

## Body Part Insurance for Football Athletes Abroad Reviewed under Positive Law in Indonesian

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KEYWORDS	ABSTRACT
Insurance; Specific Bodyparts; New Insurance Product; Football	This article analyzes insurance related to human body parts for football athletes abroad compared to positive laws in Indonesia. This insurance product is a potential product to be explored because of the various types of professions that are developing in this country, especially professional athletes who take part in the sport of football. However, it is unfortunate that up to now there are no regulations or insurance products that can be used to fulfill this kind of request. The aim of this research is to compare human limb insurance for football athletes in other countries with existing regulations in Indonesia. The research method used is normative juridical with comparative approach using primary legal materials, secondary legal materials and interviews. In conclusion, the rules regarding insurance for body parts are contained in article 1 number 25 of Law No. 40 of 2014 concerning Insurance. The object of agreement on the body parts of professional soccer athletes is the feet. The principles used in insurance contract law emphasize the principle of consensualism, freedom of contract and good faith. Insurance companies in Indonesia should take this potential and translate it into a new insurance product using the principle of insurable interest and the principle of indemnity like in other countries. The use of this type of life insurance can be used for insurance for the limbs of football athletes such as in Italy, Belgium, Spain, the Netherlands or loss insurance according to insurance in South Africa, Germany, France, Belgium and England.

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### Introduction

A decent life is one of the rights of Indonesian citizens. This is stipulated in Article 27 Paragraph (2) of the Republic of Indonesia 1945 (Constitution 1945 Constitution), which hereinafter referred to as the states that "Every citizen has right to the work and a decent living for humanity". A decent livelihood is the ability to fulfill basic needs such as food, clothing, and shelter. The right to life, the right to health, and the right to a decent livelihood are closely related

to a healthy and sustainable human life. A decent livelihood can be obtained through social security. The state is obliged to provide socio-economic protection to the community. This is also stated in the 1945 Constitution Article 28H paragraph (3), which stipulates that "Everyone has the right to social security that enables his or her full development as a useful human being."

A person in carrying out daily activities requires a risk transfer mechanism to protect financial interests or *assets* and get a decent life in old age. One mechanism that is widely used is insurance. The insurance industry has many product variants that play an important role in the development of the national economy. The government, in this case, responds and anticipates the development of the insurance industry and economic development by issuing Law No. 40 of 2014 concerning Insurance (hereinafter referred to as the Insurance Law).

Soccer is one of the most popular sports among the Indonesian population. The game grew rapidly in the business world until it was introduced to the Indonesian professional league. and is widely played in urban and rural areas, easy to find, and does not consider race, ethnicity, religion, or region. Nadeo Argawinata, Ernando Ari, Evan Dimas, Budi Sudarsono, Rochy Putiray, and Kurniawan Dwi Yulianto are some of the Indonesian National Team players who have made Indonesia proud in the international arena. Professional soccer players have a very busy schedule, and depend on financial income from every match played. Football matches have a duration of 2 times 45 minutes; if the score is a draw, there will be an extra time round for 2 times 15 minutes; if it is still the same, it will end with a penalty round. Throughout this match time, professional football players are in dire need of protection for their limbs because the interaction between players in fighting for the ball will increase the risk of injury, which can cause a number of losses if they get injured and cannot continue the match. The professional career and financial income of the individual and the club that oversees will be in a threatened position. Therefore, football players need financial protection and long-term welfare due to the risk of injury and relatively short career span. Insurance is a safe investment option. It can relieve themselves from worrying about future financial problems, relieve themselves from financial burdens when they are old, and can also function as a substitute for government social security programs. Overseas soccer players have used limb-related insurance.

For example, David Beckham, who is a soccer athlete and model, insured his legs and face worth 177 million pounds; besides that, there is also the name Gareth Bale a footballer from the Tottenham Hotspurs club, who migrated to the Real Madrid club in 2013. In that year, the Real Madrid club insured Gareth Bale's leg worth £ 100 million, and this decision proved to be correct because, after that, Bale suffered several injuries, so he could not participate in several matches. Other examples are footballer Lionel Messi, who insured his left leg for 900 million dollars, Spanish goalkeeper Iker Casillas, who insured his hand for 15 million euros in 2007, and also the Real Madrid Football Club, which insured Cristiano Ronaldo's leg in 2009 for 103 million euros. The professionals or clubs mentioned above are very concerned about the possibility of losing their income because their careers depend on the excellent performance of the insured limbs so that if something goes wrong, funding for daily life is not interrupted (AtlasMagazine, 2018).

