

Legal Review II**FIFA: Assessing the Necessity of its Treatment as an International Organization**

By Rashiq Akbar and Marcyntha Nugranti Lomboan

Staff of Legal Research and Development

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I. Introduction

Football has been known to be the world's most popular sport due to its popularity amongst 3.5 billion fans worldwide spanning throughout Europe, Africa, Asia, and America.¹ This popular sport is played worldwide in the form of tournaments ranging from a local, national, regional, as well as international scale. In all those levels, the sport itself is regulated by a single body consisting of national football associations, as its members, representing sovereign nations from across the globe. This regulating body of football possesses a considerable amount of power strong enough to set standards that must be obeyed worldwide, to come into agreements with sovereign states, as well as to establish representative offices outside its country of origin. Such powers are common among subjects of international law such as international organizations, however this regulating body does not even qualify to be classified as one.

Fédération Internationale de Football Association ("FIFA"), the French for International Federation of Association Football, is one of the most well-known and influential organizations in the world of sports. They are the governing body of football and they are also responsible for The FIFA World Cup, the world's most renowned and viewed international football championship event. The 2022 FIFA World Cup held in Qatar has scored many viewership records in several market segments across the globe. For instance, the Group Stage match versus Costa Rica hit the highest audience of the year in Japan², while as a whole, FIFA has scored around five billion audiences worldwide for the Qatar World Cup.³ This illustrates the popularity received by the World Cup alone.

¹ Eleni Veroutsos, "The Most Popular Sports in the World," worldatlas.com, September 2023, available at <https://www.worldatlas.com/articles/what-are-the-most-popular-sports-in-the-world.html>, accessed on 17 September 2023.

² FIFA, "FIFA World Cup Delivering Record-Breaking TV Audience Numbers," fifa.com, December 2022, available at <https://www.fifa.com/tournaments/mens/worldcup/qatar2022/news/fifa-world-cup-delivering-record-breaking-tv-audience-numbers>, accessed on 11th July 2023.

³ Rory Jones, "Qatar 2022: World Cup Final Scores 1.5 bn Global Viewers," sportspromedia.com, January 2023, available at <https://www.sportspromedia.com/news/qatar-2022-fifa-world-cup-final-argentina-france-viewers->

FIFA was created to regulate football and advance the sport internationally.⁴ Looking at its Statutes, FIFA has made clear that one of its goals is to enact rules and regulations and ensure their implementation. The enactment of FIFA's rules also gave the federation the authority to supervise the game in order to prevent any violations of its statute or bylaws and regulations issued by it.⁵ The federation passes various types of legal documents through its Congress, the FIFA Council or the Secretary General that have an impact on day-to-day activities of football all over the world. This includes the FIFA Code of Ethics, FIFA Disciplinary Code, and the FIFA Football Agent Regulations that are all accessible on its website. FIFA's hegemonic influence on countries hosting the World Cup can be examined through the lens of International Law, particularly in the context of accountability of an International Non-Governmental Organization dictating sovereign states. FIFA's dominance is evident in its ability to override national laws in favor of transnational regulations, as demonstrated in cases like Brazil (2014), South Africa (2010), Russia (2018), and Qatar (2022).⁶ The organization's questionable bidding processes further underscore its power. While Switzerland may have limited capacity to regulate FIFA's hegemony, recent amendments to Swiss anti-corruption laws and FIFA's internal reform efforts represent steps toward accountability⁷. Because FIFA has a significant impact on society, the organization's larger social goal depends on its commitment to good governance standards. Its organizational structure and its authority to solve disputes involving its members and make substantial decisions, such as canceling its member's hosting country status for a tournament unilaterally, have signified the impression that FIFA is an international law subject falling in the category of private international organizations.

engagement/?zephrr_sso_ott=woxxRm#:~:text=Confirmed%3A,engaged%20with%20the%20World%20Cup, accessed on 11th July 2023.

⁴ FIFA, "About FIFA," [fifa.com](https://www.fifa.com/about-fifa), available at <https://www.fifa.com/about-fifa>, accessed on April 10th 2023.

⁵ Nazzal M. Kiswani, "Application of Competition Rules and Prevention of Monopoly on the Organizers of Sports Competitions: A Comparative Study," *Research Article*, Vol. 23, No. 6 (2020), available at <https://www.abacademies.org/articles/application-of-competition-rules-and-prevention-of-monopoly-on-the-organizers-of-sports-competitions-a-comparative-study-9925.html>.

⁶ Marketa Jerabek, Alisson Maxwell Ferreira de Andrade and A. Figueroa, "FIFA's Hegemony: Examples from World Cup Hosting Countries," *Global Society*, Vol. 31, No. 3 (2017), available at <https://doi.org/10.1080/13600826.2016.1261807>.

⁷ Roger Pielke, "How can FIFA be held accountable?" *Sport Management Review*, Vol. 16, No. 3 (2013), available at <https://doi.org/10.1016/J.SMR.2012.12.007>.

FIFA's display of power can also be seen from a few events that occurred during the years when FIFA World Cup championships were held. Recently, one notable and hot topic of FIFA is when the Indonesian Football Association (PSSI) was stripped off its right from hosting the U-20 World Cup 2023 following the rejection from two local government officials for the Israeli team to play in their region. Those rejections were made in consideration of the Israel-Palestine dispute.⁸ The choice to cancel the competition in Indonesia serves as a reminder of the challenges that can develop when social issues are intertwined with athletics. Such a move would have repercussions for the entire football community as well as FIFA's legal standing because the international community may start to question FIFA's neutrality as it seemed to hold a certain bias or double standard towards the Israel-Palestine conflict.

