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# The Exit Strategy Clause as an Application of the Proportionality Principle in Franchise Agreements

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***Abstract.*** *This study aims to analyze the application of the proportionality principle in formulating exit strategy clauses in franchise agreements and examine legal protections available to franchisees facing unilateral termination without proportional clauses. This study employs a normative legal approach examining legislation, academic literature, and franchise practices through conceptual, legislative, and case approaches. The novelty of this research lies in applying the proportionality principle specifically to exit strategy mechanisms, an aspect rarely explored in Indonesian franchise law literature, offering practical frameworks for balanced contract termination. The proportionality principle applies through three tests (suitability, necessity, and balancing). A proportional exit strategy clause must contain a clear termination mechanism with a cure period, fair compensation based on franchisee investment and contribution, and an adequate transition period for business cessation. Legal protection for franchisees includes preventive measures through notarial agreements and repressive measures through legal remedies based on the Civil Code, compensation claims, buyback mechanisms, protection during franchisor bankruptcy, and proportional non-competition clauses. This study emphasizes that applying proportionality principles in exit strategy clauses is crucial for ensuring balance between parties rights and obligations and preventing contractual power abuse.*

***Keywords:*** *Agreement; Exit Strategy; Franchise; Proportionality; Protection.*

## 1. Introduction

The franchise relationship is bound by the Franchise Regulation 42 of 2007, amended to include Regulation 35 of 2024, as well as the Minister of Trade Regulation 71 of 2019 that concerns franchising. While there are laws that are intended to protect the franchisees, the franchise agreements still tend to place the franchisees in a weaker legal position. The disbalance is most pronounced when the franchisers superior knowledge, economic power, and control of business resources, dictate the other non-negotiable terms of the franchise model (Batu Bara et al., 2025, pp. 6772–6732). The structural inequality in franchise relationships creates a fundamental challenge in ensuring fair contractual arrangements, particularly when the agreement reaches its termination phase. For instance, Indonesia's franchise sector with over 1000 registered franchises contributing significantly to the economy, yet imbalances persist in exit mechanisms.

Franchise agreements are essentially long-term business contracts between two parties. Like any contract, they should follow basic legal principles, particularly the principle of proportionality, which means there needs to be a fair balance between everyone's rights and responsibilities. However, what we see in real life is quite different. Franchisees usually end up in a much weaker position because franchisors write contracts that heavily favor themselves. This power imbalance gets even worse when you consider that there aren't enough specific regulations protecting franchisees from being taken advantage of. While Government Regulation No. 35 of 2024 does cover some important aspects of franchising, it doesnt offer strong enough protection against arbitrary actions by franchisors, especially when it comes to contract terminations.

One of the biggest problems in franchise agreements is the contract termination mechanism or exit strategy. A good exit strategy should let both parties walk away from the partnership in an organized way without suffering unreasonable losses. Unfortunately, vague exit clauses create serious legal uncertainty. There are even dishonest franchisees who sign up just to steal the franchisors business secrets, then either right before or after the contract ends, they start their own competing business (Hernoko, 2010, p. 112). On the flip side, franchisees face their own set of problems with unclear exit terms, leaving them vulnerable when the relationship sours.

The issue of franchisors unilaterally terminating agreements is particularly troubling. Franchisees invest heavily in operating and growing the franchisors business in their specific area, but they have virtually no say in what goes into the contract (Rappe et al., 2021, pp. 26–27). They basically have to accept whatever terms the franchisor puts in front of them. This creates a dangerous situation where franchisors can suddenly terminate agreements without giving proper reasons or allowing franchisees enough time to fix any problems (Munir Fuady, 2015, pp. 84–89). The franchisees weaker bargaining position makes them an easy target for these kinds of one-sided actions.

Despite extensive research on franchise law in Indonesia, a significant research gap exists regarding the application of the proportionality principle specifically to exit strategy mechanisms in franchise agreements. Previous studies have examined general aspects of franchising, contractual imbalances, and legal protection for franchisees, but none have systematically analyzed how the proportionality principle, as conceptualized by Agus Yudha Hernoko. Regulations like Regulation 35 of 2024 provide administrative guidance but no concrete frameworks for proportional terminations. For example, prior works by Atmoko (2022) discuss proportionality broadly but do not address exit mechanisms, leaving practitioners without tools for balanced clauses. This gap between theoretical principles and practical implementation leaves both legal practitioners and contracting parties without clear frameworks for formulating balanced exit strategies that protect franchisee investments while safeguarding franchisor interests.

