

CHAPTER I

INTRODUCTION

1.1 Background

Law is a tool that used by a nation to achieve balance and order. So the presence of law and law entity in a nation is very important and mandatory. From The Act of criminal and Human Rights violation, law will always be a way to settle things down in the right way. Law is a set of regulations that contain orders and prohibitions which govern the order of a society and because of it, it must be obeyed by the society. Currently, technology has been a big part of every human life. It looks like the technology era have received a very large attention from many people in the world. Advancement in technology have changed the human lifestyle. Progress in the field of technology will coincide with the emergence of changes in the field of society. Changes in society can be about social values, social principles, behavior patterns organizations, and the structure of social institutions. Even though not every aspect of advancement in technology is considered positive, and it's not wise to forget about the negative aspect it would be wiser if we pay attention at the positive aspect and what could it bring for the later generation. The presence of technology is always here to make sure everyone has their opportunity for a better life in the future. Even for someone with only a passion about technology, if they are willing to learn by himself and not receive any help from others, they can still make a living from it and have a better future. That is one thing for sure we know about technology. Gaming is always a big part of technology. Both gaming and

technology play a big role for each other. We cannot deny that the advancement of gaming also relies on invention and creativity. Knowing the value that gaming brought to Indonesia, we should give gaming Industry especially e-Sports, more attention and care. From the point of view of law itself, it is unfortunate that our government doesn't have any regulation about gaming aspect. Through the explosiveness in interest and engagement in gaming industry, It would be very wise for Indonesia to make profit and bring wellness to their citizen from gaming itself. In the old-time gaming is only a thing to kill time, to have fun with some friends and family together. A lot of parents considered gaming in the old time for such a waste of time and money. However, they are not aware about the value of gaming in this time of the day. From making money, curing mental health, and actually being a real profession for a lot of people (which is called as an E-sports athlete).

Being an E-sports athlete is the dream job of a lot of teenagers nowadays. scrolling through every single platform of social media, there are a lot of content creator for the gaming category. A lot of tournaments have been held by mega electronic company, developer, even small business company because they know the value of E-sports these day and what kind of attention that it can bring to their business. Back in the day a lot of e-sport tournament has been held by small community but sadly it didn't get any kind of attention because nobody saw it as something promising and business-able. While in these days, every single company are trying to hold an E-sport competition to gain attention. From Tokopedia to small coffee shop around the street held E-sports competition for the attention. They are even willing to give a shocking amount of prize pool for the participant. As an

example, Valve a big game developer from America which also the developer of Dota 2 now hold the biggest prize pool for E-sport tournament with a shocking amount of \$40 million dollars in total. The funnier thing is that all the money from the prize pool is purely collected from the casual player of Dota 2 (from in game micro transaction, Gaming avatar, and gaming loots). let alone, how much the company own if they can throw \$40 million for a prize pool¹.

In Indonesia, E-Sports also have a lot of impact. From International to domestic competition, Indonesia have it all. The SEA games committee actually held an E-sport competition along with other sport like basketball and soccer. Indonesia was able to grab the silver medal on that competition and the President Himself, Mr. Jokowi congratulate them at Istana Negara. In Mobile Legend E-sports, A team from Indonesia called EVOS E-sports was able to finish at 1st place and bring home \$80000 with them. There are a lot more achievement that has been achieved by Indonesia in the field of E-sports. It would be great if the government pay more attention to the field of E-sports. Considering that E-sport actually bring a lot of good things to our country, not only to the player but to every single form of business from pharmacy, beauty even food and beverage the government should take it from Law point of view more seriously. Not to forget, E-sport not only give better financial status to people but it also brought a better quality of life to anyone who commit and put their time into it. Looking back into a lot of tragedy that happened in our country, there has been a lot of situations that shows where being

¹ DOT e-Sports, "How Much is The International 10's Prize Pool?", <https://dotesports.com/dota-2/news/how-much-is-the-international-10s-prize-pool>, Accessed on October 9, 2021

a professional athlete is not a promising profession in Indonesia. A lot of Indonesian professional athlete who bring glory to the name of Indonesia doesn't get the attention and appreciation they deserve and can't even have a financially stable life. Former Member of Commission X DPR RI, Muhamad Nizar Zahro, said that until now Indonesia does not have a law regarding awards for outstanding athletes. In Law Number 3 of 2005 concerning the National Sports System there is no phrase about awards.

