

Legal Protection of Franchisees For Franchisor' Actions

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ABSTRACT

This research aims to analyse the legal protection for franchisees against unlawful acts of franchisors in the context of the franchise business in Indonesia. Based on a qualitative approach with a normative analysis method, this research examines existing regulations, such as Government Regulation No. 42 Year 2007 and its amendment in Government Regulation No. 35 Year 2024, which provide a legal basis for franchisees to obtain protection against potential abuse by franchisors. The results showed that the regulation provides legal certainty and balance between the two parties by clearly regulating their respective obligations and rights. The legal protections contained in this regulation include intellectual property rights, the franchisor's obligation to provide information and training, and the obligation to include fair clauses in the franchise agreement. Although there are already supporting regulations, franchisees are expected to be more proactive in utilising their rights in accordance with applicable legal provisions. This research concludes that existing regulations are sufficient to protect the interests of franchisees, provided that they are properly implemented and complied with by all relevant parties, so as to create a healthy, fair and transparent partnership relationship in the franchise business in Indonesia.

Keywords: franchisee, franchisor, franchise, Legal protection

Introduction

In the era of growing economic globalisation, franchising has become an important phenomenon, including in Indonesia. Franchising is an effective business model in facing the challenges of modern times, where parties involved in cooperation do not need to make direct investments, but rather the utilisation of rights and business systems that have proven successful. This system allows other parties to run a business on the basis of a binding agreement between the franchisor and franchisee.

The existence of franchising in Indonesia is regulated in various laws and regulations, including in Government Regulation of the Republic of Indonesia Number 16 of 1997 concerning Franchising, which was later amended by Government Regulation Number 42 of 2007, and most recently by Government Regulation Number 35 of 2024 concerning Franchising (PP Franchising). In addition, there are also Regulations of the Minister of Trade of the Republic of Indonesia that regulate the implementation of franchises, such as Regulation of the Minister of Trade Number 71 of 2019 concerning Franchising. In accordance with Article 1 Paragraph 1 of Franchise Regulation No. 35 of 2024, a franchise is defined as a special right owned by an individual or business entity to utilise a business system in marketing goods and/or services through a franchise agreement with other parties.

In this relationship, the franchisor, called the franchisor (Sukarja & Lubis, 2023), grants the franchisee or franchisee (Pailaha, 2024) the right to run a business based on a proven system. The franchise agreement is one aspect of legal protection between the two parties (Saputra & Urbanisation, 2023). If one party violates the provisions in the franchise agreement, the injured party has the right to sue in accordance with applicable law. However, in practice there are often disputes between franchisors and franchisees that can lead to unlawful actions (Sulistyaningsih, et al., 2017). This shows the importance of fair and balanced legal protection for both parties in carrying out the agreement. In accordance with Article 26 Paragraph 2 of the Franchising Regulation, franchisors also have an obligation to prioritise domestically

produced goods and services of a quality that is in accordance with the provisions stipulated in writing by the franchisor.

However, in reality, the relationship between franchisors and franchisees is often unbalanced, especially in terms of bargaining power in standardised agreements (Farida, 2021) and tends to burden franchisees. Agreements made by franchisors often contain provisions that cannot be negotiated by franchisees, who only have two options: accept or reject the agreement. In this case, franchisees are often disadvantaged by helplessness in the face of unfavourable provisions. Based on Article 1320 of the Civil Code (KUHPerdota), the validity of an agreement must fulfil the element of free agreement between the parties, but in reality, franchise agreements often do not provide equal opportunities for both parties in determining the terms of the agreement. Based on this phenomenon, it is important to examine more deeply how legal protection can be given to franchisees, especially in relation to unlawful franchisor actions. Therefore, this study aims to explore the legal protection of franchisees, as well as legal remedies that can be taken in the face of franchisor actions that violate the agreement or act against the law.

The purpose of this study is to analyse the legal protection that can be given to franchisees in the face of unlawful franchisor actions in franchise agreements. This research will examine existing legal mechanisms, both in legislation and in franchise contract practice, to understand the extent to which franchisees can be protected from harmful or unlawful acts committed by the franchisor. In addition, this research aims to identify legal steps that can be taken by the franchisee in the event of a breach of agreement by the franchisor, as well as to provide recommendations regarding more balanced legal protection for both parties in the franchise relationship.

The hypothesis proposed in this study is that legal protection of franchisees can be realised through clearer and more balanced arrangements in franchise agreements, which accommodate the rights of franchisees fairly, especially in the face of unlawful franchisor actions. In this case, franchisees should be given room to reject burdensome provisions in the franchise agreement, by referring to the legal principles contained in Article 1320 of the Civil Code regarding free agreements and not burdening either party.

