

Antitrust Law Analysis on the Abuse of Dominant Position in Franchise Agreements in Indonesia

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ABSTRACT

This study examines the abuse of dominant positions in franchise agreements in Indonesia, highlighting power imbalances between franchisors and franchisees and their impact on market fairness, competition, and franchisee autonomy. Employing a normative juridical methodology, the research analyzes legal frameworks, including Law No. 5 of 1999 on Monopolistic Practices, complemented by comparative studies of international practices. The findings reveal gaps in Indonesia's regulations, enforcement challenges, and significant power asymmetries in franchising, underscoring the need for a dedicated regulatory framework, enhanced institutional capacity, and stakeholder engagement. Recommendations include adopting a Franchise Disclosure Document, dispute resolution mechanisms, and fostering local franchise growth.

INTRODUCTION

Franchise agreements represent a strategic form of business cooperation that plays a vital role in driving the economy in Indonesia. As a business model that facilitates the transfer of technology, knowledge, and branding, franchising has grown rapidly across various sectors, from food and beverages to educational services (Grünhagen & Terry, 2017). Despite its significant benefits, franchise agreements also have the potential to create conflicts, particularly when there is an imbalance of power between franchisors and franchisees (Zulkifli & Noor, 2024). This imbalance can lead to practices that violate competition laws, including the abuse of dominant positions, which may harm the parties involved and disrupt market equilibrium.

One of the primary challenges in regulating franchise agreements in Indonesia is ensuring that this business practice adheres to principles of fairness and aligns with the existing legal framework. Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (the Antimonopoly Law) prohibits various forms of abuse of dominant positions (Kennedy, 2024a). However, the enforcement of this law, particularly in the context of franchise agreements, often faces obstacles ranging from legal interpretation to effective implementation (Rahmawati et al., 2024). This situation underscores the importance of studying franchise agreements to understand how antimonopoly and competition laws can prevent violations while fostering a healthy business environment in Indonesia.

Franchising is characterized by its unique dynamics, which often create high dependency between the franchisor as the brand owner and the franchisee as the operational entity. This dependency often grants the franchisor significant power, which in some cases can lead to unfair practices, such as imposing onerous contractual terms or engaging in unfair market dominance (Grünhagen & Terry, 2017). In this context, the dominant position held by the franchisor can become a source of violations, including covert monopolistic practices or exploitative actions against franchisees (Kumar, 2024). Therefore, this research aims to explore the extent to which abuses of dominant positions occur in franchise agreements in Indonesia and how existing laws address these issues.

This study also seeks to contribute to the development of legal theory and practice in Indonesia, particularly regarding the regulation of franchise agreements. Moreover, it is expected to serve as a reference for policymakers and legal practitioners in drafting regulations that are fairer and more effective in preventing abuses of dominant positions. Consequently, this research does not solely focus on normative analyses of existing regulations but also strives to capture the dynamics of real-world practices to provide relevant and practical solutions.

A fundamental reason for conducting this research is the lack of in-depth studies on dominant positions in franchise agreements in Indonesia. Most existing studies focus on the technical or economic aspects of franchising, while the legal dimensions of competition law receive less attention (Maharani & Darya Dzikra, 2021; Sihaloho et al., 2023). This study aims to fill that gap by

offering an in-depth analysis of the relationship between franchisors and franchisees from the perspective of antimonopoly law. Furthermore, this research seeks to assess the effectiveness of law enforcement in Indonesia, which is often hindered by institutional limitations and biases in legal interpretation.

In the context of globalization and the digital economy, franchise business models also face new pressures requiring adaptive legal approaches. Changes in consumption patterns, the use of technology, and market globalization have created increasingly complex business ecosystems (Kraak et al., 2017). In this situation, the potential for abuse of dominant positions by franchisors becomes increasingly relevant for study. Additionally, increased competition in the franchise business sector has also led to the emergence of various contractual innovations that, if not adequately monitored, could harm franchisees' interests (Zulkifli & Noor, 2024). Therefore, this research is not only crucial for the development of national law but also relevant in a broader context to ensure that franchise businesses can grow sustainably without compromising principles of fairness and healthy competition.

The primary contribution of this research lies in its attempt to enhance understanding of abuses of dominant positions in franchise agreements, a topic that has not been comprehensively addressed. By analyzing specific cases and examining them within the existing legal framework, this study aims to provide a clearer understanding of how violations occur and offer recommendations to improve the current legal system. Additionally, this research seeks to address gaps in Indonesian legal literature by presenting a deeper and data-driven perspective on franchise agreements.

