between countries. Therefore, international sports law can be defined as the principles of international law that are applied to the world of sports. According to Foster, International Sports Law can be applied by national courts. In contrast, the Global Sport Law implicitly claims immunity from national laws.

2. The Position of Lex Sportiva in the World Sports Law System

It has been mentioned previously that Lex Sportiva is synonymous with global sports law, and is one of the 4 pillars of international sports governance. The other three pillars are the rules of the game, ethical principles of sports, and international sports law. As global sports law, Lex Sportiva is unique as a special place to create new sports norms that have social and legal force. Conceptually this rests on the ability of international sports federations to create their own norms.

According to Foster, as a global sports law Lex Sportiva was realized because of the following prerequisites:³⁹

- a. The existence of an organization with constitutional powers that regulates international sports. This international sports federation has the legislative competence to create a normative basis that provides social obligations for the rules made.
- b. The existence of a global forum for resolving disputes. This is done by establishing an international sports arbitration body, which is specially formed and has global jurisdiction and can apply all aspects of international sports law.

³⁹ Ken Foster, *op.cit.*, p.8.

- c. There are different and unique global sports law norms. These norms are the result of legal customs and practices originating in international sports federations. They need to be sufficiently generalized and harmonized in this transnational context to be valid.
- d. There are general international sports law principles taken from the thoughts/opinions of legal experts as a basis for the Sports Arbitration Court in deciding sports disputes.
- e. There is an effort to create an 'immunity system' that is respected by all national courts. It is de-localized and does not require special requirements of recognition or endorsement by the national legal system, as it is essentially transnational. This system acts as a constitutional directive to national courts that there are global principles that provide autonomy to the global sports system.

The character of global sports law above is different from international sports law. The rules used here are legal rules that are generally understood to be used from customary international law, namely *jus commune*, such as *pacta sunt servanda*, justice, the doctrine of proportionality, the doctrine of personal responsibility, the prohibition of unfair enrichment, and the doctrine of clauses on the *cob sic stantibus*. However, this universal legal principle cannot be ignored by international sports federations, and it can and must be enforced by whatever law the institution has jurisdiction. The autonomy of international sports law is not very strong, and international sports federations are not free to apply or interpret the rules as they wish.

In its development, *Lex Sportiva* was transformed into an independent sports regulation system. The nature and characteristics of *Lex Sportiva* process and form:

- a. legal order in the form of independent and transnational international sports regulations or rules created by international sports federations as private global institutions;
- b. transnational sports agreements which are contractual in nature and have binding force between the parent sports organization and the international sports authority (international sports federation);
- c. the decisions of a sports arbitration body which is permanently established specifically for the independent and independent resolution of sports disputes, is not subject to the laws and regulations of a country, and is not regulated and cannot be interfered with by the government and courts of national legal jurisdiction.

With its role as a component of international sports governance and its current development as an independent legal order, there is no doubt that *Lex Sportiva* has a strategic position as a source of Sports Law. *Lex Sportiva* is one of the

basic references for the management and administration of sports both nationally and internationally.

Judging from the interests of international law, Lex Sportiva also meets the requirements as a source of Global Sports Law, because the nature and character of Lex Sportiva is in accordance with Article 38 paragraph (1) of the Statute of the International Court of Justice (ICJ). Mochtar Kusumaatmadja stated that the sources of international law in accordance with Article 38 paragraph (1) of the ICJ Statute include: (a) international agreements, (b) international customs, (c) general legal principles; (d) court decisions, and (e) doctrines of leading legal experts from various countries. Meanwhile, according to JG Starke, sources of international law include: (a) international agreements, (b) international customs, (c) court decisions or arbitration institutions, (d) juridical works; and (e) establishment of international institutions.

The fact that Lex Sportiva qualifies as a source of Global Sports Law is strengthened by the determination of the subject of international law. According to Article 38 paragraph (1) of the ICJ Statute, the subjects of international law are: (a) international agreements, both general and specific, which establish rules expressly recognized by participating States; (b) International custom, as evidence of general practice accepted as law; (c) Principles of general law recognized by civilized nations; and (d) Judicial decisions and opinions of the most qualified experts from various nations as additional means of determining the rule of law.”

Thus, it can be said that Lex Sportiva qualifies as a source of sports law. The argument for this statement is as follows:

- a. Lex Sportiva was created by global private sports institutions based on the results of transnational agreements between international sports federations and national sports federations.
- b. The content or substance of Lex Sportiva contains general legal principles or principles that apply and are recognized by many countries in the world, customs in sports practices, as well as the doctrine or thoughts of sports law experts.
- c. Dispute resolution in Lex Sportiva is carried out through an arbitration body created specifically for the resolution of sports disputes which is independent and free of interference by the government and national law/courts.

