

The Legal Certainty on Freedom of Foreign Football Player Transfer in Indonesia: Learning of Bosman Ruling

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ABSTRACT

Keywords:

*Bosman Ruling;
National Sports
System; Court of
Arbitration for
Sport; Contract
Foreign Football
Player*

The Bosman ruling means that players could move or transfer to a new club at the end of their contract without paying their former clubs any fee. A player can now agree with a pre-contract with another club for a free transfer if the players' contract with their existing club has six months or less remaining. This means that the Bosman Ruling is a pioneer in the freedom of contract aspect in sports law. According to Law Number 3 of 2005 on National Sports System in Indonesia, the problem in Indonesia is that there is no regulation regarding the freedom of contract for the sporting member in Indonesia. Some cases violate the Bosman Ruling against foreign football players Damian Linzio. Damian Linzio cannot solve his problems because there is no regulation related to Bosman Ruling issues in Indonesia. This Research aims to adapt Bosman Ruling into Indonesian Sports Law based on Law Number 3 of 2005 concerning the National Sports System. Bosman Ruling is very important in sports law because it regulates the freedom of contract. The type of this research is normative legal research. Normative legal research is a process to find the rule of law, principles of law, and the legal doctrines to address the legal issues faced by equal treatment of foreign players in freedom to transfer, the need to introduce Bosman Ruling into Indonesian sports law, study the case of Damian Linzio and bring the case to the Court of Arbitration for Sport. This research found that Indonesia needs to apply Bosman Ruling as the pioneer of freedom of contract to Indonesian Sports Law. Bosman Ruling can be adapted in Law Number 3 of 2005 on the National Sports System in Indonesia. For Damian Linzio, the author recommends bringing the case to the Court of Arbitration for Sport because they are more competent to resolve sports cases.

1. INTRODUCTION

Sports law in the United States overlaps substantially with labour law, contract law, competition or anti-trust law, and tort law. Issues like defamation and privacy rights are also integral aspects of sports law. This area of law was established as a separate and

important entity only a few decades ago, conceding with the rise of player agents and increased media scrutiny of sports law topics.¹

In 1967, the National Labour Relations Board accepted that players can form unions or players' associations. It is now common for professional athletes to organize into associations or unions to negotiate Collective Bargaining Agreements' (CBAs) with their sport's owners.

Under federal labour law, players and owners must negotiate mandatory issues, those relating to hours, wages, and working conditions, in good faith. All other issues are deemed "permissive" and do not have to be negotiated. Players agree not to strike once a CBA is in place, and owners promise not to lock out players.²

By way of example, the 2005 National Hockey League season was cancelled because of an owner's lockout after the parties' CBA had expired. In 1994, Major League Baseball lost half its season and the playoffs because ballplayers went on strike over a salary cap. Historically, the most controversial issues subject to CBA negotiation are a free agency, minimum salary, squad size, draft, salary cap, grounds for termination, and suspension.

More than half the states in the United States currently regulate agents' activities and union regulation for bad acts. Super agents like baseball's Scott Boras and football's Drew Rosenhaus are frequently media profiles.

Until a few decades ago, most United States professional sports leagues contracts retained clauses that essentially prevented players from leaving their original teams by their own choice. These "reserve clauses" were upheld because courts found that these sports leagues did not operate in interstate trade or commerce, meaning they did not fall under anti-trust laws.

This interpretation has largely been eroded today. However, Major League Baseball may still retain limited anti-trust exemptions it is unclear whether Flood Act has overruled the entire exemption because the true extent of the exemption was vague. It is important to note that the formation of players unions to negotiate contracts with management is exempt from anti-trust scrutiny under labour law. The by-product of good faith negotiations between management and players unions in a CBA is also exempt from anti-trust scrutiny.

Recently, torts were never part of the landscape of sports law. A tort can be defined as an actionable wrong. However, in 1975 an Illinois appeals court established that players could be found guilty of negligence if their actions are "deliberate, wilful or with a reckless disregard for the safety of another player so as to cause injury to that player." Negligence torts are typically harder to prove in contact sports, where violent

¹ Roger I Abram, *Sports Justice* (New York: Northeastern University Press, 2010).

² Nolte Chester, *Sports Law (Microform)* (Washington D.C: Tort Liability of the College and University Athletic Department Administrator ERIC clearinghouse, 1979).

actions and injuries are more common and thus more expected ("assumption of risk" or "self-defence").

Labour issues are not unique to United States law. The European Union has dealt with countless sports-related legal issues. The most important development in this area was the Bosman ruling, in which the European Court of Justice invalidated restrictions imposed by EU member countries and UEFA (the governing body for football within Europe) on foreign EU nationals.

Bosman was extended to countries with associate trading relationships with the EU by the Kolpak ruling. The 6+5 rule was a proposed rule by FIFA that sought to limit the effects of Bosman and its offshoots on football clubs; it sparked considerable legal controversy in Europe and was abandoned in 2010.

Bosman Ruling is a 1995 European Court of Justice decision concerning freedom of movement for workers, freedom of association, and direct effect of article 39 (now article 45 of the Treaty on the Functioning of the European Union) of the TEC.³

The case was an important decision on the free movement of labour and had a profound effect on the transfers of footballers within the European Union (EU). The decision banned restrictions on foreign EU players within national leagues and allowed players in the EU to move to another club at the end of a contract without a transfer fee being paid.

