

# FRANCHISING IN THE FORM OF PARTNERSHIP

Fennieka Kristianto

President University, Indonesia

Correspondence: fennieka@president.ac.id

---

## Abstract

*The rapid advancement of business competition nowadays encouraged business actors to enhance and strengthen their networking. One of the approaches taken by business actors was to engage themselves within the franchising business. However, within this case, several issues arose, namely relating to the expansion of the business conducted by the franchisor through a partnership by way of establishing a Limited Liability Company ("LLC") with the franchisee, particularly, concerning the management of the business. On one hand, the franchisor is acting as the owner, founder, and holder of intellectual property rights. Supplementary to that, the franchisor is likewise the major shareholder of the LLC and the franchisee is the common shareholder. Normative legal research is imposed within this research with the primary objective of examining the potential conflict of interest that may likely arise between the franchisor and the franchisee for having the form of partnership. Moreover, inequality within the franchising business relationship will likely occur since the franchisor has a larger capacity within this relationship compared to the franchisee and the possibility for the franchisee to obtain adequate protection from the agreement pertaining to the termination of the franchise agreement is considerably low.*

**Keywords:** *franchisor, franchisee, franchising business, limited liability company.*

---

## I. INTRODUCTION

Franchise or franchising is a very common terminology within our everyday life, chiefly, within the field of business. Franchising businesses are developing swiftly worldwide including in Indonesia itself. As an illustration, it can be seen from the increasing number of franchising brands from abroad or locally within the retail industry as well as the food services industry, for instance, Kentucky Fried Chicken (KFC), McDonald, Pizza Hut, Wendy's, etc. Prior to further discussion relating to franchising in Indonesia, understanding the basic principles of franchising shall be valuable. Regardless of the popularity gained within the franchising business today, franchising was an uncommon terminology in Indonesia, notably under the Indonesian legal literature.<sup>1</sup> This is due to the fact that the franchising business is nowhere to be found within the Indonesian business culture or tradition.<sup>2</sup>

As time goes by, franchising gradually enters the business field of Indonesia resulting from the influence of globalization that as a matter of fact affects every aspect of life. Prior to the recognition of this term within the Indonesian laws and regulations, franchising was first introduced by *Lembaga Pendidikan dan Pengembangan Manajemen (LPPM)*.<sup>3</sup> Subsequently, the term franchise was primarily acknowledged under the Indonesian laws and regulations subsequent to the promulgation of law No. 9 of 1995 on Small Businesses, Government Regulation No. 16 of 1997 on Franchising, and the Decree of the Minister of Industry and

---

<sup>1</sup> Nandhina Ayu Saraswati, "Problematika Pelaksanaan Perjanjian Waralaba dan Faktor-Faktor yang Harus Diperhatikan di Luar Isi Naskah Perjanjian," *Privat Law* 3, no. 1 (2014): 65.

<sup>2</sup> *Ibid.*

<sup>3</sup> Adrian Sutedi, *Hukum Waralaba* (Ghalia Indonesia, 2008), 6.

Trade No. 259/MPP/KEP/7/1997 on Provisions and Procedures for Implementing Franchise Business Registration.<sup>4</sup> Franchise, as stipulated within these regulations, is implying to an agreement in which one of the parties is given the right to use and utilize the intellectual property rights or inventions or business characteristics related to the other parties with an imbalance in accordance to the provisions or sale of goods and/or services.<sup>5</sup>

The identical interpretation of franchise lies down within the enactment of the Government Regulation No.16 of 1007 on Franchise that was then amended into No. 42 of 2007 on Franchise (“Franchise Law”) and under the Regulation of Minister of Trade No. 71 of 2019 on Franchising (“Franchising Law”).<sup>6</sup> These regulations define the franchise as the special right possessed by an individual or business entity towards a business system with business characteristics in terms of marketing goods and/or services that have been proven successful and credible to be used and/or utilized by another party complying with the Franchise Agreement.<sup>7</sup> Business characteristics referred to within this article is implying to a business that acquires particular advantages or uniqueness that ought to be burdensome to imitate compared to another analogous business that provokes the consumers to seek the characteristics in question, such as the management systems, sales, service methods or arrangements, or distribution methods which are the unique characteristic of the franchisor.<sup>8</sup> Taking into account the expert point of view, franchising represents a method of conducting business, in particular, for marketing system or distribution of goods and/or services to the public and the parent company ought to be the one that is accountable for providing the franchisee in a form of small and medium scale individuals or companies.<sup>9</sup> In this context, the franchisee has the authority and the privilege to carry out the business system that has been determined in advance within a certain period of time and place.<sup>10</sup>

Afterward, the terms of the franchisor and the franchisee will be consistently mentioned in this research. Thus, an explicit definition of these terms shall be elaborated in ensuring that misinterpretation will not occur. An individual or business entity that authorizes the right to utilize and/or use the franchise to the franchisee is signifying the term of the franchisor.<sup>11</sup> Whereas an individual or business entity that obtained authorization from the franchisor to utilize and/or use the franchise owned by the franchisor is indicating the term of the franchisee.<sup>12</sup> In addition, the Indonesian laws and regulations that are related to the

---

<sup>4</sup> Moch. Najib Imanullah, “Waralaba Sebagai Instrumen Pengentasan Kemiskinan di Indonesia,” *Mimbar Hukum* 24, no. 2 (2012): 187.

<sup>5</sup> *Ibid.*

<sup>6</sup> Moch Najib Imanullah, *Faktor Non-Ekonomi dalam Waralaba* (UNS Press, 2008).

<sup>7</sup> Indonesia. *Peraturan Pemerintah tentang Waralaba*. PP No. 42 Tahun 2007. (*Government Regulation on Franchise*. GR No. 42 Year 2007), art. 1(1); Indonesia. *Peraturan Menteri Perdagangan tentang Penyelenggaraan Waralaba*. Permendag No. 71 Tahun 2019. (*Regulation of the Minister of Trade on Franchising*. MOT No. 71 Year 2019), art. 1(1).

<sup>8</sup> Indonesia. *Peraturan Menteri Perdagangan tentang Penyelenggaraan Waralaba*. Permendag No. 71 Tahun 2019. (*Regulation of the Minister of Trade on Franchising*. MOT No. 71 Year 2019), art. 1(2).

<sup>9</sup> Richard Burton Simatupang, *Aspek Hukum Dalam Bisnis* (Rineka Cipta, 2007), 57.

<sup>10</sup> *Ibid.*

<sup>11</sup> Indonesia. *Peraturan Pemerintah tentang Waralaba*. PP No. 42 Tahun 2007. (*Government Regulation on Franchise*. GR No. 42 Year 2007), art. 1(2); Indonesia. *Peraturan Menteri Perdagangan tentang Penyelenggaraan Waralaba*. Permendag No. 71 Tahun 2019. (*Regulation of the Minister of Trade on Franchising*. MOT No. 71 Year 2019), art. 1(3); Indonesia. *Peraturan Menteri Perdagangan tentang Pengembangan Kemitraan Dalam Waralaba untuk Jenis Usaha Jasa Makanan dan Minuman*. Permendag No. 7 Tahun 2013. (*Regulation of the Minister of Trade on the Development of Partnership in Franchising for Food and Beverage Service Business Types*. MOT No. 7 Year 2013), art. 1(2).

<sup>12</sup> Indonesia. *Peraturan Pemerintah tentang Waralaba*. PP No. 42 Tahun 2007. (*Government Regulation on Franchise*. GR No. 42 Year 2007), art. 1(3); Indonesia. *Peraturan Menteri Perdagangan tentang*

franchising business acknowledged the terms of the sub-franchisor and sub-franchisee. Sub-franchisor is attributing to the franchisee that attained the right from the franchisor in appointing a sub-franchisee.<sup>13</sup> While sub-franchisee is hinting at an individual or business entity that earned the right from the sub-franchisor in utilizing and/or using the franchise.<sup>14</sup>

Other relevant laws and regulations relating to the franchising business encompass the Decree of the Director General of Domestic Trade No. 138/PDN/KEP/10/2008 on the Technical Guidelines for the Implementation of Franchising, Business Competition Supervisory Commission Regulation No. 6 of 2009 on Guidelines on the Exemption from the Implementation of Law No. 5 of 1999 (the Anti-Monopoly Law) for Franchise Related Agreements (Commission Guidelines), Regulation of the Minister of Trade No. 53/M-DAG/PER/8/2012 on the Implementation of Franchising as amended by Regulation of the Minister of Trade No. 57/M-DAG/PER/9/2014, Decree of the Director General of Domestic Trade No. 16/PDN/KEP/3/2014 on the Technical Guidelines for the Implementation of Franchising, Regulation of the Minister of Trade No. 68/M-DAG/PER/10/2012 on Modern Store Franchising, and Regulation of the Minister of Trade No. 60/M-DAG/PER/9/2013 on the Obligation to Use the Franchise Logo.<sup>15</sup>

Furthermore, in coping with the never-ending business development in Indonesia, business actors implemented different approaches and efforts that aim to strengthen their networking. Such measure is applied to ensure that their business will not experience any losses or in the worst-case scenario, they are forced to close down their businesses. One of the efficient approaches to expand their networking in this case is by franchising, especially in dealing with the existing challenges on the grounds that direct investment is not obligated within the system of franchising and involves participation from other parties.<sup>16</sup> Identical to businesses in general, franchising, in essence, is the type of partnership that is formulated in accordance with mutualistic symbiosis, or basically, the relationship has to be beneficial for both the franchisor as well as the franchisee.<sup>17</sup>

Regardless of those approaches and efforts, a considerable number of businesses are still dealing with certain issues. In reference to this issue, one of the cases that will be brought up within this research is related to the issue in which the franchisor taking the role of the owner, founder, as well as the possessor of the intellectual property right established a Limited Liability Company (hereinafter referred to as “LLC”). Moreover, both the franchisor and franchisee are the shareholder of the LLC. However, the proportion of the share is dominated by the franchisor as the major shareholder. In advance of elaborating further on this issue, for the reason that this issue is connected to the LLC, accordingly, it is essential to comprehend general knowledge relating to the LLC. LLC is described as a legal entity that comprises a capital association, constructed through an agreement, business activities are conducted with

---

*Penyelenggaraan Waralaba*. Permendag No. 71 Tahun 2019. (*Regulation of the Minister of Trade on Franchising*. MOT No. 71 Year 2019), art. 1(4); Indonesia. *Peraturan Menteri Perdagangan tentang Pengembangan Kemitraan Dalam Waralaba untuk Jenis Usaha Jasa Makanan dan Minuman*. Permendag No. 7 Tahun 2013. (*Regulation of the Minister of Trade on the Development of Partnership in Franchising for Food and Beverage Service Business Types*. MOT No. 7 Year 2013), art. 1(3).

