

Legal analysis of legal protection for parties in a franchise agreement

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Abstract

Franchise Business is one way to gain profits faster. Franchise is an agreement rather than the sale of a product/service with a Franchisor trademark where the Franchisor will assist the recipient of Franchisee in the field of marketing, management and others where the franchisee will pay Fee for rather than using Franchise brand owners. Emerging from this Franchise business in Indonesia continues to grow in practice will bring up phenomena / problems both from the economic and legal aspects in particular that require a more comprehensive arrangement to create a legal certainty, legal protection and mutually beneficial cooperation.

In running this Franchise Business, it is regulated relating to the Agreement referring to the written Law stipulated in the Criminal Code. The implementation of this Franchise Agreement is to avoid one of the aggrieved parties namely Franchisor and Franchisee. At present, Indonesia does not yet have a law specifically regulating this franchise business, but Government Regulation No. 42 of 2007 regulates franchising providing a legal basis for legal protection for those who run franchise businesses in Indonesia.

Keywords: business, franchise, paying fee, legal protection

1. Introduction

As is known today with advances in Technology, all human activities experience dynamic changes, as well as in the business world with this IT progress, business people will always look for new innovations in developing their business. Which is one of the new innovations carried out by the perpetrators business is the development of its business through a Franchise system which is currently better known as "Franchise". This system is for some entrepreneurs who will develop their business seen as effective and appropriate in the development of a company, this is because it does not require direct investment but involves collaboration with other party. The emergence of this Franchise business brings a logical consequence to those related to law, this is because a legal institution will be needed to regulate the business in order to create legal certainty and protection for those who will be involved in this franchise business.

With the ability of the development of technology and knowledge will produce a new or innovative thing, either in the business world as a result of this will bring change and development, or bring changes to employers will be able to offer the excess capabilities possessed by the company to the parties for the progress of the company.

Franchise in the practice of the business world has been known internationally for a long time. Even though it was only legally regulated in Indonesia in 1997 with the issuance of the Republic of Indonesia Government Regulation No.16 of 1997 dated June 18th, 1997 concerning Franchising, and Decree of the Minister of Industry and Trade 259 / MPP / Kep / 1997 July 30, 1997 Regarding the Provisions and Procedures for the Implementation of the Franchise Business Registration and Then has been amended by Republic of Indonesia Government Regulation No.42 of 2007, as well as the Minister of Trade Regulation of the Republic of Indonesia concerning Implementation rather than Franchising.

Franchising is a form rather than a form of business development that has received attention rather than an

entrepreneur who will develop his business internationally can do several options methods, and the simplest to the most complex.

This franchise business is currently developing a lot in Indonesia such as: Food, Salon, Workshop, Pharmacy, etc. This business opportunity is very wide open and the owner of the franchise is also always helping to develop franchise rights holders in various ways. Franchising in the world of trade is one system that is considered to be very profitable and has been proven by a variety of national and international companies.

In general what is said by this franchise is the granting of the right by the franchisor to the franchise to use the business characteristics or characteristics of the business identifier in the field of trade or services in the form of products and forms including company identity (logo, brand, company design, use of marketing plans and giving assistance with extensive, time, hours of operation, clothing and appearance of the employees) so that the business characteristics or identifying characteristics of the franchise's business and services are the same as the business or trade business or services of the franchisor.

By emerging from this Franchise business in Indonesia which is increasingly widespread and developing, in practice there will be phenomena / problems arising from economic and legal aspects in particular that require a more comprehensive arrangement to create legal certainty, legal protection and cooperation mutually beneficial.

Law is basically a protection for the benefit of humans. In terms of each legal relationship including an agreement has a balance between the parties so that there is no conflict of interest between the parties. But in reality it is not always the case that there is always the possibility that one party has a stronger position both economically and from mastery rather than technology. In this condition, one party has more opportunities to benefit in an agreement. Often the constituent parties will determine the conditions that are quite

burdensome especially the contract is presented in the form of a standard contract, because the provisions in the agreement can be used to anticipate the possibility of losses from the parties.

