

CHAPTER FOUR

FINDING AND ANALYSIS

A. Football Dispute in Indonesia

The development of football is very dynamic since the beginning of 1800's in England. From merely sports event to the professional, even economics issue, football today have so many changes with its legal matters. The basic feature of football is its footballers and clubs. The contractual or working agreement relation among those parties has created several issues and problem in maintaining stability of contract, such as another working relationship. The Bosman case in 90's has given fundamental change for sports dispute resolution throughout the world, especially in football.

Looking at Indonesian football, firstly the discussion should be begun from its history to provide broader knowledge about the problem arises form contractual dispute prospect. Indonesian football was organized after the establishment of PSSI on Saturday, 19 April 1930 in Hendeprojo building, Yudonegaran, Yogyakarta. The founding spirit of the first sports organization in Indonesia was to foster the interest of the Indonesian people towards football, as well as to establish the nationalism spirit of as an effort to fight against Dutch colonialism.¹ Indonesian football, especially concerning the competition as a macro level in football, practically had

¹ Eddi Elison, 2014, *Soeratin Soesro Soegondo: Menentang Penjajahan Belanda dengan Sepak bola Kebangsaan*, Penerbit Ombak, Yogyakarta, p. 1.

became professional since 1979 when a competition called *Galatama* was established and competed with a semi-professional competition, *Perserikatan*.²

It can be said that Indonesian football has not experienced the glory time yet. Football in Indonesia is still far from good and professionalism is still just a word since the welfare of the footballer as an important aspect of football ecosystem is still a big question. Many footballers in Indonesia are ignored their rights, especially when they have contractual disputes. The legal rights of players are neglected when they stand as individuals against a legal entity such as a club.

Another problem of Indonesian football is less courage to bring it out to the public; legal action. Since the beginning of reformation disclosure era, one by one contractual cases were unfolded. There were so many contractual disputes in Indonesian football. Starting from contract termination, delayed salary, unpaid salary of footballers, to the management of competition and football federation which is put in question. There are several kind problems of contractual dispute in Indonesian football:

1. Salary

This is the main problem in Indonesian football. The fulfilment of footballer's rights such as receiving salary on time and fully paid often were often forgotten by the clubs. The delayed salary was the dominant problem of

² Gerry Putra, "Sejarah Kompetisi Sepak bola di Indonesia: Dari Masa Pra-Kemerdekaan hingga (Menuju) Liga Profesional", available at <https://www.fourfourtwo.com/id/features/sejarah-kompetisi-sepakbola-di-indonesia-dari-masa-pra-kemerdekaan-hingga-menuju-liga?page=0%2C2>, accessed on 24 November 2017, at 3:34 a.m.

maintaining stability of contract between footballers and clubs. There were several cases of delayed salary;

- 1) Diego Mandieta, Paraguayan footballers didn't receive his salary in the last four months before he passed away in late 2012. This case, occurred because the incapability of Persis Solo to fulfill Mandieta rights as their footballers.
- 2) Fernando Soler, has not received eight months salary from his club Persebaya 1927 in 2013. Tragically, Fernando, and his family were forcibly evicted from their homes because they had no money to paid the rent the home. Beside delayed salary, Fernando's intention to return Argentina was constrained. The passport of Fernando and his family was detained by the immigration authorities and needed some money to get it back. In fact, according to the contract, passport and temporary living license issues should be the responsibility of the club management of Persebaya 1927.
- 3) The delayed salary is also suffered by Alamsyah Nasution and Irwin Ramadhana, two former PSMS Medan players in season 2012/2013. They hadn't earned a salary for 10 months. In June 2013, Alamsyah along with

10 other PSMS footballers met with PSSI and Indonesian league operator to seek clarity of their rights.³

- 4) Persegres⁴, once didn't paid timely the salary of their footballers when competed in Torabika Soccer Championship 2017 and even they didn't paid the salary of their several footballers until now.⁵

