

# Inter Agreement Balance Branches Business Law

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**Abstract.** Franchise is a special right that is owned by an individual or business entity against a business system with business characteristics in the context of marketing goods and/or services. The business law which is the basis for every business activity is often interpreted as limited to the product of rules issued by the authorities so that there is an imbalance when the franchise agreement is terminated due to failure to meet sales targets and operating standards, Alfamart as the franchisor has discretionary power to assess all aspects of the franchisee. so that the agreement does not provide adequate protection for the franchisee. Judging from the contents of the contract as a whole is determined by Alfamart, and the franchisee cannot change the slightest provisions in the agreement as a weakness for the franchisee who doesn't get the opportunity to have an opinion in making the agreement.

**Keywords:** Franchising; Principle of Balance

## 1 Introduction

The era of globalization has led to the phenomenon of the expansion of the business world that has penetrated the boundaries of space, time and even the country's territory. One of the breakthroughs made by business actors is business development through a franchise system which in Indonesia is termed a franchise. Franchise (franchise) is a business system that has a characteristic in the field of trading or service business by covering the type of product and form that is cultivated, logo identity, design, brand and even clothes and appearance of company employees, and is supported by marketing plans and operational assistance.

Franchise (franchise) is defined as cooperation in the field of business with profit sharing in accordance with the agreement, management rights and marketing rights. Franchise is no different from a license (intellectual property rights), especially with regard to the franchise of a trade name or trademark, whether for products in the form of certain goods or services. This means indirectly acknowledging the existence of two forms, franchise, namely franchise in the form of a trademark or product license and franchise as a business format.

Franchising is carried out based on a written agreement between the Franchisor and the Franchisee with due observance of Indonesian law. According to Wiryono Prodjodikoro, an agreement is said to be a legal event that causes an agreement in which two legal subjects have a binding legal relationship. A legal relationship between two parties in which one party promises or is considered to have agreed to do something or not to do something, while the other party demands the fulfillment of that promise.

The legal aspects of franchising consist of franchise agreements, business legality, copyrights, patents and trademarks, labor and taxation. The franchise agreement is an important aspect. The franchise agreement is an agreement made in the form of a standard agreement made by the franchisor and is enforced on all prospective franchisees without exception. Therefore, prospective franchisees can only choose to accept or reject the agreement without determining its contents.

This provision basically emphasizes again that the franchise is not given free of charge, the granting of a franchise is always associated with generally known two types of compensation that can be requested by the Franchisee / Franchisor of the Franchisee or Franchise Recipient. First is direct compensation in the form of monetary value (*Direct Monetary Compensation*) and the second is indirect compensation in the form of monetary value or compensation given in the form of monetary value (*Indirect and Non Monetary Compensation*), for example Lumpsum Payment (*Pre Calculated Amount*) and Royalty is a certain form of reward.

Alfamart is a local franchise that has grown and developed in Indonesia. PT Sumber Alfaria Trijaya, Tbk or Alfamart is a national company engaged in general trading and retail services that provide basic and daily needs. Alfamart can be owned by the wider community by means of partnerships. In expanding the franchise business in Indonesia, Alfamart has opened new outlets by approaching consumer locations in the company's territory.

“During a period of five years from 2014 to 2019, Alfamart outlets have grown to more than three thousand stores. In 2019, the number of Alfamart outlets was 13,726 with 26% (twenty-six percent) being franchisees, while 74% (seventy-four percent) owned. In a period of five years (2014 - 2019), the focus of developing Alfamart outlets moved from the Jabodetabek area to Outside Jabodetabek and Outside Java which increased sharply until 2019 reaching 3,543 Alfamart franchise outlets, with the distribution of the area experiencing a decrease in the percentage that was originally dominated by the Jabodetabek area in 2019. 2014 amounted to 41.4% but in 2019 it has spread outside Jabodetabek reaching 37.6% and outside Java reaching 29%. Alfamart Franchise outlets owned by local residents as franchisees are an important part of the Company's business growth. The way to become an Alfamart franchisee is to submit a new location, or take over an existing outlet (with goodwill). Franchise requirements with a term of 5 (five years), a franchise fee of Rp. 45 million, royalty fees of 0-4% of sales (progressive-rate). The Company prepares operational and control standards in the form of prices and product mix, employee recruitment and training, performance reports and promotions.

The franchise agreement involves both parties, namely the franchisee (franchisee) as the other party, which means the recipient of the brand, in an agreement, and the franchisor (franchisor), which means the brand giver, namely PT Sumber Alfaria Trijaya, Tbk, and contained provisions relating to rights and obligations of the franchisee with the franchisor.

