



Delineating Jurisdictional Boundaries of Lex Sportiva: A Comparative Study of Indonesia and Italy

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Abstract

Football raises serious legal problems when incidents of assault on the pitch intersect with two distinct normative systems simultaneously: lex sportiva as the autonomous legal order of international sports organisations, and national criminal law. In Indonesia, Law No. 11 of 2022 on Sports and Law No. 1 of 2023 on the New Criminal Code fail to explicitly regulate the jurisdictional boundary between the two, creating a normative vacuum that undermines legal certainty and victim protection. This research aims to analyse the applicability of lex sportiva in assault incidents on the football pitch under the legal systems of Indonesia and Italy, and to propose a reform model for delineating this jurisdictional boundary in Indonesia. This normative legal research employs a statutory approach, a comparative approach, and a conceptual approach, with functional comparative analysis as the primary analytical technique. The results demonstrate that the applicability of lex sportiva in Indonesia is de facto unlimited due to the normative vacuum, while Italy through D.L. 220/2003 and the jurisprudence of the Corte di Cassazione has constructed explicit and systematic jurisdictional boundaries through an autonomy-limiting clause and an exhaustive definition of the federation's exclusive domain. This study concludes that the absence of an explicit jurisdictional boundary in Indonesia results in weak legitimacy of lex sportiva autonomy. This study recommends that the Parliament and Government amend Law No. 11 of 2022 by incorporating provisions that adapt the limiting principles of Art. 1(2) and Art. 2 of Italy's D.L. 220/2003.

1. Introduction

Football, as the world's most popular sport with over four billion followers globally, harbours serious legal complexity when physical incidents on the pitch intersect with two distinct normative systems simultaneously: *lex sportiva*—the autonomous legal order constructed by international sports organisations—and national criminal law. The fundamental question that emerges is whether an act of deliberate violence causing serious injury should be resolved solely through the internal disciplinary mechanisms of a federation such as PSSI or FIFA, or whether the state retains an obligation and authority to process the offender through criminal channels.

In Indonesia, Law No. 11 of 2022 on Sports and Law No. 1 of 2023 on the New Criminal Code do not explicitly regulate the jurisdictional boundary between *lex sportiva* and state criminal law. This creates a normative vacuum that enables perpetrators of assault to invoke the argument that the matter has already been resolved by PSSI or FIFA, while victims lack clarity as to the legal recourse available to them. This condition is fundamentally inconsistent with the principles of legal certainty and victim protection that constitute the foundation of Indonesia's criminal law system.¹

Italy, by contrast, has developed a more structured normative framework through Decreto-Legge n. 220 of 2003 (as converted by Legge n. 280 of 2003), which explicitly establishes the jurisdictional boundary between the sports legal order (*ordinamento sportivo*) and the state legal order (*ordinamento della Repubblica*). This framework is reinforced by the jurisprudence of the Corte di Cassazione, which has crystallised the principles of *proporzionalità* and *dolo specifico* as operative criteria for determining when *lex sportiva* loses its jurisdictional force.²

Given that both Indonesia and Italy subscribe to the civil law tradition, a comparative study between their respective approaches offers a normative mirror

¹ Ardhian Fadillah Rindiarto and Emilia Rusdiana, "Kajian Yuridis Lex Sportiva Terhadap Pemidanaan Pemain Sepakbola," *Novum: Jurnal Hukum* 8, no. 2 (2021).

² Guido Vidiri, "Il Diritto Sportivo Tra Ordinamento Statale e Ordinamento Sportivo," *Rivista Di Diritto Sportivo* 1 (2014): 40.

that is methodologically sound and practically relevant. This article examines two central questions: first, how does lex sportiva operate in incidents of assault on the football pitch under the legal systems of Indonesia and Italy; and second, how can the legitimacy of lex sportiva autonomy be realised in Indonesia.

2. Problem Statement

This research is directed at two primary questions. First, how does lex sportiva operate in incidents of assault on the football pitch under the legal systems of Indonesia and Italy? Second, how can the legitimacy of lex sportiva autonomy be realised in Indonesia? These questions are interrelated: the first establishes the empirical and normative baseline through comparative analysis, while the second builds upon that baseline to propose a reform model. Together, they address the core normative gap identified in this research—the absence of an explicit jurisdictional boundary between lex sportiva and state criminal law in Indonesian positive law.