<sup>13</sup> Indonesia. *Peraturan Menteri Perdagangan tentang Penyelenggaraan Waralaba*. Permendag No. 71 Tahun 2019. (*Regulation of the Minister of Trade on Franchising*. MOT No. 71 Year 2019), art. 1(5).

<sup>14</sup> *Ibid*, art. 1(6).

<sup>15</sup> Norma Mutalib and others, “Franchising in Indonesia,” accessed September 19, 2021, <https://www.lexology.com/library/detail.aspx?g=7041ed35-f5f0-4741-a6e2-fb31d9a836ae>.

<sup>16</sup> P. Lindawaty S. Sewu, *Franchise: Pola Bisnis Spektakuler dalam Perspektif Hukum & Ekonomi* (CV. Utomo, 2004), 2.

<sup>17</sup> Norman Syahdar Idrus, “Aspek Hukum Perjanjian Waralaba Dalam Perspektif Hukum Perdata dan Hukum Islam,” *Jurnal Yuridis* 4, no. 1 (2017): 29.

the authorized capital that is entirely divided into shares and in accordance with the requirements set forth under the LLC law along with its implementing regulations.<sup>18</sup> Within the LLC there are several organs and that includes the general meeting of shareholders, the board of directors, and the board of commissioners.<sup>19</sup> As an auxiliary, relating to the social and environmental responsibility of an LLC, it is inherently obliged to take part in sustainable economic development in contemplation of enhancing the quality of life and environment that ought to be beneficial for the company itself, the local community, along with the society at large.<sup>20</sup>

Additionally, taking into account that the partnership that involves a franchisor and a franchisee within this case was established through the form of an LLC, it will certainly provoke the appearance of conflicts within their relationship, especially because as mentioned above the franchisor is the major shareholder of the LLC. A thorough examination of this research will respectively aim to determine the likelihood of the occurrence of a conflict of interest in the relationship between the franchisor and the franchisee. Relevant laws and regulations relating to this issue include Franchise Law, as well as Franchising Law.

Lastly, normative legal research or commonly known as the normative doctrinal approach will be conducted for the examination of this research. This approach focuses on legal materials such as written laws and regulations<sup>21</sup> or it mainly examines the elements stated or set forth within the internal positive law.<sup>22</sup> Moreover, primary, secondary, and tertiary legal materials ought to be evaluated thoroughly in this research.<sup>23</sup> Relevant provisions that are known within other legal systems, for example, the Illinois Franchise Disclosure Act (hereinafter referred to as “IFDA”) and the Model Laws on Franchising Initiated by the International Institute for Unification of Private Law (UNIDROIT) on the Guide to International Master Franchise Arrangements (hereinafter referred to as “Master Franchise Arrangements”) as well as Model Franchise Disclosure Law (hereinafter referred to as “Franchise Disclosure Law”) will be taken into consideration as these provisions uphold the equality of protection for the interests of both parties in the franchise agreement and for its flexibility which may be suitable or could be an inspiration for the Indonesian laws and regulations with regard to this matter. Mainly because the indicated provisions are applicable to both national and international franchising,<sup>24</sup> therefore, in this research, the aforementioned provisions will function as a suitable comparison with the existing Indonesian laws and regulations.

## II. RESULTS AND DISCUSSION

### A. Potential Conflict of Interest That Will Likely Occur Between the Relationship of the Franchisor and the Franchisee

This section will provide a thorough elaboration on the franchise requirements under the laws and regulations in Indonesia, general contract provisions including its relevant principles, relevant cases as an example and in order to give a clearer understanding of

---

<sup>18</sup> Indonesia. *Undang-Undang tentang Perseroan Terbatas*. UU No. 40 Tahun 2007. (*Law on Limited Liability Company*. Law No. 40 Year 2007), art. 1(1).

<sup>19</sup> *Ibid*, art. 1(2).

<sup>20</sup> *Ibid*, art. 1(3).

<sup>21</sup> Soejono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (PT Raja Grafindo Persada, 2004), 14.

<sup>22</sup> Kornelius Benuf and Muhamad Azhar, “Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer,” *Jurnal Gema Keadilan* 7, no. 1 (2020): 20.

<sup>23</sup> *Ibid*.

<sup>24</sup> The International Institute for the Unification of Private Law (UNIDROIT) Model Franchise Disclosure Law, art. 6(1-3).

the possible conflict of interest that will likely occur within the parties of a franchise agreement in carrying out their business. Cases that will be utilized within the discussion section are Central Jakarta District Court Decision No. 200/Pdt.G/2004/Pm/Jkt and Court Decision No. 121/Pdt.G/2017/PN. Furthermore, this section will incorporate the comparison of franchisor and franchisee rights and obligations as stipulated under Indonesian law on franchising and the UNIDROIT Model Laws. This section will likewise discuss the conditions stipulated within IFDA in correlation with the relevant issues.

## 1. Types of Franchise

- a. Direct Franchise is the type of franchise in which the franchisor established the franchise agreement directly with the franchisee. Direct franchising includes Unit Franchising and Development Agreements.<sup>25</sup> In terms of Unit Franchising, the franchisor granted the franchises to the individual franchisee directly and an international agreement is created between the parties. While relating to the Development Agreement the developer is entitled to the right to open multiple units within a predetermined schedule and areas.<sup>26</sup>
- b. Master Franchise, within this franchise the franchisor granted the sub-franchisor the rights to grant franchises to sub-franchisee.<sup>27</sup>
- c. Manufacturing Franchises, in this case, the franchisor act as the owner and is entitled to the right to exploit the manufacturing system.<sup>28</sup> Whereas the franchisee will run the business by implementing the procedures and following the formulas provided by the franchisor.<sup>29</sup> This type of franchise is commonly found within soft drink production companies such as Coca-Cola and Pepsi,<sup>30</sup>
- d. Product Franchising, within this type of franchising the franchisee obtains the license to sell the products from the franchisor, thus the franchisee functions as a distributor of the franchisor's products. For instance, car dealers and gas stations,<sup>31</sup>
- e. Business Format Franchising is the kind of franchising in which the franchisee is recognized as a member of the franchising group and the franchisee carries out their business by using the franchisor's name. Everything performed by the franchisee must comply with the standard that was determined by the franchisor. The standard refers to the materials of the product, place of business, design, etc;<sup>32</sup> and
- f. Group Trading Franchise is a franchising model that is currently developing in Indonesia. This kind of franchising grants rights to wholesalers and retailers.<sup>33</sup>

From the elaboration on the types of franchises above, there are 4 types of franchises that are recognized and have been run by business actors in Indonesia that

---

<sup>25</sup> The International Institute for the Unification of Private Law (UNIDROIT), "Guide to International Master Franchise Arrangements," accessed May 26, 2022, <http://www.unidroit.org/english/modellaws/2002franchise/2002modellaw-e.pdf>.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> Sri Redjeki Slamet, "Waralaba (FRANCHISE) di Indonesia," *Lex Jurnalica* 8, no. 2 (2011): 130.

<sup>31</sup> Adrian Sutedi, *Hukum Waralaba* (Ghalia Indonesia, 2008), 17-18.

<sup>32</sup> *Ibid.*

<sup>33</sup> Slamet, "Waralaba (FRANCHISE) di Indonesia," 131.

includes Master Franchises, Manufacturing Franchises, Product Franchising, and Business Format Franchising.<sup>34</sup>

## 2. Criteria of Franchising Business Under Indonesian Laws and Regulations

Certain criteria or characteristics shall be fulfilled to be legally contemplated as a franchise and those criteria amount to:<sup>35</sup>

- a. Having a business characteristic;
- b. Proven to have definite benefits;
- c. Have an inherent standard for their services and goods and/or services offered and it ought to be in a written form;
- d. It is easy to teach and apply;
- e. Continuous assistance or support shall be maintained; and
- f. The Intellectual Property Rights (“IPR”) must be registered.

## 3. Franchise Agreement in Consonance with Indonesian Laws and Regulations

A franchise agreement essentially is an agreement made in written form between the franchisor and the franchisee or the sub-franchisor and the sub-franchisee.<sup>36</sup> Several requirements that are compulsory and must be imposed within the Franchise Agreement comprises:<sup>37</sup>

- a. Complete name and address of the owner or the individual that is accountable for entering the Franchise Agreement;
- b. Types of Intellectual Property Rights of Franchisors like logos, etc;
- c. Business activities;
- d. Rights and obligations of the Franchisor and the Franchisee;
- e. Assistance, facilities, operation guidance, training, and marketing provided by the Franchisor;
- f. Business area;
- g. Term of the Franchise Agreement;
- h. Payment procedure;
- i. Ownership, change of ownership, and right of heirs;
- j. Dispute resolution;
- k. Extension and termination procedure;
- l. Guarantee from the franchisor;
- m. The number of outlets.

## 4. Contract Validity

In correlation with the franchising business, it is definite that the relationship within the franchising business between the franchisor and the franchisee is inseparable from the term of the agreement, notably as the franchising business can merely operate subsequent to the signing of the Franchise Agreement. In regard to the

---

<sup>34</sup> Ankia Novairi Dari and Aditya Bayu Aji, *Kaya Raya Dengan Waralaba* (Kata Hati, 2017), 23-24.

<sup>35</sup> Indonesia. *Peraturan Pemerintah tentang Waralaba*. PP No. 42 Tahun 2007. (*Government Regulation on Franchise*. GR No. 42 Year 2007), art. 3; Indonesia. *Peraturan Menteri Perdagangan tentang Penyelenggaraan Waralaba*. Permendag No. 71 Tahun 2019. (*Regulation of the Minister of Trade on Franchising*. MOT No. 71 Year 2019), art. 2(2).

