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Legal Protection for Franchisors and Franchisees in Cases of Breach of Franchise Agreement

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Abstract. *This study aims to analyze the effectiveness of Indonesia's positive law in providing legal certainty and justice for the parties in resolving franchise disputes arising from breach of contract. The research uses a normative juridical method with a statutory and conceptual approach. The findings indicate that Indonesia's legal framework on franchising has been comprehensively regulated under Government Regulation No. 42 of 2007, Minister of Trade Regulation No. 71 of 2019, and the Civil Code provisions. Normatively, these regulations have provided a foundation of legal certainty and protection for both franchisors and franchisees. However, the effectiveness of implementation remains limited due to the lack of administrative compliance among business actors, weak government supervision, and the inequality of bargaining power in standard contracts. Therefore, it is necessary to strengthen state supervision, enhance legal awareness among business actors, and enforce principles of justice and good faith in the execution of franchise agreements, so that the law not only ensures formal certainty but also achieves substantive justice for both parties.*

Keywords: *Contract; Certainty; Effectiveness; Franchise; Justice.*

1. Introduction

The development of the business world in the era of globalization has driven the emergence of various forms of commercial cooperation that prioritize efficiency, partnership, and innovation in business management. One of the business cooperation models that has rapidly developed in Indonesia is the franchise agreement. The franchise system provides an opportunity for business players to expand their business networks by sharing business concepts, trademarks, and proven operational standards. Through this system, the franchisor grants the franchisee the right to operate a business using the same name, brand, and system, in exchange for royalty payments and certain licensing fees.

Legally, the implementation of franchising in Indonesia is based on Government Regulation No. 42 of 2007 concerning Franchising, which emphasizes that franchising is a special right owned

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by individuals or business entities regarding a specific business system that has been proven successful and can be utilized by other parties based on an agreement. In addition, the legal aspects of the franchise agreement are also subject to the Civil Code (*Kitab Undang-Undang Hukum Perdata*), particularly provisions concerning obligations and agreements as regulated in Articles 1313 to 1338 of the Civil Code. Therefore, the relationship between the franchisor and the franchisee is a reciprocal legal relationship that creates rights and obligations for each party to be fulfilled according to the terms of the contract.

However, in practice, this legal relationship does not always proceed as expected. One of the common issues is *wanprestasi* (breach of contract), which occurs when one party fails to fulfill its obligations as agreed. Breach of contract can take the form of delays or negligence in paying royalties, violations of franchise operational standards, use of non-compliant raw materials, misuse of intellectual property rights, or unilateral termination of cooperation without valid legal reasons. Such conditions can cause economic losses, damage trust, and even disrupt the sustainability of both parties' businesses.

The phenomenon of *wanprestasi* in franchise agreements shows that the mechanism for legal protection for the parties involved still needs to be strengthened. Legal protection functions as a guarantee for both franchisors and franchisees so that business relationships remain fair and balanced. In the context of the franchisor, legal protection is necessary to safeguard the rights to the business system, trademarks, and the reputation of the business that has been built. For the franchisee, protection is needed to prevent losses due to unfair clauses, non-transparent business practices, or unilateral contract termination that could threaten the continuity of their business.

Basic principles of civil law serve as an important foundation in regulating this legal protection, especially the principles of freedom of contract, balance, and good faith. The principle of freedom of contract, as regulated in Article 1338(1) of the Civil Code, gives the parties the freedom to determine the content and form of the agreement according to their respective will. However, this freedom is not absolute as it is limited by the principle of good faith stated in Article 1338(3) of the Civil Code, which emphasizes that the execution of the agreement must be carried out honestly and without harming the other party. This principle is highly relevant in the context of franchising because franchise agreements are generally adhesive contracts (standard contracts), where the franchisor's bargaining position tends to be stronger than that of the franchisee.

In practice, franchisees often suffer losses due to imbalances in contract clauses, such as high royalty payment obligations, restrictions on the use of certain raw materials, or the imposition of non-compete clauses that prevent the franchisee from opening a similar business after the contract ends. Conversely, franchisors can also be harmed when franchisees fail to meet operational obligations, lower product quality, or use the brand without permission after the cooperation period ends. Therefore, balancing economic interests and legal protection is crucial in creating a healthy franchise business relationship.

If a breach of contract occurs, dispute resolution can be pursued through two paths: litigation in court or non-litigation through Alternative Dispute Resolution (ADR) such as mediation, negotiation, or arbitration. ADR is regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which offers parties the option to resolve disputes quickly, efficiently, and while maintaining a good relationship. Arbitration often becomes the preferred choice because it is confidential and can be conducted by parties familiar with the intricacies of the franchise industry. However, if the mediation or arbitration results do not reach an agreement, litigation becomes the last alternative to obtain legal certainty.

