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The Implementation of Proportionality Principle in Commercial Contracts of Franchise Sector

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ABSTRACT

The principle of proportionality is an integral legal principle in ensuring the balance of rights and obligations in commercial agreements, including franchises. This research aims to examine the function and purpose of the principle of proportionality in a franchise contract and analyze its implementation in the process of forming and performing the contract. The research method used is normative juridical with a legislative approach and analysis of literature related to the principle of proportionality in contract law. The results show that the principle of proportionality has a significant role in preventing imbalances in rights and obligations between franchisors and franchisees. The implementation of this principle in franchise contracts also contributes to creating legal certainty and reducing the potential for disputes due to imbalances in the agreement. Therefore, the implementation of the principle of proportionality in franchise contracts not only protects the rights of both parties, but also ensures fairness in the implementation of commercial contracts in the franchise sector.

Keywords: *Commercial Contract, Franchises, Justice, Legal Certainty, Principle of Proportionality*

INTRODUCTION

Franchise businesses have become an important part of global economic development, driven by trade liberalization and increased competition in accessing market opportunities. This system allows entrepreneurs to sell goods directly to consumers with promising growth potential. First introduced by Isaac Singer in the United States in 1850, the franchise business continues to grow rapidly today as an effective business model amid the dynamics of global trade (Rustan et al., 2020).

According to the International Franchise Association, annual retail sales from franchisor and franchisee companies in the United States were estimated at US$1 trillion in 2000, involving 320,000 small businesses spread across 75 different industries (Silvercrest, 2019). The franchise business acts as a means of community economic development, especially with promising profit potential. Support from international organizations such as the ILO and cooperation with the Ministry of Industry and Trade of the Republic of Indonesia have encouraged the formation of the Indonesian Franchise Association (AFI) in 1991 and the Indonesian Franchise Restaurant Association (ARWI) in 1995. Both associations play an important role in advancing the franchise industry, particularly in the restaurant sector. Through franchise licensing, small businesses can compete and grow faster by utilizing affordable materials, technology, service management, and royalty facilities.

In a franchise business, franchisors provide key services that help prospective franchisees consider potential profits and benefits. This support includes licenses, key services, as well as legal compliance to ensure there are no violations, fraud or deception committed by franchisors, both domestically and internationally. The government has an important role in monitoring and collecting data related to franchise businesses, as well as requiring franchisors to submit a transparent offering prospectus before an agreement is made. In addition, franchise agreement reports are regulated under Government Regulation No. 42/2007 to protect both parties (Savita & Fatmawati, 2022).

In this era of transparency and global business growth, the franchise system has become one of the most popular business models in Indonesia. A franchise agreement grants the franchisee the right to use the business identity, including brand, design and operational support (Syafiina & Cahyani, 2024). This business is based on sustainable partnerships, but often franchise agreements do not work proportionally, triggering legal issues related to contractual fairness. The principle of proportionality in commercial contracts is key in regulating the exchange of interests between the parties involved to prevent disputes and ensure the balance of rights and obligations in the agreement.

The main advantage of the franchise business model is the balance between the initial fees and royalties paid and the provision of key services that support the licensee's operations (Association, 2025). These services include business premises, equipment specifications, management and employee training, promotional support, and the benefits of bulk purchasing. Supported by a widely recognized trademark, small entrepreneurs can focus on business development without having to build a business system from scratch.

This research will discuss about the meaning and function of the principle of proportionality in commercial contracts of franchise business as well as the implementation of the principle of proportionality in the formation and implementation of commercial contracts in the franchise sector. The purpose of this research is to understand the function and purpose of the principle of proportionality in commercial contracts related to franchising, to find out how the application of the principle of proportionality in the formation and implementation of commercial contracts in the franchising sector, and the legal steps that could be made.

LITERATURE REVIEW

Agreement

According to the Indonesian Dictionary, an agreement is a mutual understanding between two or more parties, which can be either written or verbal, where each party commits to agreeing to and adhering to the terms within the agreement. A contract consists of several essential elements, including a legal relationship that creates rights and obligations, the legal subjects involved, and the performance that involves delivering something, doing something, or refraining from doing something, as stipulated in Article 1234 of the Indonesian Civil Code (KUHPerdata). Additionally, a contract is related to assets, where the agreed terms are documented in writing and signed by all involved parties.

