



## Franchise Agreement in Civil Law Perspective

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### ABSTRACT

In the current era of globalization, development in the business sector has a very high level of competition, to make it easier for someone in their efforts to maintain their business and government efforts to innovate through franchise activities. This study uses a descriptive method with a qualitative approach and data triangulation analysis, the results of the study explain that specifically franchise activities are an agreement involving two or more individuals in which it forms an agreement involving the law as the legal basis, franchise activities provide significant benefits very big for the perpetrators because this activity emphasizes a cooperation and is mutually binding on each other, this business concept involves the franchisor to the franchisee then becomes a legal institution that regulates the franchise agreement, as 9 of 1995 concerning Small Business, which reads that the franchise pattern is a partnership relationship in which the franchisee grants license rights, trademarks and distribution channels of his company to franchisee accompanied by assistance. management guidance.

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## 1. Introduction

In the current era of economic globalization, private economic actors have an important role in carrying out the process of developing a country's economy. It is not surprising that the process of economic development is more left to the private sector to manage and run it, so that the active role and initiative of private business actors is needed in the current era of economic globalization. According to Badruzaman (2021) the principle of freedom of contract does not mean that it is not limited but is limited by the responsibilities of the parties. so that freedom of contract as a principle is given a responsible nature. This principle supports a balanced position between the parties so that a contract will be stable and provide benefits for both parties.

Broadly speaking, the word business according to R. Setiawan (2019) is often defined as the overall business activity carried out by a person or entity on a regular and continuous basis, namely in the form of activities to procure goods or services as well as facilities to be traded, exchanged, or leased for the purpose of making a profit. Meanwhile, according to Husein Umar (2006) defines business as an overall activity organized by people working in the fields of commerce (producers, traders, consumers and industry) in order to improve their standards and quality of life. When referring to government regulations and the Constitution, there are five different ways or stages in business development efforts, first (Slamet, 2011; Priyono, 2018; Hanim, 2021),

One form of cooperation that is growing rapidly in Indonesia at this time is a form of cooperation in the field of franchising. This is because franchising is the most profitable business to develop the business world. In addition, franchising is an improvement from the business development system that uses direct investment, while according to Suharmoko (2009) & Harnoko et al (2015), what is meant by a Franchise (Franchising) agreement is the granting of rights by the franchisor to the franchisee to use the uniqueness of the business or business identification characteristics in the franchisee. in the trade/service sector in the form of types of products and forms being cultivated, including corporate identity (logo, brand, and company design, use of marketing plans as well as the provision of extensive assistance, operational time/hours, clothing, and appearance of employees) With this franchise system, there will be savings in investment costs that should be required to establish and maintain an extensive distribution network. 16 of 1997 concerning Franchise dated June 18, 1997 and Article 1 of the Decree of the Minister of Industry and Trade of the Republic of Indonesia No. 259/ MPP/KEP/7/1997 concerning Provisions and Procedures for the Implementation of Franchise Registration, while in the Decree of the Minister of Industry and Trade No. 259 of 1997 is the implementation of Government Regulation no. 16 of 1997, to make an update in the mechanism for implementing trade permits, especially in terms of franchising, the government made a decision to change and make a new regulation based on the Decree of the Minister of Trade of the Republic of Indonesia No. 71 of 2019, that the Franchisor is an individual or business entity that grants the right to utilize and/or use its Franchise to the Franchisee.

The agreement made has binding force as law for both parties. The principle of freedom of contract does not mean that without restrictions in its development there has been government intervention in an agreement that will be held. In the franchise agreement, the limitation can be seen from the obligation of the parties to include certain clauses in the agreement they make. This is intended by legislators to provide legal protection. Another limitation on freedom of contract is the emergence of standard or standard forms of contracts (Yuniarti, 2016; Barusman et al, 2013).

