



## Regulation of Esports in the Context of the Employment in Indonesia

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### ABSTRACT

*This study aims to understand and analyze the legal arrangements of esports in terms of the point of view of labor law. The research method used is legal research with a normative juridical approach. The research results obtained are first, in terms of legal substance, second, in terms of legal structure, and third, in terms of legal culture. The author reflects that in the substance of the law, there has not been a single piece of legislation that contains explicitly and comprehensively regarding esports. Then in the aspect of esports dispute resolution, that is, the phrase "final and binding" on the award of the settlement of violations by Executive Board of Esports Indonesia is biased. In addition, in terms of legal culture, the existence of esports in Indonesia has risen in all walks of life, players who are legal subjects in esports are dominated by underage players. This study concludes that the government needs to form a law that explicitly regulates esports activities in Indonesia, in the form of: 1) The rights of esports athletes, especially minors; 2) The legal position of the Executive Board of Esports Indonesia statute in the laws and regulations in Indonesia; 3) Rights and obligations of esports athletes.*

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## 1. Introduction

Esports is one of the achievement sports in Indonesia which is currently in great demand by young Indonesians. The increase in interest is based on none other than the acceleration of the development of information and communication technology and even developing very rapidly. This sport received support from the government of the Republic of Indonesia by placing esports as an exhibition sport at the XX<sup>th</sup> National Sports Week held in Papua in 2021. Five games will be competed, including Mobile Legend, Free Fire, PUBG Mobile, E-Football PES 2021, and Lokapala Friendly Matches. Not only that, esports has become an exhibition sport at the 2018 Asian Games and was competed at the 2019 Sea Games held in the Philippines.

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With the presence of these esports, Indonesia can be said to be able to produce some players who are commonly called players and make them viral or famous not only at the national level but also at the international level. Amazingly, some of these players have signed contracts with esports teams abroad. If we are fans of soccer games, of course, esports Pro Evolution Soccer or PES is familiar to our ears. An Indonesian citizen named Rizky Faidan at a very young age has successfully become a semifinalist of the PES League 2019 World Finals which was held at the Emirates Stadium in London. He also won the Pro Evolution Soccer League Asia in 2019. He even had a chance to establish a cooperation contract with an overseas team.

The development of esports which relies heavily on the power of mind and creativity is like the Mobile Legend game which has held world-level competitions twice and has more than twice held Southeast Asian level competitions. Even specifically in Indonesia, the Mobile Legend competition is already in season 8. If we draw a common thread from all the phenomena that the author describes above, esports no longer seems to be limited to the sports aspect alone but has become an industry that should have a legal basis and regulatory clarity. Because as we all know that in the existing constitution in Indonesia, Article 1 Paragraph 3 of the 1945 Constitution of Republic Indonesia has explicitly stated that Indonesia is the state of law. Thus, all aspects including esports must be included in the laws and regulations. The goal is to provide clarity regarding the status, rights, and obligations, as well as other matters that can provide legal certainty and justice and benefit to the players or players on the esports.

Currently, talking about the regulation of esports, the author observes that the government has referred to Law Number 11 of 2022 concerning Sports. It is stated that sports are all activities that involve the mind, body, and soul in an integrated and systematic manner to encourage, foster, and develop physical, spiritual, social, and cultural potential. One of the elements worth paying attention to in esports is if we look at it from the point of view of industrialization, that players who are legal subjects in esports are dominated by underage players. In Article 1 Number 26 of Law Number 13 of 2003 concerning Manpower, it is stated that a child is any person under the age of 18 (eighteen) years. Then, Article 68 it is stated that employers are prohibited from employing children.

Esports, which has become a forum for commercialization, should be given a fixed procedure to provide convenience for players who have the ability and creativity in their fields. Therefore, the author feels that this legal arrangement about esports needs to be researched and this is very important, especially in terms of protection for esports players who are still categorized as children.

## **2. Method**

In this study, the authors used a normative-empirical type of legal research, if translated with legal research equipped with empirical data. This research is not empirical, because it is still based on law, not on social sciences.<sup>5</sup> The approach taken in this study is more about the socio-legal study.<sup>6</sup> The reason is that socio-legal studies in legal research, especially in the context of empirical legal research, are understood as the use of studies or studies of social science disciplines on the process of working or the influence of law in social life. This research uses secondary data (from libraries) and is supported by primary data based on field research, such as observations, interviews, and surveys.

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<sup>5</sup> Peter Mahmud Marzuki. (2005). *Penelitian Hukum*. Jakarta: Kencana.

<sup>6</sup> S. Purwanda. (2022). Hilangnya Hak Eksklusif Tanaman Rempah Asli Indonesia. *Pangadereng: Jurnal Hasil Penelitian Ilmu Sosial dan Humaniora*, 8(1), 137-152. <https://doi.org/10.36869/pjhpish.v8i1.235> .

In order to analyze and determine the results of research, valid data is needed, therefore the data collection technique used in this study focuses more on literature research but still considers field research. Data collection techniques are carried out by searching and finding various kinds of references, be it laws and regulations, books, journals, or documents that are valid and relevant to the object of this study. The data collection using field studies by conducting surveys with esports players using online questionnaires.