In general, a contract is an agreement between multiple parties concerning assets that hold financial value (DSAK-IAI, 2017). The elements of a contract include the involved parties, mutual agreement, object of the contract, financial-related purpose, and the contract's form, which can be either verbal or written. Contract law is based on several fundamental principles, such as the Principle of Proportionality and the Freedom of Contract, which grants parties the right to create agreements as long as they do not violate the law, public order, or morality. Furthermore, there is the Complementary Principle, which allows parties to draft their own terms, the Consensual Principle, which emphasizes that agreement is the basis of contract formation, and the Obligatory Principle, which states that ownership rights only transfer after a property agreement and the process of delivery.

The validity of an agreement is determined by legal requirements stipulated in the law, ensuring that the agreement has legal effect. According to Article 1320 of the Indonesian Civil Code, an agreement is considered valid if it meets four conditions: the parties' mutual consent, legal capacity to engage in a contract, a clear and specific object, and a lawful cause (causa) (Siombo, 2023).

Contracts can be categorized based on several criteria, such as reciprocal agreements, where both parties have interrelated obligations; gratuitous agreements, which provide benefits without compensation; and onerous agreements, which involve obligations from both parties (Zalta et al., 2021). There are also named contracts regulated under the Civil Code, unnamed contracts commonly found in practice, and obligatory contracts that result in binding obligations. A property contract involves the transfer of rights, while a consensual contract is formed based on agreement. Additionally, there are real contracts that take effect after the delivery of goods, liberatoir contracts that release a party from obligations, evidentiary contracts related to proof methods, aleatory contracts with outcomes determined in the future, public contracts involving public law, and mixed contracts that combine various elements of different contract types.

Franchise

The term "franchise" originates from the French word *affranchir*, which means "to free." In the context of franchising, this term refers to granting rights or freedom to someone to use, produce, or sell something without being restricted by certain limitations (Bekhouche & Kahlessenane, 2018).

Collaboration in the franchise system involves two entities, as regulated in Article 1, Paragraphs (2) and (3) of Government Regulation of the Republic of Indonesia No. 42/2007:

1. Franchisor refers to an individual or business entity that grants permission to the franchisee to utilize and/or operate the franchise system it owns.
2. Franchisee refers to an individual or business entity that receives rights from the franchisor to utilize and/or operate the franchise system owned by the franchisor.

Article 1, Paragraph (7) of the Minister of Trade Regulation defines a franchise agreement as a "written agreement between the franchisor and the franchisee." In general, franchising involves granting rights by the franchisor to the franchisee—whether an individual or a group—to operate and use the franchisor's intellectual property rights. This process is often referred to as granting a licensing permit. However, a licensing agreement typically only includes permission to use a specific brand, whereas a franchise agreement encompasses broader intellectual property rights.

Government Regulation No. 42/2007 on Franchising

The franchise business system, which promises profits for both local and international entrepreneurs, requires government regulation to maintain order and protect consumers. On July 23, 2007, Government Regulation No. 42/2007 on

Franchising was issued as part of the implementation of various laws, including the 1945 Constitution of the Republic of Indonesia.

This regulation encourages the involvement of small and medium-sized enterprises as franchisors and franchisees while also requiring the registration of franchise businesses to monitor their development (Indonesia, 2007). The registration procedures are outlined in Minister of Industry and Trade Decree No. 12/MDAG/Per/3/2006. Although Government Regulation No. 16/1997 on Franchising has been repealed, its implementing regulations remain valid as long as they do not conflict with Government Regulation No. 42/2007.

Legal Protection

Legal protection describes how the law functions to achieve its objectives, namely ensuring justice, benefits, and legal certainty. Legal protection is an effort to safeguard the rights of legal subjects in accordance with applicable regulations, either through preventive measures or law enforcement that is coercive, whether written or unwritten. Legal protection in the context of franchising consists of two main aspects:

1. Preventive Legal Protection, which allows individuals to raise objections or opinions before a government decision becomes final.
2. Repressive Legal Protection, which focuses on resolving disputes or conflicts that have already occurred.

Franchising in Indonesia has had a legal basis since 1997 with the issuance of Government Regulation No. 16/1997 on Franchising on June 18, 1997. This regulation was later updated by Government Regulation No. 42/2007 on Franchising. Furthermore, this regulation was reinforced by Minister of Trade Regulation No. 31/M-DAG/PER/8/2008 concerning Franchise Operations, which was later amended by Minister of Trade Regulation No. 53/M-DAG/PER/8/2012.

Legal principles serve as the foundation of the legal system, reflecting ethical, moral, and social values in society. As a fundamental norm, legal principles function to assess the validity of legal norms in force. These principles often evolve from societal perceptions of what is deemed appropriate in social interactions and are then adopted by legislators as legal rules (Amin et al., 2023).

