

INTERNATIONAL LAW AND GAMING INDUSTRY: FILLING THE LACUNAE IN DIGITAL ERA?

Wishnu Adisatya Dharma¹
wishnuadisatya@gmail.com

Keywords: International Law, Gaming Industries, Legal Challenge, Gamer, Game Developer

I. Introduction, Why Video Games Matter

Games and gaming industries has developed rapidly since the globalization era, it starts with the first console coming from Nintendo company in Japan, who made single player game titled Mario Bross to massive multiplayer game across multi-platforms spread among Personal Computer, Playstation, and Virtual Reality. Game nowadays is not only considered as an entertainment, but also platform that can gave us profits and fame.

The profit is coming from certain stream of income namely Streaming Platform, Ad-sense, Merchandise, and the creation of Electronic Sports or E-Sport. The terms E-Sport refer to playing game in highly competitive and organize environment spreading internationally around the globe.

The facts that E-Sport is sky rocketing in contrary to traditional sports, it has started to create new cultural trends however it is not followed with the proper certainty in relation to the protection and management of the E-Sports athlete along with a fair and equitable share for both sponsor and big game developer as an organizer.

Take a look as an example of the cross border nature of the online gaming like *Valorant Championship* from Riot Gaming, the International Dota Championship from Valve, and Tekken World Tour from Bandai Namco Entertainment who has massive players around the globe, if there is any violation on the tournament for entering the tournament by using “doping” who infamously happen during Dota Tournament, or there are an athlete injury after the tournament, the are no protection for these E-Sports Athlete and also the potential to be exploit since the training is begun in an early ages.

The challenge to implement has already develop a new legal challenge to regulate games in International law treaties, however the challenge are realign the sovereignty principle in cyberspace since the gaming industries and E-Sports are cyber in nature. Defining specific

¹ Wishnu Adisatya Dharma is a former litigation lawyer who now working as Freelance Researcher, his interest are among other International Law is in the field of Law of the Sea, International Dispute Settlement, International Humanitarian Law, and International Cyber Law.

legal treaties under cyber law is merely impossible, many scholars were debated about jurisdiction and sovereignty in realms of cyber space, however the development of information under this 21st century has gone beyond our prediction.

The urgencies to create international legally binding instrument is quite simple, simply because the gaming championship are attracting many players from different nationality around the globe, playing to get the title of “The Best Team of the World” and claiming themselves as a professional gamer. The number of moneys that they earn is “Quite” big and cannot be underestimate.

The lucrative area of gaming industry along with the competition for their player may significantly shifting the mindset of the young adults, especially during Covid-19 Pandemic where most of the people are using work from home scheme, the issues for treaty to solve may relies under these following problems:

1. What are the main applicable laws for E-Sport, along with the prize and promotions whose impact on E-Sports events and online platform.
2. What type of prizes can be awarded to players along with proper legal contracts considering the unique nature of E-Sports
3. Are there limitations on the sponsorship and Ad-Sense in E-Sport Tournaments?
4. What are the penalties for non-compliance for E-Sports Athlete, Game Developer, or the Tournament Organizer asides from monetary sanctions.
5. Global Standards for broadcasting game around the globe.
6. Creating a Legal entities under international law who can operating abroad without the limitation of jurisdiction and sovereignty of the states.

II. Current Challenge Revolving Around Video Games and E-Sport

Like two sides of a coin, this rapid change does not in line with the sufficient regulations to protect the environment and the community behind it. For example, the shifting behind entertainment purpose to professional gamer athletes who chase the fame and prize pool for each championship, the long unwatched grind that affect both mental and physical durability for each team and individuals, and not to mention the amount of youth around the globes that attracted to become a professional gamer without any legal protection and proper legal employment contracts.

These employment contracts may refer to International Labour Convention as refer to 1970 Minimum Wage Fixing Convention where there are wage components to be satisfied such as Minimum Wage, Regular Pay, and Overtime Compensation. The challenge relies whether working in a gaming industry as an E-Sport athlete can falls under Sports law.

Another thing that should be consider from the developer perspective are the intellectual property including but not limited to patent infringements, market dominance along with competition law, and last but not least illegal game downloads.

The international treaties may rely on the regulations for Global Streaming which has a huge mass who can uses or utilized for personal and political agenda. The fact that the majority of the audience is on their youth, and both players and audience consist of minors age it is a matter of urgent international concern to protect and regulate the gaming and E-Sport industry.