After collecting data in the form of sources of legal materials relevant to the research, the data will then be analyzed into a research result. To analyze the data and information that has been collected, the authors use qualitative descriptive analysis techniques. According to Sugiono, descriptive qualitative is research conducted by describing the data as it is and explaining the data with qualitative explanatory sentences. In the use of data analysis techniques that are descriptive qualitative in nature, the thing that needs to be carried out by researchers is to develop the data that has been obtained by using theories relevant to the object of research so that the research can provide a description of the design of this study.<sup>7</sup>

Before analyzing the data and legal materials obtained, the author must first identify and inventory various laws and regulations that are relevant to the object of research, so that in the qualitative descriptive analysis method, what must be done is to first examine and group the legal materials and data obtained into certain parts to be processed into information. Therefore, in this study, the author will examine and group and analyze the data obtained using existing theories and then relate them to applicable laws or regulations. By using data analysis techniques like this, the author will find accurate research results and answer the problems raised in this study.

### **3. Results of Research and Discussion**

#### **3.1. Overview of Esports**

Esports or electronic sports is a sport that emphasizes a person's ability to electronic applications called games as a manifestation of the purpose of competitive sports. A surprise in the world of sports, due to the presence of esports which takes part in sports competitions not only in the country but also applies on an international scale.

The gaming world is currently undergoing significant changes. Because the presence of esports has become a trend of developing game applications in cyberspace with various forms of games. Moreover, gaming today no longer targets teenagers and adults, but children also feel the development of this gaming technology. Thus, esports tends not to recognize the gender, age, and individual background of those who are involved in this sport. The benefits or benefits obtained from esports also tend to reduce the negative views of some people that gaming does not provide any benefits other than spending time. Languages like this began to decrease with various kinds of achievements made by esports players ranging from local, national, to international levels. The types of genres of esports include:

- 1) Multiplayer Online Battle Arena or MOBA;
- 2) First Person Shooter or FPS;
- 3) Battle Royal;
- 4) Fighting;
- 5) Card Battle; and
- 6) Pro Evolution Soccer or PES.

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<sup>7</sup> C.M. Zellatifanny and B. Mudjiyanto. (2018). Tipe Penelitian Deskripsi Dalam Ilmu Komunikasi. *Diakom: Jurnal Media Dan Komunikasi*, 1(2), 83-90. <https://doi.org/10.17933/diakom.v1i2.20> .

First, MOBA is a type of game that is real-time action or strategy game where a player can only control or control one character to win the game by killing or exhausting all his opponents. The characters used have a variety of character models by adjusting the play style of each player. To destroy the opponent, the character chosen is not personal or individual, because MOBA focuses on teamwork.<sup>8</sup>

MOBA is known for its dynamic characters. That is, the model of the game played always has differences from the previous game model. So, players tend to be challenged in playing this game. Then, the concept of playing a MOBA is fairly easy to understand and simple. The main purpose of a MOBA is to destroy the opponent's base, so strengthening the character's mindset becomes the main factor in winning the game. The system required to win this game has been set up by this game for example a group or team that automatically walks towards the enemy's base. MOBA minimizes cheating in the game wherever possible. With a surveillance system from the application creator, this game can be enjoyed continuously. Thus, the quality of the game is always maintained to maintain player statistics.

In terms of convenience, MOBA as an online game tends not to choose the class of players, meaning that MOBA does not require players to spend a lot of funds to play this game. However, even though this game category is free to play, this game still has a premium segment. This segment consists of purchasing items that add to the aesthetics of the player's character that can increase the player's enthusiasm. MOBA's are a category of games that are not difficult to understand but quite difficult to master. The complexity and variety of opponents skills always present their challenges for endless players. So, it takes reliability and hard work to survive. The habit of watching the players streams and the seriousness in reading the guide is an obligation that must be lived by every player to get satisfaction in playing. Emotional intelligence is the key to victory in MOBA games because the mood of each player in each team is certainly different. The habit of mocking other players or flaming or insulting is a common sight found in MOBA games. Bullying is common and the victims are players who are still amateurs. This is then the concern if one day a game like this will disappear from the market. Not only that, match-fixing is a fear faced by MOBA's that can hurt fair play in this online game competition.

Second, FPS is one of the game genres played that displays the perspective of the player's character's view into the game monitor. As for the FPS games that are again famous today such as Counter-Strike, Point Blank, and Call of Duty. FPS is different from Third Person Shooter or TPS. The difference is based on the angle of display of the characters on the monitor. If on the monitor you can see the backside that shows the head, back, and even the entire body of the player character, then the game is categorized as TPS. However, if what is seen on the monitor is only the weapon and the character's hand, then the game is categorized as FPS.

One form of satisfaction felt by players from this FPS game is that players are easier to feel the characters played in this game. In general, FPS focuses on action games. In this game, the mission objective to be achieved is to kill all enemies so that players can continue the game to the next stage. However, not all FPS genre games focus on that segment, there is another segment to continue the game, namely by talking to other characters. In addition, there are missions of collecting certain items or exploring certain places.

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<sup>8</sup> I.K.S. Yogatama, A.P. Kharisma, and L. Fanani. (2019). Analisis Faktor-faktor yang Memengaruhi Minat Pemain Dalam Permainan MOBA (Studi Kasus: Mobile Legends: Bang-Bang!). *Jurnal Pengembangan Teknologi Informasi dan Ilmu Komputer*, 3(3), 2558-2566.

In general, the choice of weapons used in FPS games is such as rifles and pistols to carry out opponents shooting activities. But it does not rule out the possibility, some weapons are melee in nature such as laser swords, knives, and the like. Melee weapons or melee weapons give each player space to approach the enemy. So, variations like this make players feel more at home in playing FPS games. Every FPS game has two typical weapons namely realistic weapons and fictional weapons. Realistic weapons are weapons that do exist in the real world. The use of realistic weapons is used by more serious segments of the game with a story that contains a lot of skits. Examples are the Call of Duty games, Tactical Shooters. While fictional weapons are weapons that only exist in the game. The use of fictional weapons tends to be used by segments of the game that contain humorous stories and are varied in nature. For example, the games Bullet Storm and Bioshock.

