

LEGAL PROTECTION IN IMPLEMENTING FRANCHISE AGREEMENTS IN INDONESIA

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Abstract

The development of the franchise business has grown rapidly and become a new force for the domestic economic sector in Indonesia. This business also requires legal protection. Legal protection is very important to know and provide certainty that someone will get what is his rights and obligations. In the application of a franchise or franchising agreement, there is a probability of default. This default occurs if one party does not carry out its obligations as stated in the franchise agreement. This study aims to determine the implementation of legal protection for franchise agreements in Indonesia and to find out the obstacles to implementing franchise agreements in Indonesia. This research uses a type of normative research method, which uses a literature study by reviewing some literature such as legal journals, legal principles, and laws and regulations that are relevant to the discussion. The results of this study indicate that legal protection in the implementation of franchise agreements in Indonesia has not been able to provide legal protection for franchisees because the agreement is in the form of a standard agreement made unilaterally by the franchisor. Then the obstacles in implementing franchise agreements in Indonesia, among others, can be seen from this franchise agreement that there is often no agreement between employees and the franchisee company which is very important in protecting trade secrets .

Keywords : Legal Protection, Franchise Agreement, Business.

Intisari

Perkembangan bisnis waralaba/franchise telah berkembang dengan pesat dan menjadi kekuatan baru bagi sektor ekonomi domestik di Indonesia. Pada bisnis ini juga diperlukan adanya sebuah perlindungan hukum. Perlindungan hukum sangat penting untuk mengetahui dan memberikan kepastian bahwa seseorang akan mendapatkan apa yang menjadi hak dan kewajibannya. Pada penerapan perjanjian franchise atau waralaba terdapat probabilitas terjadinya wanprestasi. Wanprestasi ini terjadi jika salah satu pihak tidak melaksanakan kewajibannya sebagaimana yang tercantum dalam perjanjian waralaba. Penelitian ini bertujuan untuk mengetahui pelaksanaan perlindungan hukum terhadap perjanjian franchise yang ada di Indonesia

serta untuk mengetahui kendala dalam pelaksanaan perjanjian franchise di Indonesia. Penelitian ini menggunakan jenis metode penelitian normatif, yang menggunakan studi kepustakaan dengan mengkaji beberapa literatur seperti jurnal hukum, asas-asas hukum, serta peraturan perundang-undangan yang relevan dengan pembahasan. Hasil penelitian ini menunjukkan bahwa Perlindungan hukum dalam pelaksanaan perjanjian franchise di Indonesia belum dapat memberikan perlindungan hukum bagi franchisee dikarenakan perjanjian tersebut berbentuk perjanjian baku yang dibuat sepihak oleh franchisor. Kemudian kendala dalam pelaksanaan perjanjian franchise di Indonesia antara lain dapat dilihat dari perjanjian waralaba ini sering dijumpai tidak adanya perjanjian antara karyawan dengan perusahaan penerima waralaba yang mana hal tersebut sangat penting dalam melindungi rahasia dagang.

Keywords: Perlindungan Hukum, Perjanjian Waralaba, Bisnis.

1. Introduction

Trading free and increasingly global competition tight, then company must understand what and how method For manage various source owned power. Phenomenon This the more awaken entrepreneurs For look for approaches as well as innovative breakthrough For interesting market share. Attempts made that is try For compete in more markets broad, also decisive which part of the market can served with ok. Competition such an endeavor strict require company own decision purchase, if No so company the No can last long. Purchase decision in A organization can obtained with notice superior value for customers, culture and climate For bring improvements in efficiency and effectiveness.¹

Businessman nor individual moment This glance at business franchise. Business Very promising franchise Because without expertise and skills specifically, them Can

¹ Ika Yunia R, *Asas Proportional in Agreement Franchise*, Journal of Business Law , Vol.1, No.1 , 2015, p . 5

enjoy satisfactory results, because that moment This franchise be one business many alternatives interested For become a entrepreneur.