Ultimately, this study raises two fundamental questions: first, what are the forms of abuse of dominant positions in franchise agreements in Indonesia? Second, how does Indonesian law currently address these issues? These questions form the foundation of the analysis conducted in this research, which aims not only to identify problems but also to provide actionable solutions. Thus, this research is expected to serve as a guide for various stakeholders, including policymakers, academics, and business actors, in understanding and addressing challenges related to franchise agreements in Indonesia.

Through comprehensive analysis, this study also aims to make a tangible contribution to legal development in Indonesia. By identifying weaknesses in the current system and offering recommendations for improvement, this research is expected to foster a more conducive business climate for all parties involved in the franchise business. Moreover, the findings of this research are expected to serve as a reference for other countries facing similar challenges, thereby strengthening the global relevance of this study.

Internationally, collaboration between countries is becoming increasingly important to address the challenges posed by companies with dominant positions operating across borders. Organizations such as the OECD and UNCTAD have encouraged the harmonization of competition policies to ensure that global markets remain competitive and inclusive (Anderson et al., 2018). In Indonesia, learning from these international frameworks could strengthen

national efforts to regulate the franchise industry. Additionally, the emergence of new regulations in various countries, such as the Digital Markets Act in the European Union, reflects the importance of adapting legal frameworks to the evolving business landscape.

This study does not only aim to answer specific legal questions but also seeks to provide broader insights into how franchise agreements can be managed more fairly and effectively in the future. With a holistic and evidence-based approach, this research hopes to pave the way for better policy and practice development in the field of competition law, both in Indonesia and internationally. By integrating theoretical and practical perspectives, this study aspires to enrich the discourse on the intersection of franchising, competition law, and legal enforcement, contributing to a fairer and more dynamic business environment.

LITERATURE REVIEW

Freedom of Contract Theory

Freedom of contract theory is a fundamental principle in contract law that grants parties the liberty to enter into agreements based on their mutual consent and preferences (Miru, 2018). This principle is grounded in the doctrine of *pacta sunt servanda*, which mandates that agreements made legally between parties must be honored as if they were laws. According to Sjaiful (2015), freedom of contract encompasses three main elements: the freedom to choose contractual partners, the freedom to determine the terms and content of the agreement, and the freedom to decide the form of the contract. These freedoms ensure that contracts are tailored to the specific needs and interests of the parties involved, fostering trust and efficiency in business transactions.

However, this freedom is not absolute. Subekti (2008) emphasizes that freedom of contract must operate within the boundaries of legality, public order, and morality. Contracts that violate these principles such as agreements for unlawful activities or clauses that contravene public norms are deemed void. Furthermore, Subekti (2008) underlines that contract entered under duress, fraud, or misrepresentation are invalid, as they compromise the fundamental principle of mutual consent, which is the cornerstone of contractual freedom.

Freedom of contract plays a pivotal role in franchise agreements, where parties negotiate terms governing their business relationships. In franchise agreements, the application of freedom of contract often faces challenges when there is a significant power imbalance between the franchisor and franchisee. As the brand owner and operator of the franchise system, the franchisor frequently holds a dominant position, allowing them to impose terms that disproportionately favor their interests. Fuady (2003) highlights that franchisor often exploit this position by requiring franchisees to purchase goods exclusively from them at inflated prices. Additionally, franchisees are often subject to strict contractual terms that limit their operational autonomy, such as exclusivity clauses and disproportionate penalties for contractual breaches.

In the context of power imbalances, Sjaiful (2015) highlights how freedom of contract can be exploited in relationships where one party holds significant

bargaining power over the other. The authors emphasize that in many standard form contracts, the stronger party often drafts terms that reflect their interests, leaving the weaker party with little room for negotiation (Fadhilah, 2019). This is particularly evident in franchise agreements, where franchisors frequently impose stringent terms on franchisees, such as exclusivity clauses or penalties for failure to meet sales targets. These practices demonstrate how freedom of contract, while facilitating flexibility, can lead to unfair outcomes if not properly regulated.

Regulations such as Indonesia's Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition play a critical role in addressing potential abuses of contractual freedom. These laws aim to prevent dominant parties, such as franchisors, from leveraging their position to create dependencies that harm franchisees. In Indonesia's legal framework, franchise agreements are subject to scrutiny to ensure that their terms align with principles of fairness, equity, and transparency.