Another event to enforce FIFA's legal authority is the exclusion of Russia from the Qatar World Cup.⁹ During the Russian military aggression towards Ukraine starting in February 2022, many football fans around the globe protested Russia's exclusion from the Qatar World Cup. FIFA approved that motion by banning Russia from participating in competitions held by FIFA. FIFA has banned or disqualified many countries, notably Kenya, South Africa, Chile, Yugoslavia, Kuwait, and many more, all for different reasons and events.¹⁰ This showcases FIFA's power to force countries to follow their regulations willingly.

These circumstances and events that are happening make people question FIFA's authority. What authority and privileges does FIFA have that allow it to adopt rules that are somewhat legally enforceable in many nations? Is FIFA's control on par with that of world bodies like the WHO and UNESCO? Why are FIFA's rules so enforceable? FIFA has a significant impact on football globally. As seen above, the length of its rules can regulate various activities in its field.

⁸ News Desk, "FIFA Removes Indonesia as Host of U-20," [thejakartapost.com](https://www.thejakartapost.com/indonesia/2023/03/30/fifa-removes-indonesia-as-host-of-u-20.html), March 30th 2023, available at <https://www.thejakartapost.com/indonesia/2023/03/30/fifa-removes-indonesia-as-host-of-u-20.html>, accessed on April 10th 2023.

⁹ Tariq Panja, "FIFA Suspends Russia, Ejecting It From World Cup Qualifying," [nytimes.com](https://www.nytimes.com/2022/02/28/sports/soccer/fifa-russia-ban.html), February 28th 2022, available at <https://www.nytimes.com/2022/02/28/sports/soccer/fifa-russia-ban.html>, accessed on April 11th 2023.

¹⁰ Sanya Mansoor, "These Are the Countries FIFA Has Ever Banned From the World Cup," [time.com](https://time.com/6234776/countries-banned-world-cup-russia/), November 17th 2022, available at <https://time.com/6234776/countries-banned-world-cup-russia/>, accessed on April 11th 2023.

II. Facts and Analyses

Subjects of International Law: An Overview

Subjects of international law are entities that are capable of performing certain functions and have a certain degree of autonomy in relation to its rights and obligations¹¹ on the international plane which makes up their legal personality. These rights and obligations are specified and given by the organization's Constitution in regards to functions that enable them to fulfill their objectives. In the context of International Law, states have traditionally been referred to as the main subject of international law having the capacity to make claims, agreements, and treaties, as well as certain privileges and immunities. Besides sovereign states, other subjects of international law such as international organizations, belligerent groups, and individual persons may also gain legal personality through acknowledgement by national law or stated within international treaties made on their establishment.¹²

The development of international law since the 18th and 19th centuries has seen the recognition of other forms of entities as subjects of international law. These entities are classified into two main categories which are first the Typical subjects of international law consisting of entities such as nation-states, international organizations, and institutions possessing the status of legal capacity.¹³ They have their legal personality recognized and hence could participate extensively in international legal relations. Meanwhile, another category of subjects of international law include the Holy See, Sovereign Order of Malta, belligerents, and individuals¹⁴ which are more limited in their legal personality. This means that the scope of their rights and obligations is more limited compared to typical subjects of international law. Other entities may also possess such privileges and immunities if specific criteria are met¹⁵, which could include companies and even some international sporting groups. An international

¹¹ P.R. Menon, "The Legal Personality of International Organizations," *Sri Lanka Journal of International Law*, Vol. 4 (1992), p. 80–81.

¹² Law Explorer, "Subjects of International Law," Law Explorer, May 5th 2018, available at <https://lawexplores.com/subjects-of-international-law/>, accessed on July 5th 2023.

¹³ Hermann Mosler, "Subjects of International Law," in R. Bernhardt (ed.), *Encyclopedia of Public International Law*, Installment 7, (Amsterdam: Elsevier Science Publishers B.V., 1984), p. 442–443.

¹⁴ Christian Walter, "Subjects of International Law," in R. Bernhardt (ed.), *Encyclopedia of Public International Law*, (Amsterdam: Elsevier Science Publishers B.V., s.a.), p. 3, available online at <https://hoclv.com/wp-content/uploads/2017/11/2.-subjects-of-international-law.pdf>.

¹⁵ Law Explorer, "Subjects of International Law," Law Explorer, May 5th 2018, available at <https://lawexplores.com/subjects-of-international-law/>, accessed on July 5th 2023.

organization can be classified as an international law subject, as it is governed by international law itself.

Not all actors on the international plane are subjects of international law, and therefore not all of them possess the capacity to exercise their rights and obligations on the international plane. An entity's capacity to act legally on the international plane depends on the existence of its international legal personality.¹⁶ This legal personality allows them to engage with other subjects of international law to make agreements, sign treaties, or make regulations that are enforceable to other subjects of international law as well.

What Makes an International Organization an International Law Subject?

International organizations are classified into two categories which are public international organizations and private international organizations. International organizations differ from individual states as they may comprise non-state actors (Non-Governmental Organizations such as the Amnesty International) or independent states (Inter-Governmental Organizations established by treaty between three or more states¹⁷ such as the United Nations/UN) and may have administrative control over a territory but no sovereignty over it. A public international organization is established based on general international law through intra-state agreements in the form of a treaty¹⁸ that results in the creation of its constituent instruments. In its legal nature, the treaty is referred to as the constitution of international organizations.¹⁹ In contrast, private international organizations are not established based upon the international law, but rather by the national law of one of its constituent countries.²⁰ The competence of an international organization is also limited by the goals set in its charter, while its immunity is agreement-based and limited to the necessity of its functions. As a legal entity, an international organization is entitled to have a legal personality that allows it to bear rights

¹⁶ Sukayna Khalid, "Recognizing the (Rightful) Subjects of International Law," International Law Coursework, April 2015, available at https://www.academia.edu/35830999/Recognising_the_Rightful_Subjects_of_International_Law, accessed on July 5th 2023.