In the business world, the central role of contract law in framing the pattern of legal relations between parties is increasingly felt. Whether they are aware of it or not, every business step taken by business actors is basically a legal step, which incidentally falls within the realm of contract law.<sup>1</sup> The franchise agreement is a form of standard agreement as an inevitable need that is born from the needs of the community. However, it is felt necessary to regulate it so that it is not misused and causes harm to other parties, it is necessary to provide legal protection for the parties regarding the use of standard agreements that are enforced in the franchise agreement and legal protection of the parties regarding the settlement of franchise agreement disputes.<sup>2</sup> The imbalance in the position of the parties in a contract is contrary to the principle of equality which in essence has given equal treatment to people in accordance with the applicable law. Therefore, this paper will examine and discuss the extent

to which the principle of balance in the franchise agreement between the franchisee and Alfamart as the franchisor.

## **2 Problem Statement**

The formulation of the problem in this study is "Is the Alfamart franchise between the franchisor and the franchisee fulfilled the principle of balance in the agreement"?

## **3 Literature Riview**

### **3.1 Agreement**

Humans, in obtaining the necessities of life in the association of society, mutually establish legal relations and agreements based on conformity to their wishes. The agreement arises legal consequences that bind both parties, in this relationship an agreement is required, in civil law it is regulated in Book III of the Civil Code, Article 1313 of the Civil Code (KUHPerdata) provides an understanding of the agreement. namely: "An act by which one or more people bind himself to one or more other people".

The relationship between the two people is a legal relationship in which the rights and obligations between the parties are guaranteed by law. An agreement can give rise to an engagement, which is in the form of a series of words that contain a promise or commitment to be spoken or written. This is confirmed by the provisions of Article 1338 paragraph (1) of the Civil Code, namely: "An agreement made legally acts as a law for its maker".

According to Herlien Budiono, he states that: "An agreement is a process that starts from a promise towards agreement (free) from the parties and ends with the achievement of the goals of the agreement which is achieved in a spirit or spirit of balance. Agreements that give rise to legal relationships must be protected from imbalance situations.

According to Purwahid Patrik states that: "P an agreement is a legal act that occurs in accordance with the formalities of existing legal regulations, depending on the conformity of the statement of the will of the two or more people aimed at arising legal consequences in the interest of one party at the expense of the other -Each party reciprocally".

The existence of a contract (contract law) in relation to the parties is often associated with "balance in contracting" (principle of balance). However, it seems that the assumption has never ceased that the contract that exists between the parties does not provide a balanced position for one of them. Such contracts are considered unfair and one-sided, thus giving rise to efforts to seek and explore new findings in the field of contract law in order to resolve imbalance problems in contractual relationships.

In order for the process of exchanging interests in the contract to run fairly, the parties are required to understand the legal basics of the contract. Contracts that are made or drawn up by the parties are basically the pouring of the business process into a legal language formula (contract). The legal basis for a contract is meant that the parties have guidelines in preparing the contract, because: (a) it provides a legal basis for the contract being made; (b) provide frames or signs for the rules of the game in business transactions; and (c) as a benchmark for measuring the existence of the contract concerned.

Understanding the principle of balance certainly cannot be separated in the context of its relationship with the basic principles of contract law, namely freedom of contract,

consensualism, binding strength and good faith. This understanding is deemed necessary to determine the working of the balance principle in relation to other contract law principles. Basically, contract law principles are not separate from one another, but in various ways they complement and complement each other. In other words, each of the principles does not stand in isolation, but overlaps and complements the existence of a contract.

### 3.2 Franchise

What is meant by franchise according to Article 1 number 1 Government Regulation Number 42 of 2007 concerning Franchising, defines franchise as: “special rights held by an individual or business entity against a business system with business characteristics 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 a franchise agreement”.

The definition of franchising in the Black's Law Dictionary is quoted from Andri Sutedi, it is stated that franchising is the granting of the right to sell products in the form of goods or services by utilizing the franchisor's trademark, where the franchisee is obliged to follow the methods and procedures or procedures set by the franchisor. The definition of franchising contains an understanding related to legal actions between the franchisor and the franchisee, giving rise to an agreement. Franchise put forward by the United Nations Center on Transnational Corporation (UNCTC), as follows: *”Franchise is particular from licensing agreement implying a constituting relationship in which the franchisor provide rights usually including the use trademark or brand name plus services of technical assistance, training, merchandising and management in return for certain place”*.

The definition above can be concluded that the franchise agreement involves two parties, namely the business owner (franchisor) and the lessee or the party who has a business license (franchise).

According to Faisal Santiago, mentioned that: *“Franchising is a system of marketing goods and or services and / or technology, which is based on closed and continuous cooperation between independent actors (meaning franchisors and individual franchisees) and separated both legally (law) and financially, where the franchisor gives rights to individuals franchisee, and imposes an obligation to carry out its business in accordance with the concept of the franchisor ”*.