Regarding the franchise business agreement procedure, which is regulated in Article 5 of the Law, government regulation no. 42 of 2007 in determining an agreement, an entrepreneur must fulfill several conditions that must be fulfilled, so that the process can be carried out well and has met the standards of applicable government regulations, in the first stage an entrepreneur must include the name and address of the party who will carry out the franchise process in accordance with the correct provisions, then an entrepreneur must determine the type of intellectual property rights, then choose a business activity, and entrepreneurs are also required to fulfill the rights and obligations of the parties who will later become business partners, at a later stage the entrepreneurs are asked to provide assistance, facilities, operational guidance, training and also marketing provided by the franchisor to the franchisee, then choose a business area, the term of the agreement, the procedure for payment of benefits and the last is the procedure for extending the termination and



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termination of the agreement.

The definition of franchise in the Government Regulation is not the same as the definition of franchise as regulated in Article 1 number 1 of Government Regulation No. 16 of 1997 concerning Franchising which determines, Franchising is an agreement in which one party is granted the right to utilize and or use intellectual property rights or inventions or business characteristics owned by another party in exchange for a fee based on terms and or the sale of goods and or services, while according to Elucidation of Article 27 letter d of Law No. 9 of 1995. In Article 1 number 1 of the Government Regulation it is determined that franchises are special rights owned by individuals or business entities to business systems with business characteristics in the context of marketing goods and/or services that have been proven successful and can be utilized and/or used by other parties based on the franchise agreement.

The principles of franchise agreements contained in civil law agreements include the principle of freedom of contract, where the principle of contracting is a universal or comprehensive principle because this principle does not only exist in the Civil Code, this principle does not stand alone, its meaning can only be determined after we understand its position. in an integrated connection with other principles of agreement law, this principle is the main pillar and the most important sector in the legal foundation of a franchise agreement, because on this contracting principle you have the freedom to determine with whom this agreement can be carried out, the agreement made in accordance with Article 1320 of the Civil Code has binding power. Freedom of contract is one of the most important principles in contract law.

Next is the principle of consensualism. The principle of consensualism is contained in Article 1320 of the Civil Code which implies the willingness of the parties to bind themselves and to participate in each other. Their binding agreement is the essence of contract law. This principle of consensualism determines the existence of an agreement, the willingness of the parties to generate trust that the agreement is fulfilled, this principle of trust is an ethical value that is rooted in morals, the basis of the consensus is found in natural law, which says that the promise is binding and we must fulfill our promise, the principle of consensualism has a close relationship with the principle of freedom of contract and the principle of binding force contained in Article 1338 paragraph 1 of the Civil Code which stipulates that all agreements made legally apply as law for those who make them, including all agreements whose names are known or unknown by law.

The aims and objectives of this study are to find out how the legal aspects of franchise agreements are in the perspective of civil law. Some references and previous studies that the researchers used in the preparation of this study were, the Legal Aspects of Franchise Agreements (*Franchise*) in the Perspective of Civil and Legal Law. In Islam, this research was compiled by Norman SyahdarIdrus using a normative juridical research method that is descriptive analytical, and the results of this previous study explain that, Islamic law and general law are indeed different sources of law. Islamic law is rooted in Allah through the intercession of the Qur'an and Sunnah, while general law is derived from laws, customary law, jurisprudence, international treaties, and doctrines, all of which are man-made laws. Although different sources of law, but in principle have similarities or similarities with one another.

The similarities can be seen from the division of types of agreements into named agreements and unnamed agreements, the principles of the agreement and the legal terms of the agreement. The legal basis for the emergence of a franchise agreement is Book III of the Civil Code which adheres to an open system and the principle of freedom of contract which is enshrined in Article 1338 paragraph (1) of the Civil Code. Franchise agreements qualify as unnamed (*onbenoemd*) or *innomaat* agreements. the principles of the agreement and the terms of the validity of the agreement. The legal basis for the emergence of a franchise agreement is Book III of the Civil Code which adheres to an open system and the principle of freedom of contract which is enshrined in Article 1338 paragraph (1) of the Civil Code. Franchise agreements qualify as anonymous (*onbenoemd*) or *innomaat* agreements. the principles of the agreement and the terms of the validity of the agreement. The legal basis for the emergence of a franchise agreement is Book III of the Civil Code which adheres to an open system and the principle of freedom of contract which is enshrined in Article 1338 paragraph (1) of the Civil Code. Franchise agreements qualify as anonymous (*onbenoemd*) or *innomaat* agreements.

