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Legal Protection for Franchisee on Franchise Agreement (Case Study: Martabak And Terang Bulan Holland)

ABSTRACT

So many business models as a part of investment have been grow up so fast. Franchise has good prospect as one of business method (just running business by buy a system or right of trading business), although there are too many legal issues that made any franchisee loss. The agreement that balance, comfort and safety for franchisor and franchisee should be noticed because franchise not only focus on profit and loss but as an investment and give affect the economy of the country on a macro scale.

Keywords: legal protection, franchisee, franchise agreement

In the current era of economic globalization, private economic actors have an important role in carrying out the process of economic development of a country. It is not surprising that the process of economic development is largely left to the private sector to manage and run it, so that the active role and initiative of private business actors is urgently needed in the current era of economic globalization. In line with the increasing era of globalization, the widest possible opportunity for the product capability and the trading system, both domestic and foreign.

One form of cooperation that is growing rapidly in Indonesia at this time is the form of cooperation in the field of franchise business. This is because franchising is the most profitable business to develop the business world. In addition, franchising is an improvement of the business development system that uses direct investment. With this franchise system, there will be savings in investment costs that should be required to establish and maintain an extensive distribution network.

This saving is because the distribution network will occur independently of the increasing number of franchisees and franchisors who will receive royalties from the sale of licenses for their trademark or service business.

Franchising is described as a mix of "big" and "small" businesses, namely a combination of energy and individual commitment with the resources and strengths of a large company. Franchising is a business

arrangement in which a company (franchisor) gives the right to an independent party (franchisee) to sell the company's products or services with the rules set by the franchisor. Franchisees use the name, goodwill, products and services, marketing procedures, expertise, operational procedure systems, and supporting facilities of the franchisor company. In return, the franchisee pays an initial fee and royalties (management service fee) to the franchisor company as stipulated in the franchise agreement.

The franchise agreement is one aspect of legal protection for parties from actions that harm other parties. If one party violates the contents of the franchise agreement, then the other party can sue the violating party in accordance with applicable law. Currently, the franchise business sector is very diverse, meaning that it is not only dominated by the food sector, but from the education, retail, laundry, fitness, car wash, vehicle accessories sectors which have been franchised. No exception, a Tutoring Institute where its existence provides solutions for people who need quality tutoring at affordable costs for their children.

Our Regulations that first contained the word "Franchise" was Act No 9 of 1995 concerning Small Business, namely Article 27 letter d. This law has been repealed and replaced by Act No. 20 of 2008 concerning Micro, Small and Medium Enterprises, where the word franchise in this Law is contained in Article 26 letter C which states "partnerships implemented with a pattern" :

- a. Plasma core;
- b. Sub-contract;
- c. Franchise;
- d. General trading;
- e. Distributor and Agency;
- f. Another form of partnership, i.e: joint venture, operational partnership

Then Act No. 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition mentions specifically "Agreements relating to Franchising", namely Article 50 letter b. It should be noted that the two laws above, do not formulate / contain the definition / definition of Franchising, only in Government Regulation Number 16 of 1997 concerning "Franchising" (hereinafter written PP. No. 16/1997), the definition / definition of Franchising formulated in Article 1 point 1, as follows: "Franchising is an agreement in which one of the parties is given the right to utilize and / or use intellectual property rights or inventions or

business characteristics owned by the other party for a fee based on the conditions set by the other party, in the context of providing and or selling goods and or services ".