3. Methods

This research employs normative legal research methodology (penelitian hukum normatif). The research is library-based, working with legal materials rather than empirical field data. Three complementary approaches are applied concurrently. The statutory approach examines the textual content and normative structure of the relevant primary legal instruments: Law No. 11 of 2022 on Sports; Law No. 1 of 2023 on the New Criminal Code; Decreto-Legge n. 220 of 2003 as converted by Legge n. 280 of 2003; the Codice della Giustizia Sportiva (CGS) of FIGC; FIFA Statutes; and the PSSI Disciplinary Code. The comparative approach juxtaposes the Indonesian and Italian legal systems based on a shared tertium comparationis—the question of how each system regulates the jurisdictional boundary between lex sportiva and criminal law in football. The conceptual approach applies the theories of lex sportiva (Latty, Foster, Siekmann), legal certainty (Radbruch, Otto), and legal transplants (Watson) to analyse the normative structures identified.³

³ Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law*, 3rd ed. (Oxford: Oxford University Press, 1998), 36.

The primary analytical technique is functional comparative analysis as developed by Zweigert and Kötz, which compares not merely the text of norms but their functional operation in solving the same legal problem across different legal systems.⁴ Legal materials are classified into primary sources (statutes, regulations, and jurisprudence) and secondary sources (legal doctrine, academic journals, and textbooks). Analysis proceeds deductively, from general principles to specific normative conclusions.

4. Main Heading of the Analysis or Discussion or Results

4.1 Lex Sportiva: Concept and Characteristics

Lex sportiva refers to the transnational set of norms autonomously developed by international sports organisations to govern all aspects of sporting activity – from rules of play and athlete conduct to dispute resolution and sanctions – without dependence on any national legal system.⁵ Franck Latty conceptualises lex sportiva as a transnational *ordinamento sportivo* possessing all the attributes of a legal system: normative sources, adjudicative mechanisms, and enforceable sanctions.⁶ Ken Foster characterises it as a private legal order with global reach, while Robert Siekmann distinguishes between lex sportiva in the strict sense (the body of law produced by CAS jurisprudence) and in the broad sense (encompassing all norms produced by international sports organisations, including FIFA).⁷

Lex sportiva is characterised by five distinctive features: it is transnational (applying uniformly across all FIFA member federations regardless of national legal systems); autonomous (claiming independence from state legal systems); hierarchical (with FIFA Statutes at the apex, followed by confederal regulations, national federation rules, and club regulations); self-enforcing (through internal disciplinary bodies and CAS arbitration); and premised on the doctrine of

⁴ Zweigert and Kötz., 40.

⁵ Franck Latty, *La Lex Sportiva: Recherche Sur Le Droit Transnational* (Leiden: Martinus Nijhoff, 2007)., 7.

⁶ Latty., 10.

⁷ Ken Foster, “‘Is There a Global Sports Law?’” *Entertainment Law* 2, no. 1 (2003)., 2.

volenti non fit injuria (the implicit consent of participants to risks inherent in the sport).⁸

The doctrine of volenti non fit injuria, however, has limits. Participants consent only to risks that are inherent and reasonably foreseeable within the rules of the game—not to deliberate violence designed to injure. When an act transcends the boundaries of sporting risk and meets the elements of a criminal offence, lex sportiva loses its protective mantle.⁹

4.2 Applicability of Lex Sportiva in Indonesia

In Indonesia, lex sportiva derives its normative basis primarily from two sources. First, Law No. 11 of 2022, specifically Article 36, provides implicit recognition of the authority of national sports organisations to regulate their respective sports in accordance with the rules of their respective international federations.¹⁰ Second, Indonesia's membership of FIFA through PSSI automatically binds PSSI to FIFA Statutes and the FIFA Disciplinary Code, which under Article 68 of the FIFA Statutes prohibit referral of disputes to ordinary courts.¹¹

However, neither Law No. 11 of 2022 nor Law No. 1 of 2023 contains an explicit provision delimiting the boundary between the disciplinary jurisdiction of the federation and the criminal jurisdiction of the state. There is no sports exception clause—no provision recognising implied consent in sport as a ground eliminating the element of unlawfulness—and no exhaustion of internal remedies clause requiring parties to exhaust federation mechanisms before approaching state courts.¹²

The consequence of this normative vacuum is a condition of de facto overreaching: lex sportiva in Indonesia operates as though it possesses unlimited and exclusive jurisdiction over all incidents on the football pitch, including acts that objectively satisfy the elements of assault under Articles 466 and 467 of

⁸ Mark James, *Sports Law*, 3rd ed. (London: Palgrave Macmillan, 2017), 98-100.