Do marketing product in a manner international with export import, gift license, run system franchise, form company joint venture, and do direct investment with total ownership, or through mergers, consolidations, or acquisition is possible steps taken For increase business according to the opinion of Warren J. Keegen .² From fifth type method development business such, franchise or *franchises* is a sufficient marketing strategy Lots used at the time this .

According to Article 1 point 1 Regulation Government Number 42 of 2007 concerning Franchise, got defined cam in a manner juridical that franchise is right specifically owned by individual or eternity business to system business with characteristic typical business in framework promote goods and/or services that have proven successful and got utilized and/or used by other parties based on agreement franchise. Franchise is A form network business, network consisting and many working businessman with A deep same system³ development his efforts involve gift permission or right For make use of, use, or carry out right on riches intellectual owned by giver license .⁴

Development business franchise has develop with rapidly and become strength new for sector economy domestic in Indonesia. The rise trading goods and services with system franchise such, because system the more profitable Good for giver franchise nor recipient franchise.⁵ However presence business franchise as something system business

²Gunawan Widjaja , *Franchise* , PT. Grafindo King Persada , Jakarta, 2001, p . 1

³V. Winarto , *Development Franchise (Franchise) in Indonesia Legal and Non-Legal Aspects* , IAI, Surabaya, 2003, p . 8

⁴Gunawan., *Op. Cit* , p . 2

⁵Norman Syadar Idrus , *Legal Aspects of Agreements Franchise (Franchise) in Perspective of Civil Law and Islamic Law* , Journal Juridical , Vol.4 No.1, 2017, p . 28-45

have characteristics alone in life economy, can also cause problems in the field law because business franchise based on a giving rise to the agreement rights and obligations.⁶ Development business This Already should accompanied with protection adequate law so as not to There is aggrieved party.

as in agreement in general, agreement franchise subject to book III of the Civil Code as arrangement in a manner General and Regulations Government Number 42 of 2007 as arrangement in a manner special. Agreement franchise load gathering terms, conditions and commitments made and desired by the parties. Form agreement of the parties in franchise generally poured to in A agreement loading franchise the rights and obligations of the parties. Agreement franchise or this franchise agreement is gift rights by the franchisor (giver franchise) to the franchisee (recipient franchise) for use peculiarity business form type products and forms cultivated including identity company (logo, brand and design company, use plan marketing as well as gift extensive help, time or operating hours, clothing and appearance employee). Because of That peculiarity business or characteristic features identifier business trade or service owned by the same franchisee with peculiarity business or business trade or service owned by the franchisor.

Protection law is very important Forknow and give certainty that somebody will get what to be rights and obligations. With exists protection adequate law, will be creating a sense of security and trust for the parties in agreement franchise as well as expected business franchise will develop more fast and get Keep going contribute for sector economy Indonesian domestic.

⁶ Asuan , *Existence Franchise (France) According to Regulation Government Number 42 of 2007 as Agreement Innominaat* , Journal of Law, University of Palembang, Vol.12, No.2, 2017, pp.260-271

On application franchise agreement or franchise there is probability happening default. Default This happen if one party No carry out his obligations as listed in agreement franchise. Default This will happen if one party No do obligation as should have listed in agreement franchise the. If happen A default so will raises loss For party else, in matter This feeling party himself disadvantaged permitted by law For demand To use fulfil his obligations. Agreement it also includes related with termination A agreement, like No fulfillment sales, no fulfillment standard operation and etc. The franchisor has (discretionary power) to determine all aspect franchisor business, so agreement the Not yet give sufficient protection especially For recipient franchise in matter If want to end agreement and do refused the franchisor to there is an addendum to the agreement. As in the case at the outlet FnB Waffelicious, ramen outlet Hanashobu, as well Still many others. With exists possibility happening problem law in agreement franchise This make writer interested For writing research about **Legal Protection in Implementation Franchise Agreement in Indonesia.**

Formula Problem

1. How protection law in implementation franchise agreement in Indonesia ?
2. Is that to be constraint in implementation franchise agreement in Indonesia?