When a franchisor terminates an agreement without warning, the financial and operational damage to the franchisee can be devastating. Franchisees invest significant money into building facilities, hiring staff, and running the business properly (Suharnoko, 2004, p. 223), yet they suddenly risk losing everything through no real fault of their own because the franchisor decides to pull the plug. The absence of fair exit strategy clauses worsens this situation, leaving franchisees without clear guidance on their rights when an agreement ends early or naturally expires. A proportional exit strategy clause is crucial as a balanced legal protection tool: it guarantees franchisees the right to end the agreement, compensation for investments, and clear procedures for transferring or closing the business, while protecting franchisors intellectual property, brand reputation, and preventing major losses to the franchise network, thus ensuring both parties can exit fairly without devastation.

This study aims to address the gap in research about exit strategies through the lens of proportionality. The research objectives are to analyze how the concept of proportionality is applied in the formulation of exit strategy clauses in franchise agreements and to examine what forms of legal protection are available to franchisees in the event of unilateral termination without a proportional exit strategy clause. These objectives are formulated to provide practical frameworks for balanced contract termination mechanisms and ensure adequate legal safeguards for franchisees facing arbitrary agreement terminations.

## 2. Research Methods

This research employs a normative legal method with statutory, conceptual, and case approaches. The statutory approach examines the Civil Code, Government Regulation No. 35 of 2024, and Minister of Trade Regulation No. 71 of 2019. The conceptual approach utilizes the proportionality principles theory to analyze balanced contract formulation. The case approach examines franchise agreement practices to identify the gap between current imbalanced practices and proportional exit mechanisms required by law. Data sources include primary legal materials (legislation) and secondary materials (books, journals, expert opinions), analyzed qualitatively through descriptive-analytical techniques to draw deductive conclusions about legal protection for franchisees.

## 3. Results and Discussion

### 3.1. Application of the Principle of Proportionality in Drafting Exit Strategy Clauses in Franchise Agreements

The essence of proportionality is a form of emphasis on both parties to give each other equal rights and obligations. This proportional distribution of rights and obligations can be observed in the substantive content of the agreement itself (Atmoko, 2022, p. 158). Therefore, a thorough understanding of the proportionality principle serves as the fundamental basis for examining the balance of rights and obligations between parties, particularly in franchise agreements where inequality between franchisors and franchisees occurs frequently (P et al., 2019, p. 914).

Agus Yudha Hernoko leverages the idea of proportionality to articulate the equilibrium among entities involved in an agreement. He posits that the concept of proportionality within agreements acts as the bedrock for the give-and-take of entitlements and duties among the participants, aligning with their individual stakes or ratios. This concept is put into practice across the complete lifecycle of the contractual connection, which takes into account the preliminary stage before the agreement, the actual creation of the agreement, and the periods of putting it into practice. It is worth mentioning that the concept of proportionality places its attention not so much on the identicalness of results but to a greater extent on how entitlements and duties are shared out between the entities involved in a manner that corresponds to their input (Hernoko, 2010, p. 29).

In contractual relationships, the principle of proportionality should ideally be evident from the pre-contract stage. At this stage, there is a process of offer and acceptance commonly referred to as negotiation. Ideally, both the franchisor and franchisee would have equal opportunities to reach an agreement on the form, substance, and legal rules governing their relationship. However, in reality, all clauses of the agreement are determined unilaterally by the franchisor. The franchisee is only given the option to accept or reject the agreement without any genuine opportunity to participate in shaping its content. This situation should be governed by the principle of consensualism in agreements as stated in Article 1338 of the Civil Code, which stipulates that agreements are formed based on mutual consent (Badriyah, 2019, p. 75). However, this principle has been violated. This inequality at the pre-contract stage ultimately persists until the final stage of the contractual relationship, namely when the agreement terminates. In the context of franchise agreements, the termination phase of the relationship between the franchisor and franchisee is regulated through a clause known as an exit strategy.

An exit strategy clause is a component of a franchise agreement that establishes the procedures for terminating or ending the contractual relationship, whether due to expiration, breach of contract, or other mutually agreed reasons. This clause is essential to ensure clarity and legal certainty when one party is unable to continue the partnership. However, in practice, such clauses are often unbalanced. For instance, franchisors are typically granted the authority to terminate the agreement unilaterally without providing similar rights to franchisees. This condition can be considered a violation of the principle of proportionality in contract law.

The exit strategy clause in an agreement fundamentally provides significant benefits for all parties involved, as it serves as a guideline regulating the procedures when the contractual relationship needs to be terminated. Through this clause, both the franchisor and franchisee obtain legal certainty regarding how to terminate the cooperation, their respective rights and obligations after the agreement ends, and protection from the risk of disproportionate losses (Al-Qarano, 2021, p. 3). Thus, the exit strategy serves as a safeguard against unilateral actions and ensures that the termination process is carried out fairly, transparently, and in accordance with the principle of proportionality in contract law.