This right requires and allows individual franchisees to use the franchisor's trade name and/or trademark and/or service mark. Know how means a set of practical, non-patented information, derived from experience and testing by the franchisor, which is confidential, substantial, and specific (ways of doing business and technical methods), business, technical methods, procedural systems and / or proprietary intellectual and industrial, supported by technical and commercial assistance on an ongoing basis, within the framework and in accordance with a written franchise agreement, made by the parties for this purpose.

Faisal Santiago further explained that: *“Franchise is a privilege to use a name or to sell products / services. This is given by manufacturers or suppliers to retailers to use various products and names on terms that have been mutually agreed upon (in a mutually beneficial relationship)”*. According to Adrian Sutedi, the franchise agreement contains the following conditions:

- a. Rights granted by the franchisor to the franchisee. The rights granted include, among others, the use of special methods or recipes, use of brands, trade names, time periods, extensions and areas of activity and other rights.

- b. Obligations of the franchisee in return for rights received and activities carried out by the franchisor when the franchisor starts a business.
- c. Matters relating to cases of selling franchisee rights to other parties. If the franchisee does not want to continue the business himself and wants to sell it to another party, then a procedure needs to be agreed upon in advance.
- d. Matters relating to terminating the cooperation agreement.

According to Suryono Ekotama, there are several things that are needed in creating and preparing to build and develop a business with a franchise system, as follows:

#### **a) Make A Distinctive Business**

This is what differentiates between a franchise business and other businesses. The franchise business must meet the main requirements for the characteristics of the business. The hallmark of this business is an advantage or difference that differentiates the business we have from other people's businesses. The existence of these characteristics, our business is not easily imitated by other business owners, and in fact these characteristics can create consumer dependence on our products or business. Characteristics can be found in products, systems, management, sales and service methods, product arrangement and distribution methods.

#### **b) Creating Standard Operating Standards**

Standard operating standards are one of the conditions that must be met for businesses that are developed with a franchise system. By applying standard operating standards, it is hoped that wherever the customer domicile is, they will be able to enjoy the same quality products and services. An example of a KFC franchise business, where employees look very professional, even as if they master all areas of their work and really enjoy their work so they look sincere in serving customers, and those of us who see are amazed and satisfied with their service. This is the operating standard imposed by the company. The company applies standardized operating standards, so that wherever there are KFC outlets, the products and services are the same.

#### **c) Making HAKI (Intellectual Property Rights)**

Franchises need IPR to protect their business characteristics. There are four intellectual property rights in the franchise business that protect the owner of the rights to the franchise business, namely trademarks, copyrights, patents, trade secrets that must be registered with the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights.

#### **d) Making Duplication Methods Easy and Practical**

An easy and practical duplication method is easy to teach and apply or easy to implement so that franchisees who do not have experience or knowledge of similar businesses can carry it out properly in accordance with the ongoing operational and management guidance provided by the franchisor.

#### **e) Make Growing Profits**

The growing profits in the franchise business prove that:

- (a) The franchise business is healthy, because the financial side is strong.
- (b) The management has been tested for professionalism and work ethic, so that it is able to guarantee that franchisees get their rights to benefit from the franchise business.
- (c) The business has been accepted and wanted by the community.

#### **f) Creating Sustainable Management Support**

Franchisors provide managerial support (supporting management) to franchisees during the contract period, with the aim that the franchisee can do business smoothly and profitably. Franchisors must provide management support because franchisors are more experienced than franchisees in running a franchise business.

#### **g) Creating A Business Prospective**

Selling a franchise business to prospective franchisees requires marketing tools called a franchise business prospective.

#### **h) Make A Contract/Franchise Agreement**

Building and developing a business by selling the franchise system requires a means that will secure the cooperative relationship between the two, namely a franchise contract/agreement.

According to Libermann and Siedel, quoted from Adrian Sutedi, the elements of the franchise are as follows.

- a. Franchise is a reciprocal agreement between franchisor and franchisee.
- b. Franchisees are obliged to pay fees to the franchisor.
- c. Franchisees are allowed to sell and distribute goods or services of the franchisor in a manner determined by the franchisor or following the business methods of the franchisor.
- d. Franchisees use the brand name of the company or also the commercial symbols of the franchisor.

According to Agus Yudha Hernoko, an example of a commercial contract clause in a franchise contract that reflects the principle of balance can be explained as follows.