2. Research Methods

In study This writer use type method study normative, that is use studies literature with study a number of literature like journal laws, principles law, as well regulation relevant legislation with discussion, especially on the franchise agreement viz Constitution Number 9 of 1995 concerning Small Business Development as well Regulation Government Number 42 of 2007. The approach used is approach appropriate legislation (*statute approach*). with problem.

3. Analysis and Discussion

Legal Protection in Implementation Franchise Agreement in Indonesia

Agreement or contract is connection law between a number of agreed parties For do deed law certain. Beside That contract as well something agreement will binding on the parties and can forced in a manner law.⁷ Conditions to be base law in implementation franchise Alone stand from Article 1338 of the Civil Code. Business *franchises* own legality juridical that has arranged in Regulation Government Number 16 of 1997 later renewed become Regulation Government Number 42 of 2007.⁸

Based on Article 1233 of the Civil Code, which states that every engagement born from agreements and laws. With thereby agreement franchise is born Because promised become law for recipient franchisors and grantors franchise in something system business operated franchise.⁹ In other words all agreement (incl agreement franchise), created for a purpose certainty law so become Constitution for the parties related. Of course just the terms agreed within agreement franchise the can forced for the parties bound in it, namely recipient one franchise side as user / tenant licence owned by giver franchise.¹⁰ On agreement franchises in general position recipient franchise is independent party in contract the as well as No is agent or worker for giver franchise. Although so, use maintain quality products and services (*service*) provided to the recipient franchise, likewise with mark something brand trade, giver franchise often try do supervision in a manner wide from a number of aspect implementation business

⁷Catherine Tay Swee Kian & Tang See Chim , *Contract Law: A Layman's Guide* , Times Books International, Singapore, 1987, p . 19-20.

⁸Gunawan Widjaja , *Franchise* , Raja Grafindo Persada , Jakarta, 2003, p . 75

⁹Ahmadi Miru , *Contract and Design Law Contract* , Rajawali Pres, Jakarta, 2011, page 87

¹⁰ Moch . Basarah , *Legal Aspects of Franchise and Multi-National Companies* , Citra Aditya Bakti , Bandung, 2008, p . 6

run by the recipient franchise.¹¹ Because That supervision carried out giver franchise the in a number of case that happened during This raises recipient franchise no free party in contract the.

By and large agreement franchise give right for giver franchise to “decide connection franchise” by a reasons, including death recipient franchise, bankrupt or bankrupt, failed in fulfil payment or No meet sales targets. There are 6 (six) things a must poured in agreement franchise, that is includes : the rights owned by the recipient franchise (among others use brand trade, logo and reputation giver franchising, using layouts, designs, patents, methods labor and equipment), development product by the giver franchise, liability recipient franchise, liability giver franchise, division profits and resources income giver franchise, so supervision to business franchise can walk with ok.

¹² On agreement franchises in general load standard supervision quality, requirements training, ban on competition (*covenant not to compete*) by the recipient franchise and clause arbitration.¹³

Related with protection law for recipient franchise, got taken example that is exists imbalance in connection contractual between recipient franchise with giver franchise in agreement franchise. Next analysis to agreement franchise will researched is with imbalance in connection contractual the party recipient franchise has get protection law associated with agreement franchise that has done between party giver franchise and beneficiary franchise connected with existing rules and then, How settlement the case if happen dispute between giver franchise with recipient franchise .¹⁴

¹¹Johannes Ibrahim, *Business Law in Preception Modern Man* , Refika Aditama , Bandung 2007, p . 28

¹² Fuady Munir, *Introduction to Business Law* , Citra Aditya Bakti , Bandung, 2005, p . 340

¹³ Roeslan Saleh, *Seluk outs Practice License* , Sinar Graphics , Jakarta, 1991, p . 54

