

# LEGAL REGULATION AND PROTECTIONS FOR THE PARTIES IN THE FRANCHISE BUSINESS AGREEMENTS IN INDONESIA

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## LEGAL REGULATION AND PROTECTIONS FOR THE PARTIES IN THE FRANCHISE BUSINESS AGREEMENTS IN INDONESIA

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### Abstract

In Indonesia doing business with the concept of franchising in various fields is currently very popular among the people. Doing business with the concept of franchising is desirable because in addition to being seen in terms of profits and various ease of doing business offered by the franchisor to the franchisee. Franchising is based on an agreement called a franchise agreement, but there are not a few legal problems that arise with the existence of the franchise agreement. Based on this, this research aims to find out the form of arrangement of the franchise agreement and legal protection for the parties in the franchise agreement. The normative juridical method is the method used in this study. This method is intended to analyze the legal materials related to the arrangements in the franchise agreement and legal protection for the parties in Indonesia. This study addresses the franchise business agreements including agreements that are not well-known or innocent and legal protection carried out further regulated in the Republic of Indonesia's Minister of Trade Regulation Number 53/M-DAG/PER/8/2012 regarding Franchising. The legal status of the parties in the franchise agreement in force in Indonesia is independent.

### Keywords

Regulation; Protection; Parties; Franchise Agreements

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## Introduction

Economic growth in Indonesia has developed so rapidly. This success is inseparable from the development in the economic field which is carried out thoroughly and continuously between the government and the community. These efforts also have an impact on improving people's welfare (Disemadi, 2019). Opening opportunities for entrepreneurship is one factor for the welfare of society. Entrepreneurship will make the community more independent because in entrepreneurship the community will be able to open opportunities for themselves and take advantage of the opportunities that are created. Even further, entrepreneurs can create job opportunities for others who are around the business (Disemadi & Prananingtyas, 2019).

Entrepreneurs, in general, need people with various types of expertise to help them keep their business profitable and always growing (Disemadi, 2019). Thus, an entrepreneur in business development, in general, is the owner of a business idea (creative process) and translates the business ideas into a reality (innovation process) and at the same time supports the economic development of a country (Theresia & Santoso, 2017).

Various ways that can be taken to become an entrepreneur either by establishing a new business or buying an existing business system that is already running. In the development of this globalization era, many people choose businesses using existing business systems that have been running or are known as franchises (Slamet, 2016). In Indonesia, the term franchise has been translated into a franchise. Franchise is a business system that is distinctive or has the characteristics of a business in the field of trade or services, in the form of the type of product and form sought, company identity (logo, design, brand, even including the clothing and appearance of company employees), marketing plans and operational assistance (Ruauw, 2013).

But besides that, there are advantages and disadvantages to running a franchise business system. The existing business system that has been running (franchise), has the advantage that the buyer of the system does not need to start from scratch again because this system usually has a reputation in the market and is ready to run by the buyer of the business system. But in this business system, there are also drawbacks that the buyer of the system (franchisee) does not have the freedom to run a business, because there are rules that have been made by the owner of the business system (the franchisor) (Trisnadewi & Mahartayasa, 2014).

In principle, investment or business cooperation in running a franchise, success or profit depends very much on good cooperation between the franchisor and the franchisee with mutual attention to the relationship between the two (Slamet, 2016). This often creates conflict because of various things agreed upon and agreed upon (Badriah, 2014). So today, the franchisee community needs to get legal protection and legal certainty so that it runs safely, legally and does not need to cause legal problems in the field of investment like this in the future (Kondo, 2015).

<sup>12</sup> Based on the background above, this <sup>10</sup> paper aims to find out the arrangements regarding the franchise agreement and legal protection for the parties entering into a franchise agreement in Indonesia.

### Research Method

<sup>6</sup> The research method used is normative juridical research. The type of data used is secondary data. Secondary data in the form of data obtained from library studies in the form of legal materials such as legislation, books, journals or seminar materials using qualitative analysis (Salim & Nurbani, 2014).

