

Menantea Franchise Agreement Case Analysis Reviewed from the KUHPer

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Abstract

The development of the Indonesian economy was followed by the development of legal forms of agreements. Nowadays many people start a business by buying a business system or what is known as a franchise which in Indonesian is called a franchise. Franchising comes from the word Wara which means more and Profit which means profit. Literally franchising means that franchising is a business that provides more profits. In addition, according to the Indonesian Franchise Association (AFI), what is meant by franchising is a system of distributing goods or services to end customers, where the owner (franchisor) gives rights to individuals or companies (franchisees) to carry out business with a brand, name, system, procedure and ways that have been determined beforehand in a certain period of time covering a certain area. Menantea is a tea beverage product that was founded in 2021. Menantea does not only sell tea drinks but also food in the form of chicken and potatoes. Menantea officially opened on April 10 2021. However, only 11 days later, alias on August 21 2021, they are reported to have offered a franchise. In fact, this is something that is not fair. Because, a business that can be offered as a franchise must have an STPW (Franchise Registration Certificate), one of the conditions is to fulfill the profit offering prospectus. In this case the author will discuss legal protection and legal remedies that can be taken by the Franchisee in the Menantea franchise agreement.

Keywords: Agreement, Menantea Franchise



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INTRODUCTION

The development of the Indonesian economy was followed by the development of legal forms of agreements. One of the causes of the development of contract law in Indonesia is one of the factors caused by the fast-paced business activities of the community. One form of the development of the civil law is the existence of an anonymous agreement. An anonymous agreement (innominaat) is an agreement that is not regulated in the Civil Code, but develops in society. An anonymous agreement was made possible because of the nature of Book III of the Civil Code which has an open system and the principle of freedom of contract regulated in Article 1338 of the Civil Code. Nowadays many people start a business by buying a business system or what is known as a franchise which in Indonesian is called a franchise. Franchising comes from the word Wara which means more and Laba which means profit. Literally franchising means that franchising is a business that provides more profits. In addition, according to the Indonesian Franchise Association (AFI), what is meant by franchising is a system of distributing goods or services to end customers, where the owner (franchisor) gives rights to individuals or companies (franchisees) to carry out business with a brand, name, system, procedure and ways that have been determined beforehand in a certain period of time covering a certain area. Franchise business or franchising is one of the ways to enter the business world which is very popular in the world, considering that franchise products or services are the majority of products or services that are global and have high quality.

One example of a franchise agreement that is currently booming is Menantea. Menantea is a tea beverage product that was founded in 2021. Menantea does not only sell tea drinks but

also food in the form of chicken and potatoes. Menantea was created by Jehian Panangian Sitanding and Jerome Polin Sijib who are well-known influencers on social media, such as Instagram and Youtube. Menantea beverage products have a characteristic, which is not only made from tea, but added with syrup and fruit. The development of the Menantea franchise business is quite significant. This cannot be separated from the influence of Jerome and Jehian who have symbolic capital in the form of symbols as influencers who are able to inspire young people through their YouTube content. Apart from that, Jehian and Jerome also have social capital because their social networks are very broad. This has an impact on the increase in Menantea franchise business branches. Reported from Instagram “@Menantea”. Now the Menantea store already has various branches in 76 cities in Indonesia, totaling around 207 branches.

In this case, many partners admit that they have never made a profit and have even sold less than 10 drinks in one day. Even though the franchise costs incurred are not small, for the initial investment value of opening one outlet, a potential partner must spend IDR 125 million. Then, if you want to add machinery and equipment, an additional fee of IDR 50 million will be charged. This case got bigger when several Menantea franchise partners decided to form an action group via the Twitter account @MenanteaHarapan. The Menantea franchise was observed selling its shares with a target of IDR 2.9 billion on the Bizhare.id website. Until now, there have been 2,503 people who bought the shares with profits that investors can generate at Rp. 730 million to Rp. 900 million per year. If successful, the payback period for this business only takes about 38 to 27 months. But the facts on the ground are different, some partners only manage to sell five to 10 Menantea cups a day.

Based on the description above, what is being discussed in this paper is "Legal Protection of Franchisees in the Menantea Franchise Agreement". Formulation of the problem. What is the legal protection for Franchisees in the Menantea franchise agreement? What are the legal remedies that can be taken by the Franchisee in the Menantea franchise agreement? Research Objectives: To determine the legal protection of franchisees in the Menantea franchise agreement. To find solutions/legal remedies that can be taken against problems between the franchisee and the franchisor in menantea cases. Benefits of Research: Theoretically, this research is expected to contribute ideas to knowledge in the field of law. Practically, to find out how protection and legal remedies are for Franchisees in the Menantea franchise agreement.

RESEARCH METHODS

In this study, the authors used the library research method which described systematically, normatively and accurately the subject matter of the problem. Library research is research by obtaining information by using existing facilities, such as libraries, books, newspapers, journals, the internet, etc. In this study secondary data is available in the form of legal documents that have relevance and scientific writings from the results of the research. The research was carried out with a review of Article 1338 of the Civil Code.