Research related to human limb insurance, among others, human limb insurance based on the principle of indemnity, which explains the value of insurance money and compensation for insurance of human body parts. When associated with the principle of indemnity cannot be applied or there are difficulties in applying the principle of indemnity in determining the value of insurance money and compensation (Husairi, 2018, p. 61). Another research on the Existence of Limb Insurance in Indonesia from the Viewpoint of Sharia Economic Law explains that limb insurance does not conflict with the provisions or rules of Sharia Insurance in the country of Indonesia because limb insurance is basically an effort to obtain and provide protection for body members that are considered important by a person. The implementation of such insurance must pay strict attention to the applicable rules, both national law and religious law (Ihwan et al., 2021, p. 550). The regulation of insurance of certain body parts in other countries compared to regulations in Indonesia has not been a topic of much discussion and further discussion. The authors attempt to analyze the possibility of developing insurance for certain body parts in Indonesia by emulating insurance in other countries, especially for soccer players who depend on the performance of their limbs. The regulation on human limb insurance is still unclear and thus remains a blurred norm in insurance in Indonesia. This research brings a novel perspective by exploring the regulation of human limb insurance in Indonesia, a topic that has not been widely discussed. It compares international practices, such as in Italy, Belgium, and South Africa, with the existing legal framework in Indonesia to suggest the introduction of a new insurance product specifically tailored for football athletes. The research proposes legal and practical steps for creating this insurance market in Indonesia, potentially serving as a pioneering model for the country. The purpose of this study is to compare human limb insurance for football athletes abroad with existing regulations in Indonesia. By analyzing global practices, the research aims to explore how insurance for specific body parts, especially for football athletes, can be integrated into Indonesia's insurance market.

## **Research Methods**

The type of research used is normative juridical. The research approach method uses a statutory approach, conceptual approach, and approach comparative (Marzuki, 2011, p. 35). The authors use primary legal sources in the form of legislation, journals, related research, the authors also use secondary legal materials in the form of documents, literature, books, journals, and brochures. (Rizkia, 2023: 120).

## **Research Results and Discussion**

Insurance has personal benefits for both the insurer and the insured to the benefit of many people. In addition, insurance is also often said to be a safe investment because it provides a sense of freedom from worry about future economic problems and provides protection for the insured when entering old age. Insurance has a function, namely as a transfer of risk from one insured party to the insurer or also known as a risk transfer mechanism (Yusrani et al., 2023, pp. 39–40).

The legal relationship in the insurance agreement gives birth to the rights and obligations of

the parties so that the bond comes from the agreement. The definition of an agreement according to Article 1313 of the Civil Code states that "An agreement is an act by which one or more people bind themselves to one or more people." The formulation becomes an agreement is an act (law), in which one or more people (mutually) bind themselves to one or more people. The form of the agreement is in the form of a series of words containing promises or abilities that are spoken or written (Hartatiyanto, 2023, p. 22). This is in accordance with Article 255 of the Commercial Code (KUHD), which states that "Insurance must be made in writing in a deed called a policy". Article 246 of the KUHD states that "The insurance agreement for certain body parts can be said to be valid if it fulfills the conditions of the agreement". This is in accordance with Article 1320 of the Civil Code, namely "the existence of parties who agree to carry out an agreement, the existence of capacity to agree, the existence of certain interests that are insured, and the existence of risks arising from these interests (a halal cause)".

