

## **Application of Franchising as a Form of Agreement Object**

**Clarissa Aurelia Susanto<sup>1</sup> Urbanisasi<sup>2</sup>**

Faculty of Law, Universitas Tarumanagara, West Jakarta City, Province of DKI Jakarta,  
Indonesia<sup>1,2</sup>

Email: [clarissa.205210050@stu.untar.ac.id](mailto:clarissa.205210050@stu.untar.ac.id)<sup>1</sup> [urbanisasi@fh.untar.ac.id](mailto:urbanisasi@fh.untar.ac.id)<sup>2</sup>

### **Abstract**

The approach in this study uses a normative juridical approach. The juridical approach is an approach to the problem by looking at it from the point of view of the applicable laws and regulations, especially regarding the application of franchising as a form of agreement. Therefore, this type of research is normative relating to the principles and norms in the implementation of franchise agreements, namely between the franchisor and the franchisee. In this paper using primary and secondary data obtained from library materials in the form of laws, government regulations, the Civil Code and literature related to problems and derived from legal materials such as primary legal materials, secondary legal materials and tertiary legal materials. A franchise agreement is a form of agreement involving the franchisor as the franchisor and the franchisee receiving the franchise. This legal relationship gives rise to binding rights and obligations for franchisors and franchisees. The franchise agreement includes an innominate agreement that is regulated outside the Criminal Code. Legal sanctions in violation of franchise agreements are regulated in Article 16 of Government Regulation Number 42 of 2007 where legal sanctions in the form of administrative sanctions are carried out through 3 (three) stages, namely giving written warnings, fines and/or revocation of franchise registration certificates.

**Keywords:** Franchise Agreement, Franchisor And Franchisee.



This work is licensed under a [Creative Commons Attribution-NonCommercial 4.0 International License](https://creativecommons.org/licenses/by-nc/4.0/).

### **INTRODUCTION**

The form of business cooperation is marked by the increasing number of foreign businesses in Indonesia as a result of the globalization era. In the field of trade and services, one of the businesses currently developing is franchising. Franchising is a business system that is distinctive or has characteristics regarding business in the trade or service sector, in the form of types of products and forms cultivated, corporate identity, marketing plans and operational assistance. Franchising is based on an agreement called a franchise agreement. This form of franchise agreement involves at least 2 (two) parties, the first party is called the franchisor, namely as the owner of a product, service or operating system that is typical with a certain brand which is usually patented. The second party, namely franchisees as individuals and/or entrepreneurs who run a business using trade names, namely logos, designs, brands owned by the franchisor by paying royalties to the franchisor. The franchise agreement includes business tips in the form of methods and procedures for making, selling and servicing carried out by the franchisor and also providing assistance in advertising and promotion as well as consulting services.

The legal relationship between the franchisor and the franchisee is also regulated in a contract in the form of the rights and obligations of the parties. This means that there is a relationship between the parties to comply with the contents of the agreement which, if violated, can result in legal consequences in accordance with the agreement in the franchise agreement. The relationship between franchisor and franchisee is a reciprocal relationship. On the one hand, the franchisee provides assistance to the franchisor and on the other hand the franchisee provides benefits to the franchisor so that both of them work together in improving the marketing of their products in the community through procedures determined by the

franchisor. With capital assistance from franchisees who also share the risk and have high dedication, growth can run smoothly and easily. So the balance of rights and obligations between franchisor and franchisee must be realized in a franchise agreement in order to provide certainty or legal protection for both parties. One example of a developing franchise in Indonesia is KFC, as well as examples of local franchise businesses currently developing as well, namely Indomart and Alfamart, which have outlets in various places.

The franchise business has grown rapidly in Indonesia, even though before 1997 there was no specific legal basis governing franchising. Prior to the existence of this regulation, the franchise agreement made by the parties was an anonymous agreement so that the agreement was carried out based on a written agreement only which refers to the principle of freedom of contract contained in article 1338 of the Civil Code which states that "all agreements made legally are valid as laws. for those who make it." These agreements cannot be withdrawn other than by agreement of both parties, or for reasons stated by law. Such agreement must be executed in good faith.

Thus, franchise agreements that are not regulated specifically in the Criminal Code can develop, because the system adopted in the Criminal Code is an open system and contains a principle of freedom of contract. The presence of a franchise business as a business system has its own characteristics in economic life, it can also cause problems in the legal field because this franchise business is based on an agreement that gives rise to the rights and obligations of the parties, so that mutually beneficial legal protection is needed for each party. . Problem Formulation: What is the legal relationship between franchisor and franchisee in the franchise agreement? What are the legal sanctions in the franchise agreement for the franchisor and franchisee in the event of a violation?

Research Objectives: To determine the legal relationship between the franchisor and the franchisee in the franchise agreement. To find out the legal sanctions in the franchise agreement for the franchisor and franchisee in the event of a violation. Research Benefits: Theoretical Benefits, Theoretically the results of this research are expected to provide benefits for the development of legal science and are useful for researchers and reading materials in libraries as reference material for further research regarding the application of franchising as a form of agreement. Practical Benefits Practically, the results of this research are expected to contribute ideas to business/company activities, as well as the community, business actors who are especially involved in the business/business world.

## **RESEARCH METHODS**

The approach in this study uses a normative juridical approach. The juridical approach is an approach to the problem by looking at it from the point of view of the applicable laws and regulations, especially regarding the application of franchising as a form of agreement. Therefore, this type of research is normative relating to the principles and norms in the implementation of franchise agreements, namely between the franchisor and the franchisee. In this writing using primary and secondary data obtained from library materials in the form of laws, Government regulations, the Civil Code and literature relating to issues and originating from legal materials such as primary legal materials, secondary legal materials and tertiary legal materials.