In term of delayed salary in contractual dispute in Indonesian football, the labour law is the basic regulation for maintaining or implementing the contractual stability, including salary issues between footballers and clubs. Article 95 Paragraph 2, Law No. 13 Year 2003 on Labour regulates that employers in football means clubs, by their intent or negligence, result in late payment of wages, are liable to fine in accordance with a certain percentage of the salaries of footballers or workers.⁶ Then, percentage for the fine was provided by Government Regulation No. 78 Year 2015 on Wages in Article 55 Paragraph 1 which regulated after four until eight day the salary didn't paid, then employer of worker imposed 5% fine from the salary amount. The fined doesn't eliminate the responsibility of employer or clubs to pay salary in determined amount. The clubs in example cases above have clearly infringed that provision. Nevertheless, there is no clarity concerning legal effect to the clubs.

³ Ali, "Ini Beberapa Kasus Kontrak Pesepakbola Diabaikan Klub", available at <http://www.hukumonline.com/berita/baca/lt529085a06530c/ini-beberapa-kasus-kontrak-pesepakbola-diabaikan-klub>, accessed on 25th November 2017, at 1:38 a.m.

⁴ Persatuan Sepakbola Gresik is an professional football club from Gresik, abbreviated as *Persegres*.

⁵ Fahrizal Arnas, "Gaji 3 Bulan Ditunggak, Pemain Persegres Lapor APPI", available at <http://www.bola.com/indonesia/read/2863136/gaji-3-bulan-ditunggak-pemain-persegres-lapor-appi>, accessed on 18 May 2017, at 5:27 p.m.

⁶ Article 93 Paragraph 2, Law No. 13 Year 2003 on Labour.

2. Compensation

Compensation is given by employer to worker if both parties apart in term of contractual agreement. In every labour contract in Indonesia include football contract, the compensation of the employer granted to the employee is an obligation when the employment relationship between the parties is broken.⁷ The compensation will be calculated based on regulation on labour in Indonesia.

Regarding this issue, Rahmat Affandi reportedly earned late compensation for termination of his contract by Persebaya in April 2017. This problem is a bit complicated because it involves another problem that became the main cause, concerning on Affandi's injury. He reportedly received one-month salary as compensation after the termination of contract, but the compensation was delayed because there wasn't consent written agreement on contract termination between parties.

3. Unilateral Contract Termination

The important factor implementation of working contract between footballers and clubs is maintaining the stability of contract. The termination of contract is possible to do if there is agreement between parties but in the reality, there is often a unilateral termination of the contract, including in the football matters. The case of Rahmat Affandi, besides his compensation, he also has unilateral contract termination. His contract was terminated unilaterally by Persebaya. While, the termination of contract should be based on the decisions of

⁷ Article 156, Law No. 13 Year 2003 on Labour.

the authoritative body. For Indonesian sports especially in football, the authoritative body is unclear. The parties may settle the unilateral termination under football federation auspice, the sports arbitration body and through national courts, even this way is not competence because the existence of *lex sportiva*. In labour regulation, Persebaya as the employer didn't comply with Article 151 Paragraph 3, Law No. 13 Year 2003 on Labour which said that employer may conduct unilateral termination, only with decisions of the authoritative body.⁸

The Persebaya conduct to Affandi in term of unilateral contract termination, is also not respecting the mutual agreement or consent of parties in contract termination⁹ and during the season in progress.¹⁰ Affandi was terminated during the on-going league season.

3. Management of Football Competition

Management is also one of the weaknesses of Indonesian football. The competition is the main pillar of the football system in a country. The more professional a competition is managed, the better is the structuring of the country's football and of course it's linear with achievements on the field. Professionalism and management on football competition will affect another aspect, such as the contractual or working relation between footballers and clubs.

A real example was seen in the management of League 1 last season, which legally get authorization from PSSI. The league was launched on April 15, when

⁸ Article 151 Paragraph 3, Law No. 13 Year 2003 on Labour.

⁹ Article 13, PSSI Regulation on Status and Transfer of Players.

