

Franchising in the Perspective of Business Agreement Law

Tjoetjoe Sanjaya Hernanto¹, Faisal Santiago²
{mr.tjoetjoe@yahoo.com}

Universitas Borobudur, Jakarta, Indonesia¹²

Abstract. A franchise is a trade or service that has distinctive characteristics business identity (logo, design, and brand), as well as employee clothing and appearance, marketing strategy, and operational support, in the form of the sort of product and the form being cultivated. The statute approach (legal approach) and the analytical conceptual approach (legal concept analysis technique) were utilized in this study, both of which were based on Regulation No. 42 of the Government of the United Kingdom of the United Kingdom of the United Kingdom of the Franchising. The parties' legal protection comprises of reimbursement from the franchisee, cancellation of the agreement, fulfillment of the agreement, or fulfillment of the agreement for the franchisor accompanied by compensation or cancellation accompanied by compensation, as well as three written warnings to the franchisee who not registering the agreement, then a fine.

Keywords: Bisnis; Waralaba; Hukum Perjanjian

1 Introduction

With the Everyone is free to make agreements on the idea of contract freedom (consensual). This principle states that the parties are free to enter into any type of agreement they want existing or not yet regulated in the Civil Code as long as the agreement does not conflict with the law, public order, and morality. The notion of contract freedom is only briefly defined paragraph (1) of Article 1338 of the Civil Code, which states: All legitimately binding agreements are binding on individuals who form them [1]. From the freedom to make agreements guaranteed by the Civil Code, various agreements arise, one of which is a franchise agreement.

The term "franchise," which was initially presented by the Institute for Management Education and Development, was then tried in Indonesia (LPPM). The words "franchising" and "wara" (more or special) are derived from the words "wara" (more or exceptional) and "profit." (profit) so franchising means a business that provides more or special profits (Sutedi, 2008).

The government believes it is vital to learn about the legality and legitimacy of the franchisor's operation. As a result, before engaging into a franchise agreement with a franchisee, the franchisor must present a franchise offer prospectus to the government and interested franchisees According to Government Regulation No. 42 of 2007 concerning Franchising [2], if a franchise agreement exists, the franchisee is required to present the agreement to the government.

Furthermore, in Article 10 of Government Regulation no. 42 of 2007 that the franchisor must register a franchise offer prospectus before signing a franchise contract with a franchisee [3]. The franchise offer prospectus is a written statement regarding the data of the franchisor which will be provided to the franchisee 2 weeks before the signing of the agreement. However, in reality, there are still franchisors who have not registered their franchise offering prospectus but have already sold the franchise to other parties. This is certainly detrimental for franchisees who buy franchises that are not registered. On the other hand, there are still many franchise agreements that are made between the franchisor and the franchisee and are not registered, whereas according to Article 11 PP No. 42 of 2007 that A franchise agreement must be registered by franchisees.

According to Sumardi (1995), it is "a means of delivering goods and services to the consumer community, which are then sold to other interested parties." The franchisor is the person who owns the method, while the franchisee is the person who has the right to utilize it. Hardjiwidagdo (1993) from the side of the business system, states that franchising is a "trade or service that has a characteristic corporate identity (logo, design, and brand) even included in the clothes and appearance of firm personnel, plans in Indonesia., franchises became known in Indonesia in the 1950s with the emergence of motor vehicle dealers through obtaining licenses or becoming the sole agent of brand owners [5].

Then it grew more and more when the entry of foreign franchises in the 80-90s. KFC, McDonald's, and Wendy's are some of the foreign franchise networks that entered Indonesia in the early days of franchise development in Indonesia. Meanwhile, national companies franchising locally, one of them is Es teller 77, which is a pioneer of its trade operating system with a franchise system, which in 1991 alone had 70 branches both domestically [6].

Examples of franchises that are currently growing rapidly are Indomaret and Alfamart both of them compete with each other and become a prolonged polemic in the development of retail/retail business between modern retailers, traditional market traders and stall traders, and street vendors (PKL), where until now the study about it up to the level of philosophical ideological, juridical and socio-cultural [7].

The existence of a franchise business has experienced significant development and has received recognition from various business actors and business law experts, even though there is no statutory regulation. However, in 1983 through the Jurisprudence of the Supreme Court Number, 3051/K/Sip/1981 dated December 26, 1983, in the case of the Gold Bond brand, the licensing of brands in Indonesia was initiated, because one of the legal aspects of franchising is the use of license marks by the licensor to the licensee. [8]

In its development, brand licenses also received recognition in the Trademark Law No: 19/1992 which was renewed by Law. No: 14/1997 in Chapter V, the second part of articles 44 to 50. Likewise, logotypes obtained legal recognition in the Supreme Court's decision No. 1237/K/Sip/1982 dated January 31, 1983, in the case of the Columbus trademark. , where the logotype is formulated as "the outward nature of the image, symbol, design, and letters used as a brand, and it is this outward characteristic that becomes a distinguishing tool between one brand and another".