## **RESEARCH RESULTS AND DISCUSSION**

### **Legal relationship in the franchise agreement between franchisor and franchisee**

In contract law, a principle called consensualism applies. This term comes from the Latin word consensus which means to agree. An agreement is also called an agreement, meaning that two parties have agreed or agreed on something. The meaning of the principle of consensualism

is that basically the agreement and the agreement that arises because of it have been born from the moment the agreement is reached or it can be said that the agreement is valid if it has agreed on the main matters and no formalities are needed. Article 1313 of the Criminal Code states that an agreement is "an act by which one person or more binds himself to one or more people", and article 1319 of the Civil Code states "all agreements, whether they have a special name, or are not known by a certain name, subject to the general regulations contained in this chapter and the previous chapter".

An agreement that has a special name or what is often referred to as a nominate agreement, which is an agreement known in the Civil Code, such as buying and selling, leasing, borrowing, and exchanging. While agreements that are outside the Criminal Code grow and develop in society, such as franchises, joint ventures, contracts of work are usually referred to as innominate agreements. In simple terms, franchising is defined as "a privilege granted by the franchisor to the franchisee with a number of obligations or payments." In a business format, the definition of franchising is "a business arrangement in which a company (the franchisor) gives rights to an independent party or franchisee to sell the company's products or services under the rules set by the franchisor". From this understanding, it can be seen that franchise agreements are included in agreements that are outside the Criminal Code or what are often referred to as innominate agreements.

The definition of franchising according to Article 1 of Government Regulation Number 42 of 2007 concerning Franchising, is a special right owned by a person or business entity for 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. In an agreement there are relationships that exist between the parties. "This relationship does not arise by itself. The legal relationship is created from legal actions that give rise to legal relations and give birth to the rights and obligations of the parties. One party has the right to obtain achievements while the other party is obliged to fulfill achievements. This requires attention to legal involvement in an effort to provide a guarantee framework for the protection of each party.

### **Completion of legal sanctions for the franchisor and franchisee in the event of a violation of the franchise agreement**

Arrangements regarding the terms of termination of the agreement by one of the parties which may result in the imposition of legal sanctions against him are regulated in Government Regulation Number 42 of 2007 Article 16 states: "If the franchisor terminates the franchise agreement with the franchisee before the expiration date of the franchise agreement and then appoints a new franchisee, the issuance a franchise registration certificate (STPW) for new continued franchisees will only be given if the main franchisee has resolved all the problems that arise as a result of the termination set forth in the form of a joint statement." As for the stages of administrative sanctions in the form of written warnings, freezing up to the revocation of the STWP, giving written warnings is carried out if:

1. Not carrying out and fulfilling tax obligations to the government in accordance with applicable regulations.
2. There are reports or complaints from authorized officials or holders of intellectual property rights that the franchisor or franchisee has violated intellectual property rights such as copyrights or brands.

The stages of STPW freezing are carried out if:

1. Three consecutive written warnings have been given with an interval of one month each, namely in which the person concerned does not carry out his obligations.

2. If the person concerned violates intellectual property rights and is charged with committing an economic crime or other acts related to his business activities.

While the revocation of STPW is regulated in Government Regulation Number 42 of 2007 article 2 in which the revocation of STPW is carried out if during the 6 (six) month period of suspension they still do not carry out their obligations or have been sentenced by a judicial body that has permanent legal force.

## **CONCLUSION**

A franchise agreement is a form of agreement involving the franchisor as the franchisor and the franchisee who receives the franchise. This legal relationship gives rise to binding rights and obligations for franchisors and franchisees. The franchise agreement includes an innominate agreement that is regulated outside the Criminal Code. Legal sanctions in violation of franchise agreements are regulated in Article 16 of Government Regulation Number 42 of 2007 where legal sanctions in the form of administrative sanctions are carried out through 3 (three) stages, namely giving written warnings, fines and/or revocation of STPW.

Suggestion: In running a franchise business, it is hoped that the franchisee will pay attention to special and specific provisions regarding the franchise system so that the parties can know their rights and obligations. In the development of franchise businesses, it is hoped that the government can play an active role and provide convenience, especially in granting credit to small entrepreneurs who will develop their businesses.

## **BIBLIOGRAPHY**

[http://galeriukm.web.id/peluang\\_usaha](http://galeriukm.web.id/peluang_usaha).

[http://www.Paroki\\_teresa.tripod.com/tonikum\\_waralaba](http://www.Paroki_teresa.tripod.com/tonikum_waralaba).

Joseph Mancuso & Donald Boroian, *Pedoman Membeli & Mengelola Franchise*, PT.Delapratasa, Jakarta, 1995.

M. Yahya Harahap, *Segi-Segi Hukum Perjanjian*,. Alumni, Bandung, 1986.

Moch. Basarah. H& H.M. Faiz Mufidin, *Bisnis Franchise dan Aspek-Aspek Hukumnya*, PT. Citra Aditya Bakti, Bandung, 2008.

Rooseno Hardjowidigdo, *Perspektif Pengaturan Perjanjian Franchise*, Makalah Pertemuan Ilmiah Tentang Usaha Franchise dalam Menunjang Pembangunan Ekonomi, Jakarta BPHN, 14-16 Desember 1993.

Subekti, *Hukum Perjanjian*, PT. Intermasa, Jakarta, 1992.