



UDC 34

IMAGE RIGHTS OF FOOTBALL PLAYERS IN THE PERSPECTIVE OF INTELLECTUAL PROPERTY PROTECTION IN INDONESIA

Hermiono Budi*, Doctoral Candidate
Suhariningsih, Professor
Puspitawati Dhiana, Yuliati, Lecturers
Faculty of Law, University of Brawijaya, Malang, Indonesia
*E-mail: budihermono4@gmail.com

ABSTRACT

The 2009 policy of the Indonesian football league management, mandating that football clubs competing in the 2009-2010 Indonesian Super League must be legal entities, resulted in the transformation of several clubs that maintained amateur status. Amateur associations, funded through the regional budget regulated by the Ministry of Home Affairs Regulation No. 13 of 2006, revised to Ministry of Home Affairs Regulation No. 59 of 2007, underwent this transition. One notable example of an amateur association evolving into a professional club is Persib Bandung, which established a legal entity in the form of a Limited Liability Company (PT) known as PT Persib Bandung Bermartabat (PT PBB). A professional measure taken by PT PBB involved entering into contracts with individual players. One clause stipulated in these contracts pertained to image rights, the management of which was held by PT PBB, with players entitled to royalties for the use of their image rights. This research examines and analyzes image rights from the perspective of Intellectual Property Rights as a component of property law within the civil law concept. The study utilizes a qualitative analysis with a normative legal approach. The research concludes that the image rights referred to in the contracts of Persib Bandung players constitute objects eligible for the protection of intellectual property rights, specifically copyright and trademark rights.

KEY WORDS

Image rights, intellectual property rights, objects.

Football is one of the popular sports in Indonesian society, alongside badminton. The history of football competitions in Indonesia has seen the existence of two major leagues: one involving amateur clubs, known as the "perserikatan" competition, and another involving professional clubs, which participated in the Galatama competition. Amateur clubs during that period were often associated with specific regions, as they were initiated by local government authorities and funded through the Regional Revenue and Expenditure Budget (APBD). In contrast, Galatama competition featured "private" clubs that self-funded their participation.

The disparity in funding sources led to differences in the quality of clubs and competitions. In 1994, an attempt was made to merge these two competition poles into a league named Liga Indonesia. However, there was an imbalance in the quality of clubs participating in Liga Indonesia, with those originating from the perserikatan having higher quality compared to those from the former Galatama. This discrepancy was linked to the availability of club funding, especially in preparing high-quality players. Consequently, at the outset of Liga Indonesia, former perserikatan clubs dominated the league. Recognizing this imbalance, the Indonesian Football Association (PSSI) and the Liga Indonesia operator decided to prohibit clubs competing in Liga Indonesia from using funds sourced from APBD. This prohibition was enacted in 2009 or during the 2009-2010 competition season. Based on the Ministry of Home Affairs Regulation No. 13 of 2006 regarding the Technical Guidelines for Regional Financial Management (Permendagri 13/2006), which was later revised to Ministry of Home Affairs Regulation No. 59 of 2007 concerning Amendments to Ministry of Home Affairs Regulation No. 13 of 2006 regarding Guidelines for Regional Financial Management (Permendagri 59/2007), PSSI and Liga Indonesia operator mandated that



clubs, especially former perserikatan clubs, must become professional clubs (no longer using APBD as club funding) and must be professionally managed under a legal entity.

Persib Bandung, as a former perserikatan club, responded to the policy set by the Indonesian Football Association (PSSI) by restructuring the club as a legal entity and ceasing the use of regional revenue and expenditure budget (APBD) funding. The consequence of this decision was that the club had to actively seek investors and sponsors to secure financing, covering expenses such as player and coach salaries, as well as those of team officials. Operating under the legal entity named PT Persib Bandung Bermartabat (PT PBB), Persib Bandung implemented professional club management processes. One notable aspect of this transformation involved the establishment of contracts between the club and its players. These contracts resembled typical employment contracts as defined by employment Law No. 13 of 2003.