¹⁷ Union of International Organizations, "Types of International Organization," uia.org, s.a., available at <https://uia.org/archive/types-organization/cc>, accessed on 20th October 2023.

¹⁸ Wiwin Yulianingsih, Moch. Firdaus Sholihin, "Hukum Organisasi Internasional," 1st Edition (2014), Yogyakarta: Penerbit ANDI, p.21.

¹⁹ Tetsuo Sato, "Constituent Instruments of International Organizations and Their Interpretative Framework - Introduction to the Principal Doctrines and Bibliography," *Hitotsubashi Journal of Law and Politics*, Vol. 14 (1986), available at <https://core.ac.uk/download/pdf/59066955.pdf>.

²⁰ Wiwin Yulianingsih, "Hukum Organisasi Internasional", p.25.

and obligations only if given through the legal system to which it is bound, with no regard to its creators and its members.²¹

International organizations are perceived to be created by states through an establishing treaty, and therefore its legal personality depends on the intention of the state creating it to give, in order to enable it to carry out certain functions desired by the state. Examples of international organizations created through a treaty include the UN, International Labor Organization (ILO) and the World Trade Organization (WTO) which was born out of international agreements. These establishing treaties result in the creation of the international organization's constitution which grants each of them their international legal personality as in the case of the ILO²² and WTO.²³ In the case of the UN, its Charter does not explicitly state that the organization has a legal personality but rather implicitly as seen from the intentions of their state creators during its establishment.²⁴

Non-state entities may also be recognized as subjects of international law in parallel to sovereign states if certain criteria are met, namely independence from any other entity and recognition of its international legal personality. Despite the fact that recent developments in international law have enabled non-state actors to be recognized as the subjects of international law, sovereign states still retain their position as the main subject of international law. This is because the recognition of non-state entities' international legal personality by sovereign states determines their position on the international plane.²⁵ It is also important to note that recognition shall not be seen as a significant determiner of an entity's status as an international law subject since there is no consistent set of empirical criteria upon which states base their recognition and that even though non-state entities may also be recognized as subjects of

²¹ Nneoma Udeairiy, "To What Extent Do International Organizations Possess International Legal Personality?" University of Westminster, September 15, 2011, available at SSRN: <https://ssrn.com/abstract=2052555> or <http://dx.doi.org/10.2139/ssrn.2052555>.

²² International Labor Organization, ILO Constitution Article 39, accessible at https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#A39.

²³ World Trade Organization, Marrakesh Agreement Establishing the World Trade Organization Article VII (1), accessible at https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm.

²⁴ Gudbrandsen, Susanne Juell, "Legal Personality of International Organisations: In Relation to Members and Non-members." (Master's Thesis Faculty of Law of University of Oslo, Oslo, 2003). Available at <https://www.duo.uio.no/bitstream/handle/10852/18865/2304AvhSjG.pdf?sequence=3>.

²⁵ Sukayna Khalid, "Recognizing the (Rightful) Subjects of International Law," International Law Coursework, April 2015, p. 5–6.

international law, they may not be recognized as members of International Organizations, unless the constituting treaty of the International Organization stipulates as such.²⁶

Additionally, formal state law may also set provisions that an association established within its jurisdiction which has no commercial purpose could automatically gain an international legal personality as soon as the association's intention to exist as a corporate body has been written in their articles of association, which contains the rules and regulations relating to the internal management of the association. It defines the rights, powers, and duties of the management in running the association to achieve its objectives.²⁷ This is the case with the Swiss Law, by which FIFA was established and regulated.²⁸ While states possess all international legal rights and are subject to all international legal duties, international organizations do not possess them entirely. International organizations are only considered partial subjects of international law, which implies that their rights and duties are limited only to those set in their founding documents. The scope of their international legal personality does not extend beyond the rights and duties determined in their founding documents.²⁹

FIFA's Case

There are no restrictions in international law on the recognition of entities other than states and intergovernmental organizations as international law subjects.³⁰ Recent development of international law shows that subjects of international law have included international organizations in addition to sovereign states.³¹ Those organizations may take the form of hybrid organizations which are established under national law but have their international legal personality recognized by their home country and also other countries.³² An illustration of organizations which have their legal personality acknowledged by both the international law

²⁶ Guido Acquaviva, "Subjects of International Law: A Power-Based Analysis," *Vanderbilt Journal of Transnational Law*, Vol. 38, No. 2 (2021), p. 345.

²⁷ SK Singh and Sanjay Gupta, *Business Studies Based on NCERT Guidelines Class XI*, ed. 2019-20, (Agra: SPBD Publications, 2020), p. 314.

²⁸ Switzerland, Swiss Civil Code Art. 60.

²⁹ Sanya Mansoor, "These Are the Countries FIFA Has Ever Banned From the World Cup," *time.com*, November 17th 2022, available at <https://time.com/6234776/countries-banned-world-cup-russia/>, accessed on April 11th 2023.

³⁰ Droesse, G. (2020), *Subjects of International Law and International Legal Personality*, In: *Membership in International Organizations*, T.M.C. Asser Press, The Hague.

³¹ Mochtar Kusumaatmadja and Etty R. Agoes, *Pengantar Hukum Internasional, 5th printing*, (Bandung: PT Alumni, 2015).

³² *Op cit.*

and the national law of its home country can be given by contrasting FIFA with the International Committee of the Red Cross (ICRC).