¹⁴ *Ibid.*

In general, agreement franchise is instrument cooperation in matter marketing with concepts and standards that have been determined by the giver franchise. Draft marketing provided by the giver franchise called as a “system” includes right owned by intellectual property *rights*, problems management production, and services offered by the provider franchise especially in training and promotion. On study juridical, contract franchise looked at as “agreement licence special” (concerns licence brand trade / *trade marks* and brands services / *service marks*) or can said as gift right license that includes licence For produce product with brand certain For distribute product certain from the licensor (manufacturer).¹⁵ It says special , because exists something authority from party giver franchise For do supervision to licensed business to recipient franchising, so inherent (*technical assistance*), training (*training*), as well trade and management (*merchandising and management*). No regardless of specificity from franchise as form licence special is use *brain name* that becomes backup for recipient franchise in use franchise owned by giver franchise .¹⁶

Agreement franchise created by the giver franchise and beneficiary franchises in general use agreement raw that is something the agreement therein has there is conditions made by one party. Where is the compiling party contract is party giver franchise, meanwhile receiving party contract is party recipient franchise. Giver franchise give contract the to recipient franchise, where party recipient franchise has No own choice For sign or reject contract the. Giver franchise have freedom as composer

¹⁵Martin Mendelsohn, *Farnchising : Clues Practical for Franchisors and Franchisees* , PT. Building Library Pressindo , Jakarta, 1993, p . 3

¹⁶Norman Syadar Idrus , *Legal Protection of the Parties in Agreement Franchise Business* , Journal Krtha Semaya , Vol. 4, No. 05, 2016, p . 4

clauses in contract so that recipient franchise be in position accept the proffered contract to him.¹⁷

Bound parties in agreement raw No bother about standardization in matter relationship in general, will be but bother position between the parties in agreement default, This caused Because part big agreement franchise shaped agreement prepared raw materials giver franchise, so giver franchise tend For notice protection for interests alone and less notice protection for recipient franchise. This can resulted *bargaining position* that is not draw so in the end raises position that is not balanced for parties in agreement franchise. Something position balanced can achieved if the parties own a balanced bargaining *position*, because circumstances the lead to *inconsionable* in draft *common law*.¹⁸ Whereas base balance and conformity position, by explicit has listed in Article 1320 of the Civil Code about deal basically state that valid deal between the parties can achieved if the parties is at in balanced position.

On manufacture usual agreement has prepared by parties giver franchise whereas party recipient franchise only find out and then sign without Can reject or follow give opinion, most of the time culminate in problems like No there is agreement will from the parties and there is impression as if No exists position balanced from position of the parties in agreement. With thereby agreement made by the giver franchise and beneficiary franchise arranged in something regulation legislation for rights and obligations from parties related can known and protected with clear. this Already should must done because, Indonesia as part from public international will always relate with party foreign. Besides That franchise foreign incoming to Indonesia

¹⁷ *Ibid.*

¹⁸ *Ibid.*

every the year show significant improvement.¹⁹ In arrangement alone about making agreement in making agreement franchise need urge For done so weak side can protected from more party strong, where in general weak party is at the receiver franchise whereas more party strong is on the giver franchise.

right also note that Power Work something Contracts are heavily influenced by content from contract such, which will determine rights and obligations of the parties, implementation business managed franchise the along with matter other related matters with implementation in principle in accordance with principle strength tie will become Constitution for the parties maker. For address problem the government has make regulation that is contained in Article 6 paragraph (1) Regulations Government Number 42 of 2007 concerning franchise, which states that agreement franchise can load clause gift right for Recipient franchise For pointing Recipient Franchise another, and continued with provisions in paragraph (2) that explain that recipient Granted franchise right For pointing Recipient Franchise else , must own and implement own at least 1 (one) place business Franchise.

