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Implications of Franchise Agreements for Default by Franchisees (Case Study: Decision Number 1064K/PDT/2020)

Masni Purba[1], Martono Anggusti[2*], Roida Nababan[3]
Fakultas Hukum, Universitas HKBP Nommensen, Medan
Corresponding Author: Martono Anggusti martono.anggusti@uhn.ac.id

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ABSTRACT
This study aims to analyze the rapid growth of the franchise business in Indonesia, which has prompted the government to regulate and protect the legal relationship between franchisors and franchisees through various regulations, including Government Regulation Number 42 of 2007 and the Ministry of Trade Regulation Number 71 of 2019. A dispute case between PT MYSalon International as the franchisor and Ratnasari Lukitaningrum as the franchisee highlights the challenges in implementing franchise agreements in Indonesia. This research was conducted qualitatively with a case study analysis. The research method used is empirical juridical. The case study analysis and literature review are described in this research. The main challenges in franchise agreements include unclear contract clauses, non-compliance with regulations, lack of trust, and operational difficulties in implementing franchisor standards. The impact of these challenges includes lawsuits, contract termination, and damage to business reputation. Based on civil law principles such as consensualism, freedom of contract, and good faith, this study emphasizes the importance of compliance with regulations and transparency in the implementation of franchise agreements to create justice and business sustainability. The study concludes that harmonizing regulations and simplifying administrative processes are necessary to address the challenges in franchise agreements in Indonesia while promoting healthy and competitive franchise sector growth.

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INTRODUCTION

Due to the rapid emergence and development of businesses, Indonesia is currently in the midst of global economic growth. As stipulated in Article 33 of the 1945 Constitution of the Republic of Indonesia, which regulates Indonesia's business and economic sectors, this reflects economic development worldwide, where companies adopting the franchise system have emerged and expanded as a form of social control. This is due to the fact that the franchise system has existed since the beginning, yet there were no specific regulations governing it. Presidential Decree Number 99 of 1998 established Law Number on Micro, Small, and Medium Enterprises, which was later amended to Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises (MSMEs). The Indonesian government adopted the MSME Law to address the growth of franchises in the country. This law aims to prevent small businesses from being disadvantaged and provides legal protection for the franchise system. This legal relationship pattern was created due to business growth, particularly in franchising.

With the rapid development of franchises, the government has paid attention to franchise regulations in Indonesia to ensure fairness. These regulations were first established in Indonesia through Government Regulation Number 16 of 1997 concerning Franchising, which was later amended to Government Regulation Number 42 of 2007 concerning Franchising. According to Article 1, point 1 of Government Regulation Number 42 of 2007, "a franchise is a special right owned by an individual or business entity over a business system with distinctive 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." Essentially, a franchise is an agreement on how consumers obtain goods and services. For a specified period, the franchisor grants the franchisee a license to distribute goods and services under the franchisor's name and identity within a specific area. The business must be conducted following the protocols established by the franchisor. The franchisor supports the franchisee in exchange for an initial payment and royalties.

This case originates from a dispute between PT MYSalon International and the franchisee, Ratnasari Lukitaningrum. Founded by Thomas Lie in 2008, MYSalon is officially named MY Salon Color Expert, with its headquarters located at Blok M Square, 3rd Floor No.9-12, Jalan Melawai V, Kebayoran Baru, South Jakarta. Thomas Lie remains the company's director to this day. This Indonesia-based salon claims to be the only salon in Indonesia that implements a franchise concept with an innovative management approach, such as using an online application that allows employees and owners to collaborate fairly and transparently. Additionally, the MYSalon application system is designed to protect employees from harming salon owners.

In case number 1064 K/Pdt/2020, the obligations of the parties in the Franchise Agreement and its implementing regulations were often ignored. PT MYSalon International, acting as the franchisor, and Ratnasari Lukitaningrum, acting as the franchisee, established their legal relationship through a franchise cooperation agreement and a licensing agreement signed on April 25, 2015. The dispute arose when the defendant violated the franchise cooperation agreement by failing to pay the royalty fee for the MYSalon Jababeka outlet amounting to IDR 26,000,000.00 (twenty-six million rupiah). Consequently, the plaintiff suffered material losses, including unpaid BPJS TK (social security), compensation, and additional costs amounting to IDR 80,073,551.00 (eighty million rupiah). The plaintiff made verbal and written attempts, including formal warnings, but these efforts were unsuccessful. As a result, the defendant was required to pay the third-phase equipment costs amounting to IDR 175,000,000.00 (one hundred seventy-five million rupiah) to the plaintiff, as agreed upon in the initial franchise cooperation agreement.