The application of the principle of proportionality in the exit strategy clause of a franchise agreement represents an implementation of the principle of contractual balance as stipulated in Article 1338 of the Civil Code in conjunction with Government Regulation No. 42 of 2007 concerning Franchising. This study found that the majority of franchise agreements in Indonesia have not effectively integrated equitable exit strategy clauses, often prioritizing the franchisors interests at the expense of the franchisees.

Based on regulatory frameworks and industry practices in different countries, several important points emerge regarding franchise agreement protections. Indonesian regulations require franchisors to provide written warnings with a maximum of 14 working days between the first and second warning before termination, which is considerably shorter than international standards. Australia's Franchising Code requires that when a franchisee breaches the agreement, the franchisor must provide written notice of the default and allow the franchisee an opportunity of no more than 30 days to remedy the breach. In the United States, franchise termination is primarily governed by state laws rather than federal regulations, with cure periods varying significantly by state. Most state franchise relationship statutes require franchisors to provide written notice stating reasons for termination and offering franchisees a reasonable opportunity to cure defaults. These international frameworks provide significantly longer cure periods and clearer procedural protections than Indonesia's current 14 day maximum warning period.

Comparing Indonesia's rules with international standards shows big gaps in how it handles franchise terminations. Many franchise agreements in Indonesia lack clear compensation provisions for franchisee investments upon early termination. Where such provisions exist, they often contain only vague language without specific formulas or calculation methods, creating significant uncertainty for franchisees who have made substantial investments. Standard franchise agreements also often provide limited or no transition periods following termination, which can be insufficient for handling practical matters such as inventory liquidation, employee settlements, and lease obligations. This regulatory gap leaves enforcement dependent on the relative bargaining power of the parties and creates a significant disparity between written regulations and practical implementation, resulting in franchisees having substantially less procedural protection than their international counterparts.

In various agreements, franchisors are often granted full authority to terminate the agreement if the franchisee is deemed to have violated operational rules, without providing a warning procedure or an opportunity to correct the mistake. Such clauses clearly contradict the principle of proportionality because there is no balance between the right to terminate and the opportunity to remedy violations (Peter Mahmud Marzuki, 2005, p. 115). In certain situations, franchisees are also subjected to fines or compensation that are excessively high and disproportionate to the actual losses incurred, which further weakens the franchisees negotiating position.

The application of the principle of proportionality in drafting exit strategy clauses can be accomplished by referring to three key benchmarks: suitability test, necessity test, and balancing test (Hernoko, 2010, p. 72). By utilizing these three benchmarks, the parties are able to assess whether the exit strategy clause is drafted in a reasonable and fair manner. For example, if the contract stipulates restrictions on post-contract business activities for one year and only applies to a limited geographical area, then the clause can still be considered proportional. However, if the restrictions are excessive, such as prohibiting franchisees from conducting business in the same field throughout Indonesia for five years, then the clause clearly does not comply with the principle of proportionality.

The exit strategy clause, in accordance with the principle of proportionality, must include several essential elements that work together to ensure fairness in contract termination. These elements are not merely technical requirements but substantive protections that operationalize the proportionality principle in practice. The first essential element is transparent termination procedures, which means explicit provisions regarding situations that may lead to the termination of the agreement, whether due to the expiration of the contract period, breach of obligations, or force majeure (Fawwaz, 2025, p. 5). These procedures must be accompanied by a reasonable period of time for the violating party to remedy the breach before termination takes effect. This provision aligns with the principle of proportionality as it provides a fair opportunity to correct mistakes before legal sanctions are applied (Juniardi et al., 2021, p. 263).

The second essential element is fair compensation, which is calculated based on the value of the investment, the term of the agreement, and the franchisees contribution to the development of the brand. This demonstrates the application of the principle of proportionality, which dictates that a franchise agreement must contain the rights and obligations of the parties in a balanced manner. Fair compensation prevents situations where franchisees lose their entire investment due to premature termination, while also protecting franchisors from having to compensate for speculative future profits that were never guaranteed. The compensation formula should be transparent, predictable, and based on objective criteria rather than the franchisors unilateral discretion.

The third essential element is a reasonable transition period, which provides sufficient time for the franchisee to transfer or terminate business operations in an orderly manner, including the settlement of debts to third parties and employees. A proportionate transition period prevents sudden losses and provides legal stability during the termination process (Farida, 2021, p. 223). This period allows franchisees to wind down operations responsibly, fulfill obligations to employees and suppliers, and potentially recover some investment through asset liquidation or business transfer. Without such a transition period, franchisees face immediate operational collapse and potential liability for unmet obligations to third parties.

