

IMPLEMENTATION OF FRANCHISE AGREEMENT PERSPECTIVE IN CONTRACT LAW

Lina Maulidiana

Maulidianalina17@gmail.com

ABSTRACT

Franchise is one form of growing business activity in Indonesia, where the agreement based on principle of freedom of contract. This study aims to analyze of the franchise agreement implementation in contract law perspective, and factors inhibiting and supporting the franchise agreement in the contract law perspective.

This research is a qualitative study using a non-doctrinal approach to socio-legal research, in order to get an overview of study subjects to find an ideal reconstruction of the franchise in the contract law perspective. An approach that is non-doctrinal with presumption that the object of the law is interpreted as part of a social sub-system among other social sub-systems. The study also includes three stages, namely the study of philosophy which focuses on literature, study of normative to see how legislation to regulate legal relationships in the franchise business and was associated with the values of philosophy and conducted cross-checking through interviews with actors then do a sociological study to find in-put of justice sought.

It concluded that the franchise is a document legal agreement between the franchisor and franchisee (about the rights and obligations). Achievement in the agreement that gives something include the obligations of Franchisor to provide flexibility to run the business without interruption to franchisee for a certain period, the principles of business management following intellectual property rights such as trademarks, logos, patents, and other, which is part of the business concept franchise, for the franchise fee as agreed in the agreed amount. If the agreement between the parties is not carried out for example franchisee does not pay a franchise fee to the franchisor, it may be requested compensation. In an agreement is possible non-performance of the agreement, although the terms of validity of the agreement have been fulfilled. It caused by uncommitment (breach of contract) and coercion or force majeure. Therefore in the agreement, must have a balance between the rights and obligations between both parties that the franchisor and franchisee.

Keywords: *franchising, contract law, settlement, agreement, rights, obligation*

1. INTRODUCTION

A. Background

Indonesian state guarantees the freedom of the widest possible for every citizen to earn a decent living for humanity, basically everyone has the right to live and to defend life and livelihood. More broadly every person has the right to develop themselves

through the fulfillment of basic needs. The provisions on the freedom given by the State to citizens to earn a decent living are listed in the Act of 1945 Article 27, Paragraph 2, and Article 28 which states THAT A: a. Every citizen has the right to work and a decent living for humanity, and b. Everyone has the right to life and survival

and, life. Civil law in the Book of the Law of Civil Law third book about the engagement, arranged on agreements purchase and sale agreement, exchange, lease, employment agreement. Business practices can be found in a wide variety of agreements (contracts) which is used by businesses.

Similarly, the term used quite a variation; there is a use agreement, contract, agreement, contract or agreement. So the contract is something very important in the course of business activities. The contract will link businesses with other businesses or the relationship between business and consumer. This relationship will facilitate business activities due to the presence of this relationship will realize clearly the rights and obligations of the parties. Similarly a franchise, this is currently very rapid development. This business thrives in Indonesia, both foreign and local. The rapid growth and success of franchise business is caused by several factors. The most fundamental factor is that the franchise is a combination of knowledge and strength of existing businesses or established.

In the world of business, contracts are indispensable to the consideration of their mutual relationship. A mutually beneficial relationship of the parties as a business person should be supported by a variety of legal regulation as its legal basis and the various types of agreements stipulated in the contract. There is no business activity occurred in the exchange of interest without being based on the engagement that comes from a contract. The authority and proficiency in making a contract exists on the subject of law, either individual (human person) or legal

entity (as represented by the caretaker).

The contract is understood to protect the process and the legal relationships of business done by the businesses. Concretely contract is a reflection of the will of the parties aimed at mutual benefit based on the principles of contract as a fundamental concept in any agreement.

The franchise agreement is one form of business activity is growing in Indonesia based on the principle of freedom of contract, where the person or legal entity granted the right to use someone else's trademark or business concept particular operation is governed by the terms of the franchise agreement.

The franchise agreement is an agreement not named as a result of the development of contract law outside the Civil Code provides its own color in business practice in Indonesia. Conceptually the franchise agreement cannot be separated from the principles that apply in contract law, as the basis of the emergence of a franchise is an agreement that begins with the negotiation process between the parties. Through negotiations, the parties seek to create a mutually beneficial contract and not biased. The nature of contract law is inseparable from the existence of the principle of freedom of contract contained in Article 1338 paragraph (1) of the Civil Code that reflects respect for human rights in the field of wealth. The franchise agreement is expected to build the ideal contract law and proportionate in accordance with the needs of the parties.