### Discussion

#### 1. Legal Status and Arrangement of Franchise Agreements

<sup>2</sup> Franchising or *waralaba* in Indonesia is an equivalent of the term franchise which was first introduced by the Institute for Management Education and Development (LPPM). The term franchise is a combination or combination of the words "*wara*" meaning more or special and the word "*laba*" means profit so that the franchise means a business that provides more or special profit (Slamet, 2016).

Franchise business practices in Indonesia occurred before 1995, but the term franchise first appeared in Law Number 1995 concerning Small Businesses, namely in Article 27 letter d which states that franchising is a partnership pattern. What is meant by the pattern of franchising stated in the Elucidation of Article 27 letter d which reads "d. franchise pattern is a partnership relationship in which the franchisor grants the right to use the license, trademark, and distribution channel of the company to the franchisee with the assistance of management guidance. To implement the provisions regarding <sup>8</sup> franchising as contained in Law Number 9 of 1995, the Government then issued Government Regulation Number 42 of 2007 concerning Franchising. This was emphasized in the consideration of "remembering" number 4 of the Government Regulation, which means that Law Number 9 of 1995 referred to is one of the bases for the formation of the Government Regulation. However, the definition of franchise referred to in the Government Regulation is <sup>16</sup> different from the definition of franchising in Elucidation of Article 27 letter d of <sup>17</sup> Law Number 9 of 1995. In Article 1 number 1 of the Government Regulation specified "Franchise is a special right owned by an individual or business entity to the business system with the characteristics of a business in order to market goods and/or services that have been proven successful and can be utilized and/or used by other parties based on franchise agreements (Katrinasari & Hadi, 2017).

It is unfortunate <sup>12</sup> the meaning of franchising in Law Number 9 of 1995 is no longer found in Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises. The definition of franchising in the <sup>8</sup> government Regulation is not the same as the definition of franchising as regulated in Article 1 number 1 of Government Regulation Number 16 of 1997 concerning Franchising which determines Franchise is an agreement in which one of the parties is given the right to utilize and or use intellectual property rights or inventions or characteristics a typical business owned by another party with a reward based on conditions and or sale of goods and or services. The legal basis for the establishment of Government Regulation Number 16 of 1997 does not refer to Law Number 9 of 1995. At present Government Regulation Number 16 of 1997

has been revoked based on the provisions of Article 20<sup>8</sup> of Government Regulation Number 42 of 2007 concerning Franchising.

In the law of agreement there are several principles, including the following:

- 11
- a) The principle of freedom of contract is universal because it does not only exist in the Civil Code. This principle does not stand alone, its meaning can only be determined after we understand its position about that which is integrated with other principles of treaty law, which, as a whole, are principles, pillars, pillars, foundations of contract law. The principle of freedom of contract relates to the contents of the agreement, namely the freedom to determine "what" and with "who" this agreement is held, but that freedom is not absolute, but relative, because it is always associated with the public interest (Slamet, 2016). Agreements made by Article 1320 of the Civil Code have binding power. Freedom of contract is one of the most important principles in the treaty law, freedom is the embodiment of free will, the transmission of human rights. In the freedom contained responsibility, in the law of national treaties the principle of freedom of contracting that is responsible, who can maintain balance needs to be maintained as capital for personal development to achieve welfare and happiness in life and harmony, harmony, and in harmony with the interests of the community (Sitompul, Syaparudin & Suranta, 2010);
  - b) The principle of consensual. The principle of consensual is contained in Article 1320 of the Civil Code which implies the willingness of the parties to bind themselves to one another and to participate in one another. Their binding agreement is essential to the treaty law (Sitompul, Syaparudin & Suranta, 2010). This principle of consensual determines the existence of an agreement. The willingness of these parties aroused the belief that the agreement was fulfilled. This principle of trust is an ethical value rooted in morals (Riva'i, 2012). The basis of the consensus is found in natural law, which says that "*pacta sunt servanda*" (the promise is binding) and "*promissorum implendorum obligation*" (we must fulfill our promise). The principle of consensual has a close relationship with the principle of freedom of contract (contractvrijheid) and the principle of binding force contained in Article 1338 paragraph (1) of the Civil Code which determines, that all treaties made legally apply as a law for those who make them. The word "all" means all the treaties, both known and unknown by law;
  - c) The principle of trust. Someone who agreed with another party will foster trust between the parties, that each other will keep their promises, in other words, will fulfill their achievement because without trust there is no way that the agreement will be entered into by the parties (Riva'i, 2012). With trust, both parties bind themselves and the agreement has binding power as a law (Harnoko & Ratnawati, 2015);
  - d) Principle of binding strength. Based on this principle, the parties must fulfill what has been promised, the binding of the parties to the agreement is not solely to what was promised, but there are also some other elements as long as desired by the customs and propriety and morals that bind the parties (Sitompul, Syaparudin & Suranta, 2010);
  - e) The principle of legal equality. This principle places the parties' inequality, there is no difference even though there are differences in skin, nation, wealth, power, position, and others (Idrus, 2017). Each party must see this similarity and require both parties to respect each other as human beings;



