

Legal Analysis Of Franchise Agreements In The Culinary Sector Based On The Regulation Of The Minister Of Trade In Indonesia

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Abstract: *This study analyzes the legal aspects of franchise agreements in the culinary sector based on the Regulation of the Minister of Trade No. 71 of 2019. Franchising as a rapidly growing business model in Indonesia presents legal challenges related to contract transparency, legal certainty, and the balance of rights and obligations between franchisors and franchisees. This study uses a normative legal approach by analyzing laws and regulations, legal doctrines, and franchise business practices in Indonesia. The results of the study show that although the regulation has provided a clear legal framework, its implementation still faces obstacles, especially in the aspect of supervision and understanding of business actors regarding their rights and obligations. The franchisor has protection over intellectual property rights and operational control, while the franchisee is guaranteed through the franchisor's obligation to provide technical support and training. However, weak supervision and lack of legal education for franchisees still cause unfair practices in franchise agreements. Dispute resolution through arbitration is preferable to litigation because it is faster and more flexible, but cost constraints and procedural understanding are still major obstacles. Therefore, it is necessary to strengthen regulations, increase supervision, and legal education for business actors so that franchise agreements can run more transparently, fairly, and provide legal certainty for all parties involved..*

Keywords: *Legal Certainty, Civil, Franchise Agreement*

INTRODUCTION

Franchising is one of the fastest-growing business models in Indonesia, especially in the culinary sector.¹ These systems enable business replication by using proven concepts, brands, and operational systems. In Indonesia, the franchise industry in the culinary sector is one of the main drivers of economic growth by involving thousands of business actors from various scales, both large companies and Micro, Small, and Medium Enterprises (MSMEs). With the franchise system, MSMEs can expand the market and increase their competitiveness with support from franchisors in aspects of management, marketing, and technology.

Regulations related to franchising in Indonesia are regulated in various regulations, including Law No. 7 of 2014 concerning Trade and Regulation of the Minister of Trade No. 71 of 2019 concerning

¹ Suprpto, Y., Herman, H., Fiona, F., Yovanka, K., & Vincent, T. (2023). Analisis Strategi Pemasaran Global (Global Marketing) Perusahaan McDonald's Di Pasar Indonesia. *Jurnal Mirai Management*, 8(1), 169–177.



the Implementation of Franchises.² This regulation aims to provide legal certainty, regulate the rights and obligations of the parties to the franchise agreement, and ensure that this business model runs with the principles of fairness and transparency. However, in practice, there are still many challenges faced by franchisors and franchisees, both in terms of licensing, profit sharing, legal protection, and dispute resolution mechanisms.

One of the main problems in culinary franchise agreements is the imbalance in the agreement between franchisors and franchisees.³ Franchisees are often in a weaker position economically and legally compared to franchisors. Some clauses in franchise agreements are often made with franchisor dominance, such as provisions regarding high royalties, obligations to purchase raw materials from certain suppliers, and restrictions on developing product innovations. This can lead to unfair business practices and potentially harm the franchisee in the long run.

In addition, there are still gaps in supervision and law enforcement of the implementation of franchise agreements in Indonesia.⁴ Although regulations have regulated the obligation to register franchise agreements with the Ministry of Trade, many franchises operate without meeting these requirements. As a result, in the event of a dispute between the franchisor and the franchisee, the legal position of the franchisee is often weak because the agreement made is not officially registered or does not include adequate protection provisions.

Resolving disputes in franchise agreements is also a challenge.⁵ Many franchise agreements list arbitration clauses as the primary dispute resolution mechanism, but the high cost of arbitration is often an obstacle for franchisees seeking justice. On the other hand, the litigation mechanism in the courts also has disadvantages, such as a lengthy process and uncertainty in legal decisions. As a result, many franchise disputes end without a satisfactory settlement for both parties.

From the perspective of legal protection, the aspect of intellectual property rights in culinary franchising is also often a source of problems.⁶ The trademarks, recipes, and business methods that

² Situmeang, T., Jayadi, H., & Setiawan, L. (2024). PENERAPAN ASPEK KEPASTIAN HUKUM DALAM PERJANJIAN LISENSI DAN WARALABA PADA PUTUSAN NOMOR 394/Pdt. G/2010/PN. Jkt. Sel. *Honeste Vivere*, 34(1), 137–152.

³ Santoso, M. (2024). Asas Keseimbangan Dalam Perjanjian Bisnis Franchise. *Notary Law Research*, 6(1), 136–147.