The next research is entitled, Franchise Business in Indonesia in the Perspective of Sharia Business Law, this research was compiled by H. Syahrani by using descriptive method in the form of qualitative results from previous research explains that, A franchise is a form of agreement, the contents of which give special rights and authority to the *franchisee*. Franchising is a reciprocal agreement because both the franchisor and the *franchisee* are both obliged to fulfill certain achievements. The franchise agreement is a formal agreement. because the franchise agreement is required to be made in writing. This is necessary as part of the protection framework for both parties involved in the franchise agreement and the principles of openness and prudence are needed for both the franchisor and the *franchisee*. The third study entitled Legal Protection for *Franchisee* in Termination of Franchise Agreements (**case studies of Salon De Grace and Salon Yemember Surabaya**), this research was compiled by OvySuhartiwiy using qualitative normative research methods. Based on the results of the study, it shows that, all disputes decided by the Indonesian National Arbitration Board (BANI) The decisions are independent, final and binding on both parties to the dispute, as decisions at the first and final level. This means that the parties must implement the decision after the verdict is read.

The last research entitled, Legal Aspects of Franchising in Indonesia, this research was compiled by Mudassir Mathar using qualitative research methods, and the results of this previous study explained that, Basically, the regulations that apply to the franchise agreement (franchising), after the regulations specifically to regulate franchises, namely: Legal regulations regarding agreements, especially those found in Article 1320 of the Civil Code, namely the conditions for the validity of an agreement. Then article 1338 of the Civil Code concerning provisions that can justify franchise agreements. Regulation on Intellectual Property Rights, namely patent rights, trademark rights and copyrights in accordance with Law No.19 of 2002.

After observing several previous studies as a reference for researchers in formulating research on the legal aspects of franchise agreements in the perspective of civil law, the researchers found an equation that describes research that raises topics around the legal study of franchise activities when viewed from the perspective of the Civil Law law, it will but in the context of the discussion the researcher only focuses on understandings in civil law, the rest of the previous studies are only an illustration for researchers so that this research is in accordance with the rules of writing that have been perfected previously.



## 2. Method

In this study, researchers want to examine a phenomenon that discusses the legal aspects of franchise agreements in the perspective of civil law, in this study the researchers used a qualitative descriptive approach by reviewing several journals or articles related to the topic, notarial deed as evidence in civil law events, The type of research used is development research or what is often known as Research and development model is used because it is easy to apply, systematic with a clear framework, There are two sources of data used in this study, where the data includes primary data and also secondary data, what is meant by secondary data is the main data related to the topic and also the research being studied, which researchers get these sources from journals and also references related to education values of local wisdom and culture.

At the next stage in qualitative research methods the main purpose of doing data analysis techniques is to lighten the data and facts that have been obtained. met in the field in a form that is easier to understand or the data is summarized and concluded more easily for interpretation. At the next stage in the qualitative research method, the main purpose of carrying out data analysis techniques is to alleviate the data and facts that have been encountered in the field in a form that is easier to understand or the data is summarized and concluded more easily for interpretation. At the next stage in the qualitative research method, the main purpose of carrying out data analysis techniques is to alleviate the data and facts that have been encountered in the field in a form that is easier to understand or the data is summarized and concluded that is easier to interpret.

