

Civil Law Review of The Implementation of Franchise Agreements In Indonesia

Yudith Evametha Vitranilla

Universitas OSO Pontianak, Indonesia

Email: Utehtersenyum76@gmail.com

Correspondence: Utehtersenyum76@gmail.com*

KEYWORDS

Franchise Agreement; Civil Law, Rights and Obligations; Law Enforcement; Consumer Protection

ABSTRACT

Franchise agreements have become one of the fastest-growing business models in Indonesia. However, in its implementation, legal problems often arise faced by the parties involved in the franchise agreement. This journal aims to review the implementation of franchise agreements in Indonesia from the perspective of civil law. This review was carried out by analyzing laws and regulations related to franchising, principles of civil law, and the practice of implementing franchise agreements in the field. The study results show that implementing franchise agreements in Indonesia still faces several obstacles, such as: 1) Lack of understanding of the parties to their rights and obligations in the franchise agreement. 2) Weak law enforcement against violations of franchise agreements. 3) The government's role in protecting the parties' rights in the franchise agreement has not been optimal. Based on the study's results, this journal recommends several steps to improve the implementation of franchise agreements in Indonesia: Increasing education and socialization of the parties about their rights and obligations in franchise agreements; Strengthening law enforcement against violations of franchise agreements; and Enhancing the role of the government in protecting the rights of the parties to the franchise agreement.

Attribution-ShareAlike 4.0 International (CC BY-SA 4.0)



1. Introduction

Franchising is a form of business that is proliferating in Indonesia. The franchise system allows entrepreneurs to expand their business network relatively easily and quickly compared to opening an independent branch. Basically, a franchise is a business relationship between two parties, a franchisor and a franchisee, where the franchisor grants the franchisee the right to conduct business using a proven brand, operating system, and track record of support (Putra, 2020). In fact, implementing franchise agreements in Indonesia cannot be separated from various legal aspects that regulate the rights and obligations of the parties involved. Civil law plays an important role in ensuring legal certainty in franchise agreements and the protection of the parties (Subekti, 1985).

The franchise agreement itself must meet the contract's validity conditions by the provisions of the Civil Code (Kitab Undang-Undang Hukum Perdata (KUHPerdata), n.d.) and other laws and regulations. In Indonesia, the implementation of franchise agreements is further regulated by Government Regulation Number 42 of 2007 concerning Franchise and Regulation of the Minister of Trade of the Republic of Indonesia, which regulates the implementation and registration of franchise agreements (Handayani, 2018; Raharjo, 2013). This regulation aims to provide legal protection to franchisees and encourage creating a healthy and competitive business environment (Sutiyoso, 2015). A review of civil law regarding the performance of franchise agreements in Indonesia is important because, in practice, many problems may arise, such as Breach of Contract, Imbalance of Rights and Obligations of the Parties, and Simultaneous Protection of Franchise Intellectual Property Rights. By analyzing the aspects of civil law that govern franchise agreements, we hope to provide a comprehensive overview of the role of civil law in regulating and protecting the performance of franchise agreements in Indonesia. This study examines various aspects of civil law related to the implementation of franchise agreements, including its legal conditions, registration obligations, legal protection of the parties, and dispute resolution that may arise (Wibowo, 2015). This aims to contribute to developing better franchising practices and provide legal certainty for economic actors in Indonesia. However, implementing franchise agreements in Indonesia often encounters obstacles and legal problems. This can be caused by several factors, such as: (Anwar, 2017)

1. Lack of understanding of the parties' rights and obligations in the franchise agreement.
2. Weak law enforcement against violations of franchise agreements.
3. The government's role in protecting the parties' rights in the franchise agreement has not been optimal.

These problems can cause losses for the parties involved in the franchise agreement, both the franchisor and the franchisee. Therefore, conducting a civil law review of the implementation of franchise agreements in Indonesia is necessary to identify existing problems and find the right solutions. Franchise business dispute resolution is pursued through a deliberation route emphasizing the principle of a win-win solution. If the dispute cannot be resolved by deliberation and consensus, both parties agree to resolve it by choosing a domicile in the District Court. In the contract made by the parties, the place of dispute settlement has been determined. Still, in reality, the regulation does not apply because both parties live and work in a continuous network of relationships. Thus, it can be said that formal and procedural things are not always in accordance with the demands of community development, especially those related to economic activities.