<sup>36</sup> Indonesia. *Peraturan Menteri Perdagangan tentang Penyelenggaraan Waralaba*. Permendag No. 71 Tahun 2019. (*Regulation of the Minister of Trade on Franchising*. MOT No. 71 Year 2019), art. 1(8).

<sup>37</sup> Indonesia. *Peraturan Pemerintah tentang Waralaba*. PP No. 42 Tahun 2007. (*Government Regulation on Franchise*. GR No. 42 Year 2007), art. 5; Indonesia. *Peraturan Menteri Perdagangan tentang Penyelenggaraan Waralaba*. Permendag No. 71 Tahun 2019. (*Regulation of the Minister of Trade on Franchising*. MOT No. 71 Year 2019).

substance of the Franchise Agreement itself, it is indisputable that it must be in line with the general requirement of the contract as stipulated under the Indonesian Civil Code (hereinafter referred to as “ICC”). The ICC set forth 4 legal requirements in constructing a contract and they consist of:<sup>38</sup>

- a. Consent from the parties that binds them to the contract;<sup>39</sup>
- b. Legal capacity to enter into an agreement, by means of this the parties of a contract must be at least the age of 21 years old, have been married, shall not be under guardianship, and the parties must have the legal authority to bind themselves to a contract;<sup>40</sup>
- c. There must be a specific subject matter;<sup>41</sup> and
- d. Permitted cause.<sup>42</sup>

## 5. Legal Principles of a Contract

Apart from the legal requirements of a contract that must be obeyed by the parties of the contract, the clause and the operation of the contract should likewise be in line with the legal principle of a contract specified under Indonesian contract law. The legal principle of a contract in accordance with the Indonesian contract law incorporates:

- a. Freedom of contract, in which the parties of the contract are entitled to the freedom to bind themselves into an agreement, determine or define the substances, and the form of the contract. This principle likewise utilizes the contract as a guide for the parties of the contract;<sup>43</sup>
- b. Consensualism, which basically incorporated under the legal requirement of the contract is implying the absolute element of a contract despite the fact that it was made in an informal way (unwritten form) and the fact that an agreement will be immediately constructed after the parties of the contract present their consent;<sup>44</sup>
- c. *Pacta Sunt Servanda*, where the parties of the contract are required to obey, respect, and carry out their responsibilities set forth within the agreement that was established in light of the fact that the contract function as the laws and as a binding provision for the relevant parties of the contract;<sup>45</sup>
- d. Good faith is a principle that is referring to propriety and decency. This principle expects the parties of the contract to establish a contract with good faith as well as to consider carefully the interest of both parties;<sup>46</sup> and
- e. Privity of contract is the principle that is indicating the fact that in essence an individual can only enter into an agreement based on their own consent and will for the reason that the agreement is solely binding to the parties of the contract

---

<sup>38</sup> Indonesia. *Kitab Undang-Undang Hukum Perdata. (Indonesian Civil Code)*, art. 1320.

<sup>39</sup> Indonesia. *Kitab Undang-Undang Hukum Perdata. (Indonesian Civil Code)*, art. 1320 & 1321; Salim H.S, *Pengantar Hukum Perdata Tertulis (BW)* (Sinar Grafika, 2002), 33.

<sup>40</sup> Indonesia. *Kitab Undang-Undang Hukum Perdata. (Indonesian Civil Code)*, art. 330 & 1329.

<sup>41</sup> *Ibid*, art. 1332-1333.

<sup>42</sup> Indonesia. *Kitab Undang-Undang Hukum Perdata. (Indonesian Civil Code)*, art. 1335; R. Subekti, *Hukum Kontrak: Teori & Teknik Penyusunan Kontrak* (2rd edn, Sinar Grafika, 2004), 19.

<sup>43</sup> Indonesia. *Kitab Undang-Undang Hukum Perdata. (Indonesian Civil Code)*, art. 1320 & 1338; Huala Adolf, *Dasar-dasar Hukum Kontrak Internasional* (PT. Refika Aditama, 2008), 89.

<sup>44</sup> Indonesia. *Kitab Undang-Undang Hukum Perdata. (Indonesian Civil Code)*, art. 1320(1) & 1338(1).

<sup>45</sup> *Ibid*, art. 1338(1); Muhammad Noor, “Penerapan Prinsip-Prinsip Hukum Perikatan Dalam Pembuatan Kontrak,” *Mazahib* 15, no. 1 (2015): 89.

<sup>46</sup> Maulidiazeta Wiriardi, “Prinsip-Prinsip Hukum Perjanjian Dalam Kesepakatan Para Pihak Yang Bersengketa Atas Permohonan Intervensi Pihak Ketiga Dalam Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa,” *Yuridika* 26, no. 1 (2011): 71; Jan M. Smits, *Contract Law: A Comparative Introduction* (Edward Elgar Publishing Limited, 2014), 137.

and it does not bind another party that is not relevant or engages within the agreement.<sup>47</sup>

Previously, pursuant to the aforementioned explanation relating to the issue discussed in this research, the relationship between the franchisor and the franchisee lies in the concept of partnership. It must be highlighted again that the partnership is in the form of an LLC, particularly *Perusahaan Terbatas Penanaman Modal Asing* (hereinafter referred to as “PT PMA”). The issue and concerns brought up within this research are very relevant as this kind of partnership is very likely to occur in Indonesia, especially in the case of PT PMA. This is due to the fact the establishment of PT PMA can be conducted within all types of business fields that are conditionally open for investment.<sup>48</sup> In this case, Micro, Small, and Medium Enterprises (hereinafter referred to as “MSMEs”) is one of the types of business field included within the requirement of PT PMA, and with regard to this matter, franchising business has been chosen by the Indonesian government as a policy strategy to develop MSMEs.<sup>49</sup> Not to mention the profitable objective that can be earned through this type of partnership, in which the Indonesian government considers franchising as a way to deal with MSMEs’ weaknesses in which they will attain the guidance needed to access their capital as well as training for production management, finance, and human resources, accounting, promotion, and marketing.

Furthermore, it is likewise important to consider that the establishment of the PT PMA is in line with the laws and regulations in Indonesia, namely:

- a. It must be in a form of an LLC. The investment done by the domestic and foreign investors shall be carried out through taking over their shares during the establishment period of the LLC, purchasing shares, as well conducting other means as stipulated under the laws and regulations;<sup>50</sup>
- b. Limitations such as the obligation that requires Indonesian citizens and legal entities in performing the PT PMA, restrictions on the ownership of the share for foreign investors as regulated within *Daftar Negatif Investasi* (hereinafter referred to as “DNI”), and relating to the Personnel Director position that shall not be occupied by foreign workers;<sup>51</sup>
- c. The PMA must be established conforming with the laws and regulations in Indonesia as stated under the law on LLC;
- d. The nationality of the founder of the PT PMA must be Indonesian or it must be established by an Indonesian legal entity. While foreign legal entities will

---

<sup>47</sup> Indonesia. *Kitab Undang-Undang Hukum Perdata. (Indonesian Civil Code)*, art. 1317; Djohari Santoso and Achmad Ali, *Hukum Perjanjian Indonesia* (Perpustakaan FH UII, 1989), 47; Taufiq El Rahman and others, “Asas Kebebasan Berkontrak dan Asas Kepribadian Dalam Kontrak-Kontrak Outsourcing,” *Mimbar Hukum* 23, no. 3 (2011): 586.

<sup>48</sup> Indonesia. *Peraturan Presiden tentang Perubahan atas Peraturan Presiden Nomor 10 Tahun 2021 tentang Bidang Usaha Penanaman Modal*. PERPRES No. 49 Tahun 2021. (*Presidential Regulation on the Amendment of Presidential Regulation Number 10 Year 2021 on Investment Business Activity*, PR No. 49 Year 2021).

<sup>49</sup> Indonesia. *Peraturan Presiden tentang Bidang Usaha Penanaman Modal*. PERPRES No. 10 Tahun 2021. (*Presidential Regulation on Investment Business Activity*. PR No. 10 Year 2021), art. 3(1); Lilian Danil, “Franchise Business Sustainability – West Java Province Small Medium Enterprises,” accessed May 27, 2022, <https://media.neliti.com/media/publications/12706-ID-franchise-business-sustainability-west-java-province-small-medium-enterprises.pdf>.

<sup>50</sup> Indah Sari, “Syarat-Syarat Penanaman Modal Asing (PMA) di Indonesia Menurut Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal,” *Jurnal Ilmiah Hukum Dirgantara* 10, no. 2 (2020): 66.

<sup>51</sup> *Ibid*; Indonesia. *Undang-Undang tentang Penanaman Modal*. UU No. 25 Tahun 2007. (*Law on Investments*. Law No. 25 Year 2007), art. 12;



be permitted to create a PT PMA solely when the law that governs the field of business allows it;<sup>52</sup>

- e. The organization structure must be in accordance with the law on LLC with at least one Board of Directors, one Commissioner, and two shareholders;<sup>53</sup>
- f. Within the establishment of a PT PMA leaders and/ or proxies are prohibited to provide false information and/or data;<sup>54</sup>
- g. Prohibition to create share ownership agreements for/or on behalf of other parties;<sup>55</sup>
- h. The provisions on the Employment;<sup>56</sup>
- i. The provisions on the Dispute settlement;<sup>57</sup>
- j. The provisions on the Fields of business;<sup>58</sup>
- k. The provisions on the rights, obligations, and responsibilities of investors;<sup>59</sup>
- l. The provisions on the Investment Facility;<sup>60</sup>
- m. The provisions on the Residence Permit Facilities for Foreign Investors;<sup>61</sup>
- n. The Provisions on the PT PMA Capital;<sup>62</sup>
- o. The provisions on the Principle License (IP) of the PT PMA;<sup>63</sup> and
- p. The provisions on the Coordination and Implementation of Investment Policy.<sup>64</sup>

By the same token, despite the benefits that could be obtained within the kind of franchising partnership in the form of PT PMA, however, the relationship within a franchising business in this form might pose a possibility of establishing potential conflicts. This is simply due to the fact that there is an imbalance of bargaining power within the legal relationship that exists between the franchisor and the franchisee because they are both the shareholder of the PT PMA, but the franchisor is the majority shareholder. As the majority shareholder, the franchisor is capable of controlling the whole performance of the PT PMA through the policies determined by them. This way differences of interest between the franchisor and the franchisee could be the one that leads to the conflict and it will likely provoke the occurrence of

---

<sup>52</sup> Sari, “Syarat-Syarat Penanaman Modal Asing (PMA) di Indonesia Menurut Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal,” 77.