Based on the above explanation, the issues to be discussed in this study are: How can legal protection for franchisors and franchisees be provided in cases of breach of franchise agreements in Indonesia? How effective are Indonesia's positive legal provisions in providing legal certainty and justice for the parties in resolving franchise disputes caused by breach of contract?

Thus, this research is expected to make a real contribution to the development of legal science, particularly in the fields of civil law and business law, by highlighting the importance of balance and legal protection in the contractual relationship between franchisors and franchisees. Furthermore, the results of this study are also expected to serve as a reference for policymakers, business actors, and legal practitioners in drafting fair, transparent franchise agreements based on the principle of good faith. Ultimately, a legal system that can provide protection and legal certainty for both parties will support the creation of a healthy, competitive, and just business climate in Indonesia.

2. Research Methods

This study used normative juridical approach, focusing on the analysis of relevant legislation, legal doctrines, and court rulings. This approach is used to provide a systematic analysis of the legal norms that govern the protection for franchisors and franchisees, as well as to assess the effectiveness of their application in business practices. Theoretically, this research is based on three main theories: the theory of legal protection, the theory of contracts, and the theory of legal certainty. The data collection technique used in this study is library research. The data analysis obtained in this research consists of literature study results, which are secondary data sourced from primary and secondary legal materials.

3. Results and Discussion

3.1. Legal Protection for Franchisors and Franchisees in Cases of Breach of Franchise Agreement in Indonesia

Legal protection is an effort to provide security and guarantee fairness for the parties involved in a legal relationship, including in franchise agreements. In the context of the relationship between the franchisor and the franchisee, legal protection is necessary to ensure that neither party is harmed when a breach of contract or violation of the agreement occurs. This form of legal protection can be divided into two types: preventive legal protection (before a breach occurs) and repressive legal protection (after a breach occurs).

Preventive legal protection functions to prevent disputes or violations of agreements before issues arise. In this regard, the government has established various legal provisions to protect both parties from the beginning of the agreement. According to Government Regulation No. 42 of 2007 concerning Franchising, every franchise agreement must be made in writing and include essential elements such as the identity of the parties, rights and obligations, the duration of the agreement, assistance and training provided by the franchisor, the use of intellectual property rights, and the dispute resolution mechanism. These provisions aim to ensure that the legal relationship between the franchisor and the franchisee operates transparently, fairly, and in good faith.

Additionally, franchisors are also required to provide a franchise offering prospectus to potential franchisees before the agreement is signed. This prospectus must contain comprehensive information about the company's profile, business history, financial statements, intellectual property rights, and a list of other franchisees who have cooperated. This obligation is regulated in Article 7 of Government Regulation No. 42 of 2007 and clarified in Minister of Trade Regulation No. 71 of 2019 concerning Franchising. The aim is to ensure that franchisees have a clear understanding of the business system to be implemented and avoid fraudulent practices or withholding information by the franchisor.

Furthermore, both franchisors and franchisees are required to register their businesses and obtain a Franchise Registration Certificate (STPW) issued by the Ministry of Trade. The STPW serves as an administrative form of legal protection ensuring that the franchise cooperation is in accordance with the legal provisions and complies with the applicable standards. This registration allows the government to supervise the implementation of the franchise system in Indonesia to ensure it remains within the correct legal framework.

Meanwhile, repressive legal protection is provided after a breach of contract occurs, with the aim of restoring the rights of the harmed party. If one party fails to fulfill its obligations as per the agreement, the aggrieved party may file a claim based on Article 1243 of the Civil Code. The forms of legal protection that can be pursued include demands for performance (specific performance), unilateral contract termination with valid reasons (contract termination), or claims for damages due to losses incurred. Through this mechanism, the law provides an opportunity for the harmed party to seek justice through the courts or other dispute resolution methods as outlined in the contract.

In addition to litigation in court, breach of contract in a franchise agreement can also be resolved through Alternative Dispute Resolution (ADR) methods such as mediation, negotiation, and arbitration, as regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. ADR is often preferred because of its quick process, lower costs, and confidentiality, which prevents damage to the business reputations of the parties. In franchise agreements, an arbitration clause is usually explicitly included to ensure that any disputes can be settled amicably without resorting to court.

Legal protection can also be provided through the regulation of intellectual property (IP) rights. Franchising is typically related to the use of trademarks, logos, recipes, business systems, and trade secrets owned by the franchisor. Therefore, if the franchisee violates the agreement, such as using the brand without permission or opening a similar business after the contract ends, the franchisor can pursue legal action based on Law No. 20 of 2016 concerning Trademarks and Geographical Indications and Law No. 30 of 2000 concerning Trade Secrets. Conversely, if the franchisor takes harmful actions such as unilateral termination without a valid legal basis, the franchisee also has the right to seek legal protection and compensation based on the principles of contractual fairness.