1. Fee and royalty clauses, related to the franchise recipient's obligation to fulfill the obligation to pay a sum of money as an integral part of the cooperation commitment. The obligation to pay these fees is generally carried out at the beginning of the contractual relationship, while royalty payments are payments for the results of the use or utilization of rights (IPR), products or management by the franchisee.
2. The clause of supervision (quality control product and management), is part of the franchisee 's commitment to maintain the image (good name) of the franchisee' s product. This clause is important, considering that the quality of the product and the form of service is very influential on the success of the business. For this reason, strict supervision is an effort to maintain the continuity of the franchise business itself.
3. The clause for the use of materials or products of the franchisor is part of the franchisee 's business process to maintain product quality in order to meet the specified quality standards. In fact, the clause often relates to the confidentiality of products or services in the franchise.
4. Exclusive marketing clause, related to the policy regulating the franchisee distribution network. In addition to avoiding competition among franchisee recipients, it is also

expected to provide a guarantee of investment returns that have been invested by the franchisee.

5. Confidentiality clause, is intended to bind the franchisee so as not to divulge the licensed secret to other parties without the written permission of the franchisor. This is very closely related to IPR, the size of the franchisor's investment and other business considerations.

The termination of a franchise agreement, according to R. Setiawan, can occur due to several things, namely:

- a. Determined in the agreement by the parties. For example, the party to the franchise agreement determines that the agreed agreement lasts for seven years, then after seven years, the agreement will expire.
- b. The law determines the limits of the validity of an agreement. For example, A (franchisor) and B (franchisee) agree to run a franchise business in the food sector. During the agreement period which was agreed upon for ten years, suddenly B as a franchisee died. The law determines the validity limit of the agreement so that the fulfillment of the obligations by the heirs before the end of the agreement stipulated by the law.
- c. The parties or the law can determine that with the occurrence of certain events the agreement is nullified.
- d. Statement of terminating the agreement by both parties by one of the parties. For example, A (franchisor) states that the franchise agreement with B (franchisee) is terminated because B is deemed not to meet the target set by A in the mutually agreed agreement.
- e. The agreement is canceled due to the judge's decision. For example, a judge decides to cancel a franchise agreement because it is requested by one of the parties.
- f. The objective of the agreement has been achieved. For example, the parties agree that the franchise agreement will last for fifteen years, after that time, it is considered that the objectives of the business are achieved so that the agreement is terminated.
- g. With the agreement of the parties. For example, the franchisee feels unable to meet the target outlet opening targets, then the franchisee with the franchisor's approval terminates the franchise agreement.

Franchise agreement is a legal guideline that outlines the responsibilities of the franchisor or what is often called a franchisor and a franchisee or what is often called a franchisee. The agreement states the conditions for termination of the agreement, such as failure to meet sales amounts, failure to meet operating standards and so on. The franchisor has discretionary power to assess all aspects of the franchisor's business, so the agreement does not provide adequate protection for the franchisor in the face of termination of the agreement and the franchisor's refusal to renew the agreement.

The law is basically for the protection of human interests. In every legal relationship, including an agreement, there must be a balance between the parties so that there is no conflict of interest. But in reality this not always the case. There is always the possibility that one of the parties will have a stronger position both in terms of economics and mastery of technology or a specific invention. In this condition, one of the parties has more opportunities to benefit more in an agreement. Often the compilers determine conditions that are quite burdensome, especially when the agreement is presented in the form of a standard agreement, because the provisions of the agreement can be used to anticipate the possibility of a loss on his part. In this case, one of the parties only has the option to accept or reject the agreement.

#### **4 Research Methods**

The method used in this research is juridical normative, namely by collecting scientific knowledge materials that come from legal regulations, books, literature, scientific papers, and the internet which are closely related to this scientific work.

#### **5 Analysis and Discussion**

The franchise agreement is a standard agreement made by the franchisor. The franchisor sets terms and standards that must be followed by the franchisee that allows the franchisor to cancel the agreement if the franchisor judges that the franchisee cannot fulfill his obligations. From a legal perspective, franchising involves the areas of contract law, particularly agreements on licensing, law on trade names, brands, patents, models and designs. These areas of law can be grouped into the field of contract law and the field of intellectual property rights. Regulations regarding franchising issues in Indonesia are currently specifically regulated in Government Regulation Number 42 of 2007 concerning Franchising, because the Government considers that this franchise system is an effective way to increase the sluggish economic activities of our country and provide opportunities for the community in particular. to economically weak groups to try to do business. Therefore, the Government issued these laws and regulations.

As it's known that the franchisor and the franchisee are bridged by a contract called a franchise agreement. There is no other relationship apart from that. Therefore, every action taken by each party against the third party will be solely responsible for each of these parties and usually these respective principles of responsibility are clearly found in the franchise contract. But in addition to the general legal principles regarding respective responsibilities in certain cases it feels unfair if these are applied consequently, so that later legal theories develop (in Indonesia it is still the idealized law or *ius constituendum*) which also imposes responsibility on the franchisor for actions taken by the franchisee against third parties. So in this case the franchisee changes its position from the original, such as distributor responsibility to the responsibility that applies to an agent.