⁹ James, 115.

¹⁰ "Undang-Undang Nomor 11 Tahun 2022 Tentang Keolahragaan" (2022).

¹¹ FIFA, "FIFA Statutes" (2023).

¹² Dicky Eko Prasetyo, "Lex Sportiva Dalam Hukum Keolahragaan Indonesia: Otonomi, Independensi, Dan Harmonisasi Dengan Hukum Nasional," *Justitia Jurnal Hukum* 7, no. 2 (2023).

Law No. 1 of 2023.¹³ This condition conflicts with the principle of legal certainty (rechtssicherheit) and the principle of victim protection (slachtofferbescherming) that are foundational to Indonesian criminal law.¹⁴

4.3 Applicability of Lex Sportiva in Italy

Italy has developed one of the most structured normative frameworks in Europe for regulating the relationship between the sports legal order and the state legal order. Decreto-Legge n. 220 of 2003, converted by Legge n. 280 of 2003, constructs this framework through a three-tiered normative architecture.¹⁵ Article 1 establishes the principle of autonomy of the ordinamento sportivo while simultaneously containing a limiting clause: the relationship between the sports legal order and the state legal order is governed by the principle of autonomy, "salvi i casi di rilevanza per l'ordinamento giuridico della Repubblica di situazioni giuridiche soggettive"—except in cases involving subjective legal situations of relevance to the state legal order, including the right to physical integrity.¹⁶ Article 2 defines the exclusive domain of the federation exhaustively and limitatively, encompassing only: (a) compliance with regulatory, organisational, and statutory sports norms; and (b) conduct relevant to sports discipline and the imposition of related disciplinary sanctions.¹⁷ Because this definition is exhaustive, acts falling outside these two categories—including assault satisfying the elements of a criminal offence—automatically fall under state jurisdiction through Article 3.¹⁸

The Codice della Giustizia Sportiva (CGS) of FIGC operationalises these principles at the federation level, explicitly recognising that disciplinary sanctions and state criminal sanctions are non-exclusive—both may be imposed for the same act without violating the principle of ne bis in idem, since they emanate from different legal orders protecting different interests.¹⁹

¹³ "Undang-Undang Nomor 1 Tahun 2023" (n.d.). Pasal 466-467.

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Jakarta: Kencana, 2017).

¹⁵ "Decreto-Legge 19 Agosto 2003, n. 220" (n.d.).

¹⁶ Decreto-Legge 19 agosto 2003, n. 220., Art. 1(2)

¹⁷ Decreto-Legge 19 agosto 2003, n. 220., Art. 2(1)

¹⁸ Decreto-Legge 19 agosto 2003, n. 220. Art. 3(1)

¹⁹ "Codice Della Giustizia Sportiva" (Rome, 2023).

The jurisprudence of the Corte di Cassazione has further crystallised the jurisdictional boundary through two central principles. The principle of *proporzionalità* holds that a player's conduct is assessed against the standard of what is proportionate to the ordinary context of play: a forceful but legitimate tackle in a ball contest remains within the domain of *lex sportiva*, while a kick directed at an opponent who has already fallen and is no longer playing the ball crosses into the criminal domain.²⁰ The principle of *dolo specifico* provides that *lex sportiva* loses its applicability when the actor possesses a specific intent to injure (*dolo specifico*) unrelated to the dynamics of play.²¹

4.4 Comparative Analysis

The comparative analysis between Indonesia and Italy reveals both significant commonalities and fundamental differences. Both systems share the civil law tradition, recognition of *lex sportiva* autonomy, FIFA membership through their respective national federations, the availability of state criminal law as a normative instrument, and formal acknowledgment of the principle of *ne bis in idem*. These commonalities establish the methodological legitimacy of the comparison and demonstrate that the differences in outcomes are attributable to deliberate legislative choices rather than structural incompatibilities.²²

The fundamental difference lies in whether the jurisdictional boundary has been codified. Italy possesses an explicit limiting clause (Art. 1 D.L. 220/2003), an exhaustive definition of the federation's exclusive domain (Art. 2), a residual jurisdiction clause vesting all remaining matters in state courts (Art. 3), and an institutionalised coordination mechanism between the federation and law enforcement (CGS FIGC). Indonesia possesses none of these normative instruments. The consequence is that Italy's *lex sportiva* operates with proportional and bounded authority, while Indonesia's operates with *de facto* unlimited authority – a distinction that directly implicates legal certainty and victim protection.²³

²⁰ Vidiri, "Il Diritto Sportivo Tra Ordinamento Statale e Ordinamento Sportivo.", 40.

