



Franchise Registration in the Perspective of Regulation of the Minister of Trade Number 71 of 2019

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ABSTRACT

The franchise business is one of the most visible concrete examples in export and import trade between countries globally. To guarantee the interests of the parties, this business needs to be registered in accordance with the applicable laws and regulations. This type of research is normative with a conceptual and statutory approach. The data used is secondary data consisting of primary, secondary and tertiary legal materials. In Article 11 of the Minister of Trade Regulation Number 71 of 2019 concerning Franchise Management, it is stated that a Franchise Registration Certificate (STPW) is issued by the OSS Institution for and on behalf of the Minister or Regents and Mayors. STWT application process submitted through the Online Single Submission (OSS) Institution. For this reason, it is recommended that the franchisor and franchisee register their businesses in accordance with applicable regulations and that local governments are more active in socializing franchise registration and exercising tighter supervision of franchisors and franchisees who do not register their businesses.

ABSTRAK

Bisnis waralaba adalah salah satu contoh konkret yang paling tampak dalam perdagangan ekspor dan impor antar negara secara global. Untuk menjamin kepentingan para pihak usaha ini perlu didaftarkan sesuai dengan peraturan perundang-undangan yang berlaku. Jenis penelitian ini adalah normatif dengan pendekatan konseptual dan perundang-undangan. Data yang dipakai adalah data sekunder yang terdiri dari bahan hukum primer, sekunder dan tersier. Dalam Pasal 11 Peraturan Menteri Perdagangan Nomor 71 Tahun 2019 tentang Penyelenggaraan Waralaba dinyatakan bahwa Surat Tanda Pendaftaran Waralaba (STPW) diterbitkan oleh Lembaga OSS untuk dan atas nama Menteri atau Bupati dan Walikota. Proses permohonan STWT yang diajukan melalui Lembaga Online Single Submission (OSS). Untuk itu disarankan agar pihak pemberi dan penerima waralaba mendaftarkan usahanya sesuai dengan peraturan yang berlaku dan agar pihak pemerintah daerah lebih aktif mensosialisasikan pendaftaran waralaba dan melakukan pengawasan yang lebih ketat terhadap pemberi dan penerima waralaba yang tidak mendaftarkan usahanya.

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I. INTRODUCTION

The State of Indonesia is based on law (rechtstaat) as emphasized in Article 1 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia (Aryani & Hermanto, 2019; Busthami, 2018; Widiatama et al., 2020). Law as a means of community renewal as stated by Muchtar

Kusumaatmadja, essentially aims to make changes in the way of thinking and behaving community life in the face of development (Ambarwati, 2022; Riyanto, 2020; Sirait, 2019). Without changing the way of thinking and behaving in life, the introduction of modern institutions will not be successful. Therefore, the development of activities in economic sectors will have a logical consequence (Ismanto et al., 2013; Widisuseno & Sudarsih, 2019), namely the more open opportunities for the community to carry out activities in the economic sector.

The opening of these broad opportunities certainly requires processes, arrangements, directing and limiting, especially economic losses and the economy of the wider community. The logical consequence is that law must be able to become a facilitator of economic interests, because without law (rules) it will result in disorder in society. Thus, the existence of law in the economic field and in the growth of the economic sector is a symptom of reciprocity or mutual influence and complementarity (Pahlevi, 2019).

In line with legal and economic development simultaneously, in national, regional and global relations arrangements cannot be separated from international transactions. This is also inseparable from humans as social beings. According to Aristotle, humans are *zoon politicon* (Oldy Rosy et al., 2021; Rut et al., 2020; Sumanto, 2019), which was further explained by Hans Kelsen "man is a social and political being" meaning that humans are social creatures who are predestined to live in togetherness with others in society, and beings who are carried by nature as social beings. It is always organized (Age, 2021; Harsya, 2017). Thus, this concept is also actualized in the life of the state where one country is dependent on another. The most visible concrete example is the export-import between countries globally, especially in the franchise business.

The development of franchises has actually been known for a long time in Indonesia (Atmoko, 2019; Nasution, 2019). This is evidenced by the existence of several foreign franchise businesses that live and grow in Indonesia. However, regarding the institutions that regulate franchising in Indonesia, there are still differences of opinion. Based on the literature it is known that there are countries that deliberately do not issue special regulations in the field of franchising, for example England and Australia. Meanwhile, the United States is very rich with special franchise laws. The purpose of these arrangements is more weighty on protection for franchisees whose position is generally weak in terms of cooperation agreements and their implementation.