3. Transformation of Lex Sportiva in the Indonesian Sports Law System

Bagir Manan said that the politics of national legal development as the direction of national legal development is directed in line with national ideals, especially in the fourth paragraph of the Preamble to the 1945 Constitution. This legal development must be directed at realizing the foundations of the state, namely: democracy (political and economic), rule of law (guaranteeing respect for

human rights and the division of power), as well as social justice (general welfare and prosperity of the people).⁴⁰ Meanwhile, Mochtar Kusumaatmadja said that the development of the National Legal System must be carried out in all legal sub-systems which are interconnected and interact.⁴¹

Legal transformation is part of the formation of new laws or renewal of old laws. These two activities are part of the Development of the National Legal System. The aim of legal transformation is to adapt the principles/principles, rules, teachings/doctrine, or legal norms of foreign systems into the national legal system. Formally, the transformation of Lex Sportiva into the Indonesian Sports Law System means adapting the principles/principles, rules or substance of Lex Sportiva into the Indonesian Sports Law system. Meanwhile, substantially it means that there must be no Lex Sportiva principles that conflict with Indonesian Sports Law.

One of the main problems that arises in the process of transforming Lex Sportiva (global sports law) into the Indonesian Sports Law System is that at the practical level, the binding power of the principles/principles, rules and doctrines/teachings of Lex Sportiva is stronger than the binding power of the principles/principles, rules, and legal and regulatory norms in the field of sports. As a result, when there is a tug-of-war between the two forces, Lex Sportiva's strength is more dominant. This is proven by the acceptance of several teachings/doctrines and provisions in Lex Sportiva (global sports law) into Law Number 11 of 2022 concerning Sports. Examples include those related to resolving sports disputes. The provisions of Article 88 paragraph (3) of Law Number 3 of 2005 concerning the National Sports System (SKN) which states "if dispute resolution as intended in paragraph (2) is not achieved, dispute resolution can be carried out through a court in accordance with its jurisdiction" has been replaced with the provisions of Article 102 paragraph (2), paragraph (3) and paragraph (5) which state:

Paragraph (2): In the event that deliberation and consensus as intended in paragraph (1) are not achieved, dispute resolution can be reached through arbitration or alternative dispute resolution in accordance with statutory regulations.

Paragraph (3): Settlement of disputes as referred to in paragraph (2) is carried out through: a. mediation; b. conciliation; or c. arbitration.

Paragraph (5): Dispute resolution as referred to in paragraph (3) letter c is carried out by 1 (one) Sports arbitration body which is

⁴⁰ *Ibid.*, p. 85.

⁴¹ *Ibid.*, p.87

independent and whose decision is final and binding, and is formed based on the Olympic charter.

The change in the editorial of the article and the inclusion of the phrase "Sports arbitration body which is independent and whose decisions are final and binding, and is formed based on the Olympic charter" indicates a change in principle in dispute resolution. This change also shows that the binding power of Lex Sportiva, which in this case is implemented by international sports federations, is very strong. So far, the Indonesian government and the management of the parent sports organization (IOCO) have often been criticized by international sports federations and world sports law experts because in resolving disputes they use Article 88 of the SKN Law which leads to proceedings in court, while the rules in most sports federations International law states that all sports disputes must be resolved through a sports arbitration body or the Court of Arbitration of Sport (CAS).

The inability to withstand the power of Lex Sportiva (global sports law) has caused Indonesia to transform the rules regarding dispute resolution created by international sports federations, as stated in Article 102 of the Sports Law. This means that Indonesia is "forced" to accept Lex Sportiva as global sports law. Several similar transformation problems are and will continue to occur, the essence of which is that the transformation of Lex Sportiva into the Indonesian Legal System will continue to occur, and in many cases Indonesian Sports Law is "forced" to accept the power of Lex Sportiva as global sports law created by the federation. international sports.

The strength of Lex Sportiva as global sports law lies in the independence of international sports federations which create an independent and universal global sports law system. This pressure started when the parent sports organization (IOCO) declared its parentage and made a binding agreement (agreement) with the international sports federation of a sport. This bond is carried out with the threat of sanctions if IOCO violates the regulations. Sanctions for violating these regulations vary, from banning sports teams from playing at international level to suspending and removing IOCO as a member of international sports federations.

