



# Legal Protection for Parties in Franchise Agreements Based on Dignified Justice: Reconstructing Regulations

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## Abstract

Franchise agreements in the business sector are recognized globally with Indonesia experiencing significant growth in the industry. The expansion of franchise businesses in the trading and service sectors is due to the benefits offered to both the franchisor and franchisee. In practice, the agreements are a standard category contract but when conducting business, franchisors often have greater bargaining power than the franchisees. Regulations on franchise operations have been established in Indonesia through Government Regulation Number 42 of 2007 Regarding Franchises and Minister of Trade Regulation Number 71 of 2019 Regarding the Implementation of Franchises but there were weaknesses in the articles that do not provide legal certainty and protection for the parties. Therefore, this research aimed to provide legal certainty and protection, fostering dignified justice for all parties. Reconstructing Article 8 of Government Regulation Number 42 of 2007 Regarding Franchises was necessary, particularly the term "continuous" which can be interpreted in multiple manners and can lead to legal conflicts. The research adopted a normative juridical method that uses secondary data in the form of laws and regulations relevant to the problems. The findings indicated that the term "continuous" should be removed from the Constitution to provide franchisors with a clear period for guiding the form of training, operational management, marketing, research, and development to franchisees at least once a year.

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## 1. Introduction

Franchising has emerged as a prominent business model, allowing individuals and companies to leverage established brands and proven operational methods. This system offers a unique opportunity for entrepreneurs to enter the market with reduced risk compared to starting from scratch. However, the legal landscape surrounding franchise agreements is often fraught with complexities and ambiguities that can lead to significant challenges for both franchisors and franchisees.

One of the primary issues in franchise relationships is the imbalance of power and information between the parties. Franchisors typically possess greater resources and knowledge, which can create an environment where franchisees may feel vulnerable or exploited. [Dant, R. P., & Grünhagen, M. (2014).



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This disparity is exacerbated by a lack of comprehensive legal protections, leading to disputes that can undermine the sustainability of franchise operations.[ Hunt, S. D. (2015). *A General Theory of Competition: Resources, Competences, Productivity, Economic Growth*. Thousand Oaks: Sage Publications.] The absence of clear regulations to safeguard the rights and responsibilities of both parties can result in misunderstandings, financial loss, and damaged reputations. Moreover, the existing regulatory framework often fails to address the specific needs of franchise agreements. Many jurisdictions lack robust laws that provide adequate protection for franchisees, leaving them exposed to the whims of franchisors.[ Klein, B., & Murphy, A. (2012). *The Role of the Franchisee and Franchisor in Franchise Agreements*. *Journal of Business Venturing*, 27(2), 123-138.]

Franchise agreements are a widely recognized business model throughout the world. More than 30 countries have enacted franchise-specific regulations to regulate franchise relations in response to the global recognition (Temesgen, 2016). Legally speaking, franchising was regulated in Indonesia by Minister of Industry and Trade of Indonesia Decree Number 259/MPP/Kep/7/1997 dated July 30, 1997, concerning Provisions as well as Procedures for Franchise Business Registration Implementation, and Government Regulation Number 16 of 1997 dated June 18, 1997, regarding Franchises. Following that, the Government Regulation Number 42 of 2007 and the Minister of Trade of Indonesia Regulation Number 71 of 2007 concerning the Implementation of Franchises were added to these regulations.

Franchising is a special right that an individual or business entity has against a business system with business characteristics to market goods and/or services that have been proven to be successful and that other parties may use in accordance with a franchise agreement, according to Government Regulation Number 42 of 2007's Article I, Number 1. Commercial cooperation will involve at least two parties through the use of franchising: the franchisor, who gives another party permission to construct a comparable business unit, and the franchisee, who gets the permission.

A franchise is a component of a business partner's suitability for the rules of the game as specified by the franchisor, which include usage of trademarks, service marks, copyright on logos, industrial designs, patents for technology, trade secrets, and procedures, as well as marketing strategies (Widjaya, 2001). As per Andrew et al., franchising is a business model wherein the franchisor provides a license, trademark, and service mark along with guidance and support for setting up, stocking, and operating the firm over an extended period of time (Andrew, 2007).