The legal arrangements regarding running a franchise business are largely determined by the franchise agreement made by both parties. The creation of a business contract is a very important business cooperation process to avoid matters / disputes between parties considering the contract made by the parties everything will be poured out concerning the implementation of cooperation and become a law for the parties who make it.

As is known, basically every agreement made by the parties including this franchise agreement has a validity period, and will end automatically with the expiration of the period of giving the franchise which is regulated in the agreement to grant this franchise, unless extended or renewed by the parties. In the Decree of the Minister of Industry and Trade No. 259 / MPP / KEP / 1997 Article 8 which regulates the franchise mentioned that the period of the agreement made is determined to be valid for at least 5 (five) years.

In making an agreement contract made by the parties given freedom by law to determine the material of the agreement with whom they will bind each other in an agreement insofar as it does not conflict with the legal terms of the agreement referred to in Article 1320 of the Criminal Code which states that: Agreement made it will have binding power as an Act for both parties. The principle of freedom of contract does not mean that without limitation in its development there has been government interference in an agreement to be held. In the franchise agreement the limitation can be seen from the obligation of the parties to include certain clauses in the agreement made. It is aimed by the law maker to provide legal protection.

2. Problem formulation

Based on the background stated above which is the Formulation of the Problem are as follows:

1. What is the arrangement of the Franchise agreement that applies to the Parties?
2. What is the Legal Protection in the Franchise Agreement in the Legal System in Indonesia?

3. Research methods

3.1 Types of research

Legal research conducted is Normative Juridical Legal Research, namely the approach taken based on the main law by examining theories, concepts, legal principles and legislation related to this research.

3.2 Data sources

Legal materials obtained from Secondary Data are sourced from Research Library (Library Research).

3.3 Data collection techniques

The technique used in this study is document study technique, namely data obtained from the relevant literature.

3.4 Analysis techniques

The entire data that has been obtained will be analyzed qualitatively or known as qualitative descriptive analysis. Where the overall data collected will be analyzed systematically.

4. Discussion

1. Arrangement of the Franchise Agreement for the Parties

Franchising is a form of business development that gets the attention of entrepreneurs who will develop their business. That there are five types of business development methods, including:

- a. Through international trade by means of exports and imports.
- b. With licensing
- c. Franchising / giving franchises
- d. Establish a joint venture company
- e. Conduct direct investment with comprehensive ownership, or through mergers, consolidations and acquisitions.

In conducting the Agreement between the Parties that bind themselves in Indonesia, it is regulated in the Third Book of the Civil Code Article 1313 which states that: "Acts by which one person or more ties himself to one or more other people". From this event a relationship will arise. the law between two or more people called the Engagement in which there are rights and obligations of each party.

There are several principles in the Agreement Law, including:

a. Principle of Consensuality

That in an agreement and an agreement that arises after birth is reached after an agreement, as long as the parties to the agreement do not specify another. This principle is in accordance with Article 1320 of the Civil Code regarding the terms of the legal agreement.

b. Principle of Freedom of Contract

Is: The Parties in a free agreement to determine the material / content of the agreement insofar as it does not conflict with public order, decency and propriety. Azas is clearly reflected in Article 1338 of the Criminal Code which states that all agreements made legally binding as a Law for them who made it.

R. Subekti argues that: The Principle of Freedom Contracting is a matter of arguing that everyone is basically allowed to make a contract (agreement) that contains and of any kind as long as it does not conflict with the law, decency and public order.

Freedom in contracting does not mean that the parties can make contracts (agreements) freely, but still must heed the legal requirements of a contract / agreement specified in Article 1320 of the Civil Code.

Based on this, Munir Fuady made it clear that "The Principle of Freedom Contracts" gives freedom to the parties to make or not make a contract, as well as the freedom to self-regulate the contents of the contract made.

