

# Legal Protection for Franchise Business Actors

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**Abstract.** In writing this article, it is discussed about legal protection for franchise business actors. This article uses a normative legal research method with descriptive analysis, which describes the facts and problems related to the issue of legal protection for franchisees and the balanced position of the parties in the franchise agreement. Franchise business actors are protected by applicable laws, namely in PP No. 2007 on Franchise.

**Keywords:** Business Actors; Legal Protection; Franchising

## 1 Introduction

Along with the development of the economy in Indonesia, which has many business relationships with other countries around the world. The business that is widely found and developed in Indonesia is the franchise business. A franchise is a commercial business agreement in the world of trade between two parties, namely the party as the owner of the patent rights for the name, goods, or services as well as the operational structure and the recipient, based on a specific time measure made before the agreement is agreed. Another definition of a franchise is a series between the parent company granting rights to small or medium-sized companies based on an agreed time.[1]

The existence of a franchise business about the effectiveness of marketing a product is felt to be able to cover all corners of the country. Seeing that there is immense enough opportunity, this type of business is in great demand, especially for people who are still new to starting a business or enterprise. Businesses that are developing today need to be protected by law to protect people in the business world. In the franchise business, an agreement is needed. The agreed agreement can be used as a protection for the parties by law from matters that can later cause losses. The party to the agreement can charge what should be obtained if the other party denies the contents contained in the franchise agreement based on existing law. The agreement is not only required for international scale franchise agreements but also applies to national scale franchise businesses.

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, since 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.

So, before the Supreme Court (MA) Jurisprudence, legal protection regarding franchises was carried out through franchise contracts made by the parties using the Third Book on Engagement, and the articles contained in the Civil Code or *Burgelijke wet Boek* (BW) regulated agreements, such as article 1320, article 1338, and article 1365 of the Civil Code. After the Supreme Court's jurisprudence, there were several regulations in the form of Decree of the Minister of Justice No: M.02-HC.01.01 of 1987 dated June 16, 1987, concerning Guidelines for the Use of Limited Company Names.

The decree means that the registered Articles of Association and Bylaws deed will be rejected if the name of the newly registered limited liability company bears a resemblance to the name of the PT that has previously registered from the limited liability company that is just about to register its company name. This rule was later strengthened by the Decree of the Minister of Justice No: M.03HC.02.01 of 1991, in addition, companies that have registered in advance can sue based on article 1365 of the Civil Code, if a company that has not been registered has been operating and gaining economic benefits from using a similar name.[2]

Diversifying depends on an arrangement called an establishment understanding. This type of establishment understanding includes no less than two gatherings. The primary party is known as the Franchisor, to be specific the proprietor of an item, administration, or working framework that is novel to a specific brand which is typically licensed. The subsequent party, the Franchisor is an individual and additionally business visionary who maintains a business utilizing the Franchisor's trademark, logo, plan, brand by giving eminences to the Franchisor.

The legitimate connection between the Franchisor and the Franchisor is additionally directed in an agreement that appears into the privileges and commitments of the gatherings. This truly intends that there is a connection between the gatherings to conform to the items in the understanding which whenever abused can prompt legitimate outcomes by the arrangement in the establishment arrangement.[3] In this study, we will discuss the legal protection for franchise business actors.

## **2 Research Methods**

The approach method used in this study is a normative juridical approach [4] because, in this study, the law is conceptualized as written norms made and promulgated by authorized state institutions or officials. Law is seen as an autonomous institution, apart from other institutions in society. Therefore, the study carried out is limited to the (written) laws and regulations related to the object under study, namely the legal relationships that occurred between legal subjects involved in franchise business agreements and their legal protection for the parties. [5].

## **3 Results and Discussion**

The subject of franchise law consists of 2 parties, namely the franchisor and the franchisee. In the franchise agreement, there is a balance principle, namely the principle that requires both parties to follow and carry out the agreement properly, namely in the form of fulfilling rights and obligations. This principle is quite crucial to achieving balance in business.[3] A franchisor (franchisor) is an individual or business substance that gives the option to use and additionally utilize its establishment to the Franchisee (Article 1 point (2) of Government Regulation Number 42 of 2007 concerning Franchising). A franchisee (franchisee) is an individual or business substance that is allowed the right by the Franchisor to use as well as utilize the

Franchise possessed by the Franchisor (Article 1 point (3) of Government Regulation Number 42 of 2007 concerning Franchising). In view of Article 5 of Government Regulation Number 42 of 2007, the establishment arrangement contains the names and addresses of the gatherings. The article in the establishment understanding (establishment) is a permit. A permit is a permit that the franchisor awards to the franchisee. There are two permitting rules as expressed by Dieter Plaff, specifically: 1) monetary reason and 2) juridical reference. The financial objective is what the permit needs to accomplish while the legitimate reference is the lawful instrument used to accomplish that objective.