The ICRC was born out of an international agreement which is the 1863 Geneva Convention.³³ As stated within ICRC's Statute that it is an association governed by Article 60 and the following of the Swiss Civil Code,³⁴ The ICRC is regarded as a Swiss Non-Governmental Organization (NGO) with international legal capabilities given by the Geneva Convention, and it is not an international NGO. The ICRC can be identified with Switzerland rather than an independent international organization.³⁵ Despite being classified as a national NGO, the ICRC is capable of engaging with other subjects of international law namely sovereign states in activities argued to be necessary to meet its objectives like having informal talks with governments in the hope of gaining access to war prisoners. The ICRC has an organizational structure that makes it an entirely Swiss private association without an intergovernmental dimension. Although its standing as a subject of (and to) international law is still debatable, the organization is admitted as an interlocutor by individual states.³⁶

On the other hand, FIFA is also an association established under Article 60 of the Swiss Civil Code. The difference it has with the ICRC is that FIFA is an example of a business enterprise in the legal form of an association.³⁷ FIFA was established by seven European football associations from Spain, The Netherlands, France, Sweden, Denmark, Belgium, and Switzerland.³⁸ Each of them represent their respective states, but they are not a part of the government. The FIFA Statutes clearly stated in Article 10 Paragraph 1 that FIFA's members consist of football associations representing a sovereign country, but not the country itself.³⁹ As FIFA is also governed by Article 60 of the Swiss Civil Code, FIFA's legal personality is also given by the Swiss Law. Compared to the ICRC, FIFA is different in the way that it is not

³³ Christophe Lanord, "The Legal Status of National Red Cross and Red Crescent Societies," *icrc.org*, December 2000, available at <https://www.icrc.org/en/doc/resources/documents/article/other/57jqt9.htm>, accessed on 20th October 2023.

³⁴ ICRC, Statutes of the International Committee of the Red Cross Art. 2 (1).

³⁵ Halil Rahman Basaran, "The International Committee of the Red Cross: an Evaluation," *Indonesian Journal of International Law*, Vol. 17, No. 3 (2020), p. 360–361, available at <https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1003&context=ijil>.

³⁶ *Ibid.*, p. 362.

³⁷ Obada S. Zeidan and Simon G. Fauser, "Corporate Governance and Corporate Social Responsibility – The Case of FIFA," *Problems and Perspectives in Management*, Vol. 13, Issue 2 (2015), p. 185.

³⁸ Muhammad Nizar Hidayat, "FIFA, Global Governance and Cosmopolitanism," *Jurnal Independance Hubungan Internasional*, Vol. 3, No. 1 (2015), p. 22, accessible at <https://e-journals.unmul.ac.id/index.php/JHII/article/view/1333/1018>.

³⁹ FIFA, FIFA Statutes Art. 10.

an international organization formed by states and it does not consist of states as its members. Hence, its relationship with its members takes the form of a private law relationship.

Looking at FIFA, it is still difficult to conclude whether the federation is a public or a private entity. FIFA is not an intergovernmental organization which derives its power from its founding states, but it is rather a private entity⁴⁰. It is not a for-profit enterprise as its streams of revenue are redirected to fund efforts made to protect and develop the football game, promote the game globally, enforce and develop the laws of the game, and organize international championships.⁴¹ Moreover, FIFA is not state-affiliated despite being stationed in Switzerland and established based upon the Swiss Civil Code. Its members are also national football associations independent of their respective government's influence.

FIFA's possession of a legal personality may not be declared explicitly in its Statutes, but it is implicitly recognized by sovereign states. States recognize FIFA's legal personality only when entering into business relationships with FIFA in a *Jus Gestionis* way. This means that those states do not conduct public relationship with FIFA in the name of its government, but rather they conduct commercial relations through state-owned bodies that are not organs of the state itself.⁴² For instance, countries willing to apply for World Cup host status will require its government to take part in a bid organized by FIFA. This bidding process requires those countries to submit several documents to FIFA and fill an application letter.⁴³ However, it is notable that the countries' motivation to follow this procedure set by FIFA is because they seek economic revenue from organizing the World Cup in their territory. This illustrates that states acknowledged FIFA's ability to make private agreements with them in their position as subjects of international law, and that the agreements are not made to satisfy their public interests. By looking at FIFA's display of power in its relation with states, it is considerable to treat FIFA as an international law subject, namely a private international organization.

⁴⁰ Upcounsel, "Private Entity: Everything You Need to Know," upcounsel.com, s.a., available at <https://www.upcounsel.com/private-entity#:~:text=A%20private%20entity%20can%20be,that%20is%20not%20government%2Daffiliated>, accessed on 24th October 2023.

⁴¹ Muhammad Nizar Hidayat, "FIFA, Global Governance and Cosmopolitanism," p. 23–24.

⁴² Oxford Reference, "Jure Gestionis," oxfordreference.com, s.a., available at <https://www.oxfordreference.com/display/10.1093/oi/authority.20110810105202117>, accessed on 25th October 2023.

⁴³ Rookie Road, "How Is The Host Nation Decided for The FIFA World Cup?," s.a., available at <https://www.rookieroad.com/fifa-world-cup/how-is-the-host-nation-decided-for-world-5144930/#the-bidding-process>, accessed on 25th October 2023.