For example, the principle of good faith is established in law as a legal norm that must be upheld and cannot be ignored. To identify a legal principle, it is necessary to examine the general characteristics found in various specific regulatory norms.

RESEARCH METHODOLOGY

This research employs a normative juridical research method with a statute approach, conceptual approach, and case approach. This method is chosen to analyze the application of the principle of proportionality in commercial contracts in the franchise sector based on applicable regulations and relevant legal concepts.

The statute approach is used to examine legal regulations related to franchising, such as Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, Government Regulation No. 42/2007 on Franchising, and various other implementing regulations governing the legal relationship between franchisors and franchisees.

The conceptual approach involves reviewing legal theories related to the principle of proportionality in commercial contracts, including the principle of contractual justice, balance of rights and obligations, and legal protection for parties in franchise agreements (Rahman et al., 2022). The primary sources for this approach include legal doctrines, scientific journals, and books discussing the principle of proportionality in contract law.

The case approach is employed to analyze court decisions related to franchise contract disputes, particularly those highlighting aspects of fairness and the balance of rights and obligations between franchisors and franchisees. This case study provides empirical insights into how the principle of proportionality is applied in legal practice.

The data collection technique is conducted through literature studies by gathering and examining primary, secondary, and tertiary legal materials. Primary legal materials consist of legislation and court decisions, while secondary legal materials include legal journals, academic literature, and expert opinions. Tertiary legal materials are used to support the analysis, such as legal dictionaries and legal encyclopedias.

Data analysis is carried out qualitatively by interpreting and correlating various legal sources collected. The results of this analysis are expected to provide a comprehensive understanding of the application of the principle of proportionality in franchise commercial contracts, as well as recommendations for improving legal protection for parties involved in franchise agreements.

RESULT AND DISCUSSION

The Meaning and Function of the Principle of Proportionality in Commercial Contracts in the Franchise Business Sector

The theory of justice as a foundation in contractual relationships implies that discussions on contractual interactions between parties cannot be separated from the issue of justice. A contract serves as an arena where two different interests meet, expecting a fair exchange of interests. In Aristotle’s view, as expressed in Ethica Nicomachea, justice is the highest form of virtue. According to Aristotle, “Justice is achieved by treating equals equally and unequals unequally, in proportion to their differences.”

In practice, justice, who should reflect virtue, often disregards the principle of justice itself. Justice is inherently objective and universal, meaning it is absolute, obligatory, and often too abstract in its implementation, without considering the specific situations and conditions of each party.

Considering individual qualities and specific conditions as a basis for attention is not meant to diminish justice but rather to enhance its application. Therefore, in practice, justice is often corrected and aligned with the principle of equity (aequitas or fairness). Equity does not aim to alter the essence of justice but serves as a corrector or complement when individuals are in special circumstances. Through equity, the principle of *summa iustitia summa iniuria*—that extreme justice can lead to injustice—can be avoided, ensuring that the application of justice in interpersonal relationships is restored to a more appropriate proportion.

This is because equity considers essential aspects surrounding a case, including good faith, the intentions of the parties, situations or conditions, and other relevant factors.

The Substance and Function of the Principle of Proportionality in Commercial Contracts in the Franchise Business Sector

In the business world, all parties’ interests are incorporated into contracts, as every business action is a legal act with consequences. Although often overlooked, the principles of balance and proportionality are crucial in contract law and should be emphasized in contract formation to ensure justice for all parties involved.

In conclusion, the understanding of the principle of proportionality in contracts remains incomplete, as seen in the confusion between the terms proportionality and balance, which have not been clearly distinguished. Balance refers to the equal bargaining positions of the parties, where an imbalance may justify regulatory intervention. Meanwhile, proportionality is often understood only in the context of the burden of proof in legal proceedings, whereas it should be comprehended as the proportional distribution of rights and obligations encompassing all contractual aspects.

The aspects and impact of the principle of proportionality become more significant in commercial contracts. The rationale is that commercial contracts tend to place parties in an equal position, allowing them to achieve their business objectives through a fair and proportional exchange of rights and obligations. The principle of proportionality is not merely a mathematical balance but a process and mechanism that ensure fair exchanges of rights and obligations.

The Application of the Principle of Proportionality in the Formation of Commercial Contracts in the Franchise Business Sector

In contract drafting, business processes are translated into legal formats, where contracts play a crucial role in transferring interests between parties. The synergy between business aspects and contract law is essential in determining business success. The structure of contract drafting must consider proper processes, procedures, and legal norms as fundamental requirements.