Based on the explanation above the problems will occur as follows: 1) how is the implementation of the franchise agreement based on the

principle freedom of contract, 2) what are the factors supporting and franchise agreements in contract law perspective. Meanwhile the objectives of the research are: 1. to analyze the execution of the franchise agreement based on the principle freedom of contract, 2) to analyze the enabling and inhibiting factors in the agreement franchise in the contract law perspective. So, the general objective of this research to find legal postulates that contains a theory or argument of justification for a contract made by the parties in the franchise agreement that eventually will be recommended as a standard rule of law as generally accepted standard of contract.

B. Methodology Research

Type of research to be conducted is a qualitative study using a non-doctrinal approach to socio-legal (socio-legal research), in order to get an overview of the study subjects so hopefully find an ideal reconstruction of the franchise in the contract law perspective.

Although this study as departing from the approach is inductive because starting from the basic picture-set while gathering the data, then the data is processed, analyzed and abstracted and eventually emerges theories as qualitative research discoveries.

To support the research efforts of collecting the material to be studied in the form of theories, including the theory of the theory of justice as the basis of contractual relations and the principle of contract law as a philosophical foundation.

While the model of legal reasoning to be used in this study is based on a paradigm of constructivism is closely related to the Indonesia context as the terms of the substance of

thought is expected to help understand the objects (human behavior or communicate with one another), from the point of perpetrators-interaction (actor) itself in terms of capturing the meaning of a text.

This paradigm pragmatically assumes that every product form and behavior among humans as a reality that is also a product of the law will always be determined by the interpretation made and agreed upon by the actors who were involved in the process that is under construction (formation) of who knows something. on knowledge itself which of course will provide meaningful diversity to the fact that is being studied as an object. For understanding of the interpretation of the researcher should put the dialectic interaction between researcher and respondent to reconstruct reality (the basic concept of the ideal franchise) were examined through qualitative methods.

Simultaneously deductive process takes place via a data reduction step as the process of seeking an answer from the presumption contained in the author's mind, to be able to generalize if the findings apply in other times and places (meaning universal). In other words, not only qualitative findings can be generalized to the same substantive background, but also on the background of the others, failure by generalized more widely used by researchers interested in the preparation of the grabt theory.

While the approach is hermeneutic approach in order to understand the law in the context of the community that is an approach that is non-doctrinal with the presumption that the object of the law is interpreted as part of a social sub-system among other social sub-systems. With the

strategy of the study includes three stages, namely the study of philosophy which focuses on literature, study of normative to see how legislation to regulate legal relationships in the franchise business and was associated with the values of philosophy and conducted cross-checking through interviews with actors franchise business then do a sociological study to find in-put of justice sought.

The data collection in this research is done by way of literature study to obtain legal documents, either in the form of legislation regarding franchise business namely: Minister of Industry and Trade No. 259 / MPP / Kep / 7/1997 Date of July 30, 1997 on Provisions Procedures for Registration of Franchise Business. Regulation of the Minister of Industry and Trade No. 31 / M-DAG / PER / 8/2008 on the Implementation of the Franchise Law No. 14 of 2001 on Patents. Law No. 15 of 2001 on Marks. Law No. 30 of 2000 on Trade Secrets. Law Number 42 Year 2007 on Franchise and other documents related. Against the necessary data regarding the ideal concept of franchising in the perspective of contract law to use the method of observation, in-depth interviews (in-depth interviews) conducted on informants who were determined purposively. Through observation expected to receive a general orientation about the location and focus of research and can gain an overview of the situation and the behavior of the phenomenon that is able to give an idea of the focus of research to be assessed.

Interviews with the subjects used to reveal more about the data obtained through the observation of legal materials which have been obtained from the literature. Meanwhile, in-

depth interviews (In-depth interview) with the franchise business people as subjects, are expected to be able to reveal the meaning / symbolic further clarify the issues in the focus of research and data collection to sharpen understanding of the issues being studied.