"The government regulation from this law is even more sad, namely it does not explain who is included in the category of outstanding athletes. There is only Presidential Regulation Number 44 of 2014 concerning the Awarding of Sports Awards," said Nizar, Wednesday (25/7/2018).

"However, this Presidential Regulation is considered not strong, because the Act does not explain it specifically," he added.²

The Gerindra politician revealed that in other countries athletes are considered heroes because they bring the name of the nation to life, so they are protected by law.

² Pontas, "Miris, Indonesia Belum Memiliki UU Penghargaan Atlet Berprestasi", <https://pontas.id/2018/07/25/miris-indonesia-belum-miliki-uu-penghargaan-atlet-berprestasi/>, Accessed on October 9,2021

According to him, the solution to the welfare of national athletes can be done with two options. Namely by revising Law No. 3 of 2005 concerning the National Sports System, or by proposing a new law.

"As long as this law has not been changed or replaced by the DPR and the government, don't expect our athletes to get more awards. It is different from other countries, where the athletes are given a lifetime allowance," he said.

Nizar stated that awards for athletes will be of good value if they are carried out in an organized manner. Therefore, he invites all parties to fight for the fate of Indonesian athletes to be respected by the state. "One of them is to amend Law No. 3 of 2005 on the National Sports System or by proposing a new law," he said. Looking back to this, Author is also having the same concern as Mr. Muhamad Nizar Zahro back in 2018 because author want's the newly developed e-Sports in Indonesia doesn't have to went through this. Even though this tragedy happened not in the e-Sports industry and e-Sports, but e-Sports athlete is still considered as athlete by Indonesian Government which mean it doesn't close the possibility of the same tragedy will happen later in the e-Sports industry. The image that these tragedy projected towards whoever want to be an e-Sports athlete is very bad and crucial towards their decision whether they will keep on pursuing their career as an e-Sports athlete or just stop now and work as a corporate worker just like anybody else because it is more stable and they can make a future, have a family, and fulfill their financial and welfare goals in life .It is only natural for someone to step out of something if they saw

a bad example or tragedy happened to that thing, because this is a natural human instinct.

Looking into the law aspect, Author see a specific legal vacuum that obliged the government to give their appreciation to athlete. Before talking about that, there aren't any specification about what is even considered as "help the development of sports" in Presidential Regulation number 44 of 2014? Is it anyone who can bring a medal from an international competition? Is it for anyone who develop a new innovation for sports industry? Because all the example mentioned above is considered as helping the development of e-Sports in Indonesia. There isn't any form of legal certainty that make sure all the award stated at Presidential Regulation Number 44 of 2014 will be received by whoever "help the development of sports" which the definition and categorization of it is still not clear yet will be received. Secondly, as a fan of sports, it is undeniable the athlete is one of the core components of any sports. If there is no athlete, there will be no such sports. The qualification in order to be considered as a professional athlete in Indonesia is not good enough or it is not even legally regulated by Indonesian legal system, The certainty in this legal matter is very important, because the vacuum of legal certainty during qualification process to decide someone is qualified enough to be an athlete will make sure that the right person is qualified because of the rules, not anything else. There will be no room for bribery, nepotism and other immoral action that can make anyone be an athlete without being legally qualified. In the perfect world, author believe to be considered as a professional athlete every individual

