

LEGAL PROTECTION OF BASKETBALL ATHLETES IN CONTRACT WITH BASKETBALL CLUB

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Abstract

Professionally, a basketball athlete will contribute directly either playing or competing on behalf of the basketball club that recruited him. The attachment between the basketball athlete and the basketball club is a logical consequence of a legal relationship between the two parties as stated in the employment contract and other agreements that have been agreed by both parties. Everything can run smoothly if the agreement can heed the legal terms and principles in the agreement correctly, but not infrequently there are problems that arise as a result of the agreement not implementing the legal terms and the agreement correctly, giving rise to rights disputes arising from the actions of one or both parties. parties outside the agreement or the laws that were in force previously and resulted in one of the parties feeling that their rights were not realized. The type of research used was normative. The data was collected by means of library research and interviews. The data analysis method used is qualitative data analysis. The results of this study show how the rights of basketball athletes as workers in a legal relationship with the basketball club that recruited them and what forms of legal protection there are in case of problems. it is necessary to take action that must be considered by the relevant parties and institutions in order to optimize the protection of the rights of basketball athletes.

Keywords: *Basketball Athlete, Agreement, Basketball Club, Legal Protection*

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1. INTRODUCTION

Basketball in Indonesia is growing rapidly. The development of the sport of basketball in Indonesia has contributed to the rise of the country's economic sector where it is strongly influenced by athletes who have achievements in their respective sports. In this case, the type of sport in question is a professional sport that has the goal of developing athletes in a sustainable manner in order to earn income.

Professionally, a basketball athlete will contribute directly to both playing and/or competing on behalf of the basketball club that houses and recruits him. The attachment between the athlete and the basketball club was born because of an agreement between the two parties. In the implementation of this work activity, the agreement can be stated in a contract that regulates the rights and obligations of the parties as described in Article 57 paragraph (9) of Government Regulation Number 16 of 2007 concerning the Implementation of Sports (“PP 16/2007”).

The agreement in this professional field will involve several parties such as the club as the first party, athletes as the second party and the association and/or league as the authorized party to give approval so that the second party can run a game in a sport with a reward (payment) that will be given. by the first party, so that all forms of agreements that exist in the relationship between athletes and sports clubs must be considered because there are many things that must be regulated in the agreement and must be regulated in detail so as not to cause multiple interpretations so as to provide justice for all parties involved.

Reporting from various media portals, currently, a number of Indonesian professional basketball players and former players are aggressively launching the “One Ball, One Voice” movement which aims to improve the relationship between players and basketball clubs. This movement will later form a player association that has never existed before in order to protect the fate of basketball athletes because it is felt that after decades of running the national basketball league, there are often disputes where basketball athletes are not in an advantageous position.

This basketball worker (athlete) actually has a broad spectrum in submitting himself to a contract or agreement and existing regulations, so that if there are problems related to this matter, of course it is necessary to ask how the rights of basketball athletes as workers actually are and what forms of legal protection are provided. must be given if this basketball athlete is entangled in problems related to contracts or agreements that have been agreed with the basketball club that recruited him.

2. METHODS

The type of research used is normative research. In normative legal research, the data used is secondary data consisting of primary legal materials in the form of the Civil Code and relevant laws and regulations. In addition, secondary legal materials include related legal books, scientific articles, legal dictionaries and so on and tertiary legal materials obtained from encyclopedias and interviews so that the processing of legal materials will always be related to interpretation in a legal science. The data analysis method used is qualitative data analysis. Qualitative data analysis is an analytical method that produces analytical descriptive data, namely data sourced from library data that is researched and studied as a unit and is based on information obtained from library studies as well as other primary and secondary data.

The data collection method used in this research is literature study, which is a method of collecting legal materials by examining written legal materials using content analysis. This technique can be applied by studying and reading undergraduate books, literature collections of lecture materials, official documents, archives, scientific works, as well as laws and regulations, and other literature both printed and electronic related to research topics and can support research writing.