If the MYSalon name or trademark continues to be used after the termination of all agreements between the two parties, the defendant must pay compensation of IDR 100,000.00 (one hundred thousand rupiah) per day until the defendant ceases using the MYSalon name or trademark. Based on the decision of the South Jakarta District Court, the judge ruled in favor of the appellant (previously the plaintiff). Although the appellant did not submit an appeal memorandum, this did not prevent the Panel of Judges from reviewing and assessing the legal accuracy of the first-instance court's decision to determine whether it was correct and appropriate. This case is still under review.

The Panel of Judges examined the minutes of the South Jakarta District Court hearing on May 9, 2018, the evidence presented by both disputing parties, and the official copy of the South Jakarta District Court's decision dated May 9, 2018, case number 612/Pdt.G/2017/PN.Jkt.Sel. This document includes the legal considerations and conclusions of the First-Level Panel of Judges, which granted the counterclaim plaintiff's (formerly the counterclaim defendant) request in part. However, the Appellate Panel of Judges concurred that the initial decision was fundamentally accurate.

The decision of the South Jakarta District Court, dated May 9, 2018, case number 612/Pdt.G/2017/PN.Jak.Sel, was upheld and reaffirmed based on these considerations. According to the Decree of the Chairman of the Jakarta High Court Number 493/Pdt/2018/PT DKI, dated September 4, 2018, the Panel of Judges reviewed the appeal filed by the appellant (previously the plaintiff). The Panel of Judges upheld the previous decision, confirming the South Jakarta District Court's ruling, case number 612/Pdt.G/2017/PN.Jak.Sel, and ordered the appellant (previously the plaintiff) to pay court fees. Subsequently, the cassation applicant (previously the appellant) filed a petition for cassation. The Supreme Court granted PT MYSalon International's cassation petition and overturned the Jakarta High Court's decision Number 493/PDT/2018/PT. DKI, dated October 4, 2018, which had upheld the South Jakarta District Court's ruling, case number 612/Pdt.G/2017/PN.Jkt.Sel, dated May 9, 2018.

LITERATURE REVIEW

A. Concept of Franchise Agreement

Various legal relationships in the field of economics are generally based on agreements. As society develops, contract law continues to evolve, especially with advancements in science, technology, and the emergence of globalization, which significantly influences the economy, particularly in business. One of the agreements that is widely practiced today is the franchise agreement.

Article 1313 of the Indonesian Civil Code (KUH Perdata) states that "An agreement is an act whereby one or more persons bind themselves to one or more other persons." The term "agreement" is translated from the Dutch word "overeenkomst." Some people also translate "overeenkomst" as "consent." From the perspective of the Indonesian language, translating "overeenkomst" as "consent" is not entirely incorrect. However, from a legal technical standpoint, the use of the term "consent" as a translation of "overeenkomst" is less precise. One of the essential conditions for a valid agreement is "toestemming" (Article 1320 of the Civil Code), which means permission or consent. In Dutch legal literature, "toestemming" is defined as "wilssovereenstemming," which in Indonesian means "mutual agreement" or is commonly referred to as "consensus."

If "overeenkomst" (Article 1313 of the Civil Code) is translated as "consent," and one of the conditions for a valid agreement ("toestemming": Article 1320 of the Civil Code) is also translated as "consent," it would sound odd to say that one of the conditions for a valid consent is consent itself. In the second chapter of Book III of the Civil Code (BW), the term "contract" is used alongside "overeenkomst." In general, legal scholars, referring to Article 1313 of the Civil Code, state that an agreement is a bilateral legal act (tweezijdige rechtshandeling) intended to establish a mutual consensus (meeting of the minds) that results in legal consequences. This bilateral legal act consists of an offer (aanbod) and an acceptance (aanvaarding). Offer and acceptance are referred to as bilateral legal acts, where one side presents an offer while the other accepts it.

