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Development of Indonesian Business Contract Law in The Globalization Era

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ABSTRACT

In business activities in Indonesia, contracts are the basic framework that is used as a framework for relationships for economic actors. The principle of contract law is regulated in the Civil Code. Contracts can give rise to rights and obligations for the parties making the contract. Thus contracts play an important role in doing business in Indonesia. Contract law has existed since the days of Egyptian and Mesopotamian society around 3-4 centuries before Christ and has always experienced developments until now. The development of contract law in countries that adhere to the Common Law system is based on the doctrine of Promissory Estoppel and consideration, where there is an agreement followed by certain legal actions to fulfill the agreement already able to claim compensation, and there is a reciprocal relationship. This development also occurred in the Netherlands where an agreement that was not final but already had legal actions to fulfill the agreement could also claim compensation based on the principle of good faith. The development of contract law in Indonesia is still based on fulfilling the requirements for the validity of the agreement stipulated in article 1320 of the Civil Code, so that it can be called classic contract law. Legal actions that have not been based on Article 1320 of the Civil Code do not yet have legal consequences, so that losses arising from pre-contracts do not receive compensation. Assessment of current contract law, it is necessary to pay close attention to other developments through the development of contract law in other countries or through statutory regulations, which where the aggrieved party at the time of the agreement can claim compensation.

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I. INTRODUCTION

Basically a contract starts from a difference or dissimilarity of interests between the parties. The formulation of such contractual relations generally always begins with a negotiation process between the parties. Through negotiations, the parties seek to create forms of agreement to bring together what is desired (interests) through a bargaining process.[1]

Democracy in the economic field requires equal rights and opportunities for every individual or corporation to participate in producing and marketing goods and services in fair, efficient and effective business conditions.[2] In the world of commerce, which is carried out in various businesses, both to maintain business relations, and in choosing the form of business dispute resolution, agreements are the guideline and benchmark. Therefore, in making agreements to maintain and resolve disputes, it must be based on legal provisions, especially the contract law regulated in book III of the Civil Code (KUHPer), to avoid the occurrence of settlement of legal issues which can sometimes give birth to new legal problems.[3]

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[1] Agus Yudha Hernoko,*Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*, cet. 1, LaksBang Mediatama, Yogyakarta, 2008,h.1

[2] Aji Sekarmaji, *Tinjauan Atas Permasalahan Yang Timbul Dalam Penegakkan Hukum Persaingan Usaha*, Jurnal Hukum dan Pembangunan Tahun ke-39 No.3 Juli-September 2009, h 401

[3] I Ketut Artadi, *Hukum Perjanjian Kedalam Perancangan Kontrak* , Udayana University Press, Denpasar, 2010,h. 27

In defining globalization, academics have different opinions, but have almost the same substance.[4] One of them is the opinion of Barbara Parker, who interprets globalization as an increase in meaning and events that occur throughout the world that spread rapidly to form a single world, integrated economically, socially, culturally, technologically, business, and other influences that penetrate borders and Traditional barriers such as nations, national cultures, time, space, and business industries increase easily.

The global economy really covers a wide range of issues and complexities and covers various aspects. In this context, a number of legal problems, including: agreements or contracts, tort law, alternative dispute resolution (ADR), legal aspects of multinational companies, business competition law, consumer protection, protection of intellectual property rights, anti-dumping law, international economic organizations, legal aspects of technology and business, business aspects in the marine world, space commercialization, and so on.

In order to deal with the development of international business practices, legal regulations need to be modernized as soon as possible, because currently many legal regulations, especially in the field of business and economics are still too old-fashioned, reactive and incidental, and are more of a momentary reaction to short-term business needs that arise. arise at certain times. One area of law that needs to be updated or modernized is contract law/contract law. Indonesian treaty law is considered to be out of date and can no longer adequately accommodate the development of needs in modern business and trade.[5]

Therefore, the tendency to formulate various special laws and regulations (*lex specialis*) in the field of business transactions can no longer be stopped. The most prominent feature of this particular product of legislation is the condition of its substantial characteristics[6] in which all aspects of the legal fields that have been known so far, namely civil law and public law in the national legal system have been covered. So that some Indonesian legal experts state that the legal field that has so far been adhered to, namely the distinction between private law and public law in the national legal system is no longer considered relevant to defend.

