
Juridical Review of The Protection of Intellectual Property Rights in Franchise Agreement

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ABSTRACT: The research aims to find out and analyze the legal protection of intellectual property rights in franchise agreements and to find out and analyze the legal consequences if there is a breach of contract in the franchise agreement. The research method uses normative legal research, which uses primary and secondary legal materials, which are then presented as an inductive thinking pattern, namely from specific things to general things. The research found that as a form of legal protection in franchise agreements, the franchise must be registered with Intellectual Property Rights. Indonesian laws and regulations require a franchise to register its Intellectual Property Rights. The legal consequences are if there is a breach of contract in the franchise agreement or if one of the parties (Franchisee) does not fulfill its obligations properly. The duties are not fulfilled because there are elements of negligence and error. The other party (franchisor) has the right to demand compensation for losses as regulated in Article 1236 and Article 1243 of the Civil Code. Terminating the franchise relationship will also have consequences regarding using IPR, namely, brand rights and trade secrets. The franchisee can no longer use the franchisor's brand and logo. Everything related to it must be returned to the franchisor. The research suggestion is that to provide more certainty and legal protection for IPR owners in the franchise agreement, it is best always to include a clause regulating IPR protection that contains restrictions the franchisee must comply with. And companies are also advised to make additional agreements with employees to protect IPR.

Keywords: Legal Protection, IPR, Franchise Agreement.



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INTRODUCTION

A franchise from the perspective of Intellectual Property Rights is a grant of a license or right to utilize, jointly use two specific types of Intellectual Property Rights, namely Brands (including trademarks, service marks, and indications of origin) and Trade Secrets. The rights to exploit and use these two types of Intellectual Property Rights cannot be separated. Suppose the Intellectual Property Rights granted are only the right to sell or distribute goods or services using a particular

brand, which is not accompanied by the authority and/or action to do a certain thing, either in the form of management or further processing, which provides additional value to the product being sold. In that case, this is not much different from a form of distribution of goods. franchise. Franchising as a trade subsector requires adequate protection.

The growth of local franchises is much higher than that of foreign franchises in Indonesia. This is because local franchisees provide various conveniences in their franchise purchase requirements. The tolerance given is also quite broad, plus continuous promotion and marketing. The General Explanation of Republic Government Regulation Number 42 of 2007 concerning Franchising states that to increase business development with the franchise concept throughout Indonesia, it is necessary to encourage national entrepreneurs, especially small and medium entrepreneurs, to grow as national franchisers who are reliable and have competitiveness at home and abroad, especially in the context of marketing domestic products.

The franchise business concept has recently become the center of attention as a breakthrough form of business development. Considering that the businesses being franchised are businesses that have been tested and are successful in their field, they are supposed to be able to "guarantee" a profit, so this factor becomes a "magnet" to attract widespread public interest. Through the franchise concept, someone does not need to start a business from scratch because an integrated franchising system allows a franchisee to run a business well. At least in the last three years, the interest of the Indonesian people in the emergence of franchise business opportunities has been very significant. This interest is reflected in 2 (two) mirrors, namely: the number of franchise buyers and the number of business opportunities converted into franchises. Franchise, or in English, called franchise itself, comes from Latin, namely *francorum rex*, which means "free from ties", which refers to the freedom to own business rights. The definition of franchising itself is an agreement in which one party is given the right to exploit and/or use intellectual property rights or inventions or business characteristics owned by another party in return for a fee based on the conditions set for the provision and/or sale of goods or services.

Article 1, paragraphs (2) and (3) of the Republic of Indonesia Government Regulation No. 42 of 2007 concerning Franchising explain the parties involved in franchising. A franchisor (Franchisor) is an individual or business entity that grants the franchisee the right to exploit or use their franchise. Meanwhile, a franchisee (Franchisee) is an individual or business entity given the right by the franchisor to utilize or use the franchise owned by the franchisor.

Palu City has many franchise providers, including KFC, Texas, Alfamidi, Boba Sugar, Pizza Hut, and Master Cheese Pizza. What will soon be opening in Palu City is McD. However, various small businesses or street vendors have expanded into franchising, with people still unfamiliar with the rules and franchise system. Their participation in this business is only due to their interest in the lure of profit by carrying a big name of a trademark, for example, the street fried chicken franchise system, which imitates the big name of a similar franchise (KFC, CFC, Texas FC), which has permanent and transparent legal protection.