As for what constitutes a juridical justification for the withdrawal of the responsibility of a franchisee being the responsibility of the franchisor for actions taken by the franchisor, are as follows.

- a. Intere's justification, in this case if there is influence over significant interference from the franchisor on the course of the franchise business which is actually managed by the franchisee.
- b. External Justification, that is, if there is an impression on the public in such a way that it seems as if the action was carried out by or on behalf of the franchisor.

The Franchise Agreement is made by the parties, namely the franchisor and the franchisee, both of whom are qualified as legal subjects, either as a legal entity or only as an individual. Franchise agreement is an agreement between the franchisor and the franchisee where the franchisor gives the franchisee the right to produce or market goods (products) and/or services (services) within a certain time and place agreed under the supervision of the franchisor, while the franchisee pays a certain amount of money for the rights he has acquired.

Franchise agreement as a form of standard agreement. A standard agreement is a written agreement made only by one of the parties, often even printed in forms made by one of the



parties, in which case when the agreement is signed, generally the parties only fill in certain informative data. with little or no changes in the clauses, where the other parties to the agreement have no opportunity or only a few opportunities to negotiate, change the clauses made by either party, so that usually the standard agreement is very biased. The standard terms in the agreement are the terms of a written concept contained in several agreements that are still to be made, the number of which is not certain, without first negotiating the contents.

An agreement is born at the second an agreement or agreement is reached between the two parties regarding the main things of what is the object of the agreement. A written statement between another party as a franchisee and Alfamart is a formal requirement that must be fulfilled in the franchise agreement. Fulfillment of this formal requirement is regulated in Article 4 paragraph (1) Government Regulation Number 42 of 2007 concerning Franchising is a requirement so that an agreement can be said to be valid. The agreement in the franchise requires a kind of closed agreement in its clause, when the franchisor and the franchisor do not provide space for other competitors to enter their business activities. A closed agreement is regulated in Article 15 of Law Number 5 Year 1999 concerning Anti-Monopoly and Unfair Business Competition, namely:

- a. Business actors are prohibited from entering into agreements with other business actors which state that the party receiving the goods or services will only resupply the goods and or services to certain parties and / or at certain places.
- b. Business actors are prohibited from entering into agreements with other parties which state that the party receiving certain goods and or services must be willing to buy other goods or services from the supplying business actor.
- c. Business actors are prohibited from entering into agreements regarding certain prices or discounts on goods and or services, which contain requirements that the business actor receiving goods and or services from the supplying business actor: (1) Must be willing to buy other goods and or services from the supplying business actor; or (2) Will not buy the same or similar goods and or services from other business actors who are competitors of the supplying business actor.

If the franchise agreement refers to the provisions of Article 1338 of the Civil Code, it is applicable as law for the party that makes it and causes legal consequences in accordance with Article 1315 of the Civil Code only for other parties as franchisees with Alfamart. Article 1339 of the Civil Code further stipulates this agreement, namely if it is linked to this minimarket franchise agreement, this agreement is not only binding on what is stated solely in the agreement, but also on what according to the nature of the agreement, is desired by justice, customs or laws.

The development of business ventures, especially those related to the expansion of the business area, the distribution of products and marketing can also be realized through the enactment of franchise contracts, they contain many elements of a license agreement, besides that there are many elements of distribution, the rest is a combination of work agreements, agents and buying and selling. On the other hand, a franchisee or party who carries out business activities as a business partner of the franchisor according to the terms and procedures provided, also requires certainty that the business activity that is being carried out by him has been thoroughly tested and is indeed a product that is preferred by him. the community and will be able to provide a benefit (financially) for him, this means that in fact it only has one aspect that both the franchisor / franchisor and business partners who receive the franchise / franchisee crave, namely the issue of legal certainty and protection.

As a result of the existence of a franchise agreement, what are called rights and obligations will arise. Rights and obligations in the field of property law are relative. It is said to be

relative because this legal relationship can only be prosecuted and defended against certain parties bound by the agreement. Certain parties that are bound are other parties as franchisees with Alfamart who are bound, either because of statutory provisions or because of a franchise agreement made by the parties themselves. In general, the franchisor's obligations can be formulated as follows:

- a. Provide all information relating to intellectual property rights as well as inventions and business characteristics, for example the management system and the way of selling and structuring and distributing which are the typical characteristics of the franchise object.
- b. Providing coaching assistance, guidance and training to franchisees.