The Principle of Contract Freedom as stipulated in Article 1338 of the Criminal Procedure Code essentially states that there is freedom to make any contract insofar as it is not contrary to law, order and morality.

According to Roscoe Pound, as quoted by Munir Fuady, there are several Contract Theories based on the achievements of both parties, namely:

1. **Theory of Desire (Will Theory):** This theory of desire emphasizes the importance of desire (will or intend) from the party who gives the promise. The size of the existence

of force applies and the substance of a contract is measured from that desire. According to this theory the most important thing in a contract is not what the parties do in the contract but what they want.

2. **Bargaining Theory - Bargaining Theory:** This theory is a development of the theory of "equal value" and is very well placed in countries that adhere to the Common Law system. The same theory of value teaches that a contract is only binding as far as what is negotiated (bargaining) and then approved by the parties .
3. **Theory of Value (Equivalent Theory):** It is a theory that a new contract is binding if the parties to the contract provide equal or equal value.

R. Subekti stated that "Everyone is free to make any agreement, as long as it does not violate public order or morality, which is generally the regulation contained in Book III because Book III is a supplementary law rather than a law that is compelling.

Principle of Freedom Contracting includes five types of freedom, including:

- a. Freedom of the parties to close or not close the contract.
- b. Freedom determines with whom the parties will close the contract.
- c. Freedom of the parties determines the form of the contract.
- d. Freedom of the parties determines the contents of the contract
- e. The freedom of the parties determines how to close the contract.

This freedom of contract cannot be interpreted as an infinite freedom, because in freedom of contract it still has freedom. The principle of freedom of contract, as stipulated in Article 1338 of the Criminal Procedure Code, explains that: "All contracts that are legally made will be binding as an Act for the parties to the contract.

The principle of freedom of contract and the principle of binding as an Act in one Article means:

1. Both legal principles must not conflict with one another.
2. The new contract will bind as a law to the parties to the contract, if in the making it is fulfilled the principle of freedom of contract which consists of five kinds of freedom.

The principle that states that the parties must fulfill what they receive as their respective obligations because the agreement is a law for the parties who will hold it and the power that will bind is considered the same as the strength of the law so that the term *pacta sunt servanda* means the agreement is binding The binding of the parties in an agreement is not solely limited to what is agreed upon, but also to several other elements as long as it is desired by habits and moral propriety.

Article 1320 of the Criminal Procedure Code requires that a contract has occurred and therefore it will bind the parties since an agreement on the main elements in the contract occurs. In other words, the contract is valid if an agreement has been reached on the main elements of the contract and no formalities are needed.

The binding power of a contract is born when there is an agreement, or known as the principle of consensuality, where the parties that promise have agreed to bind themselves in an agreement.

2 Legal Protection in Franchise Agreements Against Parties Which is one of the objectives of the law is to realize justice as a condition for happiness and prosperity rather than society.

Soedjono Dirjosisworo argued that the Purpose of Law is: To protect human interests. But because these interests contradict each other, then it is impossible for the law to provide full protection against one interest, and ignore the interests of others. Because not fully protection from the interests of one person, means ignoring the interests of people, the other partially or completely.

Meanwhile, according to Sudikno Mertokusumo the law is to function as protection rather than human interests, so that human interests are protected, then the law must be enforced, and the implementation of the law can take place normally, peacefully, but it can also occur due to legal violations.

As a result of the existence of differences in conflicting human interests, the law must find a way to resolve the problem, namely by considering the two types of conflicting interests, so that there is a balance. So the law shows its efforts on settlers who make a balance between interests - interests which are in essence contradictory, so that each will get as much as possible what is acceptable, which in essence cannot satisfy all parties.

Legal protection is an illustration of the workings of the legal function to realize rather than legal objectives, namely justice, benefit and legal certainty. The form of legal protection given to legal subjects is in accordance with the rule of law, both preventive and refresive, both written and unwritten to enforce legal regulations.