On the off chance that one notices Government Regulation Number 42 of 2007 concerning Franchising, there are a few ideas of legitimate security for establishment organizations, in particular: (1) Article 3 letter f that states that a franchise must constitute a registered intellectual property right. So that there is legal certainty in the franchise business, eliminating doubts about the franchise offered; (2) There is a provision that requires a franchise agreement to be made in Indonesian; (3) The franchisor must provide a prospectus before making a franchise agreement, to protect the interests of the prospective franchisee. The existence of this rule provides space for prospective franchisees to first learn about the franchise in question; (4) There is a need to include a minimum clause in the franchise agreement, this will create a balance between the parties' positions in the agreement as well as provide legal protection.[6]

When viewed from the scope and design, the franchise contract is between the licensing contract and the distributor. The granting of permission by the holder of Intellectual Property Rights to other parties to use specific brands or procedures is an element of the license agreement, while on the other hand, there is quality control from the franchisor on the products sold by the franchisee. As in the franchise license contract, the franchisee is required to pay a certain amount of royalties in exchange for the brands and systems purchased under the agreement in the franchise agreement. In addition to paying royalties, franchisees are also subject to obligations that have been set by the franchisor to design the company in such a way that it resembles the franchisor's design.

The establishment arrangement is directed by the Civil Code and Government Regulation of the Republic of Indonesia Number 42 of 2007 concerning Franchising which hosts a reason for the gatherings. The plan of the establishment interaction depends on what is set out as privileges and commitments in the establishment understanding. An establishment arrangement is a part of legitimate insurance that directs all types of exercises connected with diversifying. So, in the development of an establishment arrangement, it is important to focus on 2 fundamental perspectives to safeguard the franchisor, to be specific:

1. Internal Aspects This aspect concerns the existence of existing franchise agreements in terms of registration, franchisee obligations to the franchisor, period, royalties, and issues of termination, namely registration, franchisee obligations to franchisors, period, royalties, and termination of business relationships.
2. External Aspect Basically, the external aspect is a general explanation of how the rules regarding the franchise are made and applied by a country. The state takes part in dealing with franchising issues, among others regarding the process before an agreement is made by the parties and the duration of an agreement. Broadly speaking, it can be said that the external aspect is how the rules are made correctly, either directly or indirectly, regarding the implementation of the franchise business in Indonesia.

The above aspects cannot be separated from the laws and regulations as well as the role of the state in carrying out its duties to provide protection and law enforcement to all citizens without exception can be done by providing adequate legal tools. Based on what is stated in

Article 1338 of the Civil Code, it is explained that everything that has been agreed upon and also designed by statutory regulations, the agreement becomes law for the parties who agree.

The franchise agreement is anonymous, so the franchise agreement comes from article 1338 of the Civil Code which in this article contains the principle of freedom of contract. This means that the law of the agreement which contains things that are contained based on the existing statutory regulations, by good customs, and in good conditions, it is agreed to bind the parties like a law. In every agreement, including a franchise agreement, some things are mandatory and entitled to be carried out and accepted in good faith by the parties concerned in the agreement. One of the obligations that must be carried out by the franchisee is to pay royalties every month.[7]

The establishment business arrangement is done by the two players concerned. Where in going with an agreement or understanding there are conditions for the legitimacy of the arrangement as specified in Article 1320 of the Civil Code, which fundamentally controls the arrangement of the gatherings, the abilities of the gatherings, certain items, and legitimate causes. In leading an establishment business arrangement against the gatherings, a spot is required in its execution as legitimate assurance. The legitimate insurance that should be possible to the gatherings, in particular the subject of franchisees and franchisors, like preventive and oppressive lawful assurance. This preventive legitimate insurance intends to forestall the event of a debate by the two players to the establishment business. Establishment parties are permitted to submit protests or suppositions before a choice rule gets a distinct (conclusive) structure. In Indonesia, there is no extraordinary guideline with respect to this preventive legitimate assurance.[6]

Preventive lawful insurance is completed to forestall an infringement, for example, diversifying and give signs or constraints in doing a commitment in leading an establishment. While oppressive legitimate insurance is pointed toward settling a question from the two players to the franchisee. The treatment of lawful assurance in settling this debate is completed by the General Court and Administrative Court in Indonesia. This security is the last insurance that can be as approvals to the gatherings like fines, detainment, and extra punishments given in case of an establishment question.