Within these employment contracts, an interesting aspect agreed upon by both parties pertained to image rights. Although image rights were not explicitly stated as a part of the contract, they were addressed under the section on performance rights, specifically in Article 11 of the contract. Article 11.1 of the contract stated, "with the consent of the second party, the first party may use the image of the second party, as an individual or as part of the club, related to activities promoting the first party, PSSI, liga, including in the context of publications, advertising, and sponsor cooperation." it should be noted that this clause may have undergone changes, given that the contract between PT PBB and the players was formed in the year 2015.

In several news articles, it has been reported that the transfer of Juventus player paulo dybala to Manchester United was canceled due to issues related to his image rights, which were owned by a third party that had previously served as the player's agent. Another high-profile football star, lionel messi, had also considered canceling his move to paris saint-germain (psg) due to a lack of agreement regarding his image rights at psg. Both examples illustrate that image rights are exclusive and economically valuable assets owned by individuals. In this context, image rights are inherent to both individuals and entities. Based on these instances, there is a need for analysis or examination of image rights to determine whether legal protection can be provided, ensuring legal certainty for the rights' owners.

METHODS OF RESEARCH

The research methodology employed to analyze the issue involves utilizing the legal research method with a legislative and conceptual approach. The conceptual approach is applied to assist norms in the prescriptive process in interpreting image rights, particularly from the perspective of civil law and intellectual property law. This is done to obtain a description of legal protection for image rights, specifically for players in the context of the sport of football.

RESULTS AND DISCUSSION

Image Rights from the Perspective of Object Law. In this section, we will analyze and discuss the concept of image rights, which serves as a phrase to describe something owned by a player, specifically a football player promised in an employment contract with the club where they play. An illustrative example is the contract of Persib Bandung players in 2015, regulated by Article 11.1, stating that "The first party, with the consent of the second party, may use the image of the second party, either as an individual or as part of the club, related to activities promoting the first party, PSSI, LIGA, including in the context of publications, advertising, and sponsor cooperation." The first party in this contract is PT PBB as the manager of Persib Bandung, and the second party is the player engaged (considered to be working) for Persib Bandung.

The continuation of Article 11.1 extends to Article 11.2, which stipulates that "The second party has the right to income in any form agreed upon by the parties," and Article 11.3 asserts that "income received by the second party related to the use of the second



party's image becomes the exclusive right of the second party." Both clauses provide an overview that image rights can yield economic benefits to their owner, and these rights are exclusive. The term "exclusive," when approached hermeneutically, signifies a quality of uniqueness for the owner, specifically related to the exploration and exploitation of their image, resulting in economic benefits. These characteristics, namely exclusivity and economic utilization, indicating ownership of the image, are then further scrutinized from a legal perspective to ascertain whether legal protection can be accorded to a player's image.

Civil law positions objects as entities owned by legal subjects, whether individuals or legal entities. The legal concept of objects differentiates them into tangible and intangible entities, with goods representing tangible objects and rights representing intangible ones. Property rights, generally associated with legal subjects who possess the corresponding objects, exhibit varying legal consequences for control and ownership of an object in Civil Law. A legal subject in control of an object cannot be considered as owning it; hence, the legal term "bezit" is acknowledged.

One fundamental principle of property rights is their transferability, allowing objects, including intangible entities such as intellectual property rights, to be transferred from one party to another. This principle is explicitly articulated, as seen in Copyright Law No. 28 of 2014, Article 16 paragraph (1). Now, how about image rights? Is the concept of image rights considered part of intellectual property rights?

When discussing image rights as a phrase and employing a linguistic approach, it becomes imperative to deconstruct the phrase into two constituent words rights and image. Comprehending rights as a form of wealth is an abstract matter. The concept of rights can be traced from ancient Roman legal texts to contemporary international legal documents. Hohfeld attempted to create an analytical framework regarding the abstract logic of rights, defining rights as counterbalanced against obligations, privileges, powers, and immunities (Susanti, 2017). From Hohfeld's framework, we infer that rights are intrinsic to humans, forming the foundation for obligations.