Franchising is not a newly recognized industry, although its juridical legality was only recognized in Indonesia in 1997 with the issuance of Republic of Indonesia Government Regulation No. 16 of 1997 concerning Franchising, and Decree of the Minister of Industry and Trade of the Republic of Indonesia Number: 259/MPP/Kep/7/1997 dated 30 July 1997 concerning Provisions and Procedures for Implementing Franchise Business Registration. Long before that, there were no special regulations related to franchising. Rather, the existence of a franchise comes from the Civil Code (KUHPerdata).

Along with the times, within 10 years of RI Government Regulation No. 16 of 1997 concerning Franchise underwent renewal. In RI Government Regulation No. 16 of 1997, the franchise arrangement is meant for business order and consumer protection. However, in its development, the franchise arrangement underwent renewal, namely with the issuance of Government Regulation Number 42 of 2007 concerning Franchising. As for the consideration points of Government Regulation Number 42 of 2007, the purpose intended in the renewal regulation is besides regulating franchise business rules, it is also to provide broad opportunities related to franchising nationally.

When viewed within the framework of regional autonomy, in fact the granting of authority granted through Government Regulations to Governors, Regents/Mayors as stated in Article 16 of Government Regulation Number 42 of 2007 is a delegation of authority granted by the Central Government to Governors, Regents/Mayors who are part of the concurrent government affairs in the implementation of the division of government affairs.

The regional head in the implementation of regional government has the authority to act as an autonomous regional head or regional head. The regional head in the implementation of regional government carries out attribution, delegation and mandate authority in accordance with the provisions of the applicable laws and regulations. Government Regulation Number 42 of 2007 concerning Franchising is then elaborated in Regulations.

II. RESEARCH METHOD

This research is analytical descriptive in nature, namely research that describes or explains the registration of a franchise business in the perspective of the Minister of Trade Regulation Number 71 of 2019 Concerning Franchising. This type of research is normative legal research, namely research aimed at finding and formulating legal arguments through analysis of the subject matter. Normative legal research, also known as library law research, is legal research conducted by examining literature or secondary data alone. The approach used in this study is a conceptual and statutory approach. The data collection technique in this study was literature study, which was carried out by collecting, reading and tracing all library materials related to research titles consisting of books, previous reports and journals related to research titles while data analysis was carried out qualitatively.

III. RESULTS AND DISCUSSIONS

Franchise Agreement

The franchise agreement is a special agreement for the parties bound in it, because it relates to intellectual property rights and the standard agreement model with the application of standard clauses is very unequal in terms of fulfilling achievements. In addition, the franchise agreement is almost always made in the form of a standard agreement with standard clauses, considering that the agreement relates to the "request" of the franchisor to be able to use the franchisor's trademark, so that the franchisor must protect its privileges.

From the point of view of the content contained in a franchise agreement which generally consists of articles, if an identification is made of the most important material points in the agreement, then at least there are main clauses, as follows: a. Franchise object, The object to be franchised is usually stated at the beginning of the franchising agreement. The object being franchised must explain carefully what goods/services business is included in the franchise; b. Place of business, A place of business and a good appearance and carrying the franchisor's characteristics are needed in a franchise business; c. Franchise area, This section includes the granting of territory by the franchisor to the franchisee, where in consideration the granting of this territory must be based on a marketing strategy; d. Lease, This lease is carried out if the location of the franchise business is obtained by means of a lease. The lease term must at least be the same as the franchise period; e. Training and technical assistance from the franchisor, Training is an absolute thing that must be carried out by prospective franchisors or franchisees; f. Operational standard, The operational standards applied in the franchise are usually contained in the operational manual/operation manual.

Franchise agreement is a legal relationship in the field of assets/properties between two or more people which gives power to one party's rights to obtain achievements and at the same time obliges other parties to fulfill achievements (Article 1313 of the Civil Code). Both in the form of speech, as well as physical actions and not only in the form of mere thoughts so that an agreement is an act that creates an agreement between the parties who promise. Obligations and rights of franchisor and franchisee: a. Liability of the franchisor, The franchisor is obliged to: Providing all kinds of information relating to intellectual property rights, inventions or business characteristics such as management systems, sales methods or distribution methods which are special characteristics that are the object of the franchise, in the context of implementing the given franchise; and Provide assistance to franchisees, coaching, guidance and training to franchisees; b. Franchisor's rights, The franchisor