Then related to the protection of industrial product designs (related to service marks) the government issued a law. No. 5/1984 concerning Industry, while those relating to copyright are regulated in the Law. No. 6/1982 which was amended by Law no. 7/1987. Thus historically the franchise business has legal protection, although the new Government Regulation on Franchising is implicitly regulated in the PP. No. 16/1997 on Franchise.

Trade with this franchise system is basically due to an agreement relationship, namely a franchise agreement which will give birth to rights and obligations for each party. So that this

franchise agreement becomes a legal guide for franchise owners (franchisors) and franchisees (franchisees). Each franchisee has a standard agreement to be mutually agreed upon with the franchisor, which is mutually beneficial for the franchisor and the franchisee. Rights and obligations in implementation are often not as expected, because both the franchisor does not fulfill them as well as the franchisee which is called default.

2 Research Methods

The writing of this journal is used with Methods of normative legal research A legislative approach was used in this study, and a conceptual approach was used as well carried out in a normative juridical manner based on statutory regulations, one of which is based on Franchising is governed by Government Regulation No. 42 of 2007. Normative legal research, according to Peter Mahmud Marzuki, is a method for determining the rule of law, legal principles, and legal precedents theory in order to resolve legal issues that are currently happening [9]. Normative research is sourced from primary and secondary legal sources, which are derived from statutory regulations and literature. The approaches The statute approach (legal approach) and the analytical conceptual approach were used in this study (legal concept analysis approach).

3 Results and Discussion

3.1 Franchising Agreement Implementation

Pre-agreement preparation, agreement drafting stage, and post-agreement signing stage: There are three steps to the agreement drafting stage: pre-agreement preparation, agreement drafting stage, and post-agreement signing stage. [10]

1) Pre-agreement preparation stage

Negotiation is a type of meeting in which two parties come together [11]. Preliminary steps in a franchise agreement are normally carried out in the form of negotiations between the parties. In this instance, the potential franchisee normally contacts the prospective franchisor first to indicate his wish to create a franchise company under the prospective franchisor's brand in a specific location. In response to the request, the potential franchisor will normally undertake a survey in the area where the franchise company will operate [12].

The agreement is usually followed by an MoU, but in a franchise agreement, after a site review, the prospective franchisor usually offers several standard conditions, such as the format of the agreement, which the franchisor has prepared in advance and will always use as a guideline in every agreement he will make with prospective franchisees. [13] her Alternatively, when the franchisor has assessed the location, the franchisor will send a franchise offer prospectus to the prospective franchisee (franchisee).

The franchisor and franchisee must each have a Franchise Registration Certificate (STPW), which is proof of registration of the franchise offer prospectus for the franchisor and/or continued franchisor, as well as proof of registration of the franchise agreement for the franchisee and/or continued franchisee, and is issued after the franchisor and/or continued franchisee have met the registration requirements set forth in Article 1 paragraph (9) The Minister of Trade of the Republic of Indonesia has issued a regulation.

The franchisor comes from abroad, the franchisor comes from within the country, the further franchisor comes from the foreign franchise and the further franchisor comes from the domestic franchise to obtain a Franchise Registration Certificate (STPW), must register the

franchise offer prospectus to the Directorate of Business Development. Trade up. Trade Service Unit Office of the Ministry of Trade by filling out the form through the Application for Franchise Registration Certificate (SP-STPW).

Prospective franchisors must file a master franchise agreement in order to be considered for STPW. Check the master franchise agreement within 20 (twenty) working days for STPW issuers. If the master franchise agreement is determined not to be in violation of the legislation, the prospective Franchisor may proceed with the STPW application process by completing the required documents in the STPW application. If the STPW application is found to be in violation of the law, it will be refused [13].

A Franchise Registration Certificate is also necessary for franchisees (STPW). Franchisees from abroad franchises must also establish a franchise agreement with the Directorate of Trade Business Development in order to get STPW. Fill out the Application for Franchise Registration Certificate at the Ministry of Trade Service Unit Office.

Franchisees from domestic franchises, international franchisees, and domestic franchisees must register a franchise agreement with the Office responsible for trade in the DKI Jakarta Province, Regency/City, or the local One Stop Integrated Service Office. throughout Indonesia by filling out the form. By submitting the relevant documents to the application, the owner, management, or person in control of the company can sign the franchise registration certificate [14].