⁴ Meiyona, U. R., Asfia, H., & Karami, Q. (2021). IMPLEMENTASI FUNGSI PERATURAN WALIKOTA NO. 79 TAHUN 2010 TENTANG PEMBATAAN USAHA WARALABA MINIMARKET DI KOTA YOGYAKARTA (STUDI KEBERADAAN USAHA INDOMART DAN ALFAMART DI DAERAH ISTIMEWA YOGYAKARTA). *JOURNAL EQUITABLE*, 6(2), 86–102.

⁵ Ridha, I. (2023). PELAKSANAAN PERJANJIAN FRANCHISE RUN RUN SIGNATURE DRINK DI PROVINSI RIAU. *Journal of Sharia and Law*, 2(3), 858–873.

⁶ Hariyani, I., Serfiyani, C. Y., & Purnomo, R. S. D. (2024). *Hak Kekayaan Intelektual Sebagai Jaminan Kredit*. Penerbit Andi.

are part of the franchise agreement must be properly protected so that there is no abuse or infringement of rights by either party. However, in some cases, franchisees do not get adequate legal protection against the investments they invest in the development of the franchise business. This shows the need to strengthen regulations related to the protection of intellectual property in the franchise system.

This research is interesting because it examines the legal aspects of culinary franchise agreements based on applicable regulations in Indonesia. With the growing franchise industry in this sector, a deeper understanding of the legal aspects that govern the relationship between franchisors and franchisees is urgently needed. This study will provide an overview of how current regulations are implemented in practice as well as identify potential improvements that can be made to create a fairer and more sustainable franchise system.

The urgency of this research lies in the need for an in-depth evaluation of the effectiveness of the Regulation of the Minister of Trade No. 71 of 2019 in providing balanced legal protection for franchisors and franchisees. With the increasing number of franchise disputes in Indonesia, analysis of dispute resolution mechanisms and implementation of existing regulations is very important. This research is expected to provide recommendations for policymakers to improve the effectiveness of regulations and create a more conducive franchise business environment.

This research differs from previous studies that have focused more on the economics and business aspects of franchising. This study focuses on the legal analysis of culinary franchise agreements with a normative and juridical approach. Thus, this research is expected to make a theoretical and practical contribution to the development of franchise regulations in Indonesia and become a reference for academics, legal practitioners, and business actors engaged in the culinary franchise sector. The formulation of this research problem is: 1) How is the application of the Regulation of the Minister of Trade No. 71 of 2019 in protecting the interests of franchisors and franchisees in franchise agreements in the culinary sector in Indonesia? 2) What is the dispute resolution mechanism regulated in the culinary franchise agreement in Indonesia?

METHOD

Research Type

Normative legal research is an approach that focuses on the analysis of laws and regulations, legal principles, doctrines, and legal literature to assess the implementation of legal norms in practice.⁷ The study is both theoretical and conceptual, with a primary focus on primary legal sources such as laws and court rulings, as well as secondary legal sources such as expert opinions and legal journals. In the context of research on franchise agreements in the culinary sector, this approach serves to evaluate the applicable regulations and identify legal loopholes that can cause problems in business practices. In addition, normative legal research is prescriptive, which not only describes

⁷ Law, P. (2020). Urgensi Omnibus Law Dalam Percepatan Reformasi Regulasi Dalam Perspektif Hukum Progresif. *Jurnal Penelitian Hukum De Jure*, 20(2), 233–244.

the existing legal conditions, but also provides recommendations on how regulations should be implemented or improved to ensure more effective legal protection for the parties involved in franchise agreements.

Research Approach

In normative legal research, there are two main approaches used, namely the legislative approach and the conceptual approach.⁸ The legislative approach focuses on an analysis of relevant regulations, such as the Regulation of the Minister of Trade No. 71 of 2019 and the Civil Code, to understand the legal framework that governs franchise agreements. Meanwhile, a conceptual approach is used to examine legal principles, such as freedom of contract, good faith, and legal certainty, to assess how these concepts are applied in the practice of franchise agreements in the culinary sector.

Legal Ingredients

In business law, franchising is a contract-based business model between the brand owner (*franchisor*) and the party who obtains the right to use the brand (*franchisee*). Therefore, regulations in this sector aim to balance the interests of both parties and ensure legal certainty in franchise business operations. This regulation covers various aspects, including licensing, operational standards, intellectual property rights protection, and contract transparency to ensure fair business practices and not harm any party. In Indonesia, provisions regarding franchises have been regulated in Government Regulation Number 42 of 2007 as well as other derivative regulations that regulate the licensing mechanism and implementation of franchise agreements.