has the right to: a. Supervise the implementation of the franchise; b. Obtain regular reports on the course of business activities of the franchisee; c. Carry out inspections in the work area of the franchisee to ensure that what has been given has been implemented as it should; d. To a certain extent obliges the franchisee in certain matters, to purchase certain other goods from the franchisor; e. Requires the franchisee to maintain the confidentiality of Intellectual Property Rights, inventions or business characteristics such as management systems, sales or management methods or distribution methods which are specific to the object of the franchise; f. Requires that the licensee does not carry out activities that are similar, or which can directly lead to competition with business activities, for example, management systems, distribution methods are special characteristics that become the object of the franchise; g. Receiving royalty payments in the form, type and amount deemed appropriate by him; h. Registering the franchise given to the franchisee; i. Upon termination of the franchise, ask the franchisee to return all data, information and information obtained by the franchisee during the franchise implementation period; j. Upon termination of the franchise, prohibit the franchisee from further utilizing all data, information and information obtained by the franchisee during the implementation of the franchise; k. Upon termination of the franchise, prohibit the franchisee from continuing to carry out similar, similar or direct activities or indirectly, it may cause competition by using Intellectual Property Rights, inventions or business characteristics, for example management systems, methods of sales or arrangement or methods of distribution which are special characteristics which are the object of the franchise; l. The franchisor, except for the exclusive nature, does not cancel the rights of the franchisor to continue to use, use or exercise their own intellectual property rights, inventions or methods of sale or arrangement or distribution methods which are special characteristics that become the object of the franchise; c. Obligations and rights of the franchisee: The obligations of the franchisor are: Carry out all instructions given by the franchisor to him in order to exercise intellectual property rights, inventions or business characteristics such as management systems, sales or arrangement methods or distribution methods which are special characteristics that become the object of the franchise, Provide flexibility for the franchisor to carry out periodic and sudden inspections and inspections to ensure that the licensee has implemented the franchise provided properly, As well as reports either periodically or upon special request from the franchisor, Purchasing certain capital goods or other certain goods in the framework of implementing a franchise from the franchisor, Maintain confidentiality or business characteristics, for example business systems, inventions or business characteristics, such as management systems, sales or arrangement methods or special distribution methods that are the object of the franchise, both during and after the end of the franchise granting period, Report any violations of intellectual property rights, inventions or business characteristics such as management systems, methods of selling or arrangement of management systems, methods of selling or arrangement or methods of distribution which are special characteristics which are objects of franchising found in practice, Do not take advantage of intellectual property rights, inventions or business characteristics, for example management systems, sales or arrangement methods or distribution methods which are special characteristics that are the object of the franchise other than for the purpose of implementing the license granted, Perform franchise registration, Not carrying out activities that are of the same type, similar, or which can directly or indirectly create competition with business activities that use intellectual property rights, inventions or characteristics such as management systems, ways of selling or arrangement or ways of distribution which are special characteristics that become the object of the franchise, Make royalty payments in the form of types and amounts that have been mutually agreed upon, Upon termination of the franchise, return all data, information and information obtained, Upon termination of the franchise, no further use of all data, information or information obtained by the franchisee during the franchise implementation period, Upon termination of the franchise, no longer carry out activities that are similar, or which can directly or indirectly create competition by using intellectual property rights, inventions or business characteristics such as management systems, sales methods or arrangements or distribution methods which are special

characteristics that are the object of the franchise; d. Rights of the franchisee, The franchisee has the right to: Obtain all kinds of information relating to intellectual property rights, inventions or business characteristics such as management systems, sales methods or arrangement of distribution methods which are special characteristics that become the object of the franchise, which are needed by him to carry out the given franchise, Obtaining assistance from the franchisor for all kinds of ways of utilizing and or using intellectual property rights for inventions or business characteristics such as management systems, sales or arrangement methods or distribution methods which are special characteristics that become the object of the franchise.

Franchise Registration

Franchising is basically an agreement regarding the method of distributing goods and services to consumers. In Article 7 of the Regulation of the Minister of Trade of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Franchise, it is regulated that: a. The franchisor or follow-up franchisor is required to register a Franchise Offer prospectus before making a Franchise Agreement; b. The Franchisee or Advanced Franchisee must register the Franchise Agreement; c. Registration of Franchise Prospectus and Franchise Agreement is carried out by submitting an application for STPW through the OSS institution.

Issuance of STPW is carried out by the OSS institution for and on behalf of the Minister or Regent/Mayor, namely the Regent/Mayor delegates the authority to issue STPW as referred to in paragraph (1) to the head of the agency concerned in the trade sector. The Minister responsible for trade, Regents/Mayors, in accordance with their respective authorities, can impose administrative sanctions on franchisors and franchisees who do not carry out their obligations with regard to: a. Obligation of the Franchisor to provide guidance to the franchisee; b. The Franchise Giver's obligation to register a franchise offer prospectus; c. Obligation of the Franchisee to register the franchise agreement.