This study used qualitative analysis through organizing data, sifting through so units that can be managed seek and find patterns, find what is important and what is learned, and decide what will be delivered on the steps, namely: Data Collection , Reduce Data, Presentation of Data, Data Verification. Data validation is used to establish the validity of the data based on the degree of confidence (credibility), transferability, dependability (dependability) and certainty (confirmability).

C. Literature Review

In the contractual relations "fairness" a central issue is quite urgent, because the "contract" is a forum for the parties to realize their interests fairly even-handed. Thomas Aquinas in his theory of distributive justice states that in the context of distributive justice, fairness and propriety (equity) is not achieved solely with the determination of the actual value but also on the basis of similarity between one thing with another (*aequalitas rei ad rem*). There are two forms in common is: a proportional similarity (acqualitas propotionis) and the similarity of the quantity or amount (actualities quantities).

Rawls says that an adequate theory of justice should be established by the contract approach, in which the principles of justice are chosen along really a mutual agreement of all

persons who are free, rational and equals. In exchange business interests of the parties always stated in the contract form to remember every step of the business is legal move. Rescoe Pound provides a definition of interest is a demand or desire to satisfy human wants either individually or in groups or associations. The basic framework used Rescoe Pound is the interests of the wider social which is the human desire to fulfill personal, interpersonal, and group.

The theory of justice which forms the basis of contract law stand has consequences that are not negotiable, that the balance of rights and obligations is the embodiment of justice in a meaningful comprehensive contract means that freedom of contract is based on the "interest" of the parties that must be protected by law.

In a classic appearance, for the term of this contract is often referred to as "the agreement" as a translation of "agreement" in English, or "overeenkomst" in Dutch. Besides, there is also a term that is commensurate with the term of the contract (as the translation of the English term "contract") is the most modern, most widespread and most commonly used, including their use in the business world. And the law governing the contract called "contract law".

Definition of a contract concluded by Salim HS is based on the theory proposed by Van Dunne, the definition of a contract or agreement is a legal relationship between two or more parties based on an agreement to give rise to legal consequences based on three phases: pre-contractual form of offer and acceptance, stage contractual statement will be a rapprochement

between the parties and post-contractual stage form of implementation of the agreement.

Contract law essentially has the basic philosophical principle or principles in an operational context. Lexical principles mean something on which to base the foundation of thinking or acting, etc. that contain values.

According Satjipto Rahardjo concept of legal principle is a "cornerstone" of the most comprehensive for the birth of a legal norm *daan* is the "ratio legis" of the rule of law.

The principle of contract law by Muhammad Syaifuddin applicable common principles of contract law underlying commercial transactions International contained in the UNIDROIT Principles Of International Commercial Contracts, 1994 (UPICCS 1994), among others: the principle of freedom of contract, the principle *konsensualisme*, the principle of good faith and transactions honestly, the principle of the prohibition of negotiating in bad faith, the principle of confidentiality and the principle of local customs. International contracts are predominantly no other existing national contract law foreign element, therefore the law governing international contracts are predominantly national contract law.

To answer the problems in the study will refer to the principles stated in the Seminar on "The reform of the Code of Civil Code organized by the Agency for Development of National Law (BPHN) in 1981 stated that the Act contract that will be created based on the principles following : a. The principle of freedom to contract, b. The principle of assuring the protection of the economically weak groups, c. The principle of good faith, d. The principle of alignment, e. The principle of decency, f. The

principle of public interest, g. The principle of legal certainty, and h. The principle of pacta sunt servanda.

Currently, the term franchise is understood as a form of marketing or distribution activities. Inside a large company gives the right or privilege to run the business in a particular time and place to individuals or companies that are relatively smaller. From a business standpoint, the franchise is one of the methods of production and distribution of goods and services to consumers with a system or a certain standard. Definition shorter but better illustrate the sense franchise put forward by the United Nations Centre on Transnational Corporation (UNCTC), as follows: "Franchise is particular from continuing licensing agreement implying a relationship in the which the franchisor provide Including the rights usually use the trademark or brand name plus the services of technical assistance, training, merchandising and management in return for Certain place". means "Franchise license agreement in particular is of a continuous relationship, which the franchisor provides rights especially one that included the use of a brand or a name plus a technical assistant services, training, equipment and management as well as providing a place". From the above definition can be concluded that the franchise agreement involves two parties namely the business owner (franchisor) and the tenant or the party that got the business license (franchise).