Third, Battle Royal is an esports game genre that demands to be the last player to survive. Battle Royal games like Battlelands Royale, Call of Duty Mobile, Rules of Survival, Free Fire, and PUBG Mobile. Battlelands Royale is a game with fairly low image quality, with two-dimensional graphics. This game faces 35 (thirty-five) players who fight each other somewhere for five minutes. This game can be played for players who only make the game a mere pastime.

PUBG Mobile is one of the most popular Battle Royal genres today. PUBG Mobile provides a high-definition graphic display and provides excitement in exploring the game by presenting up to a hundred players online. One of the game modes in Battle Royal is Team Deathmatch or TDM. That is, each team consists of 4 (four) players to fight other teams in one small place. This is where strategy and teamwork are needed to defeat opponents. The Battle Royal game presents challenges to players such as by providing players with makeshift equipment but with the same mission which is to destroy all their opponents.

Fourth, Fighting is a game genre that became known in 1990. In the past, Fighting games could only be enjoyed through console games. However, along with the times, this game has been able to be played via smartphones. Some Fighting games that are often played on smartphones include Shadow Fight 3, EA Sports UFC, Marvel Contest of Champion, Punch Quest, Street Fighter IV: Champion Edition, Skullgirls, Teppen, Mortal Kombat, Injustice 2, Real Steel Boxing Champion, Combo Crew, The Executive, Fight Club, WWE Universe, Real Boxing 2 Rocky, Gods of Rome, Taekwondo Game Global Tournament, Super Samurai Rampage, Chrono Blade, Beat Street, Prizefighters, Knight Brawl, Dan the Man, Hordes, Of Enemies, Rowdy Wrestling, Shurado, Glory Ages-Samurais, and Undisputed Champ.

Fifth, Card Battle is the best choice for those who love the strategy genre. The game can be played on smartphones. Today's card games can be played online which are often called digital card games. The term Digital Card Game or Collectible Card Game has a game concept that is deckbuilding and collecting cards. Several digital card games are popular today such as Pokemon TCG Online, Gwent: The Witcher Card Game, Shadowverse, Yu-Gi-Oh! Duel Links, Eternal, TEPPEN, Magic: The Gathering Arena, Legends of Runeterra, Kards, and Mythgard.

Sixth, PES which is currently changing its name to football, is a soccer game created by Konami from 1995 to 2013. Then, from 2014 to 2020 this soccer game was developed by PES Production. In, 2020 until now, it was redeveloped by Konami Digital Entertainment. Efootball is the most famous game on earth. Efootball sold at least 111 (one hundred and eleven) million worldwide, plus approximately 400 (four hundred) million efootball downloads through mobile devices as of December 2020.

Some types of esports games that the author describes above, are a sign that the presence of esports, especially in Indonesia, is currently making the game industry has developed very quickly. Esports has not only become a competition but has become a competitive achievement sport. On a national scale, after the XX<sup>th</sup> National Sports Week held in Papua in 2021, the implementation of esports was also organized by the government by holding the 2021 esports President's Cup. The tournament competed in several branches of games such as Lokapala, Free Fire, Mobile Legends, PUBG Mobile, and Speed Chess MPL. Not only that, Indonesia held the first virtual football league in Indonesia called the Indonesian Football E-League which competed with professional football clubs from the 1<sup>st</sup> league and the Indonesian 2<sup>nd</sup> league. In April 2022, the Mobile Legend Professional League (MPL) tournament advanced to the 9<sup>th</sup> season. This tournament is the most famous online tournament in Indonesia.

### **3.2. Legal Substance Esports in the Context of Labor**

The legal regulation of esports in terms of the legal system in the context of labor in Indonesia can be analyzed using the legal system theory proposed by Lawrence Meir Friedman by referring to the three elements of the legal system consisting of legal structures (related to law enforcement officers), legal substance (related to the content of laws and regulations), and legal culture (relating to habits or laws that live in certain societies) of a collective nature. Meanwhile, the opinion of Friedman focuses more on the role of law enforcement because it is part of the concept of legal structure. so that, before discussing law enforcement, what is first understood is the legal system.<sup>9</sup> Law that functions as a tool for social engineering, a problem-solving tool (dispute resolution), to as a tool in controlling community behavior (social control)<sup>10</sup> is because the normative approach is always used in solving problems in Indonesia.

In the substance of the law, there has not been a single piece of legislation that contains explicitly and comprehensively regarding esports. However, if we refer to the definition of esports as a sport that uses technology or electronic-based sports, then this has also been mentioned in Article 20 Paragraph 5 Letter m of Law Number 11 of 2022 concerning Sports. In chapter *a quo* it is explained that: "What is meant by 'technology-based sports' is a competitive and interactive sport that uses intermediaries of devices and/or equipment by utilizing electronic technology innovations?"

The phrase "device intermediary" above actually includes computers, laptops, consoles, simulators, and gadgets. In other words, if it is related to the definition of esports definitively with the content material in the sports law, it can be concluded that esports in Indonesia is categorized as an electronic sport or sport that uses technology whose existence has been legally recognized as one of the sports. In addition, the existence of esports in the laws and regulations is also contained in Presidential Regulation Number 97 of 2019 concerning the Tourism and Creative Economy Agency. However, under these rules, the existence of esports is the only limitation. Where, it is only referred to as applications and game developers that are within the scope of the creative economy which is the task of the tourism and creative economy agency to assist the president in government activities in the field of tourism and creative economy.