A "franchise" is now a commercial agreement for the provision of products and services. According to the Australian Swanson Committee, there are three different kinds of franchising: product, processing, or manufacturing, and system, or business structure franchising.

Franchise agreements, in which the franchisor offers a unilateral agreement in the form of a blank template or form to conduct business, are regarded as standard category contracts. In the agreement, the business owner, also known as the franchisor, has a stronger position than the franchisee, which results in more advantageous conditions for the business owner. One party, usually the one with greater economic power, unilaterally determines these arrangements (H. S. Salim, 2007). Franchise agreements, in which the franchisor offers a unilateral agreement in the form of a blank template or form to conduct business, are regarded as standard category contracts. In the agreement, the business owner, also known as the franchisor, has a stronger position than the franchisee, which results in more advantageous conditions for the business owner. One party, usually the one with greater economic power, unilaterally determines these arrangements (A. Dimatteo, 2015). Numerous domestic and international businesses attest to the fact that franchising is regarded as a very beneficial system in the business sector (Fadairo, 2013).



The legal framework for franchising in Indonesia is not very thorough, so some parts of the partnership are not fully addressed. This is evident from the laws that control franchise companies, which are currently governed by a single set of ministerial and government regulations. Although there exist rules from the relevant technical departments, they are insufficient given how the franchise business model is always changing to accommodate new company ventures. The parties need detailed legal frameworks as guides both before and after the agreement's creation in order to handle situations pertaining to it. This is required to shield franchise holders and beneficiaries against unintended losses brought on by gaps in the parties' legal protections. Consequently, the franchise agreement signed by both partners sets up the rules for those planning to run a business. The most important step in a corporate cooperation process is creating a contract, since everything pertaining to the collaboration will be outlined in it and will be binding on the parties. Both parties are required to carry out specific tasks under franchise company legislation (Temesgen, 2016). The way in which the parties obtain equitable legal protection as constitutional subjects is one area of the franchise company that requires legal control. The Indonesian Constitution of 1945 governs the protection of each and every individual in Article 28D (paragraph 1). It proclaims:

"Every person has the right to equality before the law as well as acknowledgment, assurances, protection, and just legal certainty."

The efforts made by the government or authorities to offer security through various current legislation can be characterized as the idea of legal protection. According to Satjipto Rahardjo, one way to ensure that everyone has access to the full range of legal rights is to provide sanctuary for human rights (HAM) that have been violated by others (Raharjo, 2000). Clauses that are accepted by the parties as providing legal protection should include things like rights and obligations, responsibilities, dispute resolution procedures, and choice of law. These elements ought to be included as standards that provide the parties with a legitimate basis on which to reach a fair and respectable franchise agreement. Since these agreements are innominate or unnamed contracts that are not expressly regulated in the Civil Code, the only regulations that specifically address them are Government Regulation (PP) Number 42 of 2007 Regarding Franchises and Minister of Trade Regulation Number 71 of 2019 Regarding the Implementation of Franchises. When it comes to company franchises, the authority to negotiate is not shared by the franchisor and the franchisee. The franchisee has no bargaining leverage and the franchisor has the capacity to control the negotiation when it comes to the take-or-leave nature of the offer. The fairness of the agreement between the parties is impacted by the power imbalance between the franchisor and the franchisee. Additionally, there is an unequal distribution of rights and responsibilities among the stakeholders in the firm due to a complex variety of agreements (Dimatteo, 2003).

Franchise agreements should be negotiated fairly and in a way that benefits both parties as business partners. This will provide legal certainty and prevent problems at the same time. Furthermore, formalizing the business through an agreement is a good idea since contracts give the participants a means of obtaining legal protection. When one party breaks the terms of the contract, the other party takes legal action against the offending party in accordance with the law that is in effect at the time (Rahma, 2014). Contract freedom is safeguarded by Article 1320 of the Civil Code, which permits parties to determine what is and is not legally binding on both parties throughout the duration of the agreement. The freedom of agreement is upheld by contract law, but in some cases, government involvement has restricted this freedom. The parties' duties to incorporate specific terms in the contract are how franchise agreements enforce their restrictions. All parties to the contract will have legal protection thanks to this, as intended by the lawmakers. The development of standard category contracts is another hindrance to the freedom to contract.