According to Faisal Santiago, states that:

"Franchising is a system of marketing of goods and or services and or technology, which is based on closed cooperation and continuously between the actors of the independent (meaning

the franchisor and individual franchisees) and separate both legal (law) and finance, where the franchisor granting to the individual franchisees, and imposes a duty to conduct its business in accordance with the concept of the franchisor".

This right obliges and allows the individual franchisee to use the franchisor's trade names or trademarks or service marks. Know-how means a set of practical information that is not patentable, which comes from experience and testing by the franchisor, which is secret, substantial, and certain (ways to do business and methods technical), business, technical methods, systems procedur and or property intellectual and industrial, which is supported by a technical and commercial continuous basis, within the framework and in accordance with the approval of the franchise written, made by the parties for this purpose a secret, it means a bunch of know-how, or a combination, and the proper arrangement of the components, not generally known or can be obtained easily, this information is not restricted in the narrow sense, where each individual component of the know-how should be totally unknown or can not be outside the franchisor's business.

Under Article 1 point 1 of Government Regulation No. 42 Year 2007 on Franchise, defines franchise as:

"Special rights owned by an individual or business entity to a business system with distinctive feature in order to market their goods and / or services that have proven successful and can be used and / or used by other parties under the franchise agreement".

D. Results

a. Implementation of Franchise Agreement In Contract Law perfective

Franchising is held by written agreement between the Franchisor to the Franchisee with regard to Indonesian law, when in a foreign language, the agreement must be translated into Indonesian. Regarding the clause as contained in Article 5 clause Franchise Agreement includes at least: a. names and addresses of the parties; b. types of Intellectual Property Rights; c. business activities; d. the rights and obligations of the parties; e. assistance, facilities, operational guidance, training and marketing given the Franchisor to the Franchisee; f. business areas; g. duration of the agreement; h. manner of payment of remuneration; i. ownership, change of ownership and the right of heirs; j. dispute resolution; and k. procedures for renewal, termination and termination.

In the case of a legal responsibility to the parties to a franchise agreement with Government regulations, if there are those who violate the terms specified in government regulations then konsekuensi law that occurred under Article 16 paragraph (1) of Government Regulation No. 42 Year 2007 on Franchise stated: Minister, Governor, Regent / Mayor in accordance with their respective authorities may impose administrative sanctions for Franchisor and Franchisee who violates the provisions referred to in Article 8, Article 10 and / or Article 11. the sanctions referred to in Article 16 paragraph (1) is a written warning; fine; and / or revocation of Certificate of Registration of Franchising. (Article

16 (2) of Government Regulation No. 42 Year 2007 on Franchise).

PT Indomarco is a franchise company with outlets Indomaret first opened in 1988 and began to franchise in 1997 and is a pioneer of modern franchise retail stores.

As an expansion strategy that involves another party capital, Indomaret franchise business is transparent, and the concept of mutual benefit and mutual trust between the franchisor and franchisee. A relatively stable field of business is the retail business. Retail business in Indonesia is sufficiently developed; it is in line with the increasing needs of the community. One retail businesses that serve basic needs and daily needs is a mini market (Local), one of which is Indomaret outlets in Lampung.

The process begins with the execution of the agreement and the offer is followed by a request. At that time the parties can soon begin negotiations to reach agreement in a franchise business.

Based on the interview with Mr. Ahmad Jilani, S.E., M.M as PR PT Indomarco Bandar Lampung, that there are two (2) ways to join the franchise business: 1) New Outlet Franchise with the terms already have candidate. The process of opening a franchise with several stages of doing the initial presentation, a survey of business can be a shop or stall, binding agreement and payment of franchise fee, measurement and evaluation, management of business licensing shop, physical development and opening of stores, and 2) franchise Take Over with the condition do not have candidate. Steps being taken to Take Over the franchise began with the presentation of proposals outlets, binding agreement and payment of

franchise fee, the necessary permits and store business outlets Take Over.

Any agreement referred to Article 1320 of the Civil Code is agreed they were doing the agreements were not under pressure or coercion and fraud and mistakes, proficient or pursued in legal actions, certain things that become the object of the agreement and because kosher with goals that do not violate the law, decency and public order.