To illustrate, in the context of franchise agreements in Indonesia, franchisors often leverage their control over trademarks and operational systems to impose rigid conditions on franchisees (Grünhagen & Terry, 2017). These conditions may include mandatory marketing contributions, fixed operational guidelines, and penalties for non-compliance. While such terms are intended to maintain brand consistency, they may also limit the franchisee's autonomy and profitability. (Subekti (2008) emphasizes the need for judicial oversight to ensure that such contracts do not result in exploitation or unfair business practices, aligning with the broader principles of justice and equity in contract law.

Furthermore, Fuady (2020) notes that the enforcement of Article 1338 of the Civil Code must consider the broader implications of contractual freedom, particularly in protecting weaker parties. He argues that regulatory interventions, such as Indonesia's Law No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition, play a vital role in balancing contractual freedom with the need to prevent abuse. This law serves as a safeguard against the misuse of dominant positions, ensuring that contracts are not merely instruments of control by stronger parties.

The principle of freedom of contract is both a facilitator of economic activity and a potential source of conflict in power-imbalanced relationships (Subekti, 2003). While it empowers parties to negotiate terms that align with their interests, it also necessitates mechanisms to prevent exploitation and promote fairness. By integrating the insights from Fuady (2003) and Subekti (2008), it becomes evident that the effective application of this principle requires a delicate balance between autonomy and regulation. Ultimately, freedom of contract should function not as an instrument of dominance but to foster equitable and mutually beneficial relationships in business and commerce.

Unfair Competition Theory

Competition law is a fundamental part of the economic legal system aimed at creating fair and efficient markets. Generally, this law functions to

prevent and regulate practices that may hinder healthy market competition, such as monopolies, cartels, and the abuse of market power (Fadhilah, 2019). The primary principle of competition law is to encourage fair competition among business actors to enhance economic efficiency, foster innovation, and provide benefits to consumers in the form of competitive prices and better-quality products.

The theory of competition is grounded in the basic concept of a free market economy, where each business actor is given the freedom to compete based on innovation, efficiency, and the quality of products or services they offer (Ningsih, 2019). In this context, healthy competition is believed to result in a more optimal allocation of resources, drive technological advancements, and lower the prices of goods and services, making them more affordable for consumers (Kennedy, 2024a). Conversely, when competition is distorted, such as in monopoly or oligopoly conditions, consumers are often disadvantaged due to limited choices and higher prices for goods or services.

From a legal theory perspective, the prohibition of monopolistic practices and unfair competition stems from the principle of fairness (Febriani & Hasmiati, 2022). Practices such as price control by one or several dominant business players can lead to economic inequity (Kurniasari & Rahman, 2023). This contradicts the fundamental goal of economic law, which is to ensure a balance between the interests of business actors and the broader society.

Economic theory also provides an analytical framework for understanding market structures and their effects on competition. For instance, the model of perfect competition assumes the existence of numerous business actors with no significant control over market prices (Azevedo & Gottlieb, 2017). In contrast, in monopolistic or oligopolistic market structures, certain business players can use their market power to create barriers for new entrants, set high prices, or reduce innovation. Therefore, regulations in the form of competition law are necessary to maintain market balance and prevent the abuse of economic power.

At the international level, competition law continues to evolve to address new challenges, especially in the digital economy (Mappuji & Wardana, 2023). Large digital platforms often present unique challenges to competition due to their network effects, which tend to create natural monopolies. In some jurisdictions, such as the European Union and the United States, competition law has been expanded to address concentrated market power in this sector (Pranoto, 2024). For example, new regulations oversee the misuse of user data by dominant platforms, which can harm competition (Kennedy, 2024b).

The normative approach to competition law also emphasizes the importance of market impact analysis. In this regard, determining whether a practice is deemed unlawful is typically based on its effects on consumers and the overall market structure. Common indicators used include market concentration indexes, such as the Herfindahl-Hirschman Index (HHI), and analyses of market entry barriers that could hinder new competition.

Overall, competition law aims to ensure that market mechanisms function effectively without interference from anti-competitive practices. By maintaining healthy competition, this law supports sustainable economic growth, a fairer

distribution of wealth, and provides protection for consumers and small businesses against domination by larger enterprises. Amid the dynamics of the global market, competition law will continue to adapt to the changing structure of the economy and increasingly complex technologies.