As franchise firms develop, there will be legal ramifications, which makes it necessary for legal institutions to regulate franchise enterprises in a nation. This is necessary to give all parties a sense of



dignified justice and to guarantee legal certainty in the enterprises. A franchise agreement gives a franchisee the right, with continuous assistance from the franchisor, to run a business utilizing the franchisor's intellectual property, such as trademarks or logos, for a fee. Amir Karamoy states that in exchange for the franchisee paying a portion of the franchisor's expenses, the franchisor should offer the franchisee technical support, management, and marketing. A license or franchise agreement will be used to form the parties' collaboration (Karamoy, 2016)

When a franchise agreement forms the foundation of the legal relationship between a franchisor and a franchisee, it means that every clause in the agreement acts as a guide for carrying out the business arrangement. The rules serve as a partnership and legal force for the initiator, as stipulated in Article 1338 of the Civil Code.

Issues that arise during the implementation of a franchise agreement are viewed by the parties as losses. The parties in the contractual connection that is being implemented must find a legal remedy to this. There are two ways to resolve a legal dispute: through litigation or non-litigation.

The West Jakarta Decision Number 2297K/PDT/2012 is an illustration of a legal matter that has reached the constitutional level. PT. TARRA FRANCHISE is the defendant, while MATIO SIHOMBING is the plaintiff in this case. The action is centered on the Plaintiff and Defendant, who on July 21, 2009, signed a five-year contract under the trade name Odiva as a Unit Franchise Agreement for a video rental company. The location study, in which the plaintiff accepted the business site, was a major contributing element to the loss incurred by the plaintiff in the franchise business. However, the location was unsuitable because it was impossible for drivers or potential consumers to make a U-turn due to traffic restrictions. Customer acquisition was made difficult by the business location's one-way street location and heavy commuter traffic during business hours. The knowledgeable franchisor (defendant) ought to have performed a second survey of the site that the plaintiff had accepted, even if the franchisee (plaintiff) had consented to the company location. Plaintiff, the franchisee, ran advertising campaigns that brought in clients for the franchisor during the first year of the contract.

From the second to the third year, the Plaintiff experienced continuous losses. Additionally, the Plaintiff had to incur more expenses on operation, management service, contribution costs, building rental, electricity, and employee salaries. According to the court, Plaintiff (the franchisee) should have been able to profit from the franchise business run by Defendant (the franchisor). Furthermore, Article 8 of Government Regulation Number 42 of 2007 Regarding Franchises is violated by the Defendant's (franchisor) activities toward the Plaintiff (franchisee). This section states:

"Franchisees must receive ongoing assistance from the franchisor about marketing, research, development, operational management, and training."

Regarding the lawsuit, the West Jakarta District Court issued Decision Number 524/Pdt.G/2009/PN JKT.BAR, dated June 23, 2010, with the verdict as follows:

-In the main case, the plaintiff's lawsuit is rejected entirely.

-With regard to the appeal level, the Jakarta High Court, via ruling Number 200/PDT/2011/PT.DKI, dated November 14, 2011, confirmed the West Jakarta District Court's ruling regarding the Appellant/Plaintiff's petition.

-At the cassation level submitted by the first applicant, the plaintiff/appellant with Decision Number 2297K/PDT/2012 rejected the application from the cassation applicant, Matio Sihombing.

The analysis highlights that there may be legal voids created by Article 8 of the Government Regulation Number 42 of 2007 that could lead to disputes over the terms of the franchisee-franchisor agreement based on the case description and the cassation verdict. This is a result of Article 8's lack of clarity



regarding the kind of advice that the franchisor should give to the franchisee. Likewise, the time and frequency of instructions provided during the franchise agreement are not made clear in the article. There may be varying interpretations of what is meant by "continuously" among the parties.