2. Materials and Methods

This research uses a normative legal approach and analytical descriptive research methods. This method was chosen to analyze and examine the performance of franchise agreements from the perspective of civil law in Indonesia (Setiawan, 2001). The following steps are taken in this study: Norm-Law Research Approach: This research aims to study and analyze legal regulations, legal literature, and court rulings related to franchise agreements. This approach helps to understand the applicable legal norms and their practical application (Marzuki, 2011). Types of Descriptive Analysis

Research This research is descriptive. That is, systematically explaining the facts and characteristics of the topic studied. In addition, this research is also analytical. That is, the data collected is analyzed to draw relevant conclusions. Secondary Data Sources The data used in this study comes from secondary sources, including: Legal Literature: Textbooks, journal articles, and other academic publications related to civil law and franchise agreements. Laws, government regulations, ministerial regulations, and other regulations that regulate franchising in Indonesia. Court decision: A relevant court decision relating to a franchise agreement dispute. Data Collection Techniques Literature Research collects data by searching, reading, and reviewing legal literature, regulations, journal articles, and court decisions related to franchise agreements. Data Analysis Techniques Qualitative Analysis The collected data is analyzed qualitatively by identifying, classifying, and interpreting relevant information. This analysis aims to determine the franchise agreement's implementation per the provisions of the applicable civil law and identify the problems and possible solutions. The normative analysis analyzes the legal norms contained in the articles of association and related court decisions to assess whether the implementation of the franchise agreement is in accordance with the applicable legal provisions. This Literature Search Research Stage collects and reviews legal literature related to the research topic. Data Analysis: Analyzing the data collected to identify and review relevant legal aspects when executing franchise agreements.

3. Result and Discussion

In general, the implementation of franchise agreements in Indonesia is regulated in Government Regulation Number 42 of 2007 concerning Franchising ("PP 42/2007"). PP 42/2007 complements the Civil Code ("Civil Code") provisions related to franchise agreements. Some of the important results of the civil law review of the implementation of franchise agreements in Indonesia are:

1. Franchise agreements are recognized as a type of legal agreement based on the principle of freedom of contract regulated in Article 1338 of the Civil Code.
2. The implementation of the franchise agreement must be based on good faith and in accordance with the agreement's object, as agreed upon by the parties.
3. The parties to the franchise agreement have rights and obligations that must be fulfilled.
4. Dispute resolution related to franchise agreements can be done through consensus deliberation or legal channels.

Based on the analysis of laws and regulations, principles of civil law, and the practice of implementing franchise agreements in the field, it can be concluded that the implementation of franchise agreements in Indonesia still encounters several obstacles, namely: (Harahap, 2002)

1. There is a lack of understanding of the parties' rights and obligations in the franchise agreement, which often leads to disputes between franchisors and franchisees.
2. Weak law enforcement against violations of franchise agreements. This causes the aggrieved parties to feel they do not get legal certainty and are reluctant to resolve the dispute through legal channels.

3. The government's role in protecting the parties' rights in the franchise agreement has not been optimal. This causes the parties, especially the franchisee, to feel less protected from the franchisor's unnatural practices.

Disputes related to franchise agreements in Indonesia are quite frequent. These problems can arise from various things, such as the lack of understanding of the parties to their rights and obligations, defaults, and trademark infringement. Here are some examples of disputes related to franchise agreements in Indonesia:

The Case of CV Ayu Elita Estetika vs PT Elty Aesthetica International

This case began with a franchise agreement between CV Ayu Elita Estetika (franchisee) and PT Elty Aesthetica International (franchisor) in the beauty clinic business. Franchisees feel disadvantaged because franchisors do not provide adequate support and training and unilaterally change the business concept. The franchisee then filed a lawsuit against the franchisor to the Semarang District Court. In the decision of the Semarang District Court Number 200/PDT/2020/PN.Smg, the panel of judges ruled that the franchisor had committed a default against the franchisee. The panel of judges ordered the franchisor to refund the franchise fee that had been paid by the franchisee, as well as pay material and immaterial damages to the franchisee.