The contribution of this research is to provide a deeper understanding of legal protection for franchisees in the context of unbalanced franchise agreements, as well as provide new insights into ways that can be taken to improve or enforce the rights of franchisees in the Indonesian legal system. This research is also expected to be taken into consideration for policy makers in formulating regulations that are fairer and protect both parties, so as to create a healthy and sustainable partnership relationship in the franchise business in Indonesia.

Franchising plays an important role in the Indonesian economy, both for large and small entrepreneurs. Despite providing lucrative business opportunities, the relationship between franchisors and franchisees often presents an imbalance, especially in terms of legal protection. The franchise agreement that governs this relationship is subject to the provisions in the Civil Code (KUHPerdota), particularly regarding obligations arising from agreements. Articles 1313 and 1314 of the Civil Code confirm the existence of mutual obligations in an agreement that must be fulfilled by both parties. Article 1338 of the Civil Code also stipulates that a valid agreement has binding legal force, and cannot be cancelled unilaterally without the consent of both parties. The principle of freedom of contract allows the parties to determine the contents of the agreement, but is still limited by public order, propriety, and applicable laws and regulations. In the context of franchising, although there is freedom of contract, it is important that the agreement does not disadvantage the franchisee. The Indonesian government has issued regulations to protect small businesses, such as Law No. 9

of 1995 on Small Business Development, as well as Government Regulation No. 35 of 2024 on Franchising.

In this study, the author uses the theory of legal protection. According to Satjipto Rahardjo, it focuses on protecting human rights, especially for individuals who are harmed by the actions of others (Fuad, et al., 2020; Samin, 2024). Legal protection serves to ensure that every legal subject obtains the rights guaranteed by law, with the aim of protecting those who are in a weak position. In Rahardjo's view, legal protection is not only normative (Halim, et al., 2024), but must also be oriented towards the fulfilment of basic individual rights, both in the form of preventive protection that prevents violations, and repressive that deals with violations after they occur. This theory also emphasises the importance of the social context in the application of law, where the law must create social justice and involve community participation to be more effective in protecting individual rights. Thus, this theory of legal protection provides a foundation for the protection of franchisees against unlawful acts of franchisors.

Methods Research

This research uses the normative juridical method, which is legal research conducted by relying on library materials or secondary data. Data collection is carried out by identifying and inventorying relevant positive legal rules, as well as examining various library materials such as books, scientific journals, and research reports related to legal protection for franchisees against unlawful acts of the franchisor. To analyse legal materials, the author uses several methods of interpretation and legal construction, including grammatical interpretation, which focuses on the meaning of legal words or sentences based on grammar and daily use; systematic interpretation, which examines the understanding, principal, and basis in law related to legal society, legal subjects, rights and obligations, and legal relationships; and analogy construction, which provides an interpretation of legal regulations by using analogies to adjust events that are not covered by existing legal provisions. In addition, this research also uses the construction of legal refinement (*rechtsverfijning*), which serves to narrow the scope of legal regulations to fit a more specific context. These methods will assist in providing a deeper understanding of the legal protection that can be given to franchisees in the face of unlawful acts from franchisors.

Result and Discussion

Legal protection is a fundamental concept in safeguarding the interests of individuals or legal entities in relationships governed by law. This protection arises from legal provisions accepted by society to regulate social and individual relationships with the state. Legal protection is not only in the form of written legal provisions, but can also be oral, but both aim to provide legal certainty, justice, and peace for people involved in legal agreements (Rahardjo, 1997).

More specifically, in the context of franchising, Satjipto Rahardjo (1997) argues that legal protection serves to provide human rights (HAM) to individuals who are harmed, either by other parties or in this case by franchisors who may be against the law. Therefore, legal protection provided to franchisees is a very important thing in maintaining the balance between franchisors and franchisees, considering that franchisors often have a stronger position economically and legally than franchisees (Mumdžiev & Windsperger, 2013).

Legal Protection of Franchisees in Franchise Businesses

Franchising in Indonesia is regulated under the Franchising Government Regulation, and is currently updated with Government Regulation No. 35 Year 2024. Franchising grants special rights to the franchisor to allow franchisees to run a business using a system that has

been proven successful. In running this business, there are clear obligations and rights for both parties that must be implemented in accordance with applicable legal provisions.