It is also noteworthy that FIFA has its own set of rules and follows the Court of Arbitration for Sport (“CAS”) in the settlement of disputes occurring among its members. According to Art. R45 of the Code of Sports-Related Arbitration and Mediation, the CAS follows the Swiss law by default in the absence of any choice of law determined by the conflicting parties, due to being stationed in Switzerland. Even though FIFA can be seen as an international organization based on national law (Swiss law) and has its international legal personality recognized by the Swiss law, under Article 60 of the Swiss Civil Code, the Swiss government's treatment of FIFA as “somewhat” an international organization with a legal personality shall be followed suit by other countries wishing to send their national football associations to participate in the World Cup organized by FIFA.⁴⁴

However, FIFA’s position on the international plane is still debatable. As recent developments in international law have recognized international organizations as the subjects of international law alongside sovereign states, another perspective argues that there are two main criteria that need to be met for an international organization to be recognized as a subject of international law. The first is that the international organization is required at a minimum to have sovereignty in terms of having economic, political, and legal independence from other sovereign states when making its own decisions. Second, that international organization is required to obtain recognition by other sovereign states as a holder of international rights and obligations, which enables it to establish treaties and contracts, open embassies or permanent headquarters, request funds, and demand obligations from other subjects of international law. Every legal entity that fulfills those two criteria is always considered a subject of international law. According to this viewpoint, organizations capable of binding themselves to states such as the Holy See, the Red Cross, the European Union, the IMF, or FIFA can be recognized as subjects of international law.⁴⁵

Though FIFA is recognized as the central governing body of football by its members (football associations representing their respective countries), has the capability of mobilizing heads of state when organizing the FIFA World Cup, and is free from the influence of any subject of international law in making its own decisions which seem to fulfill several “criteria” of an international law subject, FIFA still can not be considered as one. FIFA is not entirely

⁴⁴ Switzerland, Swiss Civil Code Art. 60.

⁴⁵ Anavitarte, E.J., “Subjects of International Law,” Academia Lab, March 2022, available at <https://academia-lab.com/2022/03/01/subjects-of-international-law/>, accessed on July 6th 2023.

governed by international law as it operates within the framework of its own regulations set by its own governing body, such as the FIFA Statutes. However, in practice, the activities of the organization are regulated by the national law of the state in which FIFA is stationed, which in this case is Swiss Law. On top of that, FIFA is also indirectly controlled by international law in terms of having to comply with it regarding the organization's legal obligation to respect human rights, labor standards, and anti-discrimination laws, as well as complying with international treaties when hosting major football tournaments such as the World Cup.

The Source of FIFA's Authority to Enforce Its Rules

FIFA is the lawmaking body for world soccer which creates and enforces a code of conduct for players, clubs, regional federations, and international organizations. FIFA's ability to make its law is granted by the Swiss Law, upon which its formation was based. Many international organizations and sports associations are stationed in Switzerland due to the existing regulations, which create a favorable environment for their growth. Associations established under Swiss Law enjoy the ease in structuring and administering, especially in executing its internal governance, determining the rights and obligations of its members, as well as deciding upon internal remedies.⁴⁶ This ease of executing internal governance and dispute resolution by associations is given by the Swiss Civil Code as regulated in Art. 60 of the Swiss Civil Code.⁴⁷

FIFA is a private association that is not a public entity and is run for profit. Therefore, FIFA has its own set of regulations, such as the FIFA Statutes, FIFA Governance Regulations, and FIFA Disciplinary Code which will regulate everything regarding FIFA and its members. This set of regulations is part of a private legal order created by FIFA. Although there is no specific part of the Swiss Law that explicitly gives associations the freedom to make their regulations and enforce them as they wish, those associations still benefit from the recognition of their autonomy, as stated in Art. 60 of the Swiss Civil Code. The autonomy given by this article includes the permission to execute self-governance and to establish regulations within the limits given by Swiss Law. This also enables organizations to freely organize their activities and pursue their objectives without any interference from external parties. Additionally, while

⁴⁶ Claude Ramoni and Alexandra Veuthey, "The Sports Law Review: Switzerland," *The Law Reviews*, 8th September 2022, available at <https://thelawreviews.co.uk/title/the-sports-law-review/switzerland>, accessed on July 6th 2023.

⁴⁷ Switzerland, Swiss Civil Code Art. 60.

Art. 60 of the Swiss Civil Code applies specifically to associations, it also serves as a basis for the recognition of the autonomy of international organizations (including FIFA) within the Swiss legal system.

The rules and regulations made by a private entity are referred to as a private law order. It may only provide the rules of conduct and then rely on the support of formal state institutions for carrying out dispute resolution and the enforcement of sanctions, but in some other instances, a private law order can also consist of the enforcement mechanisms. This way, if the law is created by an organization, the organization will then obtain the ability to enforce its law by itself after forming its judicial bodies. In the case of FIFA, the organization has developed a complex law-like private order which is signified by the formation of a formal institutional structure. These institutions include a legislative branch having the rule-making capability, an executive branch, and a judicial branch having the capability to deal with dispute resolution and law enforcement for any breach of regulations done by its members.⁴⁸

FIFA's regulations are enforced by its court system, which consists of three judicial bodies: the Disciplinary Committee, the Ethics Committee, and the Appeals Committee. The Disciplinary Committee is authorized to enforce sanctions on violations against FIFA's Statutes and Disciplinary Code. The Ethics Committee investigates and punishes breaches of ethics, while the Appeals Committee handles appeals from committees and holds the authority to reverse decisions and adjust punishments. FIFA's set of regulations enforced by the Disciplinary Committee gave it the authority to sanction its members that deviate from the regulations contained within the FIFA Statute, and this power can be seen when FIFA removed Indonesia from its status as the FIFA U-20 World Cup host country. In addition to those three internal judicial bodies, FIFA also recognizes the Court of Arbitration for Sport, an independent and impartial arbitrator, which has the competency to arbitrate final appeals of decisions made by competent sports authorities at a national, international, or sport-specific level as well as sport-related disputes within FIFA members.⁴⁹

A question may be raised on FIFA's authority to enforce its own rules: How can a set of rules issued by the organization itself be enforceable to countries having their sovereignty

⁴⁸ Suren Gomtsian, Annemarie Balvert, Branislav Hock, and Oguz Kirman, "Between the Green Pitch and the Red Tape: The Private Legal Order of FIFA," [openyls.law.yale.edu](https://openyls.law.yale.edu/bitstream/handle/20.500.13051/6722/SurenGomtsianAnnemarieBal.pdf?sequence=2&isAllowed=y), available at <https://openyls.law.yale.edu/bitstream/handle/20.500.13051/6722/SurenGomtsianAnnemarieBal.pdf?sequence=2&isAllowed=y>, accessed on July 7th 2023.

