

IDEAL FORM OF IPR MEANING REGISTERED IN FRANCHISE BUSINESS FORMAT (FRANCHISE) IN INDONESIA

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Abstract

The purpose of this study is to analyze: 1) to what extent is the franchise business format able to provide profitable choices for the community in starting a profit-seeking business? 2) To what extent is the correlation of Intellectual Property Rights with the franchise business format? What donations do IPR provide in the franchise business format? 3) How the ideal form interprets the provision "registered IPR" as one of the indicators of the existence of a franchise according to regulatory provisions. The research method used is empirical juridical with a statutory approach, concept approach, and case studies. The results showed that: a) the franchise business became popular and growing rapidly in Indonesia because this form benefited both parties, namely the franchisor and the franchisee. For franchisees, the benefits obtained are that franchisees do not need to start their business from scratch because the franchisor's business is well-known and has a market, so that franchisees have the opportunity to grow quickly. The advantage of running a franchise business for franchisees is that the business can expand faster in many locations simultaneously and increase profits by utilizing investment from franchisees. 2) Intellectual Property Rights (IPR) is a very significant element in franchising, because without IPR contained in the franchise, it can be said that a business is not a franchise. Thus, IPR legal protection in franchise agreements is very important in supporting franchise businesses. Through the agreement on the franchise, various aspects of legal protection for IPR are regulated and agreed upon jointly by the franchisor and franchisee. 3) Article 1 paragraph (1) of the Decree of the Minister of Trade No. 12/M-DAG/PER/3/2006 concerning Terms and Procedures for Issuance of a Franchise Business Registration Certificate, Franchising (franchise) is an engagement between the Franchisor and the Franchisee where the Franchisee is given the right to run business by utilizing and/or using intellectual property rights or inventions or business characteristics owned by the Franchisor in exchange for a fee based on the terms set by the Grantor.

Keywords: Ideal Form of Meaning, Registered IPR, Business Format, Franchise, Indonesia.

INTRODUCTION

Background

The franchisee business is a business pattern with a small risk of failure where the growth is very rapid and gives its own color in the Indonesian economy. The popularity of the franchise business as an effective way of marketing and distribution of goods and services, because the existence of a franchise is considered able to reach the market share of a type of product throughout Indonesia. The large franchise business

opportunities in Indonesia make both foreign and local franchises emerge and experience a very extraordinary increase. For a beginner in the business world, this form of franchising is an alternative to starting a business.¹

When we talk about *franchises*, our memories will mostly be focused on various kinds of American-style fast food, such as MacDonal'd's, Burger King, Dunkin Donuts, Kentucky Fried Chicken etc. Such an understanding is not wrong at all because fast food has long been present in this country through the franchise format, in addition to the license format that has long been introduced in business activities in Indonesia², although even local franchises are now no less popular, you name it; Alfa Mart, Indomart, Ayam Bakar Wong Solo, Es teller 77, Kumon Method, Mr. Celup's etc.

Along with the large interest of business actors to choose a franchise business form, the Government of Indonesia completes a series of regulations on franchising. In detail, the latest guidelines and procedures for the practice of operating a franchise business are regulated in the Regulation of the Minister of Industry and Trade Number 71 of 2019 concerning Franchise Implementation as a follow-up to the Government Regulation of the Republic Number 42 of 2007 concerning Franchising.³

The understanding of franchising between what is understood by the public in general and the understanding according to the provisions of laws and regulations is different. Generally, people provide an understanding of franchising as leasing a certain business format owned by another party for a certain period of time by paying certain compensation known as royalties. Meanwhile, according to the provisions of Government Regulation No.42 of 2007 concerning Franchising, Article 3 states the criteria that must be met to be called a franchise, namely:

1. Have business characteristics;
2. Proven to have provided benefits;
3. Have standards for services and goods and / or services offered that are made in writing;
4. Easy to teach and apply;
5. There is continuous support;
6. Intellectual property rights (IPR) that have been registered.