Since the ruling came into effect throughout the EU in 1995, several notable players in European football have benefited from the ruling. In 1996, Edgar Davids became Europe's first high-profile player to benefit from the ruling when he moved from Ajax to Milan. Ex-Hibernian FC player, Paul Kane became the first UK Bosman transfer, moving from Aberdeen FC to Norwegian side Viking Stavangerin 1996.

In 1999, Steve McManaman became the most lucrative transfer at the time in British football, as "Britain's first high-profile Bosman departure", when he moved from Liverpool to Real Madrid and the deal resulted in McManaman becoming the highest paid British player in history, from 1999 to 2001. Since Davids and McManaman, scores of other notable players became able to negotiate deals according to their market value when their contracts expired, a trend continued into the 2000s and beyond.

The ruling meant that clubs could no longer block a move or demand a fee from the player or the destination club if the player left at the end of their contracts. The Bosman ruling coincided directly with a new era of financial gains in football. In 2005, UEFA declared it was seeking to repair aspects of the ruling because it was believed to cause the increasing rich-poor gap between elite and smaller clubs.

In Indonesia, player contracts are one of the problems that often occur with foreign and local players. Complex problems occur in Indonesian football because clubs are often

³ Lalu Husni, *Pengantar Hukum Ketenagakerjaan Indonesia* (Jakarta: Grafindo, 2006).

not professional with only concern with the interests of the club without regard to the players' contracts.

Currently the case happened with the midfielder Damian Lizio who was terminated unilaterally by his former club Persebaya. Thus leaving the player idle for the rest of the competition by not including the player's name by the club for league competition. Even though many clubs in Indonesia want to recruit Lizio, but the club refused to release the player, but he would rather fire the player the day after the transfer window was closed.

2. RESEARCH METHOD

The type of this research is normative legal research. Normative legal research is a process to find a rule of law, principles of law, and the legal doctrines to address the legal issues faced Equal Treatment of Foreign Players In Freedom to Transfer: The Need to Introduce Bosman Ruling Into Indonesian Sports Law, Study Case of Damian Linzio and Bring The Case to The Court of Arbitration For Sport.

In connection with the normative research, the researcher uses several approaches, namely the statute approach. The statute approach uses legislation and regulations and is done by examining all laws and regulations relevant to the legal issues being addressed.

The research tells several regulations such as Article 52 Judgment of the Court of 15 December 1995 on Bosman Ruling Decision. Article 45 (1) Treaty on the functioning of the European Union, Article 30 Treaty on the functioning of the European Union, Article 1320 and Article 1338 on Indonesian Civil Code, Law Number 13 of 2003 on Labor Law in Indonesia, Law Number 3 of 2005 on National Law Sports System in Indonesia.

The research also uses doctrine approach, because this research aims to find the Application of Equal Treatment of Foreign Players In Freedom to Transfer: The Need to Introduce Bosman Ruling Into Indonesian Sports Law, Study Case of Damian Linzio and Bring The Case to The Court of Arbitration For Sport with doctrine from scholar related that issue.

Data used in this research is secondary data. Secondary data consist of primary, secondary, and tertiary legal materials.

- a. Primary legal material consists of several regulations as follows:
 - a) Article 52 Judgment of the Court of 15 December 1995 on Bosman Ruling Decision.
 - b) Article 45 (1) Treaty on the functioning of the European Union.
 - c) Article 30 Treaty on the functioning of the European Union.
 - d) Article 1320 and Article 1338 on Indonesian Civil Code.
 - e) Law Number 13 of 2003 on Labor Law in Indonesia.

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- f) Law Number 3 of 2005 on National Law Sports System in Indonesia. Institutions In Indonesia.
 - b. Secondary material consists of several documents related to the primary legal material such as:
 - a) Books;
 - b) Journals;
 - c) Other legal documents related to the issue;
 - d) Black laws dictionary;
 - e) Trusted internet sites.
 - f) Tertiary legal materials:
 - g) Black Law Dictionary;
 - h) English dictionary;
 - i) Encyclopedia.

3. RESULT AND DISCUSSION

3.1. The Brief Introduction of Bosman Ruling

3.1.1. Introduction

The freedom of movement is the consequence of many social, cultural and political developments which have caused an increase in the international mobility of players in many situations. Professional footballers are very special as their value to clubs goes far beyond that of regular workers. Naturally, clubs must finance the acquisition and maintenance of these players as the asset to compete in an industry which shows a very different trend between big and small.⁴

In 1967, the National Labour Relations Board accepted that players can form player's associations. It is now common for professional athletes to organize into associations to negotiate collective bargaining agreements with their sports owners. Under federal labour law, players and owners need to negotiate mandatory issues relating to hours, wages, and working conditions in good faith.

Bosman Ruling is a 1995 European Court of Justice decision concerning freedom of movement workers, freedom of association, and direct effect of article 45 of Treaty on the functioning of the European Union (TEC). The case was an important decision on the free movement of labour and profoundly affected the transfer of the football payers within the European Union.⁵

Transfers of players have been in practice since football became more popular in England during the end of the 19th century. Since the season 1893/94, a player could only be registered for one club and was only allowed to play for this team during the season.

⁴ Latty Franck, *Kedaulatan Negara Vs Kedaulatan FIFA* (Jakarta: Kompas Gramedia, 2011).

⁵ Andrian Kusumawardana, "Arbitrase Sebagai Alternatif Penyelesaian Sengketa Dibidang Sepakbola Di Indonesia" (Universitas Airlangga, 2004).