Therefore, it is certain that if the franchise owner's IPR is not registered, the business will not be able to be developed in the form of a franchise and will not be legally protected. IPR in franchising is the most critical element, considering that if a franchise business does not have specific IPR then it can be ascertained that the business is not a franchise, therefore IPR in franchising must

receive legal protection, in this case the franchise agreement is very significant and decisive in providing legal protection, through the franchise agreement various aspects of IPR protection are regulated and agreed upon by the parties.

METHOD

The type of research in this writing is legal research that uses normative research methods, namely, research carried out by examining statutory provisions (in abstracto) and the doctrines of legal scholars related to this research. Normative legal research examines document studies using secondary data such as statutory regulations, court decisions, legal theory, and scholars' opinions. The things studied in normative legal research include legal principles, legal systematics, the level of legal synchronization, legal comparison, and legal history.

RESULT AND DISCUSSION

1. Legal Protection of Intellectual Property Rights in Franchise Agreements

Franchising is essentially a marketing concept for expanding business networks quickly. It is not an alternative but a strong and strategic way of developing a business. The franchise system is considered to have many advantages, especially regarding funding, human resources (HR), and management. Franchising is also known as a very effective distribution channel for bringing products closer to consumers through the hands of franchisees.

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The growth of local franchises is much higher than that of foreign franchises in Indonesia. This is because local franchisees provide various conveniences in their franchise purchase requirements. The tolerance given is also quite broad plus continuous promotion and marketing. The General Explanation of Republic Government Regulation Number 42 of 2007 concerning Franchising states that to increase business development with the franchise concept throughout Indonesia, it is necessary to encourage national entrepreneurs, especially small and medium entrepreneurs, to grow as national franchisers who are reliable and have competitiveness at home and abroad, especially in the context of marketing domestic products.

Article 1 of Republic Government Regulation Number 42 of 2007 concerning Franchising states that a franchise is a special right owned by an individual or business entity to a business system with business characteristics in the context of marketing goods and/or services that have been

proven successful and can be exploited and/or used by other parties based on a franchise agreement. Article 3 further emphasizes that registered Intellectual Property Rights are one of the franchise criteria. What is meant by registered Intellectual Property Rights is those related to business, such as brands, copyrights, patents and trade secrets, which have been registered and have a certificate or are in the process of being registered with the authorized agency.

The granting of a franchise is always related to the granting of the right to use and/or utilize certain Intellectual Property Rights, which in this case is manifested in the form of a brand, whether including a trademark or service mark, or a particular indication of origin and a particular form of format, formula, characteristic, method, procedure, system and so on which is related to, and which cannot be separated from any output or product produced and subsequently sold, delivered or traded using the trademark, service mark or indication of origin mentioned above, which is called Confidentiality. Trade. Of the two types of Intellectual Property Rights, there are always and will always be elements of differentiation between one franchise and another. The differentiating element lies in the franchised Intellectual Property Rights' nature, form, and type.

As previously explained, many forms of franchising have mushroomed in society. They are not limited to international-scale franchise businesses like five years ago, but various small businesses or street vendors have entered the form of franchising. The perpetrators are still unfamiliar with the rules and franchise system. Their participation in this business is only due to their interest in the lure of profits from carrying a big name from trademark.

Throughout 2020-2021, the franchise industry experienced quite high growth, namely 10% year over year (yoy), compared to the realized growth in the previous year, which only reached 5% to 6%. The most significant contribution to the franchise industry's growth is culinary or food and beverage (F&B) businesses, including those originating from within the country or locally. Currently, franchise businesses in Indonesia are starting to revive after the 2019 elections last April. Not only are domestic franchise brands thriving, but brands from other countries are also thriving in Indonesia.

The Indonesian Franchise and Licensing Association (WALI) notes that around 2,000 trademarks are franchised within and outside the country. As many as 35% are franchise brands from abroad, and 65% are local franchise brands. Even though there are more local ones, WALI sees that creativity must still be improved to compete with foreigners.