In this research, rights are interpreted as one manifestation of wealth. This wealth is owned by subjects within the legal context. According to the Burgerlijk Wetboek (BW), Article 499 states that "objects are every item and every right that can be the object of ownership." To comprehend rights as referred to in Article 499 BW, attention is directed to Article 503 BW, which distinguishes tangible and intangible objects. Hohfeld provides a perspective that rights are abstract but perceivable when discussed (Susanti, 2017). As an object that can be owned, rights hold a position similar to tangible goods, with the primary distinction being that tangible goods are directly perceivable by human senses.

The concept of rights as wealth and the concept of rights as the foundation of an obligation operate in different contexts. By analogizing the concept of rights as an object, it is suggested that rights can be controlled and/or owned. The linguistic approach is more effective in interpreting the abstraction of rights as the foundation of existence and obligation. The presence of objects that can be owned by a legal subject, based on the utilitarian concept advocated by Jeremy Bentham, is anticipated to furnish benefits to the owner. Consequently, legal protection is essential to enable the owner to maximize the utilization of their rights.

"The theory of natural law, originally grounded in Aristotle, posits that every human is bestowed with the ability by the creator to think and create" (Susanti, 2017). The theory of natural law is one of the cornerstones for safeguarding the outcomes of human thought. According to this theory, humans, as beings created by God, are conferred with authority in their actions and the use of their intellect. The intellect is endowed with creativity, allowing individuals to produce something valuable in their lives. Rights, as objects protected under this theory, embody the products of intellectual activity.

The concept of rights as wealth is already inherent in civil law, with one example being the right to claim. The right to claim arises from the existence of an agreement based on a debt relationship between a creditor and debtor. The creditor owns or has something that can be claimed from the debtor, i.e., the debt. In this case, the debt represents a form of wealth owned by the creditor due to lending to another party. Both the right to claim and intellectual



property rights, in a linguistic approach, can be interpreted as rights (in the concept of wealth), in the form of claims or intellectual property.

In both the realm of claims and intellectual property rights, linguistically speaking, both can be construed as a right (within the framework of wealth), taking the form of either a claim or intellectual property. This warrants discussion to ascertain the essence of "image" in the context of image rights. There are two interpretations within the phrases "claims rights" and "intellectual property rights." In the phrase "intellectual property rights," we also encounter the term "intellectual property," where both (intellectual property rights and intellectual property) inherently have distinct meanings. Intellectual property can be defined as the wealth arising from human intellectual capabilities (Roisah, 2015). In this context, wealth refers to works produced by individuals through the application of their intellectual abilities, involving time, thought, emotion, and effort, which also possess economic value or benefit for the individuals themselves. On the other hand, intellectual property rights constitute private rights granted to individuals who produce intellectual works.

The understanding of the disparity between intellectual wealth and intellectual property rights can be observed in the definitions of trademarks and rights to trademarks in Law Number 20 of 2016 concerning Trademarks and Geographical Indications (UU MIG). The right to a trademark is one component of intellectual property rights, falling under industrial intellectual property rights (Djumhana, 2006). Article 1, clause 1 of UU MIG states that a "trademark is a sign that can be represented graphically in the form of a picture, logo, name, word, letter, number, color arrangement, in 2 (two) or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by individuals or legal entities in the course of trade in goods and/or services." Meanwhile, the terminology of the right to a trademark in Article 1, clause 5 of UU MIG is defined as the "exclusive right granted by the state to the registered trademark owner for a certain period to use the trademark personally or grant permission to others to use it."