This was the first restriction of player movement in football, and all other leagues, which have been formed after the English league, applied the basics of this.⁶

The decision banned restrictions on foreign European Union players within national leagues and allowed players to move to another club at the end of a contract without a transfer fee being paid. The ruling meant that the club could not keep the players for moving without demand a fee from the player or from the destination club.

However, the club withdrew the licence of the player, a new club was able to sign him for the upcoming season. Therefore, if a player wanted to go to another club, the new club had to pay the old compensation fees to make it admirable for the old club to withdraw the licence. Transfers have frequently taken place, as football became the sport number one in most European countries and therefore economically more important and bigger. Another restriction that was in practice for many years was limiting the number of foreigners on any team. In European competition, only three foreigners were allowed per team.

The Bosman case brought two pillars of the existing system down. On the one hand, an unlimited number of foreign players of all EU member states could now play for every club in the EU. The other big change was the end of transfer fees after the contract of a player expired.

Bosman ruling is a pioneer in freedom of contract in sports law. Many regulations that were created after this rule also governed the freedom of contract. Bosman also challenged the restrictions on players who can play inside and outside the European Union countries because Bosman could not find a club because of these restrictions.

The Belgian Jean-Marc Bosman never belonged to the superstars of football. He was a decently talented player and struggled to make a life as a football professional. In the year 1988, he signed a contract with the RC Liege. RC Liege was a club in the first Belgian division, but they never won any important title, and they belonged to the teams that had to struggle to stay in the league. Today the team is not active in professional football anymore. In the year 1990, his contract with the club expired, and RC Liege wanted to cut the payment of Bosman from 120.000 Belgian Franc to 30.000 a year.⁷

The main goal of this was to still receive a transfer fee for the player, even though the RC Liege had little interest in keeping Jean Marc Bosman. Since Bosman was not willing to accept his wage cut, he was actively looking out for a new club. He even found a club that showed interest in him, the USL Dunkirque, the second French division club. This club wanted to sign him.

The biggest problem for the transfer was that Liege did not believe that Dunkirque could pay the necessary money. Even though Dunkirque agreed to pay a transfer fee,

⁶ Simon Gardiner, *Sports Law* (New York: Cavendish Publishing, 2012).

⁷ Mitten Matthew J., "Foreward to Sports Law as a Reflection of Society's Laws and Values," *South Texas Law Review* 38, no. 4 (1997): 999–1006.

Liege was reluctant to wait until the money arrived and suspended Bosman from playing. The suspension could have been up to two years, and during this time, Bosman went to court.

For Bosman himself, the situation became more problematic. He went on to play for amateur clubs in Belgium and France for the next three years while he was waiting for the case to be decided. He never made it back to professional football and thus could not benefit from the judgement. Professional clubs were never willing to sign him again, and he had to wait until 1997 before he received a compensation of 750.000 Euro for the early end of his career.

3.1.2. *Transfer Rules Before Bosman Ruling*

Before the ruling, clubs could charge a fee for a player even in the case of an expired contract if they fulfilled certain requirements. It was believed that especially small clubs benefit from this rule. Some experts feared that clubs would not train young players anymore because of the end of this system, since they can save this money and instead buy players from other clubs.

Only in cases of an expired contract an official ruling could be enforced, as the club who had the player under contract could keep the player otherwise and did not have to sell it no matter what the offer of the other club was. Therefore, the UEFA was only entitled in the cases of expiring contracts.⁸

Only under certain circumstances the clubs could claim money for the player, in fact when an attempt to keep the player was made. The club had to offer a new contract to the player that had to have a minimum wage, in Belgium this was exactly 30.000 Belgian Franc. Clubs could then claim that they had to pay for the “training and development” of the player, and therefore it was necessary to get a compensation for this effort.

If the two clubs involved did not settle an agreement, the UEFA could step in and announce a fee that the new club had to pay if they want to sign the player. The fee depended on the player's age and the amount of the gross income the player earned. If the clubs did not accept the UEFA ruling, the player officially still belonged to his old club.⁹

It became especially difficult when a player wanted to change from one country to another. France, for example had a rule that clubs from outside the European Union had to pay double the amount that French clubs would have to do in order to sign a player. Of course, this was only feasible when clubs did not reach an agreement by themselves and asked the officials to settle the dispute.

⁸ Katelynn Hill, “Index: Sports Law in Law Reviews and Journals,” *Marquette Sports Law Review* (2000) 27, no. 2 (2017): 615.

⁹ P Antonioni and J Cubbin, “The Bosman Ruling and the Emergence of a Single Market in Soccer Talent,” *European Journal of Law and Economics* 9 (2000): 157–73.

In a case of a transfer of a player from one country to another, the new team needed an official agreement stating “all commitments of a financial nature, including a transfer fee” had been settled. Otherwise, the player was not allowed to play for the new club, and if no agreement could be reached, the player could be suspended up to two years or until an agreement was reached.

After two years, the player had amateur status and was allowed to play again. In extreme cases, this could mean the end of a professional career, just because the clubs did not agree on a transfer fee even after a contract expired. The transfer fees before the Bosman case were quite confusing since exceptions existed in every country. However, one basic principle was that the clubs were still allowed to charge money for players even after a contract expired.

3.1.3. *The Benefit of Bosman Ruling*

One goal of the Bosman case was to allow players to choose freely the employer they want to work for. Therefore, transfer fees in case of an expiring contract were declared to be illegal. A logical step would have been that the transfer fees would have dropped, as the clubs could have waited until the contract expired and then sign the player.

