APPLICATION OF THE PRINCIPLE OF GOOD FAITH AS AN EFFORT TO CREATE CONTRACTUAL JUSTICE IN STANDARD FRANCHISE AGREEMENTS IN INDONESIA

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ABSTRACT

The purpose of this study is to analyze: 1) Why do franchise agreements tend to be made by default? 2) Why is the content of franchise agreements that are in accordance with article 1320 often considered unfair to the *franchisee*?3) Is the application of the principle of good faith consistently able to create an ideal contract in the practice of franchise contracts that are in a standard form?. This research is a type of normative juridical research with a legislative approach, a conceptual approach, and a case study.

The results of the study show that: 1) Standard contracts are very appropriate to be used in the franchise business when compared to negotiated agreements. Standard/standard contracts are not only used for large-scale business agreements, as they appear at every level of business transactions even small-scale businesses. 2) The first and second conditions in article 1320 of the Criminal Code are often called subjective conditions because they concern the parties to the agreement. The third and fourth conditions in article 1320 of the Criminal Code are called objective conditions, because they concern the object of the agreement. If the first and second conditions are not met, the agreement can be canceled. If the third and fourth conditions are not met, then the agreement is null and void, meaning that the agreement was originally considered to have never happened. 3) The inclusion of good faith in the implementation of the franchise agreement also means that we must interpret the agreement based on fairness and propriety. In the Civil Code, propriety (the principle of propriety) is stated in Article 1339 of the Civil Code which states that the agreement is not only binding for things that are expressly stated in it, but also for everything that according to propriety, custom or law.

Keywords: Application, Principles, Good Faith, Create, Justice, Contracting, Agreement, Standard, Franchizing, Indonesia

INTRODUCTION

Background

In Indonesia, the word franchise was first introduced by V. Winarto, Director of Business Development of Educational Institutions and Management Development, as a result of a discussion with an expert in Indonesia language and literature, Harimurti Kridolaksono, as the equivalent of the word *franchise*. The pioneer of franchising in Indonesia is Pertamina. Although Pertamina has never explicitly stated that its company runs a franchise system, the business run by Pertamina by operating these gas station units has met the criteria as a franchise business. The franchise business is still the most promising business in Indonesia. Even the franchise business can become Indonesia's economic powerhouse. In 2017 there were 700 types of franchises with 25,000 outlets spread across Indonesia. Of this number, 63 percent are local franchises and the rest are foreign. The franchise business also absorbs a workforce of 90,000 people. The turnover of the franchise business reaches Rp 172 trillion per year and still has the potential to increase by 10 percent per year. The types of franchise sectors that are most in demand are food and beverage, education, beauty and health.[1]

In 2021, there have been 93,372 franchise industry outlets throughout Indonesia. From this figure, the total turnover of the franchise industry reached around Rp 54.4 billion. This franchise business contributes to Indonesia's economic growth. The franchise industry also absorbs Indonesia's workforce. Based on data submitted by the Ministry of Home Affairs, the total workforce absorbed reached 628,622 people. Indonesia is still dominated by foreign franchisees with a total of 120 franchisors. Meanwhile, there are 107 local franchisees. The majority of franchises in Indonesia are engaged in the food and beverage industry at 59.37%, the retail industry at 15.31%, non-formal education services at 13.4%, beauty and health services at 6.22%, laundry services at 3.35%, and property trade brokerage services at 3.35%.[2]

With a franchise system, capital owners do not need to build a brand and a business working system from scratch. In the world of franchising, the brand owner is called a Franchisee or *Franchisor*. This franchisee is the party that gives the business rights and as a

[1] Ridho Syukro, "Franchise Business is Very Promising in Indonesia," Berita Satu, 2017, https://www.beritasatu.com/ekonomi/431693/bisnis-waralaba-sangat-menjanjikan-di-indonesia.

[2] Abdul Basith Bardan and Noverius Laoli, "The Franchise Industry Continues to Grow in the Midst of a Pandemic and Supports the Indonesia Economy" (2021), this https://nasional.kontan.co.id/news/industri-waralaba-tetap-tumbuh-di-tengah-pandemi-dan-sokong-ekonomi-indonesia#:~:text=Saat has existed as much, the economy is Indonesia%2C%22 explained Okay.

producer to run it. Meanwhile, the capital owner is called a *franchisee or franchisee*. This party buys the business and will run the business in accordance with the system that has been prepared. The Franchisee is required to pay a certain amount of fees to obtain its business rights from the Franchisee.[3]

