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PROPORTIONAL PRINCIPLES OF COOPERATION AGREEMENT OF BRAND AMBASSADOR (ANALYSIS OF THE LEGAL RELATIONSHIP BETWEEN BRAND AMBASSADORS AND BEAUTY CLINICS)

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ABSTRACT

Background: One of beauty clinic in Indonesia, Larissa Aesthetic Center uses *Brand Ambassador* as a promotional media. In fact, they use the Friends of Larissa as *Brand Ambassador*. However, in practice there are rights and obligations above the law that are violated so that they are disproportionate.

Aim: Therefore, this study aims to analyze the principle of proportionality of a cooperation agreement *brand ambassador* Larissa Aesthetic Center beauty clinic.

The research method that was used was a statute approach and conceptual approach. Both of these approaches were used to examined and analyzed the issues that were the object of discussion. The statute approach was conducted by reviewing all laws and regulations relevant to the legal issues that were being addressed.

Result: The result of the analysis shows that commercial contracts place more emphasis on the proportionality of the exchange of rights and obligations included in the type *Contract adhesion*, However, in the implementation of the agreement there were some deficiencies that occurred. In a contract there is one party that does not fulfill the performance and there is a party who is aggrieved, then legal efforts can be made to protect the rights and obligations of the aggrieved party.

Conclusion: Therefore, it can be concluded that the cooperation between the two parties has fulfilled the subjective and objective elements regarding the legal conditions of the contract. However, in this case the Larissa Aesthetic Center does not fulfill its achievements because the

principle of proportionality relies more on the distribution of rights and obligations that are realized in the whole process of contractual relations.

INTRODUCTION

Larissa Aesthetic Center is the first aesthetic beauty clinic that carries the concept of "*Natural Ingredient with High Technology*" that is facial care system, hair care, to body care using natural ingredients that are synergized with the use of modern technology at an affordable price. Larissa Aesthetic Center also presenting cosmetic products that use natural ingredients, are safe, and have been CPKB (Good Manufacturing Practices) certified from National Agency of Drug and Food Control.

The cosmetic product uses the trademark "L" which has been patented and is only available at outlets of the Larissa Aesthetic Center. The concept developed is skin and hair care using natural ingredients such as fruits, vegetables, tubers, stems and roots, better known as the concept "*back to nature*". As of the date June 2, 1998, Larissa already has a trademark certificate from the Department of Law and Legislation of the Republic of Indonesia, Directorate General of Intellectual Property Rights. Thus the Larissa brand has been registered and received legal protection. Its existence as a beauty clinic has also spread to various regions, such as Yogyakarta, Solo, Semarang, Klaten, Purwokerto, Tegal, Salatiga, Surabaya, Malang, Kediri, Denpasar, Magelang, Madiun, Sragen, Mojokerto, Kudus, Ponorogo, and Serpong.

In order to continue its existence in the world of beauty, Larissa Aesthetic Center made a selection of BASL (*Brand Ambassador* and *Sahabat Larissa*) by conducting a selection that was followed by various participants from various regions. During the selection, participants will be quarantined and given various materials such as *public speaking*, a healthy lifestyle, medication and also talent show, games, as well *outbound* are held. Later, there will be two (2) selected *Brand Ambassador Larissa* together with ten (10) *Sahabat Larissa (Friends of Larissa)* whose job is to promote Larissa as a beauty product.

Through this, each ambassador conducted a process of agreement or binding of two parties with Larissa to carry out their duties. This was done on an ongoing basis and had passed the agreement process. However, in the cooperation agreement apparently there was an unbalanced clause between the rights and obligations of the *Sahabat Larisa (Friends of Larissa)* and the Larissa Aesthetic Center. Thus there have been violations that have resulted in losses. Therefore, this study aims to analyze the principle of proportionality of a cooperation agreement *brand ambassador Larissa Aesthetic Center beauty clinic*.

RESEARCH METHOD

The method used in this research was normative law. The method was chosen because it was deemed able to explained and described a matter sourced from existing legal provisions. This legal research would be based on the logical thinking of researchers followed by reviewing applicable laws and regulations

relevant to the issue being discussed.