The same criteria as above are also mentioned in the Regulation of the Minister of Trade of the Republic of Indonesia Number 71 of 2019 in Article 2 paragraph (2), there are further provisions of Article 3 of this Permendag in the form of:

"Individuals or business entities **are prohibited from** using the term and / or franchise name for their business names and / or activities, if they do not meet the criteria as referred to in Article 2".

This provision is about prohibition, of course, there are sanctions for those who violate. However, it is unfortunate that sanctions for violation of the provisions of Article 3 of the Minister of Trade Regulation do not expressly mention it. Article 29 states that:

"Franchisees, continuation franchisees, franchisees, and follow-on franchisees who violate the provisions as stipulated in Article 7 and Article 10 are subject to sanctions as stipulated in laws and regulations."

There is still confusion in this trade minister regulation, this is due to sanctions for violations of the franchise implementation agreement and ownership of the Franchise Registration Certificate (STPW). There is still no clarity regarding further statutory provisions regarding sanctions. The conclusion that can be obtained that Registered IPR is the main requirement for franchising. Without registered IPR there is no franchise, at least This is a franchise concept known to the Government of Indonesia. In the explanation of Article 3, it is stated that "registered IPR" is IPR related to businesses such as trademarks, copyrights, patents, and trade secrets, has been registered and has a certificate or is in the process of registration at the authorized institution. Understanding the term "registered IPR" needs further explanation, because it creates the impression that all IPR branches get legal protection through the registration process, even though some IPR branches do not require legal protection by registration, such as copyright and trade secrets.

Problem Statement

1. To what extent is the franchise business format able to provide a profitable choice for the community in starting a profit-seeking business?
2. To what extent is the correlation of Intellectual Property Rights with franchise business formats? What donations do IPR provide in the franchise business format?
3. How does the ideal form interpret the provision "registered IPR" as one of the indicators of the existence of a franchise according to regulatory provisions?

THEORETICAL FRAMEWORK

1. Theory of Legal Protection

Based on Satjipto Rahardjo's thinking, legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community in order to enjoy all the rights provided by law. Philipus M. Hadjon gave the idea that legal protection for the people as a preventive and repressive government action. Preventive legal protection aims to prevent disputes from occurring, which directs the government to be cautious in making decisions based on discretion, while repressive protection aims at dispute resolution, including handling them in judicial institutions⁴

M. Isnaeni argues that basically the issue of legal protection in terms of its source can be divided into two, namely:

a. Internal legal protection

Internal legal protection is legal protection created by the parties themselves when making an agreement, where when negotiating on clauses in the agreement the parties expect their interests to be fulfilled on the basis of agreement. In this intellectual legal protection, all types of risks are sought to be prevented by agreement on the clauses made by the parties.⁵

b. External Legal Protection

External legal protection is a legal product made by the government through written regulatory regulations to meet the legal needs of the community or weak parties, in accordance with the nature of laws and regulations that cannot be biased and impartial, proportionally must also be given balanced legal protection as early as possible to other parties.⁶

2. Theory of Justice

The term justice (*iustitia*) comes from the word "just" which means: impartial, impartial, siding with the right, deserved, not arbitrary.⁷ Justice is essentially treating a person or other party in accordance with his rights and obligations. What is the right of everyone is to be recognized and treated in accordance with his equal dignity and dignity, which is equal in rights and obligations, regardless of ethnicity, degree, descent, property, education or religion.⁸

Aristotle in his work entitled *The Ethics of Nichomachea* explains the thinking of his thoughts on justice. For Aristotle, the virtue, that is, obedience to the law (the law of the polis at that time, written and unwritten) was justice. In other words, justice is a virtue and it is general. Theo Huijbers explains justice according to Aristotle in addition to general virtues, also justice as a special moral virtue, which relates to human attitudes in certain areas, namely determining good relations between people, and balance between two parties.⁹ The measure of this equilibrium is numerical and proportional similarity. This is because Aristotle understood justice in terms of equality. In numerical similarity, every human being is equated in one unit. For example, everyone is equal before the law. Then proportional equality is to give to each person what is rightfully his, according to his abilities and achievements.¹⁰