<sup>53</sup> Indonesia. *Undang-Undang tentang Perseroan Terbatas*. UU No. 40 Tahun 2007. (*Law on Limited Liability Company*. Law No. 40 Year 2007), art. 1(2).

<sup>54</sup> Indonesia. *Peraturan Badan Koordinasi Penanaman Modal (BKPM) tentang Pedoman dan Tata Cara Perizinan dan Fasilitas Penanaman Modal*. Peraturan BKPM No. 6 Tahun 2018. (*BKPM Regulation on Guidelines and Procedures for Licensing and Investment Facilities*. BKPM Regulation No. 6 Year 2018), art. 64.

<sup>55</sup> *Ibid*, art. 6(8).

<sup>56</sup> Indonesia. *Undang-Undang tentang Penanaman Modal*. UU No. 25 Tahun 2007. (*Law on Investments*. Law No. 25 Year 2007), art. 10.

<sup>57</sup> *Ibid*.

<sup>58</sup> *Ibid*, art. 12.

<sup>59</sup> *Ibid*, art. 14.

<sup>60</sup> *Ibid*. art. 18.

<sup>61</sup> *Ibid*, art. 23(3).

<sup>62</sup> Indonesia. *Peraturan Kepala Badan Koordinasi Penanaman Modal (BKPM) tentang Permodalan PT PMA*. Peraturan Kepala BKPM No. 14 Tahun 2015. (*Head of BKPM Regulation on the PT PMA Capital*. Head of BKPM Regulation No. 14 Year 2015).

<sup>63</sup> *Ibid*.

<sup>64</sup> Indonesia. *Undang-Undang tentang Penanaman Modal*. UU No. 25 Tahun 2007. (*Law on Investments*. Law No. 25 Year 2007).

opportunism.<sup>65</sup> On the grounds that there is a huge possibility for the franchisor to solely take into account their interest in determining the policies for the PT PMA, such as providing special rights that permit the franchisor to terminate the Franchise Agreement due to a cause (for cause) and when the period of the Franchise Agreement has expired the franchisee is not willing to renew the agreement, or even transfer his franchising business to another party.<sup>66</sup> With this kind of circumstance, the franchisee tends to be harmed by the franchisor.

Pursuant to the Franchising Law, it is stated that the performances of franchise activities must be in line with the Franchise Agreement created by the parties of the agreement with equal legal standing.<sup>67</sup> Nevertheless, the substances of a Franchise Agreement are commonly determined unilaterally by the franchisor. Supplementary to the case discussed in this research, the franchisor is the major shareholder of the PT PMA as well. For this reason, greater bargaining power lies on the side of the franchisor.<sup>68</sup> In essence, the franchisor is potentially capable of protecting itself against the franchisee.

However, in dealing with this issue relating to the PT PMA the Indonesian law imposed the view of protectionism which is reflected within the legal philosophy of Plato and Aristotle.<sup>69</sup> Plato contemplated that the presence of foreign trade entering the city would cause a huge negative impact which is the destruction of the soul. Whereas, Aristotle considers the best state of a state is when the state is capable of being self-sufficient. The protectionism is implemented through the provisions in which the investment of fewer than 10 billion rupiahs should contain at least 40% from the local parties,<sup>70</sup> while the investment of more than 10 billion rupiahs should be at least 30% from the local parties.<sup>71</sup> Through these clauses, the freedom to invest is limited as the local investors likewise play an important role. This is the one that serves to protect the economics of MSMEs in Indonesia.

Subsequently, pertaining to the unequal bargaining power of the franchisor is further demonstrated by the fact that the franchisor possesses discretionary power.<sup>72</sup> Accordingly, the franchisor is authorized to assess every aspect of the franchisee's business and the Franchise Agreement will not be adequate in providing decent

---

<sup>65</sup> Roger D. Blair and Francine Lafontaine, "Understanding the Economics of Franchising and the Laws that Regulate It," *Franchise Law Journal* 26, no. 1 (2006): 55.

<sup>66</sup> M Roma Rizky Yahya, "Wanprestasi Dalam Perjanjian Waralaba (Studi Kasus Putusan Mahkamah Agung Nomor 612/Pdt.G./2017/PN Jkt. Sel)," *Article Wisudawan Ke 74* 11, no. 2 (2020): 2.

<sup>67</sup> Indonesia. *Peraturan Menteri Perdagangan tentang Penyelenggaraan Waralaba*. Permendag No. 71 Tahun 2019. (*Regulation of the Minister of Trade on Franchising*. MOT No. 71 Year 2019), art. 6(1).

<sup>68</sup> Etty Septiana R and Etty Susilowati, "Kedudukan Tidak Seimbang Pada Perjanjian Waralaba Berkaitan Dengan Pemenuhan Kondisi Wanprestasi," *Law Reform* 10, no. 1 (2014): 16; Robert W. Emerson, "Franchise Contract Interpretation: A Two Standard Approach," *Michigan State Law Review* 1, no. 1 (2013): 641.

<sup>69</sup> Andi Wadiyah Ulfiah Ambas Syam, "Dampak Kebijakan Proteksi Indonesia Pada Bidang Waralaba Asing (Studi Kasus: Kentucky Fried Chicken)," *Jurnal Hubungan Internasional Departemen Ilmu Hubungan Internasional Universitas Hasanuddin* 5, no. 1 (2020): 26-27.

<sup>70</sup> Indonesia. *Peraturan Menteri Perdagangan tentang Pengembangan Kemitraan Dalam Waralaba untuk Jenis Usaha Jasa Makanan dan Minuman*. Permendag No. 7 Tahun 2013. (*Regulation of the Minister of Trade on the Development of Partnership in Franchising for Food and Beverage Service Business Types*. MOT No. 7 Year 2013), art. 5(2)(a).

<sup>71</sup> *Ibid*, art. 5(2)(b).

<sup>72</sup> Robert W. Emerson and Uri Benoliel, "Can Franchisee Associations Serve as a Substitute for Franchisee Protection Laws?," *Penn State Law Review* 118, no. 1 (2013): 99.

protection for the franchisee. The franchisee can be harmed in the event when the franchisor possesses a malicious intent within their relationship, for instance, in the case where the franchisor considers that the profit earned from their cooperation with the franchisee is no longer beneficial or profitable for them, then the franchisor could utilize its discretionary power to find loopholes or faults from the franchisee to terminate the contract despite the fact that the franchisee has complied with the provisions laid down under the Franchise Agreement.

There are identical cases that occurred in Indonesia with regard to this matter and these cases solely act as a mere example for further discussions relating to the bargaining power of the parties within a Franchise Agreement. Two cases will be taken in order to provide a clearer illustration, namely:

a. Central Jakarta District Court Decision No. 200/Pdt.G/2004/Pm/Jkt<sup>73</sup>

This case is related to the franchising business with the brand called QUICKLY. Here the franchisors stipulated several requirements that need to be fulfilled by the franchisee and that include the franchisor must have a counter that is approved by the franchisors, the franchisee must pay the franchise fee in the amount of USD 10,000, and the security deposit of USD 5,000 (security deposit will be returned when all conditions have been fulfilled by the franchisee), and the franchisee should make a services desk that is approved by the franchisors. Subsequent to receiving the letter which stated that the franchisee's request to officially become the franchisee and for the layout design has been approved by the franchisors, the franchisee invited the franchisors to the franchisee's office in order to sign the Franchise Agreement. However, as the Franchise Agreement was written in English, the franchisee requested further explanation which was then rejected by the franchisor because the franchisor do not have time as he is leaving for abroad.

Afterward, the franchisee paid for the franchise fee as the franchisee has a huge eagerness to run the franchising business. Then the franchisee handover the counter table designs to the franchisor which was then rejected by the franchisor and the franchisor requested the franchisee to use the counter table design from PT. RT&Z. The franchisee then refused to use the contractor suggested by the franchisor even though the franchisee will use the same design from PT. RT&Z. Long story short, as the franchisor never accepted the franchisee's request to use his own contractor and the franchisor acted as if they only allowed PT. RT&Z to do the job, hence the postponement for the performance of the counter as scheduled within the Franchise Agreement occurred. Due to the postponement, the franchisors terminate the Franchise Agreement. At the end based on the Court's Decision, it was decided by the judges that the franchisee's claim is denied and the franchisee is unable to receive the refund.

b. Court Decision No. 121/Pdt.G/2017/PN<sup>74</sup>

---

<sup>73</sup> Ferry R. Lasamahu, "Perlindungan Hukum Terhadap Franchisee Dalam Perjanjian Waralaba (Studi Kasus: Analisis Putusan Pengadilan Antara PT. Lingkar Natura Indi dan Natasha Kasakeyan)," *Jurnal Hukum dan Pembangunan Tahun* 36, no. 3 (2006): 320.

<sup>74</sup> Dwi Puji Astutik, "Perlindungan Hukum Terhadap Franchisee yang di Rugikan Oleh Franchisor Dalam Perjanjian Waralaba," *RechtIdee* 15, no. 2 (2020): 283.

This case is related to the domestic franchise business, the clinic branch is called Billagio Clinic. Both parties signed an unclear form of Franchise Agreement as it is only in the form of *akta di bawah tangan*. The franchisee in this case has paid the franchise fee with the total amount of Rp 5,286,000,000 and has fulfilled the requirements set up by the franchisor. However, the franchisor did not accomplish its responsibilities.