Government Regulation No. 35 of 2024 and Regulation of the Minister of Trade of the Republic of Indonesia No. 71 of 2019 concerning the Implementation of Franchising place greater emphasis on administrative aspects, such as registration, reporting, and requirements for submitting franchise prospectuses. However, these regulations do not explicitly regulate the substance of the balance of rights and obligations in the agreement clauses (Kartikawati, 2019, p. 38). The absence of legal norms related to proportionality means that the application of this principle is entirely dependent on the freedom of the parties in drafting contracts.

In general, the application of the principle of proportionality in the formulation of exit strategy clauses aims to harmonize the economic and legal interests of all parties. This principle also serves as an essential tool to prevent the abuse of contractual power by the dominant party. The principle of proportionality ensures that every burden, responsibility, and penalty in the agreement is based on reasonable and fair grounds, in accordance with the spirit of pacta sunt servanda and good faith in Indonesian contract law.

### 3.2. Legal Protection for Franchisees in the Event of Unilateral Termination Without a Proportional Exit Strategy Clause

Legal protection is an effort to protect the interests of individuals by giving them the right to control their basic rights so that they can act according to their needs. A franchise agreement can be considered a form of legal protection to prevent actions that are harmful to all parties. If one party violates the terms of the agreement, the other party has the right to sue or hold them accountable in accordance with the agreement (Annisa & Andraini, 2023, p. 1231). Legal protection for franchisees is a crucial element in franchise relationships, especially when the franchisor unilaterally terminates the agreement. This protection is not only preventive in nature through contractual rules, but also punitive through legal measures when franchisees suffer losses due to the absence of a proportional exit strategy clause.

Unilateral termination of a franchise agreement by the franchisor without a proportional exit strategy clause raises complex legal issues and is detrimental to the franchisee. franchisees only operate the franchisors business and develop that business in a specific region or location. When facing unfair sudden termination, franchisees need robust legal safeguards to ensure they're treated fairly and have legal certainty.

Philipus M. Hadjon argues that legal protection consists of preventive legal protection and repressive legal protection. Preventive legal protection for parties to a franchise agreement, especially from the franchisees perspective, can be provided through the creation of a franchise agreement set forth in an authentic deed with the franchisor (Deva & Rosmidah, 2023, p. 305). The use of an authentic deed is important because when the agreement is made before an authorized official (notary), the notary will provide a complete description of the position, rights, and obligations of each party in the franchise contract. In addition, the notary will also inform the parties of the applicable legal provisions related to the agreed franchise agreement, so that the rights of the franchisee in particular can be protected more optimally (Tobroni, 2018, p. 313). Franchise agreements made in the form of authentic deeds have full probative force as referred to in Article 1870 of the Civil Code. Thus, the parties bound by the agreement cannot deny or reject the substance contained in the agreement if a dispute arises in the future.

Repressive legal protection occurs when someone violates the agreed-upon franchise terms. Resolution can happen through formal legal channels in court or through informal alternatives outside the courtroom. The available conflict resolution options for franchise parties include either pursuing formal legal proceedings or choosing alternative methods outside official channels. Keep in mind that franchise agreements created without notary involvement only carry full legal weight when all parties agree the content is valid. However, if any party disputes or doesn't accept whats written in the agreement, that document loses its strength as solid evidence in legal proceedings (Saputro et al., 2024, p. 984).

Looking at current laws, franchisee protection comes from several sources:

1. Article 1266 of the Civil Code stipulates that in all reciprocal agreements, there are voidable conditions that apply automatically even if not stated in writing. However, the cancellation of such agreements cannot be done unilaterally and must first be determined by a court of law. This regulation protects franchisees from the threat of unilateral termination of the contract by the franchisor.
2. Article 1338 paragraph 3 of the Civil Code requires executing every agreement with good intentions. This means franchisors can't abuse their stronger position to suddenly end agreements, causing franchisee losses. When the franchisor terminates the agreement without justifiable grounds and without giving the franchisee adequate opportunity, such action may be classified as an unlawful act *(onrechtmatige daad)* under Article 1365 of the Civil Code, which requires the party at fault to pay compensation for damages.
3. Government Regulation No. 35 of 2024 gives specific legal protections to franchisees in business relationships. Article 5 paragraph 2 states that franchise agreements must contain balanced and proportional rights and obligations for both the franchisor and franchisee. This means that agreements that do not include a fair exit strategy clause may be considered to not meet formal requirements and have the potential to harm franchisees.