With issued regulation the so in making agreement franchise party recipient franchise has given protection law For can use right in develop his efforts with method sub-franchise to recipient franchise other. Because of the agreement franchise usually party made giver franchise without involve recipient franchise, then there is inequality in relationships law between giver franchise with recipient franchising (*unequal bargaining power*). giver franchise set mandatory discrete *power* requirements be met by the recipient franchise. Inability or failure in fulfil requirements that have given like, no fulfil quota sale or standard operation, got resulted termination agreement in a manner unilaterally by the giver franchise. In fact there are possibility giver franchise

¹⁹Gunawan Widjaja , *Franchise* , PT. Raja Grafindo Persada , Jakarta, 2001, p . 5

with on purpose No forward the contract with Meaning dominate existing outlets because of these outlets has reach big profit.²⁰

Another thing that can explained related with exists partiality in agreement franchise related with provision equipment to activity business in accordance standards set by the provider franchise so everything charged to the recipient franchise, fine means nor infrastructure. Provision standard facilities and infrastructure the must reported to the giver franchise and not can contain disabled law. Activity as the on is basically that part give obligation for recipient franchise For follow standards that have standardized by the giver franchise. With thereby in making agreement franchise between giver franchise with recipient franchise There is factor domination from party giver franchise that makes recipient franchise as weak party. Party giver franchise do domination Because matter most important from use standard the in framework guard quality product goods and services. It 's just determination standard the should followed with supporting programs, ie on-the- job training Keep going continuously by the giver franchise so that determination standard the give contribution to enhancement quality nor ethos Work recipient franchise in operate the business the However matter This sometimes No carried out by parties giver franchise.

In A contract franchises, often party giver franchise has own something contract raw, with exists such circumstances so party recipient franchise Already No own Lots opportunity (will but No closed The same once) for negotiate. As in general in position like This party recipient franchise in principle only faced to choice *take it or leave it*. With thereby No surprising if many people say that in Lots contract franchise, party giver franchise own distant position more Good temporary party recipient franchise

²⁰ Suharnoko , "Law of Agreement ": *Theory and Case Analysis* ". Prenada Media, Jakarta, 2005, p . 85-87

Ready For swallowed raw, or in other words the receiver franchise confronted with a position Where must agreed agreement the. With such circumstances presumably principle freedom contracted as adhered to by the Civil Code We Already No can fully applied.²¹ Because that too, for guard justice and balance rights and obligations, then in many countries such as the United States that by the government local provided something contact raw or where are the guidelines become minimum requirements required fulfilled by everyone contract franchise, like arrangement specifically on the Commission Institution Federal Trade in the United States.²²

Constraint in Implementation Franchise Agreement in Indonesia

Based on Minister of Trade Regulation No. 12/M-Dag/Per/3/2006 concerning Provisions and Procedures for Issuing a Franchise Business Registration Certificate, then presumption recipient franchise forbidden divert to the other party becomes not enough right, cause Article 3 of the Minister of Trade the allow agreement franchise accompanied with gift right For make agreement franchise continued. at the moment giver franchise tied to a agreement franchise with recipient franchise, giver franchise No allowed For franchise product or same services with brand the same trade to recipient franchise others in nearby locations. If p the happen so can resulted competition between units franchise locations the. Restrictions This also applies to recipient franchise to recipient franchise continued.

Then If if giver franchise end A agreement franchise before period time ends, then giver franchise can make agreement other franchise if all problems that arise from expired agreement the has resolved and stated with clear in something letter statement

²¹Franky Slamet, *Supervisor Management Franchise* , PT. Index , Jakarta, 2016, p . 19