RESEARCH METHODOLOGY

This research is included in the type of doctrinal research, where the approach method used is normative juridical. The study method used in this study is *normative legal research*, which is a study conducted by reviewing applicable laws and regulations or applied to a particular legal problem. Normative research is often referred to as doctrinal research, which is research whose object of study is statutory documents and library materials. This research was conducted in order to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject matter.¹¹ The research technique in this dissertation is descriptive analytical, where analysis is

carried out critically using various theories of research problems. The data collected in this study will be analyzed descriptively with a *qualitative approach*, namely by providing a thorough and in-depth explanation and explanation (*holistic / verstelen*), based on words arranged in a scientific setting. In this context, the analysis aims to see the development of IPR and franchise regulations.¹²

RESEARCH RESULTS

Franchise Business Format That Is Profit-Making

Franchise (*Franchise*) comes from French, namely *Franchir* which means giving freedom to the parties ¹³PH. Collin, in the Law Dictionary gives the definition of franchise as, *Lincense to trade using and paying a royalty for it dan Franchising as act of selling a license to trade as a Franchisee*. The definition emphasizes the importance of the role of trade names in franchising in exchange for *Royalty*¹⁴. By granting royalties means that there is a license grant, which is, a form of right to perform one or a series of actions or deeds given by those authorized in the form of permission. Without such permission, the act or act is a prohibited, invalid act or act which is against the law.

According to Warren J. Keegen in his book *Global Marketing Management* stated that international business development can be carried out in at least five ways, namely: 1. By way of export; 2. Through licensing; 3. In the form of franchising; 4. Establishment of joint ventures; or 5. Total ownership or overall ownership that can be done through direct ownership (direct ownership) or acquisition.¹⁵

In Franchising (*Franchise*) *this can be* It is said that as part of the business partner's compliance with the rules of the game given by the entrepreneur *Franchisor*, then the business partner or recipient *Franchise* granted the right to utilize the Intellectual Property Rights of the entrepreneur *Franchisor*, whether in the use of trademarks, service marks, copyrights on logos, industrial designs, patents in the form of technology or trade secrets and vice versa, Franchisor entrepreneurs earn royalties on the use of their Intellectual Property Rights.¹⁶

Franchise (*Franchise*) It is basically an agreement on the method of distributing goods and services to consumers. In this case the franchisor grants a license to *franchisee* to carry out goods and services distribution activities under the name and identity of the franchisor in certain areas, where the business is carried out in accordance with established procedures and methods *franchisor* and the franchisor provides assistance (*assistance*) against the franchise. In return, the franchisee pays a sum of money in the form of: *Inntial Fee* and royalties.¹⁷

Type of Franchise business (*Franchise*) was born in the United States approximately a century ago when the Singer sewing machine company began introducing the concept of Franchising (*Franchise*) as a way of developing the distribution of its products. Similarly, beer companies license small companies in an effort to distribute their products. In Indonesia, this form of business is also growing rapidly, where this franchise business form is widely used in fast food restaurant businesses such as Kentucky Fried Chiken,

Pizza Hut, Mc Donald, Hotels and car rental services. This form is also used by local businesses in Indonesia such as Es Teller 77.

Deep *Black's Law Dictionary* shows that the Franchise also contains elements as given to the license, but emphasizes more on granting the right to sell products in the form of goods or services by utilizing the trademark of the Franchisor (franchisee) with an obligation to the Franchisee (franchisee) to follow the methods and procedures or procedures that have been established. Franchise can be seen from two aspects, namely juridical and business aspects. The definition of franchise in juridical terms can be seen in the provisions of laws and regulations, various opinions, and expert views. Article 1 paragraph (1) of Government Regulation number 42 of 2007 concerning Franchising, Franchise is defined as: Franchise is a special right owned by individuals or business entities to a business system with business characteristics in order to market goods and / or services that have proven successful and can be utilized and / or used by other parties based on franchise agreements.