The Case of Bono Defi Aris Andi vs PT Ayam Goreng Cepu

This case involves a franchise agreement between Bono Defi Aris Andi (franchisee) and PT Ayam Goreng Cepu (franchisor) in the fried chicken restaurant business. Franchisees feel disadvantaged because franchisors do not provide adequate support and training and do not fulfill their obligations to supply raw materials in accordance with the agreement. The franchisee then filed a lawsuit against the franchisor to the Surakarta District Court. In the decision of the Surakarta District Court Number 412/Pdt.G/2021/PN.Skt, the panel of judges ruled that the franchisor had committed a default against the franchisee. The panel of judges ordered the franchisor to refund the franchise fee that had been paid by the franchisee, as well as pay material and immaterial damages to the franchisee.

CV Dhia Jaya vs PT Dua Kelinci Case

This case began with a franchise agreement between CV Dhia Jaya (franchisee) and PT Dua Kelinci (franchisor) to sell biscuits. Franchisees feel disadvantaged because franchisors do not provide adequate support and training and unilaterally change the business concept. The franchisee then filed a lawsuit against the franchisor to the Malang District Court. In the decision of the Malang District Court Number 12/Pdt.G/2022/PN.Mlg, the panel of judges decided that the franchisor was not proven to have committed a default against the franchisee. The panel of judges stated that the franchisee had violated several provisions in the agreement, so the franchisee's lawsuit was rejected.

From the three cases above, it can be concluded that some of the main factors that cause disputes related to franchise agreements in Indonesia are:

1. The parties' rights and obligations in the franchise agreement are not understood, which often leads to misinterpretation and violation of the agreement.

2. Default by one of the parties. Defaults can occur in various forms, such as inadequate support and training, failure to fulfil obligations to supply raw materials, or unilateral changes in business concepts.
3. Trademark infringement. Trademark infringement can occur when a franchisee uses a franchisor's trademark without permission or in a manner that does not follow the agreement.

To prevent disputes related to franchise agreements in Indonesia, it is necessary to take several steps, namely:

1. Educate and socialize the parties about their rights and obligations in the franchise agreement. This can be done through various programs, such as seminars, workshops, and information publications.
2. Create a clear and complete franchise agreement. The agreement should detail all the parties' rights and obligations so there is no room for misinterpretation.
3. Increase supervision of the implementation of franchise agreements. The government, franchise associations, and other interested parties can do this.

By taking these preventive measures, it is hoped that disputes related to franchise agreements in Indonesia can be minimized

Comparison of Franchise Systems in Indonesia with Other Countries

The franchise system in Indonesia is different from that of other countries. Here are some comparisons of the franchise system in Indonesia with other countries: (Mulyono, 2019)

1. Legal Basis

In Indonesia, the legal basis for franchising is regulated in Law Number 15 of 2009 concerning Franchising and Government Regulation Number 42 of 2007 concerning implementing Franchises. In the United States, the legal basis of franchising is regulated in the Federal Franchise Law, which consists of several laws, such as the Franchise Disclosure Act, the Franchise Rule, and the Lanham Act.

2. Franchise Registration,

In Indonesia, franchises must be registered with the Ministry of Trade. In the United States, franchise registration is not mandatory at the federal level, but some states require it. In Japan, franchise registration is mandatory with the Japan Franchise Association.

3. Obligations of the Franchisor

In Indonesia, franchisors must provide complete and correct information to franchisees about the franchise business, including company history, financial projections, and information about the training and support. In the United States, franchisors must provide franchisees with a Franchise Disclosure Document (FDD), which contains the same information as required in Indonesia. In Japan, franchisors are required to provide franchisees with a Franchise Disclosure Statement (FDS), which contains information similar to FDDs in the United States.