- f) Balance principle. This principle requires both parties to fulfill and implement the agreement, this principle of balance is a continuation of the principle of equality, the creditor has the power to claim achievement and if necessary can demand the payment of achievements through the debtor's wealth, but the creditor also bears the burden of carrying out the agreement in good faith, it can be seen that the creditor's position is strong offset by with its obligation to pay attention to good faith, so that the position of creditors and debtors is balanced;
- g) The principle of legal certainty. Agreement as a legal figure must contain legal certainty (Riva'i, 2012). This legal certainty was revealed from the binding power of the agreement, namely as a law for the parties;
- h) The principle of propriety. This principle is outlined in Article 1339 of the Civil Code, the provisions of compliance here relating to the provisions concerning the contents of the agreement (Riva'i, 2012). This principle of propriety must be maintained because through this principle the size of the relationship is also determined by the justice system; and
- i) The principle of habit. This principle is regulated in Article 1339 in conjunction with Article 1347 of the Civil Code which states that a commitment is not only binding on matters that are expressly stated in it, but also on everything which according to the nature of the agreement is required by propriety, custom, and law (Sitompul, Syaparudin & Suranta, 2010).

## 2. Legal Protection of the Parties in the Franchise Business Agreement

Franchise business is one way that can accelerate profitability for the perpetrators. The ups and downs of the development of the franchise do not diminish the appeal of this form of business, franchising remains an attractive choice for anyone who wants to be an entrepreneur (Sari & Parwata, 2016).

Franchise business agreements are one type of agreement that includes agreements that are not named (innominaat), namely agreements that arise, grow, live, and develop in the practice of community life. Named agreements are agreements that have no specific arrangement (Widodo, 2017). Innominaate agreements are permissible for their existence in the community of origin not in conflict with the law, public order, and decency. The birth of the agreement in practice is based on the principle of freedom of contract or freedom to agree (Idrus, 2017).

The franchise business agreement is made by both parties concerned. Where in making a contract or agreement there is a condition for the validity of the agreement as regulated in Article 1320 of the Civil Code, which in essence regulates the agreement of the parties, the abilities of the parties, certain objects, and halal reasons. In conducting a franchise business agreement with the parties, a place is needed in its implementation as legal protection (Sari & Parwata, 2016). The legal protection that can be done to the parties that are the subject of franchisee and franchisor actors such as preventive and repressive legal protection. This preventive legal protection aims to prevent a dispute between the two parties in the franchise business. Franchisees are allowed to raise objections or opinions before a decision rule gets a definite form (definitive). In Indonesia alone, there are no specific arrangements regarding preventive legal protection (Rusli, 2015). Preventive legal protection is carried out to prevent a violation such as a franchise and provide guidelines or restrictions in carrying out an obligation in conducting a franchise.

While repressive legal protection is aimed at resolving a dispute from the two franchises. The handling of legal protection in resolving these disputes is carried out by the General Courts and Administrative Courts in Indonesia. This protection is the final protection that can be in the form of sanctions to the parties such as fines, imprisonment, and additional penalties given if a franchise dispute occurs (Sari & Parwata, 2016).