The principle of legal protection against the Government's actions rests on and derives from the concept of recognition and protection of human rights. The principles of legal protection in Indonesia are the foundation of Pancasila as an Ideology and State Philosophy.

Philipus M. Jadjon stated that Legal Protection for the people included two things:

- a. Preventive Legal Protection, which is a form of legal protection whereby the people will be given the opportunity to submit their objections or opinions before rather than a government decision to get a definite form.
- b. Refresive Legal Protection is: It is a form of legal protection which is more aimed at resolving disputes.

The legal basis for regulating legal protection in Indonesia is referring to the formulation of Article 27 (1) of the 1945 Constitution which reads: "All citizens are at the same position in law and government and are obliged to uphold the law and government with no exceptions. More continued Article 28 D paragraph (1) of the 1945 Constitution which reads: "Every person has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law.

Article 28 paragraph (5) of the 1945 Constitution which reads: "To uphold and protect Human Rights in accordance with the principles of a democratic legal state, the implementation of Human Rights is guaranteed, regulated and set forth in legislation".

Law Protection and Enforcement is very important because it embodies:

1. **Upright Supremacy of Law:** Supremacy of Law is that law has absolute power in regulating human relations in various kinds of life. In other words, that all actions of citizens and Governments are always based on applicable

law. The Supremacy of Law will not be realized if applicable rules are not enforced well by the community and law enforcement officers.

2. **Upright Justice:** The purpose of the main law is to bring justice to every citizen. Every citizen can enjoy his rights and carry out his obligations which are a manifestation of justice. This can be realized if the rules are enforced
3. **Realizing Peace in Life in the Community:** Life that is colored by a peaceful atmosphere is the hope of everyone. Peace will be realized if everyone feels protected in all areas of life. This will be realized if the applicable rules are implemented.

The role of the Government in terms of maintaining legal certainty and legal protection is very important. Where the Government must not issue implementing regulations that are not regulated by law or that are contrary to the law. If this happens then the court must declare that such regulations will be null and void by law, meaning that they are never considered so that the consequences of the existence of these Regulations must be restored in the past. However, if the government still does not want to revoke the rules that have been declared null and void, this will turn out to be a political problem between the Government and the Lawmakers.

Normative legal certainty is when a regulation is made and promulgated in a certain way because it regulates clearly and logically. Obviously in the sense that it does not cause doubt and is logical in the sense that it becomes a norm system with other norms so that it does not clash or cause norm conflicts. The matters stated above are legal protection to every Indonesian citizen in general but in running the business of this Franchise so that Franchising will be able to develop rapidly means that Indonesia must have clear laws as that legal certainty and legal protection for those who run the franchise business in Indonesia, both for Franchisors and Franchisees.

The milestone of legal certainty to run this franchise business is the issuance of Republic of Indonesia Government Regulation No. 16 of 1997 concerning Franchising which was later revoked and replaced with PP No.42 of 2007 concerning Franchising.

In matters relating to the Agreement, the Franchise agreement is a special agreement because it is not found in the Civil Code. This franchise is based on a written agreement between the Franchisor and the Franchisee, which then the franchisee is obliged to register the agreement The franchise is in addition to that the Franchisor must register the prospectus from the Franchise offer before making a Franchise Agreement with the Recipient of the Franchise.

5. Conclusion

a. In conducting the Agreement between the Parties in the field of franchise business that ties itself in Indonesia is regulated in the Third Book of the Civil Code Article 1313 which states that: "Acts by which one person or more ties himself to one or more other people". this will arise a legal relationship between two or more people called the Engagement in which there are rights and obligations of each party.

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- c. Legal certainty in running this franchise business is the issuance of Republic of Indonesia Government Regulation No. 16 of 1997 concerning Franchising which was later revoked and replaced with PP No.42 of 2007 concerning Franchising.

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