

**PROTECTION OF THE BRAND RIGHTS OF THE FRANCHISOR IN  
THE FRANCHISE AGREEMENT****Pierre Senjaya, Dhaniswara K. Harjono, Andrew Betlehn**

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Email: [pierresenjaya@gmail.com](mailto:pierresenjaya@gmail.com)Email: [dhaniswara\\_private@yahoo.com](mailto:dhaniswara_private@yahoo.com)Email: [andrew.betlehn@gmail.com](mailto:andrew.betlehn@gmail.com)**ABSTRACT**

The main problem in this research focuses on how franchise businesses relate to problems that arise and often occur in franchise businesses. On this occasion the researcher explained the problems that emerged clearly. Based on normative juridical qualitative research, it was found that there are many problems in franchise businesses that always arise and the increasing number of franchise businesses appearing in society shows the importance of conducting studies related to legal protection for these businesses in Indonesia. Several ways to minimize the risk of legal problems in a franchise business include making a clear and complete franchise agreement, carrying out *due diligence* before entering into a franchise collaboration, understanding the laws and regulations related to franchise businesses, building good communication between franchisor and franchisee and providing training and education for franchisees. By understanding the legal problems that often occur in franchise businesses and the steps to prevent them, *franchisors and franchisees* can minimize risks and build a successful franchise business

Keywords: Problem, Franchise, Brand

**INTRODUCTION**

In the current era of globalization, it can be seen that economic growth, especially in the business sector, is increasingly increasing and becoming more complex. So, various types of business collaboration continue to increase, develop and perfect the many transactions that have been carried out in Indonesia. The development of this business collaboration has enabled the emergence of new facilities and types of business, one of which is the franchise business sector or more people call it a franchise, which is an alternative to conventional business lines owned by companies. The goal is to increase market reach without burdening the parent company with significant investments .

Franchising, also referred to as "franchisee" in English, is a franchise business relationship which is a form of business collaboration between two parties, namely the franchisor and the franchisee. Simply put, a franchise is the right to market goods, services or services using a registered brand and operating system. Indonesian Civil Law does not consider a franchise agreement to be similar to buying and selling, but the general meaning of a franchise agreement overrides this article. The franchise concept, also known as franchising, depends on how well the business partner can develop and run the franchise business based on whether the business complies with the rules, protocols and systems that the franchisor has created.

Because it is a socio-economic institution in Indonesia, franchising can give rise to legal problems. In a franchise business system, a franchise agreement involves two or more parties, usually the franchisor and the franchise holder. According to Sumardi (1995), the agreed agreement gives the owner of the franchise right or franchisor to another party who is the franchisee the right to create, produce, produce and introduce, sell products and services to

consumers within a certain time period and location that has been determined. agreed together. The franchisee must also pay a fee to the owner or franchiser in return. With a franchise agreement agreed between the franchisor and franchisee, the franchisor can use the franchisor's brand in its operations. Agreements like this usually have clauses.

1. Rights and obligations: The relationship between the franchisor and the franchisee is regulated by the rights and obligations stated in the franchise agreement, including the franchisee's right to use the franchisor's trademark
2. How to use the brand: Ways and limitations of franchisees in using the franchisor's brand.
3. Royalty payments: The cost of a franchisee's obligation to pay for the rights to use the franchisor's brand.

This research aims to present a more in-depth and comprehensive study of the legal implications in franchise businesses. It is hoped that this research can provide a positive contribution in the form of constructive input for the development and improvement of related regulations, thereby creating a more conducive and sustainable franchise business ecosystem in Indonesia. Apart from that, it can provide a deeper understanding of the legal aspects of franchise agreements in order to prevent potential conflicts between the parties involved in the franchise business, especially in protecting *the franchisor's brand rights* .

## **THEORETICAL BASIS**

### **Franchise**

The term "franchise" has its roots in the French word "affranchir" which means "free" or "completely free from restrictions". In a business context, franchising refers to the freedom given by an entrepreneur (franchisee) to another party (franchisee) to run their own business in a certain area and in a certain way. In Indonesia, in order to popularize the business linkage system in the field of marketing, terminology is needed that is easier to understand, read and pronounce. The word "franchise" was chosen because it has familiar roots in Indonesian, namely the word "wara" which means "more" or "special" and the word "laba" which means "profit", which means a business that can produce more or greater profits. Lots. As a result, in Indonesia, the term "franchise" is better known and used as such.

This agreement regulates how Franchisors can utilize their intellectual property, brands, inventions, or business characteristics. The rights granted to Franchisees can be in the form of:

- Use of trademarks
- Use of trade names
- Use of business systems
- Use of copyright
- Use of patents
- Use of trade secrets.