Dominant Position Theory

The theory of dominant position is one of the fundamental pillars of competition law in various countries (Davis & Orhangazhi, 2021). This concept refers to the ability of a business entity to act independently of market forces, competitors, and consumers. In the global economy, a dominant position is often understood as a situation where a company has significant market power, enabling it to influence market structures without significant pressure from competitors (Kurniasari & Rahman, 2023). This theory forms the basis for identifying behaviors that have the potential to harm competition and disrupt market balance.

In general, a dominant position is not prohibited; the concern lies in the abuse of such a position. Abuse can take the form of exclusionary behaviors, such as preventing new competitors from entering the market or obstructing access to critical resources, as well as exploitative behaviors, such as setting unfair prices or imposing contractual terms that harm consumers (Anderson et al., 2018). In many jurisdictions, such as the European Union (Article 102 TFEU) and the United States (Sherman Act), regulations on dominant positions are designed to protect competitive market structures and prevent anticompetitive behavior.

Globalization and digitalization have expanded the scope of the dominant position theory, particularly in the technology sector and digital ecosystems. Large technology companies, commonly referred to as "Big Tech" (such as Google, Apple, Facebook, Amazon, Shopee and Microsoft), exemplify entities with dominant positions (Munawaroh, 2024). They often leverage complex digital ecosystems, integrating platforms with additional services to create lock-in effects for customers and business partners. These practices pose new challenges for regulators worldwide, especially concerning data collection, privacy, and competition.

On the other hand, the theory of dominant position also fosters discussions about the efficiency and innovation benefits generated by companies with significant market power (Zulkifli & Noor, 2024). This perspective emphasizes that a dominant position is not always negative. In some cases, market dominance drives economies of scale and innovation that can benefit consumers, such as lower prices or higher-quality services. However, these benefits are often accompanied by concerns that excessive market power may stifle competition in the long term.

In law enforcement, the effects-based approach has gained global popularity. This approach focuses on analyzing the impact of a company's behavior on the market and consumers, rather than merely assessing whether specific rules are violated (Cecilia, 2022; Kim, 2021). For example, in the United States, courts examine the impact of behavior on consumer welfare, while in the

European Union, the focus is broader, including effects on competitors and market dynamics.

At the global level, international collaboration has become essential to address challenges posed by companies with dominant positions operating across borders. Organizations such as the OECD and UNCTAD have promoted the harmonization of competition policies to ensure that global markets remain competitive and inclusive (Grünhagen & Terry, 2017). Additionally, the emergence of new regulations in various countries, such as the Digital Markets Act in the European Union, reflects efforts to regulate the power of dominant companies in the digital economy.

In conclusion, the theory of dominant position provides a robust framework for analyzing market power and anticompetitive behavior. However, its application requires a balanced approach to encourage innovation, protect consumers, and ensure the sustainability of competitive markets globally.

METHODOLOGY

This research employs a normative juridical methodology. This approach focuses on the study of legal norms applicable within a particular legal system, such as laws, government regulations, court decisions, and other legal documents (Sonata, 2015). This method views law as a normative system consisting of rules that prescribe or prohibit actions within society.

In the normative juridical approach, law is seen as a set of prescriptive norms that provide guidance on what is permissible or prohibited (Sunggono, 2019). This research aims to understand the content, purpose, and application of legal norms and to evaluate their conformity with the principles of justice, utility, and legal certainty. Therefore, the primary focus of this research is on formal legal texts and conceptual analysis of the norms contained within them.

The normative juridical approach has several key characteristics. First, this research is normative in nature because it examines positive law, which is the law currently in effect in a particular country at a specific time. Second, this research relies on legal documents as its primary data source. Primary legal materials such as laws, government regulations, and court decisions form the core of the analysis. Additionally, secondary legal materials such as academic journals, textbooks, and other supporting documents are used to enrich the analysis. Third, the normative juridical research employs legal analysis methods that involve interpreting legal texts. This approach encompasses various interpretative techniques, such as grammatical, systematic, historical, and teleological interpretation, to understand the intent of legal norms.

RESEARCH RESULT

Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition is a significant milestone in creating a fair and healthy market in Indonesia (Ningsih, 2019). This law is designed to prevent abuse of dominant positions, collusion, and other unfair business practices that harm small businesses and the broader community. In the context of franchising, the implementation of this law aims to protect small business

partners who are often in a weak position when dealing with large enterprises. However, various cases, such as the one involving PT Indomaret Prisma (Indomaret), highlight that the implementation of this law is still far from optimal.