In terms of legal principles, legal protection in franchise agreements must be based on the principle of good faith, the principle of balance, and the principle of legal certainty. The principle of good faith requires that each party fulfill its contractual obligations honestly and without harming the other party, as stipulated in Article 1338(3) of the Civil Code. The principle of balance means that the legal relationship between the franchisor and franchisee must reflect proportional fairness, with neither party dominating the other. Meanwhile, the principle of legal certainty ensures that any agreement made in accordance with the law must be executed and respected as stipulated by the applicable positive law.

In practice, the implementation of legal protection in franchise agreements in Indonesia still faces several challenges. One of the issues is the imbalance of bargaining positions between the franchisor and the franchisee in drafting standard contracts. Many franchisees do not have the opportunity to negotiate the terms of the agreement, making them vulnerable to harmful clauses. Therefore, the role of the government through the Ministry of Trade and arbitration bodies such as the Indonesian National Arbitration Board (BANI) is crucial in overseeing the franchise system's implementation and providing legal protection for the harmed parties.

From the discussion above, it can be concluded that legal protection for franchisors and franchisees in the case of breach of franchise agreements consists of two main aspects:

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preventive legal protection and repressive legal protection. Preventive protection is implemented through clear contract regulations, registration obligations, and administrative oversight, while repressive protection is realized through dispute resolution, compensation claims, and legal enforcement against contractual violations. Both forms of protection must be implemented with a focus on good faith, fairness, and legal certainty to create a balanced, healthy, and sustainable business relationship between franchisors and franchisees in Indonesia.

3.2. Effectiveness of Positive Legal Provisions in Indonesia in Providing Legal Certainty and Justice for the Parties in Resolving Franchise Disputes Caused by Breach of Contract

Effectiveness in the context of civil law can be understood as the extent to which the law can function to regulate societal behavior, prevent violations, and provide fair resolutions when disputes occur (Rahardjo, 1991). In Indonesia's legal system, the effectiveness of a regulation is not only measured by its normative existence but also by how consistently it is implemented and the tangible benefits it provides to the parties involved. This is also true in the legal relationship between the franchisor and the franchisee, which often faces issues of breach of contract or violations of agreements.

Normatively, Indonesia's legal system has a fairly comprehensive set of legal instruments to regulate and protect legal relationships in the franchise business. The main provisions are found in Government Regulation No. 42 of 2007 concerning Franchising, Minister of Trade Regulation No. 71 of 2019 concerning the Implementation of Franchising, and general contractual provisions in the Civil Code. These three instruments serve as the foundation for establishing legal certainty in franchise agreements (Indonesia, 2007).

Government Regulation No. 42 of 2007 clearly regulates the basic principles of franchising, from definitions, rights and obligations, registration, to dispute resolution mechanisms. Meanwhile, Minister of Trade Regulation No. 71 of 2019 strengthens the administrative aspect by requiring franchisors to submit a franchise offering prospectus and register the franchise agreement with the Ministry of Trade. This step aims to improve transparency, accountability, and legal protection for franchisees to prevent them from being victims of information misuse by franchisors (Inggriani, 2023).

However, in practice, the effectiveness of these positive legal provisions still faces several obstacles. Many franchise businesses in Indonesia, both local and foreign, are still unaware of the administrative obligations and the legal substance of franchise agreements, such as the registration of the Franchise Registration Certificate (STPW). Non-compliance with these obligations creates problems when disputes arise, as unregistered agreements are often difficult to use as evidence in court (Ningrum & Inayah, 2021). As a result, the legal certainty promised by regulations becomes weak, and the harmed party often faces difficulties obtaining effective legal protection.

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From the perspective of legal certainty, the franchise laws actually provide a clear and comprehensive normative framework. For example, Article 1338(1) of the Civil Code states that all agreements made legally shall have the force of law for the parties who create them. This shows that a franchise agreement made in accordance with the law has the same binding force as a law (Rahmad & Zubaedah, 2022). However, in practice, the implementation of this principle does not always proceed as expected. There are still many cases where one party fails to fulfill its obligations, and when the matter is taken to court, the resolution process becomes protracted due to weak contractual evidence and different interpretations of the agreement's clauses.

In addition to legal certainty, fairness is also an important aspect in assessing the effectiveness of positive law. The principle of fairness demands that each party receive fair treatment in accordance with their contributions and responsibilities in the legal relationship. However, in franchise business practices, the legal relationship between the franchisor and franchisee is often unequal because the agreement is a standard contract (adhesive contract). In such contracts, almost all clauses are determined by the franchisor, who holds a stronger bargaining position, while the franchisee has little room for negotiation (Farida, 2021). As a result, many franchisees suffer losses due to unbalanced clauses, such as territorial restrictions, high royalty obligations, or non-compete clauses that prevent them from opening similar businesses after the agreement ends.