Esports as one of the sports in Indonesia already has a parent sports organization called the Executive Board of Esports Indonesia or PBESI which was established in 2020 under the auspices of the Indonesian National Sports Committee or KONI and the Ministry

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<sup>9</sup> Lawrence Meir Friedman. (1975). *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation.

<sup>10</sup> Aziz Syamsuddin. (2019). *Proses dan Teknik Penyusunan Undang-undang*. Jakarta: Sinar Grafika.

of Youth and Sports or Kemenpora. The establishment of PBESI is also based on the mandate of Law Number 11 of 2022 concerning Sports in Article 1 Paragraph 24. Thus, based on the provisions of the law, the position of PBESI is horizontally equivalent to that of other sports organizations. Such as football under the auspices of the Indonesian Football Association or PSSI, the Indonesian Badminton Association or PBSI which regulates badminton, and other sports parent organizations. The formation of PBESI in 2020 initially reaped polemics. This is because there is already the Indonesia Esports Association or IPA is the oldest esports association in Indonesia under the auspices of the Indonesian Community Recreational Sports Forum or FORMI and the Kemenpora. Even if the two esports and sports parents, only the recognized by the International Esports Federation or IeSPA. This is because IeSPA is a member of the International Esports Association, namely the Asian Electronic Sports Federation or AESF.

However, after the status of esports changed to an achievement sport that was previously a recreational sport, IeSPA finally entered PBESI in 2022. In other words, until now PBESI is the only esports association in Indonesia that has the authority to foster, develop and regulate all activities related to esports in Article 1 Paragraph 24. On that basis, the Regulation of the Executive Board of Esports Indonesia Number 34 of 2021 concerning the Implementation of Esports Activities in Indonesia was born as a basic guideline for the implementation of esports activities in Indonesia.

On the other hand, of the three regulations related to esports, at least it poses a very complex problem in legal substance. This is because no law explicitly regulates esports activities even in Law Number 11 of 2022 concerning Sports. Thus, this has negative implications, in the form of:

- 1) Issues of rights on esports athletes, especially minors;
- 2) The legal position of the PBESI statute in the laws and regulations in Indonesia; and
- 3) Rights and obligations of esports athletes.

The existence of esports is no longer a new thing in society, but it is something very common that has penetrated all walks of life, including children. Not just as a player, until now there have been esports players in Indonesia who are still children who have become professional esports athletes and have even received job contract offers. If we look at positive law in Indonesia, at least there are very diverse differences in the categorization of children, including table Categorization of Children in Indonesian Laws.

<b>Categorization of Children in Indonesian Laws and Regulations</b>		
<b>No.</b>	<b>Types of Legislation</b>	<b>Child Age Categories</b>
1	Article 330 of the Civil Code	21 years old
2	Article 45 of the Criminal Code	16 years old
3	Article 39 Paragraph 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary	18 years old
4	Article 1 Number 26 of Law Number 13 of 2003 concerning Manpower	18 years old
5	Article 6 Paragraph 1 of Law Number 12 of 2006 concerning Citizenship	18 years old
6	Article 1 Number 34 of Law Number 7 of 2017 concerning General Elections	17 years old

7	Article 98 Paragraph 1 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law	21 years old
8	Article 1 Number 1 of Law Number 3 of 1997 concerning Juvenile Courts	18 years old
9	Article 47 Paragraph 1 of Law Number 1 of 1974 concerning Marriage	18 years old
10	Article 1 Number 5 of Law Number 39 of 1999 concerning Human Rights	18 years old
11	Article 1 Number 1 of Law Number 23 of 2002 concerning Child Protection	18 years old
12	Article 1 Number 5 of Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons	18 years old
13	Article 1 Paragraph 4 of Law Number 40 of 2008 concerning Pornography	18 years old
14	Article 1 Number 3 of Law Number 11 of 2012 concerning the Juvenile Justice System	18 years old
15	Supreme Court Circulars Number 7 of 2012 concerning Legal Formulation of the Results of the Plenary Meeting of the Court Chamber as a Guideline for Carrying Out the Duties of the Court	18 years for the civil chamber and casuistic for the criminal chamber

*Source: Primary Data, 2022.*

However, in this context, it refers to Article 1 Number 26 of Law Number 13 of 2003 concerning Manpower, which is 18 (eighteen) years as a reference for the age category of children. Some of those who are esports athletes are Muhammad Rafli Setiawan who is the youngest athlete at the XX<sup>th</sup> National Sports Week held in Papua in 2021. At that time, Rafli represented DKI Jakarta in the sport of esports at the age of 13 or was still in junior high school. In other words, it is noted that Rafli has been counted as a professional esports athlete. In addition, there are also professional esports players who join the EVOS Immortal team, namely, Rasyah Rasyid who is 12 years old.

It should be underlined, that esports athletes are game players who have professional status after joining an esports company. This is based on the players concerned who have become part of the company and will later be coached, trained, and included in the competition following the agreement between the company and the athletes. The form of a memorandum of agreement is also in the form of an employment contract based on Law Number 13 of 2003. The form of a memorandum of agreement between esports athletes as workers and esports teams as entrepreneurs is based on the Manpower Law. If we look at Article 52 Paragraph 1 of the Law *a quo* has outlined 4 conditions for the validity of an employment agreement that is cumulative, namely an employment agreement made based on:

- 1) Agreement between the two parties;
- 2) Ability or ability to perform legal acts;
- 3) The existence of the promised work; and
- 4) The work promised is not contrary to public order, decency, and applicable laws and regulations.