In Indonesia's development efforts in relation to law and the economy, there are two paradigms. First, economic development based on added value (*value added*) which is oriented towards mastery of advanced technology and industry. Second, economic development based on comparative advantage (competitive advantage) oriented to the free market and exports, based on the people and their own natural resources.

Contract law as an institution of state economic law must also be developed, renewed in such a way that the prospects for economic development and other fields in free trade and economic globalization are predictable. This also needs to be implemented in order to accurately determine the direction and strategy for economic development that is more oriented towards added value and comparative advantage. The essence of the contract is the same as the agreement, in the franchise business, a contract of an agreement or agreement based on voluntary will, to obtain a goal that benefits fairly for both parties. The definition of an agreement, in Article 1313 of the Civil Code is an act of one or more people who bind themselves.[7]

For the continuity of business transactions, currently the problem is increasingly complex. This situation is of course difficult to reach by conventional contract law rules which have so far been guided by rules which were inherited from the Dutch East Indies colonial government, namely the Indonesian Criminal Code, especially Book III concerning Contracts because some of them are out of date along with the increasingly rapid flow of globalization. Therefore, the renewal or modernization of engagement law is absolutely necessary. The renewal of the law can be done through two ways, namely legislation and jurisprudence.

In Indonesia, the main method taken in regulating and organizing and transforming society is still based on or through statutory regulations. It is undeniable that a business relationship begins with a contract. Without a contract, no business relationship is possible. Contract law has an important role in the business world, namely:

1. contract law emphasizes individual characteristics;
2. creates legal symptoms as a result of a legal relationship between one party and another;
3. contract law has an object on an object, namely property rights;
4. rights arising from contract law are not absolute, namely they apply to the person entering into the agreement;
5. there is a selection of laws that apply to the parties.

[4] Nindyo Pramono dalam makalah yang berjudul, "*Kontrak Komersial: Pembuatan dan Penyelesaian Sengketa," dalam acara Pelatihan Hukum Perikatan Bagi Dosen dan Praktisi*, Fakultas Hukum Universitas Airlangga, Surabaya, 6-7 September, 2006, hal. 1-3

[5] *Subianta Mandal, UPICC Sebagai Model Bagi Pembaruan Hukum Kontrak Indonesia dalam Rangka Masyarakat Ekonomi ASEAN*,jurnal Media Hukum, Vol.24 NO.2 / Desember 2017

[6] Putu Pery Indrawan Dkk, *Kontrak Perdagangan Melalui Internet (Electronic Commerce) Ditinjau Dari Hukum Perjanjian*, Jurnal Analogi Hukum, 3 (3) (2021), 388–392

[7] Malik, C. (2007) *Implikasi Hukum Adanya Globalisasi Bisnis Franchise*, Jurnal Hukum UII. Vol.14 (No.1,Januari), h 97- 113

So contract law is the basis for the existence of a business relationship. In order for an agreement or contract to be valid, as stipulated in Article 1320 of the Indonesian Civil Code (KUH Perdata), 4 (four) conditions must be met, namely:

a. Agree between the parties who bind themselves to a certain contract (Article 1321-1328 of the Civil Code)
b. The parties are indeed capable of carrying out legal actions, namely in terms of entering into contracts (Articles 1329-1331 of the Civil Code)
c. The nature and extent of the object of the contract agreement can be determined (Article 1332-1334 of the Civil Code)
d. The clause is lawful or permissible so that it does not violate public order, decency and applicable laws and regulations (Articles 1335-1337 of the Civil Code)

In legal relations in an era of increasingly advanced business traffic, a legal framework is needed that can paralyze evil desires to cause harm to one of the parties. It must be understood by business people or others about the terms of the validity of the agreement and held as a guide when making a contract. Interpretation in legal language, contracts are very concerned so as not to cause multiple interpretations.[8]

Furthermore, the form of the contract and the juridical function of the contract must be a guarantee that the contract can be implemented safely without harming any party. Therefore, it must be understood the principles of contract law and default in contracts. If there is a default in the contract, what should one of the parties do? In addition to preventing losses due to default, in the end what will be done by the parties if a default occurs and the legal consequences.