Terms of franchising Indomaret generally must comply with Article 1320 of the Civil Code and specifically qualified by the parties in accordance with the terms of the contract. Terms of franchising Indomaret are: 1. Indonesian Citizen, 2. Provide the location of a place of business with a broad base of commercial area in 120-200 square meters, 3. Has the business licensing shop fittings such as building permit, Law Disturbance / HO, Trade Permit, Tax Identification Number and others, 4. Provide investment fund with estimated value of Rp. 394,000,000.00, and 5. Have the entrepreneurial spirit and focus on the franchise system Indomaret.

Based on field data that the number of outlets Indomaret more than 10,400 stores and 32% are owned by franchisees. This is due to the strategy used by Indomaret in franchise businesses, among others: 1. Transformation of knowledge. Indomaret provide management capabilitas enough and put the franchisee as a businessman reliable, 2. Joining together the widely known brand, because Indomaret a pioneer of the largest retail minimarket own and the largest distribution network in Indonesia, 3. Help enrich the site survey and strategic insights into the potential whether or not a location, 4.

Support store operations that make investors not full time in management and does not need to leave the job before, and 5. Planning ranging from site surveys mature until the opening outlets, speed and completeness of goods distribution and support store management helps investors reduce the risk of loss.

To achieve gains in the franchise business there is goodwill owned the rights holder, this is also done by Indomaret namely: survey the feasibility of a place of business, budget planning costs, investment feasibility studies, zoning and planning shops, business licenses, purchase of equipment store, selection and employee training, system package store operations and financial administration and sales promotion programs.

Fee or royalty is the compensation that must be met for the franchisees.

Based on the results of field studies note that if franchisees benefit Rp.175.000,000,00 (one hundred and seventy five million per month) does not pay a fee to the franchisor or the party holding intellectual property rights, if sales worth Rp.200.000.000,00 franchisees are required to pay a fee of 2% or Rp.25.000.000,00 per month.

The franchise agreement is an agreement that documents the legal relationships of rights and obligations that exist between the franchisor and franchisee. Achievement in the franchise agreement that gives something include the obligations of the Franchisor to provide flexibility to run the business without interruption to the franchisee for a certain period, the principles of business management following intellectual property rights such as trademarks, logos, patents,

know-how and other, which is part of the business concept franchise, for the franchise fee as agreed in the agreed amount.

Achievements of the franchise agreement is for not doing something, between the franchisee shall not be allowed to add a name or a brand or a variation on the name or brand, do not transfer to the other party use of the brand and the rights granted by the franchisor in relation to the system in the business of the franchisor, including patents, copyrights and intellectual property rights, following secret information.

Existing achievements in the franchise agreement is called the primary achievement, and when he was in the agreement between the parties is not carried out for example franchisee does not pay a franchise fee to the franchisor, it may be requested compensation. In an agreement is possible non-performance of the agreement, although the terms of the validity of the agreement have been fulfilled. It is caused by tort (breach of contract) and coercion or force majeure (force majeure).

In the event of the above, then in the franchise agreement, there must be a balance between the rights and obligations between both parties that the giver franchise (franchisor) and the receiver franchise (franchisee).

But the fact that the franchisor has a higher position than the franchisee, this is because the franchisor as a business owner who rents his business to the franchisee with the proviso that the franchisee would not rent it to another party. This position makes the franchisor can determine the contents of the agreement even terminate the agreement unilaterally.

Termination of the agreement or contract can be caused by a default or negligence on the part of the franchisor (the franchisor) and default or negligence on the part of the franchisee.

Reason franchisor for the franchisee terminate the agreement violates the agreement that has been made. For example if the franchisee does not meet the minimum sales quota that has been agreed, the franchisor can terminate the agreement. Another thing that may also occur for example: 1. Franchisee becomes payable or is unable to pay the debt to franchisor (insolvency); 2. Conduct violation or confidentiality; 3. Too late did report royalties; 4. Failing to pay royalties; and 5. Take action beyond the standard of quality and services;

Special requirements set by the franchisee is a manifestation of a standard clause. The essence of this standard clause is to facilitate the parties to negotiate, do not use a long time and can be implemented immediately. Such things often make defaulting party in the future, because there is no freedom to assess and responds to a contract made by the franchisees.