The analysis of image rights as property is aimed at determining whether image rights constitute an entity themselves, which, in legal terms, can be considered as an object of ownership by legal subjects. Regarding the term "rights," it has been elucidated that within image rights, rights must be understood within the framework of wealth. To comprehend the meaning of the image itself, an analysis of the norms in player contracts regarding what is considered an image in that contract is required. Analogies are drawn between the image associated with the concept of intellectual property.

Article 11 of the player employment contract regulates the utilization of the image of the second party (the player) by both the club and relevant institutions. The utilization of this image implies that the mentioned image holds economic value or benefit through its use. The term "image" in legal literature and legislation has not been explicitly defined, necessitating an analysis with a hermeneutical approach to the term "image." Hermeneutics is a philosophical thought process grounded in the essence of language (Hermawan, 2018).

"Image" is a noun, which can be interpreted as form, representation; data obtained from satellite images; the representation of many people regarding personal aspects, reputation; or the impression conveyed mentally in its use in prose or poetry (Hermawan, 2018). When associated with norms in player contracts, the term "image" refers to form, representation, which can also be understood as face, body shape, and, if interpreted extensively, even name. Face, body shape, and name are inherent characteristics of an individual, each bestowed by God, making them unique compared to other human beings.

Analogously, considering intellectual property, this image is something possessed by an individual that holds economic value or benefit for them. Human beings are legal subjects, and thus, they cannot be treated as objects. Therefore, the presence of an image inherent to an individual should be interpreted as its use not intending negative purposes or violating the law. In this context, the image is akin to the face, a divine gift. For example, when observing soap opera actors, it would be challenging to find one without an attractive appearance, as the goal is to attract a large audience for the show.

The existence of a face or appearance as an image cannot stand alone. The acting ability of a soap opera actor will influence the value of the actor and the soap opera. This



also applies to soccer players; a player with an attractive face but lacking good soccer-playing skills and proper behavior will receive a negative image. Therefore, the image itself represents the manifestation of image rights, similar to intellectual property with its corresponding intellectual property rights.

"Image" can be defined as a representation of something, and when referring to a person, it is associated with their appearance, physique, name, or perhaps distinctive characteristics. If we link the concept of "image" to a soccer player, the intended image may include the player's name, appearance or facial features, the player as a whole, or artistic representations of the player's image. To facilitate a better understanding of the intended image, we can observe the following illustrations:



Figure 1 – Silhouette of Cristiano Ronaldo (Source: www.pngitem.com)

Figure 1 illustrates the silhouette of the renowned Portuguese football mega-star, Cristiano Ronaldo. Coincidentally, the image prominently displays the surname and jersey number typically associated with Ronaldo, thereby allowing us to ascertain his identity as Ronaldo or, alternatively, by his well-known moniker, CR7. In the absence of the aforementioned name and jersey number, recognizing the intended silhouette might prove challenging. However, individuals who have witnessed football matches featuring Ronaldo would readily recognize that the depicted pose corresponds to his customary celebration after scoring a goal. Furthermore, the overall portrayal of the silhouette unmistakably signifies the subject as Ronaldo. Additionally, Ronaldo's management strategically employs the player's initials as a brand or trademark.



Figure 2 – Image with Cristiano Ronaldo (Source: www.wallpapersafari.com)

In Figure 2, an image of Ronaldo is presented, featuring his face as the focal point for wallpaper. In this depiction, Ronaldo's visage undergoes a touch of editing, yet remains recognizable as belonging to the renowned football player. Through these two images, a clearer understanding of the term "image" emerges. An image can manifest itself through the



representation of an individual, either through facial features or the entire body, as well as through the utilization of the individual's personal name.

Upon reuniting the two previously separated phrases, "rights" and "image" form a cohesive phrase, where the right to one's image can be construed as something exclusively owned by an individual, encompassing aspects within themselves that can yield economic benefits. Furthermore, the "value" of this image is determined by the player's achievements both on and off the field. The better the accomplishments, the higher the "value" attributed to the player's image.