Based on the above definition of a franchise agreement, several essential elements in a franchise agreement can be identified, including:

1. The existence of an agreement mutually agreed upon by the parties. A franchise agreement is a contract between two parties, the franchisor and the franchisee, both of whom have legal capacity, either as legal entities or individuals. This agreement legally binds both parties and regulates their rights and obligations in the franchise cooperation.
2. The granting of rights by the franchisor to the franchisee to produce or market goods and/or services. In a franchise agreement, the franchisor grants the franchisee the right to use a proven franchise system. This right includes authorization to market or produce goods and services according to the standards set by the franchisor. The granting of this right is the core of the franchise agreement, requiring both parties to clearly define the rights granted in the contract document.
3. The rights granted are limited in time and location. The franchisor grants the franchisee the right to use the company's name, trademark, and logo to operate the franchise business. However, this right is not permanent and is limited in terms of time and location as agreed upon in the contract. In other words, the franchisee is only allowed to operate in a specified region for a certain period, and this right will expire based on the terms of the agreement.
4. The franchisee is required to pay a certain amount of money to the franchisor. As part of the franchise relationship, the franchisee must

provide financial compensation to the franchisor. This payment may take the form of an initial fee, royalties, or other periodic or one-time fees. Financial compensation is a crucial element in the franchise relationship as it forms the basis for the franchisor to grant the license and provide support in operating the franchise system. These payments, although not always in cash, usually include fees tailored to the business model within the franchise network.

Overall, a franchise agreement is not merely an agreement to use intellectual property rights but also creates a mutually beneficial relationship between the franchisor and the franchisee, requiring both parties to adhere to the agreed terms to ensure a successful business relationship. Therefore, understanding the legal structure of agreements, particularly franchise agreements, necessitates attention to the nuances of terminology and the conditions for validity, including mutual consent and shared intent between the parties. This is crucial to ensuring fairness and effectiveness in legal relationships in business, especially as the franchise model continues to expand within the global and local economy.

B. Breach of Contract (Wanprestasi)

In legal terms, "performance" refers to the fulfillment of obligations stated in a contract by a party that has committed to executing them, in accordance with the "terms" and "conditions" outlined in the agreement. According to Article 1320 of the Civil Code, once an agreement is made, it becomes legally binding for the involved parties, as stipulated in Article 1338(1) of the Civil Code. If one party fails to perform its obligations, it is considered a breach of contract (wanprestasi).

Breach of contract can be defined as the failure to fulfill obligations as agreed in the contract. Some elements of breach of contract include the existence of a valid agreement (under Article 1320), fault (whether due to negligence or intentional actions), resulting damages, and potential sanctions, which may include compensation. It can also lead to contract termination, risk transfer, and the obligation to pay legal fees if the dispute reaches court. Breach of contract occurs when the obligated party (debtor) fails to meet its obligations as stipulated in the contract. This may result from negligence, deliberate actions, or force majeure (unforeseeable circumstances beyond the debtor's control). Generally, breach of contract is the failure of a debtor to fulfill the agreed-upon obligations. If this failure is not due to force majeure, the debtor is required to compensate for the violation.

METHODOLOGY

In this study, the author employs a qualitative research approach. A qualitative approach is used to gain a deeper understanding of the research focus. The author applies a normative juridical research method to compile and produce this journal. This type of research is designed as a case study. The data used consists of secondary data or literature materials. This approach is also known as a literature-based approach, which involves reading books, legal regulations, and other relevant documents related to this research.

In normative legal research, this journal employs two approaches: the statutory approach and the conceptual approach. The collected legal materials are then analyzed based on case studies. Subsequently, a qualitative analysis is conducted on all the gathered legal materials. The final step is presenting the analysis results in a descriptive format.

RESULTS AND DISCUSSION

A. Forms of Breach of Contract Committed by the Parties in the Franchise Agreement

A contract is a legal act carried out by two or more parties based on an agreement that results in rights and obligations. In civil law, the declaration of intent by the parties to enter into a contract constitutes a legal event. The legal relationship established in the contract will have legal consequences, namely the rights and obligations of the agreeing parties. In this case, the agreement between PT MYSalon International and Ratnasari Lukitaningrum is a franchise agreement, which is a reciprocal contract where the rights and obligations of the parties must be consistently applied. According to contract law, a franchise agreement is a specific type of contract that is not regulated in the Indonesian Civil Code (KUHPerdata). This is due to the fact that, according to Book III of the Civil Code, an open system is used to meet the needs of society as times change. Therefore, it is understood that franchise agreements are not governed by the Civil Code.