The Indomaret case, which was tried by the Business Competition Supervisory Commission (KPPU), serves as a tangible example of abuse of dominant position in the franchise business. As one of the largest convenience store chains in Indonesia, Indomaret was accused of engaging in business practices that harmed small businesses and its franchise partners (Kartini, 2016). One key allegation was that franchisees were obligated to purchase supplies from suppliers designated by Indomaret. This requirement restricted franchisees' freedom to choose other suppliers that might offer more competitive prices, thereby strengthening Indomaret's dominant position in the market.

Indomaret was also accused of leveraging its market power by offering periodic discounts, such as the "Super Hemat" program, which small businesses in its vicinity could not compete with (Rahayu, 2019). These programs attracted customers to shop at Indomaret but simultaneously harmed small shops that lacked the ability to compete in terms of price, promotions, and convenience. Many small shops within a 300-meter radius of Indomaret outlets experienced revenue declines of up to 50% (Kartini, 2016). This impact was not only felt by small business owners but also affected the livelihoods of families dependent on these businesses.

Despite the apparent negative effects of Indomaret's business practices, KPPU faced difficulties in proving violations of Article 25 of Law No. 5 of 1999 concerning abuse of dominant position. This article prohibits businesses from using their dominant position to block other businesses from entering the market or creating dependency. In the Indomaret case, KPPU concluded that while the company had a stronger position compared to small businesses, there was insufficient evidence to explicitly declare a violation of the law.

Although Law No. 5 of 1999 has strong principles, several legal gaps allow unfair business practices to persist. Ambiguities in the definition of dominant position, unstable franchisee-franchisor relationships, low competition in the franchise sector, and the lack of standardized guidelines for franchise agreements are major challenges.

The law defines a dominant position as a situation where a business controls more than 50% of market share or has significant influence over a specific market (Ningsih, 2019). However, in practice, it is difficult to determine when such significant influence constitutes a violation. For instance, in the Indomaret case, while the company had superior distribution and economies of scale compared to small businesses, KPPU could not find sufficient evidence to declare that Indomaret abused its dominant position (Kartini, 2016).

In comparison, the European Union has a more detailed definition of a dominant position. Under Article 102 of the Treaty on the Functioning of the European Union (TFEU), a dominant position is defined as the ability to act independently of competitors, customers, or consumers. This approach

considers not only market share but also barriers to entry, market structure, and the behavior of businesses. With a clearer definition, regulators in the European Union have a stronger basis for enforcing competition laws.

In Indonesia, the relationship between franchisees and franchisors is often unstable due to franchisees' heavy dependence on franchisors (Zulkifli & Noor, 2024). In many cases, franchisees are required to comply with strict conditions set by franchisors, such as purchasing goods from specific suppliers, paying high royalties, and incurring expensive licensing fees. These conditions create significant imbalances, leaving franchisees with little room to negotiate or innovate.

Franchisee reportedly had to adhere to strict supply rules, which limited their freedom to seek alternative suppliers offering more competitive prices (Sugiono et al., 2023). Such relationships require stricter oversight to prevent exploitation that could harm small business partners. In the United States, the Federal Trade Commission (FTC) requires franchisors to provide a Franchise Disclosure Document (FDD) containing comprehensive details about costs, rights, and franchisee obligations before any agreement is signed (FTC et al., 2021). This level of transparency protects franchisees' interests from harmful terms.

The lack of competition is further exacerbated by the unequal distribution of franchises across regions. Most franchises are concentrated in major cities such as Jakarta, Surabaya, and Bandung, while other areas have limited access to franchise opportunities (Rizal & Aslami, 2022). This condition worsens regional economic disparities and creates barriers for small businesses to participate in the franchise ecosystem.

Indonesia currently lacks standardized guidelines specifically governing franchise agreements. Regulation of the Minister of Trade No. 71 of 2019 only regulates administrative aspects, such as the requirement to register franchise agreements and disclosure documents. However, the regulation does not provide clear guidelines on fair agreement elements, such as profit sharing, supply obligations, or competition restrictions.

By comparison, Australia has the Franchising Code of Conduct, which serves as a mandatory guideline for franchisors and franchisees (Hardy, 2020). This code requires franchisors to act in good faith, provide complete information to franchisees, and establish dispute resolution procedures. Such a guideline is urgently needed in Indonesia to protect franchisees from unfair terms.