One of the important elements of the government's policy towards franchising is the franchisor's obligation to provide transparent information to franchisees before signing an agreement.⁹ This transparency includes aspects of financial statements, business strategies, rights and obligations of each party, as well as business risks, which aim to prevent business practices that are detrimental to franchisees due to a lack of accurate information. In addition, franchisors are also required to provide continuous support to franchisees, both in the form of training, marketing, and supervision of operational standards to maintain the quality of services or products. Government oversight of unfair business competition practices is also part of this policy, especially to prevent the abuse of the franchisor's dominant position that could harm franchisees, for example through exclusive agreements or restrictions on cooperation with certain suppliers. In this case, authorities such as the Business Competition Supervisory Commission (ICC) play a role in ensuring that franchise policies do not create monopoly practices or unfair business competition.

Globally, franchise regulations vary in each jurisdiction. Some countries emphasize more protection for franchisees to prevent exploitation, while others give franchisors more flexibility in determining their business policies. The United States, for example, through the Federal Trade

⁸ Aryani, C. (2021). Reformulasi Sistem Pembentukan Peraturan Perundang-Undangan Melalui Penerapan Omnibus Law. *Jurnal USM Law Review*, 4(1), 27–48.

⁹ Kountul, E. I. M. (2024). TRANSFORMASI SISTEM HUKUM ANGLO-SAXON DALAM PRAKTIK BISNIS WARALABA (FRANCHISE) DI INDONESIA. *LEX ADMINISTRATUM*, 12(5).

Commission (FTC), requires franchisors to submit a Franchise Disclosure Document (FDD) before an agreement is signed, while the European Union places more emphasis on the protection of intellectual property rights and the transparency of business relationships. In Indonesia, the main challenge in the implementation of franchise policies is to ensure franchisor and franchisee compliance with existing regulations and adjust policies to technological developments and business digitalization. Along with the development of digital-based and e-commerce franchise models, more adaptive regulations are needed to ensure that franchise policies remain relevant, effective, and able to provide legal protection for all parties involved in the franchise business.

Data Collection Procedure

1. Identify the problem
2. Problem formulation
3. Collection of legal materials
4. Analysis of legal materials
5. Conceptual and legislative approach
6. Evaluation and discussion
7. Conclusions and recommendations
8. Preparation of research reports

Legal Material Analysis

Analysis of legal materials in normative legal research is carried out by examining various legal sources that are the basis for understanding, interpreting, and evaluating applicable regulations. Primary legal materials, such as laws and regulations, court decisions, and international conventions, are the main references in determining the legal basis that governs a problem. In the context of franchise agreements, regulations such as Government Regulation No. 42 of 2007 and Regulation of the Minister of Trade No. 71 of 2019 play an important role in regulating the contractual relationship between franchisors and franchisees. An analysis of this regulation is carried out to assess the extent to which the regulation provides legal certainty and protection for the parties involved. In addition, court decisions are also significant legal material in describing how legal provisions are applied in practice and providing a jurisprudential perspective on the resolution of disputes related to franchising.

In addition to primary legal materials, this study also uses secondary legal materials, such as expert opinions, scientific journals, and legal literature that serve to enrich normative analysis. The study of secondary legal materials allows researchers to understand how legal concepts are applied and interpreted in a variety of contexts. The conceptual approach derived from legal doctrine provides a theoretical basis in evaluating whether existing regulations are in line with the principles of justice, legal certainty, and contractual balance. Thus, the analysis of legal materials is not only limited to the understanding of normative texts, but also includes a critical evaluation of the implementation and effectiveness of regulations in franchise business practices in Indonesia

DISCUSSION

The law of the agreement emphasizes the importance of good faith in the execution of contracts, which in the context of culinary franchising requires franchisors to provide transparency of information related to business prospectuses, operational systems, and potential business risks. Franchisees, on the other hand, have an obligation to run the business in accordance with the terms of the contract and maintain the brand reputation that has been given by the franchisor. This principle serves as the main foundation in ensuring that the contractual relationship runs fairly, where both parties act with honesty and sincerity in carrying out their obligations. Good faith is a crucial factor that not only regulates the process of forming a contract, but also its implementation, so that the balance of rights and obligations between franchisors and franchisees is maintained.¹⁰