According to the case in question, the franchisor's advice is not time-bound, which means that support comes in just as the franchisee's company is about to file for bankruptcy. Due to the franchisor's (defendant) lack of ongoing support in the form of training, operational management advice, marketing, research, and development, the plaintiff in this case was forced to close the outlet in order to minimize losses. This circumstance might result in losses for the franchisor as well as the franchisee, as it does not offer equitable and respectable legal protection. As a result, several of the clauses in Article 8 of the Government Regulation Number 42 of 2007 that deal with franchises need to be revised. Drawing from the background description given, this study will look into two main issues: (1) What legal protection regulations currently lack for parties involved in franchise agreements, and (2) How can the regulations be redesigned to guarantee a framework grounded in dignified justice? The goal of this research was to improve the fairness and balance of the franchising environment by addressing these shortcomings.

## 2. Understanding Franchise

### 2.1 Term of franchise

The French term "franchir," which denoted giving the parties freedom, is whence the word "waralaba" (franchise) originated (H. Salim, 2003). P. H. Colin defines a franchise as a license to trade using a royalty in the Law Encyclopedia, and franchising is the act of selling a license to trade as a franchisor. (Widjaya, 2001). This definition emphasized the use of trade names when granting franchises in exchange for royalties. Consequently, the definition of a franchise was defined as "a privilege established or given by the owner of the franchise to the franchisee with several obligations or costs". (Lumoidong, n.d.).

Rather of launching a small business, franchisees can significantly lower the risk associated with creating an organization from the ground up by owning a franchise. Additionally, they can obtain a great deal of knowledge in their industry thanks to the support that the franchisor provides. Franchisees also typically experience improved brand and product familiarity. (Emerson, 1998) Typically, franchisees rely on the franchisor's well-established brand name, assistance, and training to get started in business. (Knight, 1984). Many franchisors will accept franchisees with no prior business expertise. (Mendelsohn, 1999) and some even intentionally seek out new franchisees with no experience, believing that this will make it easier to indoctrinate them into the system.

Around the 1850s, the Singer sewing machine company in the United States marked the beginning of the franchise system's history. In order to market the company's goods during that time, Singer built a distribution network throughout the continent of America. These distributors also offered their clients maintenance, repair, and spare parts in addition to after-sale services. (Setiawan, 2007). Although it wasn't very profitable, Singer set the foundation for franchising, which was eventually accepted by everyone. The fundamental concept that led to the establishment of this company in America was the possibility of selling a product made in one state to other regions. The internationally recognized franchise model was basically an advancement over earlier eras.

In the US, franchising has taken the lead as the most popular model for product and service distribution. The International Franchise Association reports that franchise agreements accounted for a decreasing percentage of typical American enterprises. In the United States, franchising employed eight million people and made up 41% of all retail establishments. At first, the idea of franchising was not mentioned in Indonesian legal literature as a separate business model. This made sense because Indonesian society's corporate culture and tradition did not initially include the franchise institution. However, as a result of globalization's effect in many sectors of the economy, franchising has been ingrained in Indonesian





culture and the country's legal system (Azwar, 2005). Around the 1970s, foreign franchises like Kentucky Fried Chicken, Swensen, and Shakey Piza began to open in Indonesia, and these businesses quickly gained popularity. Burger King and Seven Eleven soon followed.

In Indonesia, franchise systems have existed since the 1970s. Since the International Labor Organization (ILO) supported a franchise study in Indonesia in 1991, the system has begun to emerge. (Sukandar, 2006). Early in the 1990s, the Indonesian government received advice from the International Labour Organization (ILO) to establish a franchise system in order to increase employment opportunities and hire professionals to perform surveys and interviews prior to making recommendations. These specialists' efforts culminated in the "Franchise Resource Center," which was created with the intention of converting different companies into franchises and educating the Indonesian public about the system. As a result, the Indonesian business sector started to hear the phrase "franchise," which encouraged more businesses to explore the concept. Additionally, the Management Education and Development Institute (LPPM) initially used the phrase as a synonym for franchise, localizing it as "waralaba". The term "Waralaba" refers to a company that generates more or special profits since it is derived from the words "wara" (more or special) and "laba" (profit) (Azwar, 2005). By utilizing other people's recipes, technology, packaging, service management, and trademarks and services by paying a certain amount of royalties depending on the franchise license, small enterprises in Indonesia were able to build sustainability through the franchise system. (Abdulkadir, 2010).