The legal gaps in regulating dominant positions and franchises significantly affect the economy. The imbalance in franchisee-franchisor relationships, low competition, and legal ambiguities create an unhealthy business environment (Sugiono et al., 2023). Small businesses often become victims, losing opportunities to grow and being trapped in unfavorable contracts. In the long term, these conditions can exacerbate economic inequality, hinder innovation, and weaken national competitiveness.

DISCUSSION

The findings from this research underscore critical challenges in regulating franchise agreements in Indonesia, particularly concerning the abuse of dominant positions by franchisors. These challenges highlight how power imbalances in franchise relationships can lead to exploitative practices, adversely affecting franchisees' profitability and operational independence (Sugiono et al., 2023). Beyond individual franchise relationships, these imbalances also disrupt broader market dynamics, exacerbate economic inequities, and harm consumer welfare.

One key implication is the urgent need for a comprehensive regulatory framework tailored to the unique dynamics of franchise agreements. Current laws, including Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, provide general provisions against anti-competitive practices but lack the specificity needed to address the intricacies of franchising. Without targeted regulations, enforcement remains inconsistent and fails to provide adequate protection for franchisees while allowing potentially harmful practices to persist.

Additionally, the findings highlight the need for strengthened institutional mechanisms to detect and address abuses of dominant positions. Challenges faced by the Business Competition Supervisory Commission (KPPU) in proving violations such as in the Indomaret case illustrate gaps in legal interpretation and enforcement capacity. To address these issues, there is a need to clarify legal definitions, enhance regulatory oversight, and improve the investigative capabilities of enforcement bodies.

Balancing the protection of franchisees with the promotion of franchise market growth is a complex but essential task. Franchisees, often small business owners or individual entrepreneurs, require strong protections to prevent exploitative practices and ensure fair treatment, this can only be achieved if there's a fair contract between franchisor and franchisee. Simultaneously, over-regulation could deter franchisors from expanding their networks, hindering the growth of the franchise sector and limiting economic opportunities.

To strike this balance, several strategies can be employed. First, franchise agreements must be made more transparent and equitable. Requiring franchisors to provide a comprehensive Franchise Disclosure Document (FDD) that outlines costs, franchisee obligations, and dispute resolution mechanisms can empower franchisees to make informed decisions and reduce the risk of exploitation (Rizal & Aslami, 2022). Second, establishing accessible and impartial dispute resolution mechanisms, such as mediation or arbitration centers specializing in franchise disputes, can provide franchisees with fair recourse for grievances without resorting to costly litigation.

Moreover, providing incentives for the growth of local franchises can help foster a balanced franchise ecosystem. Tax breaks, grants, or access to low-interest loans for domestic franchisors can encourage the development of homegrown brands, creating more opportunities for franchisees to engage in fair and competitive agreements (Grünhagen & Terry, 2017). Finally, regulatory frameworks must remain dynamic and adaptable to changes in the business

environment, such as the rise of digital franchises and globalization, to ensure long-term relevance and effectiveness.

Examining international approaches to franchise regulation provides valuable lessons for Indonesia. Countries like the United States, Australia, and members of the European Union have established robust frameworks to address challenges in franchising while promoting fairness and competition.

In the United States, the Federal Trade Commission (FTC) enforces franchise-specific regulations through the Franchise Rule, which requires franchisors to disclose critical information to prospective franchisees via an FDD (FTC et al., 2021). This rule emphasizes transparency, empowering franchisees to evaluate potential risks and benefits before entering an agreement. Similarly, Australia's Franchising Code of Conduct mandates good faith in franchisor-franchisee relationships, requires clear disclosure of terms, and includes dispute resolution mechanisms. The code's adaptability to changing business conditions makes it particularly effective in addressing emerging challenges.

The European Union also offers valuable insights, particularly through its enforcement of competition laws under Article 102 of the Treaty on the Functioning of the European Union (TFEU). The EU adopts an effects-based approach, evaluating the impact of a company's practices on competitors, consumers, and market dynamics. This broader perspective allows regulators to address nuanced issues, including abuses of dominant positions in franchise agreements. Indonesia can draw inspiration from these frameworks, tailoring their principles to suit the local franchise market.

The findings of this research have significant implications for policy-making in Indonesia. First, they underscore the need for a dedicated regulatory framework that addresses the specific characteristics of franchise agreements. Such a framework should focus on ensuring transparency, addressing power imbalances, and promoting fair competition while supporting the growth of the franchise sector.