3. RESULTS AND DISCUSSION

1) Legal Relationship Between Basketball Athlete and Basketball Club

There is a legal relationship that is born between workers and employers, namely between professional basketball clubs and basketball athletes that focuses on fulfilling the rights and obligations of both parties, especially the Indonesian Basketball League regulations as outlined in the Indonesian Basketball League (IBL) Implementing Regulations in Chapter I Article 2 regarding the IBL Participant Requirements, it is stated that every IBL club must be in the form of a Limited Liability Company which must be reported to PT Bola Basket Indonesia (PT BBI) by submitting the Deed of Establishment of a Limited Liability Company and/or the Deed of Final Amendment to a Limited Liability Company along with a Decree of the Minister of Law and the Human Rights of the Republic of Indonesia regarding the Ratification of the Limited Liability Company.

Regulations that require IBL participating clubs to be legal entities have been issued by PT BBI with some very mature considerations. Not only supporting government programs in building the sports industry as well as transparent financial and tax management, club management under a legal entity will also protect all clubs and all levels within them.

Some basketball clubs in Indonesia that are still in form other than a limited liability company such as a foundation can of course maintain their status as a foundation but to participate in the IBL competition, the club must be managed by a limited liability company which means that the foundation can form a limited liability company to manage clubs that participate in the IBL competition. , so that the discussion regarding basketball clubs that are required to be legal entities is deemed appropriate because with a clear legal entity, namely a limited liability company, the legality is clear so that it will protect players, coaches, and the basketball club itself and if it does not have a legal entity then the enforcement of legal protection for the parties involved will be more difficult to reach, especially the things that must be met not only from the aspect of professionalism but also how to provide appropriate legal protection for the parties involved in it.

After the basketball club has a clear legal entity, the relationship with the athlete will certainly become clearer and have proper protection than the basketball athlete dealing with a basketball club that is not a clear legal entity, in addition, basketball athletes and basketball clubs are in a legal relationship must be based on a rule of law and an agreement or contract that binds both parties as described in Article 1338 of the Civil Code, so that the legal relationship that exists between basketball clubs and basketball athletes is as an employment relationship that includes the employer and job recipient. The elements of a work agreement have been explained in Article 1 point 15 of Law Number 13 of 2003 concerning Manpower based on a work agreement which has the following elements

a) Work

As the object of the work agreement, it is clear that if there must be work that is agreed upon and must be carried out by the worker himself, except with the permission of the employer, the worker can ask another person (a third party) to carry out his work.

b) Wages

One of the benchmarks for workers at work is to get rewards in the form of wages and other rewards for things that have been done (achievements).

c) Command

With an order, the worker will do the work on the orders of the employer.

So this indicates that a professional basketball athlete is identical to the worker element because he works as a basketball athlete under the auspices of the basketball club that houses him where by doing the work, he gets the agreed wage. The existing work agreement between basketball athletes and basketball clubs can be classified as a Specific Time Work Agreement (PKWT) because based on Law Number 13 of 2003 concerning Employment which was changed to Law Number 11 of 2020 concerning Job Creation in the Employment chapter in article 59 paragraphs (1) and (2) it is stated that if a Specific Time Work Agreement is only made for certain jobs which according to the type and nature or activities of the work will be completed within a certain period of time, namely work that is only temporary or completed once; work which is estimated to be completed soon; seasonal work; work related to something that is in the experimental period; and jobs whose types and activities are not permanent. The making of an agreement in the form of a work contract in sports professional activities is also emphasized again in Article 57 paragraph (8) and paragraph (9) of Government Regulation Number 16 of 2007 (“PP 16/2007”) regarding the Implementation of Sports which explains that the implementation of professional sports activities is also must make an agreement in the form of a work contract which at least includes;

- a) Rights and obligations of the parties;
- b) Agreement;
- c) Arrangements regarding wages, bonuses, allowances and insurance;
- d) The validity period of the agreement;
- e) Support for the implementation of the object of the agreement; and
- f) Settlement of disputes.

The things that have been mentioned above are general things even though they have been re-emphasized in PP 16/2007, so it is necessary to establish standardization of contracts that can be accommodated by the Indonesian Basketball League in order to create a legal benefit for the parties involved. Contract standardization is indeed a league discourse since 2019 so that basketball clubs have similar contract clauses, especially matters relating to the rights and obligations of players and clubs so that there are similarities for new players, old players, new clubs and old clubs so that it is hoped that all have the same position. balanced, not detrimental to one side and if the rules related to contract standardization have been realized, it is hoped that these rules can apply consistently and have the right technique.