In addition, this research was accompanied by a legislative approach (*statute approach*) and conceptual approach (*conceptual approach*). Both of these approaches were used to examine and analyze the issues that were the object of discussion. The statute approach was conducted by reviewing all laws and regulations relevant to the legal issues that were being addressed. It is known that the laws and regulations used in this study were laws and regulations related to the characteristics and proportionality principle in the cooperation agreement of Sahabat Larissa Aesthetic Center (Friends of Larissa Aesthetic Center). While the conceptual approach moved from the views and doctrines that developed in the legal studies.

Sources of legal materials used by researchers were primary legal materials and secondary legal materials. Primary legal materials used consisted of Burgerlijk Wetboek, Staatsblad Year 1847 Number 23, Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia Number 1 of 1974; Supplement to State Gazette Number 2019), Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (State Gazette of the Republic of Indonesia of 1999 Number 138 Supplement to the State Gazette of the Republic of Indonesia Number 3872), Supreme Court Circular Letter Number 3 of 1963, Supreme Court Regulation Number 2 of 2015 concerning Simple Procedure for Lawsuit (*small claim court*), and Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in the Court. Meanwhile, secondary legal material were in the form of all legal publications which were not official documents. Publications about the law, legal journals, and comments on court decisions.

The procedure of collecting legal material used was carried out using a literature study (*library research*) that is the method used to gather materials. In this case the study researcher read and examined the laws and regulations, legal literature, journals, and articles that were relevant to the case at hand. Then, after all the necessary legal materials have been collected, a classification and selection were carried out in accordance with the legal issues to be discussed, which then concluded with an analysis process.

RESULTS AND DISCUSSION

In the implementation of the agreement entered into by the parties can not be denied if there is a breach of promise (default). If the debtor (debtor) does not do what s/she promised, then she/he does "default" (Subekti, 2003). Defaults (negligence) basically have consequences that are really important that it must be determined in advance whether the debtor owes a default or negligence which can then be proven before the judge (Subekti, 2003).

It is known that a default is an event or situation, in which the debtor does not fulfill the obligations of the engagement properly (Muhammad, 2017). In this case, the person concerned has caused a loss, that is the loss of assets of one of

the parties. There are four things that classify debtors' defaults to creditors, namely not doing what they are promised to do, doing what they promised but did not do, doing what was promised but too late, and doing something according to the agreement that should not be done (Subekti, 2003). While there are also several forms of default which are If it does not fulfill the achievement at all, that is in connection with the debtor who does not fulfill his achievement, it is said that the debtor does not fulfill the achievement at all, fulfills the achievement but is not on time, and fulfills the achievement but is not appropriate or wrong.

In a contract or agreement, there is often a problem of default. Under article 1233 BW, default actions can result in losses. In this case, what is concerned is Friends of Larissa (Sahabat Larissa) who then feel disadvantaged by the agreement to the Larissa Aesthetic Center. Therefore, Friends of Larissa (Sahabat Larissa) has the right to ask for legal protection through the court to compel party who commit default to back to carry out their obligations in accordance with the agreed contract (Perdana and Dahlan, 2014).

Basically, any agreements made by the parties must be voluntary or in good intention, but in reality the agreements made are often violated. Therefore, there are two options for legal action to sue for default actions, which are, *first*, settlement via the litigas channel (*in court settlement*) that is, putting the parties in opposition to each other (Winarta, 2012). Litigation in this case serves to resolve disputes before the court. It is important to note that the word court here refers to an official state institution. However, this method of submitting a dispute to the court is less popular for the parties in business activities (the business community), even if it is not forced, the entrepreneurs in general avoid the dispute resolution in court (Afifah and Mudiantono, 2014). The unpopularity of the court for these entrepreneurs may be due to the length of time consumed in the court process in relation to the stages (appeal and cassation) that must be passed, or due to the nature of the court which is open to the public while the entrepreneurs dislike their business problems being publicized, or because the handling of dispute resolution is not carried out by experts in certain fields chosen by themselves (although the court can also appoint ad hoc judges or use expert witnesses) (Hernoko, 2010).