The effects of the Bosman case, regarding the transfer system and the average contract length. They came to the conclusion that clubs prefer longer contracts to secure their investment in the players (2002). This is also one reason why players can earn more money as they sell their affirmation to longer contracts.¹⁰

The average contract length has indeed increased since the Bosman case. Contracts sometimes last up to seven years, depending on the player's age when he signs the contract. At the beginning of the season 2004/05 the average remaining contract length was over three years. The Bundesliga Clubs now try to negotiate with their players one season before the contract ends, as the clubs have better chances to keep the player.

The transfer fees before the Bosman case were quite confusing since exceptions existed in every country.¹¹ However, one basic principle was that the clubs were still allowed to charge money for players even after a contract expired.

3.1.4. *The Weakness of Bosman Ruling*

Directly after the Bosman ruling, the player wages started to rise, not only as a reaction to the increased available money due to more income for the clubs. Before the Bosman case, a third of the expenses a club had to carry were due to the player wages. Since players had a better position for new deals after the Bosman case, the clubs reacted by paying more money.

¹⁰ Bernd Frick, “Globalization and Factor Mobility: The Impact of the ‘Bosman-Ruling’” on Player Migration in Professional Soccer,” *Journal of Sports Economics* 10, no. 1 (2009): 88–106, <https://doi.org/10.1177/1527002508327399>.

¹¹ Anonymous, “Bosman Transfer Ruling Stunted Scottish Game - Paul Kane” (www.bbc.com, 2019), <https://www.bbc.com/sport/football/35099613>.

A good example is the English Premier League, as the rise in wages can be demonstrated absolutely and relatively. In the season 1999-2000, the players earned 319% of the season 1995-96. This meant that 63% of all club expenses were directly paid to the players. In Italy, the number was even higher, as 65% of all expenses for clubs were for the salary of players.¹²

The biggest development of player wages can be seen for the post-Bosman period, even though the tendency of paying players more started before the case got decided. However, directly after the Bosman case, player wages started to climb significantly. The same as for the other countries is true for the Primera Division in Spain as directly after the Bosman case, and the player wages jumped in the next two seasons from around one-third of the costs to 45%.

In the German Bundesliga, the salaries also climbed compared to the total expenses of the clubs, even though they stayed below the numbers of Italy or England. Around half of the club, revenues were paid directly to players in 2001, compared to a third before the ruling.

In the League 1 of France, the trend is similar that in Germany, as between 1995/96 and 2001/02 the player wages climbed from 108 million to 340 million. This is around half of the clubs total expenses, and the trend continues that the player wages get even more expensive.

In England, 59% of all expenses are still paid for player salaries, in Italy 62%, in France 63% and in Spain 65%. Even if not all numbers are 100% identical, a clear trend towards higher salaries on the costs of other factors in the budget can be seen. Especially the training of young players often suffered directly after the Bosman case.

After this, the leagues established standards for the training of youth and would not give a licence to the clubs in the case that they violate these rules. But the fact that 37 training has to be enforced in such a way already proves that it is less important today than before the Bosman case.

The weakness after the Bosman ruling is that football clubs have to provide a large with enough salary for the players. Because if the player's contract leaves less than 6 months, then the player is free to choose a new club without any payment for the transfer of players. To avoid this situation club need to increase the player's salary so that the player wants to extend his contract and not go to another club for free.

Club expenditures that should have been for other purposes such as building club infrastructure and other facilities have become centralized only to paid player salaries.

¹² John Binder and Murray Findlay, "The Effects of the Bosman Ruling on National and Club Teams in Europe," *SSRN Electronic Journal* 13, no. 2 (2011): 1–32, <https://doi.org/10.2139/ssrn.1317204>; Anonymous, "Bosman Ruling to Chance the Football Transfer" (www.bola.net, 2019), <https://www.bola.net/open-play/aturan-bosman-aturan-yang-mengubah-transfer-sepakbola-77bcc.html>.

This is a disadvantage for a club because there are still a lot of expenses that can improve the quality of the club rather than spending only on paid player salaries.

3.1.5. Direct Implementation After the Bosman Ruling

The reactions by most officials were negative as they feared that the Bosman case would give more power to the players and let the clubs remain without adequate compensation if players move to another club. Especially with the opportunity to be employed by international clubs more easily, the clubs feared higher competition for their workers. Before the ruling, it was common that especially the best players of the traditional football nations would play for only one or two clubs in their home countries.

In other leagues, no such attempts were made, probably because of the illegality, such an agreement most likely has. In Britain, for example the ruling was implemented directly, and the clubs could play with as many players from European member states as they wanted to. However, the fact that the Bosman ruling occurred in the middle of the season also made it impossible to change the teams immediately. The number of non-English players, therefore, stayed relatively stable for a short period of time, as the following statistic will show.¹³

In the season 1994-1995, 27% of all players in the starting pitch were not from England, while the number only slightly rose to 29% the season after, which was the season in which the case was decided. It took around two years until the number of non-English players in the league rose significantly. The different numbers of foreign players the teams used can already show this. An extreme example is Chelsea London, who played with eleven foreign and therefore non-English players in the starting pitch only four years after the Bosman case was decided.

Other clubs at the same time played with only a few non-English players, which showed that a general hidden agreement between the clubs never existed. British fans criticized the development, and they saw it as an “offence on English football” The newspaper Independent wrote that this is a “picture that humiliates the English game”. After this, other cases that served as a follow-up for Bosman will be described, as for example, the Lehtonen Case or the Kolpak case. Those cases were necessary since the ruling in the Bosman case made clear that no discriminations against players from inside the EU were allowed anymore, which had to be applied to all parts of the sport.