The legally recognized subjects of a franchise agreement are the franchisor and the franchisee. The franchisor is an individual or organization that grants permission to the franchisee, such as licenses, trademarks, administrative records, and others. In this case, the franchisee is the entity authorized to use the franchisor's license. The license, which may consist of permission granted by the franchisor, serves as the object of the franchise agreement itself. In this study, the franchise agreement is discussed, with PT MYSalon International acting as the franchisor and Ratnasari Lukitaningrum as the franchisee. The agreement includes a license to use the MYSalon brand for a salon service business.

Indonesian regulations first established provisions regarding franchise agreements. The applicable laws, including the Civil Code Articles 1338 (1), 1335, 1337, and 1320, as well as Law No. 20 of 2016 on Trademarks and Geographical Indications and Law No. 30 of 2000 on Trade Secrets, regulate contracts in general. The second set of government regulations governing franchise agreements can be found in Government Regulation No. 42 of 2007 on Franchises and Minister of Trade Regulation No. 71 of 2019 on Franchise Administration. According to the Explanation of Government Regulation No. 42 of 2007 on Franchises, Section I states that the purpose of this regulation is to encourage the growth of franchise businesses in Indonesia, especially small and medium enterprises. The government considers it necessary to monitor the legality and credibility of franchisors to maximize economic growth in Indonesia. The regulation also aims to provide legal certainty for franchisors and franchisees in marketing products. Franchise regulations must be amended and simplified to enhance operations and ease franchise business administration. Based on this, the Ministry of Trade of the Republic of Indonesia issued Minister of Trade

Regulation No. 71 of 2019, which states that "A Franchise Agreement is a written agreement between the franchisor and the franchisee or between a master franchisor and a sub-franchisee."

According to Article 1338 (1) of the Civil Code, "All legally made agreements apply as law for those who create them." Therefore, the franchise agreement between PT MYSalon International and Ratnasari Lukitaningrum is legally binding on both parties. Furthermore, Article 1335 of the Civil Code states that "A contract without cause, or made based on a false or prohibited cause, shall have no legal effect." Article 1337 states that "A cause is considered unlawful if it is prohibited by law or contrary to morality or public order." These provisions define unlawful causes under Article 1335. A contract is only valid if it meets four requirements, according to Article 1320 of the Civil Code:

1. Agreement of the parties;
2. Capacity to contract;
3. A specific subject matter;
4. A lawful cause.

PT MYSalon International and Ratnasari Lukitaningrum had a legally valid franchise agreement under Article 1320 of the Civil Code. The signing of the agreement on April 25, 2015, and June 18, 2015, indicates that the franchise agreement was approved. As PT MYSalon International is a business entity, it has the capacity to make a franchise agreement, and Ratnasari Lukitaningrum also possesses the legal capacity to enter into a contract. The purpose of the franchise agreement in this case was collaboration in the salon service business to optimize profits. The franchise agreement between Ratnasari Lukitaningrum and PT MYSalon International does not contain any elements contrary to the law and is therefore deemed lawful. Every legal contract is based on principles that underpin, inspire, and guide its formation. In the case of franchise agreements, these principles are necessary to clarify the intent and purpose of the contract.

According to Satjipto Rahardjo (2014), legal principles are the main components of legal regulations because they contain ethical demands that connect legal rules with societal ideals. Legal rules do not explicitly contain principles, but they cannot be understood without them. PT MYSalon International and Ratnasari Lukitaningrum executed their franchise agreement based on the following legal principles:

1. Principle of Consensualism
2. Principle of Freedom of Contract
3. Principle of Pacta Sunt Servanda
4. Principle of Good Faith

If a legally valid agreement exists, non-performance or breach of contract (wanprestasi) is possible, as contracts represent agreements between two or more parties that create rights and obligations that must be fulfilled. If one party fails to perform its obligations under the agreement, it constitutes a breach of contract. In this case, PT MYSalon International and Ratnasari Lukitaningrum committed breaches, as the parties to the franchise agreement dated April 25, 2015, and June 18, 2015, failed to fulfill their responsibilities.

B. Challenges Faced by the Parties in Forming a Franchise Agreement

Legal Aspects:

- Ambiguous contract clauses that do not clearly define rights and obligations.
- Non-compliance with regulations such as Law No. 42 of 2007 on Franchises.
- Lack of awareness regarding mandatory franchise agreement registration.
- Mistrust between business partners, affecting negotiations.
- Lack of transparency regarding business performance and financial reports.
- Complex administrative documentation prolonging contract finalization.
- Differences in interpretation of contractual provisions.
- Difficulty adapting to franchisor systems and standards.
- Inadequate monitoring and compliance oversight.