2) The stages of the agreement's drafting

The franchise agreement outlines the terms, conditions, and promises that the franchisor has made and expects from its franchisees. The franchise agreement contains provisions governing the franchisee's rights and obligations, location requirements, training requirements, fees to be paid by the franchisee to the franchisor, the length of the franchise agreement and its extension, and other provisions governing the franchisor-franchisee relationship. 15].

Government Regulation No. 42 of 2007 on Franchising demonstrates that the franchisor must conduct due diligence before engaging into a franchise agreement must provide the following clauses in writing: [16]

- a. the names and addresses of the parties;
- b. types of Intellectual Property Rights;
- c. business activities;
- d. rights and obligations of the parties;
- e. assistance, facilities, operational guidance, training and marketing provided by the Franchisor to the Franchisee;
- f. business area;
- g. duration of the agreement;
- h. procedure for payment of compensation;
- i. ownership, change of ownership and right of heirs;
- j. dispute resolution; and
- k. procedures for extension, termination and termination of the agreement.

3) Stages following the signing of the contract

The steps in the creation of the agreement, in this case the franchise agreement, show that there are various elements to consider in every franchise agreement, namely:

a. Cost.

Fees are crucial aspects of a franchise agreement that must be mutually agreed upon by the parties, such as the cost of a franchisee fee or royalty, which is a price decided by the franchisor and paid by the franchisee. However, there are charges, such as promotions or

particular events promoted through commercials or brochures, for which the franchisee is also responsible.

b. The length of time.

On average, each period of time in the implementation of the franchise agreement lasts for 5 years, after which the agreement can be renewed, either by the franchisor who wishes to continue working with the franchisee or by the franchisee who wishes to continue working with the franchisor.

Obligations and rights.

Every agreement that is made and agreed upon includes the rights and obligations that each party want to be carried out in good faith. If the contents of these rights and responsibilities are not carried out as indicated in the agreement, the party is in default against the other party, and the aggrieved party can sue for the loss experienced as a result of the failure.

3.2 In the context of business law, legal protection for the parties against termination of the franchise agreement (franchise).

When entering into a franchise agreement, legal protection for the parties is essential to offer legal certainty.

1) The Parties' Legal Protection

a. Franchisors have legal protection.

Even though an agreement made is the will of the parties through rights and obligations that are then poured into the clauses of the agreement, the franchisee considers not getting his rights during the implementation of the agreement franchises made that the franchisee considers not getting his rights. The following are the legal safeguards:

- The Civil Code, the provisions of Article 1338 of the Civil Code, and agreements made legally valid as law for those who make them, cannot be revoked without both parties' approval or for adequate legal reasons. It is the law, and it must be followed in good faith.
- The Franchisee is obliged to register a Franchise Agreement under Government Regulation No. 42 of 2007. Article 11 paragraph (1) specifies that the Franchisee is required to register a Franchise Agreement. The franchisor must first register a franchise offer prospectus, which is delivered to the franchisee prior to signing the agreement, before the franchisee can register the agreement. If the franchisee accepts the terms of the franchise offer prospectus, the agreement agreement will begin, followed by the signing of the agreement. The franchisee will receive a Franchise Registration Certificate after this agreement is registered with the office responsible for trade in the DKI Jakarta Province or district/city or local One Stop Service Offices throughout Indonesia by filling out the form (STPW).
- Regulation No. 57/M-DAG/PER/9/2014 of the Minister of Trade of the Republic of Indonesia about Amendment to Regulation No. 53M-DAG/PER/8/2012 of the Minister of Trade of the Republic of Indonesia concerning Franchising. The franchisor must have a STPW, according to Article 9. Both the franchisor from outside the country and the franchisor from within the country, as well as the further franchisor from the overseas franchise and the further franchisor from the domestic franchise, must register the franchise offer prospectus with the Directorate of Development in order to obtain a Franchise Registration Certificate (STPW). Trading is a profitable business.

b. Franchisees' Legal Protection

Because the franchisor has more latitude in establishing the provisions of the contract than the franchisee, the franchisor's position is stronger than the franchisee's because the franchisor's ability to terminate the agreement is likewise higher. For example, under a franchise business

activity regulation agreement, the recipient (franchisee) does not comply with the set business activity standards by not offering regulated services. Then there's his legal protection:

- According to Indonesian legislation [17], franchising is performed on the basis of a written agreement between the Franchisor and the Franchisee [Government Regulation No. 42 of 2007 on Franchising]. By developing a written franchise agreement as anticipated, the parties will be aware of their particular rights and obligations. A time frame is also included in the franchise agreement. This means that if the franchisor decides to end the contract, you will be notified before the conclusion of the period, the franchisor is in violation of the terms of the contract.
- Minister of Trade of the Republic of Indonesia Regulation No. 57/M-DAG/PER/9/2014 modifying Minister of Trade of the Republic of Indonesia Regulation No. 53M-DAG/PER/8/2012 governing franchising. When a franchisor unilaterally terminates a franchise agreement before its expiration date, the franchisor is unable to appoint a new franchisee for the same region unless both parties achieve an agreement in dispute resolution (clean break) or until a permanent judicial ruling. [18].