The franchisor's rights can be formulated as follows:

1. Supervise the implementation of the franchise.
2. Obtain regular reports on the course of franchisee business activities.
3. Require franchisees to maintain the confidentiality of intellectual property rights as well as inventions and business characteristics.
4. Require that franchisees do not carry out similar, similar, or activities which directly or indirectly may lead to competition with the business activities being franchised.
5. Receive royalty payments in the form, type and amount deemed appropriate by him.
6. Upon terminating the franchise, ask the franchisee to return all data, information and information obtained by the franchisee during the franchise period.

The franchisee's obligations can be formulated as follows.

- a. Carry out all instructions given by the franchisor in order to exercise intellectual property rights as well as inventions and business characteristics, for example, are special characteristics that are the object of the franchise.
- b. Provides flexibility to the franchisor to carry out periodic and sudden supervision and inspection, to ensure that the franchisee has implemented the franchise properly.
- c. Provide reports either periodically or upon special request from the franchisor.
- d. Purchasing certain capital goods and certain other goods in the framework of implementing a franchise from the franchisor.
- e. Maintain the confidentiality of intellectual property rights and inventions and characteristics.
- f. Registering a franchise.
- g. Make royalty payments with an amount that has been mutually agreed upon.
- h. If there is termination of the franchise, it is obligatory to return all data, information and information obtained.

Franchisee rights can be formulated as follows.

1. Obtain all kinds of information relating to intellectual property rights as well as findings from business characteristics such as management systems and ways of selling and structuring and distribution methods which are characteristics that become the object of the franchise needed to carry out a given franchise.
2. Obtain assistance from the franchisor for all kinds of ways of utilizing and exercising intellectual property rights as well as inventions and business characteristics such as management systems and ways of selling and structuring and distribution methods which are special characteristics that are the object of the franchise.

A franchise agreement between another party as a franchisee and Alfamart can be said to be a franchise agreement because it fulfills the following characteristics.

- a. There is a written collaboration between the other party as a franchisee with Alfamart. This agreement is written in a franchise contract signed by both parties.

- b. During this collaboration. The franchisor allows the franchisee to use the trademark and business identity of the franchisor in the agreed business field.
- c. During the duration of the franchise agreement, the franchisor provides business setup services and provides ongoing assistance to the franchisee.
- d. During the collaboration, the franchisee follows the terms set by the franchisor which form the basis of a successful business.
- e. During this collaboration, the franchisor controls the results and activities in his position as the leader of the system and cooperation.
- f. Ownership of a business entity that is run by the franchisee is entirely with the franchisor. By law, the franchisor and the franchisee are two separate legal entities.

In the minimarket franchise agreement between the other party as a franchisee with Alfamart, seen from the contents of the contract, it is entirely determined by the franchisor, and the franchisee cannot change any of the provisions in the agreement. Based on the legal validity of the contract, this is allowed, even considered valid when the franchisee has signed an agreement contract. The validity of the agreement contract is contained in Article 1320 of the Civil Code regarding the validity of the agreement. Based on Government Regulation Number 42 of 2007 concerning Franchising, franchise agreements must be made in writing in Indonesian, this is in accordance with Article 4 paragraph 1 of the Civil Code. Franchise agreements do not need to be in the form of a notary deed, the parties can make their own under the hands of the provisions of the Civil Code.

Standard agreements need to be disciplined because from the point of view of the contents of the agreement there is an imbalance in the rights and obligations of the parties, and standard agreement clauses tend to benefit the business actor as well as burdens the opposing party, so it is necessary to monitor the use of standard agreements so that they are not used as tools to harm others. Therefore, it is necessary to provide legal protection for the parties stipulated in Article 18 of Law Number 8 Year 1999 concerning Consumer Protection.

The prohibition on the use of a standard agreement is related to two things, namely the content and form of writing, in terms of its content it is prohibited to use a standard agreement which contains unfair clauses, whereas in terms of the form of writing, these clauses must be written simply, clearly and clearly so that can be read and understood well by the parties. The law requires business actors to immediately adjust the standard agreement used with the provisions of the law, if in reality a standard agreement that is not in accordance with the above provisions is still used, the legal consequence is null and void, meaning that the clause is deemed non-existent, because it has no legal force. The prohibition and requirements regarding the use of standard agreements above are intended to place the parties' positions equal / balanced based on the principle of freedom of contract and to prevent possible actions that are detrimental to the parties due to ignorance, unbalanced positions and so on which may be used by the parties to obtain advantage. When viewed from the point of view of the principle of balance, showing the strength of the franchisee is very weak even if there is no strength at all. All clauses of the contents of the agreement come from the franchisor. The franchisees feel they are not given the opportunity to have an opinion in making the agreement. The objectives of each party that may be different cause difficulties in carrying out this agreement.