Meanwhile, in positive law in Indonesia, children are categorized as legal subjects who are not yet capable of carrying out legal actions. In other words, the valid terms of *a quo* agreement are contrary to the status of a child. Thus, when one of the contract agreements



is not fulfilled, the contract agreement is considered invalid. In addition, the point that needs to be criticized in this context is how it is related to guaranteeing and fulfilling the rights as a child and the rights of children as esports athletes starting from the work agreement phase to when carrying out their work. Article 68 of Law Number 13 of 2003 has emphasized that children are prohibited from being employed, except for being able to carry out work that is “light work” as long as it does not interfere with the development and physical, mental, and social health as regulated in Article 69 Paragraph 1. However, in esports, players have to drain energy on the mental, health, physical and social aspects of a person in every activity.

Ingo Froböse as a sports scientist from Germany stated that the reason an esports athlete is called an athlete is that the body of an esports player can touch 400 movements per minute or 400 RPM/min. Furthermore, his research mentioned that the central nervous tension of esports players exceeds that of tennis players even though the heartbeat of an esports athlete is the same as that of a Formula 1 driver. So, biologically, this fact confirms that playing esports games requires mental strength, physical health, and other aspects that are very draining for each of its players. Thus, this has also been contrary to the mandate of the constitution through the Manpower Law. Therefore, it should not be someone who is still in the category of children to become an esports worker or athlete, because children who are still in the developmental period of playing esports have the potential to hinder their growth and development.

Then, the negative implications of including children as esports athletes are that they have the potential to violate the normative rights of children that have been mandated in the constitution, such as the right to survival, growth and development, and the right to education. In Article 6 Paragraph 1 of Law Number 20 of 2003 concerning the National Education System, it is stated that: “Every citizen aged seven to fifteen is required to attend primary education.”

In other words, in systematic interpretation, it states that each child is obliged to attend basic education for nine years. However, even the Manpower Law and the Sports Law do not regulate systematically and comprehensively the guarantee of the fulfillment of the right to education when a child becomes an esports athlete. Moreover, when a player who is still a child is under contract with the esports team or joins the esports team, the player will automatically be fostered, trained, and included in competitions according to his contract which has the potential to hinder his education time. This is also exacerbated by the absence of clear and special signs for entrepreneurs who will later recruit esports athletes.

The PBESI statute in Indonesian laws and regulations has become a separate discourse in positive law in Indonesia. This is because there is a dualism of perception related to this matter, namely the PBESI statute is autonomous according to the views of adherents of Domestic Sports Law and Global Sports Law or is it subject to national law? The perception of figures who adhere to *lex sportiva* considers that the principle of *lex specialis derogate lex generalis* applies which is the basic guideline in overriding other laws and regulations contained in the Indonesian legal system. Basically, in the world of sports, there is a special principle called *lex sportiva*, not least focusing on its legal aspects. This is also in line with the opinion of Dimitrios Panagiotopoulos who mentioned that:<sup>11</sup>

“...*lex sportiva* is a legal order, which incorporates state-adopted law and the law adopted by the national and international bodies representing the organized sport. These bodies operate to the standards of unions and in the context of the autonomy granted to such bodies and operate within states in a pyramid-like fashion and at the

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<sup>11</sup> Robert C.R. Siekmann. (2012). *Lex Sportiva: What Is Sports Law?*. Berlin: Springer.

international level in the form of a special relationship linking them to the relevant international sports federation. The law produced in this manner is thus a law which is, in essence, non-national law, which claims for itself direct and preferential application within sports legal orders and the par excellence law in sports life.”

In addition, there is also a view that *lex sportiva* is a global sports law, this is also in line with Ken Foster’s opinion which reveals that:<sup>12</sup>

“Global sports law, by contrast, may provisionally be defined as a transnational autonomous legal order created by the private global institutions that govern international sport. It is a *sui generis* set of principles created from transnational legal norms generated by the rules, and the interpretation thereof, of international sporting federations. This is a separate legal order that is globally autonomous. This implies that international sporting federations cannot be regulated by national courts or governments. They can only be self-regulated by their internal institutions or by external institutions created or validated by them. Otherwise, they enjoy a diplomatic-type immunity from legal regulation.”

From these two statements, it can be concluded that *lex sportiva* is any rule of the parent sports organization, such as an organization or statute of a sports organization, to which each member is required to be subject to its organization or statute. Only internal institutions can regulate or by external institutions that get approval from them.<sup>13</sup>

If we look at the types of laws and regulations listed in Law Number 13 of 2022 on the second amendment of Law Number 12 of 2011 concerning the Formation of Laws and Regulations, it does not seat the statute of PBESI or other sports organizations as one of the types of legislation. Moreover, the PBESI statute is excluded from the results of internal congresses. However, the author considers that the PBESI statute as *lex sportiva* does not mean that it is independent of attachment to positive law in Indonesia.

The autonomy of PBESI contained in its statute will always be recognized as *lex sportiva* because PBESI is the parent of esports in Indonesia. However, the content material contained in the PBESI statute is required to remain based on all rules contained in the legal system in Indonesia. This is because the position of the PBESI statute is only limited to the rule of the game, not as a rule of the law as stated in Law Number 13 of 2022 concerning the Establishment of Laws and Regulations which contain types of laws and regulations that are legal products produced by the legislative and executive institutions. There is no power over the law so there is no arbitrary power or abuse of power.<sup>14</sup> In Indonesia itself, there is no concept of a central law or a local law.<sup>15</sup>

The contractual agreement contained in the memorandum of the agreement indicates the existence of an obligation agreement that must be carried out by the relevant party and the rights obtained by the party concerned. In other words, the rights and obligations of both esports athletes and esports teams are logical consequences accepted for the memorandum of agreement. However, the thing that needs to be emphasized is that the concept of rights and obligations must go hand in hand. Regarding the rights and obligations of esports, we can describe them by referring to the Regulation of the Executive Board of Esports Indonesia Number 34 of 2021. Where, in Chapter III and Chapter IV, the rules of a

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<sup>12</sup> *Ibid.*, p. 35-52.