## 3. Result and Discussion

Based on the results of the research that has been done, by using the observation method on several articles related to the topic of the discussion of franchise agreement law in the perspective of civil law, by evaluating and also analyzing the data found in the field, it can be concluded some results and discussions carefully found, namely:

### 3.1 Legal Position and Arrangement of Franchise Agreements in Civil Law

The term franchise is an equivalent of the term *franchises*, which began to develop and was introduced for the first time by the educational and management development institution (LPPM), referring to the notion of franchise which is a combination or combination of the word "wara" which means more or special and secondly from the word "profit" which has the meaning of profit, so that franchising means a business that provides more or special profits, whereas according to the Regulation of the Minister of Trade No. 12/M-Dag/Per/3/2006

Regarding Provisions and Procedures for Issuing Franchise Business Registration Certificates, the definition of franchise is explained as follows: "Franchise is an agreement between the franchisor and the *franchisee* in which 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 fee based on terms set by the franchisor with a number of obligations to provide ongoing operational consulting support by the franchisor to the *franchisee*

Special rights granted by the government to individuals to be able to develop and manage a business with predetermined rights and conditions, using names or brands for products and services, these rights are legally granted and have fulfilled an agreement previously agreed upon. in a fair manner and in management that is based on the law and the rules contained in the applicable law, namely sourced from the Basic Law concerning agreements and development of certain businesses or businesses. others to sell products or services under that name or brand. In a broad sense, that the franchise has developed into a broader and more detailed agreement,

The definition of franchise contained in Article 1313 of the Civil Code has the meaning of an agreement or agreement by involving two or more individuals and binding themselves to carry out an agreement in the development of an effort to achieve something greater, Meanwhile, according to Richard Burton Simatupang (2007) that franchising is a method for doing business, namely a method for marketing goods or services to the public, namely a marketing system or distribution of goods and services, where a parent company (franchisor) provides or other small and medium-sized companies (*franchisee*), special rights to implement a certain business system. This is in line with what was stated by Amir Karamoy (2008), parties who obtain the right (license) to use trademarks and business systems are individuals and other entrepreneurs who are chosen by the franchisor to become *franchisee*, by providing profit sharing to the franchisor. in the form of fees (initial security deposit) and royalties (continuous profit sharing).

There are agreements that must be fulfilled between the two people who will carry out the franchise agreement, as stated by Abdul Kadir Muhammad (2007) there are several rules and agreements that must be fulfilled before someone does franchise activities, the first one must at least have two people as delegates who are called the subject of the agreement who have legal authority and are stipulated in the applicable law, then there is a binding agreement between the parties involved in the franchise business, its nature is mandatory and cannot be replaced by negotiation or a certain deliberation, the agreement involves the conditions and determines the agreement to be agreed jointly. And the next thing is there are achievements to be carried out, achievement is an obligation that must be fulfilled by the parties in accordance with the terms of the agreement, for example the purchaser is obliged to buy the price of the goods and the seller is obliged to deliver the goods, and the most important thing in a franchise agreement is the existence of a goal to be achieved, in this process both parties will provide an offer that will be profitable and generate a lot of income, but still refers to public order and morality and is not prohibited by applicable laws, these things are of course in accordance with government regulations through the Decree of the Minister of Industry and Trade No. 259 of 1997 is the implementation of Government Regulation no. 16 of 1997. In this Decree of the Minister of Industry and Trade, general understanding is given of various activities related to franchise business activities. Meanwhile, to further develop the potential and capabilities of entrepreneurs in Indonesia, with full confidence and hope, the Indonesian government through a regulation from the Minister of Trade of the Republic of Indonesia issued a reform regarding the operation of franchising for all entrepreneurs in Indonesia that franchising is a special right owned by individuals. or a business entity to a business system with business characteristics in the context of marketing goods and/or services that have been proven successful and can be utilized and/or used by other parties based on a Franchise Agreement. The decision is contained in Article 1 of Law No. 71 of 2019 concerning the



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## Implementation of Franchising.

The position that regulates franchise agreements in civil law is a form of cooperation that is binding and will mutually benefit each other, by following the principles contained in Article 1338 paragraph (1) of the Civil Code which reads, all forms of agreements made are valid and valid. in the law of the law for anyone who makes it, meaning that the purpose of the article is to conclude an agreement can be made freely and enter into an agreement with anyone by following the procedures and conditions that have been agreed previously, so the essence of the article is the general public is allowed to make an agreement in the form of cooperation, especially in terms of business and business, so that the bond becomes a law that becomes the basis for guidelines in carrying out these franchise activities,