Franchise agreements, like other agreements, the main basis is article 1320 of the Civil Code regarding the legal conditions of the agreement.[4] Basically, the requirements for service as stated in the Civil Code are the basis for agreements in general. Franchising is an agreement in which one of the parties is given the right to utilize and/or use the rights of intellectual property (IPR). Franchising is a meeting of the characteristics of a business owned by another party with a certain reward based on the requirements set by the other party in the context of providing and/or selling goods and services. An agreement is the main basis for an agreement to occur. The franchise agreement must refer to the principle of freedom of contract regulated in Article 1338 paragraph (1) of the Civil Code. In this franchise agreement, the agreement is made by the franchisor, where the franchisor is free to determine the content of the agreement and the franchisee is only free to choose whether to agree or disagree with the agreement that has been made by the franchisor. Considering that the content of the agreement made by the franchisor does not contradict the law and must meet the conditions for the validity of an agreement contained in Article 1320 of the Civil Code.

However, a franchise agreement is a unilateral or standard agreement, that is, the agreement is made by the franchisor and the franchisee can only agree or not to agree to the agreement. A franchise agreement is a written agreement between the parties, which is a standard agreement that is generally determined unilaterally by the franchisor so that it tends to provide a better bargaining position for the franchisor than the franchisee.[5] If the franchise agreement is violated by one of the parties because it does not fulfill its obligations and violates the applicable regulations, then the party who makes the mistake and violates the regulations must be held responsible based on default (article 1243 of the Civil Code) and unlawful acts (article 1365 of the Civil Code).

[3] *Ibid*.
[4] Sri Wardah and Bambang Sutiyoso, *Civil Procedure Law and Its Development in Indonesia* (Yogyakarta: Gama Media, 2007), p. 22.
[5] Etty Septiana Rahma and Etty Susilowati, "Unbalanced Position in Franchise Agreement Relating to the Fulfillment of Default Conditions," *Law Reform* 10, no. 1 (2017): 16–30, https://doi.org/10.14710/lr.v10i1.12454.

Thus, the agreement of the parties creates a legal relationship to carry out the rights and obligations of each party. The above has the potential to violate the essence of the principle of freedom of contract as the main and universal principle in making any agreement (one of the main points in the application of the principle of freedom of contract is the freedom to determine the content of the agreement. The franchise agreement should refer to the principle of freedom of contract regulated in Article 1338 paragraph (1) of the Civil Code.[6] Therefore, to control the application of the principle of freedom of contract, it is necessary to apply the principle of good faith, as a conclusion from Article 1338 paragraph (3) of the Civil Code which states that "agreements must be carried out in good faith". The principle of good faith is the principle that the parties must carry out the substance of the contract based on firm trust or belief or good will of the parties. The principle of good faith as a moral foundation for the parties {from the negotiation process (pre-contract stage) to the implementation (contract stage), to the end of the contract (post/post-contract) as an effort to create contractual fairness in franchise contracts.

Considering that franchising is an agreement that is made by default, it is a special agreement that does not meet the principle of freedom of contract. The standard contract or standard agreement is the use of exoneration clauses in consumer transactions. Contract standards are basically born from the needs of the community which aims to provide convenience or practicality for the parties in conducting transactions. Contract standards that contain an exoneration clause have legal consequences for consumers, namely the responsibility that should be imposed on business actors to be the responsibility of consumers.[7]

Based on the description above, the author is interested in further examining the form of franchise agreements that tend to be made by default, the content of franchise agreements that are in accordance with article 1320 is often considered unfair to the franchisee, the application of the principle of good faith is consistently able to create an ideal contract in the practice of franchise contracts that are standardized, in a study on "*The application of the principle of good faith as an effort to create contractual justice in the standard franchise agreement in Indonesia".*

[6] *See* Civil Code, "Translated by Subekti and R," *Tjitrosudibio, Jakarta: Pradnya Paramita*, 2008.
[7] Sri Lestari Poernomo, "Contract Standards in the Perspective of Consumer Protection Law," *De Jure Legal Research Journal* 19, no. 1 (2019): 109, https://doi.org/10.30641/dejure.2019.v19.109-120.

Problem Formulation

1. Why do franchise agreements tend to be made by default?
2. Why is the content of a franchise agreement that has been in accordance with article 1320 often considered unfair on the part of *the franchisee*?
3. Is the consistent application of the principle of good faith able to create an ideal contract in the practice of franchise contracts that are standardized?