Implementation Challenges:

- Difficulty fulfilling royalty payment obligations.
- Operational discrepancies affecting service or product quality.
- Internal competition when the franchisor opens a nearby business location.

Common Issues in Franchise Agreements:

- Breach of contract resulting in financial and reputational damage.
- Unclear contracts leading to legal disputes.
- Differences in contract interpretation causing conflicts.
- Insufficient franchisor support impacting business performance.

Legal Consequences:

- Lawsuits arising from breaches of contract.
- Unilateral contract termination affecting franchisee continuity.
- Damage to business reputation, impacting future relationships.

CONCLUSION AND RECOMMENDATION

The dispute case between PT MYSalon International (franchisor) and Ratnasari Lukitaningrum (franchisee) illustrates the complexity of legal relationships in franchise agreements in Indonesia. Although franchise agreements have a legal basis through regulations such as Government Regulation No. 42 of 2007 and Minister of Trade Regulation No. 71 of 2019, they still face various legal and operational challenges. Some key points concluded from this journal are as follows:

1. Forms of Breach of Contract

In this case, both parties were found to have committed a breach of contract:

- The **franchisor** failed to fulfill its obligation to provide manpower as agreed, which can be categorized as a partial breach.
- The **franchisee** failed to pay the royalty fee within the agreed time and amount, which is categorized as a total breach.

2. Challenges in Franchise Agreements

Franchise agreements are often marked by several challenges, such as:

a. **Legal Aspects**: Ambiguity in contract clauses, non-compliance with regulations, and failure to fulfill registration obligations.
b. **Trust and Transparency**: Lack of trust and transparency between parties, particularly concerning financial reports and business performance.
c. **Administration**: Complex documentation and differing contract interpretations often trigger disputes.
d. **Operational Issues**: Franchisees struggling to meet operational standards and financial obligations, as well as insufficient support from the franchisor.

3. Legal Impacts of Disputes

Disputes in franchise agreements, such as in this case, can have significant impacts, including:

a. Legal lawsuits demanding compensation for financial and material losses.
b. Unilateral contract termination affecting the continuity of the franchisee's business.
c. Damage to business reputation for both parties.

4. Efforts to Minimize Disputes

To reduce potential disputes in franchise agreements, the following steps are recommended:

a. Contracts should be drafted in a detailed, clear manner and in compliance with applicable regulations.
b. Regular oversight and transparency should be maintained by the franchisor.
c. Franchisees should understand and fulfill their financial and operational obligations according to the agreement.

Franchise agreements require good faith, adherence to legal principles, and consistent fulfillment of obligations by both parties. The case between PT MYSalon International and Ratnasari Lukitaningrum highlights the importance of legal clarity, transparency, and supervision in maintaining the sustainability of franchise business relationships in Indonesia.

5. Challenges in Case Analysis

Several difficulties often arise, which can affect the depth of analysis and clarity of arguments. One of the main challenges is in data collection related to case studies, particularly in accessing necessary court ruling documents. Limited or difficult-to-obtain documentation can hinder efforts to conduct a more in-depth and comprehensive analysis of the case. To overcome this, it is essential for researchers to seek relevant references from other sources that support an understanding of the ruling, whether through legal professionals or related literature.

Additionally, when analyzing franchise agreements, researchers must be able to clearly explain legal concepts contained in franchise agreements, such as the rights and obligations of franchisors and franchisees, and how they influence dispute resolution in practice. Expanding theoretical understanding and linking it to practical conditions in the case is crucial. The use of appropriate and relevant theories will help provide a more comprehensive perspective on the impact of breaches of contract in the legal relationship between franchisors and franchisees. Researchers also face challenges in ensuring the relevance of legal theories to actual case practices. Therefore, future research should delve deeper into the application of contract and breach of contract theories in resolving franchise disputes. To improve this journal, the author can update references from the latest legal sources and broaden the scope of analysis with more related case studies, providing a more comprehensive view of the legal implications of franchise agreements and solutions to breach-of-contract issues in the franchise business.

ADVANCED RESEARCH

In writing this article the researcher realizes that there are still many shortcomings in terms of language, writing, and form of presentation considering the limited knowledge and abilities of the researchers themselves. Therefore, for the perfection of the article, the researcher expects constructive criticism and suggestions from various parties.

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