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The existence of elements of intellectual property rights as the most important part of a franchise can be seen from the provisions of Article 1 point 1 of Government Regulation Number 42 of 2007 concerning Franchising, which emphasizes a franchise as a special right owned by an

individual or business entity to a business system with business characteristics in the context of marketing goods and/or services that have been proven successful and can be exploited and/or used by other parties based on a franchise agreement. Meanwhile, in Minister of Trade Regulation No. 12/M-Dag/Per/3/2006 concerning Provisions and Procedures for Issuing Franchise Business Registration Certificates, it is emphasized that "Franchise (franchise) is an agreement between the franchisor and the franchisee where the franchisee is given the right to run a business by exploiting and/or using intellectual property rights or inventions or business characteristics owned by the franchisor with a fee based on the conditions set by the franchisor with several obligations to provide continuous operational consulting support by the franchisor to the franchisee. Based on the provisions of the regulations above, it is understood that in Indonesia, intellectual property rights are a core element of franchising; it will not be possible for a business to be franchised if it does not contain these elements.

From a business perspective, franchising is related to a manufacturing and/or distribution network of goods or services with certain standards and exploitation systems. The definition of standards and exploitation systems includes similarities in using business names and brands, manufacturing systems, packaging, presentation and distribution procedures. In the franchise system, an abstract thing with high economic value is hidden, namely, a certain image or goodwill. A good image or name is needed in the business world, where competition and efforts to gain market share play a big role.

According to the Government Regulation of the Republic of Indonesia Number 42 of 2007 in Article 3 letter f, Intellectual Property Rights have been registered. If these elements are not fulfilled, a franchise agreement entered into during the trademark registration process cannot be called a true franchise agreement. If the registration of a franchise agreement is carried out in the context of and to develop a business employing a franchise, then the requirements to be able to register a franchise must also be in line with the regulations governing franchising, in this case it must be adjusted to Government Regulation of the Republic of Indonesia Number 42 of 2007, especially Article 3 letter f, namely that the object of the franchise is Intellectual Property Rights that have been registered. You must prove ownership to prove that Intellectual Property Rights have been registered. In this case, in the author's opinion, a certificate of proof of ownership of the Intellectual Property Rights must also be attached.

Franchising is a business concept whose essence is the inclusion of Intellectual Property Rights. Therefore, Indonesian laws and regulations require a franchise to register its Intellectual Property Rights. This provision is strict considering that every franchise whose Intellectual Property Rights are not registered cannot conduct business. So registration of Intellectual Property Rights for a franchise is mandatory in Indonesia, as a form of legal protection for franchise business actors and the public.

According to Paton, pay attention to this description based on the theory of legal protection. An interest is the target of rights not only because it is protected by law but also because it is recognized. Rights contain elements of protection, interests, and desires.

The law protects a person's interests by giving them the power to act to fulfill their interests. The granting of power, often called rights, is carried out measurably, in breadth and depth.

Intellectual Property Rights as a concept originated and developed in Western countries. Therefore, the benefits of the IPR system are often touted by developed countries as producers or emitters of IPR. Most of the arguments put forward as justification for the IPR system are based on the perspective of economic development, increasing innovation, and increasing social welfare.

A franchise agreement is one aspect of legal protection for parties from detrimental actions by other parties, including providing legal protection for intellectual property rights. This is because the agreement can be a strong legal basis for enforcing legal protection for the parties involved in the franchise system. If one party violates the agreement's contents, the other party can sue the violating party following applicable law. As with the Franchise Agreement above, it can be seen that the Agreement has specifically regulated IPR protection, namely by agreeing on certain restrictions that must be complied with by the franchisee, which are directly or indirectly aimed at protecting the intellectual property rights of the franchiser.

2. Legal Consequences If There Is A Default in The Franchise Agreement

A franchise agreement is closely related to granting a license to utilize certain intellectual property rights as one of the franchise criteria, namely, IPR that has been registered, referring to Article 3 of the Government Regulation of the Republic of Indonesia Number 42 of 2007. What is meant by Intellectual Property Rights that have been registered are Intellectual Property Rights related to the implementation of a franchise business, such as Copyright, Patent Rights, Trademark Rights and Trade Secrets that have been registered and have a certificate.

The type and concept of a franchise business result in the franchisor granting the franchisee the right to use the IPR. In the product and trademark franchise system, the granted intellectual property rights are realized as brand rights. Meanwhile, franchise businesses with the IPR business format system are realized through Brand Rights and Trade Secrets.

Some problems arise between the Franchisee and the Franchisor if one party does not properly fulfill its obligations. The duties are not fulfilled because there is an element of negligence and error, as the provisions of Article 1236 and Article 1243 of the Civil Code state that if the debtor fails to fulfill his obligations, the creditor has the right to demand compensation for losses, in the form of costs, losses and interest based on late performance, which a summons must precede.