With regard to the first case, the malicious intent from the franchisor was already shown since the very first time when they did not want to provide a thorough explanation of the Franchise Agreement although the franchisee was not able to understand the clauses within the agreement well and the franchisor is actually obligated to provide a translation.<sup>75</sup> This kind of conduct showed how much the franchisor has neglected its responsibilities. Not to mention the unreasonable excuse used by the franchisor when they refused to give an explanation of the Franchise Agreement. Moreover, the franchisor refused to provide a clear decision relating to the contractor utilized to build the counter table design, despite the fact that the franchisee has complied with everything that was requested by the franchisor. However, the franchisor refused to negotiate and ignored the franchisee's request. Complementary to the first case, the second case holds similar issues where the franchisor failed to accomplish its obligation although the franchisee has fulfilled all conditions set forth by the franchisor within the Franchise Agreement in spite of the agreement being made in the form of *akta di bawah tangan*. Thus, from the elaboration of the cases, it can be concluded that the franchisor did not start the Franchise Agreement in a good faith, the complete opposite of the franchisee who totally put their trust in the franchisor's side and adhere to the requirements from the franchisor.

Another malicious business intent that might possibly be done by the franchisor would be in the case when the franchisor is utilizing its relationship with the franchisee by taking advantage of the franchisee's position solely to evaluate the market.<sup>76</sup> Subsequent to obtaining the information on the market condition and demand that is considered favorable, the franchisor terminates the Franchise Agreement that was established with the franchisee and carries out its own operation by starting a new outlet within the franchisee's area.<sup>77</sup> Moreover, other opportunistic benefits that can be attained from the franchisee and may be imposed by the franchisor before terminating the contract may include increasing the fees charged to the franchisee, price of goods supplied to the franchisee, forcing the franchisee to carry out irrelevant renovations, or demanding the franchisee to engage within promotional programs, etc.<sup>78</sup> This would cause detrimental effects on the franchisee, for the reason that the franchisee is automatically forced to increase their expenditure and what is worse is that despite obeying the request from the franchisor the possibility for the franchisor to terminate the franchising agreement is still there.

---

<sup>75</sup> Indonesia. *Peraturan Pemerintah tentang Waralaba*. PP No. 42 Tahun 2007. (*Government Regulation on Franchise*. GR No. 42 Year 2007), art. 4.

<sup>76</sup> Slamet, "Waralaba (FRANCHISE) di Indonesia," 127.

<sup>77</sup> *Ibid.*

<sup>78</sup> Gillian K. Hadfield, "Problematic Relations: Franchising and the Law of Incomplete Contracts," *JSTOR* 42, no. 4 (1990): 927.

However, although the franchisor's side may seem more favorable compared to the franchisee, the franchisor is unable to terminate the contract unilaterally. On the ground that particular requirements need to be fulfilled to terminate the contract unilaterally. These conditions are commonly acknowledged as the good cause that essentially refers to the substantially or legally sufficient reason for terminating an agreement. The good cause requirements unfortunately are not regulated explicitly within the Indonesian laws and regulations relating to the franchising business up until now despite the fact that this issue is actively discussed by a lot of parties. As a comparison, the IFDA and the Model Franchise Disclosure Law here will be used for further discussion relating to the clause of good cause as the requirement to terminate the franchise agreement and the bargaining power of the parties within the Franchise Agreement. The discussion with regard to the above-mentioned regulations is limited to the scope of good cause, considering the fact that Indonesian laws and regulations relating to the Franchise Agreement have not provided explicit provisions concerning the clause of good cause.

To obtain a thorough understanding of the bargaining power of the parties within the Franchise Agreement, therefore it is crucial to take into account the rights and obligations of the franchisor and the franchisee, attached down below is the table of comparison in accordance with the Franchising Law, Master Franchise Arrangements, and Franchise Disclosure Law.

#### Franchisor's Rights and Obligations

No.	Rights and Obligations of the Franchisor under the Franchising Law	Rights and Obligations of the Franchisor under the Master Franchise Arrangements and Franchise Disclosure Law
1.	The franchisor is entitled to the right to obtain fees and royalties from the franchisee. <sup>79</sup>	Entitled to the right to receive fees from the franchisees. <sup>80</sup>
2.	The franchisor is obliged to provide continuous assistance or support to the franchisee in the form of guidance. <sup>81</sup>	Obliged to help the franchisees through training and assistance, thus the franchisee is able to operate efficiently. <sup>82</sup>
3.	-	Retains the right to supervision of the franchisee's manner towards the implementation of the franchise system. <sup>83</sup>
4.		Shall not granted other franchises or engage itself within the franchised business in the area where the franchisee is granted

<sup>79</sup> Indonesia. *Peraturan Menteri Perdagangan tentang Penyelenggaraan Waralaba*. Permendag No. 71 Tahun 2019. (*Regulation of the Minister of Trade on Franchising*. MOT No. 71 Year 2019).

<sup>80</sup> The International Institute for the Unification of Private Law (UNIDROIT), "Guide to International Master Franchise Arrangements," 254.

<sup>81</sup> Indonesia. *Peraturan Menteri Perdagangan tentang Penyelenggaraan Waralaba*. Permendag No. 71 Tahun 2019. (*Regulation of the Minister of Trade on Franchising*. MOT No. 71 Year 2019).

<sup>82</sup> The International Institute for the Unification of Private Law (UNIDROIT), "Guide to International Master Franchise Arrangements," 253.

<sup>83</sup> *Ibid*, 249.

		with the right of franchise (territorial exclusivity). <sup>84</sup>
5.		Entitled to the right of taking major decisions in concert with all its franchisees. <sup>85</sup>

### Franchisee's Rights and Obligations

No.	Rights and Obligations of the Franchisee under the Franchising Law	Rights and Obligations of the Franchisee under the Master Franchise Arrangements and Franchise Disclosure Law
1.	The franchisee is entitled to the right to utilize and/or use the IPR or business characteristic belonging to the franchisor. <sup>86</sup>	Entitled to the right to carry out well-known trademark or trade name. <sup>87</sup>
2.	The franchisee is obliged to preserve the confidentiality of the franchisor's IPR or business characteristics admitted by the franchisor. <sup>88</sup>	Obliged to keep the confidentiality of the franchisor's IPR or business characteristics. <sup>89</sup>
3.	-	Obliged to buy products that it sells and uses solely from the franchisor or suppliers approved and/or recommended by the franchisor. <sup>90</sup>
4.	-	Obliged to engage with competing activities (non-competition clauses or restrictive clauses). <sup>91</sup>
5.	-	Entitled to an exclusive right to develop a certain territory. <sup>92</sup>

Note: (-) means there are no identical provision.

Based on the elaboration above, it can be seen that from both sides of the Indonesian law on franchising and the UNIDROIT Model Laws basically, the parties of the Franchise Agreement have equal rights and obligations. Nevertheless, there are some additional undertakings included within the Master Franchise Arrangements that

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid*, 253.

<sup>86</sup> Indonesia. *Peraturan Menteri Perdagangan tentang Penyelenggaraan Waralaba*. Permendag No. 71 Tahun 2019. (*Regulation of the Minister of Trade on Franchising*. MOT No. 71 Year 2019).

<sup>87</sup> The International Institute for the Unification of Private Law (UNIDROIT), "Guide to International Master Franchise Arrangements," 252

<sup>88</sup> Indonesia. *Peraturan Menteri Perdagangan tentang Penyelenggaraan Waralaba*. Permendag No. 71 Tahun 2019. (*Regulation of the Minister of Trade on Franchising*. MOT No. 71 Year 2019).

<sup>89</sup> The International Institute for the Unification of Private Law (UNIDROIT), "Guide to International Master Franchise Arrangements," 135.

<sup>90</sup> *Ibid*, 250.

<sup>91</sup> *Ibid*, 251.

<sup>92</sup> The International Institute for the Unification of Private Law (UNIDROIT) Model Franchise Disclosure Law.

provide more detailed rights and obligations of the franchisee and the franchisor, especially relating to the territorial exclusivity and non-competition clause which are something that can be taken and regulated as well under the Indonesian laws on franchising. In addition, despite the more detailed provisions provided within the Master Franchise Arrangements, the bargaining power of the franchisee is still proven to be lesser than the franchisor because the franchisee is not completely independent and has no right to always determine the policy for the franchise.

Furthermore, relating to the good cause requirement, it is considered to be a crucial clause in the Franchise Agreement as it is legally admissible to be the grounds for the franchisor or the franchisee to terminate the franchise agreement. Good cause is interpreted narrowly by most legislatures and courts, it is defined as the failure conducted by the franchisee or dealer in complying substantially with the requirements set forth under the Franchise Agreement.<sup>93</sup> Whereas good cause was interpreted and elaborated comprehensively under the IFDA that includes but is not limited to:<sup>94</sup>

- a. The event when the franchisee conducted an act that violates or breaches the Franchise Agreement and regardless of receiving a warning along with the chance to accomplish their responsibilities set forth under the Franchise Agreement within the period of 30 days;
- b. The franchisee transfers the assets of the company to the creditors or third parties;
- c. The franchisee leaves and abandons the place of business;
- d. The franchisee engages in a crime that causes injury to the brand and the name of the franchising company; and
- e. The franchisee violates the contract frequently.

Additionally, supplementary to the good cause requirement within the IFDA, the Master Franchise Arrangements also suggested several methods to deal with non-performance. It is applicable in the event when the franchisee conducted an act of default. Those methods encompass additional training, enhancing support to the franchisee, persuading the franchisee to improve their performance, and persuading the franchisee to sell the business to another party that can take its place within the network.<sup>95</sup>

Taking into account the previous elaboration of the good cause requirements or conditions from the IFDA and the methods proposed within the Master Franchise Arrangements, it can be concluded that to terminate the Franchise Agreement the breach done by the franchisee must be severe, considering the fact that the franchisor is obliged to provide a warning letter and chances for the franchisee to fix the damages done instead of terminating the Franchise Agreement directly. Besides that instead of terminating the Franchise Agreement, the Indonesian law of franchising must apply the approaches suggested by the Master Franchise Agreements because through those methods justice towards the party of the Franchise Agreement can be upheld. Through this means, the Indonesian law on franchising can be more adequate

---

<sup>93</sup> Robert W. Emerson, "Franchise Terminations: "Good Cause" Decoded," *Wake Forest Law Review* 51, no. 1 (2016): 103.

<sup>94</sup> Unites States, *The Illinois Franchise Disclosure Act*, 815 ILCS 705; Tracy A. Nicastro, "Note: How the Cookie Crumbles: The Good Cause Requirement for Terminating Franchise Agreement," *Valparaiso University Law Review* 28, no. 2 (1994): 786.