Agreements in the Civil Code can also apply to insurance agreements as special agreements. Thus, the parties are also subject to several provisions in the Civil Code. The principles contained in the law of agreements as regulated by the Civil Code need to be considered. The principles born from the provisions of the Civil Code are Consensual Principles, Principles of Freedom of Contract, Principles of Binding Provisions, Principles of Trust, Principles of Legal Equality, Principles of Balance / Prorate, Principles of Legal Certainty, and Principles of Good Faith. The consensual principle is taken from one of the terms of the agreement, namely, the agreement of both parties. The principle of freedom of contract is in accordance with Article 1338, paragraph (1) of the Civil Code, which states that "all agreements made legally shall apply as laws to those who make them." The principle of binding provisions is explained in Article 1338 (1) of the Civil Code; if it is related to an insurance agreement, it means that the insurer and the insured or policyholder are bound to carry out the agreed terms of the agreement, the principle of trust means that those who agree give birth to trust between the two parties. The principle of legal equality is that the legal subjects who agree have the same position, rights, and obligations in law and are not differentiated between one another. The principle of balance is a principle that requires both parties to fulfill and carry out the agreement. The principle of legal certainty is contained in Article 1338, paragraph (2) of the Civil Code, which states that "the agreement cannot be withdrawn other than with the agreement of both parties or for reasons stated by the law as sufficient for that." The Principle of Good Faith is explained in Article 1338 Paragraph (3) of the Civil Code, which states that "agreements must be carried out in good faith" (Fazri & Kurniawan, 2021, pp. 779–782).

(subrogation principle), and the principle of contribution. The principle of interest (Insurable Interest) means that everyone can insure the object of interest, and the principle of Indemnity (indemnity principle) means coverage of losses (Soehaiya, 2022, p. 18). Insurance is legally subject to a number of principles, including the principle of insurable interest, the principle of utmost good faith, the principle of proximate cause, the principle of indemnity, the principle of third-party substitution

Basically, insurance is a financing mechanism. Insurance participants pay a sum of money (premium) to the insurance agency to get health services performed by health workers or health

service facilities contracted by the insurance agency. The main elements in insurance are an agreement, a premium, compensation, and the existence of an uncertain event. the event in question must have the nature of an unexpected occurrence or an event that, according to normal human experience, cannot be expected to occur and can be referred to as a *ris* (Hartatiyanto, 2023, p. 22).

The Indonesian General Insurance Association (AAUI) states that several insurance companies have begun to offer policy coverage for breasts, legs, and hands, as well as foreign insurance companies. Based on the results of an interview conducted by telephone on May 31, 2024, with Mr. Andri, a resource person who is also a branch head at PT Asuransi Etika International Indonesia in Surabaya, stated that general insurance companies can actually accommodate insurance products for this purpose. However, the market in Indonesia has not developed like abroad, so until now, no company has dared to cover insurance for certain body parts. The results of another interview, which was also conducted via the WhatsApp app application with Mrs. Indriandini, the head of the Avrist General Insurance branch in Surabaya, insurance for certain body parts is indeed widely marketed abroad. Unfortunately, there are no body part insurance products offered by insurance companies in Indonesia.

One example of a special Insurance Policy for footballers abroad is a policy issued by the country of South Africa, Delphi Insurance Group, which can carry out Football Insurance coverage with protection through General / Loss Insurance under the Personal Accident Insurance product with a period of 1 (one) year and can be extended. Policyholders are members of the South African Football Association; Payments will be made in the event of death or permanent disability for more than 12 (twelve) months and corroborated by expert records that the condition is incurable. Payments under this policy can also be made in the event of temporary disability by making weekly payments until a certain time. Medical treatment costs incurred due to permanent disability or ordinary injury will reduce the stated indemnity amount. Other examples

The insurance products offered are in the form of products launched specifically for the County.

Football Association, named CountyCover by insurance companies in the UK, marketed by the Marsh insurance broker team. The insurance period is for 1 year, starting on July 1, 2020, and can be extended if needed. The premium paid is £54 per year per club and five elements can be covered by this type of product, namely:

1. *Public n Product Liability*: Protects against third-party claims related to bodily injury or property damage
2. *Employers Liability*: Protects the ball club in the event of any loss caused by the club's employees or workers.
3. *Officers n Committee Liability*: Protects against third-party claims caused by the misconduct of the Club's officers or committee
4. *Professional Indemnity*: Protects against claims for negligence and misconduct, including during paid training activities.
5. *Cyber Liability*: Protects against claims arising from the operation of the internet or the electronic collection and storage of personal data (The National Insurance Scheme, 2020, pp.

1–9).