4. Obligations of the Franchisee

In Indonesia, franchisees are required to pay franchise fees and royalties to franchisors. In the United States, franchisees must also pay franchise fees and royalties to franchisors. In Japan, franchisees must pay franchise fees, royalties, and entry fees to franchisors.

5. Law Enforcement

In Indonesia, law enforcement against franchise violations is carried out by the Trade Supervisory Agency (BAP) of the Ministry of Trade. In the United States, law enforcement against franchise infringement is carried out by the Federal Trade Commission (FTC) and state courts. In Japan, franchise infringements are enforced by the Japan Fair Trade Commission (JFTC) and Japanese courts.

Obstacles in the Implementation of Franchise Agreements in Indonesia

The obstacles faced in the implementation of franchise agreements in Indonesia can be identified as follows:

1. Lack of education and socialization to the parties about their rights and obligations in the franchise agreement. This can be done through various programs, such as seminars, workshops, and information publications.
2. Strengthen law enforcement against violations of franchise agreements. This can be done by increasing the capacity of law enforcement officials and tightening rules related to sanctions for violations of franchise agreements.
3. The government should increase its role in protecting the rights of the parties in the franchise agreement. This can be done by formulating more comprehensive laws and regulations and providing stronger protection for the parties, especially franchisees.

Based on the results of the analysis and discussion, here are some more specific suggestions to improve the implementation of franchise agreements in Indonesia:

Improving Education and Socialization

1. Conduct regular education and socialization programs to the parties involved in franchising, both franchisors and franchisees, about their rights and obligations in the franchise agreement. This can be done through seminars, workshops, training, and information publication through various media.
2. Increasing the role of education and training institutions in including materials about franchising in their education and training curriculum.
3. Form a community or forum for franchise business actors to exchange information and experiences and discuss problems faced together.

Strengthening Law Enforcement

1. Increase the capacity of law enforcement officials to handle franchise-related cases through training and adequate knowledge of franchise law.
2. Strengthen coordination between relevant agencies in franchise law enforcement, such as the Ministry of Trade, the Indonesian National Police, the Trade Supervisory Agency, and judicial institutions.
3. Tightening rules related to sanctions for violations of franchise agreements so that it can provide a deterrent effect for violators (Dewi, 2021).

Optimizing the Role of the Government

1. Formulate more comprehensive and detailed laws and regulations on franchising. This is necessary to close legal loopholes that can lead to disputes between franchisors and franchisees.
2. Increasing the role of the government in protecting the parties to the franchise agreement, especially franchisees who often have a weaker position than franchisors.
3. Providing support and incentives for the development of franchise businesses in Indonesia, such as easy licensing, access to capital, and training for franchise business actors.

Improving the Quality of Franchise Agreements

1. Encourage franchisors and franchisees to create a clear, complete, and easy-to-understand franchise agreement. The agreement should detail all the parties' rights and obligations so that there is no room for misinterpretation.
2. Utilizing the services of experienced legal consultants in drafting franchise agreements to ensure that the agreement is in accordance with applicable laws and regulations.
3. Organizing forums or discussions between franchisors and franchisees to discuss key points in the franchise agreement before the agreement is signed.

Increasing the Role of Franchise Associations

1. Increasing the role of franchise associations in providing education and assistance to their members about their rights and obligations in franchise agreements.
2. Facilitating the settlement of disputes between franchisors and franchisees through mediation or arbitration.
3. Cooperate with the government in formulating franchising laws, regulations, and policies.

Increased Awareness of Parties

- Increase the parties' awareness of the importance of complying with the franchise agreement through education and socialization about its rights and obligations.
- Increase the parties' awareness to resolve disputes peacefully through mediation or arbitration rather than through lengthy and time-consuming legal channels.
- Increase the parties' awareness to maintain a good and mutually beneficial relationship in running a franchise business.