need to fulfill some sets of qualification that has been regulated by that specific fields of sport in the first place and every individual in that field of sports need to do their qualification process by following the same specific regulations. This is where the principle of legal certainty is very important for these two main problems. regarding the principle of legal certainty, in fact the existence of the principle of legal certainty is interpreted as a situation where the law is certain because of the power concrete for the law in question. The existence of the principle of legal certainty is a form of protection for judicial (justice seekers) against arbitrary actions, which means that someone will and can get something that is expected in certain circumstances. This statement is in line with what Van Apeldoorn said that legal certainty has two aspects, namely that the law can be determined in concrete matters and legal security, means that the party seeking justice want to know what is the law in a certain matter before he starts cases and protection for justice seekers. Further regarding legal certainty, Lord Lloyd said that: “law seems to require a certain minimum degree of regularity and certainty ,for without that it would be impossible to assert that what was operating in a given territory amounted to a legal system”³ From this view, it can be understood that without legal certainty, people don't know what to do and finally uncertainty arises(uncertainty) which will eventually lead to violence (chaos) due to indecision legal system. Thus, legal certainty points to

³ Mirza Satria Buana, Hubungan Tarik Menarik Antara Asas Kepastian Hukum (Legal Certainpi) Dengan Asas Keadilan(Substantial Justice) Dalam Putusan-Putusan Mahkamah Konstltusi, Yogyakarta: Tesis, Muslim University of Indonesia Faculty of Law 2010, Page. 34.

the implementation of clear, permanent and consistent law whose implementation cannot be influenced by subjective circumstances. Interpreting this statement to our formulation of problem, this means that as long as there is no legal certainty qualification process will help giving consistency a form of uniformity without causing confusion and injustice toward different person. The absence of legal certainty in these two problems will lead people to act however they want to benefit their own interest in the first place. We have to remember that Legal certainty is included in the basics of legal value. If a form law doesn't fulfill one of their own basics values that means, the law itself is not working properly as intended. The best use of a terrible experience is to learn from it, and make sure it doesn't happen again. Despite of the many bad things that happen in Sports industry, author is confident to say it is not too late to prevent this from happening to e-Sports industry especially e-Sports athlete. Author feels like, a lot of appreciation that are actually received by e-Sports athlete is solely because of good deeds, not because it is an obligation. As an example, Indonesian President, Joko Widodo conveyed all and the highest appreciation to Indonesia who has fought for the Tokyo 2020 Paralympics. This appreciation was conveyed by the Head of State when receiving the Indonesian contingent at the Bogor Presidential Palace, West Java, on Friday, September 17, 2021⁴. For the achievements, the government gave appreciation awards in the form of

⁴ Presiden Ri, "Presiden Berikan Apresiasi dan Penghargaan Kepada Atlet Paralimpiade Tokyo 2020", <https://www.presidentri.go.id/siaran-pers/presiden-berikan-apresiasi-dan-penghargaan-kepada-atlet-paralimpiade-tokyo-2020/>, Accessed on November 1, 2021

bonuses to all medal-winning athletes and coaches as well as non-medal-winning athletes. Leani Ratri Oktila, Hary Susanto, and Khalimatus Sadiyah who won the gold medal were given a bonus of Rp. 5.5 billion each. Meanwhile, silver medalists on behalf of Leani Ratri Oktila, Ni Nengah Widiasih, and Dheva Anrimusthi each received a bonus of Rp. 2.5 billion. The bronze medalists, namely Suryo Nugroho, Fredy Setiawan, David Jacobs, and Sapto Yogo Purnomo, each received a bonus of Rp. 1.5 billion.

This is a very good move made by our government and author really appreciate it, but still author seeing this appreciation is only delivered because the government feels like the government only do it because they want to and because they are not obliged to do so. Author want to do an analysis regarding our legal system and find if there is any actual way that can make this appreciation delivery is a certain thing and must be done. Although there are a lot of things that need to be discussed regarding e-Sports or e-Sports athlete, Author will not talk about tax and earning of an e-Sports athlete because in order to talk about such matter author need to have a knowledge and education on that matter. Author will stick to the matter of legal certainty and three basics value of law to seek final answer toward chapter four of this. Author will only strictly use professional athlete as an object while doing this research and the word athlete that are found in this research is leading towards Professional e-Sports athlete or Professional Athlete in general. By this, author choose the title” Legal Certainty for Indonesian e-Sports Athlete in Qualification and Awards”