¹³ Anonymous, “What Was the Bosman Ruling? The One Minute Guide” (www.open.edu, 2019), <https://www.open.edu/openlearn/health-sports-psychology/health/sport-and-fitness/sport/what-was-the-bosman-ruling-the-one-minute-guide>; Nnamdi Madichie, “Management Implications of Foreign Players in the English Premiership League Football,” *Management Decision* 47, no. 1 (2009): 24–50, <https://doi.org/10.1108/00251740910929687>.

3.2. The Implementation of Bosman Ruling into Indonesian Sports Law

In Indonesia, the problem of the player contract is one of the problems that often occurs with foreign and local players. The situation in Indonesia occurs because the club is still unprofessional with only concerned with the interest of the club without regard to the player's contract and conditions.¹⁴

Based on article 1, number 14 of the Manpower Law, a work agreement is an agreement between a worker or labourer and an entrepreneur or employer that contains the terms of employment, rights and obligations of both parties.

Based on article 1320 Civil Code in Indonesia, the requirements of the agreement are as follows:

- a. There is an agreement for those who bind themselves;
- b. The ability of the parties to make an agreement;
- c. A certain thing; and
- d. Halal Clauses.

According to Iman Soepomo, a work agreement is an agreement in which the first party (labor), bind themselves to work by receiving wages from the second party, namely the employer and the employer bind themselves to employ workers by paying wages.

Professional football players, according to Law No. 13 of 2003 on Man Power Law, are labourers and the provisions of this Law apply. However, the clause of the professional football player's contract with the football club explicitly states that the football player's contract is specific and does not comply with Law No.13 of 2003 concerning Man Power Law.

Based on article 52 of the Manpower Law, it is stated that the work agreement is made on the basis of:

- a. Agreement of both parties
- b. Ability or competence in carrying out legal actions
- c. the work that was promised; and
- d. the agreed work does not conflict with public order, morality and the prevailing laws and regulations.

The provisions regarding article 52 of the Manpower Law are actually the same as the terms of the agreement in article 1320 BW, where if it does not meet the requirements in numbers 1 and 2 then the agreement can be canceled whereas if it does

¹⁴ R. H. McLaren, "Introducing the Court of Arbitration for Sport: The Ad Hoc Division at the Olympic Games," *Marq. Sports L. Rev.* 12, no. 1 (2001): 515, http://heinonlinebackup.com/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/mqslr12§ion=24%5Cnhttp://www.tvbeurope.com/c/document_library/get_file?uuid=4c83c4aa-4f5d-472f-bc20-1c316644d9e3&groupId=26422; Antony Sansom, "What's Wrong With The Beautiful Game Part 2: The Bosman Ruling" (bleacherreport.com, 2019), <https://bleacherreport.com/articles/141771-whats-wrong-with-the-beautiful-game-part-2-the-bosman-ruling>.

not fulfil the conditions in numbers 3 and 4, then the work agreement is null and void by law.

The agreement between the two parties, which is commonly called an agreement for those who bind themselves, means that the parties who enter into a work agreement must agree, as if on the things that were agreed upon, what one party wants, what the other party wants. The worker accepts the job offered, and the employer accepts the job to be employed.¹⁵

The ability or skill of the two parties making the agreement means that the worker and employer are capable of making an agreement. A person is considered capable of making an agreement if the person concerned is old enough. Labor law provisions provide a minimum age limit of 18 years (article 1 number 26 Law No.13 of 2003). In addition, a person is said to be capable of making an agreement if that person is not mentally disturbed / sane.

The existence of the promised work in terms of article 1320 BW is a certain matter. Promised work is the object of a work agreement between workers and employers, which, as a result of the law, creates rights and obligations of the parties. The object of the agreement must be lawful, that is, it must not conflict with law, public order, and morality. The type of work that is agreed upon is one of the elements of the work agreement that must be clearly stated¹⁶.

It is clear that the professional football player's contract with the club is valid as an employment agreement because all the legal conditions of the work agreement are fulfilled, such as an agreement between the football player and the club, the ability to take legal actions, the existence of the agreed work and the work does not conflict with public order, morality, and the prevailing laws and regulations.

In Indonesia, there is Law Number 3 of 2005 concerning the National Sports System. Article 1 point 1 of the National Sports System Law explains that what is meant by sports is "all aspects related to sports that require regulation, education, training, coaching, development, and supervision."

Based on Article 1 point 1 of the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number KEP.100 / MEN / VI / 2004 concerning the Implementation of a specified Time Work Agreement, it is stated that a specified time work agreement is a work agreement between a worker / laborer and an entrepreneur to establish a working relationship.

¹⁵ Marquette Lawyer, "Vibrant and Mature, Marquette's Pioneering Sports Law Institute Draws Students from Coast to Coast," *Sport Law*, 2011.

¹⁶ Randy Wirawan, "Damian Lizio's Farewell Message to Persebaya Surabaya and Bonek" (balalob.com, 2019), <https://balalob.com/read/125854/pesan-perpisahan-damian-lizio-untuk-persebaya-surabaya-dan-bonek>.

For a certain period of time or for certain workers, the meaning of a work agreement for a certain period of time is stipulated in the agreement that a period of time is related to the length of the working relationship between the worker/laborer and the entrepreneur.