<sup>95</sup> The International Institute for the Unification of Private Law (UNIDROIT), "Guide to International Master Franchise Arrangements," 82.

for both franchisor and franchisee, for the reason that, conforming to the legal philosophical perspective stated by one of the prominent legal philosophers, Gustav Radbruch, justice is one of the most important elements of a positive law aside from utility and certainty.

Regardless, the good cause requirement is not precisely set forth under Indonesian laws and regulations. Nevertheless, Indonesian laws and regulations relating to the franchising business provide similar provisions relating to the formal and material requirements relevant to the breach of the Franchise Agreement that must be included within the substances of the Franchise Agreement.<sup>96</sup> These identical requirements can be seen in the Franchise Law and Franchising Law when violations of the Franchise Agreement occur within the franchising business, warning letter, fine with a maximum amount of 100 million rupiahs, and/or revocation of the Franchise Registration Certificate.<sup>97</sup> Supposing that subsequent to the warning letter given by the franchisor to the franchisee as well as the opportunity within the period of 14 days to adjust the damage, thereupon, the franchisor is authorized to terminate the Franchise Agreement unilaterally in the written form.<sup>98</sup> According to these provisions, it is likewise revealed that the number of losses that will be suffered by the franchisee in the case that the franchisor terminates the Franchise Agreement unilaterally by enforcing their discretionary power.

Furthermore, relating to the discretionary power owned by the franchisor which may possibly be utilized wrongly by the franchisor in prioritizing their interest, it is likewise contrary to some of the principles of contract regulated under the Indonesian contract law. To begin with, the principle of freedom of contract clearly stated that the party of the contract is entitled to the right to determine the substances or clauses of the contract, however, within the Franchise Agreement the franchisor basically is the party that determines the substances of the contract and again the franchisor does not have the right to always take part in the determination of the policies. On top of that, subsequent to entering the Franchise Agreement, the right that allows the franchisee to terminate the Franchise Agreement if the franchisor fails to complete their responsibilities is solely provided towards a very rare unit franchise agreement even though it can be found within the master franchise agreements. Secondly, it is likewise contradictory to the principle of good faith as the franchisee has a limited chance to express their interest within this agreement, while this principle asserts the importance of considering the interest of all parties to the contract. The principle of good faith has a crucial role in regard to the issue of opportunism in the relationship between the franchisor and the franchisee. Essentially this principle demonstrates a similar concept or the roots of the requirements of good cause for the reason that this requirement upholds the equality for both of the parties of the Franchise Agreement and the reasoning to terminate the Franchise Agreement must be severe and the damage resulted from the violations shall be irreparable.

---

<sup>96</sup> Indonesia. *Peraturan Pemerintah tentang Waralaba*. PP No. 42 Tahun 2007. (*Government Regulation on Franchise*. GR No. 42 Year 2007), art. 5.

<sup>97</sup> Indonesia. *Peraturan Pemerintah tentang Waralaba*. PP No. 42 Tahun 2007. (*Government Regulation on Franchise*. GR No. 42 Year 2007), art. 16; Indonesia. *Peraturan Menteri Perdagangan tentang Penyelenggaraan Waralaba*. Permendag No. 71 Tahun 2019. (*Regulation of the Minister of Trade on Franchising*. MOT No. 71 Year 2019), art. 30.

<sup>98</sup> Indonesia. *Peraturan Pemerintah tentang Waralaba*. PP No. 42 Tahun 2007. (*Government Regulation on Franchise*. GR No. 42 Year 2007), art. 18.



Supplementary to the above reasoning relating to the termination of the Franchise Agreement by the franchisor, there is an additional rationale that may possibly occur and is acceptable for the franchisor to terminate the Franchise Agreement, even though it must be assessed carefully. Based on the legal expert and as proposed within the Master Franchise Arrangements, the termination of a Franchise Agreement may take place in case the franchisee is unable to pay the debts to the franchisor, the franchisee breach the Franchise Agreement, or the franchisee failed to maintain the confidentiality of the franchisor's IPR or business characteristic, late submission of the royalty reports, failed to pay for the fees or royalties, perform its business that is contrary to the standard of the quality and services, or in a nutshell when the franchisee fails to accomplish its obligations stipulated under the Franchise Agreement.<sup>99</sup> Nonetheless, the issue here is that the Franchising Law does not explicitly regulate the requirements above, thus those requirements to terminate the Franchise Agreement could be a considerable aspect of the Franchising Law to provide clearer guidance and protection to the parties of the Franchise Agreement.

In addition, besides the issue with regard to the termination of the Franchise Agreement, another issue that may as well arise is related to the material supplies needed by the franchisee. Supposing that the franchisor established a tying agreement where the distributors are permitted to purchase certain goods (tying product) on the condition where they purchase other goods (tied product).<sup>100</sup> What is more, the Master Franchise Arrangements itself likewise mentioned the obligation of the franchisee to obey the requirements set forth by the franchisor relating to the purchase or the use of suppliers that are proposed by the franchisor only which demonstrate the discretionary power own by the franchisor. This happened within one of the cases stated previously which is in the Central Jakarta District Court Decision No. 200/Pdt.G/2004/Pm/Jkt where the franchisor obliged the franchisee to use the contractor recommended by the franchisor. Similar to the abovementioned illustrations obligation relating to the enhancement of costs for the material supplies might as well be enforced by the franchisor.

Moreover, the provision set forth under the Franchise Agreement or the tying agreement might be contrary and lead to the violation of Law No. 5 of 1999 on Prohibition of Monopoly Practice and Unfair Business Competition ("Monopoly Law"). By reason for this matter is indicating monopoly which is basically control over the production and/or marketing of goods and/or the utilization of certain services by a particular business actor or a group of business actors.<sup>101</sup> Expressly, this issue is opposing to the provision that affirms that:

---

<sup>99</sup> Suyud Margono, *Aspek Hukum Komersialisasi Aset Intelektual* (Nuansa Aulia, 2010), 70; The International Institute for the Unification of Private Law (UNIDROIT), "Guide to International Master Franchise Arrangements," 182.

<sup>100</sup> Indonesia. *Peraturan Komisi Pengawas Persaingan Usaha (KPPU) tentang Pedoman Pasal 15 (Perjanjian Tertutup) Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat*. Peraturan KPPU No. 5 Tahun 2011. (*KPPU Regulation on Guidelines for Article 15 (Closed Agreement) of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition*. KPPU Regulation No. 5 Year 2011); Nila Trisna, "Tinjauan Yuridis Terhadap Kedudukan Franchisee Dalam Perjanjian Franchisee (WARALABA)," *Jurnal Ius Civile* 2, no. 1 (2018): 13.

<sup>101</sup> Indonesia. *Undang-Undang tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat*. UU No. 5 Tahun 1999. (*Law on Prohibition of Monopoly Practice and Unfair Business Competition*. Law No. 5 Year 1999), art. 1(1).

- a. It is illegal for business actors to enter into an agreement with other business actors that includes the requirement about the party obtaining the goods and/or services will solely supply the said goods and/or services to certain parties or within particular places (exclusive dealing distribution);<sup>102</sup>
- b. It is forbidden for the business actors to enter into an agreement that contains the requirement that the party attaining particular goods and/or services ought to be willing to purchase other goods and/or services from the business actor's supplier (tying agreement);<sup>103</sup>
- c. Entering an agreement relating to certain prices or discounts towards specific goods and/or services that require the business actors to receive goods and/or services from the business actor's supplier must be eager to purchase other goods and/or services from the business actor's supplier will not purchase identical goods and/or services (tying agreement associated with price discount);<sup>104</sup> and
- d. Entering an agreement relating to the certain price of discounts towards specific goods and/or services with the requirement in which the business actor that receives goods and/or services from a supplier shall not purchase identical goods and/or services from other competing business actors of the supplier (exclusive dealing associated with price discounts).<sup>105</sup>

In spite of the prohibition regulated under the Monopoly Law with regard to the tying agreement and the exclusive dealing distribution, however, the Monopoly Law likewise stated that the aforementioned prohibition does not apply for those agreements that are related to the IPR that include licenses, patents, trademarks, copyrights, industrial product design, integrated electronic circuits, and trade secrets, as well as agreements relating to franchises.<sup>106</sup> Consequently, it must be highlighted that the aforesaid restrictions cannot be applied to the relationship between the franchisor and the franchisee in Indonesia. For that reason, the franchisee likewise does not receive adequate protection from the Monopoly Law while the franchisor tends to utilize its discretionary power to oblige the franchisee to act in accordance with the franchisor's recommendation in which it is identical to the tying agreement as well as the executive dealing distribution. It is pertinent for the government of Indonesia to provide explicit regulation with regard to this issue in the franchising relationship in order to achieve equal legal protection for both parties of the Franchise Agreement.

## B. Approach to Avert Possible Harm Towards the Franchisee

Taking into consideration the examination done previously, sufficient legal protection towards the franchisee within the relationship of the Franchise Agreement with the franchisor is considerably narrow from the existing laws and regulations because the rights and obligations of the parties of the Franchise Agreement are not as detailed as proposed by the Master Franchise Arrangements and Model Franchise Disclosure Law. On top of that, even the types of franchises are not explicitly stipulated under the Indonesian laws and regulations

---

<sup>102</sup> *Ibid*, art. 15(1).

<sup>103</sup> *Ibid*, art. 15(2).

<sup>104</sup> *Ibid*, art. 15(3).

<sup>105</sup> Indonesia. *Peraturan Komisi Pengawas Persaingan Usaha (KPPU) tentang Pedoman Pasal 15 (Perjanjian Tertutup) Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat*. Peraturan KPPU No. 5 Tahun 2011. (*KPPU Regulation on Guidelines for Article 15 (Closed Agreement) of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition*. KPPU Regulation No. 5 Year 2011).

<sup>106</sup> *Ibid*, art. 50(b).

relating to the franchise business. Furthermore, the Indonesian laws on franchising solely focus on Master Franchises, Manufacturing Franchises, Product Franchising, and Business Format Franchising. Consequently, it is essential for the franchisee to make the first move in protecting themselves prior to entering into the Franchise Agreement by choosing the right franchisor and ensuring that the clauses stipulated within the Franchise Agreement will not cause any harm to the franchisee subsequent to entering the Franchise Agreement.