Second, dispute resolution based on law and classified as high quality settlement. On the other hand, non-litigation dispute resolution is the resolution of legal problems through law and conscience, so that the law can be won and also the conscience of people is also subject to obeying agreements/peace voluntarily without making anyone feeling defeated (Purbarani and Santoso, 2013). Dispute resolution through an out-of-court proceedings result in an agreement that is "*win-win solution*", guaranteeing the confidentiality of the parties' in disputes, avoiding delays caused by procedural and administrative matters, resolving the problem comprehensively in togetherness, and maintaining good relations. The only advantage of this non-litigation process is its confidential nature, because the trial process and even the results of its

decision were not made public (Wiryawan, Artadi and Atmaja, 2010).

The dispute resolution can also be resolved outside the court (non litigation), which is commonly called the Alternative Dispute Resolution (ADR), which in this case includes negotiation, mediation and arbitration (Usman, 2012). Negotiations are known as one of the main alternatives for dispute resolution which is a means for parties to discuss their resolution without the involvement of a third party (Irianto, 2016).

On the other hand, according to Article 1 number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, is a dispute resolution institution or dissent through a procedure agreed by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert judgment. Based on article 1 number 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Arbitration Dispute Settlement itself is a way to settle a civil dispute outside the general court based on arbitration agreements made in writing by the parties to the dispute. Dispute resolution through non-litigation is much more effective and efficient, because in the recent times, various ways of resolving disputes have developed (*settlement method*) outside the court, known as ADR in various forms, such as arbitration, negotiation, mediation, conciliation, expert judgment, and consultation (Smith, 2005).

Searching deeper about the actions taken by Larissa Aesthetic Center should have harmed Friends of Larissa (Sahabat Larissa). The action taken by the Larissa Aesthetic Center is based on an agreement formed between the parties whose implementation is not in accordance with the rights and obligations contained in the agreement. The emergence of actions taken by Larissa Aesthetic Center is based on legal relations between the parties due to the agreement that can be the basis for filing a lawsuit against Larissa Aesthetic Center by making a simple lawsuit to the Yogyakarta District Court in the place contained in the agreement.

A lawsuit filed by Friends of Larissa (Sahabat Larissa) as a disadvantaged party can request fulfillment of the agreement, cancellation of the agreement accompanied by loss and interest costs. Claims that can be submitted by Friends of Larissa (Sahabat Larissa) are regulated in Article 1267 BW. However, the cancellation of the agreement is not only regulated in this article but also regulated in Article 1381 BW.

Apart from those stipulated in the BW explained previously, there are also powers that are by *Woeker's Ordinance* (Stbl. 1938-524) is given to the judge to cancel the agreement, if it turns out that between the two parties, mutual obligations have been placed that each other is out of balance and it turns out also one party has done stupidly, inexperienced or under compulsion (Subekti, 2003).

In article 8 of the publication cooperation agreement, the settlement of the dispute is agreed to be carried out by way of deliberation and if the deliberation does not reach consensus then the parties are agree to settle it through the court (Harahap, 1982). Settlement through court is a binding decision, requires a lot of costs, and requires a long time (Von Hirsch and Ashworth, 2005). For this reason, the selection of dispute resolution is easier to reach by deliberation (negotiation) so that the maximum extent of the two parties can be delivered. The dispute resolution agreement chosen by the two parties is advised to be settled amicably to avoid choosing dispute resolution through the court because of its binding decision and fairly complicated procedures. Therefore, resolving disputes outside the court through deliberation (negotiation) is considered the best solution because it gets results *win-win solution* so that both parties can continue the legal relationship in the publication cooperation agreement and the negligent party or the default party can fulfill its performance without going through termination of the agreement.

CONCLUSION

Through the previous explanation, it can be concluded that the cooperation agreement made by Larissa Aesthetic Center and Friends of Larissa (Sahabat Larissa) has fulfilled the subjective and objective elements regarding the legal terms of the contract. However, if there are losses such as defaults carried out by Larissa against Friends of Larissa (Sahabat Larissa), the settlement of the dispute can be done by way of deliberation (negotiation). However, if it does not reach consensus, the parties can settle it through the court. With a simple lawsuit.

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