2) The Parties' Dispute Resolution

In the Indonesian legal system, there is no express legal provision that governs the resolution of issues in franchise agreements and the choice of dispute resolution forums. The choice of forum, whether for judicial or non-judicial organizations, must be linked to the choice of law and incorporated into the agreement. If the choice of law and forum has been regulated and included in the franchise agreement²⁴, then the agreement can be implemented smoothly.

Based on the data collected by the authors for efforts to resolve conflicts in each franchise agreement, the parties will resolve issues that arise when the grantor or franchisee unilaterally terminates the agreement, namely:

- a. Deliberation of consensus from the parties
- b. Through arbitration

4 Conclusion

The pre-agreement preparation stage, which is a meeting of the parties, both the agreement between the franchisor and the franchisee drafting stage, which is the stage of the franchisor drafting a franchise agreement that contains rights and obligations, and the post-signing agreement stage are the stages of implementing a franchise agreement. Specifically, the franchise agreement's implementation. The franchisor is protected by the law, which includes compensation from the franchisee, cancellation of the agreement, fulfillment of the agreement, or fulfillment accompanied by compensation or cancellation accompanied by compensation, as well as three written warnings to the franchisee who does not register the agreement, followed by a fine.

References

- [1] Lukman Santoso, Hukum Perjanjian Kontrak. Yogyakarta: Cakrawala, 2012.
- [2] "Lihat Penjelasan PP No.42 Tahun 2007 Tentang Waralaba."
- [3] Lihat Pasal 10 PP No. 42 Tahun 2007. .
- [4] Sumardi, Aspek-aspek hukum Franchise dan Perusahaan Transnasional. Bandung: Citra Aditya Bhakti, 1995.

- [5] R. Hardjowidagdo, "Perspektif Pengaturan Perjanjian Franchise, Makalah Pada Pertemuan Ilmiah Tentang Usaha Franchise Dalam Menunjang Pembangunan Ekonomi, Jakarta BBPHN, tanggal 14-16 Desember 1993," 1993.
- [6] "Majalah Usahawan, 2010, Menggempur Pasar Dengan Sistem Franchise, Edisi No. 11 Tahun XX, November 1991, UI Press." .
- [7] A. Sutedi, Hukum Waralaba, 1st ed. Jakarta: Ghalia Indonesia.
- [8] S. Gautama, Aneka Masalah Hukum Perdata Internasional. Bandung: PT Alumni, 1985.
- [9] Y. Fajar, M & Achmad, Dualisme Penelitian Hukum Normatif & Empiris. Yogyakarta: Pustaka Pelajar, 2015.
- [10] "BN. Marbun, Membuat Perjanjian Yang Aman dan Sesuai Hukum, Puspa Swara, Jakarta, 2009, hlm. 11." .
- [11] "Bill Scott, Strategi dan Teknik Negosiasi, Lembaga Pendidikan dan Pembinaan Manajemen dalam Kerjasama dengan PT. Pustaka Binaman Pressindo, Anggota IKAPI, Jakarta, 1984, hlm. 7." .
- [12] "Juajir Sumardi, Loc.Cit." .
- [13] "Juajir Sumardi, Op. Cit, hlm. 55." .
- [14] "Lihat 10 Peraturan Menteri Perdagangan RI No. 57/M_DAG/PER/9/2014 Tentang Perubahan Atas Peraturan Menteri Perdagangan RI No. 53/M-DAG/PER/8/2012 tentang Penyelenggaraan waralaba." .
- [15] "Adrian Sutedi, Op. Cit, hlm.79." .
- [16] Lihat Pasal 5 PP No. 42 Tahun 2007 tentang Waralaba. .
- [17] "Lihat Pasal 4 Peraturan Pemerintah No. 42 Tahun 2007." .
- [18] "Lihat Pasal 8 Peraturan Menteri Perdagangan RI No. 57/M-DAG/PER/9/2014 Tentang Perubahan Atas Peraturan Menteri Perdagangan RI No. 53/M_DAG/PER/8/2012 tentang Penyelenggaraan waralaba." .