⁴⁹ Norton Rose Fulbright, "Court of Arbitration for Sport (CAS)," Norton Rose Fulbright, June 2018, available at [Court of arbitration for Sport \(CAS\) | Indonesia | Global law firm | Norton Rose Fulbright](#), accessed on July 7th 2023.

and jurisdiction? It is important to note that FIFA's Statute gains its power to be enforced on FIFA's members since their submission to be a part of the organization. This agreement to be bound by FIFA's regulations and decisions is a condition that must be met by associations applying for membership, taking into consideration the fact that membership criteria and its procedures are also regulated within the FIFA Statute.⁵⁰ Seen from the perspective of International Private Law, an agreement made between two parties (in this case, FIFA and the association applying for FIFA membership) would require them to determine a law upon which their agreement shall be based. In this context, the agreed law would be the FIFA Statute, as the football association applying for membership is required to recognize the Statute and bow itself down to be regulated by it. This is done to obtain FIFA's membership status, although the association represents a country that has its jurisdiction and sovereignty. Another reason for football associations to choose to be governed by FIFA's private law order, rather than formal state law, would be that it better suits their needs and is more beneficial to them.

As stated in Section IX Art. 62 (1) of the FIFA Statute, every confederation, member, and league adhering themselves to be a part of FIFA must agree to comply entirely with any decisions passed by the relevant FIFA bodies, which are said to be final and not subject to any appeal. This gave FIFA the legal basis to put its decisions into force on its members, including players, officials, and agents.⁵¹ Therefore, FIFA grants itself the power to sanction any of its members who do not conform to its decisions. The binding force of FIFA's rules and decisions is also amplified by its organizational structure, with which the decisions made by FIFA can affect every single stakeholder at each level, top to down. The top level of FIFA's structure consists of FIFA's governing body. Below are the six regional confederations, followed by FIFA's members, which are football associations, each representing a country. At the bottom level stands the individual football clubs which are a part of the national football association.

The application of FIFA's rule will have an effect on its national member associations and everyone participating in the matches and tournaments organized by FIFA. This will, in turn, have indirect implications on all actors affiliated with the national member associations, as these rules will set the boundaries within which member associations can design their own national rules. FIFA binds its bottom-line members to its regulations, namely by charging member associations to apply FIFA regulations directly to all related stakeholders within their

⁵⁰ Fédération Internationale de Football Association, FIFA Statutes, Article 9-11.

⁵¹ Fédération Internationale de Football Association, FIFA Statutes, Article 62 (Section 2-3).

borders and by obliging member associations to integrate FIFA regulations into their national regulations. In the latter, FIFA's regulations set the standard minimum while member associations are given the freedom to formulate stricter rules.⁵²

Internal decisions of sports organizations, although lacking independence and impartiality, are generally not regarded as judgments or awards that carry enforceability under domestic statutory provisions and international treaties. Due to this inherent limitation, the decisions rendered within sports organizations cannot be legally enforced in the same manner as recognized legal judgments. However, it is noteworthy that parties involved in these organizations usually choose to comply with such decisions as a preventative measure, as failure to do so may result in the imposition of sporting sanctions by the respective governing bodies.

In the case of the 2023 U-20 World Cup that was supposedly held in Indonesia, FIFA's decision to remove Indonesia from its status as the host country shall be seen as final and binding. This decision was made by FIFA's high-level officials, and it affected the Indonesian National Football Association ("PSSI"), causing its youth team to be prepared to compete in the U-20 World Cup, the Garuda Muda Squad, to be disassembled. Indonesia's position as the host country has given it the privilege to qualify for the U-20 World Cup, and therefore, the removal of Indonesia's host status has also caused the national team to fail to qualify. A direct effect is also felt by Indonesia, as the host country, in the form of financial losses due to the costs of venue renovation and other preparations. By taking into account the finality, the binding force, as well as the controversies regarding FIFA's decision to remove Indonesia as the host country of the 2023 U-20 World Cup, Indonesia still has a right to submit an appeal to the Appeals Committee.

This could be done should the country feel that the decision is unjust and resulted from a decision-making process within FIFA's judicial body that does not align with FIFA's obligations regulated by the FIFA Statutes. As a FIFA member, PSSI is given the legal protection to submit an appeal by the Swiss Law for a month after learning of the decision to remove the country's host status, as stated in Art. 75 of the Swiss Civil Code that "Any member (of the association; FIFA) who has not consented to a resolution which infringes the law or

⁵² Suren Gomtsian, Annemarie Balvert, Branislav Hockt, and Oguz Kirman, "Between the Green Pitch and the Red Tape: The Private Legal Order of FIFA," openyls.law.yale.edu, page 99.

articles of association (The FIFA Statutes) is entitled by law to challenge such resolution in court within one month of learning thereof.”⁵³

Why Can FIFA Act Like a Subject of International Law?

FIFA operates under Swiss law from its headquarters in Switzerland, granting it the authority to draft its statutes and act like an international law subject with a legal personality on the international plane. Just like independent countries, FIFA has legislative, executive, and administrative bodies. The Congress serves as FIFA's supreme and legislative body, the general secretariat as its executive and administrative body, and the Disciplinary Committee and Appeals Committee as its "judicial" body.