THEORETICAL FRAMEWORK

1. *Grand Theory of* Legal Protection

According to Setiono, legal protection is an action or effort to protect society from arbitrary actions by rulers that are not in accordance with the rule of law, to realize order and tranquility so as to allow humans to enjoy their dignity as human beings.[8] Legal protection is all efforts that can ensure legal certainty, so that it can provide legal protection to the parties concerned or those who take legal action.[9]

Legal protection aims to integrate and coordinate various interests in society because in a traffic of interests, the protection of certain interests can only be done by limiting various interests on the other side. Legal interests are to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection is born from a legal provision and all legal regulations provided by the community which is basically an agreement of the community to regulate the behavioral relationship between community members and between individuals and the government which is considered to represent the interests of the community.[10]

Legal protection for every citizen of Indonesia without exception, can be found in the Constitution of the Republic of Indonesia Year 1945 (UUDNRI 1945), for that every product produced by the legislature must always be able to provide guarantees of legal protection for everyone, and even must be able to capture the aspirations of law and

[8] Setiono, Rule of Law (Surakarta: Universitas Sebelas March, 2004), p. 3.
[9] Koentjaraningrat Koentjaraningrat, "Legal Anthropology," *Anthropology of Indonesia*, 2014, https://doi.org/10.7454/ai.v0i47.3271.
[10] Ibid, p. 35.

justice that are developing in society. This can be seen from the provisions that regulate the existence of equal legal status for every citizen.[11]

2. ***Middle Theory of Legal Certainty***

One of the ideals of law is legal certainty, through certainty it is hoped that it will be able to bring justice to the ideals of law. Certainty is a characteristic that cannot be separated from the law, especially for written legal norms. Laws without the value of certainty will lose their meaning because they can no longer be used as a guideline of behavior for everyone. Certainty itself is referred to as one of the goals of the law. Community order is closely related to certainty in law, because order is the core of certainty itself. According to Sudikno Mertokusumo[12], legal certainty is a guarantee that the law is carried out, that those who are entitled according to the law can obtain their rights and that the verdict can be implemented.

Legal certainty is the implementation of the law according to its sound, so that the community can ensure that the law is implemented. The creation of legal certainty in laws and regulations requires requirements related to the internal structure of the legal norm itself.[13] Guarantee for citizens to have justice in matters related to the law. Make no difference in the eyes of the law so that law enforcers obey the rules that have been made.[14]

3. **Aplied Theory Hierarchy of Legal Norms or Hierarchy of Laws and Regulations**

According to Hans Kelsen, the norm is tiered in layers in a hierarchical order. In other words, the legal norms that are subordinate are valid and sourced, and are based on higher norms, and higher norms are also sourced and based on higher norms and so on until they stop at a highest norm called the Basic Norm (*Grundnorm*) and still according to Hans Kelsen are included in the dynamic norm system. Therefore, the law is always formed and abolished by the institutions of its authority that have the authority to form it, based on higher norms, so that lower norms (*Inferior*) can be

[11] Philipus M. Hadjon, People's Protection for the People in Indonesia (A Study on Its Principles, Handling by Courts in the General Judiciary and the Establishment of State Administrative Courts) (Surabaya: PT. Bina Ilmu, 1987), p. 38.
[12] Sudikno Mertokusumo, Getting to Know the Law of a Reporter (Yogyakarta: Liberty Press, 2007), p. 150.
[13] Fernando M Manulang, Law in Certainty (Bandung: Prakarsa Media, 2007), p. 95.
[14] Moh. Mahfud MD., "Law Enforcement and Good Governance," *National Seminar "It's Time for Conscience to Speak", January 8, 2009*, 2009.

formed based on higher norms (*superior*), in the end the law becomes tiered and layered to form a Hierarchy.[15]

Hans Nawiasky[16] also grouped the legal norms in a country into four large groups consisting of:

1. kelompok I: *staatspundamentalnorm* (Norma Fundamental).
2. Group II: *Staatgrundsetz* (basic rules/basic rules of the country)
3. Group III: *Formell Gesetz* (Formal law)
4. Group IV: *Verordnung* and *satzung autonomy* (implementing rules and autonomous rules).

RESEARCH METHODOLOGY

This research is included in the type of doctrinal research, where the approach method used is juridical-normative. The study method used in this study is normative legal research, which is a study conducted by examining the laws and regulations that apply or applied to a certain legal problem. Research that includes research on legal principles, research on legal systematics, research on legal synchronization, legal history research, and comparative legal research. [17]

The study carried out is a literature study (*library research*) which uses secondary data. Peripheral data through field studies, secondary data in this study are obtained through literature studies, by searching for as complete and as much information as possible with journal literature, newspapers, articles, scientific papers and laws and regulations related to online buying and selling in electronic contracts. The use of secondary or literature data is intended to; 1) Inform readers about the results of other research related to the research being conducted; 2) Connecting a research that is carried out on an ongoing basis to fill in the gaps and expand other research; and 3) Provide a framework and reference to compare a study with other findings. The data collected in this study will be analyzed descriptively with