The current era of globalization has hit the world, including Indonesia. One of the impacts felt as a result of these changes is the field of economic law. The part that has developed the most rapidly is the law of contracts/agreement, especially trade contracts. Basically a contract is a written document that contains the wishes of the parties for a specific purpose and how the party benefits, protected/limited liability. In reality, one of the parties often makes a contract in a standard form, while the other party will accept the contract because of their weak socio-economic condition. For this reason, in the future it is necessary to have a law on contracts that is national in nature, which replaces the old regulations. The law also provides a balanced position to the parties in fulfilling their rights and obligations.

II. FORMULATION OF THE PROBLEM

Based on the background above, some of the issues that will be discussed in this paper are what steps must we take to be able to immediately realize an agreement/contract law, to what extent is the scope of substance that must be regulated in contract law laws in the future, then How is the development of international trade contract law as reflected in various existing sources of law, both hard laws and soft laws? What matters from the development of international trade contract law that require attention in the context of developing international trade contract law in Indonesia?

III. RESEARCH METHODS

This research uses the normative legal research method, which is a type of research that refers to the principles and rules of law contained in statutory regulations and court decisions. Bernard Arif Sidharta said that normative legal research is a type of research that is commonly carried out in the development of legal science which in the West is also known as legal dogmatics. Ronald Dworkin refers to it as doctrinal research, which is research that analyzes both the laws contained in statutes and the laws contained in court decisions. Thus normative legal research or doctrinal research can use two approaches, namely the statute approach and the court decision approach (case approach).

IV. DISCUSSION

1. The Development of Contract Law As Reflected From Various Existing Law Sources, Both Hard Laws and Soft Laws

Agreements or contracts are very developed at this time as a logical responsibility of the development of business cooperation between business people, many business people make agreements or contracts in written form. In fact, in business practice, an understanding has developed that business cooperation must be carried out in written form. Contracts or written agreements are the basis for business people to make demands if one party does not do what has been agreed in a contract or agreement. Juridically, in addition to contracts made in writing, business actors can make contracts orally, but contracts made orally carry a very high risk, because they can experience difficulties in proving in the event of a legal dispute.[9]

The Agreement Process consists of the pre-contract stage; contract and post contract. The pre-contract is a very important stage in a series of agreements, because at that stage there is a process of agreement (negotiation) which is commonly referred to as the offer and acceptance which leads to two possibilities, agree or disagree. Common Law law

[8] Syamsul Munir, *Fungsi Ekonomis Dan Yuridis Kontrak Dalam Perspektif Hukum Bisnis*, Jurnal Asy-Syari'ah, Volume 6, Nomor 1, Januari 2020,h.82-97

[9] Muhammad Syaifuddin, *Hukum Kontrak*, (Bandung: CV Mandar Maju, 2012), h. 1

recognizes freedom of contract with the term Freedom of Contract.[10]

The principle of freedom of contract, this principle is the source of the development of contract law, not only in Indonesia, but also at the regional and international levels. Freedom of contract is an essential principle, both for individuals in developing themselves both in private life and social life, so some experts emphasize that freedom of contract is part of human rights that must be respected.[11]

This agreement illustrates to us that the position of the company which is so dominant economically becomes a determinant for it to establish business "laws" that are strictly binding for those who wish to cooperate. So it's not an exaggeration if you disagree with the use of standard agreements, because it's the same with private legislators.

Article 1338 paragraph 3 of the Civil Code: agreements must be implemented in good faith. Good faith is defined as..... is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage, and an individual's personal good faith is the concept of his own mind and inner spirit and, therefore, may not conclusively be determined by his protests alone.[12]

The government's responsibility becomes bigger because of its role in providing protection to the public or national business actors. So that a business that is fully subject to the provisions of contract law that are private in its development cannot deviate from some rules that are public. This principle provides information that an agreement basically has existed since an agreement was reached between the parties to the agreement.