Furthermore, the definition of Franchise from the business aspect as stated by Bryce Webster, is one method of production and distribution of goods and services to consumers with a certain standard and exploitation system. The definition of standards and exploitation includes the similarity and use of company names, brands, production systems, packaging procedures and the use of the name of the dealer.¹⁸

Brayce Webster suggests there are three forms of Franchise, namely:

1. Product franchising

Product franchising is a franchise, whose franchisor gives a license to the franchisee to sell the goods produced. The franchisee serves as a distributor of the franchisor's products. It often happens that franchisees are given exclusive rights to market the product in a particular region. For example, car dealerships, gas stations.

2. Manufacturing franchises

Manufacturing franchise franchisor provides know-how of a production process. The franchisee markets the items with the same production standards and brands that the franchisor has. This form of franchise is widely used in the production and distribution of *soft drinks*, such as Coca Cola and Pepsi.

3. Business format franchising

Business format franchising is a form of franchise whose franchisee operates a business activity using the franchisor's name. In return for using the franchisor's name, the franchisee must follow standard operating methods and be under the control of the franchisor in terms of materials used, choice of place of business, design of place of business, sales hours, employee requirements, and others. So that the franchisor provides the entire business concept which includes marketing strategies, guidelines and standards for business operations and assistance in operating a franchise. So that the franchisee has an inseparable identity from the *franchisor*.¹⁹

The Franchisee is required to pay a royalty amount for the use of the trademark and the product manufacturing process, the amount of which is determined based on the agreement. Royalties are sometimes set not from a percentage of profits but rather from a few units. In such cases, the franchisor does not care whether the franchisee is profitable or not. Besides having to pay royalties, the franchisee must design his company in such a way that it is similar to the franchisor's company. Likewise with management, not infrequently the franchisor also provides assistance in management.²⁰

The franchise business has become popular and growing rapidly in Indonesia because this form benefits both parties, namely the franchisor and the franchisee. For franchisees, the benefits obtained are that franchisees do not need to start their business from scratch because the franchisor's business is well-known and has a market, so that franchisees have the opportunity to grow quickly. The advantage of running a franchise business for franchisees is that the business can expand faster in many locations simultaneously and increase profits by utilizing investment from franchisees.²¹

Basically *Franchise* is an agreement regarding the method of distribution/sale of goods and/or services to consumers. *Franchisor* Within a certain period of time grant a license to the Franchisee to carry out the business of distributing/selling goods and/or services under the name of the franchisor's identity in a certain area/area. The business must be carried out in accordance with the procedures and methods outlined in *Standard Operating Procedure* (SOP). In return *Franchisee* Pay a fee / fee as rent for the use of the name / brand commonly referred to *Royalty*.²²

In the Franchise system there are three components, namely *Franchisor* (franchisee/franchiser), *Franchisee* (franchised/franchised), and *Franchise* (franchise). *Franchisor* is a party who has a system or way of doing business. The franchisee is the buying party *Franchise* of the franchisor thus has the right to conduct business in the manner developed by the franchisor. Franchising is a system or way of business itself. The Franchise agreement involves at least two parties, namely the Franchisor and the Franchisee. Franchisor as a party who gives permission to the Franchisee to use his trademark and Franchisee as the party who gets permission to use the Franchisor's trademark in exchange for a certain amount of money. In a franchise business, this is related to the use of the Franchisor's Intellectual Property Rights by the Franchisee.²³

Correlation of Intellectual Property Rights with Franchise Business Format

Intellectual property (*intellectual property rights*) or intellectual property rights or also called immaterial property rights are property rights created from someone's work, creation, thinking, or intellect. Intellectual property rights can generally be classified into industrial property rights (*industrial property*) and Copyright (*copy right*). Industrial property rights consist of trademark rights (brands) and patents (*patent*). A brand is a sign in the form of images, names, words, letters, numbers, color arrangements, or combinations of these elements that have distinguishing power and are used in trade or service activities. Right to a Mark is an exclusive right granted by the State to the owner of a Mark registered in the General Register of Marks for a certain period of time by using

the Mark itself or granting permission to other parties to use it. Thus a *franchisor* who already have the Rights to the Mark can use it themselves or give it to another party (*franchisee*) to use it.