<sup>13</sup> Gunther Teubner. (1997). *Global Law without a State*. Aldershot: Dartmouth.

<sup>14</sup> Mohammad Zamroni. (2018). Kekuasaan Presiden Dalam Mengeluarkan Perppu (President’s Authority to Issue Perppu). *Jurnal Legislasi Indonesia*, 12(3), 1-38. <https://doi.org/10.54629/jli.v12i3.410> .

<sup>15</sup> Muhammad Fadli. (2018). Pembentukan Undang-undang yang Mengikuti Perkembangan Masyarakat. *Jurnal Legislasi Indonesia*, 15(1), 51-61. <https://doi.org/10.54629/jli.v15i1.12> .

*quo* contain rights and obligations for esports professional athletes, namely table Rights and Obligations of Professional Esports Players:

<b>Rights</b>
1) Get legal consultation assistance;
2) Get help with health consultations (physical, mental, and social);
3) Protection and assistance for athletes when playing for foreign professional esports teams;
4) National and international match assistance;
5) Assistance in the manufacture of visas in the match when carrying the name of Indonesia;
6) Monthly wages according to the employment contract as an active player or as a reserve player;
7) Professional athletes with an employment contract of at least one year are entitled to discuss wage increases based on the assessment of athlete achievements every four to six months;
8) Obtaining the Employment Assurance guarantee program;
9) Health insurance and domestic to international travel insurance;
10) Advantages over the display or publication of face rights (image rights);
11) The right to give consent regarding buyout and transfer clauses in the employment contract including in the case of termination of employment in the employment contract; and
12) The right to get an award is further stipulated in the decree of the chairman of PBESI.

*Source: Primary Data, 2022.*

<b>Obligation</b>
1) Have a letter of recommendation from the esports team (also applies to amateur players and foreign players);
2) Have an esports Indonesia card issued by PBESI (also applies to amateur players and foreign players);
3) Pay the esports Indonesia card administration fee (also applies to amateur players and foreign players);
4) Mandatory payment of contributions per year to PBESI;
5) Comply with all provisions of the established employment contract; and
6) Abide by the rules set by PBESI.

*Source: Primary Data, 2022.*

The provisions of rights and obligations stipulated by PBESI as an institution authorized to foster, develop and regulate all activities related to esports have been in line with the provisions of rights and obligations in the employment contract agreement regulated in Article 57 Paragraphs 8 and 9, Government Regulations Number 16 of 2007 concerning the Implementation of Sports. Where, professional athletes are required to make an employment contract agreement containing rights, and obligations, with agreements and arrangements related to wages, bonuses, benefits, insurance, validity periods, and dispute resolution mechanisms.

This aims to prevent arbitrariness in labor relations and aims to create legal protection and realize social justice.<sup>16</sup> The part of the workforce is called the worker who contributes to the employment relationship, who then gets an order in the world of work, and at the contribution to his work, the worker concerned gets a reward or wage.<sup>17</sup> In other words, esports athletes can be called workers, because the athlete contributes by contributing his energy to a team to make a profit.

However, the provision does not contain rights for esports athletes after they retire, especially regarding health insurance and pension benefits. Thus, this raises concerns for the welfare of esports athletes after they retire. In addition, related the physical, mental, and social aspects of athletes have only rights of a “consultation” nature. If we look deeper, esports activities have a significant impact on these three aspects. Thus, if you do not have an optimal and appropriate pattern or treatment to avoid or compensate for pressure on these three aspects, it will indirectly hurt the athletes themselves.

For example, quoted from Esports Lane shows the results of his research that esports athletes mostly start their careers at the age of 16-18 years and will retire at the age of 22-24 years. This means that the career period of professional players is only around six years. Not without reason, the early retirement of professional athletes is mostly due to health factors, especially when a person’s reaction time has decreased. Some of the Indonesian esports professional players who retired in their 20’s Jess No Limit who is a pro player who was once an icon of EVOS E-Sport decided to retire at the age of 23 due to mental and physical factors, besides that Kenboo from the RRQ Team also decided to retire at the age of 22. This fact illustrates that there is a high impact on esports activities that are not supported by a commensurate support system. So, based on this, appropriate treatment is needed in the form of providing rights that can guarantee the health of esports athletes, both physical and mental health.

If we compare it with other sports such as football and basketball, players in those sports can still play until the age of 30 until 40 years. This is because there is a regular improvement system, ranging from improved rest patterns, better diets, and exercise patterns under age. This can certainly be a role model to be applied to the esports ecosystem. However, along with the current development, there has been an esports team that has provided its own esports psychology or physical trainer to prevent the negative impact of esports, especially psychological pressure. Those organizations like complexity have provided gyms, performance coaching, and diets designed by nutritionists. A positive step toward making the esports ecosystem much better.

However, this only happens with middle teams or the world’s top teams. In Indonesia itself, Joshua Hadinata, who is an esports player and Co-Founder of Lazy E-Sports, explained that professional esports athletes are only given assurance and glasses. The health rights of esports athletes are not only limited to this aspect. Currently, only the team from NXL E-Sports has its own esports training center called NXL E-Sports Center, and EVOS E-Sports has also launched an integrated training facility. However, unlike the facilities that the author explained earlier, the NXL E-Sports Center only contains facilities such as a gaming room, conference room, a trophy room, *and* a history alley. Meanwhile, EVOS Integrated Training Facility contains a team-building room, streaming room, gaming room,

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<sup>16</sup> Novi Quintena Rahayu. (2019). Dilematika Hukum Kedudukan Anak Sebagai Outsourcing menurut Hukum Ketenagakerjaan. *Jurnal Hukum Samudra Keadilan*, 14(1), 131-41. <https://doi.org/10.33059/jhsk.v14i1.1275> .