### **Types of Franchises and the Parties**

#### **2.2 Types of franchises**

According to East Asian Executive Report in 1983 were classified into three categories, namely as follows.

- a. Product Franchise, a form of franchise where the franchisee distributed products from partners with area restrictions, such as fuel retailers Shell or British Petroleum,
- b. Processing or Manufacturing Franchise, the franchisor played the role of providing Know-How of a production process such as Coca-Cola or Fanta drinks, and
- c. Business Format or Franchise System, where the franchisor had a unique way of presenting products in a single package to consumers such as Dunkin Donuts, KFC, Pizza Hut, and others.

According to Article 3 of PP Number 42 of 2007 on franchising, franchises must fulfill the following requirements. The goal of this law was to create a foundation for equitable and well-rounded franchising procedures in Indonesia.

1. Possessing a distinguishing quality. Customers were drawn to a business that had a unique selling point or distinction that made it difficult for competitors to copy. Some of the distinctive features of the franchisor included organizational or distribution strategies, sales and service techniques, and management systems.
2. Proven to be profitable. By referring to the franchisor's experience of approximately five years and having business strategies to overcome challenges, was evidenced by the business's continued existence and profitable growth.
3. Having standards in writing for the provided goods and services. As a result, the franchisee was able to carry out company operations within a defined and uniform framework (Standard Operational Procedure).
4. Simple to use and put into practice. Franchisees should be able to carry out the services in accordance with the ongoing operational and management guidelines given by the franchisor, even if they have no prior experience or understanding of similar operations.



5. Ongoing assistance. The franchisor should provide the franchisee with ongoing assistance, including operational direction, instruction, and marketing.

### 3. Methodology

The study used a normative juridical method that makes use of secondary data—laws and regulations—that are pertinent to the issues raised in the article. According to (Soekanto, 1981), normative research functioned as a doctrinal law, which is frequently understood as what is stated in laws and regulations (constitutions) or laws that are made by judges through legal procedures. The study employed a legislative approach to the Reconstruction of Legal Protection Regulations for Parties to a Franchise Agreement Based on Dignified Justice. The goal was to acquire a comprehensive, detailed, and methodical understanding of the laws controlling the parties' legal protection under a franchise agreement. By gathering, tracking down, and examining papers to examine legal principles and regulations that would offer the data required to discover new information, the normative juridical method functioned as research. This study found weaknesses and legal loopholes in the structure of the existing franchise agreements. The goal was to create a fair and balanced environment for all parties by laying the groundwork for justice inside the agreement

### 4. Discussion

#### **Reconstruction of Regulations for the Implementation of Franchise Agreements Based on Dignified Justice.**

The concept of dignified justice theory could be understood by recognizing that the framework was a name for a legal theory. The scope could be observed from the structure or layers within legal science including the philosophy of law in the first layer. Furthermore, legal dogmatic and practice were situated in the fourth layer of the legal science structure. Although the layers of knowledge within the theory of dignified justice were separated from each other, the layers of legal science fundamentally constituted a systematic unity. The system was interconnected, shoulder to shoulder, and working cooperatively. The theory of dignified justice commenced from the postulate of the system, aiming to achieve the objective of justice with dignity. The objective was to obtain justice that humanized the society, or justice connecting the community. The theory of dignified justice adhered to the principle that although legal science was structured in layers, the four components functioned as a unified system. This system, though consisting of distinct parts, remained interconnected. Understanding legal science in its entirety implied comprehending the interconnections between the four layers. The upper layers dictated, illuminated or enriched the layers of legal science in a systematic top-down fashion. Conversely, the lower layers also informed the understanding of the subsequent layers (Prasetyo, 2015).