PP No. 16/1997 was later replaced by Government Regulation No. 42 of 2007 (hereinafter written PP No. 42/2007) concerning "Franchising". It should be noted, the definition / definition of Franchising in PP. 16/1997 and the Regulation of the Minister of Trade Number 12 / M-DAG / PER / 3/2006 concerning the Provisions and Procedures for the Issuance of Franchise Business Registration Certificates (STPUW) changed again with the issuance of PP No. 42/2007, Article 1 point 1 states as follows: "Franchising is a special right owned by an individual or a business entity against a business system with business characteristics in order to market goods and / or services that have been proven successful and can be utilized and / or used by other parties based on a franchise agreement "

From the definition of franchising according to PP. 42/2007 above, there are 2 (two) things that become key points or concerns, namely: special rights and characteristics of the business. PP No. 42/2007 itself does not explain in detail what is meant by these special rights. In the opinion of the author, this special right is closely related to registered intellectual property rights owned by the franchisor, and then given to the franchisee to be simply "used and / or used" limited to a contractual relationship in the franchise agreement. agreed. While the characteristics of the business in the explanation of Article 3 PP No. 42/2007 explains, namely: a business that has advantages or differences that are not easily imitated compared to other similar businesses, and makes consumers always look for those characteristics. For example, the management system, the way of sales and service, or the arrangement or distribution method which is a special characteristic of the Franchisor.

Moving on from the definition of franchise above, then a franchise agreement contains a set of terms, conditions and commitments made and desired by the franchisor for the franchisees. The franchise agreement contains provisions relating to the rights and obligations of the franchisor and the recipient of the franchise, for example the territorial rights of the franchisee, location requirements, training provisions, fees that the franchisee must pay to the franchisor, provisions relating to the length of the franchise agreement and its extension and other provisions governing the relationship between franchisor and franchisee.

In Indonesia, although the franchise has been so developed, the ins and outs of this business, including legal protection, especially for the

franchise buyer, are still minimal. Knowledge and education are also still minimal, this is all because business people prioritize the element of business profit alone.

In modern times today, in various business matters, the presence of a contract is a necessity. Business contracts are a form of professionalism as well as formal communication between parties and between legal entities and individuals. Contracts are also a link in a chain in building relationships and a form of business existence.

By adhering to the principle of freedom of contract, everyone is free to make contracts with business relations. This principle stipulates that the parties are free to make any kind of contract, either existing or not yet regulated as long as the contract does not conflict with law, public order, and morals. With the existence of a business contract, the consequence is that in the event of a dispute, the contents of the contract that are drawn up and signed become the main reference in deciding the dispute resolution. So that this situation reflects the importance of a good contract, which is able to provide a sense of security and benefit to each party without ending a dispute.

Like agreements in general, the implementation of Franchise business still refers to BW, especially Article 1313 BW regarding the agreement, Article 1320 BW regarding the validity of an agreement, and the provisions in Article 1338 paragraph 1 BW concerning freedom of contract. Broadly speaking, apart from referring to BW, the implementation of franchise agreements in Indonesia is also based on what is regulated in Government Regulation No.42 of 2007 concerning Franchising and Regulation of the Minister of Trade No. 57 / M-DAG / PER / 2014 concerning amendments to the Regulation of the Minister of Trade No. 53 / M-DAG PER / 8/2012 concerning Franchising.

As a result of the law behind the creation of a franchise agreement, the franchisor and the franchisee are legally bound by law on the agreement they have legally made, if one party does not carry out its obligations, then the other party has the right to fulfill its obligations or in other words the right to sue the implementation. One of the disputes that often arise in a franchise agreement is the unilateral termination before the end of the agreement by the franchisor.

The franchise agreement is a written agreement made by both parties between the franchisor and the franchisee, which contains the rights and obligations of each party as well as legal consequences that must be

obeyed by the parties. Just like any other reciprocal agreement, the implementation of a franchise agreement is very wide open to the possibility of problems or disputes. Even though the agreement has stated the rights and obligations of each party, one party often cannot carry out the contents of the agreement that has been agreed upon, such as the unilateral termination of the agreement made by the franchisor before the end of the contract period, resulting in losses to the franchisee.

¹ The franchisor has a higher position than the franchisee, this is because the franchisor, as the business owner, grants the franchisee the right to use his business on the condition that the franchisee will not transfer it to another party. This position allows the franchisor to determine the contents of the agreement and even unilaterally break the agreement. Termination of an agreement or contract can be caused by default or negligence of the franchisor and default or negligence of the franchisee. Usually the reason the franchisor breaks the agreement because the franchisee violates the contents of the agreement that has been made. For example, if the franchisee does not meet the agreed minimum sales quota, the franchisor can terminate the agreement. Other things that might happen for example:

1. The Franchisee is proven to be negligent in not paying debts to the franchisor;
2. Franchisee commits a violation;
3. Being late in filing royalty reports;
- ¹ 4. Failure to pay royalties;
5. Take action beyond the standard of quality and service.