¹⁰ Article 16, PSSI Regulation on Status and Transfer of Players.

the club verification has not been completed throughoutly by the Indonesian Professional Sports Agency (BOPI). The launching was not fulfilled by the completion of club verification to BOPI. So far, the new terms met by *PT Liga Indonesia Baru* (LIB) are only limited legality and corporation license operators and each participating club. In fact, for the new schedule it will be sent to the participants.¹¹

The most important verification was the capability of clubs to pay the salary of footballers. This point proves to be crucial because, if this verification of the club is ignored by the management or operator of the football league, it will be the risk which increasing the number of contractual disputes in Indonesian football.

B. Football Dispute Settlement in Indonesia

In Indonesian football, the settlement for dispute occurred between parties can be brought to various option settlements. According to Law No. 3 Year 2005 on National Sporting System, the dispute in sports may be settled in three ways. Firstly, by deliberation in each sports federation, secondly by alternative dispute resolution and last by the competence court in sports matters.¹²

¹¹ Mercy Raya, "Verifikasi Belum Rampung, Liga 1 Sudah Mau *Launching*" available at <https://sport.detik.com/sepakbola/liga-indonesia/3470106/verifikasi-belum-rampung-liga-1-sudah-mau-launching> accessed on Sunday, 17 December 2017 at 02.48 p.m

¹² Article 88, Law No. 3 Year 2005 on National Sporting System.

1. Football Federation

Football federation in Indonesia is *Persatuan Sepak bola Seluruh Indonesia* or PSSI. As the highest footballing organization in Indonesia, PSSI has function as settlement body to settle down the contractual dispute between footballers and clubs with deliberation or through alternative dispute resolution such as negotiation, mediation or conciliation, based on the provision of Law No. 3 Year 2005 on Sporting National System. In fact, however, PSSI has authority to settle the contractual dispute in another alternative dispute resolution way, arbitration.¹³

The authority is to settle the contractual dispute between footballers and clubs either national or international dimension existed in Indonesian football. PSSI applied such as arbitration body by having three judges to give decision related to the disputes, but there are shortcomings in this PSSI settlement body. The issue is all about impartiality. Settlement through PSSI doesn't meet the impartiality of judicial body as Indonesian club's membership belongs to football federation, PSSI, while footballer's membership belongs to footballer's association, APPI.

When the dispute goes to PSSI settlement body, the bargaining position of clubs in front of PSSI will be put in question, because the structural relationship between federation, PSSI and clubs. In fact, one important aspect of upholding justice and human rights is an impartial proceeding, because it will also preserve the integrity and prestige of a judgement body such as arbitration by PSSI.

¹³ Article 22, PSSI Regulation on Status and Transfer of Players.

2. Sports Arbitration

Law No. 3 Year 2005 on National Sporting System provides the opportunity to the parties in sports dispute, including football, to continue to one of alternative dispute resolutions called as arbitration. Indonesia has two sport arbitration bodies, *Badan Arbitrase Olahraga Republic Indonesia* (BAORI) or Sports Arbitration Body of Republic Indonesia and *Badan Arbitrase Keolahragaan Indonesia* (BAKI) or Indonesian Sporting Arbitration Body. BAORI was established by *Komite Olahraga Nasional Indonesia* (KONI) or Indonesian National Sport Committee and BAKI was established by *Komite Olimpiade Indonesia* (KOI) or National Olympic Committee. The legal basis of the BAORI establishment is based on Article 41 and 42 of KONI's statute, while BAKI establishment based on in Special Congress of KOI by Decree No. 03 / KI-KOI / IV / 2010. These two arbitration bodies have the same jurisdiction to settle sports dispute, including football.