Comprehending image rights as a form of property provides insight that an image constitutes the visual representation of a player, whether it be the face alone, the entire body, or the player's name known to the public. This aligns with the principles articulated by Grotius in his natural law theory, where personal property rights extend beyond the ownership of physical objects to encompass *sum*, encompassing an individual's life, freedom, reputation, and honor (Lutfi, 2014).

Image Rights from the Perspective of Intellectual Property Rights. In the preceding explanation, intellectual property and intellectual property rights are understood to have distinct meanings. Intellectual property rights are defined as exclusive rights granted to the owner of intellectual property resulting from human thought and creativity in the creation of something. Exclusive rights imply that the owner of intellectual property rights has the right to exploit the intellectual property generated, created, or discovered for economic purposes. On the other hand, intellectual property refers to wealth that arises or is born from human intellectual capabilities.

Intellectual property rights are classified into two categories: industrial intellectual property rights and non-industrial intellectual property rights. This classification is based on the scope of legal protection afforded to intellectual property rights. Non-industrial intellectual property rights encompass creations in the arts, literature, and sciences, constituting copyright. Meanwhile, industrial intellectual property rights involve intellectual property protection within or utilized by industries, such as trademark rights, patent rights, industrial designs, trade secrets, integrated circuit layout designs, and plant varieties.

Seven types of intellectual property rights have been granted legal protection through legislation specific to each field of intellectual property. Regarding image rights regulated in a football player's contract, there is currently no norm governing them within the seven legislations related to intellectual property rights. In the previous discussion, it was analyzed that image rights can be considered as part of property, akin to intellectual property rights and other rights regulated in the Civil Code, representing the concept of wealth. In this context, image rights need protection similar to intellectual property rights because image rights are considered a gift from God to His creatures. This can be analyzed through an approach using natural law theory.

Image Rights as Copyright. Article 1, paragraph 1 of Law Number 28 of 2014 concerning copyright (Copyright Law) states that copyright is the "exclusive right of the creator that arises automatically based on declarative principles after a creation is manifested in tangible form without diminishing restrictions in accordance with statutory provisions." The scope of copyright encompasses arts, literature, and knowledge. As discussed earlier, image rights constitute an individual's exclusive rights over elements inherent to them, namely, their face and the entirety of their body, such as hands, legs, and the like. Connecting image rights to copyright may not be readily understood when reading Article 1, paragraph 1 of the Copyright Law. Therefore, it is essential to examine Article 40, paragraph (1) of the Copyright Law regarding creations protected by copyright, particularly those related to image rights, such as portraits. In the conceptual framework of copyright protection in Indonesia as regulated by the Copyright Law, copyright consists of economic rights and moral rights. Both rights are inherent to the creator or copyright holder, especially moral rights that cannot be waived by the creator. Economic rights, interpreted as the right to commercially exploit one's creation, can be transferred by the creator to another party who can then be referred to as the copyright holder. Portraits as creations appear to align more closely with the concept of image rights. Article 1, paragraph 10 of the Copyright Law states



that a "portrait is a photographic work with a human subject." There is no further explanation regarding the "human subject" in a portrait. Thus, the understanding of the human subject is broad, where a photo containing a human (any part of a human) receives copyright protection.

In the example of Figure 1, although the direct face of an individual is not visible, the silhouette formed in the image is reminiscent of the international football player Cristiano Ronaldo. Why is this the case? For football enthusiasts or those following sports news in the media, Ronaldo performs a distinctive movement, as depicted in the silhouette, when he successfully scores a goal. This silhouette may become iconic or distinctive, and commercializing it could yield material benefits.

On the other hand, in Figure 2, it is evident that Ronaldo's face is visible, even though it has undergone editing to appear as a caricature. Within the scope of copyright, both Figure 1 and Figure 2 constitute portrait creations and represent Ronaldo's image rights as a player, entailing economic benefits from this image. If we analogize the image to a portrait, under the Copyright Law, the commercialization of portraits is conducted through reproduction, publication, distribution, and/or communication of the portrait created for the purposes of advertising or commercial promotion. Image rights represent the right to an individual's image that needs protection for its commercial utility by others lacking such rights.