Adhering parties are bound by FIFA's regulations stated in the FIFA Statutes. This grants FIFA the power to determine the status of its members and enforce its regulations, even on an international level, to enhance the game of football. The Statutes provide FIFA the rights, liabilities, and structure it needs to carry out its functions and its legal obligations. These internal regulations empower FIFA to establish rules, organize tournaments, and make decisions that impact member associations, clubs, players, and other stakeholders in the football community. The Swiss legal system, which permits FIFA to establish its own rules and regulations, makes it feasible for FIFA to function similarly to a subject of international law and regulate international football.

The function of FIFA in the world of international football is sometimes likened to that of a formal state. FIFA coordinates the sport's worldwide administration by uniting its member associations, much like a state would. It establishes and upholds regulations, settles disputes, and controls the planning of significant international competitions. The significance and influence of FIFA expand beyond sports, frequently influencing larger social concerns and fostering diplomatic ties with national and international authorities. This includes FIFA's ability to influence the head of state of a FIFA World Cup host country's decision to create and put into force certain regulations that ensure the country's commitment to organizing the World Cup.

Such influence can be seen after the appointment of Indonesia as the initial host country of the 2023 U-20 FIFA World Cup, as President Jokowi signed the President's Decision (“Keppres”) No. 19 of 2020 and the President's Instruction (“Inpres”) No. 8 of 2020. The

⁵³ Switzerland, Swiss Civil Code Art. 75 regarding the Protection of Members.

Keppres was created to provide a legal basis for the World Cup's execution while the Inpres was created to provide legal support for its execution. These two regulations have provided the Indonesia FIFA U-20 World Cup 2021 Organizing Committee ("INAFOC") with a legal basis to set up its office at the Gelora Bung Karno Arena⁵⁴, which was planned to be one of the World Cup's venues.

Although FIFA's legal standing and responsibilities may not be the same as those of a typical state, its power to create its own statutes and rule over international football gives it a certain amount of legal personality and the ability to act similarly to a subject of international law. FIFA now has the resources necessary to carry out its mandate of administering and promoting the most popular sport in the world.

III. Regulation

FIFA's standing as an organization is at the heart of the debate over whether it is a matter of international law. Legal entities are mostly used in that context to distinguish between social entities that are important to the international legal system and those that are not.⁵⁵ Numerous entities are regarded as international legal subjects, including companies, non-governmental organizations, and even some international sporting groups. An international organization can be classified as an international law subject governed by international law itself. It is interesting to note that FIFA's legal standing is somewhat ambiguous; it is neither a state nor a normal international body.

International organizations can legitimately be a subject of international law if they follow indicators such as that the subject can and has the right to enter into an international agreement, has the right to send or receive a representative, and can submit and receive international claims. In this case, FIFA has not been seen to follow these indicators, even with the agreements needed to host their events. FIFA is a private association that is not a public entity and is run for profit. FIFA's primary function is to regulate and govern international football. It establishes rules, regulations, and policies that govern various aspects of the sport.

FIFA itself has many regulations, such as the FIFA Statutes, FIFA Governance Regulation, FIFA Disciplinary Code, and even to an extent, Swiss Civil Law. Regarding its

⁵⁴ Kemenpora RI, "Menpora Zainuddin Amali Umumkan Keppres dan Inpres tentang Piala Dunia U-20," kemenpora.go.id, September 2020, available at <https://www.kemenpora.go.id/detail/97/menpora-zainudin-amali-umumkan-keppres-dan-inpres-tentang-piala-dunia-u-20>, accessed on 15th July 2023.

⁵⁵ Roland Portmann, "Legal Personality in International Law: Introduction," Cambridge University Press (2010), p. 1-4.

laws, FIFA recognizes the independent CAS, headquartered in Lausanne, Switzerland. This court is to arbitrate disputes involving FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries, and licensed match agents, as stated within Article 59 of the FIFA Statutes.⁵⁶ So as said above, FIFA is a private association that follows CAS and Swiss law due to being stationed in Switzerland.

While FIFA's regulations bind its member associations, clubs, players, and other stakeholders, these rules are primer internally to football and do not hold direct legal effects beyond the realm of the sport. FIFA's decisions are not generally recognized as legally binding judgments by national courts or international tribunals. FIFA's relationship with international law is mainly indirect and complementary. It cooperates with national and international authorities on matters such as safety, security, and human rights during major tournaments. FIFA's hosting agreements with countries may include obligations to comply with international standards and conventions. However, these interactions do not confer subjecthood upon FIFA or elevate its decisions to the status of legally enforceable international law.

Regarding Indonesia's case, FIFA's decision is somewhat discriminative in deciding to cancel Indonesia as the host of the World Cup U-20. According to Article 3 of FIFA's Statutes, this can be seen as a violation of the said statute. This Article talks about non-discrimination and the stance against racism. It states that discrimination of any kind against a country, private person, or groups of people on account of ethnic origin, gender, language, religion, politics, or any other reason is strictly prohibited and punishable by suspension or expulsion.

By canceling Indonesia as the host of the World Cup U-20, FIFA's decision could be seen as contradictory to its regulations. It raises concerns about a potential violation of Article 3, as the decision appears to discriminate against Indonesia based on an unspecified reason. If there were no justifiable grounds for the cancellation, it could be argued that FIFA's decision contradicts the spirit of non-discrimination enshrined in its Statutes.⁵⁷

It is crucial to take FIFA's decision-making process into account while analyzing the scenario. Although the facts of the case are not given, FIFA likely had valid worries about the organization's capacities, infrastructure, or other pertinent elements. FIFA's principal goal is to make sure that its competitions are carried out successfully while upholding the standards

⁵⁶ Fédération Internationale de Football Association, FIFA Statutes, Article 59.