Franchise agreements that are born because they are promised become law for the franchisee and franchisor in a franchise business system that is run. In other words, all agreements (including franchise agreements), for the purpose of legal certainty, become laws for the parties. The terms agreed in the franchise agreement can be enforced on the parties bound in it, namely the franchisee who on the one hand is the user / lessee of the franchise's

license. Therefore, in making a franchise agreement, the parties must understand the material in the agreement, especially with regard to position, both with respect to the rights and obligations that exist in them.

In general, a franchise agreement gives the franchisor the right to "terminate the franchise relationship" for one reason, such as the death of the franchisee, bankruptcy or bankruptcy, failure to meet payments or not meeting sales targets. Regarding legal protection for franchise recipients, an example can be taken, namely the imbalance in the contractual relationship between the franchisee and the franchisor in a franchise agreement.

In practice, the franchise agreement made by the franchisor and franchisee generally uses a standard agreement, which is an agreement in which there are terms made by one of the parties. What is meant here is that the party compiling the contract is the franchisor, while the party receiving the contract is the franchisee. The franchisor offers the contract to the franchisee, where the franchisee has no choice to sign or reject the contract. The franchisor has the freedom to arrange clauses in the contract so that the franchisee is in a position to accept the contract that is presented to him.

In practice, the parties who are bound in a standard agreement do not have a problem regarding standardization in terms of relationships in general, but question the position between the parties in the standard agreement, this is because most franchise agreements are in the form of standard agreements prepared by the franchisor, so of course the giver franchisees tend to pay attention to protection for their own interests and pay less attention to protection for franchisees.

This can result in an unbalanced bargaining position which ultimately results in an unbalanced position for the parties in the franchise agreement. A balanced position can be achieved if the parties have a balanced bargaining position, because the situation leads to inconsistencies in the common law concept. Meanwhile, the basis for balance and suitability is explicitly stated in Article 1320 of the Civil Code regarding an agreement which in essence states that a legal agreement between the parties can be reached if the parties are in a balanced position.

The balanced position in an agreement is based on the principle of balance. The principle of balance is an effort so that the parties to the agreement achieve a balanced condition. If we explore it more deeply, it can be concluded that the principle of balance is an agreement that is influenced by the bargaining position of the parties. This balanced position is formed based on the principle of equal rights, which is reflected in the principle of balance. However, the interests of the parties formulated in the clauses of an agreement can create a more or less balanced situation. However, in a standard agreement it can occur when one of the parties composing the agreement takes advantage of a more favorable situation due to the formulation of an unnatural clause that only benefits one of the parties. This principle of balance is, in principle, a principle constructed from good faith, reasonableness and propriety, all of which require balance. The content of the contract and the implementation of the contract can be used as a parameter to test whether the contract that has been done by the parties has binding power with due regard to the principle of balance.

In the practice of franchising in Indonesia, there is often an impression that the position of the franchisee is in a weaker position while the franchisor is in a stronger or dominant position, this is not entirely true. The position of the parties in the franchise agreement, both at the time of contract negotiation, at the signing of the contract and when the contract is running, is greatly influenced by the bargaining position of both the franchisor and the franchisee. In practice, making agreements that usually have been made by the franchisor while the franchisee only knows and then signs without being able to refuse or participate in

giving an opinion, often results in many problems starting from the absence of an agreement of the will of the parties and there is an impression as if there is no there is a balanced position from the position of the parties in the agreement.

Acts against the law in general are regulated in Article 1365 of the Civil Code, which states that every act of breaking the law that brings harm to other people, obliges the person who, due to the lawfulness of publishing the loss, compensates for the loss. The elements contained in the article are: (1) committed against the law; (2) causing losses to business competitors; (3) committed by mistake (intentionally or negligently); and (4) there is a causal relationship between actions and losses.

Matters that are regulated by laws and regulations are things that must be obeyed by the parties in the franchise agreement, if the parties comply with all of these regulations, problems will not arise in the implementation of the franchise agreement however, irregularities often occur, and cause irregularities. default, default occurs when one of the parties does not carry out the obligations as stated in the franchise agreement. The existence of default can cause harm to one of the parties, for the losses incurred in the implementation of this franchise agreement, legal protection for the injured party applies, namely the injured party has the right to claim compensation from the party causing the loss, it is possible that the injured party gets compensation, is form of legal protection provided by law in Indonesia.

Forms of default carried out by the parties in the franchise agreement, default from the franchisee can be in the form of not paying franchise fees on time, doing things that are prohibited from doing the franchisee, performing services that are not in accordance with the franchise system and others. Default from the franchisor can be in the form of not providing facilities so that the franchise system does not work properly, does not want to help franchisees in the difficulties faced when conducting a franchise business and others. A form of unlawful action that usually occurs in the Alfamart franchise agreement is that the franchisee falsifies data and/or information and/or other information about himself which may affect the Franchisor in giving consent to the Franchisee to use and / or take advantage of the exclusive rights of the franchise.