[15] Aziz Syamsuddin, Processes and Techniques of Drafting Laws, First Printing (Jakarta: Sinar Grafika, 2011), p. 14.
[16] *See* Hans Protezky, *Hans Nawiasky, Allgemeine als recht systemischen Grundbegriffe* (Zurich: Benziger Perss, 1984), hlm. 31.
[17] Soerjono Soekanto and Sri Mamudji, Normative Legal Research, A Brief Review, (Jakarta: Raja Grafindo Persada, 2011), p. 65.

a qualitative approach, namely by providing a thorough and in-depth presentation and explanation (*holistic*/*verstelen*).[18]

RESEARCH RESULTS

Franchise Agreements Tend to Be Made by Standard

Juridically, the franchise business is regulated in Government Regulation Number 16 of 1997 concerning Franchise which has been revoked and replaced by Government Regulation Number 42 of 2007 concerning Franchise, Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 259/MPP/KEP/7/1997 concerning Provisions for the Implementation of Franchise Business Registration and Regulation of the Minister of Trade Number 12/M-Dag/Per/3/2006 concerning the provisions and procedures for the issuance of Franchise Business Registration Certificates that have been replaced by the issuance of the Regulation of the Minister of Home Affairs Number 31/M-DAG/PER/8/2008 concerning the Implementation of Franchises on August 21, 2008. Government Regulation Number 16 of 1997 concerning Franchises, which was later replaced by Government Regulation Number 42 of 2007 concerning Franchises. The Government Regulation is strengthened by the Regulation of the Minister of Trade Number 12/M-Dag/Per/3/2006 concerning Provisions and Procedures for the Issuance of Franchise Business Registration Certificates which is replaced by the Regulation of the Minister of Trade Number 31/M-Dag/Per/8/2008 concerning the Implementation of Franchises. According to Adrian Sutendi, the existence of this regulation provides business certainty and legal certainty for the business world that runs franchises.

The definition of franchise according to Article 1 of Government Regulation Number 42 of 2007 concerning Franchise, states that: Franchise is a special right owned by an individual or business entity to a business system with business characteristics in order to market goods and/or services that have been proven successful and can be used and/or used by other parties based on a franchise agreement.[19] In a franchise agreement, an agreement contract is required.

A process, an ideal contract should be able to accommodate the exchange of interests of the parties in a fair and equitable manner (proportional) at each phase or stage of the contract. Therefore, it is necessary to observe that there is an important phase that must be

[18] Sugiyono, "Quantitative, Qualitative and R&D Research Methods," 26th (Bandung: Cv. Alfabeta, 2018), p. 34.
[19] Adrian Sutendi, 2008, Franchise Law, Ghalia Indonesia, Bogor, 22.

passed by the parties in the contract process, namely negotiations. This is certainly contrary to the characteristics of a fast-paced and instant franchise business. Imagine if a company that is domiciled in Jakarta and wants to have 1000 franchises spread throughout Indonesia, then has to negotiate with one by one prospective franchisees, must make a clause clause in the contract that is agreed upon by both parties to get a balance in a business cooperation. This will certainly waste a lot of time. Therefore, standard contracts are very appropriate to use in the franchise business when compared to negotiated agreements. Standard/standard contracts are not only used for large-scale business agreements, as they appear at every level of business transactions even small-scale businesses.

Protracted negotiations need to be avoided so as not to take too long and cost more. One of the parties is usually the principal party in the form of a corporation, has a legal consultant who is in charge of drafting the terms *of the* agreement. In a standardized contract, the consultant in question seeks in such a way as to secure and protect the interests of his client from possible losses arising from the agreement.

The existence of a standard agreement, because it is a must in today's business world and allowed by law, is on the basis of freedom of contract. Freedom of contract provides a guarantee of freedom to a person to freely in several matters related to agreements, including:

1. Freedom to decide whether to enter into an agreement or not
2. Freedom to decide who to make an agreement with
3. Free to determine the content or clause of the agreement
4. Freedom to determine the form of the agreement

Other freedoms that do not conflict with other laws and regulations. The explanation of Article 18 paragraph (1) of the UUPK states the purpose of the prohibition on the inclusion of standard clauses, namely that this prohibition is intended to place consumers on an equal footing with business actors based on the principle of freedom of contract. Because basically, treaty law in Indonesia adheres to the principle of freedom of contract. The standard clause becomes inappropriate when the position of the parties becomes unbalanced because basically, an agreement is valid if it adheres to the principle of consensualism, is agreed upon by both parties and binds both parties who make the agreement as law.