The franchise agreement is an agreement that documents the legal relationships of rights and obligations that exist between the franchisor and franchisee. Achievement in the franchise agreement that gives something include the obligations of the Franchisor to provide flexibility to run the business without interruption to the franchisee for a certain period, the principles of business management following intellectual property rights such as trademarks, logos, patents, know-how and other, which is part of the business concept franchise, for the

franchise fee as agreed in the agreed amount.

Achievements of the franchise agreement is for not doing something, between the franchise shall not be allowed to add a name or a brand or a variation on the name or brand, do not transfer to the other party use of the brand and the rights granted by the franchisor in relation to the system in the business of the franchiser, including patents, copyrights and intellectual property rights, following secret information.

Existing achievements in the franchise agreement is called the primary achievement, and when he was in the agreement between the parties is not carried out for example franchisee does not pay a franchise fee to the franchisor, it may be requested compensation. In an agreement is possible non-performance of the agreement, although the terms of the validity of the agreement have been fulfilled. It is caused by tort (breach of contract) and coercion or force majeure (force majeure).

In the event of the above, then in the franchise agreement, there must be a balance between the rights and obligations between both parties that the giver franchise (franchisor) and the receiver franchise (franchisee).

But the fact that the franchisor has a higher position than the franchisee, this is because the franchisor as a business owner who rents his business to the franchisee with the proviso that the franchisee would not rent it to another party. This position makes the franchisor can determine the contents of the agreement even terminate the agreement unilaterally.

Termination of the agreement or contract can be caused by a default or negligence on the part of the franchisor

and default or negligence on the part of the franchisee.

Reason franchisor for the franchisee terminates the agreement violates the agreement that has been made. For example if the franchisee does not meet the minimum sales quota that has been agreed, the franchisor can terminate the agreement. Another thing that may also occur for example: 1. Franchisee becomes payable or is unable to pay the debt to franchisor (insolvency); 2. Conduct violation or confidentiality; 3. Too late did report royalties; 4. Failing to pay royalties; and 5. Take action beyond the standard of quality and services.

Further, in terms of franchisee declare itself bankrupt or convicted for their crime, the franchisor may decide the franchise agreement without having to give a note to the franchisee.

Of the reasons for termination of agreements or contracts mentioned above, the question arises whether the rights and obligations of the franchisor and franchisee after disconnection.

Regarding the issue to be seen whether this is stated in the franchise agreement or not. At the time of termination, the former franchisee no right to use intellectual property rights, because these rights are still held by the franchisor for licence, or registration. In particular franchisee should note that the money has been paid e.g for advertising, promotion of the brand and business names used by the franchise agreements will not be given any rights to use the mark after the termination of the agreement.

With regard to the termination of the agreement or contract, the provisions of Article 6 of Government Regulation No. 42 Year 2007 on Franchise and Article 8 of Regulation of the Minister of Trade No. 53 / M-DAG /

PER / 8/2012 on the Implementation of Franchises explained that the Franchise Agreement is terminated unilaterally by the franchisor before the validity period of the agreement expires, the franchisor can not appoint franchisees who are new to the same area, before agreement is reached in the settlement of disputes by both parties (clean break) or no later than 6 months after the termination of the franchise agreement or until there is a court decision that has binding.

The impact of the termination of the agreement or contract unilaterally by the franchisor certainly very detrimental to the franchisee. So do not rule out the possibility franchisee to claim compensation for damages suffered. If the franchisee demanding compensation, then the franchisor must pay the damages. And vice versa, if a default or negligence caused by the franchisee, the franchisor can also sue for damages. Before stating that one party defaulting either done by the franchisor or franchisee, the parties settle the dispute by means of deliberation by first giving warning or summons. Subpoena under Article 1238 of the Civil Code and Article 1243 of the Civil Code.

E. Conclusion

a. Supporting and Inhibiting Factors In Franchise Agreement

1. Implementation of the franchise agreement in contract law perspective

Factors supporting the execution of the franchise agreement are a business management provided by franchisees facilitates franchisees carry out business operations. The obstacles that arise in the implementation of the franchise, namely: a. Regarding the tax

on royalties has been the burden of franchisees, while royalties received by the franchisees is the net value of the gross sales, b. The imposition of royalties are generally based on gross sales, however, in agreement Indonesian franchise is based on gross income, while the franchise agreement using basic gross foreign sales and their fee-fee payment obligations other as determined by the franchisees, among others, such as advertising fees, training fees, and management service fee, c The training program set out in the franchise agreement Indonesia is not regulated assertive forms and different time in the case with the majority of foreign franchise agreement.