In article 59 of the Manpower Law specified time work agreement requirements as follows;

- a. A one-time job or a temporary one
- b. Work which is estimated to be completed in a not too long time and at least 3 (three) years;
- c. One season minimum working; or
- d. Work-related to new products, new activities, or additional products that are still under trial.

Football players are limited by a certain time because football players work if there are certain circumstances, namely the existence of a football competition season that is played for about ten months in a year. Thus, the status of football players is specified time work agreement.

From the above definition, it can be interpreted that sports activities require regulation, education, training, coaching, development and supervision. One of them is the regulation regarding the working relationship between football clubs and professional football players that arises from competition or championship in the field of sports and is a form of sporting activity.

So based on the principle of *Lex Specialis de rogat legi generalis*. Especially for sports activities, the legal relationship between football players and football clubs applies to the provisions of the National Sports System Law.

FIFA itself does not actually reject the labor laws of a country, but what matters is what if the laws of a country conflict with the FIFA Statute and the regulations made by FIFA. Because for the "football family" FIFA's legal force can be stronger than national law. According to the author, the enforceability of labor law must consider specific principles in the contractual relationship of football players¹⁷.

There are weaknesses in Law No. 3 of 2005 concerning the National Sports System and Law No. 13 of 2003 concerning Manpower if applied absolutely without paying attention to FIFA and PSSI regulations on football players and football clubs in Indonesia. This is because in the Manpower Law there are still no provisions that accommodate the interests of professional football players due to special arrangements in the world of sports, including in the field of law or known as the *Lex Sportiva*. So there

¹⁷ Anonymous, "Persebaya Winger Missing on Indonesian League Website" (kupang.tribunnews.com, 2019), <https://kupang.tribunnews.com/2019/09/13/winger-persebaya-hilang-di-website-liga-indonesia-damian-lizio-dicoret-digantikan-jose-sardon-info>.

is a legal vacuum, incompatibility and disharmony between the national legal system and sports law. (FIFA regulations).

In Indonesia, the regulations regarding Bosman ruling are regulated in Article 18 paragraph 3 concerning the football association of Indonesia regulation regarding the transfer of players. But the Bosman ruling is not adapted in the Indonesian sports system. The Indonesian sports system law does not regulate the Bosman ruling, even though the Bosman ruling is very important in regulating the freedom of contract for players in any sport, not only in football.

Article 21 concerning football association of Indonesia regulation regarding the transfer of players. There are restrictions on foreign players who can play in Indonesian football clubs only four foreign players. The limitations for foreign players and in contrast to bosman ruling which does not allow restrictions on foreign players' quota.

Bosman ruling should be regulated in Law number 3 of 2005 concerning the national sports system because Bosman ruling regulates the principle of freedom of contract and applies in all spheres of sport. In Indonesia there are also restrictions on foreign football players who wish to play in Indonesia and Bosman ruling is made to prevent this from happening.

3.3. The Case Study of Foreign Players in Indonesia in Case of Damian Linzio and How to Settle by the Court of Arbitration for Sport

The *lex sportiva* is a rule made by the sports organization, that is, every member of the organization must comply with the statutes of the organization and the *lex sportiva* rules have binding and has coercive power by the sports authorities and they never require official action by a sovereign state. In this context FIFA as the center of the world football organization, the *lex sportiva* in football is the FIFA legal system to resolve all the cases in the scope of football.

There is a case with the ex-players from Persebaya Damian Linzio, who was terminated unilaterally by his former club. Thus leaving the player idle for the rest of the competition. Even though there are many club in Indonesia that want to recruited Damian Linzio. Persebaya refused to release the player. The contract of Damian Linzio in Persebaya only had less than six months.

Damian Linzio is a Persebaya player whose contract only leaves less than six months. However, Persebaya did not allow Damian Linzio to have a new contract with another club. Damian Linzio's agent said there were six clubs who wanted to sign Damian Linzio, but Persebaya forbade him to make new contacts with other clubs Persebaya terminated his contract unilaterally before the transfer window closed.

Resulting in Damian Linzio not being able to find a new club and having to be unemployed for the rest of the season until the transfer window reopens. According to

agent Damian Linzio Persebaya should not prohibit the player from making a new contract with another club so that Damian can continue to play until the end of the season.

Persebaya has violated article 18, paragraph 3 regarding the prohibition to restrict players who have contracts for less than six months to have new contracts with other clubs. Damian Linzio as a foreign player, does not have sufficient legal protection to demand justice because of the limited knowledge and injustice of the Indonesian Football Federation to impose sanctions on teams that violate the rights of players.

Article 18 paragraph 3 Regulation of Football Association of Indonesia explains that the clubs wishing to enter into a contract with a professional player are required to inform which club the player is in writing before negotiating with that player. Professional players are only free to make contracts with other clubs if the contract period with that club has expired or will expire in six months. Violation of this provision will be subject to appropriate sanctions.¹⁸

Based on this article, it is clear that players who have a minimum remaining contract of 6 months can make a new contract with another club without the interference of the previous club. In this case, Damian Linzio has reported to all Football Association of Indonesia but did not get a clear continuation of the case.

The dispute resolution forum on the working relationship of professional football players with football clubs is a bit unique. Law no. 2 of 2004 concerning the dispute settlement. Industrial Relations Disputes, salary issues are settled in the court. However, the Statutes of FIFA expressly state that each member is not allowed to settle disputes through the National Court or the Ordinary Court.