Violation of the principle of consensualism can result in the agreement between the two parties becoming invalid. Therefore, standard clauses containing exoneration clauses are

prohibited by law. Even though a standard agreement containing an exoneration clause has been agreed before, the agreement cannot be considered valid because it contains provisions/clauses that are contrary to the law. So basically, the standard contract of the franchise agreement is made for the practical interests of the parties so that the agreement process does not take much time and cost. However, it must still be considered from the side of fairness, in this case the issuance of several regulations by the Indonesia government that regulate standard contracts.[20]

The standard agreement that has been prepared by a stronger party, namely the franchisor, can be sure that the content has been designed by the party and for the benefit of the franchisor. An agreement of a standard nature does not provide sufficient opportunity for the weaker party to express freedom based on the principle of freedom of contract in order to protect its interests as a party to the agreement. From the existing articles, it can be seen that the freedom to reach an agreement does not occur in a balanced manner, because of the dominance of prospective franchisors over prospective franchisees. In the article that regulates rights and obligations, it can be seen that the interests of the franchisor receive more legal protection than the interests of the franchisee.[21]

The legal consequences of the non-fulfillment of one or more of the conditions of the validity of the agreement vary depending on which conditions are breached. The legal consequences are as follows: (1) Netig, null and void, for example in the event of a violation of the objective conditions in Article 1320 of the Civil Code; (2) It can be canceled (*vernieetigbaar, voidable*), for example in the event that the subjective conditions in Article 1320 of the Civil Code are not met.[22]

The content of a franchise agreement that has been in accordance with Article 1320 is often considered unfair to the *franchisee*

In practice, there is a need for a rule as a guideline starting from when you want to make a cooperation or business, at the time of running and also after the implementation of the business. The rules that will be used as a binding basis for the parties are made in the form of agreements. The making of an agreement must pay attention to important matters,

[20] Rachdinda Pradigda Al-Qarano, The Principle of Standard Contract Proportionality in Franchise Agreements, Glosains: Jurnal Global Indonesia, Vol. 2, No. 1, January 2021, 3-4.
[21] William Tetley, Good Faith in Contract Particularly in the Contracts of Arbitrationand Chartering, 2004, 29.
[22] Miftah Arifin, Building the Ideal Concept of the Application of the Principle of Good Faith in the Law of Agreements, Jurnal Ius Constituendum | Volume 5 Number 1 April 2020, 80.

including: The conditions of the validity of the agreement, the principles or principles of the agreement, the rights and obligations of the parties, the structure and anatomy of making a contract, the settlement of disputes and the termination of the contract.

Trade using the concept of franchising is built on the basis of an agreement, namely between the Franchisee as the right giver and the Franchisee as the right holder. Franchise agreements are not only related to Article 1319 of the Civil Code, but also related to Article 1320 of the Civil Code regarding the conditions for the validity of the agreement and Article 1338 of the Civil Code regarding the principle of freedom of contract which states that everyone is free to make an agreement and is free to determine the content of an agreement as long as it does not conflict with the law, decency and public order. This means that the Civil Code gives freedom to the parties to the agreement to determine the content of the agreement on the condition that it does not conflict with the law on morality and public order.[23]

Article 1320 of the Civil Code determines 4 conditions for the validity of an agreement, namely:[24] The existence of an agreement between the two parties, the ability to perform legal acts, the existence of the object of the agreement and the existence of a halal cause. In an agreement, in addition to having to pay attention to the conditions for the validity of an agreement, it must also be based on several general principles or principles contained in the law of agreement, namely: The principle of freedom of contract, the principle of consensualism, the principle of pacta sunt servanda, the principle of good faith, the principle of personality (personality). There are also other principles or principles, namely: the principle of trust, the principle of legal equality, the principle of balance, the principle of legal certainty, the principle of morality, the principle of propriety, the principle of custom, and the principle of protection.

By paying attention to the above, it is hoped that the purpose of making the agreement, namely the creation of justice, order, and legal certainty, can be realized. The agreement contains the meaning of "promises must be kept" or "promises are debts". With the agreement, it is hoped that each individual will keep their promise and carry it out.[25] With

[23] Congratulations Widodo, Juridical Characteristics of Franchise Agreements, JOURNAL OF COSMIC LAW Vol. 16 No. 1 January 2016,
[24] Salim H.S, Contract Law Theory and Contract Drafting Techniques, Jakarta: Sinar Grafika, 2010, 33-34.
[25] Reimon Wacks, Jurisprudence, London: Blackstones Press Limited , 1995,191

the existence of an agreement, it is hoped that the parties involved in it can make the business in accordance with the agreements that have been agreed, do it in good faith, and as a basis to solve problems if problems arise in the future.