This is a business that needs to be fully supported because there are still many cases that occur related to contracts, especially the rights and obligations of both parties. For example, the

latest case experienced by Dimaz Muharri who is considered a former basketball club that houses him, namely CLS Knights, has violated an existing contract which resulted in Dimaz Muharri and CLS Knight fighting at the court. In addition, the Bogor Siliwangi case where the club was unable to pay player salaries.

The absence of rules related to standardization of contracts creates limitations on legal actions that can be taken by the Indonesian Basketball League against the problems experienced by Dimaz Muharri and Bogor Siliwangi because things that are not contained in the contract certainly make it difficult for the Indonesian Basketball League to help resolve existing problems. As in the case of Bogor Siliwangi, the Indonesian Basketball League can only revoke the club's license. The existence of standardization of the contract is expected to protect the rights of the basketball athlete and the basketball club concerned because the legal relationship between the two parties and the matters that govern it have been properly regulated in the provisions made by the Indonesian Basketball League in the future.

2) Agreement as the basis for the legal relationship of the parties

In the world of professional sports, the concept of the player and playing agreement or a contract to play between the athlete and the sports organization or club that houses the athlete is an important agreement because all conditions for the athlete's work including the rights and obligations of the athlete, wages and other matters will be stated in the contract. The provisions regarding the contents of the contract in work in the professional sportsman profession have also been regulated in Article 57 paragraph (8) and paragraph (9) of PP 16/2007 which states that the work contract must regulate the provisions of the rights and obligations of the parties, wages, objects agreement and so on. Although in the field of sports, this contract must also uphold the nature of the agreement in general because a sports contract will still be based on the nature of the agreement in general.

As the party concerned, it is necessary to understand the nature of the agreement itself, Article 1313 of the Civil Code explains that an agreement is an act in which one or more people bind themselves together so that it is clear that there is a relationship between the two parties to be bound or mutually bound. In other words, it can be called an engagement. An agreement will also not be separated from the underlying principles so that the agreement made is in accordance with the rule of law, public order and morality in society. The main principles of the agreement are as follows:

b) Skills

Proficiency has a purpose if the party making the agreement is able to carry out a legal act, while the category of incompetent person is a person who is not yet an adult and is under guardianship as described in Article 1329 and Article 1330 of the Civil Code.

c) A Certain Thing

What is meant by a certain thing is an achievement, achievement in relation to an engagement consists of giving something, doing something and not doing something as described in Article 1234 of the Civil Code.

d) A Halal Cause

It is a form of implementation of Article 1337 of the Civil Code relating to the purpose of the agreement which cannot oppose the law, public order and morality.

In addition to the above conditions, there are other forms of will defects that are recognized in jurisprudence, namely abuse of circumstances (*misbruik van omstandigheden*) which is the act of someone who abuses or takes advantage of an unequal position or has a state of complete freedom in carrying out a legal action, an agreement based on *misbruik van omstandigheden* This will create an engagement with an unbalanced bargaining position or unequal bargaining position between the parties, causing injustice to one of the parties, this can happen especially to a legal relationship affixed in an agreement or standard contract, so it is important for both parties. parties to really understand how the contents of an agreement and further examine how the agreement is from a legal point of view and not just sign any form of agreement without really understanding how the agreement is substantially.

a) The principle of consensualism

This is a principle which means that all agreements will be valid if there is an agreement between the two parties who have the same view.

b) The Principle of Proportionality

It is a development of the legal principle put forward by Agus Yudha Hernoko, where this principle emphasizes the portion of the distribution of rights and obligations among the parties involved in a proper and reasonable manner (fair and reasonableness).

c) Principle of Freedom of Contract

There are elements in this principle, namely the parties to a free agreement in terms of: 1) making or not making an agreement; 2) determine the subject of the agreement; 3) Determine the form of the agreement; and 4) Determine the contents of the agreement.

d) Pacta Sunt Servanda

This principle implies that the binding force of an agreement such as a law that has been made is binding on each party.