During the contracting process, ensuring a balanced consideration of each party's interests at every stage, especially during negotiations, is vital. Negotiation in commercial contracts is an implementation of the principle of proportionality aimed at reaching a mutual agreement. The exchange of interests between the involved parties occurs dynamically, even though contractual commitments often contradict each other. According to Antony Klok and Gerald S. Williams, contract negotiations can be either positive (cooperative) or negative (competitive), with positive negotiations focusing on achieving optimal results through cooperation and fairness.

Rudi Prasetya argues that reaching an agreement in contracts does not solely depend on negotiation skills, although they are important. Mastery of negotiation techniques influences the bargaining position of the parties. Therefore, it is essential to evaluate contract clauses and ensure they meet standards of fairness and propriety.

In the Indonesian legal system, every individual is recognized as a legal subject with rights and obligations from birth to death. Exceptions are regulated under Article 2 of the Civil Code, which states that an unborn child is considered to have been born if it benefits them. Individuals have legal capacity, indicating the ability to act under the law, but this capacity may be restricted by certain factors such as age, mental health, and guardianship status.

The legal object refers to everything beneficial to the legal subject and serves as the basis of legal relations, including rights or property that can be owned. In franchise agreements, the legal subjects are the franchisor and franchisee, as regulated under Articles 3 and 4 of Government Regulation No. 42/2007. Additionally, based on Minister of Trade Regulation No. 53/M-DAG/PER/8/2012, there are categories of franchisors and franchisees, including master franchisors and sub-franchisees. In franchise agreements, the primary focus is on the license granted by the franchisor to the franchisee.

The legal relationship between the franchisor and the franchisee is established through a comprehensive cooperation contract, covering aspects such as trademarks, designs, layouts, intellectual property rights, and sustainable business practices over a specified period, as regulated by Government Regulation (PP) No. 16/1997 on Franchising, later updated by Government Regulation No. 42/2007. Franchise cooperation materializes when the franchisor offers a business package, the franchisee owns the business unit, there is cooperation in unit management, and a written agreement regulates the partnership. Each franchise system is unique, with the franchisor's creativity in designing business packages and cooperation systems being a form of intellectual work. Despite variations in franchise designs, franchisor-franchisee relationships share characteristics such as mutual interest, long-term partnerships, complex interactions, high engagement, regulated cooperation systems, mutually beneficial outcomes, and interdependent partnerships.

Forms of Franchise Agreements Based on Government Regulation No. 42/2007 on Franchising

Businesses with strong brand reputations are often franchised to expand their reach and increase market share. Franchising enables faster business expansion by leveraging limited resources through investor involvement, experience, intellectual property rights, and established operational systems. This approach allows companies to enter new markets without directly incurring additional costs.

As franchisors, companies maintain control over franchisees through sales strategies and operational supervision. The franchise model allows companies to expand their market without additional investment while providing opportunities for others to participate. Franchisors are responsible for providing guidance and support as agreed, ensuring that franchisees can effectively operate their businesses.

According to Article 3 of Government Regulation No. 42/2007 on Franchising, specific criteria must be met, including business uniqueness, proof of profitability for at least five years, clear service standards, ease of instruction, ongoing support, and registered intellectual property rights. Franchise contracts must be detailed and in writing to build trust and protect the interests of both parties while adhering to Indonesia's legal framework. This ensures that the rights and obligations of each party are well-maintained within the agreement.

Dispute Resolution Based on the Principle of Proportionality in the Implementation of Commercial Contracts in the Franchise Business Sector

Legal action can be taken by any party suffering losses in a franchise business, particularly if there is a breach of contract clauses or unmet obligations by either the franchisor or franchisee. Franchisees have multiple dispute resolution options, including court litigation or alternative dispute resolution (ADR) such as arbitration. Disputes not involving intellectual property rights are handled in the District Court, while those involving intellectual property rights fall under the jurisdiction of the Commercial Court.

Applying the principle of proportionality in the burden of proof is crucial in dispute resolution, ensuring a balanced evidentiary burden between parties. This approach helps maintain fairness in decision-making based on legal facts and ethical considerations.

CONCLUSION

The principle of proportionality in commercial contracts, particularly in the franchise sector, regulates the exchange of rights and obligations between parties by emphasizing proportional balance at every stage of the contract, from pre-contractual negotiations and formation to execution. This principle ensures that the negotiation process is fair, guarantees equality of rights, and maintains proportionality in the exchange of rights and obligations.

In the event of a dispute, the burden of proof must be regulated in accordance with this principle. If there is a failure in contract execution, a fair and proportional assessment must be conducted to prevent arbitrary contract termination and inappropriate compensation.

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