However, in its implementation, it often does not go well and even causes conflicts. The first and second conditions in article 1320 of the Criminal Code are often called subjective conditions because they concern the parties to the agreement. The third and fourth conditions in article 1320 of the Criminal Code are called objective conditions, because they concern the object of the agreement. If the first and second conditions are not met, the agreement can be canceled. If the third and fourth conditions are not met, then the agreement is null and void, meaning that the agreement was originally considered to have never happened.

If an agreement has been made based on Article 1320 of the Civil Code, then as a consequence the agreement applies as a law for the parties as contained in Article 1338 paragraph (1) of the Civil Code. If one of the parties does not carry out the achievement in accordance with what is agreed, it is called a default. The occurrence of default results in other parties (opponents of the defaulting party) being harmed. Because the party who has committed a default must bear the consequences of the opponent's demands. Even though one of the parties has committed a default, its interests must still be protected to maintain balance. Basically, every agreement made by the parties must be able to be implemented voluntarily or in good faith, but in reality the agreement they make is often violated. If there is a problem about the agreement, then the justice seekers (*justiciabellen*) certainly crave matters to be resolved fairly.

However, in practice today, Indonesia as a country of law has not been able to provide justice equally. Many justice seekers are dissatisfied and disappointed. In the application of law by law enforcement in Indonesia today, often law enforcers carry out their duties not in accordance with existing rules.[26]

The consistent application of the principle of good faith is able to create an ideal contract in the practice of franchise contracts that are standardized

[26] Niru Anita Sinaga, The Role of Good Faith in Realizing Justice of the Parties in Agreements, M-Progress Journal, 62.

The existence of principles in contract law is very important in relation to being used as one of the foundations and guidelines for the parties in conducting legal relations based on agreements. Guided by the principles of the applicable agreement, legal acts that give birth to legal relationships due to the agreement made by the parties are in accordance with the rules or rules of law because in fact, the rule of law is applied based on the existence of legal principles. One of the legal principles of agreement is the principle of good faith.[27]

The principle of good faith is one of the principles in the law of agreement. Article 1338 paragraph (3) of the Civil Code states that "an agreement must be executed in good faith". The regulation of Article 1338 paragraph (3) of the Civil Code, which stipulates that an agreement must be carried out in good faith, means that the agreement is carried out in accordance with propriety and justice. The content of Article 1338 paragraph (3) of the Civil Code is also reaffirmed in Article 1339 of the Civil Code which states that "an agreement is not only binding on what is expressly stipulated in it, but also everything that by the nature of the agreement is required by propriety, custom or law".

The substance of good faith in Article 1338 paragraph (3) of the Civil Code does not have to be interpreted grammatically, that good faith only appears at the stage of contract implementation. Good faith must also be interpreted in the entire process of the contractual implementation stage, which means that good faith must be based on the relationship between the parties at the pre-contractual, contractual and contractual implementation stages. Thus, the function of good faith in Article 1338 paragraph (3) of the Civil Code has a dynamic nature covering the entire contract process.[28] The principle of good faith is divided into two types, namely relative good faith and absolute good faith. In the first intent, one notices the apparent attitudes and behaviors of the subject. In the second faith, the assessment lies in common sense and justice and an objective measure is made to assess the situation (impartial judgment) according to objective norms.[29]

In the National Civil Law Symposium organized by the National Legal Development Agency (BPHN) which determined that good faith should be interpreted as follows: 31 Honesty in making agreements; At the stage of making it is emphasized that when an agreement is

[27] Fahdelika Mahendar and Christiana Tri Budhayati, The Concept of Take It or Leave It in Standard Agreements in accordance with the Principle of Freedom of Contract, Alethea Journal of Law [Vol. 2, No. 2, 2019], 100.
[28] Firman Floranta Adonara, *Aspects of Covenant Law,* (CV. Mandar Maju 2014), 105-109.
[29] M. Muhtarom, Legal Principles of Agreements: A Basis for Contract Making, SUHUF, Vol. 26, No. 1, May 2014, 52.

made in the presence of an official, the parties are considered to be in good faith (although there are also opinions expressing objections); As propriety in the implementation stage, which is related to a good assessment of the behavior of the parties in carrying out what has been agreed in the agreement, it solely aims to prevent inappropriate behavior in the implementation of the agreement. Based on the understanding of good faith in the agreement, the main element is honesty. Honesty is the main element in making an agreement because the dishonesty of one party to the agreement can result in losses for the other party.