Moreover, as we shall see later, there is still doubt and residual disputes as to whether the law really considers a breach of the contract to be an offense, and several sections of the law seem to agree with the view that there is no wrong. by breach of a contract provided damages are paid for all losses incurred thereto. And again, all kinds of groupings need to be made up of the idea that the moral obligation to keep a promise is really such a simple idea as it seems. In fact, for now it is sufficient to note that at least it is firmly preserved in the law of contracts, arising from the notion that one must keep one's promises, and those promises come from moral obligations.[13]

Contract law is a rule of law that has an important role in business legal relations and those who run the business (entrepreneurs). The reality today is that there are no business activities related to entrepreneurs in that their exchange of interests is not based on a contract. Therefore, the contract has a very broad reach, in the sense that it reaches a very wide range of public relations, especially the relations of entrepreneurs which give rise to their rights and obligations in order to create legal certainty in a series of business processes and the desired goal is to make a profit.

In Article 1319 of the Civil Code, agreements are divided into two types, namely named (nominaat) and nameless (innominaat) agreements. An anonymous agreement is an agreement that arises, grows, lives and develops in society. Named and anonymous agreements are subject to Book III of the Civil Code.[14]

The trading contract was originally an agreement, therefore discussing the contract is the same as talking about the definition of the agreement itself. However, when discussing engagement, it is necessary that it be examined in advance what is appropriate for the engagement and what constitutes the legal umbrella of such an engagement. The desired engagement is an engagement that already exists and is regulated in part of Book III of the Civil Code.

One form of decency in a contract is good decency which is something that is non-contractual but absolutely must be implemented in a written contract, because the meaning of good decency in a contract can affect the implementation of the contract, especially for the parties to the contract. The application of the principle of public order in the contract is emphasized on the legal consequences that will arise from the implementation of the contract. According to the classical theory, the principle of good faith can be applied in agreements to avoid the consequences of contract law. In implementing fairness, it is always accompanied by the principle of good faith in contracting.

In essence, an agreement or contract originates from a difference or dissimilarity of interests between the parties to the contract. The formulation of the contractual relationship generally begins with a negotiation process between the parties. So that with the existence of a contract the difference

[10] Priyono, Ery Agus. 2018. *Aspek Keadilan Dalam Kontrak Bisnis Di Indonesia (Kajian pada Perjanjian Waralaba)*. Jurnal Law Reform Program Studi Magister Ilmu Hukum Volume 14, Nomor 1, Tahun 2018, h 15

[11] Simamora, Y. Yogar, *Hukum Kontrak, Kontrak Pengadaan Barang dan Jasa Pemerintah di Indonesia*, Surabaya : Penerbit Kantor Hukum Wins & Partners,2013, h 13

[12] Wahyuni Safitri, Perlindungan Hukum Kontrak Bisnis Di Indonesia Dalam Perspektif Keadilan, Jurnal Ilmu Hukum Legal Standing, Vol.4 No.2, September 2020,h 78-86

[13] Di dalam KUH Perdata pada Pasal 1338 ayat (3) ketentuan ini terkenal dengan istilah "asas iktikad baik" (goede trouw) atau dalam bahasa Inggrisnya "good faith", lengkapnya ketentuan ini berbunyi: "Perjanjian harus dilaksanakan dengan iktikad baik". Artinya, baik pihak kreditur maupun debitur harus melaksanakan substansi kontrak berdasarkan kepercayaan atau keyakinan yang teguh

[14] Salim HS, *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak*, (Jakarta : Sinar Grafika, 2006), h. 47

is accommodated and then framed with legal instruments so that it binds both parties to the contract.[15]

Many of the contract actors out there do not understand in depth how to make a good and correct contract according to contract law, so that ignorance can lead to disputes between the parties, either in the form of non-fulfillment of mutually agreed demands (default) or others that can be detrimental to both parties. If something like this has happened, it will be difficult for the parties to resolve the dispute because the contract or agreement made is not in accordance or legally flawed contract.

A commercial contract is a contract characterized by the following elements:

a. the parties are generally oriented towards the "profit motive";
b. the contractual relationship between the parties is (considered) balanced in a bargaining position;
c. acceptance of terms and conditions in the contract can be negotiated by the parties, or with other agreed forms;
d. business character (mutual profit seeking) is more prominent;
e. the exchange of rights and obligations is not seen from the context of mathematical balance, but in the process and results of the exchange of rights and obligations that are fair (proportionate);
f. not a consumer contract, meaning that one of the parties is not an “end user or end user of the product;
g. If in consumer contracts the intervention (interference) of certain authorities aims to provide legal protection for consumers, then in commercial contracts in the case of regulatory intervention, it is more aimed at providing a legal basis for creating fair rules of play between the parties.[16]