Second, the findings call for the establishment of a specialized regulatory body or unit within existing institutions to oversee franchise agreements. This body should have the authority to monitor compliance, investigate abuses, and mediate disputes, ensuring a fair and competitive business environment. Additionally, capacity building for regulators and legal practitioners is essential. Training programs focused on franchise-specific issues, economic analysis, and competition law can enhance the ability of enforcement bodies to address abuses effectively.

Finally, the findings highlight the importance of engaging stakeholders in the policy-making process. Input from franchisors, franchisees, academics, and consumer advocates can ensure that regulations are practical, balanced, and aligned with market realities. This collaborative approach can help create a legal framework that promotes fairness, transparency, and sustainable growth.

While the proposed strategies offer a roadmap for improvement, several barriers and challenges must be addressed to achieve meaningful reform. One major challenge is the ambiguity in legal definitions, such as "dominant

position" and "unfair practices." These ambiguities can lead to inconsistent rulings and undermine confidence in the legal system. Addressing this issue requires revising existing laws to provide clearer and more specific definitions.

Regulatory bodies like the KPPU often face resource constraints, limiting their capacity to conduct thorough investigations and enforce rulings effectively (Fadhilah, 2019). Strengthening these institutions through increased funding, training, and access to modern investigative tools is critical for improving enforcement outcomes. Another challenge is the fragmented nature of existing regulations (Febriani & Hasmianti, 2022). The absence of a comprehensive framework for franchise agreements creates loopholes and inconsistencies that hinder effective enforcement. A unified regulatory framework that integrates competition law with franchise-specific provisions can help address this fragmentation.

Finally, the rise of globalization and digitalization introduces new complexities. Cross-border franchises and digital platforms pose challenges that existing laws may not adequately address. Regulatory frameworks must evolve to account for these developments, ensuring that competition remains fair and inclusive in a rapidly changing business landscape. By balancing the protection of franchisees with the promotion of franchise market growth, Indonesia can foster a more equitable and dynamic franchise sector. Comparative approaches from other jurisdictions offer valuable lessons, demonstrating the importance of transparency, adaptability, and stakeholder engagement in creating effective regulations.

Moving forward, the development of a dedicated regulatory framework, capacity building for enforcement bodies, and active stakeholder involvement are essential for creating a fair and competitive franchise ecosystem. Addressing legal ambiguities, strengthening institutional capacities, and raising awareness among stakeholders will ensure that franchising contributes to sustainable economic growth while upholding principles of fairness and healthy competition. By adopting these measures, Indonesia can create a robust legal and economic environment that supports the interests of all parties involved in the franchise business.

CONCLUSIONS AND RECOMMENDATIONS

The findings from this research underscore critical challenges in regulating franchise agreements in Indonesia, particularly concerning the abuse of dominant positions by franchisors. While franchising plays a vital role in driving economic growth through job creation, technology transfer, and brand expansion, it also reveals vulnerabilities in the system. These vulnerabilities often stem from significant power imbalances between franchisors and franchisees, leading to unfair contractual terms, restricted operational autonomy, and violations of competition laws. Such practices not only harm franchisees but also disrupt market fairness, stifle innovation, and undermine consumer welfare.

Indonesia's current regulatory framework, primarily governed by Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business

Competition, provides foundational principles to combat anti-competitive practices. However, the law lacks the specificity required to address the intricacies of franchise agreements, where power asymmetries often manifest in exploitative terms. For example, franchisees frequently face mandatory purchase obligations, high royalties, and stringent operational requirements that limit their profitability and independence. Cases like Indomaret illustrate the difficulties enforcement bodies such as the Business Competition Supervisory Commission (KPPU) face in proving abuses of dominant positions, even when the adverse effects on small businesses are evident. These challenges highlight the pressing need for targeted reforms to ensure fairness in franchise agreements while fostering sustainable market growth.

To address these issues, Indonesia must develop a comprehensive regulatory framework specifically tailored to the unique dynamics of franchise agreements. Such a framework should include mandatory transparency measures, requiring franchisors to disclose critical information through a standardized Franchise Disclosure Document (FDD). This document should detail all costs, obligations, risks, and dispute resolution mechanisms, enabling franchisees to make informed decisions. Additionally, regulations should prohibit exploitative practices, such as exclusivity clauses and disproportionate penalties, which often disadvantage franchisees. Equally important is the inclusion of robust mechanisms for equitable dispute resolution, such as specialized mediation and arbitration services.