⁵⁷ Fédération Internationale de Football Association, FIFA Statutes, Article 3.

required of a major sporting event. Therefore, the tournament's and the participant teams' best interests must come first in any decision about hosting rights.

However, if it can be shown that FIFA's decision was based on discriminatory reasons or that its decision-making process lacked transparency, it would be against FIFA's own rules. When making decisions that affect member associations and host nations, FIFA, as the authority that oversees international football, should follow the values of justice, transparency, and non-discrimination.

IV. Conclusion

FIFA is not a subject of international law in the form of a public international organization. It falls closer to the category of private international organizations as FIFA is an international football association composed of national football associations each representing a sovereign state, not their governments. FIFA was also established by national football associations originating from seven European countries, and each of them are independent of their own respective governments. Therefore, it can be concluded that FIFA was not established by states and that its legal personality is not bestowed upon the organization by states. However, its status as a private international organization having a legal personality grants the organization its right to act on the international plane. Therefore, it is capable of acting similarly to an international law subject as FIFA is able to make its own law and enforce it internationally. It can also engage in cooperation with multinational corporations and with sovereign states by sending its representatives abroad and open representative headquarters, set standards for the construction of stadiums in the territories of its member association, and inspect them if they are to be used as a venue for FIFA's international tournaments, as well as having the ability to arrange meetings with heads of states and mobilize them in FIFA's large-scale tournaments such as the World Cup.

This "international legal personality" that FIFA has is given by its own statutes, which also regulate the conduct of its members and the organization of football games worldwide. Due to being stationed in Switzerland, FIFA was created in accordance with the law, and therefore its rights and obligations are also determined by Swiss Law. The Swiss Criminal Code regulates the creation and operation of associations that are stationed within the country's territory, as well as regulating the rights and duties of its members. The Code also gives FIFA

the flexibility to execute self-governance and make its own rules and regulations. Therefore it is notable that the FIFA Statutes are drafted in compliance with the Swiss Criminal Code.

The FIFA Statutes bind all of its members as well as related stakeholders at the bottom level of the organization's structure. The enforcement of FIFA's Statutes is done by the organization's court system, which consists of three judicial bodies: the Disciplinary Committee, which is authorized to enforce sanctions on violations against FIFA's Statutes and Disciplinary Code; the Ethics Committee, which investigates and punishes breaches of ethics; and the Appeals Committee which handles appeals from committees and holds the authority to reverse decisions and adjust punishments. In addition to these three judicial bodies, FIFA also recognizes the CAS as an arbitrator that settles sport-related disputes between its members. The CAS is also a means for FIFA to maintain its private legal order, as the CAS prioritizes the utilization of the FIFA Statutes to settle disputes between FIFA's members.

What gave FIFA's regulations their binding strength is the obligation for FIFA's members to bow down to be regulated by it. This consent to comply with FIFA's Statutes is a mandatory condition that must be given by football associations applying for FIFA membership. Moreover, the member's compliance with FIFA's regulations is also guaranteed by a sanction mechanism that FIFA could impose on them for any violation. These sanctions could include fines, cuts of development funds given by FIFA, prohibition to participate in tournaments as a national representative, and at the very least, exhaustion of membership. In essence, the freedom given to FIFA by the Swiss Law with certain limits to execute self-governance, create its regulations, and determine ways to enforce it on its members has made FIFA able to act similarly to a subject of international law on the international plane. Moreover, FIFA seems to hold a prominent position on the international plane as its members comprise of national football associations coming from 208 countries across the globe⁵⁸, and this made the impression that FIFA has a strong bargaining position internationally.

V. Suggestion

As a member of the world's largest football federation, the PSSI has an obligation to abide by FIFA's rules and respect its decision to remove Indonesia from its status as the host country of the 2023 U-20 FIFA World Cup. This is due to the fact that PSSI has failed to

⁵⁸ Karen MacGregor, "FIFA - Building a Transnational Football Community," *universityworldnews.com*, June 2010, available at <https://www.universityworldnews.com/post.php?story=20100612180611360>, accessed on 25th October 2023.

comply with the FIFA Statutes, namely after its failure to organize safe football matches at home, which was evident in the events that led to the aftermath of the Kanjuruhan Tragedy.

In regard to the controversies surrounding the rejection of the Israel national football team to be present and compete in Indonesia, two factors must be reconsidered by FIFA and the Indonesian government for evaluation. The first is that FIFA needs to perform a more comprehensive assessment of a country's eligibility and national values when considering assigning it as the host country for the FIFA World Cup. Second, the Indonesian government should also study the potential risks of being a World Cup host and review the consistency of the implementation of its government policies across all hierarchies. This will ensure that decisions made by the central government have been correctly communicated down to the lowest level of government. Once executed correctly, the country will be able to show its commitment to providing a safe ground for organizing an inclusive football tournament, free from the influence of politics and pressure of external parties.

However, should Indonesia feel that FIFA's decision to sanction and remove it from its position as the World Cup host is unjust, Indonesia has a right to submit an appeal to the FIFA Appeals Committee that could attempt to alter the decision in its favor. If Indonesia has done so, and the Committee's decision is still unsatisfactory, Indonesia may attempt to submit another appeal to the CAS as a last resort.

Until recently, FIFA has also given Indonesia "a second chance" to prove its readiness to host an international tournament and show its compliance with the FIFA Statutes by appointing it to be the host country of the upcoming U-17 FIFA World Cup. This opportunity must be appropriately utilized by Indonesia to restore the country's professional reputation at the international level, especially after the Kanjuruhan Tragedy and after being removed as the host of the 2023 U-20 FIFA World Cup.

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