The insurance product of the County Football Association, called CountyCover, is in line with Article 305 of the KUHD, which states that "The estimation of the amount of money for which the coverage is made and the determination of the terms of the coverage are left entirely to the agreement of both parties." Regulations related to this premium can be seen in Article 3 letter an of the Financial Services Authority Regulation Number 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products, which explains that "Insurance products must have premiums or contributions that are in accordance with the promised benefits, which are set at a level that is sufficient, not excessive, and not applied in a discriminatory manner". The elaboration is contained in Article 26 paragraph (1), namely "The calculation of premiums or contributions as referred to in Article 3 letter a must be based on reasonable assumptions and generally accepted insurance practices". Products related to insurance of certain body parts with coverage value according to the results of an agreement between the insurance company and the party with an interest in insuring. The addition of consideration of the economic value and medical condition of the body part, strengthened by physical examination from medical personnel, and also the calculation of potential losses experienced if something unwanted happens to the body part. The insurance company determines the amount of the premium based on the ratio of the risk of occurrence compared to the total value of the sum insured. This calculation clearly involves special calculation methods involving statistical figures that apply regionally, globally, and nationally. General insurance policies can be valid for a certain period of time, and the period of coverage can be extended according to the agreement of both parties.

*Insurance Company Miller issues Sports Personal Accident insurance products.* The product aims to protect the financial interests of athletes and their families against the potential loss of income if their career is interrupted or ends prematurely, either due to accident or illness. The types of insurance products offered by Miller include:

1. event of Permanent total disablement accidental death (PTD), which provides benefits in the death or permanent disability, then the benefits are given to the heirs, and protection is provided for 24 hours worldwide.
2. Temporary total disablement (TTD) is a play contract that varies from country to country, so the form of payment varies according to the location.

Payment of compensation varies from country to country; for example, in Italy, Belgium, Spain, and the Netherlands, you can take PTD, while in Germany, France, and Belgium, you can take TTD and in the UK, with a duration of 12 (twelve) and 6 (six) months according to the rules in that country (Miller, 2021, pp. 1–11).

There are 2 types of Sports Personal Accident insurance products from Miller, namely Permanent

Total Disablement (PTD) and Temporary Total Disablement (TTD). This is almost the same as the types of insurance in Indonesia and is stated in Article 2 of Law No. 40 of 2014, namely general insurance companies, including health insurance, personal accident insurance, and life insurance companies that can organize businesses included in the annuity business line, health

insurance business line, and personal accident insurance business line. The difference between the two types of insurance is life insurance if death occurs within a shorter period than the time stated in the policy. In loss insurance, a claim can be made if, during the period of grace mentioned in the policy, things happen that cause loss. For example, in fire insurance, the insured warehouse burns down. In life insurance, the amount of compensation is determined in advance. In contrast, in liability insurance, the amount of compensation is calculated by comparing the price of goods damaged as a result of loss or fire with the price of goods before the loss occurred (Yikwa, 2015, p. 137). PTD in Sports Personal Accident is almost the same as Life Insurance in Indonesia while TTD is almost the same as Loss Insurance.

Life Insurance is regulated in Article 302 of the KUHD, which states that "The life of a person can, for an interested person, be insured, either for the duration of the life of the soul, either for a time specified in the agreement." Article 306 of the KUHD states that "If the person whose life is insured dies at the time of the closing of the insurance, then the agreement is canceled, even though the insured will not be able to know about the death unless it is agreed". The nature of life insurance is not suitable to bear the risk of limb coverage, because the insured must die to get the benefits.

Liability for Loss Insurance is regulated in Article 1366 KUHPdt: "Everyone is responsible, not only for losses caused by his actions but also for losses caused by negligence and lack of care". Article 1367 KUHPdt states that "A person is not only responsible for losses caused by his own actions but also for losses caused by the actions of people under his supervision". General insurance offers financial protection for all assets that are subject to loss, theft, or damage and which cause a person to incur an obligation to pay compensation.

CountyCover insurance product from Delphi Insurance Group with 5 (five) elements and Miller's Sports Personal Accident, with its PTD and TTD, uses the principle of freedom of contract. This can be seen from the choices offered. The scope of the principle of freedom of contract in Indonesian treaty law includes, among others, freedom to make or not make an agreement, freedom to choose the party with whom he wants to make an agreement, freedom to determine or choose the content (*causa*) of the agreement he makes, freedom to determine the object of the agreement, and freedom to determine the form of an agreement. The principle of freedom of contract is very likely to contain certain requirements that are potentially more favorable to the party who has prepared the making, for example, in the agreement made additional other requirements to avoid difficulties or claims / lawsuits of the opposing party, exemption from the burden of responsibility due to the occurrence of certain matters or events during the agreement period. These unilaterally made conditions are then referred to as "standard conditions / standard clauses," while conditions which, according to their contents, seek to limit responsibility or avoid fulfilling their obligations to pay full or limited compensation, which occurs due to breach of promise or illegal acts are known as "exoneration clauses". The inclusion of an exoneration clause in an agreement as an additional clause to the essential elements of an agreement is generally found in standard contracts. This clause is very detrimental to consumers, who generally have a weak position when compared to producers, because the burden that should be borne by the producer, with the

existence of this clause, becomes the burden of consumers (Harianto, 2016, pp.146–147).