Furthermore, in the event that the franchisee declares himself bankrupt or is found guilty of a criminal problem, the franchisor can terminate the franchise agreement without having to provide notes to the franchisee. From the reasons for terminating the agreement or contract stated above, the question arises what are the rights and obligations of the franchisor and franchisee after termination. Regarding this issue, it must be seen whether this is stated in the franchise agreement or not. At the time of termination of the agreement, the franchisee is no longer entitled to use intellectual property rights, because these rights are still held by the franchisor due to licensing or registration. In particular the franchisee must pay attention that money that has been paid for example for advertising, promotion of brands and business names used under the franchise

agreement will not be granted any right to use such marks after termination of the agreement.

With regard to termination of an agreement or contract, the provisions of Article 6 of Government Regulation Number 42 of 2007 concerning Franchising and Article 8 of Permendagri No. 57 of 2014 concerning amendments to Permendagri No. 53 of 2012 concerning franchising explains that the franchise agreement is terminated unilaterally by the Franchisor before the Franchise Agreement expires, the Franchisor cannot appoint a new Franchisee for the same area, before an agreement is reached in dispute resolution by both parties (clean break) or until there is a court decision that has permanent legal force.

This shows that in fact the franchisee is still protected by law for the actions of the franchisor who unilaterally breaks the franchise agreement, by suspending the franchisor's authority to appoint another franchisee in the same area until a dispute between the parties in dispute is reached. in kinship or until there is a court decision which has permanent legal force (*inkracht van gewijsde*) if the dispute between them is resolved by litigation.

When observing the Martabak and Terang Bulan Holland agreements regarding the cancellation or unilateral termination, it is regulated in Article 14 which explains the following:

Franchisor can cancel this agreement unilaterally because of the following matters:

- 1) If the franchisee is negligent and / or does not fulfill its obligations stipulated in this agreement even though the franchisor has already given a third warning but still commits violations both different and the same, which violations are considered serious as written in the warning / warning letter according to the franchisor's size.
- 2) If the franchisee is bankrupt or declared bankrupt, unless the franchisee immediately fulfills all the obligations stipulated in this agreement.
- 3) In the event that this agreement is terminated or canceled, the franchisee is obliged to:
 - a. Pay the franchisor immediately the entire amount owed at once and paid off within 30 (thirty days after the date this agreement ends;

- b. Not demanding and requesting back the franchise fee and other costs that have been issued and their interest;
- c. Immediately and permanently discontinue all use of the franchisor's mark / label;
- d. Franchisees are not allowed to promote or advertise Martabak and Terang Bulan Holland Stores using the franchisor's name and brand;
- e. The franchisee immediately returns to the franchisor all manuals, videos, tapes, forms or equipment and printed materials containing signs of the franchisor's food products no later than 14 (fourteen) days after this agreement ends;
- f. The franchisee gives full power to the franchisor to inspect / inspect and enter the Martabak and Terang Bulan Holland franchisee outlets and take signs that are characterized by the franchisor's brand.

However, the author disagrees with the provisions in Article 14 paragraph (3) of the Holland franchise agreement, which obliges the franchisee to pay and perform certain obligations. All of this should remain in the status quo first until the dispute between franchisor and franchisee meets a reconciliation.

A dispute between the franchisor and the franchisee is something that is still being debated as a business dispute that occurs in general, where whether it is true or not it still requires proof especially if this case is brought to the court (judicial process). What if it turns out that the franchisee can prove that the mistake is not entirely the responsibility of the franchisee and what is the fate of the obligations that the franchisee has already carried out to the franchisor. For example, the franchisor who is often late in sending ingredients / flour for making martabak and the light of the month (because there is an obligation to purchase the ingredients must be from the franchisor's area) and the franchisee can prove the franchisor's default. This is why the status quo must be established as mandated by PP No. 42, 2007.