This situation leads to a failure to fully realize contractual fairness in practice. Although legally the contract is valid because it fulfills the elements of Article 1320 of the Civil Code (agreement, capacity, specific object, and lawful cause), morally and socially, such agreements create an imbalance. According to Rahardjo, the law should not only evaluate the formal legality of an agreement but also assess its substantive fairness to prevent the law from losing its social meaning (Rahardjo, 1991).

In the event of a breach of contract, the effectiveness of the law is also measured by how the legal system can provide a quick, fair, and certain dispute resolution. Based on Article 1243 of the Civil Code, the aggrieved party can demand the fulfillment of the agreement, the cancellation of the contract, or compensation for losses incurred due to the other party's negligence. However, the enforcement of this article is often hindered by obstacles in court evidence. In many franchise cases, a breach of contract may not always involve material violations like late royalty payments but may also involve violations of operational standards and brand reputation, which are qualitative and difficult to measure financially (Ardiyanto, 2023).

In addition to litigation (court proceedings), Indonesia's positive law also provides an Alternative Dispute Resolution (ADR) route, as regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. ADR mechanisms such as mediation and arbitration are considered more effective in business relationships because of their quick process, lower costs, and confidentiality, which help maintain the business reputations of the parties involved (Rahayu, 2024). In practice, many franchise agreements include an arbitration clause, ensuring that, if a dispute occurs, it can be resolved by the Indonesian National Arbitration Board (BANI). Arbitration awards are final and binding, which provides legal certainty for the parties without the need for an appeals process, as is required in the courts.

However, the effectiveness of the arbitration route also has its limitations. In some cases, the losing party in arbitration refuses to comply with the award or files for annulment in the district court, making the dispute resolution process lengthy again (Situmorang, 2020). Additionally, not all franchisees are aware of their rights or have the financial capability to access arbitration mechanisms. Therefore, while ADR offers an efficient dispute resolution alternative, its implementation has not fully guaranteed substantive justice for all parties.

The effectiveness of positive law can also be viewed from the role of regulatory and enforcement bodies. The Ministry of Trade, as the authorized agency, is responsible for providing guidance, supervision, and imposing administrative sanctions on franchisors who violate the regulations. However, this oversight is often limited to administrative aspects and does not address the substance of the agreements. To achieve the ideal effectiveness of law, there is a need for substantive oversight of contract fairness and its implementation. Additionally, arbitration bodies such as BANI play a significant role in providing a quicker, more adaptive mechanism for resolving business disputes (Winarta, 2022).

From a legal theory perspective, the effectiveness of positive law provisions in resolving franchise disputes aligns with the theory of legal certainty proposed by Gustav Radbruch. Radbruch stated that legal certainty is one of the fundamental values in a legal system, alongside justice and utility. Without legal certainty, society would lose trust in the law as a means of resolving disputes (Rahardjo, 1991). However, excessive legal certainty, without considering fairness, can lead to imbalances. Therefore, there is a need for a balance between formal legal certainty and substantive fairness in the enforcement of franchise agreements.

In conclusion, the effectiveness of positive legal provisions in Indonesia in resolving franchise disputes resulting from breach of contract can be considered moderate—adequate normatively, but weak in terms of implementation. Normatively, franchise regulations have clear legal protection principles that align with the principles of justice, balance, and legal certainty. However, in practice, many business operators still fail to comply with administrative obligations, there is weak oversight of the substance of contracts, and there is low legal awareness among the parties involved.

To improve the effectiveness of positive law, the government should strengthen the monitoring mechanisms and legal education for franchise business actors. Oversight should not only focus on administrative aspects but also on ensuring that the contract content aligns with the principles of proportionality and does not harm any party. Moreover, active roles should be taken by arbitration bodies, notaries, and franchise associations such as the Indonesian Franchise Association (AFI) to ensure that each agreement complies with the principles of contractual fairness. With these steps, it is hoped that Indonesia's franchise legal system will not only guarantee formal legal certainty but also uphold substantive justice in sustainable business practices.

4. Conclusion

Based on the discussion, it can be concluded that Indonesia's positive legal provisions have provided a strong normative foundation for regulating the legal relationship between franchisors and franchisees, particularly through Government Regulation No. 42 of 2007, Minister of Trade Regulation No. 71 of 2019, and the Civil Code. These provisions have ensured legal certainty through the requirement for written agreements, the registration of the Franchise Registration Certificate (STPW), and clear dispute resolution mechanisms. However, the effectiveness of their implementation remains weak due to an imbalance of bargaining power in standard contracts, insufficient government oversight, and a lack of legal awareness among business practitioners. Therefore, there is a need for enhanced administrative supervision, legal education, and the application of principles of fairness, proportionality, and good faith, so that franchise dispute resolutions not only meet formal legal certainty but also deliver substantive justice for both franchisors and franchisees.

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