1.2 Formulation of Problem

Formulation of problem are needed to set boundaries and be as critical as it can be in order to achieve a satisfying result. In this matter author identified a set of problem that need to be pointed out before proceeding with the research which is :

- a) Incident where athletes do not receive their awards and appreciation for their achievements
- b) No direct regulations have yet been found that oblige the government to give appreciation to athlete that uphold the name of Indonesia or contribute towards the development of sports in Indonesia
- c) There is a lack of clarity to qualify as an athlete legally in Indonesia

Because of that, the formulation problem that author will specifically talk about are:

1. What are the specific qualification that need to be fulfilled legally to be a professional e-sport athlete in Indonesia?
2. Can the government legally guarantee their appreciation and awards for e-Sports athlete who contribute to Indonesia in the field of e-Sports?

1.3 Purpose of Research

According to Soerjono Soekanto (2010), “research is the main part of science knowledge which aims to know more deeply into every aspects of life.

Research is also a means to develop knowledge.”⁵ Knowledge both from a theoretical and practical perspective. Likewise, the writers in conducting this research have certain goals to be achieved. The author's aim in this research include:

1. To increase and expand knowledge and understanding of legal aspects as a theory and practice, especially in the field of E-sports.
2. To find the best way for Indonesian government to be obliged on giving their appreciation towards the achievement of E-sports athlete in Indonesia currently and what can be done in the future
3. To find the qualification for someone to be categorized as qualified e-Sports athlete and what can be done to make the qualification process better

1.4 Benefits of Research

Looking back into the title of this thesis, author hope that this Research will bring benefits, theoretically and practically.

1.4.1 Theoretical Benefits

Theoretical benefits are benefits related to science knowledge, In this case in the field of law. Author hopes that:

1. This thesis can benefit people how want to have more knowledge about the legal aspect in e-Sports industry

⁵ Zainuddin Ali, “Metodologi Penelitian Hukum”,(Jakarta : Sinar Grafika, 2010), Page 18

2. This thesis will help the development of the legal aspect of e-Sports in Indonesia to give e-Sports especially Indonesian e-Sports athlete a better future.
3. For Indonesian government if they decide to review their regulation regarding UU Number 3 of 2005 Concerning National sport system. This thesis will also review UU Number 3 of 2005 and PBESI Regulation mostly, with the three basics of law values theory in order to see if the law itself can give legal certainty to Indonesian e-Sports athlete

1.4.2 Practical Benefits

1. For e-Sports athlete, to be more aware of their right and obligation as an athlete
2. For reader of this thesis, to help further develop their knowledge about the impotence of legal certainty in a legal system
3. For Indonesian government, to help them direct the development of e-Sports in Indonesia to the right direction

1.5 Framework of Writing

The main focus of chapter one is identifying the problem to form a formulation of problem. Author will first describe and share author concern about the title that author choose in the background part of chapter one after that, Author will identify the problem and formulate the problem into 2 different issues. In this, author will also put the purpose of this research and the benefits of it, practically and theoretically.

At chapter two, author will display and explain about the theory and principle that author use to review the primary legal data that are used later to solve the issues in formulation of problem. Author will also use a conceptual framework to dictate what are the corresponding information that will help this research

At chapter three author will explain why author use such type of research and why does it suit this thesis the best, type of data, how author use the data, approach, and how author will use the data. All of the option author choose in chapter 3 will be processed to work in conjunction with the theory and principle that author choose in chapter two of this thesis

At chapter four author will analyze the data that author have processed in chapter three while doing research and explain in further regarding the use of them toward first and second formulation of problem. Author will state how the data, facts, and example that author get helps solving the formulation of problem by cultivating those data and applying the theory and principle that author choose in chapter two to get final answer.

At chapter 5, author will conclude and state the final answer to the formulation of problem in this thesis and make sure that its in a line with the purpose of this research in chapter one. Finally, author will give a short advice that will refer accordingly to what is stated in benefits of research