<sup>17</sup> Budi Santoso. (2012). *Hukum Ketenagakerjaan Perjanjian Kerja Bersama: Teori, Cara Pembuatan, dan Kasus*. Malang: Universitas Brawijaya Press.

and leisure area. However, this is also a very positive initial step for the development of esports in Indonesia.

Meanwhile, in the aspect of wages for esports athletes in quantity, quantity is not determined in detail amount but the number of wages is based on the performance of esports athlete achievements. For the minimum standard for providing wages based on the Manpower Law, namely the Regency Minimum Wage or UMK where athletes are domiciled. Players who are outstanding or have a wealth of experience will be one of the factors influencing the increase in wages for esports players. However, sports athletes generally do not apply again after esports athletes retire, because the decision to retire will confer their contracts with teams tied to athletes. According to Hendry Koentarto Handisurya, who is a former Indonesian national team player, he said that currently the welfare of esports athletes is not guaranteed, considering that it is not clear what the fate of athletes will be after retiring. Empirically, esports athletes who have decided to retire choose to become streamers, content creators, esports analysts, and become coaches of the esports team.

Therefore, there are still many problems that need to be matured by the government in ensuring the welfare of esports players. Not only when they become athletes, but after their “athlete” status has been lost they still have the right to accommodate their welfare. That way it will realize the concept of a welfare state or welfare state because the state is required to be active to improve welfare and justice for the community through regulations and policies.<sup>18</sup>

### **3.3. Legal Structure Esports in the Context of Labor**

The legal structure in the Indonesian legal system consists of the Police, Prosecutors, Courts, Advocates, Community Institutions, and Out of Court Dispute Resolution Bodies. Related to dispute resolution regarding esports, it has actually been comprehensively regulated in the Regulation of the Executive Board of Esports Indonesia Number 34 of 2021 concerning the Implementation of Esports Activities in Indonesia. Where, there are two types of violations categorized in the rules, namely violations in the match and violations outside the match along with the mechanism for resolving violations that are interesting in the process.

Chapter XXI Article 42 contains provisions for the settlement of violations by PBESI and the types of sanctions. Violations in the match in question include using cheating programs, using jockeys or violating the rules of leagues, tournaments, and esports multi-sport events. If the violation is proven, PBESI has the right to issue administrative sanctions in the form of minor reprimands, severe reprimands, suspensions, revocation of status as professional athletes, esports teams or as vendors, dismissals, and/or fines to related parties.

While in chapter XXII articles 43-45 give legitimacy to professional players, esports teams, players including amateur players, and team representatives are allowed to submit applications related to out-of-match violation disputes to PBESI, so that such disputes can be resolved between the registered parties. Off match violations in question include misuse of PBESI’s name, breach of employment contract, transfer of players, non-fulfillment of obligations to PBESI, and/or types of violations stipulated in *a quo* regulation. Requests for dispute resolution of off-match violations submitted may be accepted or rejected by PBESI within 14 working days of the dispute resolution agreement.

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<sup>18</sup> Nehru Asyikin. (2020). Freies Ermessen sebagai Tindakan atau Keputusan Pemerintah Ditinjau dari Pengujiannya. *DIVERSI: Jurnal Hukum*, 5(2), 184-209. <https://doi.org/10.32503/diversi.v5i2.555> .

Where, PBESI is a mediator in mediation meetings. The mediation process relating to the settlement of violation disputes outside the matches between the listed parties, must be resolved within 30 (thirty) working days from the time the first mediation is carried out. Then PBESI will issue a decision that is final and binding and if the disputing party does not accept the results of the decision as stated in the minutes of dispute resolution mediation, it can submit a dispute resolution application to the Indonesian Sports Arbitrate Agency. The legal remedy mechanism is actually a form of embodiment of PBESI's function as the parent organization of esports sports which is authorized to supervise and regulate activities related to esports.

However, there is something that needs to be criticized in the dispute resolution aspect, namely the phrase "final and binding" in the decision on the settlement of violations by PBESI which is biased. This is because the existence of legal remedies to the Indonesian Sports Arbitrase Agency when the PBESI ruling was issued has actually degraded the nature of the PBESI ruling. In fact, one of the elements of a judgment can be final and binding, namely the absence of legal remedies that can be taken to change the judgment.

In addition, the PBESI ruling containing the phrase "final and binding" is contrary to the principles and principles of law in the judicial system. It should be understood that, in the judicial system, there is a principle that guides the judges in adjudicating cases, namely *iudex ne procedat ex officio* which means that judges should not be involved in the subject matter of the case. Article 24 of the 1945 Constitution of Republic Indonesia has also satisfied the principles in the judiciary with the aim of realizing a free and independent judicial system.

In the meantime, let's take a look at the function of PBESI in the Regulation of the Executive Board of Esports Indonesia Number 34 of 2021. Where PBESI has two functions, namely carrying out supervisory functions and also carrying out judicial functions. In other words, in the judicial process, PBESI will adjudicate and decide disputes and violations relating to esports based on its findings or the results of its own supervision. Thus, if the authority to supervise and adjudicate is handed over to PBESI, there is a potential for abuse of power and conflict of interest. Because the position of the judge requires that he be in a neutral position and must not be involved in the subject matter.