For football issue, the aspects of impartiality or neutrality of BAORI and BAKI is not a matter at all because in its structure, these two arbitration bodies have no structural relationship with footballers or clubs. However, the settlement through this arbitration bodies are costly, like arbitral settlement in general. To settle the disputes through this arbitration, the parties in dispute shall responsibility in several costs started from the cost of summoning witnesses and

experts¹⁴ which is charged to each party, deed registration verdict¹⁵, then judge's fees, cost for witnesses or expert which is required in dispute investigations and administration proceedings for the loser party or pro-rata if decided by judges.¹⁶

The problem is that most cases of contract disputes between footballers and clubs concerning salary issues. In the dispute, the footballer is often the damaged party with delayed, not getting compensation in the unilateral termination or even his salary didn't unpaid. Perhaps, for footballers who have good financial ability will be able to bring the case into lawsuit. However, the problem is that many footballers rely on the salary of the club as a daily livelihood. With his delayed or unpaid salary, of course bringing his case with the club to the legal action through arbitration such as BAORI and BAKI will spend much of his income. Things like this are more burdensome, especially on lower-middle-level footballers who do not get big contracts from the club.

Beside the costly arbitration in BAORI and BAKI, the existence of these two arbitration bodies has equal authority over sports create dualism. This dualism is unfavourable; it is sometimes confusing because there is no specification related to the settlement of football disputes within the two bodies as the first instance dispute resolution body in form arbitration.

The Court of Arbitration for Sports (CAS), as another sports arbitration body have function for appealing the decisions from all sports matters in the world. In

¹⁴ Article 49, Law No. 30 Year 1999 on Arbitration.

¹⁵ Article 59, Law No. 30 Year 1999 on Arbitration.

¹⁶ Article 77, Law No. 30 Year 1999 on Arbitration.

football, this arbitration body have function to appeal the decisions either from local arbitration, the NDRC or inter-regional arbitration such as the DRC. But, the existence of this arbitration has no deep impact because there is rarely a contract dispute between footballers and clubs in Indonesia that appealed in the CAS, which is located in Swiss, Australia and the United States. Travel and disputes costly charges are also certainly the factors that make the appeal to the CAS is rare.

3. National Court

Several parties in football contractual disputes, usually footballers, often bring the cases of contract disputes with clubs to national courts. This action can be done, if indeed there is no special mechanism that regulates on sport disputes. However, the existence of *lex sportiva* limits national or state intervention along with its legal system in sport affairs, including the settlement of disputes. So, the competency of national courts to settle sports dispute is limited.

C. The Urgency of the Establishment of the National Dispute Resolution Chamber (NDRC)

The mechanism of football dispute settlement, related to contractual stability between footballers and clubs is considered to be insufficient to accommodate parties' interest, condition and situation, especially for footballer's side. Then, the necessary of proper dispute settlement body for Indonesian football is important, due to upheld the justice in football, as the sector which is not separable from society.

Several months ago, the fund in amount of more than 40,000 US dollars or approximately Rp. 532 million rupiahs, was given to PSSI, from FIFA to establishing a settlement body named the National Dispute Resolution Chamber (NDRC). FIFA and FIFPro (Federationes Internationales des Footballeurs Professionels or international professional football federation) visited Indonesia to discuss this plan on the NDRC which also known as pilot project which will also be run in Malaysia and Costa Rica. During the meeting, FIFA, FIFPro and PSSI agreed to establish the NDRC and its program as soon as possible in Indonesia. According to Vice Chairman of PSSI, Joko Driyono, the fund will be used for socialization purposes. "Indonesia received 40,000 US Dollar from FIFA for this program, the fund will be used to hold seminars related to this program, call the experts of the program, drafting program, and so on," said Joko Driyono at Hotel Sultan Jakarta, Friday 10/2/2017).¹⁷

Regarding the composition member of the NDRC formed by PSSI, in the meeting FIFA also requested clubs' representatives and footballer associations are in it. "For the composition member of the NDRC, in the rules notified by FIFA there are three to five club representatives, there are three to five representatives of the players association. Then, there will be two people as chairman and vice chairman, and it must be people who have clear and existing qualifications the nomination process," said Legal Chairman PSSI, Teguh Maramis.