RESEARCH RESULTS AND DISCUSSION

Legal Protection for Franchisees in the Menantea Franchise Agreement

Business expansion with a franchising system is growing rapidly in Indonesia, pursuant to Article 1 point 1 of Government Regulation Number 42 of 2007 concerning Franchising, it is explained that franchising is a special right owned by individuals or business entities, whether they are legal entities or not, to a business system in which there are characteristics in order to market goods or services that have been proven successful and can be utilized by other parties within an agreement framework. In developing its business, Menantea must fulfill 6 (six)

criteria as stated in Article 3 of Government Regulation Number 42 of 2007 concerning Franchising. The criteria in question are:

1. Has business characteristics. Franchising must have an advantage or difference that is not easily imitated compared to other similar businesses, and makes consumers always look for the characteristics in question. The characteristic of the business owned by Menantea is selling tea drinks with various flavors.
2. Proven to provide benefits. Based on Article 3 letter b Presidential Regulation Number 42 of 2007 concerning Franchising it is explained that: "Franchises must meet the following criteria: proven to have provided benefits;" What is meant by "proven to have provided benefits" is referring to the experience of the Franchise Giver who has owned it for more than 5 (five) years and already has business tips for overcoming problems in the course of his business, and this is proven by the continued survival and development of the business. it profitably. It is known that Menantea's first store officially opened on April 10, 2021. However, only 11 days later, alias on August 21, 2021, they are reported to have offered a franchise. In fact, this is something that is not fair. Because, a business that can be offered as a franchise must have an STPW (Franchise Registration Certificate), one of the conditions is to fulfill the profit offering prospectus. Described in Appendix 1 of the Regulation of the Minister of Trade Number 31/M-DAG/PER/8/2008 concerning the Implementation of Franchise, one of which must contain financial statements for the last 2 (two) years, namely financial reports or balance sheets of the Franchise Company Giving the Company 2 (two) consecutive years - successively counted backwards from the time of application for the Franchise Offer Prospectus.
3. Have standards for services and goods and/or services offered. Arrangements regarding the standardization of raw materials, processing methods, franchise management are contained in written operational standards made by the management of the franchisor and must be obeyed by all franchisees.
4. Easy to teach and apply. The franchisor should have a business that is easy and practical to run, so that the franchise offered can be run by all parties, both experienced and inexperienced in similar businesses. franchise.
5. There is continuous support. Continuous support can be seen from mutual support activities between franchisees and franchisors to advance and carry out franchise activities.
6. Intellectual Property Rights that have been registered. Intellectual Property Rights are closely related to franchising such as copyrights, patents and trade secrets.

In this case Menantea has offered its business to become a franchise business in just 11 days from the opening of the business. This of course has violated the applicable provisions, because within 11 days it cannot be seen how the Business Prospectus is. In the absence of this Prospectus, the Franchisee cannot see the business prospects of the Menantea franchise.

Legal protection that can be carried out to the parties, namely the subject of the franchisor and the franchisor, namely preventive and repressive legal protection. Preventive legal protection aims to prevent the occurrence of a dispute that is carried out by both parties in the franchise business and provides signs or limitations in carrying out obligations in the franchise. Meanwhile, repressive legal protection focuses on dispute resolution mechanisms in the event of problems at a later date. This legal protection is the final legal protection where the protection provided is in the form of sanctions such as fines, imprisonment, and additional penalties given if there is a dispute or a violation has been committed. In this case, because the Menantea franchise business has been implemented, the legal protection that can be applied is Repressive Legal Protection.

Legal Remedies That Can Be Taken By Franchisees In The Menantea Franchise Agreement

In the Indonesian legal system, there is no legal provision that specifically regulates the settlement of disputes in franchise agreements and the choice of resolution forum. The choice of forum, whether with regard to judicial institutions or non-judicial institutions, also needs to be linked to the choice of law and included in the agreement. If the choice of law and the choice of forum have been regulated and included in the franchise agreement, then implementing the agreement can work well. Based on the data that the author gets for dispute resolution efforts in each franchise agreement, that the parties will resolve the problems that occur in terms of terminating the agreement unilaterally from the giver or franchisee, namely: Deliberation to reach a consensus of the parties and through arbitration.

Any violations committed by the franchisor shall be subject to sanctions, namely: Administrative sanctions in the form of written warnings imposed on the Franchise Giver who violates the provisions referred to in Article 8 which does not provide ongoing guidance, Article 10 which does not register the franchise offer prospectus. Written warnings can be given a maximum of 3 (three) times within a period of 2 (weeks) from the date the previous warning letter was issued. Administrative sanctions in the form of fines are imposed on the Franchisor who does not register the prospectus as referred to in Article 10 after the issuance of the 3rd (three) written warning letter. The fine as referred to is subject to a maximum of Rp. 100,000,000 (one hundred million rupiah). And administrative sanctions in the form of revocation of the Franchise Registration Certificate, are imposed on the Franchisor who does not provide guidance to the Franchisee as referred to in Article 8 after the issuance of the 3rd (three) written warning letter.

CONCLUSION

Legal protection that can be done is preventive and repressive legal protection. In this case, because the Menantea franchise business has been implemented, the legal protection that can be applied is Repressive Legal Protection. Meanwhile, repressive legal protection is carried out through deliberations to reach consensus by the parties in resolving disputes. In the event that deliberations for consensus do not succeed in reaching an agreement, both parties will settle it legally through litigation or court.

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Suggestions, it is hoped that the Government will pay more attention to franchises that are not registered either in the franchise offer prospectus or the franchise agreement. For the sake of creating certainty and legal protection for the parties to the franchise agreement, it is better if the franchise agreement is regulated more explicitly and clearly regarding the rights and obligations of each.

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