Image Rights as Brand Rights. The trademark rights in the legal system of Indonesia are regulated by Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark and Geographical Indication Law). The terminology distinguishes between a trademark and the rights to a trademark. Article 1, paragraph 1 of the Trademark and Geographical Indication Law states that a trademark is "a sign that can be presented graphically in the form of an image, logo, name, word, letter, number, color arrangement, in two (2) or three (3) dimensions, sound, hologram, or a combination of two (2) or more of these elements to distinguish goods and/or services produced by individuals or legal entities in the trading of goods and/or services." Meanwhile, the terminology for rights to a trademark in Article 1, paragraph 5 of the same law is defined as "exclusive rights granted by the state to the registered trademark owner for a certain period, allowing the owner to use the trademark themselves or grant permission to others to use it."

In principle, creation forms the basis for the emergence of other forms of intellectual property, particularly industrial intellectual property rights. A trademark, as defined in Article 1, paragraph 1 of the Trademark and Geographical Indication Law, can take the form of an image, logo, name, word, letter, number, color arrangement, or combination thereof in two or three dimensions. In creating or designing a trademark, the creator typically requires a depiction in a tangible medium, such as an image. The image protected under Article 40, paragraph (1) of the Copyright Law is the nexus between copyright and the birth of trademark rights within a trademark. What grants protection to images, logos, and the like as trademarks is their use in the trading of goods and/or services.

For a football player, the impression they make is a value that can enhance their market value for clubs seeking their services. This "value," akin to an image, can be influenced by their achievements, skills, behavior, and even physical attributes such as their face. As a football player, one will be recognized and remembered by the public by their name. For example, in Figure 2, the football player named Cristiano Ronaldo, a national player for Portugal who has played for prominent clubs such as Manchester United, Real Madrid, and Juventus, is synonymous with wearing the number 7 jersey, both for his club and the national team of Portugal. Based on this, Ronaldo has branded himself as CR7. CR7 has, in a way, become a trademark for him, leading to various products endorsed by Ronaldo featuring the CR7 branding.

From the understanding of trademarks, CR7 can be categorized as a trademark, even though in this case, Ronaldo is an individual and not a business entity. However, according to Article 1, paragraph 1 of the Trademark and Geographical Indication Law, trademarks can be registered by individuals, with the primary requirement being that the trademark serves as a distinctive element for goods and/or services. Currently, being a football player is a profession, and the player, in this context, is a collaborator for the club providing their



services. Why services and not goods? For a football player, with their high skill level, they cannot achieve success for the club in their name alone; they require the collaboration of 10 other players to play together as a team. Nevertheless, with the skills they possess, they are expected to boost the team's performance and achieve the best results. This is what football players offer to clubs: services in playing as a team and delivering achievements for the club.

Because a player will not gain recognition or awards from fans if they do not play and contribute to their club, the club where the player plays and provides services also has rights to the player's image. This is the reason for including image rights in player contracts, as exemplified by the contract of Persib players in 2015. Because of their association with Persib Bandung, the use of image rights for players becomes the right of PT PBB as well, making PT PBB the holder of the players' image rights.

CONCLUSION

Image rights, regulated as one of the clauses in a player contract, represent a right owned by the player, bestowed either by divine endowment of their physical attributes or by merit of achievements reflecting their abilities, skills, and conduct. Image rights have yet to be expressly addressed in the positive law of Indonesia. Through linguistic and natural law legal theory approaches, it is discerned that image rights share similarities with an object. Article 499 of the Civil Code states that an object is something that is the subject of ownership. Image rights constitute an object, and as such, in a player contract, they become a contracted object. In confronting the era of professional sports in Indonesia, there is a need for regulation within the positive law of Indonesia, which can be integrated into the framework of intellectual property rights.

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