The good faith contained in Article 1338 paragraph (3) of the Civil Code is always linked to Article 1339 of the Civil Code, that the Agreement is not only binding on what is expressly stipulated in it, but also everything that by the nature of the agreement is demanded based on propriety, custom, or law. The standard of good faith in the implementation of the agreement is an objective standard, with this standard the behavior of the parties in implementing the agreement and the assessment of the content of the agreement must be based on the principles of rationality and propriety.[30] According to Ridwana Khairandy, good faith must exist from the pre-contract phase where the parties begin to negotiate until they reach an agreement and the contract implementation phase".[31]

Hernoko revealed that contracts are basically an important part of a business process that is conditional on the exchange of interests between the actors. Designing a contract is essentially "pouring business processes into a legal format". It assumes a synergistic relationship – correlative between business aspects and law (contracts). It is like a locomotive and its carriage as the personification of the business aspect while the rail bearing where the locomotive and the carriage are walking towards the destination as the personification of the legal aspect (contract). Therefore, the success of the business, among others, will also be determined by the contract structure or building that is designed and prepared by the parties. However, it is unfortunate that business people formulate their business processes in a perfunctory contract format, so that they do not pay attention to the correct processes, procedures and norms of drafting contract processes.

[30] Niru Anita Sinaga, The Role of Good Faith in Realizing Justice of the Parties in Agreements, M-Progress Journal, 62.

[31] Ridwan Khairandy. Good Faith in Freedom of Contract, Jakarta: FH-UI Postgraduate. 2003, 190.

A standard agreement/contract has been made by fulfilling the conditions of the validity of the agreement, then the provisions of Article 1338 paragraph (1) of the Civil Code which states that the agreement made legally applies as a law to the party who made it with the consequences in paragraph (2) which states that an agreement cannot be withdrawn other than by agreement or by law. Furthermore, paragraph (3) emphasizes that the implementation of the agreement must be in good faith.

The creation of a Franchise Agreement in the provisions of Article 7 of Government Regulation Number 42 of 2007 stipulates as follows: "The franchisor must provide a prospectus of the Franchise offer to the prospective franchisee at the time of making the offer". In connection with this, Article 1 point 6 of the Minister of Trade Regulation number: 53/M-DAG/PER/8/2012 explains that: "The prospectus of the franchise offer is a written statement from the Franchisor which at least explains the identity of the Franchisee, the legality of the Franchisee's business, the history of its business activities, the organizational structure of the Franchisee, the financial statements of the last 2 (two) years, the number of business places, the list of Franchisees, rights and obligations of the Franchisor and the Franchisee."

The use of standard contracts in franchise agreements is a manifestation of one of the principles of contract, namely the principle of freedom of contract. This principle can be deduced from Article 1338 of the Civil Code which explains that all agreements that are legally made are valid as law for those who make them. Actually, what the article means is nothing but a statement that every agreement is binding on both parties. But from this article, it can be concluded that people are free to make any agreement as long as it does not violate public order or morality. People are not only free to make any agreement, but in general they are also allowed to set aside the regulations contained in the Civil Code. This system is commonly called an open system. So that in a franchise agreement that uses contract standards, it is still considered valid and binding on both parties.

The standard contract in the franchise agreement is indeed valid and binding on both parties, but in my opinion there must be restrictions. The restriction was carried out to suppress the abuse of circumstances caused by the enactment of the principle of freedom of

contract. This is related to the theory of justice because in practice this restriction can be found in Law Article 18 of Law No. 8 of 1999 concerning Consumer Protection.[32]

In practice, almost all agreements in the business world, especially those that are large-scale and/or repetitive, sustainable, are implemented in the form of standard contracts which limit the Principle of Freedom of Contract. The background of the growth of standard agreements is due to socio-economic conditions, in the use of these standard agreements, entrepreneurs, especially franchisors, gain efficiency in spending costs, energy and time.[33] A standard agreement is an agreement in written form in the form of a form, the contents of which have been standardized or standardized first unilaterally by the creditor and are mass without considering the differences in conditions owned by the debtor that are standardized including models, formulations, and sizes.[34]

Whether or not the Standard Agreement is recognized has become a barrier to the movement of the Principle of Freedom of Contract. The principle of Freedom of Contract, which was initially a guideline for the parties to realize a fair agreement, in its development was actually abused by the strong party to pressure the weak party, by making a standard agreement that is a take it or leave it contract. In the name of freedom of contract, justice for the parties, especially the weak parties, is not realized. [35]