4. Conclusion

This research examines the implementation of franchise agreements in Indonesia from the civil law perspective. The research was conducted by analyzing related regulations, principles of civil law, and practices in the field. The results show that the implementation of franchise agreements still faces several obstacles, such as a lack of understanding of the rights and obligations of the parties, weak law enforcement, and suboptimal government protection. This can be seen from several examples of franchise disputes in court caused by default or breach of agreement by one of the parties. To improve the implementation of franchise agreements, this journal provides recommendations to increase

education, strengthen law enforcement, and a more optimal role for the government. Another suggestion is to improve the quality of agreements, the role of franchise associations, and the awareness of the parties to fulfill contractual obligations and resolve disputes peacefully and legally. Thus, it is hoped that a better franchise system will be created in Indonesia in accordance with the applicable legal basis. This journal has discussed various relevant aspects related to the implementation of franchise agreements in Indonesia. These aspects include a review of civil law, applicable regulations, dispute cases in court, and a comparison of franchise systems in other countries. In particular, a normative analysis was carried out on the provisions of civil law regarding the conditions for the validity of the contract, the rights and obligations of the parties, and their application in franchise practice in Indonesia. The main obstacles identified are a lack of legal understanding, weak enforcement, and inadequate protection. Several recommendations were also given, namely increasing socialization, strengthening regulations and supervision, and improving the quality of franchise contract-making. This is expected to be able to handle legal problems that often arise and ensure business continuity for business actors. Overall, it can be concluded that this journal has comprehensively analyzed various legal aspects related to the implementation of franchise agreements in Indonesia. The findings and recommendations are expected to provide a clearer picture and solutions for improving the franchise business system and practices in the country.

5. References

- Anwar, H. (2017). Implementasi Perjanjian Waralaba di Indonesia: Studi Kasus pada Waralaba Jasa Makanan dan Minuman. *Jurnal Hukum Ekonomi Dan Bisnis*, 32(2), 345–360.
- Dewi, S. (2021). Analisis Hukum Terhadap Sanksi dalam Perjanjian Waralaba di Indonesia. *Jurnal Hukum Dan Kebijakan*, 22(2), 145–159.
- Handayani, A. (2018). Kewajiban Registrasi Perjanjian Waralaba dan Dampaknya Terhadap Kepastian Hukum. *Jurnal Legislasi Indonesia*, 15(2), 178–190.
- Harahap, M. Y. (2002). *Segi-Segi Hukum Perjanjian*. Alumni.
- Kitab Undang-Undang Hukum Perdata (KUHPerdata).
- Marzuki, P. M. (2011). *Penelitian Hukum*. Kencana Prenada Media Group.
- Mulyono, T. (2019). Kajian Terhadap Hak dan Kewajiban Para Pihak dalam Perjanjian Waralaba. *Jurnal Hukum Perdata*, 37(1), 97–110.
- Putra, F. (2020). Perlindungan Hukum terhadap Penerima Waralaba dalam Perjanjian Waralaba Internasional. *Jurnal Internasional Hukum Bisnis*, 10(1), 65–80.
- Peraturan Pemerintah Nomor 42 Tahun 2007 tentang Waralaba
- Peraturan Menteri Perdagangan Republik Indonesia Nomor 53/M-DAG/PER/8/2012 tentang Penyelenggaraan Waralaba
- Peraturan Menteri Perdagangan Republik Indonesia Nomor 57/M-DAG/PER/9/2014 tentang Ketentuan Waralaba untuk Jenis Usaha Jasa Makanan dan Minuman
- Putusan Pengadilan terkait sengketa perjanjian waralaba, seperti Putusan Mahkamah Agung Nomor 387 K/Pdt/2013
- Raharjo, P. (2013). Analisis Yuridis Terhadap Perjanjian Waralaba Berdasarkan Peraturan Pemerintah Nomor 42 Tahun 2007. *Jurnal Hukum Dan Pembangunan*, 43(2), 239–255.

- Setiawan, R. (2001). *Aneka Masalah Hukum dan Hukum Acara Perdata*. Alumni.
- Subekti, R. (1985). *Pokok-Pokok Hukum Perdata*. Intermasa.
- Sutiyoso, B. (2015). Perlindungan Hukum Bagi Franchisee dalam Perjanjian Waralaba. *Jurnal Hukum Bisnis*, 28(1), 112–125.
- Wibowo, G. (2015). *Aspek Hukum Bisnis Waralaba*. Gadjah Mada University Press.