Meanwhile the caused and effect disputes in the franchise agreement are: 1. Disputes between the franchisor and the franchisee from obscurity are largely due to an agreement between the two sides, 2. Franchisee will be at a disadvantage if you have to spend some money, such as paying the rent and buying equipment before signing the agreement, 3. Fill the agreement will determine the level of franchisee business results, but franchisees must focus on the costs become franchisee obligations to franchisees. For a fee specified in percentage form, specify the magnitude in the initial agreement, avoid the words "to be determined", and so on. Illustration deals have no legal force and only as marketing tool only and 4. In addition to costs, postal revenue must also be considered, such as other income such as rental and distribution.

In general, since the onset of the compensation, that compensation for breach of contract and damages for tort. Damages for breach of contract regulated in Book III of the Civil Code

starting from the Civil Code Article 1243 to Article 1252 Civil Code, while the compensation for an unlawful act stipulated in Article 1365 of the Civil Code. Regarding the cancellation of the agreement or contract terms, in Article 1266 of the Civil Code states that the agreement should be reciprocal, there is a default, and the cancellation must be requested to the judge.

The impact of the termination of the agreement or contract unilaterally by the franchisor certainly very detrimental to the franchisee. So do not rule out the possibility franchisee to claim compensation for damages suffered. If the franchisee demanding compensation, then the franchisor must pay the damages. And vice versa, if a default or negligence caused by the franchisee, the franchisor can also sue for damages.

Government in the franchise agreement can resolve a dispute through litigation or court in accordance with Act No. 48 of 2009 on Judicial Power and through out of court, ie, non-litigation or arbitration. According to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution such as consultation, negotiation, mediation, consilation, and expert opinion.

2. Factors Supporting and Inhibiting Factors Franchise Agreement In the Perspective of Contract Law

Factors supporting the execution of the franchise agreement is a business management provided by franchisees facilitate franchisees carry out business operations.

The obstacles that arise in the implementation of the franchise tax on royalties has been the burden of franchisees, while the royalties

received by the franchisee is the net value of the gross sales.

using basic gross sales and their payment obligations other fee-fee as determined by the franchisees, among others, such as advertising fees, training fees, and management service fee.

References

- Ali, H. Faried, dkk, *Studi Sistem Hukum Indonesia (Untuk Kompetensi Bidang Ilmu-ilmu Sosial dan Ilmu Politik dan dalam Payung Pancasila)*, Bandung : Refika Aditama, 2012.
- Andre Ata Ujan. *Keadilan dan Demokrasi (Telaah Filsafat Politik John Rawls* Kanisius Yogyakarta.1999
- Agus Yudha Hernoko. *Hukum Perjanjian (Asas Proporsionalitas dalam Kontrak Komersial*. Kencana Pranada Media Grup. Jakarta. 2013
- Bruggink, J.J.H., *Refleksi tentang Hukum*, Bandung : Citra Aditya Bakti, 1999.
- David, Rene and John. E.C. Brierley: *Major Legal Systems in the World Today*, Second Edition, London: Stevens & Sons, 1978.
- Fuady, Munir, *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*, Bandung : PT. Citra Aditya Bakti, 2001.
- _____, *Konsep Hukum Perdata*, Jakarta : RajaGrafindo Persada, 2014.
- Halim, A. Ridwan, *Pengantar Hukum Indonesia*, Jakarta : Rineka Cipta, 2004
- Huala Adolf. *Dasar-Dasar Hukum Kontrak Internasional*. Raja Grafindo.2012
- HS, H. Salim dan Erlies Septiana Nurbani, *Penerapan Teori*