¹⁷ Benediktus, "Bentuk NDRC, PSSI Dapat Bantuan RP 532 Juta dari FIFA", available at <http://www.bola.com/indonesia/read/2852579/bentuk-ndrc-pssi-dapat-bantuan-rp-532-juta-dari-fifa>, accessed on 6 December 2017, at 00.11 a.m.

The NDRC is an arbitration body established to process the contractual dispute between footballers and clubs. In this point of view, FIFA added that representatives of the footballers associations that shall be included in the composition of this settlement body and to settle disputes under the jurisdiction of federation, shall have a background of legal knowledge, strongly in sports law matters.

In history, the NDRC principal was approved in FIFA Congress on 30-31 May 2007. The regulation was also approved in FIFA Executive Committee meeting 29-30 October 2007. The NDRC within its principle and regulation was declared in 28 December 2007 through FIFA Circular Letter 1129. Then the NDRC with its principle and regulation will be applied into force on 1 January 2008. So, what is the National Dispute Resolution Chamber (NDRC) which is discussed by FIFA, FIFpro and PSSI to be established in Indonesia, how about the jurisdiction and another feature of this dispute settlement body will be explained below.

1. The Jurisdiction of the NDRC

The national dispute resolution chamber (NDRC) is competent to handle disputes between clubs and players regarding contractual stability as well as those concerning training compensation and solidarity contributions between clubs belonging to the same association.¹⁸ The dispute can be contractual stability between footballers and clubs in same federation, either concerning salary, unilateral termination also training compensation which is applied for 23-year-old footballers and under. Beside contractual dispute between footballers and clubs,

¹⁸ Article 1, The National Dispute Resolution Chamber (NDRC) Standard Regulations.

the NDRC also has jurisdiction to settle down dispute arises between clubs and clubs in same federation regarding solidarity contribution which is concerning on transfer of football player from one club to another club.

The existence of the NDRC will not disturb another sport arbitration bodies such as BAORI and BAKiI because their jurisdiction is all sports dispute in Indonesia, not only football. The existence of the NDRC will only eliminate the football dispute settlement done by PSSI. Because it applied *lex superiori derogate legi inferori* in FIFA Statutes and Regulations toward PSSI Statutes and regulations.

2. Applicable Law

In the exercise of its jurisdictional competence, the NDRC shall apply the association's statutes and regulations, in particular those adopted on the basis of the FIFA Statutes and regulations. Where the association has not yet fulfilled its obligations in this domain, the FIFA Statutes and regulations shall apply by analogy. The NDRC shall also take into account all agreements, laws, particularly with regard to labour law, and/or collective bargaining agreements that exist at national level, as well as the specificity of sport.¹⁹

The NDRC derived indirectly from FIFA Statutes, especially regarding on the Dispute Resolution Chamber provision. The provision of the NDRC is inspired from the dispute settlement in inter-regional or international dimension, the DRC existed in Article 25 and 25, FIFA Regulations on Status and Transfer of Players.

¹⁹ Article 2, The National Dispute Resolution Chamber (NDRC) Standard Regulations, FIFA.

The NDRC regulation or statute provided in football federation statutory, in Indonesia will be provided by PSSI Statutes and Regulations. If the football federation does not yet fulfil and give the legal domain about the NDRC in Indonesia, the NDRC will apply with analogy through FIFA Statutes and Regulations. The NDRC still respecting any regulation in national level, especially related to the labour law mean Law No. 13 Year 2003 on Labour, sporting regulations such as Law No. 3 Year 2005 on National Sporting System and also respecting the existence of agreement according Civil Code in Indonesia.

3. Composition

The member of the NDRC consists of the representative from footballer's association and club's representative. Each representative shall propose three until ten representatives. Footballers' representative was appointed from minimum three or maximal ten representatives for the NDRC. The representative was taken from footballers association affiliated to FIFpro, as the federation of footballers association around the world. APPI, as the Indonesian footballers association are affiliated to FIFPro. Then, they will be representative of Indonesian footballers in the NDRC.²⁰ Clubs representative is taken from the proposal of the clubs or league. The clubs' representative is appointed from minimum three or maximal ten for NDRC. Each club shall only have one representative in the NDRC.