Rooseno Harjowidigno stated that franchising is a structured business model with characteristics that differentiate it from other forms of business. These distinctive characteristics include:

- Type of Goods or Products: Franchises offer standardized and uniform products or services, following the concept set by the franchisor.
- Business Forms: Franchise business forms can vary, ranging from retail stores, restaurants, to services.
- Corporate Identity: Franchises have a strong, easily recognizable identity, such as a logo, design, branding, and even employee clothing or uniforms. This identity reflects the image and values that the franchisor wants to convey.

- **Marketing Strategy:** Franchises generally follow a structured and tested marketing strategy, which has proven effective in attracting customers.
- **Operational Assistance:** Franchisors provide a variety of operational support and assistance to franchisees, including training, operational guidance, and access to technology systems.

Franchising, as defined by Tri Raharjo from [salamfranchise.com](http://salamfranchise.com), is a distribution or marketing system for products and services in which a parent company (franchisor) grants a non-exclusive license to individuals or other companies (franchisees) to run small and medium businesses (SMEs). ) by using a business system that has been tested and standardized within the agreed time period and area.

V. Winarto defines a franchise as a symbiotic, mutualistic partnership relationship between two parties, namely an established entrepreneur and a relatively new or weaker entrepreneur. This partnership aims for mutual benefit, especially in businesses that focus on providing products and services directly to customers.

Franchising is basically a marketing system for products, services or services. Which contains an agreement between the franchisor and the franchisee, where the franchisor gives permission to the franchisee to use its business system, trademark and/or intellectual property rights so that the franchisee can trade certain products, Java or services under the brand, trademark, or its symbol with an initial fee, trust fee, or both (Widodo S., 2016).

### **Brand rights**

Holders of registered trademarks that are recognized by the state have the privilege to use their own trademarks or allow other parties to use them.

Article 4 states that a mark submitted for registration must have distinctive characteristics that can be distinguished by consumers. This means that brands for certain goods or services must not have similarities or similarities with other existing brands.

#### **Brand Rights according to Experts**

Intellectual property law experts also provide views on trademark rights.

**Sudargo Gautama:** Brand rights are intangible rights and are attached to the brand itself. The legal owner has the right to use the mark exclusively and prevent other parties from using it without permission.

**HR Chorny (Russian Legal Expert):** Brands function as markers of identity and differentiation between similar products, goods and/or services produced by different companies.

### **RESEARCH METHODS**

This research uses normative juridical methods, which focus on legal analysis and interpretation based on written legal materials. This method emphasizes normative aspects or legal norms contained in statutory regulations, court decisions and other legal documents. The application of normative juridical methods makes it possible to explore and deepen normative aspects in the legal field in depth. This approach makes an important contribution, especially in the development of legal theory, positive legal analysis, and providing a legal perspective on certain problems.

### **RESULTS AND DISCUSSION**

Franchising in Indonesia guarantees security and profits for the franchisor and franchisee

through a written agreement that they mutually agree to.

The following are some important components of a franchise business:

- a. A franchise is a privilege in the form of intellectual property rights to run a business with a certain brand and system; And
- b. Franchises are established based on an agreement.

Formal Definition of Franchisor and Franchisee:

- a. A franchisor is defined as a party that owns and/or produces goods or services under a certain brand and grants or licenses the exclusive right to market these goods or services to other parties.
- b. Franchisee (Franchisee): A franchisee is a party who receives exclusive rights from the franchisor to market goods or services under a certain brand.
- c. Characteristics of a Franchise Partnership: There is a division of exclusive rights between the franchisor and the franchisee, including intellectual property rights and industrial property rights.
- d. Specific Operating Areas: Franchisees, also known as franchisees, have the right to select and operate in certain mutually agreed upon areas. For example, they can choose to operate only in one area or area on the island of Java.
- e. Compensation from the Franchisee to the Franchisor: The Franchisor receives compensation from the Franchisee in the form of initial fees, royalties and other costs that have been agreed upon by both parties.
- f. The franchisor sets quality standards for franchisees and carries out routine supervision to maintain standards.
- g. Franchisors have an obligation to provide initial training to franchisees and continuously repeat them to improve skills and understanding.

Franchising is economically defined as a privilege given to certain individuals or groups to run a business using brands, trade names and operating systems owned by other franchisors, which allows franchisees to produce, arrange, deliver and market goods, services, or certain services, franchising offers benefits for both parties: the franchisee gets a business that has a proven and guaranteed reputation, while the franchisor can expand the reach of his business more quickly and efficiently. According to law, a franchise is a legal agreement between the franchisor (franchisor) and the franchisee. In this agreement, the franchisor gives the franchisee the right to use their operating system, brand and trade name in running a mutually agreed business. Franchisees, on the other hand, are obligated to pay franchise fees and follow the rules and procedures set by the franchisor. A legal agreement between two parties that regulates the use of the other party's brand, trade name and operating system to carry out a business using the other party's brand, trade name and operating system. That the concept of franchising is not the same as the franchise concept, the Institute for Management Education and Development (LPPM) was the first to use the term "franchise" as a synonym for the term "franchise". Franchising in the business realm is defined as a system that gives franchisees the freedom to operate independently in a certain field. The two words that make up the word "franchise" are "wara", which means "more" or "special", and "laba", which means "profit". This shows that franchises are more profitable than conventional businesses. Amir Karamoy defines a franchise as a legal agreement that gives the right to market goods or services to another party (franchise). Franchisees establish "rules of the game" to govern the relationship and responsibilities between franchisee and franchisee.