## **6 Conclusion**

The principle of balance in the franchise agreement between the franchisee and Alfamart as the franchisor cannot be removed in the context of its relationship to the basic principles of contract law, namely freedom of contract, consensualism, binding strength and good faith. Each of these principles does not stand in isolation, but overlaps and complements the existence of a contract. Imbalances can be found when the franchise agreement is terminated due to failure to meet sales targets and operating standards, Alfamart has discretionary power to assess all aspects of the franchisee business so that the agreement does not provide adequate protection for the franchisee. Judging from the contents of the contract as a whole is determined by Alfamart, and the franchisee cannot change the slightest provisions in the agreement. Even though it has fulfilled the validity requirements of the agreement based on Article 1320 of the Civil Code, there are weaknesses for the franchisee who do not have the opportunity to have an opinion in making the agreement.

## **References**

- [1] A. Fitri & Anny. Kamus Indonesia Bergambar, (Makasar: Galeri Lontara, 2008).
- [2] Badriyah, Siti Malikhun. "Perlindungan Hukum terhadap Pihak Adherent dalam Perjanjian Baku". (Majalah Ilmiah Fakultas Hukum Universitas Diponegoro, Vol. XXX No. 1, 2001).
- [3] Budiono, Herlien. Asas Keseimbangan bagi Hukum Perjanjian Indonesia – Hukum Perjanjian Berlandaskan Asas-Asas Wigati Indonesia, (Bandung: Citra Aditya Bakti, 2006).
- [4] Ekotana, Suryono. Cara gampang Bikin Franchise, (Jakarta: Media Pressindo, 2009).
- [5] Fuady, Munir. Hukum Kontrak dari Sudut Pandang Hukum Bisnis, (Bandung: Citra Aditya Bakti, 2009).
- [6] Hardjowidigdo, Rooseno. Perspektif Perjanjian Franchise, (Jakarta: BPHN, 1993).
- [7] Hernoko, Agus Yudha. Hukum Perjanjian, Asas Proporsionalitas dalam Kontrak Komersial, (Jakarta: Prenada Media Group, 2012).
- [8] Isnaeni, M. Perkembangan Prinsip-Prinsip Hukum Kontrak sebagai Landasan Kegiatan Bisnis di Indonesia, dalam pidato peresmian Penerimaan Jabatan Guru Besar dalam Ilmu Hukum pada Fakultas Hukum Universitas Airlangga, 16 September 2000.
- [9] Juajir, Sumardi. Aspek-Aspek Hukum Franchise dan Perusahaan Transnasional, (Bandung: PT Citra Aditya Bakti, 2005).
- [10] Marzuki, Peter Mahmud. "Batas-Batas Kebebasan Berkontrak", (Jurnal Yuridika, Volume 18, Nomor 3, Mei Tahun 2003).
- [11] Patrick, Purwahid. Perjanjian Baku dan Syarat-syarat Eksonerasi, (Semarang: Pentaraan Dosen hukum, 2006).
- [12] Patrik, Purwahid. Dasar-Dasar Hukum Perikatan, (Bandung: Mandar Maju, 2004).
- [13] PT Sumber Alfaria Trijaya, Tbk, Pertumbuhan Perusahaan, 2020.
- [14] Salim, H.S. Perkembangan Hukum Kontrak diluar KUHP Perdata, (Jakarta: Raja Grafindo Persada, 2007).
- [15] Santiago, Faisal. Pengantar Hukum Bisnis, (Jakarta : Mitra Wacana Media, 2012).
- [16] Setiawan, R. Pokok-Pokok Hukum Perikatan, (Bandung: Putra Bardin, 2009).
- [17] Sidabalok, Janus. Hukum Perlindungan Konsumen di Indonesia. (Bandung: Citra Aditya Bakti, 2006).
- [18] Soekanto, Soejono, Pengantar Penelitian Hukum, (Jakarta : Universitas Indonesia, 2014).
- [19] Suharnoko. Hukum Perjanjian: Teori dan Analisa Kasus, (Jakarta: Prenada Media, 2004).
- [20] Sutedi, Adrian. Hukum Waralaba, (Jakarta: Ghalia Indonesia, 2008).
- [21] UNCTC, Transnational Corporation and Technology Transfer : Effects and Policy Issues, New York, United Nations, 1987.
- [22] Widjaja, Gunawan. Seri Hukum Bisnis Waralaba, (Jakarta: PT Raja Grafindo Persada, 2001).
- [23] Wiryono Projodikoro. Azas-azas Hukum Perjanjian, (Bandung: Mandar Maju, 2010).