### 3.2 Agreement or Approval of Franchise Activities as a Civil Law Basis

In entering into a franchise activity agreement there are several that become the basis of reference or the main basis why these activities must be carried out together, of course this becomes an illustration of the process of franchise activities, which is a concept in which there is a mutual agreement, because what is desired by the parties one, then the opposite must also be desired by the other party, so both parties will want something reciprocal in nature, then both parties will enter into an agreement in an effort to develop the business and it is stated in a statement that is expressly and binding on each other, According to Salim HS (2003) that from the regulatory aspect, there are three types of innominate contracts, namely innominate contracts which have been specifically regulated and set forth in the form of law and/or have been regulated in separate articles. which there is no law in Indonesia. Based on these criteria, the franchise agreement is included in the innominate contract which has been regulated in a Government Regulation, namely Government Regulation No. 42 of 2007.

In the civil law aspect, franchise activities form a cooperative relationship in which there are people who really have to understand the law, meaning that everyone who has carried out an act of cooperation will be bound by a law and legal authority and must be held accountable by applicable law. someone who has entered into an agreement will also foster a sense of trust between the parties. the parties involved in the agreement, and each other will hold their promise as an unwritten guarantee but with the existence of the agreement the level of trust of both parties will be maintained and bind it as a law.

The legal equality that occurs between the actors of franchise activities indicates the existence of an equal degree, there are no differences in nationality, wealth, power, position, etc., each party plays a very important role in respecting each other's policies, This balance is a form of cooperation as an absolute requirement that must be met before conducting franchise activities, as stated in Article 1320 of the Civil Code, which consists of an agreement, the existence of skills, a certain thing and a lawful cause. The first condition of subjective conditions, namely the agreement of the parties making the agreement, which means that the parties must have freedom of will, and not get pressure that results in defects for the realization of the will. The agreement of the parties is a statement of will that is agreed between the two parties, the statement of the party offering is called the offer, and the statement of the party receiving the offer is called the acceptance.

The agreements contained in a franchise activity agreement, are not only about the agreement regarding the granting of a license but more than that there are other points of agreement that are related to the franchise development process, such as an agreement on accounts payable, someone who will do Franchise activities of course require a loan to pay for costs during the process, but there is a possibility that the *franchisee* will provide a loan to the franchise user to be used as initial working capital, then the business premises rental agreement, sometimes the franchise owner has a share who will conduct research on the place of business that will be used by a franchise user, because this place of business will play an important role in the marketing process as well as determine a strategic place, in the future the place can be purchased in its entirety or leased depending on the agreement made by the franchise user.

## 4. Conclusion

Based on the research that the researchers conducted on the discussion of how the legal aspects of franchise agreements are in the perspective of civil law, the researchers can conclude several main points that can be concluded, the results of various observations that researchers found in the field, namely, basically a collaboration involving two parties who have a regulation in it and based on a law are a form of franchise activity or (*franchisee*), in the law, especially in Article 1320 of the Civil Code, franchise activities must meet an element and condition which in the process of franchise activities must be mutually beneficial between the two parties, a franchise is a form of agreement, the contents of which give special rights and authority to the *franchisee*.

Franchising is a reciprocal agreement because the franchisor and the *franchisee* are both obliged to fulfill certain achievements. Franchise activity itself is an effective way to expand business networks both nationally and globally, considering the competition in the business world in this era of globalization has a very high level of risk for that a person is free to be able to expand and develop every business potential he has, thanks to the encouragement from the government, franchise activities can be legally accounted for according to the law and applicable laws, in other words franchise activities are a form of partnership based on a relationship that will be mutually beneficial and have a definite goal that can be called an activity. This is in the form of a symbiotic mutualism between the franchisor (franchisor) and the (*franchisee*), the success rate of the franchise depends entirely on the ability of business partners to develop and run the franchise business, through procedures and processes that are in accordance with the regulations. by the franchisor, furthermore, franchising is a business system that is independent in nature and cannot be combined with other business activities, so that the franchise process must be exclusive, in fact every *franchisee* user requires to cooperate with each other, there is no competitive nature until the end the granting of the franchise is carried out.

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