The dispute resolution forum between professional football players and football clubs in Indonesia is based on Article 88 of Law No. 3 of 2005 on the National Sports System. However, there are several weaknesses, such as unclear boundaries of sports disputes and unclear meaning of the sentence "in accordance with statutory regulations," and also the unclear meaning of "a court that is in accordance with its jurisdiction". Because the law does not explicitly regulate the resolution of the case and which jurisdiction to choose.¹⁹

The fundamental problem that occurs at this time is when a dispute occurs between professional football players and football clubs regarding which dispute resolution forum work relations are suitable for resolving sports disputes. Because in sports, there is a legal system of its own which the state cannot intervene in.²⁰

¹⁸ Antonioni and Cubbin, "The Bosman Ruling and the Emergence of a Single Market in Soccer Talent."

¹⁹ Frick, "Globalization and Factor Mobility: The Impact of the 'Bosman-Ruling'" on Player Migration in Professional Soccer."

²⁰ Anonymous, "Organisation and Structure of the ICAS and CAS" (tas-cas.org, 2021), <https://www.tas-cas.org/en/general-information/history-of-the-cas.html>; Bobby McMahon, "Why The Bosman Ruling Never Brought The Chaos So Many Predicted" (www.fobes.com, 2019),

Before stepping into the selection of a dispute resolution forum for professional football players, there is a concept of sports law, known as the *Lex Sportiva*, in order to be able to correctly answer the selection of a dispute resolution forum in the scope of football. *Lex Sportiva*'s academic debate is understood as a legal system that is neither in the national legal system nor in the international legal system but enters the territory of the transnational legal system.

Then, what is meant by the transnational legal system, especially in the football legal system. Transnational law is a law formed by the international community that is not a state (international society) and applies to its community across state boundaries administratively.

Lex Sportiva is a law that specifically regulates sports which are established by the sports community's own international institutions, for example, the FIFA as the professional football federation and is enforced by the sports institutions themselves without intervention from the positive laws of a country and without intervention from international law.

From this description, it can be seen that sports federations, especially FIFA, have their own legal system that is autonomous and independent. Even the state cannot interfere in it. However, it must be recognized that state law still applies and intersects because sports activities take place within the territory of a country. PSSI must follow procedures such as securing matches, licensing the use of stadiums, forming football clubs, and forming football associations.

However, if the rules governing the sport are made by international private sports organizations, the sport still cannot avoid the application of the laws of the country where the sport has competed, such as security permits, tax provisions, provisions for the formation of legal entities for associations and clubs, and others.

The FIFA Statute states that FIFA recognizes the Court of Arbitration for Sport (CAS) as a dispute resolution institution. Meanwhile, the PSSI Statute also recognizes CAS as a dispute resolution institution, besides that PSSI also forms its own arbitration institution.²¹

Based on article 66 on FIFA Statute FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players' agents.

Based on article 71 on PSSI Statute, In accordance with the provisions of the relevant article contained in the FIFA Statute, any appeal submitted against a FIFA

<https://www.forbes.com/sites/bobbymcmahon/2015/12/15/the-threat-of-players-using-the-bosman-rule-has-been-more-powerful-than-invoking-it/#1ad3c4c72004>.

²¹ Steefan Van Den Bogaert, "Bosman: One for All," *Maastricht Journal of European and Comparative Law* 11, no. 2 (2015): 1–12.

decision that has had final legal force and remains must be submitted to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland. However, CAS cannot accept appeals regarding violations of the rules of the game, suspension of up to 4 (four) matches or up to 3 (three) months, or decisions issued by the Football Association Arbitration Court or the legal Confederation and independent

From the FIFA and the PSSI Statute, it can be seen that FIFA and PSSI recognize CAS as a dispute resolution forum and PSSI can also form its own arbitration institution.

The Court of Arbitration for Sport (CAS) evolved from pressure in the early 1980s to find an ultimate, authoritative and neutral solution to judicial disputes among athletes, international and national sports federations, national Olympic committees and Olympic and other games organizers. The Olympic Movement decided to create a final and binding court of arbitration for all sports-related disputes, including doping cases.

Court of Arbitration for Sport (CAS) is a form of institutional arbitration. CAS was formed in order to facilitate the resolution of sports business disputes which cover clubs, athletes, broadcasting institutions, and all other sports-related activities. The idea for the formation of the International Sports Arbitration is in order to protect all activities that are more or less related to the field of sports.

In cases relating to Football, CAS jurisdiction is governed by article 67 of the FIFA Statute :

- a. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.
- b. Recourse may only be made to CAS after all other internal channels have been exhausted.
- c. CAS, however, does not deal with appeals arising from:
 - a) violations of the Laws of the Game;
 - b) suspensions of up to four matches or up to three months (with the exception of doping decisions);
 - c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.
- d. The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect.
- e. FIFA is entitled to appeal to CAS against any internally final and binding doping related decision passed by the Confederations, Members or Leagues under the terms of par. 1 and par. 2 above.
- f. The World Anti-Doping Agency (WADA) is entitled to appeal to CAS against any internally final and binding doping-related decision passed by FIFA, the Confederations, Members or Leagues under the terms of par. 1 and par. 2 above.

- g. Any internally final and binding doping-related decision passed by the Confederations, Members or Leagues shall be sent immediately to FIFA and WADA by the body passing that decision. The time allowed for FIFA or to lodge an appeal begins upon receipt by FIFA, respectively, of the internally final and binding decision in an official FIFA language.