The lawful security of an establishment or establishment is managed in the Government Regulation of the Republic of Indonesia Number 42 of 2007 which controls Franchising and is additionally directed by the Regulation of the Minister of Trade of the Republic of Indonesia Number 53/MDAG/PER/8/2012 concerning the Implementation of Franchising. Guidelines in regards to the standards and lawful security for the two establishments are directed all the more explicitly in the Regulation of the Minister of Trade of the Republic of Indonesia Number 53/MDAG/PER/8/2012.

As in the oversight of the establishment, it is expressed in the Government Regulation of the Republic of Indonesia Number 42 of 2007 Article 15 section (1) that the Minister manages the execution of the Franchise and passage (2) the Minister can organize with important organizations in doing the oversight as alluded to in section (1) Where the oversight is without a doubt additionally directed in the Regulation of the Minister of Trade of the Republic of Indonesia Number 53/M-DAG/PER/8/2012 in Article 28. As to in legitimate security against establishments, Government Regulation of the Republic of Indonesia Number 42 of 2007 Article 16 section (1) said the Minister, Governor, Regent/Mayor by their individual specialists force managerial approvals for Franchisor and Franchisee who abuse the arrangements. [8]

In the Regulation of the Minister of Trade of the Republic of Indonesia Number 53/M-DAG/PER/8/2012, the approvals are additionally directed in Article 32 which expresses that the franchisor and franchisee who disregard the arrangements as alluded to in Article 9 and Article

10 will be dependent upon authoritative authorizations as composed alerts and fines to both the grantor and the franchisee. Where Articles 9 and 10 of the Regulation of the Minister of Trade of the Republic of Indonesia Number 53/MDAG/PER/8/2012 contain that both the franchisor and the franchisee are expected to have a STPW (Franchise Registration Certificate) and register the establishment arrangement.

Then, at that point, the subsequent authorization in Article 33 of the Regulation of the Minister of Trade of the Republic of Indonesia Number 53/M-DAG/PER/8/2012 manages legitimate insurance expresses that the franchisor and franchisee abuse the arrangements as alluded to in Articles 18, 19, 21, 27 and 30 are dependent upon regulatory approvals as a composed advance notice, impermanent suspension of STPW, or repudiation of STPW. Where Article 18 specifies that the provider and beneficiary of an establishment that has a STPW should utilize the establishment logo.

#### **4 Conclusion**

An establishment business understanding is one kind of arrangement that incorporates a mysterious arrangement (innominaat) whose presence is permitted locally the same length as it doesn't struggle with the law, public request, and goodness. The lawful insurance that should be possible to franchisees and franchisors, for example, preventive legitimate assurance expects to forestall the event of debate. While abusive lawful assurance is pointed toward settling a question from the two players to the franchisee. Lawful security for franchisees is directed in the Government Regulation of the Republic of Indonesia Number 42 of 2007 concerning Franchising and is managed all the more explicitly by the Regulation of the Minister of Trade of the Republic of Indonesia Number 53/M-DAG/PER/8/2012 concerning Franchising.

#### **References**

- [1] R. B. Simatupang, *Aspek Hukum Dalam Bisnis*. Jakarta: Rineka Cipta, 2003.
- [2] A. Sutedi, *Hukum Waralaba*. Jakarta: Ghalia Indonesia, 2008.
- [3] R. Hardjowidagdo, "Perspektif Pengaturan Perjanjian Franchise," 1993.
- [4] P. M. Marzuki, *Penelitian Hukum (Edisi Revisi)*. Jakarta: Prenada Media Group, 2014.
- [5] S. Soekanto, *Pengantar Penelitian Hukum*. Jakarta: UI Press, 2012.
- [6] P. R. Listyawati, "Perjanjian Franchise sebagai Perjanjian Innomenaat dalam Pandangan Hukum Perdata," *J. Huk.*, vol. XVII, no. 2, 2006.
- [7] Sumardi, *Aspek-aspek hukum Franchise dan Perusahaan Transnasional*. Bandung: Citra Aditya Bakti, 2005.
- [8] M. Mendelson, *Petunjuk Praktis Bagi Franchisor dan Franchisee*, IPPM Jakarta, h.4. Jakarta: IPPM, 2013.