The franchisor or brand owner's business success marked the beginning of the franchise agreement's implementation. The franchisor would transfer the company's success to the franchisee via the franchise business structure. Based on the experience, the franchisor created and implemented a standardized recipe for success. The foundation of the franchise business model was standardization. The franchising principle dictated that regardless of outlet location, consumers would receive the same products, services, and procedures at every location. Research and concept creation, marketing, advertising, and the establishment of a reputable and well-known brand were all used in this process. After successfully evaluating the concept by opening outlets in multiple locations, the franchisor offered the franchise to potential franchisees. Subsequently, an individual (or partnership or company) assessed the opportunity offered by the franchisor and evaluated the system to determine the profitability.

The implementation of franchise business was conducted following the agreements and regulations in force. Strong legal frameworks were essential for ensuring the smooth operation of franchise businesses in Indonesia. Consequently, in 1997, Government Regulation Number 16 of 1997 pertaining to Franchises



was implemented. Later, Number 42 of the 2007 Government Regulation about Franchises took the place of the previous rule. The Minister of Trade Regulation Number 12/M-Dag/Per/3/2006 on the Provisions and Procedures for the Issuance of Franchise Business Registration Certificates strengthened this government regulation.

Despite existing regulations, franchisors often prepared agreements for franchisees to purchase the franchise. These agreements contained clauses that disadvantaged the franchisee, even though the franchisee was obligated to accept the terms. Considering that the standardized franchise agreement, determining the contract clauses often gave the franchisor greater bargaining power thereby making the agreement unbalanced.

Regulations governing franchise contract implementation were established, but concerns persisted about the adequacy of ensuring a fair and balanced environment for all parties. This was because the business world experienced rapid growth, while the franchise business format required more attention to profitable operations. The parties' rights and obligations continued to be significantly out of balance, with franchisees in particular having a weak position in company operations.

Government Regulation Number 42 of 2007 outlined the mandatory responsibilities in the agreements, which had a considerable impact on franchisors. Furthermore, Article 8 outlined an obligation that mandated the provision of training and development programs for franchisees.

"Franchisors were obligated to provide continuous training and development to franchisees."

Divergent interpretations emerged among the parties about the meaning of "continuous" as it pertains to franchises in the eighth article of the Government Regulation Number 42 of 2007. This occurred because the article did not explicitly specify when and how often training should be provided by franchisors to franchisees during the term of the agreement. Therefore, the imbalance in interpretation could lead to legal uncertainty and injustice for the parties, specifically franchisees.

Based on the findings, the term "continuous" was interpreted differently by franchisors as outlined in the franchise agreement document. Various franchisors interpreted "continuous" in the franchise agreement document as providing training and development to franchisees annually. Furthermore, others interpreted the clause to be bi-annual while some even set the training frequency to be two to three times during the term of the franchise agreement.

Various interpretations were reached by the parties about the meaning of "continuous" in Article 8 of Government Regulation Number 42 of 2007 concerning franchises. Standard franchise agreements, reflecting the unequal bargaining power between franchisors and franchisees, created a legal relationship with inherent power imbalances. The franchise agreement made by franchisors outlined the terms and standards franchisees were required to follow. This allowed franchisors to terminate the agreement when judged franchisees were incapable of fulfilling the obligations (Selamet, 2022). To ensure legal certainty and avoid ambiguity surrounding the meaning of "continuous," it was required to reconstruct Article 8 of Government Regulation Number 42 of 2007 pertaining to franchises.

## 5. Conclusions

In conclusion, the agreement and regulations that were in effect were followed when implementing the franchise business. Government Regulation Number 42 of 2007 in Indonesia governed the establishment of franchise businesses. However, this regulation required reconstruction to provide legal protection for dignified justice to be obtained by all parties. Concerns arose regarding the ambiguity of the term "continuous" in Article 8. To address this, proposals were made to revise the article and replace "continuous" with a more specific requirement. The proposed revision would mandate that franchisors provide training to franchisees no less than annually. By exploring the current challenges and proposing





regulatory improvements, this study aims to improve the legal framework surrounding franchising. Ultimately, the aim is to foster a more balanced relationship between franchisors and franchisees, ensuring that both parties can operate in an honest and fair manner by bringing dignified justice to the execution of franchise agreements

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