Those membership of the NDRC (consist of footballers and clubs representative) will make deliberation to reach consensus to elect the chairman and

²⁰ Article 3, The National Dispute Resolution Chamber (NDRC) Standard Regulations, FIFA.

deputy for the NDRC. The name of chairman and deputy are derived from football federation. PSSI will formulate at least five names and proposed its draft to be discussed among footballers and clubs representatives in the NDRC. The mandatory appointed representative from footballers and clubs alongside with the chairman and deputy will serve four years with mandatory renewable.²¹

The parties in dispute may choose the arbitrators in BAKI or BAORI and PSSI dispute settlement body respecting the impersonality and impartial in procedure²². However, the composition memberships in the NDRC is the reflection if equality principle is fully respected in this dispute settlement body. The election of chairman and deputy of the NDRC since the beginning of the NDRC establishment by the footballers and clubs representative is the proof if this settlement body fully accomodates the interest and aspiration of all parties. Even before the dispute arises, the footballers and clubs through their representatives, already involve in the election for competent judges for the settlement of their representative's disputes since the beginning of the NDRC establihsment. The NDRC shall sit with minimum three members consist of chairman and deputy. In all cases in panel, there must be equal of number of footballers and clubs representatives. Beside that, all parties have equal rights treatment and rights to be heard related to the disputes.

²¹ *Ibid.*

²² Article 23, PSSI Regulation on Status and Transfer of Players.

4. Impartiality and Independency

Discussion on disputes settlement body, whether by litigation or non-litigation, impartiality and independence are important principles for the implementation of a truly fair and integrity of justice process. The meetings and deliberation by the NDRC shall be seat on the association²³, but the member (chairman, deputy or representative) of the NDRC may not the member of it association²⁴. When the NDRC was established in Indonesia, the seat to be meetings and deliberation would be at football federation, PSSI, but the member of the NDRC may not from that football federation, PSSI.

The NDRC members are from the representatives of footballers and clubs, their bound with official secrecy that regarding all facts that come to their knowledge during the exercise of their duties. In particular, they shall refrain from divulging the contents of deliberations. In addition, if it is found that the members of the NDRC have a direct or indirect interest of interest, legal bonding, blood clarity, club interest, personal attachment or hostility with one or two parties to a dispute, the parties to the dispute itself may make a written petition toward the NDRC for objections to the impartiality and/or independence of such members within a maximum of five days after knowing the basis of the objection. The

²³ Article 5, The National Dispute Resolution Chamber (NDRC) Standard Regulations, FIFA.

²⁴ Article 6, The National Dispute Resolution Chamber (NDRC) Standard Regulations, FIFA.

petition shall contain a precise account of its grounds and cite the relevant evidence.²⁵

When a member of the NDRC disputes the objection, the NDRC shall reach decisions in his absence. When the objections upheld during proceedings, any stages of the proceedings in which the member objected to, shall be deemed invalid. The decisions containing part of the objected member involvement, may be appeal by the parties in disputes.²⁶

The position of the NRDC is clearly an impartial and independent dispute settlement body; it is not tied to football federation. In addition, the dispute settlement mechanism, the parties to the dispute through the NDRC may file an objection and disqualify any member found to have any direct or indirect interest with the party in dispute. Member impersonality can be questioned in the NDRC, by the parties to the dispute itself. These necessary things indicate that the NDRC does maintain its impartiality and independence as a dispute resolution body. This is in contrast to the PSSI dispute settlement where the appointment of the committee is based on the PSSI decision and the parties can not be questioning the impartiality and impersonality of the committee members in the dispute settlement body formed by PSSI. Impartiality, impersonality and independence of a dispute settlement body will preserve the authority and integrity of the body, so that decisions are made to have strong legitimacy for the parties to the dispute.

²⁵ Article 10, The National Dispute Resolution Chamber (NDRC) Standard Regulations, FIFA.