Freedom of contract must be limited so that contracts made based on this principle do not become one-sided or unequal agreements. There are several restrictions provided by the articles of the Civil Code on this principle, which make this principle an unlimited principle, including Article 1320 paragraph (1); paragraph (2); and paragraph (4), Article 1332, Article 1337 and Article 1338 paragraph (3). Article 1320 paragraph (1) indicates that the law of agreements is controlled by the "principle of consensualism" and is limited by this principle. This article also implies that the freedom of a party to determine the contents of the contract is limited by the agreement of the other party. Article 1320, paragraph (2), concludes that the freedom of people to make agreements is limited by their ability to make contracts. For someone who, according to the provisions of the law, is not capable of making a contract, there is absolutely no freedom to make a contract. Article 1320 paragraph (4) jo 1337 determines that the parties are not free to make a contract concerning a causa that is prohibited by law or contrary to decency or public order is invalid (Roesli et al., 2019, pp. 1–4).

Delphi Insurance Group and Miller Insurance products use the insurable principle and the principle of indemnity. The principle of insurable interest means that the interests of the insured are accounted for in insurance and are recognized by law. This is formulated in Article 250 and Article 286 of the KUHD regarding interests that, to hold insurance, must have elements that can be valued with material, can be threatened, and are not excluded by law. The object of the agreement on insurance is achievement (the subject of the agreement). Achievement is what is the obligation of the debtor and what is the right of the creditor. This achievement consists of positive and negative legal actions; the achievement consists of giving something, doing something, and not doing something" (Zulkifli et al., 2022, p. 101). Article 1 point 25 of the Insurance Law states that Insurance Objects are life and body, human health, legal liability, objects, and services, as well as all other interests that can be lost, damaged, lost, and / or reduced in value. Based on this understanding, the human body or body, including human limbs, fulfills the element of nature that can experience damage and can meet the definition of the object of insurance. Insurance agreements for human limbs can be carried out because the object of the agreement can be damaged so the applicant can experience financial losses if the limbs are injured so that they cannot function normally as usual. Members of the body of professional soccer players who can be insured are feet. This is because the foot can be injured or injured, and during the recovery period cannot be used as its function.

The principle of Indemnity is defined as the principle of that is balanced between the compensation amount of compensation and the loss suffered by the insured with the actual value of coverage. This is stated in Article 250 of the Commercial Code "if a person who has entered into an insurance agreement for himself, or if a person for whom an insurance has been made, at the time of the insurance does not have an interest in the insured item, the Insurer is not obliged to provide compensation" (Zulkifli et al., 2022, p. 101).

## Conclusion

The regulation of certain body parts as objects of insurance agreements is contained in Article 1 number 25 of Law Number 40 of 2014 concerning Insurance as amended by Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (PPSK Law). Insurance companies in Indonesia should take this potential and translate it into a new insurance product using the principle of interest (Insurable Interest) with the object of the insurance agreement for the human limbs of professional soccer players is the foot. The principle of indemnity can also be used as in other countries. Determination of the amount of sum insured for insurance of certain body parts can be different at each policy closing, depending on the agreement of the insured party with the insurance company in accordance with the principle of freedom of contract. The principles used in insurance agreement law emphasize the principle of consensualism, the principle of freedom of contract, and the principle of good faith. The existence of a legal vacuum in the regulation of body parts raises the need for the design of special insurance coverage of certain body parts for professionals and special professions that require vital body parts for financial support, along with the times and the emergence of various types of professionals in various fields. The use of Life Insurance can be used for limb insurance for soccer athletes, as in Italy, Belgium, Spain, and the Netherlands, or Loss Insurance in accordance with the insurance in force in South Africa, Germany, France, Belgium, and the UK.

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