Benefit of Court of Arbitration for Sport:²²

- a. Suitable for international disputes
- b. Specially designed to facilitate the resolution of sports-related disputes
- c. Easier and more flexible
- d. Fast
- e. Prepared in the Framework of a Single Settlement
- f. Confidential
- g. Not expensive

The basic principles of CAS are as follows:

- a. The Principle of Freedom to Choose the Forum of Arbitration

The parties have the freedom to make a choice of forum arbitration in relation to the settlement of business disputes in the sporting sector arising from an agreement between the parties. The choice of the forum concerns the choice of the form of arbitration and the jurisdiction forum.

- b. The Principle of Freedom of Legal Choice

The parties who are subject to different laws in making business agreements in the sports sector have the freedom to make legal choices. If the parties do not determine which law is used, based on Article 45 Statute and Regulation of Arbitration of The Court of Arbitration for Sport, the assembly or panel will use Swiss law.

- c. The Principle of Freedom of Determining Arbitrators

In this case, the parties to the dispute have broad autonomy to choose who will be appointed as arbitrators. The arbitrators are selected primarily based on their knowledge and expertise in accordance with the substance of the dispute so that according to the conviction of the litigant that the arbitrator will be able to resolve the dispute properly.

- d. The Principle of Closed Arbitration Examination

The principle of closed arbitration hearings in fact emphasizes the confidential nature of arbitral dispute resolution and this is in accordance with the wishes of the parties in dispute. The arbitration process can only be attended by the litigating parties or their proxies, and witnesses. Regarding this principle of confidentiality is regulated in article 43 Statute and Regulation of Arbitration of The Court of Arbitration for Sport.

- e. The Principles of writing Arbitration Examination

²² Trudo Dejonghe, "Competitive Balance between National Leagues in European Football after the Bosman Case," *Rivista Di Diritto Ed Economia Dello Sport* 6, no. 2 (2010): 41–61.

Related to the principle of writing arbitration explained in Article 44 Paragraph 1 Statute and Regulation of The Court of Arbitration for Sport, “The procedure before the panel comprises written submission”.

f. The Principle of Time Limitations of the Arbitration Process

Article 49 of the Statute and Regulation of The Court of Arbitration for Sport explains that the period for examining disputes is determined based on Present Code.

g. The Principle of Final and Binding

Final decision of Ordinary Arbitration Procedure regulated in Article 46 Statute and Regulation of The Court of Arbitration for Sport. “The award shall be final and binding upon the parties”.

Based on the purpose of CAS is to find an ultimate, authoritative and neutral solution to judicial disputes among athletes, international and national sports federations, national Olympic committees and Olympic and other games organizers, Damian Linzio can sue the case to CAS.

If we move on to the *Lex Sportiva* concept, especially in football law, then FIFA's position is superior to even national law. Because FIFA is the only football organization in the world that coordinates and oversees the football associations of various countries and can immediately impose sanctions on its members and the state cannot do anything about these sanctions.

If it is related to the selection of a dispute resolution forum in football law, it should be resolved through a mechanism provided by FIFA, not in national law. But because FIFA has given leeway to be able to resolve work contract disputes through the Industrial Relations Court based on article 22 of the FIFA Statute. Thus, FIFA opens up the possibility for players to settle through the Industrial Relations Court.

If we look at Law No. 3 of 2005 on the National Sports System, article 88 also regulates the procedures for resolving sports disputes:

- a. The resolution of sports disputes is pursued through deliberation and consensus carried out by the main sports branch organizations.
- b. In the case of deliberation and consensus as referred to paragraph (1) is not achieved, dispute resolution can be pursued through arbitration or alternative dispute resolution in accordance with statutory regulations.
- c. If the dispute settlement as referred to in paragraph (2) is not achieved, the dispute settlement can be carried out through a court in accordance with its jurisdiction.

In Indonesia, there are also several ways to resolve disputes over football players. But for the case of Damian Linzio it is more appropriate to use CAS as a place to solve the problem. Because Damian Linzio is a foreign player and the language used by CAS to solve problems is one of the English. In Indonesia itself, there is no law regulating freedom of contract, so it will be very difficult for Damian Linzio to resolve the matter through national arbitration.

4. CONCLUSION

Based on the discussion in the previous chapter, the development of sports law in the United States overlaps substantially with labour law, contract law, competition or anti-trust law, and tort law. In 1967, the National Labour Relations Board accepted that players have the right to form unions or players' associations. The contract players in sports law are very important issues, there is should be the regulation to protect contract players. The freedom of movement and freedom of contract is the consequence of many social, cultural and political developments which have caused an increase in the international mobility of players in many situations. Bosman Ruling is a pioneer of freedom of movement and freedom of contract in sports law. The freedom of players to choose which country and club they play for, including foreign players.

In Indonesia itself, there is no regulation regarding Bosman Ruling as a rule regarding freedom of contract. The contract player in Indonesia is legal based on the Indonesian Legal System. Bosman Ruling can be adapted to law number 3 of 2005 concerning the national sports system because this regulation covers all the matters in the sports law system in Indonesia. If Bosman Ruling can be adapted to the Indonesian Sports Law System so, this regulation can protect the player from arbitrarily of club owners. There are cases that violate the Bosman Ruling against foreign football players Damian Linzio in Indonesia. To resolve this case, it is better to use CAS because Indonesia has not regulated Bosman Ruling as a rule regarding freedom of contract. Because CAS more competent to solve the case related sports matters around the world, the arbitrator in CAS is the expert on sports issues.

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