2. What Matters Are From The Development Of Contract Law That Require Attention In The Context Of Developing Contract Law In Indonesia

In the current era, openness to domestic and foreign investment is also marked by the promulgation of the Job Creation Law, or better known as the Omnibus law, which also regulates all regulations related directly or indirectly to investment. The aim is to provide incentives for both foreign and foreign investors to want to invest their capital/shares in Indonesia with the aim of building greater economic enthusiasm whose impact will affect other aspects of life such as social culture and society.[17]

Economic activities which are part of the national development aiming at realizing a just and prosperous society that is materially and spiritually evenly distributed within the Unitary State of the Republic of Indonesia, provides a benchmark or paradigm, that economic activities carried out or carried out must be based on legal norms or rules. that regulates it, namely certainty, truth and legal order.

Kontrak merupakan suatu perjanjian tertulis, yang berarti kontrak dianggap sebagai suatu pengertian yang lebih sempit dari sebuah perjanjian. Perjanjian diberlakukan karena terdapat perbedaan kepentingan antara para pihak yang dengan cara bernegosiasi dirumuskan kedalam klausul-klausul yang terdapat dalam perjanjian tersebut.[18] Dalam skala yang lebih luas kontrak merupakan sebuah kesepakatan antara dua pihak yang menjalin kesepakatan di dalam perjanjian kontrak tersebut. Jadi pada dasarnya kontrak terdapat sebuah hubungan antara kedua belah pihak tersebut, yang dimana berisi perjanjian yang diterbitkan bagi yang membuatnya. Kontrak tersebut terbentuk seperti suatu rangkaian kata yang berisi sebuah kesepakatan dan adanya kesanggupan.[19]

The exchange of interests (achievement - counter-achievement) is the starting point for the realization of justice for the parties. According to P.S. Atiyah,[20] the contract has three objectives, namely:

a. First, the contract is obligatory to be implemented (force) and provide protection against a reasonable expectation,
b. Second, the contract seeks to prevent an increase in wealth unfair,
c. Third, the contract aims to prevent certain losses from occurring in a contractual relationship.

In other words, the role of law in national development efforts is expected not only to act as a legitimator for the implementation of development results but also as a direction for the implementation of national development.[21]

The development of the national economy, especially in the regional and global areas, demands the readiness of consistently integrated legal arrangements through an effort

[15] Muhammad Noor, *Penerapan Prinsip-Prinsip Hukum Perikatan Dalam Pembuatan Kontrak*, MAZAHIB: Jurnal Pemikiran Hukum Islam, Vol. XIV, No. 1 Juni 2015. h.1

[16] Sutarman Yodo, *Hukum Perlindungan Konsumen*, RajaGrafindo Persada, Jakarta, 2004, h. 18-19

[17] Tarmizi Abbas dan Win Konadi Manan, *Keterkaitan Antara Demokrasi Politik, Demokrasi Ekonomi Dan Sistem Ekonomi Kerakyatan*, Jurnal Volume XXI No. 3 Juli – September 2005,h.231

[18] Darwin Effendi, *Efektifitas Memorandom Of Understanding (MoU) Dalam Pembuatan suatu Perjanjian* di Bidang Pendidikan Studi Kasus di Universitas Atma Jaya Yogyakarta,2016. h.1

[19] Meriana Utama dan Arfiana Novera. (2014). Dasar-dasar Hukum Kontrak dan Arbitrase, cet. I. Malang; PT. Tunggal Mandiri. Hal.5

[20] P.S. Atijah, *Promises, Morals and Law,* Clarendon Press,Oxford, 1981, hal. 12

[21] Khairus Febryan Fitrahady dkk, *Penyuluhan Hukum Tentang Kontrak Bisnis Kemitraan Bagi Pelaku Umkm Di Desa Sukarara Kabupaten Lombok Tengah*, Prosiding Semnaskom - Unram, Vol.4 No.1, 2022,h.1172-182

to reform the law, especially in the field of economic law so that it can provide impetus, resilience and competitiveness of the Indonesian economy through conducive business opportunities with a dynamic legal basis. so that the process of economic activity can run according to market conditions based on adequate legal rules.