Legal certainty in franchise agreements is realized through the contract registration mechanism as stipulated in applicable laws and regulations, including in Articles 3 to 6 of the Regulation of the Minister of Trade Number 71 of 2019. This registration aims to ensure that the agreement made is not only legally valid, but also enforceable in the event of a dispute in the future. The principle of legal certainty provides protection for the parties so that their business relationships run within a stable and reliable legal framework. In addition, the legal theory of the agreement also regulates default, which occurs when one of the parties fails to fulfill the obligations that have been agreed. In the case of franchises, the default can be in the form of the franchisor's negligence in providing adequate technical support or training, or the franchisee failing to meet its royalty payment obligations. The legal provisions in the agreement must provide an effective solution to the default, either through litigation, arbitration, or other dispute resolution mechanisms that have been agreed upon in the contract.

Contract law theory is the basis for understanding, regulating, and resolving legal problems in culinary franchising, where the principles of freedom of contract, legal certainty, and dispute resolution play an important role in ensuring a balance between the interests of franchisors and franchisees.¹¹ The effectiveness of the law in a franchise agreement does not only depend on the regulations that have been set, but also on its application and supervision in the field. In practice, even though the Regulation of the Minister of Trade Number 71 of 2019 has provided a clear legal basis, the weak supervision mechanism causes there to still be franchisors who do not comply with registration obligations or convey inaccurate information to franchisees. This situation shows the need for increased administrative oversight to ensure that the rule of law can be applied optimally and provide legal protection for interested parties.

¹⁰ Sari, F. P., Setiawan, P. A. H., & Nurmawati, B. (2024). *Alternatif Penyelesaian Sengketa*. MEGA PRESS NUSANTARA.

¹¹ Hariyani, I., Serfiyani, C. Y., & Purnomo, R. S. D. (2024). *Hak Kekayaan Intelektual Sebagai Jaminan Kredit*. Penerbit Andi.

Dispute resolution in culinary franchising often encounters obstacles due to the limited access of franchisees to available legal mechanisms.¹² Lengthy and high-cost litigation is often an obstacle for franchisees to fight for their rights in court, while supposedly more flexible arbitration mechanisms are often poorly understood by the weaker parties to the contract. This gap reflects that existing legal regulations are not fully responsive to the needs of franchise business actors, especially for franchisees who have limited resources. In addition, low legal awareness among business actors is also a factor that worsens this condition, where many franchisees do not understand their rights and obligations in franchise agreements, making them more vulnerable to exploitation by franchisors.

The effectiveness of law enforcement in the context of culinary franchising has a significant impact on the prevention of future violations.¹³ A legal system that is transparent and consistent in enforcing rules can create a deterrent effect for franchisors who do not comply with regulations, while increasing trust in the legal system. Strengthening supervisory policies, such as stricter registration obligations and the application of strict sanctions for breach of contract, will reduce the risk of unfair business practices. Therefore, the evaluation of the effectiveness of the law in culinary franchising focuses not only on the substance of the regulation, but also includes its implementation and supervision mechanisms. Improving legal education for business actors is also an important step so that they can understand their rights in franchise agreements, so that the legal system can function optimally in creating legal certainty and fair protection for all parties involved in the franchise business.

The existence of a contractual relationship based on transparency and legal certainty is an essential factor in building trust among the parties involved in the franchise.¹⁴ The implementation of regulations that require information disclosure and compliance with operational standards plays a role in creating a more stable business relationship between franchisors and franchisees. The trust that is established not only has an impact on the continuity of the cooperative relationship, but also becomes a crucial element in supporting the success of the culinary franchise business. The industry relies heavily on brand reputation as well as consistency in the quality of products and services, so the implementation of rules that guarantee contract transparency contributes directly to the sustainability and expansion of the franchise business. In addition, regulatory clarity in this sector also supports a business climate that is more conducive to investment and franchise network development, both at the national and international levels.

¹² Suyanto, S., Tanaya, O., Wibowo, J. M., & Astanto, T. J. (2022). *Bisnis Internasional: Strategi dan Tantangan Kontemporer*.

¹³ Kamani, N. K. M. L., & Khaerunnisa, V. (2023). Analisis Hukum Hak Kekayaan Intelektual dalam Kasus Kontroversi Geprek Benu dan Ruben Onsu: Perlindungan Hak Cipta dan Hak Merek dalam Industri Kuliner dan Hiburan. *Jurnal Pendidikan Tambusai*, 7(3), 28586–28597.

¹⁴ Adrian Sutedi, S. H. (2024). *Hukum perizinan dalam sektor pelayanan publik*. Sinar Grafika.