The impact of terminating the ¹agreement or contract unilaterally by the franchisor is certainly very detrimental to the franchisee, so it does not ¹reclude the franchisee to claim compensation for the losses he has suffered. If the franchisee demands compensation, then the franchisor must

pay the loss if it is proven that the franchisor is guilty of making a unilateral termination. Conversely, if the default or negligence is caused by the franchisee, the franchisor can also claim compensation.

Before stating that one party is in default, either by the franchisor or the franchisee, the parties resolve the dispute by way of deliberation first by giving a warning or subpoena. The claim is regulated in Article 1238 BW and Article 1243 BW. In Article 1238 BW it is explained that "the debtor is negligent, if he by means of a warrant or with a similar deed has been declared negligent, or for the sake of his own engagement, that is, if this stipulates that the debtor must be considered negligent by the expiration of the specified time".

Somasi is a warning from the creditor to the debtor in order to fulfill the achievement in accordance with the contents of the agreement agreed by the parties. A warning letter must be made at least three times. As a result of not carrying out his performance and having been reprimanded for three times, the debtor is declared in default (breach of contract).

There are two causes of compensation or indemnity, namely compensation for default (breach of contract) and compensation for acts against the law. Compensation for default is regulated in Book III BW starting from Article 1243 BW up to Article 1252 BW, while compensation for acts against the law is regulated in Article 1365 BW. Compensation for an illegal act is a form of compensation that is imposed on a person causing an error to the party that is injured. The compensation arises because of an error, not because of an agreement. Compensation for default (breach of contract) is a form of compensation charged to debtors who do not fulfill the contents of the agreement that has been made between creditors and debtors in this case between franchisor and franchisee.

There are three forms of default (breach of contract), namely :

1. Not fulfill a promise or obligation 100%;
2. Fulfill a promise or obligation not in accordance with the agreement;
3. Late to fulfill a promise or obligation of contract.

Furthermore, the aggrieved party can sue in one of the ways as mentioned in Article 1267 BW, among others by fulfilling the engagement, fulfilling the agreement with compensation, claiming for compensation, canceling the reciprocal agreement and canceling the compensation.

Concerning on legal protection for an agreement, of course, involves legal protection for the parties who make it. As one of the legal principles in the agreement, namely the privity of contract, where the agreement is only binding for the parties who make it because analogically the agreement must be able to provide legal protection to those who are involved and bound in it.

Based on this, in the end we will understand that a good agreement is an agreement that can provide legal protection to all parties who make and sign the agreement and are able to maintain trust, so that in the end it is able to minimize the occurrence of disputes in the future. A well-laid-out agreement will actually provide legal protection internally for franchise business actors.

Unilateral termination of the franchise agreement will certainly cause various legal problems for the parties who are bound in the franchise agreement. Regarding this, there are also several dispute resolution options between them, both in litigation (the court) and non-litigation, including mediation, negotiation and arbitration. A good agreement is also able to provide good internal legal protection to the parties who make it, because it is able to prevent the parties from disputes that occur at a later date. Furthermore, external protection is obtained from the laws and regulations governing the terms of the franchise itself.

A good legal protection actually starts early, meaning from the pre-contractual stage to the pouring of an agreement on the rights and obligations of the parties (franchisor and franchisee) in a franchise agreement really must be based on enthusiasm and good faith. Furthermore, from the foundation of good faith and consistency of the parties' own compliance with the implementation of the rights and obligations of the franchise agreement, it is hoped that it will be able to prevent the parties from arising business disputes or disputes between them. Only with this trust will continue to be built and maintained, therefore business contracts, especially franchise agreements, must be well and carefully drafted. There is even a rule that "a reliable contract drafter is a reliable visionary too", because he is able to read the possibilities that occur in the business contract that he makes, so as to minimize the risk of his clients.

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