In addition to the principle of agreement, a good and true agreement will certainly not miss the nature of the legal terms of the agreement as explained in Article 1320 of the Civil Code where the legal terms of the agreement include 4 (four) conditions, namely:

a) Agreement

It is the conformity of the statement of the will of the parties participating in the agreement where in Article 1321 of the Civil Code it is also explained that an agreement cannot be considered valid if it is given with a background of error (dwaling) or obtained by coercion (dwang) or fraud (bedrog). and if there is such an element in the agreement, it will give the consequence that the agreement is considered to be a defect of will (willsgebreken)

3) Legal Protection for Basketball Athletes in Contract Disputes with Basketball Clubs A legal action is born because of the ability carried out by legal subjects, both human and legal entities, this causes the birth of a legal relationship in the community so that the law is present to regulate that a legal relationship between legal subjects can run fairly, so that it is clear that The law also functions to protect legal subjects for their rights in life and in the state.

The notion of legal protection has been described by Philipus M. Hadjon who states that legal protection is a process that is guaranteed and protected by law to obtain useful resources obtained from legal subjects so that power is organized in the decision-making process both on individual or structural devices where legal protection What is described by Philipus M. Hadjon is related to power, namely the power of the strong to the weak.

As a state of law, Indonesia must fulfill and provide legal protection to all its citizens without exception because basically every Indonesian citizen is entitled to protection, recognition, fair legal certainty, guarantees, and equality before the law. Legal protection is born in a society that arises as a result of an agreement between the community and individuals that aims to protect behavior that is considered to represent the interests of the community.

The provisions in the law governing the obligations, activities and professions of basketball athletes that have been regulated in the law must be implemented in order to protect

the interests of basketball athletes in obtaining welfare. The existence of a contract dispute between basketball athletes and basketball clubs is certainly contrary to the nature of legal protection and human rights to workers where in fact the basic rights of these workers have indeed been protected by the constitution, Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia explains that “Every citizen has the right to work and a decent living for humanity.” Which indicates that the basic rights and opportunities and treatment of workers will always be guaranteed so as to realize the welfare of life for workers and their families.

Employers in any sector who do not pay attention to the rights of their workers may indicate that the employer has violated the dignity of workers as human beings because in such circumstances, workers cannot do much to get their rights, as in the case of Dimaz Muharri where their rights as a worker whose main livelihood is as a basketball athlete, he cannot continue for a while because he is considered to still have a legal relationship with the previous basketball club and the case experienced by the Bogor Siliwangi dropout athlete who was not paid.

In connection with the existing legal consequences, it is appropriate that law enforcement is carried out in order to provide legal protection that can provide a sense of security and a sense of protection for human rights from irresponsible actions and degrading the rights and degrees of workers. According to Satjipto Raharjo, legal protection exists to protect the human rights of people who are harmed by something so that the community can enjoy the rights that have been provided by law. So that legal remedies that can be taken by professional basketball athletes in terms of contract disputes cannot be separated from the concept of legal protection for professional athletes.

Legal protection itself is divided into 2 (two) namely preventive legal protection which is to avoid things that can lead to a dispute and repressive legal protection which is to resolve disputes or violations through judicial institutions or outside that which has the authority to decide or adjudicate by generating sanctions. In terms of contract disputes that basketball athletes may experience with this basketball club, there are forms of preventive and repressive legal protection which can be described as follows:

- a) Preventive Legal Protection
 1. Fulfill the player's rights under the existing contract

Work contracts made by basketball clubs for basketball athletes who want to be recruited must be regulated properly and pay attention to the minimum requirements that must be in the contract, because there are still no provisions related to standardization of contracts specifically

made by the Indonesian Basketball League, the minimum requirements related to things that must exist in the contract in this case the contract in terms of professional sports activities is still guided by Article 57 paragraph (8) and paragraph (9) of PP 16/2007 which states that the implementation of professional sports activities must make an agreement in the form of a work contract which at least includes:

- a) Rights and obligations of the parties;
 - b) Agreement;
 - c) Provisions on wages, bonuses, benefits and insurance;
 - d) The validity period of the agreement;
 - e) Support for the implementation of the object of the agreement; and
 - f) Settlement of disputes.
2. Negotiating before signing the contract