#### **3.4. Legal Culture Esports in the Context of Labor**

On the other hand, the legal culture in Indonesia also has its colour regarding people's views on esports. There are differences in perceptions between groups of people towards the existence of esports. So far, there has been a dualism in people's understanding of the existence of esports, namely: esports is just an online game as entertainment that does not have a perspective for the future, this understanding is usually dominated by parents, and esports is a digital sport that has complex benefits. These differences in understanding sometimes have negative implications for the existence of esports in Indonesia. Remembering, the role of parents is central in directing, guiding, assisting, and supervising the development of their children.

Meanwhile, perceptive esports is a digital sport that has complex benefits that will strengthen the existence of esports in Indonesia. Not without reason, esports has become a luminous sparkle in the international world. Reporting from Research and Markets, Asia is at the forefront as a predictor of the development of esports formation around the world while leading the global esports trend for more than two decades. In Indonesia itself, the existence of esports has had strong capital in various circles, especially the public and the government.

In the government itself, the existence of esports is very clearly visible when esports becomes one of the sports that will be competed at the XX Papua National Sports Week in 2021. In addition, Indonesian president Joko Widodo also supports esports through the 2021 Esports President's Cup. The Ministry of Education, Culture, Research, and Technology or Kemendikbudristek declared to include esports in the curriculum in Indonesia as one of the subjects in schools. Therefore, the government as a decision maker in the implementation of government has given the green light to the development of esports in Indonesia.

Meanwhile, among the public, the dominance of the millennial and millennial generations as a generation born in the era of technological development is a factor supporting the high enthusiasm of the public regarding esports. Moreover, currently, Indonesia is experiencing a demographic bonus. Based on the results of research by the ASEAN Communication Agency Veró as of 2021, it is noted that there are 52 million esports players in Indonesia.

Sociologically, based on the results of a questionnaire processed by the author, it was noted that around 46,2% of people playing esports aimed at finding a source of income, 30,8% of people aimed to become professional players, and 23,1% played online games just for entertainment. In addition, the results of our study note that the age range of esports players is at the age of 19 until 24 years. Some people play online games for 10 years.

This indicates that the existence of esports in Indonesia has risen in popularity and has penetrated all levels of society. From this fact, of course, it can be an opportunity for Indonesia to develop sports as an industry which can certainly contribute greatly to Indonesia's economic growth. Moreover, the huge population will be an important factor in Indonesia becoming a large target market in the world of sports. Therefore, it requires a careful design by stakeholders with the right regulations and policies to take advantage of opportunities in the world of esports.

Based on the results of the analysis of esports legal arrangements in terms of the legal system in the context of labor in Indonesia by taking into account three fundamental aspects, namely, legal substance, legal structure, and legal culture, there are still many problems that need to be improved to strengthen the existence of esports in Indonesia, especially those related to the rights and obligations of players.

The thing that needs to be considered comprehensively is social security. The social security in question is not only when they are esports athletes but also after they retire, such as old-age security. The very natural thing to question is, what will an esports athlete get after they retire or decide they no longer want to continue their career in the world of esports? Moreover, if they have made the country proud in the international arena or at least have contributed to the country, what can they do? Therefore, social security for esports athletes needs to be considered and comprehensively regulated as a fundamental right for athletes.

In addition, the author considers that the form of social security for athletes is not only limited to providing glasses and health insurance in the form of providing assurance, but also certainty when the athlete is no longer productive. For example, appointing athletes to become Civil Servants or BUMN Employees by established qualifications such as achievement indicators, in addition to receiving training such as pre-employment cards, pensions, and other intensives. This aims to create certainty for the careers of athletes, which in that way the athletes will also make athletes more enthusiastic and persistent in striving to give birth to achievements and make the nation proud in the international arena.

Then, the problem of supporting infrastructure for athletes also needs to be mandatory to provide. As previously explained, the infrastructure or supporting facilities for esports athletes in Indonesia can be said to be very minimal. The facility in question is in the form of gym equipment which is then equipped with the provision of Esports Psychology Services and Medical Check-up as applied by the world's top esports teams. This certainly aims to create a positive ecosystem in esports, especially for athletes, considering that esports activities are very physically, mentally, and socially draining. Therefore, to accommodate this, regulations are needed that strictly regulate by requiring every stakeholder, especially the esports team, to complete all supporting facilities in esports activities, as well as apply sanctions that heed them, such as suspension and revocation of professional esports cards and suspension of esports teams.

#### **4. Conclusion**

In terms of the regulation of esports law in Indonesia, in the substance of the law, there has not been a single law that contains explicitly and comprehensively regarding esports and the existing law has not been able to answer the concerns that occur in the field of esports that exist at this time and in the future. So, the government must form a law that explicitly regulates esports activities in Indonesia, in the form of, rights of esports athletes, especially minors, the legal position of the PBESI statute in the laws and regulations in Indonesia, and rights-obligations of esports athletes. In addition, there is a need for social security for esports athletes, where social security for athletes is not only limited to the provision of glasses and the provision of assurance, but also certainty when the athlete is no longer productive. Then, the problem of supporting infrastructure for athletes also needs to be mandatory to provide. As has been explained, the infrastructure or supporting facilities for esports athletes in Indonesia can be said to be very minimal. The facility in question is in the form of gym equipment which is then equipped with the provision of Esports Psychology Services and Medical Check-up.

To form quality esports athletes, it is necessary to have regulations that strictly regulate by requiring every stakeholder, especially the esports team, to complete all supporting facilities in esports activities, as well as apply sanctions that heed them, such as suspension and revocation of professional esports cards and freezing of esports teams. To create clarity regarding the status, rights, and obligations, as well as other things that can provide legal certainty and justice and benefits to esports players or players in Indonesia.

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**Conflict of Interest Statement:**

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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