A franchise, from a legal perspective, is a formal bond between two parties who work together to create, design, distribute and market products or services. From a legal perspective, franchising involves various areas of legal agreement, such as licenses, trade names, trademarks, patents, models, designs, and so on. The two main pillars of franchise law are contract law and intellectual property rights. The franchisee (franchisee) prepares and

submits a franchise agreement to the franchisee (franchisee).

According to research on franchise agreements, the essence of a franchise agreement is as follows:

- a. using the franchisor's name and management system at the location for a certain period of time.
- b. Location: Prospective franchisees determine their business location with the approval of the franchisee. This location determination was made after considering the economic situation and prospects around the selected location.
- c. Counter: Prospective franchisees are responsible for providing counters in accordance with the terms and conditions determined by the franchisee.
- d. Trial Period: The purpose of this trial period is to ensure that prospective franchisees have sufficient skills and knowledge to run a franchise business well and in accordance with the standards set by the franchisee.
- e. Franchise Term: Franchise rights are granted for a two-year term, or term. This right comes into effect on the opening date of the first counter. The parties may agree to an extension of this time period in writing.
- f. The franchisee will pay several types of fees to the franchisor within a certain period of time, which include:
  1. Franchise Fee (Joint Fee): The initial cost of joining a franchise network.
  2. Counter Fee: Fee for using the counter or business premises provided by the franchisor.
  3. Advertising and Training Fees (Advertising & Training Fee): Fees to support advertising and training activities provided by the franchisor.
- g. Apart from that, the franchisee also agrees and is responsible for paying royalty obligations to the franchisor every month.
- h. *Maintenance of Image / Image maintenance.*

"Trade secrets" is a term used to describe important elements in a chain's business, such as a special recipe for Kentucky Fried Chicken or Pizza Hut. Sometimes, the term "trade secret" is also used to describe "confidential information." Even though the franchisee is given the right to run a franchise business, the franchisor may still have some business secrets that make the franchisee dependent on him. For example, the conditions for using ready-to-use recipes by franchisees are regulated in the franchise agreement, where the franchisee is obliged to use the recipe from the franchisor without being permitted to make modifications. To be categorized as a trade secret, information must have significant differences from other products or services in terms of format, formula, characteristics, methods, procedures, procedures or systems used. A trade secret is not simply a collection of steps that anyone can access and perform without needing special assistance or instructions. Trade secrets have unique qualities that differentiate them from other products or services.

## **CONCLUSION**

Based on the research "Protection of Franchisors' Brand Rights in Franchise Agreements", it can be concluded that there are several legal problems that are often faced in franchise businesses, including:

1. Franchise agreements: Unclear and unbalanced franchise agreements can lead to disputes between franchisees and franchisees.
2. Intellectual property rights: Illegal use of intellectual property rights or without mutual agreement can result in copyright, trademark and patent violations.
3. Obligations and responsibilities of both parties: Lack of clarity regarding the obligations and responsibilities between the franchisor and franchisee can trigger disputes between the two.

4. Trade secrets: Failure to protect trade secrets can result in the leakage of important information to competitors.
5. Termination of franchise relationship: The process of terminating/terminating a franchise relationship that is not in accordance with the agreement and regulated by statutory regulations can cause losses for both parties.

### **SUGGESTION**

Based on the conclusions presented previously, the following are several recommendations for overcoming legal problems in franchise businesses:

1. Create a clear and balanced franchise agreement: The ideal franchise agreement contains all the rights and obligations of both parties, including the franchisor and franchisee.
2. Registering intellectual property rights: Registration of intellectual property rights can help protect brands, logos and designs from unauthorized use.
3. Understand obligations and responsibilities: Franchisees and franchisees must understand their respective obligations and responsibilities to avoid disputes.
4. Safeguarding trade secrets: Franchisees and franchisees must safeguard trade secrets in an appropriate manner.
5. Terminate the franchise relationship in an appropriate manner and pay attention to legal aspects: Termination of the franchise relationship must be carried out in accordance with applicable laws and regulations.

By understanding the legal problems that often occur in franchise businesses and steps to prevent them, franchisors and franchisees can minimize risks and build a successful franchise business.

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