Article 1 of the Franchising Regulation defines a franchise as a special right owned by an individual or business entity to run a certain proven business system. Franchisors are obliged to provide guidance and support to franchisees in running the business, both in terms of business management, training, and utilisation of intellectual property (trademarks, service marks, or trade secrets).

However, in reality, there are often practices that are detrimental to franchisees, especially when the franchisor violates the terms agreed in the franchise agreement. These practices include stopping the delivery of raw materials, stopping franchise operations, closing access to operational services, and terminating employment without clear reasons or without going through agreed procedures (Hussain et al., 2023). Legal protection for franchisees is very important to prevent this kind of arbitrary action.

Legal Protection System in Franchising

One form of legal protection for franchisees is the provision that requires a franchise agreement to be made in Bahasa Indonesia, which according to Article 7 of the Franchising Regulation aims to provide clarity and legal certainty for both parties (López-Bayón & López-Fernández, 2016). This provision is important, as a franchise agreement that is unclear or detrimental to the franchisee can create inequality in the business relationship between the franchisor and franchisee.

In addition, arrangements regarding intellectual property rights (IPR) also play an important role in legal protection for franchisees. IPR, especially with regard to brands and trade secrets, provides a clear legal basis for franchisees to use these elements in conducting business. This protection can reduce the potential for abuse of rights by the franchisor or third parties seeking to exploit the brand without authorisation.

Legal Protection in Franchising Practice

In practice, the actions that can be taken by franchisees when facing legal violations from the franchisor include filing a lawsuit. This is supported by regulations such as Article 3 letter f in the Franchising Regulation which requires registered intellectual property rights to be legally accountable (Solis-Rodriguez & González-Díaz, 2015). With legal certainty related to intellectual property, franchisees have a stronger basis in defending their rights in the franchise relationship.

In addition, the existence of Article 4 in GR No. 35 Year 2024 emphasises that the franchisor must have a proven and profitable business system, and provide ongoing support to franchisees, which can be in the form of training, guidance in operational management, and promotional support. This clear and transparent support provides a sense of security for franchisees that the franchisor is fully responsible for the continuity of the business run under the franchise system (Urbanisation, 2023).

Favourable Conditions for Franchisees

From a legal point of view, it is important for franchisees to take advantage of existing regulations to optimise legal protection in franchise agreements. This includes paying attention to the provisions governing the franchisor's obligation to provide a prospectus prior to the signing of the agreement (Article 10, Franchising Regulation). This provision provides an opportunity for franchisees to conduct an in-depth assessment of the franchise to be run and to know exactly their rights and obligations before proceeding further. In addition, the regulation in Government Regulation No. 35 Year 2024 on the obligation of franchisors to include a minimum clause in the franchise agreement aims to create a balance between the rights and obligations of the parties, so that the relationship between the franchisor and franchisee does not favour one party only (Mumdžiev & Windsperger, 2013).

Conclusion

Based on the results of the research and discussion that has been carried out, the hypothesis stating that "Legal protection for franchisees against unlawful acts of franchisors can create fair and transparent relationships in the franchise business in Indonesia" can be accepted. This is evident from the various regulations that have been implemented, such as Government Regulation No. 42 Year 2007 and its amendments in Government Regulation No. 35 Year 2024, which provide a legal basis for franchisees to obtain protection against potential abuse by franchisors. The regulation not only clearly regulates the obligations and rights of each party, but also provides a mechanism by which the franchisee can defend its rights in the face of violations committed by the franchisor. This legal protection covers aspects such as intellectual property rights, the franchisor's obligation to provide information and training, and the obligation to include fair clauses in the franchise agreement. Thus, the existing regulations provide legal certainty and balance between both parties in the franchise relationship. Nonetheless, it is important for franchisees to make good use of their rights and understand the existing legal provisions to maximise the legal protection available. In conclusion, the existing regulations are sufficient to protect the interests of franchisees in the franchise business, provided they are properly implemented and complied with by all relevant parties.

Suggestion and Recommendation

As suggestions and recommendations, it is important for the government and relevant authorities to continue to strengthen the implementation and supervision of existing regulations, such as Government Regulation No. 42 Year 2007 and Government Regulation No. 35 Year 2024, in order to ensure more effective protection for franchisees in franchise agreements. In addition, it is recommended that authorised agencies provide legal consultation facilities for franchisees, to improve their understanding of the rights protected by law, and introduce more efficient and transparent dispute resolution mechanisms. This research can serve as an important foundation to encourage policy reforms that prioritise balance in the relationship between franchisors and franchisees, so as to create a healthy, fair and sustainable partnership relationship, and ensure more equitable justice is achieved in the franchise business sector in Indonesia.

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