III. Existing Legal Frameworks on Gaming Industry

The existing legal frameworks prior to this matter, unfortunately did not relied on international regulations, but merely prevail under the national regulations and focusing to the Electronic Sport or *Esport*. However, some keys elements that should be included in the convention can be found in several countries' regulations among others:

a) **Indonesia**

The Indonesian regulations already stipulates several criteria to regulates professional Esport teams under The Indonesian Esports Executives Board (PBESI) whereas to compete in professional tournament, the Esports teams must have their own limited liability company as a form of business entity.

However, regarding the gaming industries and gamer protection, Indonesia does not have the comprehensive legal instrument. For gaming industries, some aspects about competition law are regulates under Law Number 5 Year 1999 about Anti-Monopoly Practices and Unfair Business Competition, however gamer is protected as a consumer under the Law Number 8 Year 199 on Consumer Protection. The Employment contracts however already sets up generally under PBESI Regulations No.034/2021 that the *Esport* Players may have monthly wages and the Workers Social Security Agency (BPJS Ketenagakerjaan)

For Intellectual property, Indonesia is a party to the WIPO Convention on Intellectual Property and already enact national regulations for intellectual property under Law Number 28 Year 2004 on Copyrights with the first to file system. However, Indonesia is infamous about the implementation of protection in Intellectual property.

b) United States

United States has several judicial decisions that includes the gaming developer in realms of copyrights and antitrust law, some recently major case like Epic Games Inc v. Apple Inc in United States District Courts, Northern District of California brings the global attention because Apple allegedly breached the agreements from both parties concerning direct pay options for the *Fornite* videogames. That's is because Apple try to charging up to 30% (thirty percent) of their commission on digital transaction within the Apple Store.

This case gave the example of what dispute in developer area will takes place; these disputes certainly take place in the United States of America because they are an American company. However, what if the disputes are between Japanese company and Chinese Company? while there is no clear convention about where these types of cases will be settled, these enormous giants dispute against renowned video game developer should be entitled as a “call for helps” for international dispute to tackle the issues concerning cross border counterclaims

c) China

China has different approach on videogames, they have imposed several regulations for gamers below the age 18, whereas they only allowed to access videogames 3 (three) hours per weeks in specific days like Friday, Saturday, and Sundays. They also limited the loot boxes or gambling in the videos game also known as “the gacha system”. This mechanics often used to obtain rare items in limited amount of time.

This limitation may sound inappropriate; however, this type of limitation shows that China really has a keen interest for gaming community in China, not to mention China has one of the largest gaming companies named Mihoyo or Hoyoverse who made huge number of profits in 2021.

IV. Solution: Back to Basic?

The nature of making treaties is based on the needs of the agreement, whether the treaties be considered as a law-making treaty who made a new norm in international community or bilateral or multilateral agreement between more than two states. While in this case, the law-making treaties will more suitable considering the *erga omnes* to fill the lacunae in law in international gaming treaties.

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This interest of the law-making treaties is merely simple, it brings need for emergence of a public dimension of an international legal order. This may include statutory function to cover specific subjects in international community, such as the uniformity of gaming regulations

across the globe, the basic regulations of streaming game in cross platform, or even better a minimum wages or maximum grinding hours for Esport teams around the world.

The E-Sport and Gaming Industry are often limited on the principle of *lex loci contractus*, where the laws that govern the gaming contracts is align with the location on where the contracts were made. These may create discrepancy between the countries who has proper legal mechanism in gaming industry and E-Sport, compare to the countries who still struggling to have proper legal mechanism.

Another solution is creating a new soft law under UNIDROIT-International Institute for the Unification of Private Law, where the tribunals had already hosted the Hybrid Conference on Digital Platforms and Global Governance. These may opens any windows of opportunity to includes gaming along with E-Sport as a digital platform who should be regulates in the near future.

V. Conclusion

The rapid changing of gaming industries is still not followed by the proper international legal framework, while the gaming itself has some market values along with a new ecosystem in digital era. This lack of protection may become a problem if the international community did not accommodate the sufficient legal convention to conform both developing and developed countries. The urgencies to create a new law-making treaty to cover the lack of uniformity of global gaming community.

The lack of uniformity on proper E-Sports athlete protection, proper contracts and minimum wage for “Sports Athlete” along with protection for minor ages in the gaming industries may also take into account for consideration of law making treaties. Challenge may rely under the jurisdiction and sovereignty of the states, where the application of the treaties of cyber gaming industry was not limited to the area of the state, which in this case can be conduct virtually on Metaverse. Hence, the proper legal frameworks in a form of treaties or soft law like UNIDROIT may also take into account in order to regulates these rapid changing industry.

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