### C. Dispute Settlement Between the Relationship of the Franchisor and the Franchisee

On the condition that the parties of a contract be up against a dispute, several methods can be carried out in settling the dispute. According to the ICC, the first method would be settling the dispute by means of litigation. The second mechanism would be through arbitration or the one that is generally accepted as Alternative Dispute Resolution (“ADR”) that is regulated under Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.<sup>107</sup> These methods to settle the dispute arising between the relationship of the franchisor and the franchisee will be elaborated thoroughly within the subsequent section.

#### 1. Dispute Settlement by Means of Litigation

Settling the dispute within a contract in general or in this case within the Franchise Agreement by means of litigation is contemplated as a formal way of settling the dispute. In the event that the breach of the contract appears and the case is brought upon the court, the party that submitted the claim can select certain claims, and the request shall be in a form of:<sup>108</sup>

- i. The fulfillment of the obligation specified under the agreement;
- ii. The fulfillment of the agreement along with providing compensation in the form of a fine;
- iii. Merely by providing compensation to the party that is suffering from losses; or
- iv. Termination or cancellation of the contract as well as providing compensation.

In settling the dispute through the court usually, the court’s verdict will result in one losing party as the court’s verdict has an adversarial characteristic.<sup>109</sup> The whole process taken to settle a dispute in court is generally longer and the cost needed is comparably higher.<sup>110</sup> Thereupon, settling a dispute through the court is not encouraged as there are other means that are much more favorable for the disputing parties.

#### 2. Dispute Settlement by Way of Arbitration or Alternative Dispute Resolution (ADR)

Previously, the approach in settling the dispute by way of the court has been discussed, nevertheless, certain reasoning must be carefully considered in deciding the best possible way in solving the issue that arises between the disputing parties. Therefore, within this section, another option ought to be elaborated. The first approach that shall be applicable is arbitration, it is basically the way to resolve the dispute outside the court pursuant to the arbitration agreement that is made in writing by the disputing parties.<sup>111</sup> The result from arbitration is final and binding for both of the parties, this basically asserts that appeal, cassation, or judicial review cannot be filed subsequent to the issuance

---

<sup>107</sup> Nurnaningsih Amriani, *Mediasi Alternatif Penyelesaian Sengketa Perdata di Pengadilan* (Rajawali Pers, 2011), 39.

<sup>108</sup> Indonesia. *Kitab Undang-Undang Hukum Perdata. (Indonesian Civil Code)*, art. 1266-1267; R. Subekti, *Hukum Perjanjian* (Intermasa, 1998), 53.

<sup>109</sup> Rika Lestari, “Perbandingan Hukum Penyelesaian Sengketa Secara Mediasi di Pengadilan dan di Luar Pengadilan di Indonesia,” *Jurnal Ilmu Hukum* 4, no. 2 (2013): 217.

<sup>110</sup> *Ibid.*

<sup>111</sup> Indonesia. *Undang-Undang tentang Arbitrase dan Alternatif Penyelesaian Sengketa*. UU No. 30 Tahun 1999. (*Law on Arbitration and Alternative Dispute Settlement*. Law No. 30 Year 1999), art. 1(1).

of the decision.<sup>112</sup> The ensuing suitable measures would be through Alternative Dispute Resolution (“ADR), in which the settlement is carried out by way of:<sup>113</sup>

- i. Consultation, within this approach a consultant will be provided for the disputing parties throughout the consultation period and the consultant will provide suggestions to the parties in achieving the best solution for both parties;<sup>114</sup>
- ii. Negotiation, in essence, is a communication between the parties to come into an agreement established between the disputing parties in resolving the dispute that arises between the parties;<sup>115</sup>
- iii. Mediation basically is a dispute settlement method through mutual agreement between the disputing parties with the assistance from the mediator throughout the whole process of the mediation;<sup>116</sup>
- iv. Conciliation essentially is the extension from mediation in which the third party or previously known as the mediator function as the conciliator with the aim to conclude a mutual agreement between the disputing parties;<sup>117</sup> or
- v. Expert Opinion, substantially this approach administered by consultation in the form of legal opinion conforming to the request from the disputing parties. The expert is responsible for providing an interpretation of the agreement created by the disputing parties in order to clear up their issue.<sup>118</sup>

Certain grounds that must be taken into consideration as to why ADR shall be the most convenient measure in settling the dispute that arises between the parties of the Franchise Agreement include the outcome from ADR is generally beneficial for both parties owing to the fact that the decision is based on an intensive discussion that results in an agreement, the confidentiality of the dispute can be assured since the disputing parties are not required to attend a trial that is open for the public, and the procedure taken in settling the dispute is relatively faster and cheaper compared to settling the dispute in the court.<sup>119</sup> Respectively, dispute settlement through ADR is frequently suggested for the disputing parties for the reason that it will be much more beneficial for both parties.

---

<sup>112</sup> Muskibah, “Arbitrase Sebagai Alternatif Penyelesaian Sengketa,” *Jurnal Komunikasi Hukum* 4, no. 2 (2018): 150.

<sup>113</sup> *Ibid*, art. 1(10).

<sup>114</sup> Gunawan Widjaja, *Seri Hukum Bisnis Alternatif Penyelesaian Sengketa* (Raja Grafindo Persada, 2005), 86.

<sup>115</sup> Wahyudi Hariadi, “Alternative Dispute Resolution (ADR) in Law in Indonesia,” *Jurnal Pendidikan Kewarganegaraan Undiksha* 8, no. 3 (2020): 172.

<sup>116</sup> Taufikurrahman, “Alternative Dispute Resolution (ADR) Dalam Penyelesaian Sengketa Konsumen,” *Iqtishadia* 2, no. 1 (2015): 22.

<sup>117</sup> Andi Ardillah Albar, “Dinamika Mekanisme Alternatif Penyelesaian Sengketa Dalam Konteks Hukum Bisnis Internasional,” *Jurnal Hukum Kenotariatan* 1, no.1 (2019): 18.

<sup>118</sup> Lannemey, “Akibat Hukum Pemutusan Perjanjian Franchise Secara Sepihak Oleh Franchisor Sebelum Berakhirnya Kontrak,” *Lex Privatum* 3, no. 1 (2015): 161.

<sup>119</sup> Rachmadi Usman, *Pilihan Penyelesaian Sengketa di Luar Pengadilan* (PT. Citra Aditya Bakti, 2003), 2.

## **CONCLUSION**

Prompt development with regard to business competition nowadays provokes business actors in taking further measures to maintain their businesses. For this reason, business actors enforced certain means intending to strengthen their networking. Engaging in franchising turns out to be one of the sufficient approaches taken by business actors. Be that as it may, the likelihood of an issue appearing within the franchising business is somewhat high, particularly relating to the termination of the Franchise Agreement. The case that was discussed in this research is pertaining to the enlargement of the franchising business by way of partnership and it is done by the franchisor through the construction of an LLC. As the owner, founder, holder of IPR, and majority shareholder of the LLC is the franchisor, certain issues emerge in the relationship between the franchisor and the franchisee.

Within this case, it can be concluded that the potential conflict that may ensue includes, detrimental effects on the franchisee as the franchisor hold a discretionary power that leads to an unequal bargaining power within their relationship. The Indonesian government to develop a more sophisticated legal framework relating to the franchising business and to provide equal protection for both parties of the Franchise Agreement shall implement relevant provisions such as IFDA, Master Franchise Arrangements, and Model Franchise Disclosure Law. Additionally, pertaining to the material supply for the franchisee, an act of monopoly might likewise occur within the relationship between the franchisor and the franchisee. Furthermore, the greatest approach to lessen the possibility of harm to the franchisee is by way of choosing a reliable franchisor and ensuring the clauses of the Franchise Agreement will not harm the franchisee. Moreover, there are several measures in settling the dispute that arises between the relationship of the franchisor and the franchisees and it encompasses the court, arbitration, or ADR. The most efficient means of dispute settlement that will be beneficial for both parties is through arbitration or ADR.

## **BIBLIOGRAPHY**

### **Legal Documents**

- Indonesia. *Kitab Undang-Undang Hukum Perdata*. (Indonesian Civil Code).
- Indonesia. *Peraturan Badan Koordinasi Penanaman Modal (BKPM) tentang Pedoman dan Tata Cara Perizinan dan Fasilitas Penanaman Modal*. Peraturan BKPM No. 6 Tahun 2018. (BKPM Regulation on Guidelines and Procedures for Licensing and Investment Facilities. BKPM Regulation No. 6 Year 2018).
- Indonesia. *Peraturan Kepala Badan Koordinasi Penanaman Modal (BKPM) tentang Permodalan PT PMA*. Peraturan Kepala BKPM No. 14 Tahun 2015. (Head of BKPM Regulation on the PT PMA Capital. Head of BKPM Regulation No. 14 Year 2015).
- Indonesia. *Peraturan Komisi Pengawas Persaingan Usaha (KPPU) tentang Pedoman Pasal 15 (Perjanjian Tertutup) Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat*. Peraturan KPPU No. 5 Tahun 2011. (KPPU Regulation on Guidelines for Article 15 (Closed Agreement) of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. KPPU Regulation No. 5 Year 2011).
- Indonesia. *Peraturan Menteri Perdagangan tentang Pengembangan Kemitraan Dalam Waralaba untuk Jenis Usaha Jasa Makanan dan Minuman*, Permendag No. 7 Tahun 2013. (Regulation of the Minister of Trade on the Development of Partnership in Franchising for Food and Beverage Service Business Types, MOT No. 7 Year 2013).
- Indonesia. *Peraturan Menteri Perdagangan tentang Penyelenggaraan Waralaba*, Permendag No. 71 Tahun 2019. (Regulation of the Minister of Trade on Franchising, MOT No. 71 Year 2019).
- Indonesia. *Peraturan Pemerintah tentang Waralaba*, PP No. 42 Tahun 2007. (Government Regulation on Franchise, GR No. 42 Year 2007).
- Indonesia. *Peraturan Presiden tentang Perubahan atas Peraturan Presiden Nomor 10 Tahun 2021 tentang Bidang Usaha Penanaman Modal*. PERPRES No. 49 Tahun 2021. (Presidential Regulation on the Amendment of Presidential Regulation Number 10 Year 2021 on Investment Business Activity, PR No. 49 Year 2021).
- Indonesia. *Peraturan Presiden tentang Bidang Usaha Penanaman Modal*. PERPRES No. 10 Tahun 2021. (Presidential Regulation on Investment Business Activity. PR No. 10 Year 2021).
- Indonesia. *Undang-Undang tentang Arbitrase dan Alternatif Penyelesaian Sengketa*, UU No. 30 Tahun 1999. (Law on Arbitration and Alternative Dispute Settlement, Law No. 30 Year 1999).
- Indonesia. *Undang-Undang tentang Penanaman Modal*. UU No. 25 Tahun 2007. (Law on Investments. Law No. 25 Year 2007).
- Indonesia. *Undang-Undang tentang Perseroan Terbatas*, UU No. 40 Tahun 2007. (Law on Limited Liability Company, Law No. 40 Year 2007).
- Unites States, *The Illinois Franchise Disclosure Act*. 815 ILCS 705.