Patent is an exclusive right granted by the State to the Inventor of the results of his Invention in the field of technology, who for a certain time carries out his own Invention or gives approval to other parties to carry it out. License is a permission granted by a Patent Holder to another party based on an agreement granting the right to enjoy the economic benefits of a Patent that is given long-term protection and certain conditions. In relation to franchising, the franchisor as a patent holder can grant patent rights to enjoy economic benefits to franchisees through an agreement.²⁴

Copyright is the exclusive right for the Creator or recipient of the right to announce or reproduce his work or give permission for it without reducing the restrictions under applicable laws and regulations. Copyright may be transferred or assigned, in whole or in part due to a written Agreement. In relation to franchising, the creator (franchisor) can transfer his copyright either in whole or in part to another party (franchisee) for certain purposes through a written agreement.

Intellectual property is property that is born or arises from human intellectual abilities. These can be works in the fields of Science, Technology, Art and Literature. These works are born or produced on human intellectual abilities through the outpouring of time, energy, thought, creativity, taste, and human charity. Wealth in the form of works produced from human thought or intelligence has value or economic benefits for human life so that it can also be considered as a commercial asset for those who have it.²⁵

The franchise agreement is closely related to the granting of licenses to utilize certain intellectual property rights as one of the franchise criteria, namely IPR (Intellectual Property Rights) which has been registered referring to Article 3 of the Government Regulation of the Republic of Indonesia Number 42 of 2007. ²⁶Franchise is basically an agreement regarding the method of distributing goods and services to consumers. In this case, the franchisor grants a license to the franchisee to carry out goods and services distribution activities under the franchisor's name and identity in a certain area, where the business is carried out in accordance with the procedures and methods determined by the franchisor and the franchisor provides assistance to the franchise. Franchise is an engagement between the Franchisor and the Franchisee where the Franchisee is given the right to run a business by utilizing and/or using intellectual property rights or inventions or business characteristics owned by the Franchisor in return based on the terms set by the Franchisor with a number of obligations to provide continuous operational consulting support by the Franchisor to the Recipient Franchise.²⁷

Franchising is always related to granting rights to use and/or utilize certain intellectual property rights. These Intellectual Property Rights include copyrights, trademark rights, and patent rights. Because there has been an agreement between the Franchisor and the Franchisee, it means that a legal relationship arises between the two so that in carrying out obligations and accepting their rights, there needs to be definite legal

protection. Through the partnership, there will be a transfer of Intellectual Property Rights from the franchisor to *Franchisee*.

Intellectual Property Rights (IPR) is a very significant element in franchising, because without IPR contained in the franchise, it can be said that a business is not a franchise. Thus, IPR legal protection in franchise agreements is very important in supporting franchise businesses. Through the agreement on the franchise, various aspects of legal protection for IPR are regulated and mutually agreed upon by *franchisor* and *Franchisee*.²⁸

The Ideal Form interprets the Provisions of "registered IPR" with Franchises according to Regulatory Provisions

The creative economy and creative industries must be continuously developed. Sectors that can become a creative economy include Advertising, Architecture, Art, Crafts, Design, Fashion, Film, Music, Art Performance, Publishing, Research and Development, Software, Children's Toys, Video Games and so on. So that creative economy actors must get certainty that their creators will get their rights such as copyrights, patents, trademark rights, rights to industrial designs and so on so that it will bring justice and at the same time welfare to Intellectual Property Rights.²⁹

Works that are born or produced on human intellectual abilities through time, energy, thoughts, creativity, taste, human charities are naturally secured by developing a legal protection system for these properties known as Intellectual Property Rights (IPR). This is a way to protect intellectual property by using legal instruments owned. These Intellectual Property Rights can be in the form of copyrights, patents, trademark rights, rights to industrial designs and so on.