Based on the conditions above, the understanding and interpretation of legal transformation as currently understood by the government, legal experts and society needs to be changed. Legal transformation is no longer interpreted as adapting elements of international law into the national legal system so that they comply with national legal rules. Legal transformation must be interpreted as adapting principles/principles, rules, teachings/doctrine, or legal norms of foreign systems into the national legal system in accordance with the goals and ideals of national law. The formal goals do not change, but the substantive

goals do. Formally, legal transformation aims to adapt principles/principles, legal rules, or the substance of foreign law into the Indonesian Legal System. Meanwhile, it substantially aims to adapt foreign legal principles into the Indonesian Legal System to produce legal products that are harmonious and do not conflict. Regarding the concept of transformation of Lex Sportiva into the National Sports Law System, the author proposes that it be carried out in a planned, gradual, orderly and measurable manner so that the results run well. Planned means that it is carefully planned in the National Legal Development Plan. Gradual means that it is carried out in systematic and clear stages with a strong footing. Orderly means that the stages are arranged regularly from one stage to another. And measurable, meaning that every step taken has a clear measurement.

In line with the views of Bagir Manan and Mochtar Kusumaatmadja above, the transformation of Lex Sportiva into the Indonesian Sports Law System is proposed to be carried out in stages through 4 stages, namely:

- Stage I: Assessment of the principles/principles, rules and norms of applicable laws and regulations that conflict or have the potential to conflict, are incompatible and/or inharmonious with Lex Sportiva.
- Stage II: Determination and absorption of the principles/principles and rules of Lex Sportiva (global sports law) into Sports Law through changes to the material content (norms) of legislative regulations in the field of sports.
- Stage III: Formation or adjustment of existing sports law institutions into legal institutions that comply with the demands of the values and rules of Lex Sportiva.
- Stage IV: Adjustment of the procedural process in law enforcement and dispute resolution to accelerate the realization of Lex Sportiva rules in reality.

In this case, it is proposed to use the measure presented by Mochtar Kusumaatmadja, who stated that one measure of legal development is:

- a. Prioritize areas, elements, components or urgent legal aspects (urgent need)
- b. Feasibility considerations were made, where areas of law that had too many obstacles (had cultural obstacles) were postponed.
- c. Changes are made to basic legal aspects (fundamental changes) taking into account political, economic and/or social developments.

V. CONCLUSION

Based on the description presented in the section above, the following conclusions can be drawn:

1. Lex Sportiva is an independent, transnational legal order created by private global institutions to regulate international sports. The main characteristics are: contractual in nature, the binding force of which comes from agreements given to the authority and jurisdiction of international federations, not subject to and regulated by national law. Lex Sportiva is "global law without state". The Lex Sportiva doctrine, which is one of the elements in international sports governance, has now developed into a strong sports law doctrine. Its role as global sports law has become very dominant. Its development today is largely triggered by the phenomenon of globalization of sport which has resulted in a shift in the focus of sports regulation from legal regulation to regulation by international sports federations. With Lex Sportiva, this international sports federation controls and regulates the management and implementation of international sports by making basic rules and playing rules for a sport, as well as making decisions that can have a big impact on the sustainability of the sport.
2. With its role as a component of international sports governance and its current development as an independent legal order, there is no doubt that Lex Sportiva has a strategic position as a source of Sports Law. Lex Sportiva is one of the basic references for the management and administration of sports both nationally and internationally.

Thus, it can be said that Lex Sportiva qualifies as a source of sports law. The reasons are: (a) Lex Sportiva was created by a global private sports institution based on the results of a transnational agreement between international sports federations and national sports federations, (b) the content or substance of Lex Sportiva contains principles or principles of general law that are applicable and recognized by many countries in the world, customs in sports practices, as well as the doctrine or thoughts of sports law experts, and (c) dispute resolution in Lex Sportiva is carried out through an arbitration body created specifically for the resolution of sports disputes which is independent and does not involve interference by the government and national laws/courts.

3. One of the main problems that arises in the process of transforming Lex Sportiva (global sports law) into the Indonesian Sports Law System is that at the practical level, the binding power of the principles/principles, rules and doctrines/teachings of Lex Sportiva is stronger than the binding power of the principles/principles, rules and norms of legislation in the field of sports. As a result, when there is a tug-of-war between the two forces, Lex Sportiva's strength is more dominant. Therefore, the author proposes the concept of transforming Lex Sportiva into the National Sports Law System in a planned, gradual, orderly and measurable manner so that the results run well. planned in the sense of being carefully planned in the National Legal Development Plan. Gradual means that it is carried out in systematic and clear stages with a strong footing. Orderly

means that the stages are arranged regularly from one stage to another. And measurable, meaning that every step taken has a clear measurement.

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