²⁶ Article 11, The National Dispute Resolution Chamber (NDRC) Standard Regulations, FIFA.

5. Cost

The NDRC stipulated that any proceedings are free of charges. The parties in disputes only responsible to the what provided in Article 22, 23, 24 and 25 of the National Dispute Resolution Chamber Standard Regulations.²⁷ It means, that fees of jugdes or member in the NDRC during the proocedings are the responsibility of its body. The parties in dispute only responsible to the cost related to the summoning witnesses, experts and production of evidence. Compared to other more impartial and independent sports dispute settlement bodies such as BAORI and BAKI, the cost variables for settling disputes in the NDRC are fewer. In BAORI and BAKI, in addition to each party being responsible for the cost of witnesses' summoning or production of evidence, other arbitration fees such as arbitrator fees and proceedings cost shall be levied on the losing party or evenly divided if the arbitrator only grants part of the claim.²⁸

Fewer cost variables, will be a factor that mitigates the burden on the parties to the dispute, in this case is a footballer. With many contract disputes relating to salary issues, at least the NDRC is a more rational and accommodative option to settling disputes than BAORI and BAKI to be considered, especially for the footballers side.

²⁷ Article 31, The National Dispute Resolution Chamber (NDRC) Standard Regulations, FIFA.

²⁸ Article 77, Law No. 30 Year 1999 on Arbitration and Alternative Dispute Resolution.

6. The Urgency of the Establishment in Indonesia

The existence of the NDRC will not interfere with the sports system, especially in football. The existence of the NDRC is appropriate and linear with *lex sportiva* principles in sports law. Sports law, in essence, moves beyond the boundaries of various countries as a "non-national law" and can be expressed in terms of *lex sportiva* as a law that parallels international law that incorporates elements of supra-national legal orders such as the European Community and elements of domestic law.²⁹ The discussion on arbitration body was initiated by sports institution, moreover the institution is an international sports organization, within the principle of *lex sportiva*. This principle is a legal order adopted by the state and adopted by national and international bodies representing organized sports. The emphasis is operated under the context of an autonomous body and has its specific area in a state law. *Lex sportiva* also applies *sui generis* which means that the regulations in sport have its own specificity and have an autonomous position national legal system.

Related to the recent issue of Indonesian football, the discourse of the establishment of a new dispute settlement body of football in Indonesia has emerged. The dispute settlement body is the National Dispute Resolution Chamber (NDRC). Then, how is the position of the NDRC in the legal system in Indonesia? Sport is organized from an international level into a community, which is beyond

²⁹ Dimitrios Panagiotopoulos, 2013, "Sporting Jurisdictional Order and Arbitration", *United States-China Law Review*, Vol.10, p. 1.

state control, has specific position, institutional position and has special rules and governs relationships that develop exclusively and strictly within the context of *lex sportiva*. These rules are implemented by its members and preferably regarding any conflicting arrangements.³⁰ So, it means that the position of the NDRC as football dispute settlement body is not contradictory with Indonesian legal system, especially on governing sports affairs.

The establishment of the NDRC is part of *lex sportiva*. By having this, the NDRC has the jurisdiction which is derived from the CAS and the establishment shall need the interpretation by football sport governing body, PSSI. In addition to the role of PSSI, for the sake of football and especially about the contractual dispute is very influential on the footballer's career in Indonesia; it has also necessary role of government of the republic of Indonesia to accommodate provisions on sports matters. Because, the issues related to sport disputes are rooted in principles and regulations from various areas of the law. For example, sports activities may come from a contract, therefore, agreement law will apply. If there is a civil danger created by the sport event, sport law will be applicable. When there is an issue contractual dispute, labour law will be applicable. When there is an issue regarding the right to use an athlete's image rights, intellectual property law might have to be employed.³¹

³⁰ *Ibid.*, 135.

³¹ Leonardo Valladares Pacheco de Olivera, "Lex Sportiva as the Contractual Governing Law", *The International Sports Law Journal*, Springer International Publishing, 2017, p. 5.