Strengthening the institutional capacity of regulatory bodies like the KPPU is essential for effective enforcement. This can be achieved through increased funding, enhanced training programs for regulators, and access to modern investigative tools. Capacity building should focus on equipping regulators with the skills to address franchise-specific issues, analyze market dynamics, and adopt international best practices. Establishing a specialized regulatory unit to oversee franchise agreements would further enhance oversight and provide dedicated resources to monitor compliance, investigate violations, and mediate disputes.

Addressing ambiguities in existing laws is another critical step. Legal definitions of terms such as "dominant position" and "unfair practices" must be clarified to improve enforcement consistency and provide clearer guidance for stakeholders. These definitions should include measurable criteria, such as market share thresholds and the impact of practices on competitors and consumers, to reduce interpretive inconsistencies.

Awareness and education among franchisees are equally crucial. Many small business owners lack knowledge of their legal rights and obligations under franchise agreements, leaving them vulnerable to exploitative practices. Public awareness campaigns and educational programs can empower franchisees to advocate for fair treatment and make better-informed decisions. Additionally, the formation of franchisee associations could provide collective representation and support for negotiating equitable terms.

Promoting the growth of domestic franchises is another important strategy for fostering competition and reducing dependence on international

franchisors. The government can incentivize the development of local franchises through tax breaks, grants, and access to low-interest loans. Supporting training programs to enhance the operational and managerial capabilities of local franchisors will further strengthen their competitiveness. Encouraging innovation and diversification within the domestic franchise sector can create more opportunities for fair and mutually beneficial agreements.

Indonesia can also benefit from adapting international best practices. The United States' Federal Trade Commission (FTC) enforces franchise-specific regulations emphasizing pre-contractual transparency, while Australia's Franchising Code of Conduct ensures good faith in franchise relationships and provides accessible dispute resolution mechanisms. The European Union adopts an effects-based approach, evaluating the broader impact of business practices on market dynamics, competitors, and consumers. These frameworks demonstrate the value of transparency, fairness, and adaptability, offering valuable insights that Indonesia can tailor to its unique context.

As globalization and digitalization reshape the franchise landscape, Indonesia's regulatory framework must evolve to address new challenges. Digital franchises and cross-border agreements require updated provisions to ensure compliance with local competition laws and to protect franchisees operating in a digital economy. Collaboration with international organizations, such as the OECD and UNCTAD, can provide guidance on aligning Indonesia's regulatory practices with global standards.

Engaging diverse stakeholders, including franchisors, franchisees, legal experts, and consumer advocates, in the policy-making process is essential for creating balanced and practical regulations. Regular consultations and public-private partnerships can ensure that the interests of all parties are considered, fostering a more inclusive regulatory environment. By incorporating input from all stakeholders, Indonesia can develop a legal framework that promotes fairness, transparency, and sustainable growth in the franchise sector.

The findings of this research emphasize the importance of striking a balance between protecting franchisees and fostering the growth of the franchise market. By implementing a comprehensive regulatory framework, strengthening enforcement capacities, and promoting stakeholder collaboration, Indonesia can create a fairer and more dynamic franchise ecosystem. These measures will not only safeguard the interests of franchisees but also enhance Indonesia's reputation as a competitive and equitable market in the global economy. Addressing these challenges is a crucial step toward ensuring that franchising continues to contribute to Indonesia's sustainable economic development while upholding the principles of fairness and healthy competition.

ADVANCED RESEARCH

This research provides valuable insights into the regulation of franchise agreements in Indonesia, focusing on the abuse of dominant positions. However, several limitations warrant consideration. The study adopts a primarily normative and juridical approach, relying on legal texts, case analyses, and theoretical frameworks. While this offers a solid legal foundation, the absence of empirical data, such as interviews with franchisees, franchisors, and regulators, limits its practical applicability and the ability to capture real-world dynamics.

Additionally, the research predominantly analyzes Indonesia's legal framework and compares it with international best practices. While these comparisons provide useful lessons, they may not fully account for Indonesia's unique economic, cultural, and institutional contexts, which could affect the applicability of foreign models. Furthermore, the analysis is constrained by the limited availability of documented cases on franchise-related abuses of dominant positions, narrowing the sample and potentially affecting the generalizability of the findings. Future research should address these gaps by incorporating empirical data, sector-specific insights, and deeper exploration of Indonesia's franchise ecosystem.

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