The effectiveness of culinary franchise regulations also has an impact on increasing the competitiveness of national franchises in the global market.¹⁵ Regulations governing fundamental aspects such as contract registration and protection of intellectual property rights ensure that franchising practices in Indonesia meet international standards. Thus, local brands are in a stronger position to compete with global franchises, both domestically and abroad. However, optimizing the positive impact of this regulation requires increased understanding and compliance from business actors. More intensive policy socialization and technical assistance for franchisors and franchisees are needed so that they can effectively implement these regulations. With this step, regulation not only serves as a legal tool that regulates business relationships, but also as an instrument that can encourage more inclusive and sustainable economic growth.

Although the Regulation of the Minister of Trade Number 71 of 2019 has provided a comprehensive legal framework for culinary franchise relationships, the effectiveness of its implementation still faces a number of challenges that indicate the need for regulatory improvements. One aspect that needs to be improved is further details about the rights and obligations of each party in the franchise agreement so that its implementation is clearer and more directed. The current provisions, although they have covered important aspects such as the provision of operational manuals and training by franchisors, are still general and have not fully adapted to the specific needs of various culinary business models. In franchises involving production technology or complex operational methods, franchisors are ideally required to provide more in-depth training, covering both technical and managerial aspects. On the other hand, franchisees also need to obtain more detailed guidelines in managing the business in accordance with the standards set by the franchisor. Lack of clarity in regulations can trigger conflicts due to differences in interpretations of the obligations that must be fulfilled by each party. Therefore, drafting more detailed rules will reduce the potential for disputes while providing stronger guidelines for executing franchise agreements.

In addition, strengthening supervision from the government is the main factor in ensuring the effectiveness of franchise regulations. Currently, there are still many franchisors who have not fully fulfilled their legal obligations, such as registering franchise agreements or providing adequate training for franchisees. This non-compliance often occurs due to weak monitoring systems and lack of strict sanctions for violations committed. Strengthening supervision can be done through the use of digital technology in the registration system and real-time monitoring of business actors' compliance with applicable regulations. The government can develop a digital-based system that allows transparency in the registration of agreements as well as periodic monitoring of the implementation of the obligations of franchisors and franchisees. Periodic audits can also be implemented to detect potential violations early, while the imposition of stricter sanctions, such as revocation of business licenses or significant administrative fines, will improve regulatory compliance. In addition to the role of the government, cooperation with franchise

¹⁵ Wahyudiono, W., Maria, W., & Aminatuzzurho, A. (2019). *MANAJEMEN UMKM Orientasi Peran Stakeholder Dalam Membangun Daya Saing UMKM*. Putra Media Nusantara Surabaya.

associations and the private sector can also strengthen the supervisory mechanism through the development of reporting mechanisms and periodic evaluations of franchise business practices. Improving regulations through more detailed provisions and strengthening supervision will create a more effective legal system in regulating culinary franchise relationships. With stronger legal certainty, trust between franchisors and franchisees will increase, which will ultimately drive stability and growth of the franchise sector as a whole. This step will also support the creation of a fairer and more transparent business environment, where each party has clarity on their rights and obligations. Reforms in franchise regulation reflect the legal commitment to be an instrument that is adaptive to industrial dynamics while supporting economic development based on the principles of justice and legal certainty..

CONCLUSIONS

Based on the findings of the study, it can be concluded that Minister of Trade Regulation No. 71 of 2019 provides a legal framework for protecting both franchisors and franchisees in the culinary franchise sector. Franchisors are protected through the recognition of intellectual property rights and the obligation of franchisees to comply with established operational standards. Conversely, franchisees receive protection through the franchisor's responsibility to provide technical support and adequate training. Although this regulation is designed to create a fair and balanced partnership, its implementation still faces several challenges. The main obstacles include a lack of understanding among the parties involved and weak regulatory oversight, which may lead to conflicts and violations in franchise practices. Regarding dispute resolution in culinary franchise businesses, several legal mechanisms are available, including litigation, arbitration, and mediation. Among these, arbitration is considered the primary option because it offers a faster, more flexible, and confidential process. Mediation is often used to resolve disputes amicably without confrontation, while litigation serves as a last resort when other methods fail. However, dispute resolution still faces issues such as high costs, lengthy procedures, and limited understanding among franchisees about their legal rights. Therefore, strengthening regulations and providing continuous legal education are essential steps to improve the effectiveness of dispute resolution mechanisms in the culinary franchise sector and to ensure optimal protection for all parties involved.

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