²¹ Vidiri., 42.

²² Zweigert and Kötz, *An Introduction to Comparative Law.*, 42.

²³ Prasetio, "Lex Sportiva Dalam Hukum Keolahragaan Indonesia: Otonomi, Independensi, Dan Harmonisasi Dengan Hukum Nasional.", 12.

4.5 Towards Legitimacy: A Three-Tier Reform Model for Indonesia

Based on the comparative analysis and the theory of legal transplants as articulated by Alan Watson, this article proposes a three-tier reform model adapted from the Italian framework to the Indonesian legal context.²⁴

The first tier requires amendment of Law No. 11 of 2022 to incorporate four explicit clauses: (a) an autonomy recognition clause acknowledging the primary and exclusive disciplinary jurisdiction of recognised national sports federations; (b) an exhaustion of internal remedies clause rendering state court proceedings inadmissible until all internal federation mechanisms—including internal appeals—have been exhausted; (c) a threshold clause specifying that state courts have jurisdiction over sports-related matters only where the incident constitutes assault resulting in grievous bodily harm under the New Criminal Code, involves a fundamental due process violation by the federation, or involves legally recognised interests incapable of adequate resolution through federation mechanisms; and (d) a *ne bis in idem* effect clause recognising that final disciplinary decisions of the competent sports federation constitute a final settlement for the purposes of *ne bis in idem* in subsequent state criminal proceedings.²⁵

The second tier requires implementing regulations under Law No. 1 of 2023 to fill the sports exception gap: an operational definition of physical contact in sport that does not satisfy the element of unlawfulness (acts within the rules of the game that do not exceed what a reasonable participant could anticipate); guidance for prosecutors on applying the *opportunitateisbeginsel* in sports-related cases; and a formal coordination procedure between Polri (national police) and the relevant sports federation during ongoing disciplinary proceedings.²⁶

The third tier requires internal reform of PSSI to build legitimacy from within. Drawing on the *giusto procedimento* standard applied to FIGC under Italian administrative law, PSSI should revise its Disciplinary Code to guarantee

²⁴ Alan Watson, *Legal Transplants: An Approach to Comparative Law*, 2nd ed. (Athens: University of Georgia Press, 1993), 21.

²⁵ Decreto-Legge 19 agosto 2003, n. 220., Art. 1-3.

²⁶ James, *Sports Law*, 120.

procedural rights (the right to be heard, the right to legal representation, and the obligation to provide reasons for decisions); strengthen the independence of the Disciplinary Commission and Appeals Commission through transparent selection mechanisms and conflict-of-interest safeguards; and formally acknowledge the jurisdiction of the Court of Arbitration for Sport (CAS) as the external final appellate mechanism.²⁷

Conclusion

The applicability of *lex sportiva* in incidents of assault on the football pitch reveals a fundamental divergence between Indonesia and Italy. This article's central contribution lies in clarifying the jurisdictional relationship between *lex sportiva* and the criminal justice system, which underpins the reform model proposed below. In Indonesia, the absence of an explicit jurisdictional boundary renders the practical application of *lex sportiva* unrestricted, enabling PSSI disciplinary mechanisms to absorb cases that objectively meet the elements of criminal assault—at the expense of legal certainty and victim protection. Italy, through D.L. 220/2003 and the jurisprudence of the Corte di Cassazione, has constructed an explicit, systematic, and proportional jurisdictional boundary that is simultaneously respectful of sports autonomy and protective of fundamental individual rights.

The autonomy of *lex sportiva* in Indonesia currently possesses only weak formal legitimacy and lacks adequate substantive legitimacy. Full legitimacy can be achieved only if four cumulative conditions are met: explicit normative recognition accompanied by a limiting clause; a disciplinary mechanism meeting due process standards; guaranteed victim access to state courts for matters involving fundamental rights; and institutional coordination between the federation and state law enforcement. The Parliament and Government of Indonesia are urged to amend Law No. 11 of 2022 by incorporating provisions that adapt the limiting principles of Article 1(2) and Article 2 of Italy's D.L. 220/2003, thereby providing a constitutionally sound and internationally compliant normative foundation for the regulation of *lex sportiva* in Indonesian football.

²⁷ "Codice Della Giustizia Sportiva."

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