The legal protection of the franchise or franchise is regulated in the Republic of Indonesia Government Regulation Number 42/2007 which regulates Franchising and is further regulated by the Republic of Indonesia Minister of Trade Regulation Number 53/MDAG/PER/8/2012 concerning Franchising. Regulations regarding the rules and legal protection for both franchisees are governed by more specialists in Regulation of the Minister of Trade of the Republic of Indonesia Number 53/ MDAG/PER/8/2012. As in the supervision of the franchise, it is said in Government Regulation of the Republic of Indonesia Number 42 of 2007 Article 15 paragraph (1), namely the Minister supervises the implementation of Franchises and paragraph (2) The Minister can coordinate with relevant agencies in carrying out supervision as referred to in paragraph (1). Where supervision is indeed regulated further in the Republic of Indonesia's Minister of Trade Regulation Number 53/M-DAG/PER/8/2012 in Article 28.

Regarding sanctions in the legal protection of the franchise, Government Regulation of the Republic of Indonesia Number 42 of 2007 Article 16 paragraph (1) says that the Minister, Governor, Regent /Mayor by their respective authorities may impose administrative sanctions on Franchisers and Franchisers who violate the provisions. In Regulation of the Minister of Trade of the Republic of Indonesia Number 53/M-DAG/PER/8/2012, sanctions are further regulated in Article 32 which says the franchisor and the franchisee who violates the provisions referred to in Article 9 and Article 10, are subject to administrative sanctions in the form of written warnings and fines against the franchisor or receiver. Where Article 9 and 10 of the Republic of Indonesia's Minister of Trade Regulation Number 53/MDAG/PER/8/2012 contains franchisors as well as franchise recipients required to have STPW (Franchise Registration Certificate) and register their franchise agreement.

Then, the second sanction in Article 33 of the Regulation of the Minister of Trade of the Republic of Indonesia Number 53/M-DAG/PER/8/2012 regulates legal protection efforts that say the franchisor and the franchisee violate the provisions referred to in Article 18, 19, 21, 27 and 30 are subjected to administrative sanctions in the form of written warnings, temporary dismissals of STPW, and revocation of STPW. Where in Article 18 stipulates that the franchisor and recipient who has an STPW must use the franchise logo. Article 19 regulates that franchisors and recipients must use raw materials, business equipment and sell merchandise items at least 80% of domestic goods and/or services or less than 80% with the permission of the Minister and are considered by the Appraisal Team's recommendations. Article 21 paragraph (1) regulates that the giver and recipient of the franchise can only carry out a limited business on the business license they have, (2) in certain cases, the giver and recipient of the franchise can sell goods supporting the main business, (3) supporting goods for the main business as referred to in paragraph (2) at most 10% of the total number of items sold, (4) supervision of this provision is carried out by a Supervisory Team formed by the Director-General of Domestic Trade. Then Article 27 regulates that the franchisor must guide the franchisee by the provisions. Article 30 regulates that STPW owners of franchisors from abroad and within the country are required to submit

reports on franchise activities to the Director of Trade Business Development of the Ministry of Trade. This legal protection needs to be enforced more to protect franchisees from problems that might arise such as cheating or not by existing rules (Rusli, 2015).

### Conclusion

<sup>15</sup> The franchise agreement is a form of agreement, the contents of which give special rights and authority to the franchisee, to sell products in the form of goods and/or services using certain trade names or trademarks and carry out business activities based on a business format determined by the grantor franchise. A franchise business agreement is a type of agreement that includes an anonymous (innominaat) agreement that is permitted to exist in the community of origin, not in conflict with the law, public order, and decency. The legal protection that can be done to the franchisee and franchisor such as preventive legal protection aims to prevent a dispute. While repressive legal protection is aimed at resolving a dispute from the two franchises. Legal protection for franchise parties is regulated in the Republic of Indonesia Government Regulation Number 42/2007 concerning Franchising and is regulated more specifically by RI Minister of Trade Regulation Number 53/M-DAG/PER/8/2012 concerning Franchising.

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