Standard agreements are not basically prohibited, for reasons of efficiency, standard agreements are always applied in almost all agreements that exist today. This agreement, which is more adherent, does not give room for the weak party to carry out the negotiation process as it should. Accept or reject (take it or leave it) is the only option for the party who is weak in his bargaining position. An irregularity that often underlies standard agreements is the inclusion of exemption clauses, which is an article or provision whose content is in the form of limitation of responsibility or even exemption of responsibility of one party to the

[32] Rachdinda Pradigda Al-Qarano, The Principle of Standard Contract Proportionality in Franchise Agreements, Glosains: Journal of Global Indonesia, Vol. 2, No. 1, January 2021, 5.
[33] Ahmad Busro, The Influence of Standard Agreements on the Implementation of the Principle of Freedom of Contract in the Context of Welcoming the ASEAN Economic Community, Transcript of the Inauguration Speech of the Professor of FH Undip, January 2016, 1.
[34] Abdul Kadir Mohammad, 1992, Standard Agreement in the Practice of Trading Companies, Citra Aditya Bakti. Bandung, 6.
[35] G.H. Treitel, The Law Of Contract, Tenth Edition, , 2000, London, Sweet & Maxwell Limited, 196.

other. This deviation is also a negative impact of the application of the principle of Freedom of Contract that is not properly controlled.[36]

The arrangement of the franchisee's obligations is very little compared to its rights, in other words, the arrangement of the franchisor's rights is more than the franchise's rights, as well as the franchisor's obligations are less than the franchisee's obligations. Good faith and propriety are the principles that provide protection to the weak in a situation against the actions of the strong. Based on Article 1338 paragraph (3) of the Civil Code, if there is a difference of opinion about the implementation of the agreement in good faith (propriety and decency), then the judge is authorized by law to supervise and assess the implementation of the agreement, whether there is a violation of the norms of propriety and decency. This means that the judge has the authority to deviate from the content of the agreement according to his words, if the implementation of the agreement according to his words will be contrary to good faith (if the implementation according to the norms of propriety and decency is considered fair). This is understandable because the purpose of law is: to provide benefits, ensure certainty (order) and create justice.

It is undeniable that business interests are more of a consideration for businessmen than legal considerations and justice for the parties, so that the desire to pursue huge profits is more preminent. This consideration is also a barrier for a strong party not to impose its will too much in an agreement. What does it mean to be an agreement that in writing will provide very large profits and little responsibility to the strong party, but in practice it is difficult for the other party to implement, so that the profits that have been planned cannot be achieved precisely because the arrangement of the agreement is very burdensome for the party whose legal position is weaker.[37]

The inclusion of good faith in the implementation of the agreement also means that we must interpret the agreement based on fairness and propriety. In the Civil Code, propriety (the principle of propriety) is stated in Article 1339 of the Civil Code which states that the

[36] Ery Agus Priyono, THE ROLE OF THE PRINCIPLE OF GOOD FAITH IN STANDARD CONTRACTS (Efforts to Maintain Balance for the Parties), DIPONEGORO PRIVATE LAW REVIEW• VOL. 1 NO. 1 NOVEMBER 2017

[37] Muhammad Syaifuddin. Contract Law, Understanding Contracts in the Perspective of Philosophy, Theory, Dogmatics and Legal Practice, Bandung, CV Mandar Maju Publisher, 2012, 81

agreement is not only binding for things that are expressly stated in it, but also for everything that according to propriety, custom or law.[38]

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CONCLUSION

The results of the study show that;

1. Standard contracts are very appropriate to use in the franchise business when compared to negotiated agreements. Standard/standard contracts are not only used for large-scale business agreements, as they appear at every level of business transactions even small-scale businesses.
2. The first and second conditions in article 1320 of the Criminal Code are often called subjective conditions because they concern the parties to the agreement. The third and fourth conditions in article 1320 of the Criminal Code are called objective conditions, because they concern the object of the agreement. If the first and second conditions are not met, the agreement can be canceled. If the third and fourth conditions are not met, then the agreement is null and void, meaning that the agreement was originally considered to have never happened.
3. The inclusion of good faith in the implementation of the franchise agreement also means that we must interpret the agreement based on fairness and propriety. In the Civil Code, propriety (the principle of propriety) is stated in Article 1339 of the Civil

[38] Purwahid Patrik, 1994, Legal Foundations of Alliances (Alliances born from Agreements and Laws), Mandar Maju, Bandung, 67
[39] Subekti, 1987, Law of Agreements, PT. Intermasa, Jakarta, 40

Code which states that the agreement is not only binding for things that are expressly stated in it, but also for everything that according to propriety, custom or law.

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