Franchise registration in Indonesia is regulated in the Regulation of the Minister of Trade Number 71 of 2019 concerning the Implementation of Franchising. These provisions provide a condition that the franchisor or franchisee is required to register a franchise offer prospectus and franchise agreement with government agencies. The registration mechanism is carried out with the following conditions: a. Franchisor: The Franchisor must register the Franchise offer prospectus before entering into a Franchise agreement with the Franchisee, The application for registration of the Franchise offer prospectus is submitted by attaching the following documents, The application for registration of the Franchise offer prospectus is intended to be submitted to the Minister, namely the minister of Trade, who hereinafter, In the event that the Franchise agreement has not expired, the Franchise Registration Certificate can be extended for a period of 5 (five) years, The application process and issuance of a Franchise Registration Certificate is free of charge; b. Franchisee, Registration of the Franchise offer prospectus can be done independently or handed over to another person by granting a power of attorney. An application for registration of the Franchise offer prospectus is submitted by attaching several documents, namely: photocopy of the Franchise offer prospectus; and photocopy of business legality.

Regulation of the Minister of Trade Number 71 of 2019 concerning Franchise Administration, the procedure for Issuing a Franchise Business Registration Certificate, hereinafter abbreviated as STPUW, regulates how the mechanism for issuing STPUW can be issued. The mechanism for controlling STPUW is carried out as follows: a. Main Franchisee Franchisee who comes from a Foreign Franchise Giver must register the Franchise Agreement along with a written statement or prospectus to the Director General of Domestic Trade, Ministry of Trade; b. The Main Franchisee originating from the Foreign Franchisor must register the Franchise Agreement along with a written statement or prospectus to the Director General of Domestic Trade, Ministry of Trade; c. Main Franchisee originating from domestic Franchisees and Advanced Franchisees originating from Foreign and Domestic Franchise Givers must register the Franchise Agreement along with a written statement or

prospectus to the Head of Service who is responsible in the area of trade in the local area; d. Registration as referred to above is carried out by filling out the STPUW Model A Application Form, no later than 30 (thirty) working days from the date of entry into force of the Agreement; d. The STPUW Application Filling List that has been filled out and signed by the Franchisee or his proxy on sufficiently stamped paper, is submitted to the STPUW issuing official by attaching; d. Copy of the document referred to, must be attached with the original document and will be returned to the STPUW applicant after completing an examination regarding its validity; e. The processing period is carried out no later than 5 (five) working days from the receipt of the complete and correct STPUW Application Filling List, the STPUW Issuing Official issues STPUW using the STPUW Model B form; f. If the STPUW Application Form is deemed incomplete and correct, no later than 5 (five) working days, the STPUW issuing official will make a rejection letter accompanied by reasons; g. For applicants whose applications are rejected, they can apply for STPUW again after fulfilling the specified requirements; h. The validity period of STPUW is 5 (five) years and can be extended if the Franchise agreement is still valid; i. In the event that the Franchisor terminates the Franchise Agreement with the Franchisee before the expiration of the Franchise Agreement's validity period, and then appoints a new Franchisee, the issuance of STPUW for the new Franchisee is only given if the Franchisee has resolved all the problems that arise as a result of the termination in the form mutual agreement through a thorough settlement.

Therefore, through registration STPUW is an instrument that must be fulfilled by parties who want to do business in the franchise business and the Government as the facilitator can also carry out its function to maintain and regulate existing franchise businesses. Referring to the Regulation of the Minister of Trade of the Republic of Indonesia Number 71 of 2019 Concerning Franchising, as an agency directly involved in the issuance of STPW (Franchise Registration Certificate) the Minister of Trade delegates his authority to governors, regents/mayors throughout Indonesia. Furthermore, Governors and Regents/Mayors delegate this authority to Heads of Service who are responsible for trade or officials for one-stop integrated services in their respective areas.

If the franchisor and franchisee violate the obligations to register the offer prospectus and franchise agreement, the Minister of Trade, Governors, Regents/Mayors according to their respective authorities may impose administrative sanctions in the form of: a. written warning; b. fine; and/or; c. STPW revocation.

Administrative sanctions in the form of written warnings against registration violations can be given a maximum of three times within a period of two weeks from the date the previous warning letter was issued. Administrative sanctions in the form of a maximum fine of Rp. 100,000,000.00 (one hundred million) are then imposed after the issuance of the third written warning letter.

IV. CONCLUSION

In Article 11 of the Minister of Trade Regulation Number 71 of 2019 concerning Franchise Management, it is stated that a Franchise Registration Certificate (STPW) is issued by the OSS Institution for and on behalf of the Minister or Regents and Mayors. STWT application process submitted through the Online Single Submission (OSS) Institution. For this reason, it is recommended that the franchisor and franchisee register their businesses in accordance with applicable regulations and that local governments are more active in socializing franchise registration and exercising tighter supervision of franchisors and franchisees who do not register their businesses.

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