Negotiation is one of the stages that can be carried out before the parties agree on an existing contract even though the contract is a standard contract. Negotiations can be used as a bridge for the parties to communicate in two directions to reach an agreement with this negotiation, which is expected to minimize things beyond what has been agreed, besides that, at this stage, basketball athletes can also examine the clauses in the contract and if there is a clause in the contract that is not clear and/or incomplete so that it is necessary to carry out a legal interpretation of the contract with the party making the contract or in this case with the basketball club because basically, an agreement made by the parties must be understandable and understand its contents as regulated in Article 1342 to Article 1351 of the Civil Code.

b) Repressive Legal Protection

1. Non-litigation efforts

In order to realize the rules regarding the settlement of sports disputes as outlined in Article 88 of Law Number 3 of 2005 concerning the National Sports System ("Law 3/2005"), efforts to resolve disputes can be sought first through consensus deliberation organized by the parent organization of sports if deliberation and consensus are not reached, dispute resolution can be carried out through arbitration or alternative dispute resolution in accordance with the laws and regulations.

Indonesia has an alternative sports dispute resolution body known as the Indonesian Sports Arbitration Board (BAORI) which resolves disputes related to violations of the Articles of Association and Bylaws as well as other regulations set by the Indonesian National Sports Committee (KONI) and the Indonesian Sports Arbitration Board (BAKI). will provide opinions

and be a means of mediation if there are parties in dispute and cannot reach consensus in sports disputes.

Currently, sports law facilities are still inadequate, as a result, disputes that occur such as problems related to contracts related to the rights and obligations of athletes and the clubs that protect them are at risk of not being resolved through dispute resolution institutions alone because it is considered that there is not enough adequate understanding in resolving sports disputes, especially disputes. basketball which has an effect on the quality of decisions that still cause the parties to this sport to settle their disputes through the court line.

2. Litigation efforts

This effort can be reached by filing a lawsuit to the Court. The requirements for the lawsuit include the following:

- a) It is a claim of rights where this claim has the aim of obtaining legal protection;
- b) There is a legal interest. The claim for rights submitted can be accepted if the claim is appropriate and has a strong legal basis;
- c) Is a dispute, the claim for rights is a civil claim (*burgerlijke vordering*) which contains a dispute;
- d) Made carefully and clearly, the lawsuit must have a correct legal basis and can be proven true and fulfill the elements of the lawsuit.

Efforts to resolve disputes should be pursued through non-litigation channels first and if they do not find a point of settlement of the problem then they can carry out litigation efforts by submitting a lawsuit to the court by continuing to take the mediation route first as required in PERMA rules no. 1 of 2016 concerning Mediation

4. CONCLUSION

- 1) The attachment between the athlete and the basketball club was born because there was an agreement both parties are contained in the contract, unfortunately there are still problems that occur between basketball clubs and basketball athletes related to contracts and agreements that exist between the two parties. Contracts in the field of sports have the same principles as contracts in general, if there is a contract or agreement between the two parties that cannot heed

the principles in the agreement and the legal terms of the agreement, it will have an impact on the rights that will be obtained by the parties, especially basketball athletes.

2) The rights of the parties that cannot be fulfilled indicate that one of the parties is not in a favorable position. This can be avoided if the clauses in the contract are stated clearly and in accordance with what has been required in the existing regulations so that the player's rights can be fulfilled in accordance with what has been described in the contract. If a dispute occurs, the party who feels aggrieved can take legal action, both litigation and non-litigation.

5. SUGGESTION .

- 1) For the Government, to pay more attention to the legal infrastructure of sports and to pay attention to the sport of basketball and to consider the creation of an arbitration body that specifically handles disputes in the basketball world.
- 2) For the Indonesian Basketball League, to immediately realize the provisions of standardization of player contracts and if it has been realized, it is expected to run consistently.
- 3) For basketball clubs to behave professionally and always uphold the principles of contracting and avoid abusing circumstances and pay more attention to the fate of basketball athletes.
- 4) For basketball athletes to pay more attention to every point in the contract or any agreement made with the club and not just sign existing contracts or agreements to minimize unwanted things.

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