Then, according to the provisions of Article 1238 of the Civil Code, the debtor is declared negligent using a warrant, or using a similar deed, or based on the strength of the agreement itself, that is, if this agreement results in the debtor being deemed to be in default after the specified time has passed. The elements of negligence are that the debtor does not perform at all, the debtor performs incorrectly, and the debtor performs too late. The provisions of Article 1243 of the Civil Code only stipulate that a summons must precede claims for compensation arising from late performance.

Terminating the franchise relationship will also have consequences regarding IPR, namely Brand Rights and Trade Secrets. The franchisee can no longer use the franchisor's brand and logo. Everything related to it must be returned to the franchisor. So, suppose a franchisee wishes to set up a business similar to the franchise business that he has run for a certain period, but uses his

brand and logo. In that case, the former franchisee is an independent business owner because he is no longer dependent on the franchisor.

This is different from brands and logos, which have visible shapes. Trade secrets are described as confidential information. According to Article 1, paragraph (1) of Law Number 30 of 2000, trade secrets are information that is not known to the public in the field of technology and/or business, has economic value that is useful in business activities, and is kept confidential. Trade secret objects include production methods, processing methods, sales methods, or information in the technology and/or business field that has economic value and is not known to the general public.

After the end of the franchise agreement, the franchisor's trade secrets can be returned symbolically by the franchisor by submitting confidential documents related to production methods, processing methods, sales methods, or confidential information in the technology and/or business field. However, trade secrets in the form of information can certainly be studied and understood. This allows the franchisee to set up a similar business after the end of the franchise agreement with a different brand and logo, and the trade secrets they have mastered are innovated in such a way as to show the characteristics of their business, which is different from the previous franchise business owned by the franchisor.

Law Number 30 of 2000 concerning Trade Secrets Article 15 letter b excludes acts of re-engineering products from using other people's trade secrets for product development purposes as a violation of trade secrets. So the franchisee's actions if he sets up a business that is similar to the franchise owned by the franchisor that he ran previously using the franchisor's trade secret which he innovated into a new trade secret of his own can be said to be not against the law as long as he does not own or control the trade secret of the previous franchisor by doing things that are against the law such as stealing.

However, in addition to the profits that franchisees can gain, franchisees can also experience various losses, which are quite a few, namely as follows:

1. Franchisees cannot benefit or profit from the franchisor's image, which has formed the franchisor's market, even though the franchisee has established a business with systems and methods similar to those of the franchisor.
2. The franchisee's income during the relationship period does not cover his incurred costs. This especially happens if the termination comes from the franchisor.

According to the author, another obstacle that can occur in a Franchise Agreement is when a new business actor starts a franchise business for the first time, either as a franchisor or franchisee. These obstacles can occur because the parties do not understand the legal aspects of franchising and lack good guidelines.

This situation can impact the legal protection of IPR in franchises, considering that business actors are unaware of the importance of IPR protection as the core of a franchise. The ignorance of franchise business actors can be seen in the preparation of the Franchise Agreement, where in the Franchise Agreement, no special clause regulates the protection of IPR from the franchise. Thus, there will be weaknesses in the Agreement, which will very likely be exploited by certain parties, resulting in legal problems, especially IPR violations, such as trade secrets of a franchise.

CONCLUSION

- a. As a form of legal protection for the franchise agreement, the franchise must be registered with Intellectual Property Rights. Indonesian laws and regulations require a franchise to register its Intellectual Property Rights. This provision is strict considering that every franchise whose Intellectual Property Rights are not registered cannot conduct business. So registration of Intellectual Property Rights for a franchise is mandatory in Indonesia, as a form of legal protection for franchise business actors and the public.
- b. The legal consequences if there is a breach of contract in the franchise agreement or one of the parties (Franchisee) does not fulfill its obligations properly. The duties are not fulfilled because there are elements of negligence and error. The other party (franchisor) has the right to demand compensation for losses as regulated in Article 1236 and Article 1243 of the Civil Code. Terminating the franchise relationship will also have consequences regarding using IPR, namely, brand rights and trade secrets. The franchisee can no longer use the franchisor's brand and logo. Everything related to it must be returned to the franchisor.
- c. To provide greater legal certainty and protection for IPR owners, the franchise agreement should always include a clause governing IPR protection, including restrictions that the franchisee must comply with. Companies are also advised to make additional agreements with employees to protect IPR. For the parties involved in business contracts, especially in franchises, resolving any legal problems that arise in implementing the contract is achieved through family efforts, namely by negotiating to get the best solution.

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