The Intellectual Property Rights (IPR) system requires a well-organized documentation system for all forms of human creativity, so that the possibility of producing the same creative work from others can be avoided and prevented. Through the support of well-organized documentation, it is hoped that the community can make maximum use of the results of creativity for life needs or further development so that it can provide much higher added value.

IPR is a way to protect intellectual property by using legal instruments which in Indonesia are managed by the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights. There are two reasons why IPR needs to be protected by law, namely non-economic reasons and economic reasons. Non-economic reasons mean that legal protection will spur those who produce these intellectual works to continue to do intellectual creativity because it will increase *self-actualization* in humans. While economic reasons mean by protecting those who give birth to intellectual works against imitation, plagiarism, piracy, or other fraudulent acts by others for their intellectual work. Thus, IPR is included in intangible objects that can be used as wealth or property rights so that they can be inherited because they have economic value.³⁰

Normatively, Indonesia is a country that is quite complete in having statutory provisions in the field of Intellectual Property Rights. The statutory provisions in the field of Intellectual Property Rights have undergone adjustments in such a way that they are in harmony and do not contradict the results of international agreements. These adjustment steps are also a national policy in an effort to build an Intellectual Property Rights system.

Article 1 paragraph (1) of the Decree of the Minister of Trade No. 12/M-DAG/PER/3/2006 concerning Terms and Procedures for Issuance of a Certificate of Franchise Business Registration, Franchise is an engagement between the Franchisor and the Franchisee where the Franchisee is given the right to run a business by utilizing and/or using intellectual property rights or inventions or business characteristics owned by the Franchisor with a reward based on the conditions set by the Giver. Government Regulation of the Republic of Indonesia Number ³¹ 42 of 2007 concerning Franchising and Regulation of the Minister of Trade of the Republic of Indonesia Number: 12/M-Dag/Per/3/2006 concerning Terms and Procedures for Issuance of Franchise Business Registration Certificate requires parties involved in the franchise system to enter into a franchise agreement.

In terms of business, franchising relates to the network of making and/or distributing goods and/or services, with a certain standard and exploitation system. The definition of standards and exploitation systems includes similarities in the use of business names and brands, manufacturing systems, and procedures for packaging, serving, and distribution. In addition, in the franchise system is hidden an abstract thing that has high economic value, namely a certain image and goodwill. A good image or name is needed in the business world, where elements of competition and efforts to seize market share play a very large role.

By using the same business name, brand, and exploitation system, the business owned by the franchisee gets the franchisor's image and good name that has been firmly embedded in the community. Therefore, franchisees do not need to build their own image and good name which is needed in an effort to seize market share. Likewise, if a consumer buys goods and/or services from a franchisee, then he has actually purchased a certain image. In addition, these consumers also expect to get goods / services with quality standards that they have known before.³²

CONCLUSION

The results showed that;

- 1) The franchise business has become popular and growing rapidly in Indonesia because this form benefits both parties, namely the franchisor and the franchisee. For franchisees, the benefits obtained are that franchisees do not need to start their business from scratch because the franchisor's business is well-known and has a market, so that franchisees have the opportunity to grow quickly. The advantage of running a franchise business for franchisees is that the business can grow faster in

many locations simultaneously and increase profits by utilizing investment from franchisees

- 2) Intellectual Property Rights (IPR) is a very significant element in franchising, because without IPR contained in the franchise, it can be said that a business is not a franchise. Thus, IPR legal protection in franchise agreements is very important in supporting franchise businesses. Through the agreement on the franchise, various aspects of legal protection for IPR are regulated and agreed upon jointly by the *franchisor* and *franchisee*
- 3) Article 1 paragraph (1) of the Decree of the Minister of Trade No. 12/M-DAG/PER/3/2006 concerning Terms and Procedures for Issuance of a Certificate of Franchise Business Registration, Franchise is an engagement between the Franchisor and the Franchisee where the Franchisee is given the right to run a business by utilizing and/or using intellectual property rights or inventions or business characteristics owned by the Franchisor with a reward based on the conditions set by the Giver.

Notes

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