As a legal consequence of unilateral termination by the franchisor, the franchisee has the right to file a claim for compensation under Article 1243 of the Civil Code. This article explains that compensation for costs, losses, and new interest can be claimed if the party at fault, after being formally notified of their breach, still doesn't fulfill their responsibilities. Compensation that can be claimed by the franchisee includes actual losses (*damnum emergens*) such as initial capital expenditure, business location renovation costs, procurement of equipment and facilities, as well as losses in the form of lost profits (*lucrum cessans*), namely the profits that the franchisee would have earned if the contract had been performed until the agreed term (Syahrani, 2006, p. 228).

In the implementation of franchise agreements, it is not uncommon to find provisions that do not reflect the principle of proportionality, such as provisions on compensation for losses that give the franchisor the discretion to set the amount arbitrarily without transparent calculations (Simbolon et al., 2016, p. 4). To address this situation, franchisees can request a fair compensation ruling through the courts by submitting concrete and verifiable evidence of their losses.

In addition to compensation claims, another form of repressive legal protection is a buyback scheme by the franchisor for outlets or franchise assets that have been built by the franchisee. Buyback schemes ensure that capital invested by franchisees doesn't simply disappear because of unilateral franchisor decisions (Amalia & Prasetyawati, 2019, p. 175). Calculating reasonable buyback values must consider the initial investment, functional assets, business reputation, remaining contract time, and projected future profits. In this way, the buyback serves as an instrument of restitution (restitutio in integrum) so that the franchisees position can return to its original state.

Repressive legal protection also accommodates specific scenarios when franchisors face bankruptcy. The condition known as bankruptcy involves the complete confiscation of a debtors assets once they've been declared bankrupt in such cases, a curator manages and settles the assets under a supervisory judges oversight. If a franchisor becomes bankrupt, the Intellectual Property Rights covered by the franchise agreement could be incorporated into the bankruptcy estate because they are viewed as elements of the debtor's possessions (Amelinda et al., 2014, p. 56).

A franchise agreement is essentially a bilateral agreement, so with reference to Article 36 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the franchisee may request the curator to provide clarity regarding the continuity of the contracts implementation.

If the curator won't continue the agreement, franchisees can file compensation claims and gain concurrent creditor status. Legal protection works better when franchise agreements include specific clauses about contract continuation during franchisor bankruptcy, stating that the franchise agreement remains valid, franchisee rights to continue using the brand and system are preserved, and franchisees get fair compensation if the contract must end (Effendi, 2021, pp. 541–542).

Another important aspect is the provision of a post-termination non-competition clause. In practice, there have been cases of franchisees acting in bad faith with the intention of absorbing know-how and then establishing a similar business or becoming a competitor of the franchisor. (Indrawati, 2023, p. 23) However, non competition clauses must be drafted proportionally and should not overly restrict the franchisees freedom to conduct business after the agreement ends. If the franchisee experiences unilateral termination and is then subject to a non competition clause that is too strict and disproportionate, the franchisee may file a lawsuit to invalidate the clause on the grounds that it violates the principles of freedom of enterprise and proportionality.

This means that legal protection for franchisees facing unilateral termination without a proportional withdrawal mechanism can be realized through various legal instruments, both preventive and remedial. This protection is intended to ensure equality and fairness in franchise relationships, as well as to provide certainty that the franchisees capital and dedication will not be lost due to unilateral actions by the franchisor that do not demonstrate good faith.

## 4. Conclusion

This study concludes that the proportionality principle in franchise agreement exit strategy clauses operates through three systematic tests of suitability, necessity, and balancing with requiring a clear termination mechanisms with cure periods, fair compensation based on franchisee investment and contribution, and adequate transition periods for business cessation. Current regulations (Government Regulation No. 35 of 2024 and Minister of Trade Regulation No. 71 of 2019) lack explicit proportionality mandates, leaving implementation dependent on parties bargaining power and enabling contractual abuse by dominant franchisors. Legal protection for franchisees facing unilateral termination without proportional clauses includes preventive measures through notarial authentic deeds ensuring legal certainty, and repressive measures encompassing cancellation remedies under Civil Code provisions (Articles 1266, 1338(3), 1365, 1243), compensation claims for actual losses and lost profits, buyback mechanisms protecting franchisee investments, specialized protections during franchisor bankruptcy under Law Number 37 of 2004, and proportionally limited non-competition clauses balancing intellectual property protection with business freedom. Future regulatory reforms should mandate explicit proportionality standards in exit clauses, establish standardized compensation formulas, and create accessible dispute resolution mechanisms to ensure equitable protection for both franchisors legitimate interests and franchisees substantial investments throughout the contractual relationship.

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