The existence of the NDRC was imbued by the establishment of the Dispute Resolution Chamber (DRC). This dispute settlement body has authority to settle the contractual dispute for international dimension. The DRC will settle dispute arise from the member association of FIFA, clubs, players, coaches and licensed matches agents. Different from the DRC, the NDRC only has jurisdiction to settle contractual dispute between footballers and clubs in the same federation.

One of the NDRC function as the arbitration body. As the arbitration NDRC is institutional arbitration, not an ad hoc arbitration. Because incidental ad hoc arbitration, can only resolve and decide disputes of a particular case; once the dispute is decided, the existence of an ad hoc arbitration is exterminated and ends automatically. This is in contrast to the arbitration institution, which is a permanent institution.³² In general, ad hoc arbitration is determined based on agreements that containing the appointment of the sole arbitrator or the arbitral tribunal, as well as procedures for implementing, as agreed by the parties. BAORI and BAKI is the arbitration body or institutional which is ad hoc in nature.

The NDRC is insitutional arbitration which is permanent. Therefore, intstitutional arbitration such the NDRC is also called as permanent arbitral body. Arbitration is particular organization and intentionally built to accomadate parties in dispute on agreement. Deliberate factor and permanent nature are the

³² Fadia Fitriyanti, 2013, "The National and Sharia Arbitrations: A Comparative Study", *Jurnal Media Hukum*, Vol. 3 No. 1, Fakultas Hukum, Universitas Muhammadiyah Yogyakarta, p. 173.

characteristic distinguishes institutional arbitration from ad hoc arbitration.³³ The NDRC is not ad hoc arbitration, because it has its own procedure to appoint the arbitrators to the arbitration.

The NDRC is not only authorized in dispute settlement in the form of arbitration, but other alternative dispute settlements such as mediation, negotiation or conciliation may be filed by disputants to the NDRC. The presence of members of the football and club representatives certainly provides an option for that. In terms of institutional impartiality and independence, the NDRC has clearly offered such a thing than what the PSSI dispute settlement body can not provide. Moreover, the impartiality and independence of the NDRC will make the dispute settlement through this body more legitimated, rather than through PSSI, where membership of professional clubs belongs to this federation. Impartiality and independency of dispute settlement body, beside will create strong legitimation, it will be coherent with fairness of trial. Because the more impartial and the independence of a dispute resolution body, the resulting decisions will also be considered fairer.

In terms of the settlement's cost for disputes through arbitration, the NDRC offers a lighter fee than other arbitration bodies such as BAORI and BAKI. With the majority of disputes related to salary, the NDRC's presence will be more accommodating to the disputes, especially from footballers as those whose rights

³³Yordan Gunawan, 2017, "Arbitration Award of ICSID on the Investment Disputes of Churchill Mining PLC v. Republic Indonesia", *Hasanudin Law Review*, Vol. 3 Issue 1, Faculty of Law, Hasanudin University, Makassar, South Sulawesi, Indonesia, p. 17.

regarding salaries are often harmed when a dispute arises with the club. All explanation above indicates that contractual dispute settlement in Indonesian football is necessary to be regenerated. The old way of settlements does not really settle down the problem. Because of the federation's side bias towards the clubs and the settlement through the sports arbitration bodies in Indonesia that burden the financial side of the footballers, especially when majority of the contract disputes are related to salary. The establishment of the NDRC also will increase professionalism on football regulating, organizing, settlement and create good atmosphere in form of public trust specifically to the PSSI and all stake holders in Indonesian sports organisation.

Reviewing from the problems that arise from Indonesia's football dispute over the years that raises the problem between footballers and clubs, there were shortcomings from dispute settlement bodies such as PSSI, BAORI and BAKI and considering the advantages of the NDRC, then establishing the dispute settlement body namely the National Dispute Resolution Chamber (NDRC) is urgent and it will be benefit for football organizing in Indonesia, alongside with the settlement of disputes.