²² Early Sintya , *Comparison law arrangement agreement franchising in Indonesia and the United States* , Thesis , University of Indonesia, Jakarta , 2016

together between the parties involved.²³ With so, basically franchise regarding with gift permission by the giver franchise to others or some people use use system or method operation something business. Giving permission This covers use rights owner existing franchise in the field right owned by intellectual (*intellectual property rights*). Giving permission This also called gift license. Agreement licence normal No The same with agreement franchise. On agreement licence normal only covers One field activity course, for example gift permission licence for use brand certain or license making a / some type goods certain. Meanwhile in the agreement franchise, gift licence involve various type right owned by intellectual, like Name trade, brand, model and design. Basically franchise have room more scope wide compared to gift permission licence use or sale or making One or a number of type goods certain just .²⁴

Beside things that have mentioned above, if in agreement franchise No followed with agreement between employee with company recipient franchise For protect confidential trade so matter This will become problem alone. In circumstances This recipient franchise can just No do IPR infringement will but employee is party third to be potentially For do imitation to characteristic typical from giver franchise, remember employee from company franchise also know in a manner exactly confidential trade from company the. With thereby so should agreement is also made between companies and employees To use protect confidential trade something franchise.²⁵

Obstacle others can happen in Agreement Franchise is at the moment perpetrator business new first time doing business franchise, fine in capacity as giver franchise nor recipient franchise. Obstacle the can happen if the parties Not yet understand aspects

²³Gunawan Widjaja , *License or Franchise* , PT. Raja Grafindo Persada , Jakarta, 2004, p . 77

²⁴ *Ibid.*

²⁵ Ashhadie Zaeni , *Business Law : Principles and Implementation in Indonesia* , PT. Raja Grafindo , Jakarta, p . 101

law franchise, so No own good guideline. Circumstances This can impact protection IPR law in franchise, remember perpetrator business No realize its importance from protection of these IPRs as the core of something franchise.²⁶ Ignorance of the perpetrators business franchise Can seen in drafting Agreement Franchise, where in Agreement Franchise that, if No there is clause specially set about IPR protection from franchise the. With thereby will there is weakness from Agreement such, which would be quite possible used by parties certain that will caused happening problem law, in particular IPR violations, such as confidential trade something franchise.

Problems This will resolved If perpetrator business franchise use service consultant For accompany him in do negotiation business and manufacture agreement. Importance a Notary Public in formulate Agreement Franchise, in order to get become something balanced and capable agreement give protection law to those who made it, in particular in IPR field. because That For ensure walk something business franchise with Good then the perpetrators must use consultant expert franchisors and consultants law or notary , for avoid happening problem law later day.²⁷

4. Conclusion

Protection law in implementation Franchise agreements in Indonesia are regulated in Regulation Government Number 42 of 2007 concerning Franchise and regulated more Specific in Regulation of the Minister of Trade Number 53/M-DAG/PER/8/2012 concerning Administration Franchise. However in the practice implementation franchise agreement in Indonesia Not yet can give protection law for franchisees (recipients franchise) due agreement the shaped agreement which standard is the agreement the only made unilaterally by the franchisor and will give impact For the franchisee as weak position especially in bargaining power. Then Because

²⁶ *Ibid.*

²⁷ *Ibid.*

agreement the only made unilaterally by the franchisor can also said that No There is principle freedom contracted in making the agreement.

Constraint in implementation franchise agreement in Indonesia can seen from agreement franchise This often found No exists agreement between employee with company recipient which franchise thing it is very important in protect confidential trade. In matter This recipient franchise can just No do IPR infringement will but employee is party third to be potentially For do imitation to characteristic typical from giver franchise, remember employee from company franchise also know in a manner exactly confidential trade from company the. Then obstacle furthermore can happen in Agreement Franchise is at the moment perpetrator business new first time doing business franchise, fine in capacity as giver franchise nor recipient franchise. Obstacle the can happen if the parties Not yet understand aspects law franchise, so No own good guideline. Circumstances This can impact protection IPR law in franchise, remember perpetrator business No realize its importance from protection of these IPRs as the core of something franchise. With thereby will there is weakness from Agreement such, which would be quite possible used by parties certain that will caused happening problem law, in particular IPR violations, such as confidential trade something franchise.

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