The importance of recognizing the elements in an agreement or contract is because it is used to identify whether we are dealing with an agreement or not. The relationship between the essential element and the making of a contract consists of:

a. The word agreement from two or more parties means that an agreement can only arise with the cooperation of two or more people or an agreement is built by the actions of several people.
b. The word that is reached must depend on the parties, an agreement is reached if one party's offer is approved by the other party. If the will is not stated, it will not cause legal consequences. If the parties express their will to each other and there is an agreement between the parties, then at that time the agreement occurs.
c. It is possible that the parties are not aware that the promises made have legal consequences and it depends on the circumstances and habits in society.
d. Legal consequences for the interests of the parties, legal consequences do not always arise from the wishes of the parties. Legal consequences for the benefit of one party at the expense of the other party are required to form an agreement or contract.
e. Made with due observance of statutory provisions, the form or format of the agreement is in principle determined freely by the parties. However, some agreements are required to be in a certain form or format, as stipulated by law.

Generally agreements or contracts can be made in written and oral forms. However, written agreements have advantages over verbal agreements. If later the parties who promise or contract are involved in a dispute, then only an agreement in written form can be used as evidence for dispute resolution. As it is known that in the business world that brings together actors in business activities, contracts are important instruments that always frame legal relations and secure their transactions. Almost none of the business activities that bring together business people in the exchange of their interests without a contract. Contract Development Prospects in Indonesia, through:

1. National Arrangements Regarding Contracts
   So far, arrangements regarding international trade contracts have been scattered in various forms of laws and regulations, both in the provisions of the Civil Code, the Trade Code, as well as in various other complementary laws and regulations. This situation shows that Indonesia implements an open partial codification system. Of course, the application of an open partial codification system has both advantages and disadvantages.
2. Indonesia's Participation in the Discussion of Contract Development It is somewhat surprising to find in the search for various international instruments related to international trade contracts, where Indonesia does not play an active role in drafting various instruments, both in the form of hard laws in the form of international agreements, and in soft forms. laws. Indonesia's non-participation in the development of various contracts certainly had an influence on the development of national laws governing trading activities. One thing that is clear is that the principles and rules of national law have not developed because they still refer to very old laws and regulations (for example the Civil Code and the Trade Code) which in several provisions are not in accordance with the development or modernization of international trade activities.
3. The Need to Improve the Legal Rules Regarding Contracts in Indonesia
   By taking into account the above conditions and by studying the experiences encountered and applied in other countries in making adjustments to the principles and provisions of contracts, the need for improvement of the legal rules regarding International Trade Contracts has become a necessity and must be implemented as soon as possible.

The steps that can be taken in order to perfect the principles and legal rules regarding Contracts in Indonesia, then several steps systematically need to be taken, namely:

1. Carry out an inventory and systematization of various instruments related to trading activities, both in the form of hard laws and soft laws;
2. Conducting an analysis of each of these instruments for the possibility of ratification (of agreements deemed important for ratification), as well as adopting the principles of various relevant soft laws as input for the legislative process and the formulation of related laws and regulations;
3. At the same time conducting a review of various scattered literature to strengthen the analysis of the possibility of ratifying or adopting, or at least making the relevant instrument a reference material for improving national legislation and regulations.
4. Carry out the process of adjusting the principles and rules of the National Trade Contract with the principles, rules and habits that have developed as common practices and best practices in the world.

5. Conduct socialization and provide technical assistance related to the implementation of international principles and rules in the field of international contracts that have been transformed into national law.

V. CONCLUSION

Legal protection in business contracts begins with franchise business agreements in Indonesia based on the principle of freedom of contract as stipulated in Article 1338: 1 of the Civil Code, legal rules that bind the parties that provide legal protection in a more proportionate manner to the parties. Meanwhile, the principle of consensualism in a business agreement means that the parties are bound to each other and generate confidence that the agreement will be fulfilled. This becomes difficult to materialize when one of the parties has a much stronger bargaining position than the other party, the customary franchise business agreement is often standard in nature and basically not prohibited as long as it contains the values of justice. As a form of legal protection, agreements that are not based on the values of justice can be interpreted as violating the provisions of the legal terms of the agreement which results in being null and void or can cancel the agreement.

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