- Hukum pada Penelitian Tesis dan Disertasi*, Jakarta : Raja Grafindo Persada, 2014.
- J Van Kan dan JH Beekhuis. *Pengantar Ilmu Hukum*. Ghalia Indonesia Jakarta. 1999
- Johannes Ibrahim dan Lindawaty Sewu. *Hukum Bisnis dalam Persepsi Manusia Modern*. Refika Aditama Bandung. 2003
- Kogin, Kevin, *Aspek Hukum Kontrak Waralaba Pada Kegiatan Usaha Jasa Makanan dan Minuman*, Jakarta: Tatanusa 2014.
- Komariah, *Hukum Perdata*, Malang : UPT Universitas Muhamadiyah, 2008.
- Kurnia, Titon Slamet, *Sistem Hukum Indonesia (Sebuah Pemahaman Awal)*, Bandung : Mandar Maju, 2016.
- Margono, Suyud, *Aspek Hukum Komersialisasi Aset Intelektual*, Bandung : Nuansa Aulia, 2010.
- Mertokusumo, Sudikno, *Mengenal Hukum (Suatu Pengantar)*, Yogyakarta : Cahaya Atma Pustaka, 2010.
- Miru, Ahmadi, *Hukum Kontrak dan Perancangan Kontrak*, Jakarta : RajaGrafindo Persada, 2007.
- Muhammad, Abdul, *Hukum Perdata Indonesia*, Bandung : Citra Aditya Bakti, 2014.
- Muhammad, Abdulkadir dan Rilda Murniati, *Segi Hukum Lembaga Keuangan dan Pembiayaan*, Bandung : Citra Aditya Bakti, 2004.
- Mustafa, Bachsan, *Sistem Hukum Indonesia Terpadu*, Bandung : Citra Aditya Bakti, 2016.
- Muhammad Syaifudin. *Hukum Kontrak (memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik dan Praktik Hukum (seri pengayaan hukum perikatan)*. Mandar Maju Bandung. 2012
- Naskah Akademik RUU Kontrak Tentang Kontrak Di Indonesia*. ELIPS 1998
- Pund, Rosce, *Law Finding Through Experince and Reason*, Athens : University of Georgia Press, 1960.
- Rahardjo, Satjipto, *Ilmu Hukum*, Jakarta : Raja Grafindo Persada, 1986.
- Raharjo, Handri, *Hukum Perjanjian di Indonesia*, Yogyakarta : Pustaka Yustisia, 2009.
- Raz, Joseph, *The Concept of A Legal System*, Oxford: Clarendon Press, 1983.
- Rusli, Hardijan, *Hukum Perjanjian Indonesia dan Common Law*, Jakarta : Pustaka Sinar Harapan, 1996.
- Saliman, Abdul R., *Hukum Bisnis untuk Perusahaan (Teori dan Contoh Kasus)*, Jakarta : Kencana, 2010.
- Santiago, Faisal, *Pengantar HUKUM Bisnis*, Jakarta : Mitra Wacana Media, 2012.
- Scholten, Paul, *Penuntun Dalam Mempelajari Hukum Perdata Barat*, Yogyakarta : Gadjah Mada University Press, 1993.
- Sembiring, Sentosa, *Hukum Investasi*, Bandung : Nuansa Aulia, 2010.
- Subekti, *Hukum Perjanjian*, Jakarta : PT. Intermasa, 2005.
- Subekti, R., *Aneka Perjanjian*, Bandung : PT. Citra Aditya Bakti, 1990.
- _____, *Hukum Perjanjian*, Jakarta : Intermasa, 2002.
- Syahrani, Riduan, *Seluk Beluk dan Asas-asas Hukum Perdata*, Bandung: Alumni, 2013.
- Sumaryono. 2002. *Etika Hukum Relevansi Teori Hukum Kodrat Thomas Aquinas*. Kanisius. Yogyakarta.
- Satjipto Raharjo. *Ilmu Hukum*. Citra Aditya Bhakti. 2000

Tebbit, Mark, *Philosophy of Law*,
London New York : Routledge,
2005.

UNCTC, *Transnational Corporation and
Technology Transfer : Effects and
Policy Issues*, New York, United
Nations, 1987.

Dede andreas blogspot.com/2015/03
diakses pada tanggal 30 Oktober
2016

Kitab Undang-Undang Hukum Perdata.
Undang-Undang Nomor 48 Tahun 2009
tentang Kekuasaan Kehakiman.

Peraturan Pemerintah Nomor 42
Tahun 2007 tentang Waralaba.

Peraturan Menteri Perdagangan
Republik Indonesia Nomor
53/M-DAG/PER/8/2012
tentang Penyelenggaraan
Waralaba.