### **Book and book chapters**

- Adolf, Huala, *Dasar-dasar Hukum Kontrak Internasional*. PT. Refika Aditama, 2008.
- Amriani, Nurnaningsih, *Mediasi Alternatif Penyelesaian Sengketa Perdata di Pengadilan*. Rajawali Pers, 2011.
- Dari, Ankia and Aditya Bayu Aji, *Kaya Raya Dengan Waralaba* (Kata Hati, 2017), 23-24.
- H.S, Salim, *Pengantar Hukum Perdata Tertulis* (BW. Sinar Grafika, 2002).
- Imanullah, Moch Najib, *Faktor Non-Ekonomi dalam Waralaba*. UNS Press, 2008.
- Margono, Suyud, *Aspek Hukum Komersialisasi Aset Intelektual*. Nuansa Aulia, 2010.
- Santoso, Djohari and Achmad Ali, *Hukum Perjanjian Indonesia*. Perpustakaan FH UII, 1989.

- Sewu, P. Lindawaty S. *Franchise: Pola Bisnis Spektakuler dalam Perspektif Hukum & Ekonomi*. CV. Utomo, 2004.
- Simatupang, Richard Burton, *Aspek Hukum Dalam Bisnis*. Rineka Cipta, 2007.
- Smits, Jan M. *Contract Law: A Comparative Introduction*. Edward Elgar Publishing Limited, 2014.
- Soekanto, Soejono and Sri Mamudji, *Penelitian Hukum Normatif*. PT Raja Grafindo Persada, 2004.
- Subekti, R, *Hukum Kontrak: Teori & Teknik Penyusunan Kontrak*. 2nd edn. Sinar Grafika, 2004.
- Subekti, R, *Hukum Perjanjian*. Intermasa, 1998.
- Sutedi, Adrian, *Hukum Waralaba*. Ghalia Indonesia, 2008.
- Usman, Rachmadi, *Pilihan Penyelesaian Sengketa di Luar Pengadilan*. PT. Citra Aditya Bakti, 2003.
- Widjaja, Gunawan, *Seri Hukum Bisnis Alternatif Penyelesaian Sengketa*. Raja Grafindo Persada, 2005.

### **Journals and periodicals**

- Albar, Andi Ardillah. "Dinamika Mekanisme Alternatif Penyelesaian Sengketa Dalam Konteks Hukum Bisnis Internasional." *Jurnal Hukum Kenotariatan* 1, no.1. (2019): 18.
- Astutik, Dwi Puji. "Perlindungan Hukum Terhadap Franchisee yang di Rugikan Oleh Franchisor Dalam Perjanjian Waralaba." *RechtIdee* 15, no. 2 (2020): 283.
- Benuf, Kornelius and Muhamad Azhar. "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Jurnal Gema Keadilan* 7, no. 1. (2020): 20.
- Emerson, Robert W and Uri Benoliel. "Can Franchisee Associations Serve as a Substitute for Franchisee Protection Laws?." *Penn State Law Review* 118, no. 1. (2013): 99.
- Emerson, Robert W. "Franchise Contract Interpretation: A Two Standard Approach." *Michigan State Law Review* 1, no. 1. (2013): 641.
- Emerson, Robert W. "Franchise Terminations: "Good Cause" Decoded." *Wake Forest Law Review* 51, no. 1. (2016): 103.
- Hadfield, Gillian K. "Problematic Relations: Franchising and the Law of Incomplete Contracts." *JSTOR* 42, no. 4. (1990): 927.
- Hariadi, Wahyudi. "Alternative Dispute Resolution (ADR) in Law in Indonesia." *Jurnal Pendidikan Kewarganegaraan Undiksha* 8, no. 3. (2020): 172.
- Idrus, Norman Syahdar. "Aspek Hukum Perjanjian Waralaba Dalam Perspektif Hukum Perdata dan Hukum Islam." *Jurnal Yuridis* 4, no. 1. (2017): 29.
- Imanullah, Moch. Najib. "Waralaba Sebagai Instrumen Pengentasan Kemiskinan di Indonesia." *Mimbar Hukum* 24, no. 2. (2012): 187.
- Lannemey. "Akibat Hukum Pemutusan Perjanjian Franchise Secara Sepihak Oleh Franchisor Sebelum Berakhirnya Kontrak." *Lex Privatum* 3, no. 1. (2015): 161.
- Lasamahu, Ferry R. "Perlindungan Hukum Terhadap Franchisee Dalam Perjanjian Waralaba (Studi Kasus: Analisis Putusan Pengadilan Antara PT. Lingkar Natura Indi dan Natasha Kasakeyan)." *Jurnal Hukum dan Pembangunan Tahun* 36, no. 3 (2006): 320.
- Lestari, Rika. "Perbandingan Hukum Penyelesaian Sengketa Secara Mediasi di Pengadilan dan di Luar Pengadilan di Indonesia." *Jurnal Ilmu Hukum* 4, no. 2. (2013): 217.
- Muskibah. "Arbitrase Sebagai Alternatif Penyelesaian Sengketa." *Jurnal Komunikasi Hukum*

- 4, no. 2. (2018): 150.
- Nicastro, Tracy A. "Note: How the Cookie Crumbles: The Good Cause Requirement for Terminating Franchise Agreement." *Valparaiso University Law Review* 28, no. 2. (1994): 786.
- Noor, Muhammad. "Penerapan Prinsip-Prinsip Hukum Perikatan Dalam Pembuatan Kontrak." *Mazahib* 15, no. 1. (2015): 89.
- R, Ety Septiana and Ety Susilowati. "Kedudukan Tidak Seimbang Pada Perjanjian Waralaba Berkaitan Dengan Pemenuhan Kondisi Wanprestasi." *Law Reform* 10, no. 1. (2014): 16.
- Rahman, Taufiq El and others. "Asas Kebebasan Berkontrak dan Asas Kepribadian Dalam Kontrak-Kontrak Outsourcing." *Mimbar Hukum* 23, no. 3. (2011): 586.
- Roger D. Blair and Francine Lafontaine, "Understanding the Economics of Franchising and the Laws that Regulate It," *Franchise Law Journal* 26, no. 1. (2006): 55.
- Santoso, Johari. "Perseroan Terbatas Sebagai Institusi Kegiatan Ekonomi Yang Demokratis." *Jurnal Hukum* 15, no. 7. (2000): 194.
- Saraswati, Nandhina Ayu. "Problematika Pelaksanaan Perjanjian Waralaba dan Faktor-Faktor yang Harus Diperhatikan di Luar Isi Naskah Perjanjian." *Privat Law* 3, no. 1. (2014): 65.
- Sari, Indah. "Syarat-Syarat Penanaman Modal Asing (PMA) di Indonesia Menurut Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal." *Jurnal Ilmiah Hukum Dirgantara* 10, no. 2 (2020): 66.
- Slamet, Sri Redjeki. "Waralaba (FRANCHISE) di Indonesia." *Lex Jurnalica* 8, no. 2. (2011): 127.
- Syam, Andi Wadih Ulfiah Ambas. "Dampak Kebijakan Proteksi Indonesia Pada Bidang Waralaba Asing (Studi Kasus: Kentucky Fried Chicken)." *Jurnal Hubungan Internasional Departemen Ilmu Hubungan Internasional Universitas Hasanuddin* 5, no. 1 (2020): 26-27.
- Taufikurrahman. "Alternative Dispute Resolution (ADR) Dalam Penyelesaian Sengketa Konsumen." *Iqtishadia* 2, no. 1. (2015): 22.
- Trisna, Nila. "Tinjauan Yuridis Terhadap Kedudukan Franchisee Dalam Perjanjian Franchisee (WARALABA)." *Jurnal Ius Civile* 2, no. 1. (2018): 13.
- Wiriardi, Maulidiazeta. "Prinsip-Prinsip Hukum Perjanjian Dalam Kesepakatan Para Pihak Yang Bersengketa Atas Permohonan Intervensi Pihak Ketiga Dalam Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa." *Yuridika* 26, no. 1. (2011): 71.
- Yahya, M Roma Rizky. "Wanprestasi Dalam Perjanjian Waralaba (Studi Kasus Putusan Mahkamah Agung Nomor 612/Pdt.G./2017/PN Jkt. Sel)." *Article Wisudawan Ke 74* 11, no. 2 (2020): 2.

### Web sources

- Danil, Lilian. "Franchise Business Sustainability – West Java Province Small Medium Enterprises." Accessed May 27, 2022, <https://media.neliti.com/media/publications/12706-ID-franchise-business-sustainability-west-java-province-small-medium-enterprises.pdf>.
- Mutalib, Norma and others. "Franchising in Indonesia." Accessed September 19, 2021, <https://www.lexology.com/library/detail.aspx?g=7041ed35-f5f0-4741-a6e2-fb31d9a836ae>.
- The International Institute for the Unification of Private Law (UNIDROIT). "Guide to



International Master Franchise Arrangements.” Accessed May 26, 2022,  
<http://www.unidroit.org/english/modellaws/2002franchise/2002modellaw-e.pdf>.