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Legal Evaluation of Franchise Business Contracts Using Civil Law

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Abstract

This study was conducted in order to learn more about the characteristics of the franchise industry and how its development relates to the rapid development of the franchise industry in Indonesia. According to the findings of the study, the franchise industry is still largely unknown among Indonesians even though it is a more profitable and capital-efficient business model than starting a new business. With certain rights and obligations carried out by each party based on the terms of the agreement set forth in the Civil Code, this franchise business can be launched immediately after an agreement is reached between the owner of the franchise right and the holder of the franchise right. franchise rights. However, apart from the basic contractual terms, the government-specific laws and regulations that serve as the legal framework for the growth of this franchise business are still very inadequate. As a result, many entrepreneurs continue to be "afraid" of starting this kind of business and instead prefer to build their own.

Keywords: Evaluation, Law, Business, Civil

INTRODUCTION

The pace of economic development is getting faster and more complicated in the current era of globalization. Along with the various transactions that have occurred in Indonesia to date, new types of commercial cooperation have also emerged. The growth of this kind of corporate collaboration opens the door for the development of new facilities and business models, including franchising business, or franchising in other languages. Franchising is an alternative to a company's traditional path of marketing and distribution. Companies often use this technique to create retail channels without needing a parent company to make large investments. Legal problems are also exacerbated by the existence of franchise social institutions in economic life. This is due to the existence of a relationship in the franchise system which is made possible by a relationship based on an agreement relationship known as a franchise agreement.

Although the franchise industry has been around for a long time, it was only recently that the Indonesian government introduced clearer restrictions and legal frameworks related to the operation and regulation of franchising. This is done to protect the interests of all parties involved in the franchise business, including franchisors, trademark owners and consumers. The Indonesian government imposes restrictions and legal frameworks to regulate important aspects of the franchise industry, such as registration requirements, disclosure of information, obligations of franchisees, consumer protection and dispute resolution. This measure aims to create a more transparent, fair and sustainable business environment. With clear restrictions and legal frameworks in place, governments can ensure that franchisees and trademark owners adhere to certain standards in their operations and business practices. This involves disclosing complete and clear information to prospective franchisors, including regarding financial, training, support and contract terms of the franchise.

In addition, a clear legal framework also provides protection for consumers. The government ensures that products or services offered through franchising meet established quality and safety standards. Consumers are also protected through a fair and effective dispute resolution mechanism. For franchisors, these restrictions and legal frameworks provide certainty in running a franchise business. They have clear guidelines regarding operational procedures, financial regulations, and the rights and obligations that must be complied with.

RESEARCH METHODS

The methodology used in this study is a normative research technique with a juridical approach, which includes examining relevant laws and regulations and reading legal terms in the current literature. In order for a research to have a direction and goals that are in accordance with the object of research, the problem must be formulated clearly. This will help clear up any confusion or ambiguity about the research subject that may arise during the research discussion. This study aims to investigate the legal consequences and common commercial models of franchising. review the terms of the franchise agreement regarding the legal obligations of the parties to third parties.

RESEARCH RESULTS AND DISCUSSION

A franchisor who buys a business format franchise receives the authority to advertise and sell goods and/or services in certain territories or locations, subject to certain operational and marketing requirements. There are three different forms of franchising in this form: 1) Work Franchising, where the franchisor who operates the business actually buys support for his or her own company. He offers services for tuning automotive engines, for example, under a certain franchise name. Because it doesn't require a lot of space or equipment, this form is usually the cheapest; 2) Franchise Business, which is currently a fast growing franchise industry. It can appear as a fast food place, a retail store that offers products or services, or a print shop. Due to the need for special facilities and equipment, costs are higher than for franchised work. 3) Investment Franchise: The scale of the company, especially the amount of investment required, is the main characteristic that distinguishes this type of franchise from working franchises and business franchising. The initial investment required for franchise investments offered by well-known businesses can reach billions of rupiah.

Companies that buy investment franchises usually want to diversify, but the franchisor chooses this model of the franchise system because of management's lack of experience in running a new company. The birth of a franchise agreement involves several important factors. First, there are trademark owners or business concept owners who are successful and want to expand their business reach. They decide to grant trademark usage rights, operational systems and support to third parties called franchisees. The owner of this trademark has significant knowledge and experience in a particular industry.

Second, there are prospective franchisees who are interested in taking advantage of well-known trademarks and proven business systems. They see an opportunity in running a business with the help of a brand and the support of the trademark owner. The birth of a franchise agreement involves a process of negotiation between the trademark owner and the prospective franchisor. The parties will discuss various aspects of the agreement, including rights and obligations, terms of validity, royalties or franchise fees, exclusive areas, operational guidelines, training and support to be provided. After the negotiations are completed and an agreement is reached, the franchise agreement is signed by both parties. This agreement establishes the rights and obligations of each party, and regulates the relationship between the trademark owner and the franchisor.

In this process, it is important for both parties to conduct a legal review and consider all related aspects. This helps ensure that the franchise agreement is clear, mutually beneficial, and complies with applicable laws and regulations. Thus, the birth of a franchise agreement involves the desire of the trademark owner to expand the business and the interest of the prospective franchisor who sees value and potential in the trademark and business system offered. Franchise Product Distribution Method, in which the franchisee is given a monopoly license to promote the products or services of a single business in a certain area. The franchisor can provide regional franchises, in this case the territorial franchisee or one of its branches can purchase the right to operate or market the franchised company in a certain area. Regional franchising gives parent franchises the opportunity to build a chain of companies more quickly. The parent franchisor benefits from royalty payments and sales of goods and services made by its descendants while sharing financial risk and management experience with them.

Types of Manufacturing Facilities Franchise owners, especially in this type of franchise, provide knowledge or secret formulas of a process to produce goods or services. The franchisor then produces the goods/services mentioned above and distributes them according to the manufacturing guidelines and the same brand he owns. According to the consensual concept of Indonesian contract law, a contract is formed when an agreement is made between the prospective franchisor and the prospective franchisor. In other words, even though a formal act has not been carried out or has not been followed, the franchise agreement remains valid if the franchiser and the franchiser have reached an agreement on the essentials.

However, before an agreement is formed in a franchise agreement, negotiations are usually carried out between the parties. In this situation, prospective franchisors often contact the franchisor in advance to announce their intention and desire to create a franchise business using the franchisor's brand in a certain location. The location where the franchise company will be created and run is then usually inspected by the franchisor. This site study was conducted to give prospective franchisees something to think about when establishing standard conditions that they would ultimately be responsible for paying for.

The purpose of site inspection is to ascertain the current state of the site in question, as well as whether it is possible and meets the requirements to establish a franchised branch business from a marketing and structural standard standpoint. In addition, the franchise agreement is signed after reaching an agreement and the prospective franchise right holder has read and understood the format of the franchise agreement and has no objection to any rights or obligations arising from it. After the franchise business operates, the franchisor is then granted the right to use his name, trademark and logo by making various payments, including an initial payment for location selection fees and other costs; royalties; payment for the implementation of the franchise right holder to third parties; payment for the supply of raw materials; and others.

In a franchise agreement, there are several parties involved, namely the franchisor, the franchisee, and third parties (customers or the public). The franchisor has the responsibility to provide guidance, training and support to the franchisor regarding business systems and operations. They must also ensure that franchisees meet established quality and service standards. On the other hand, the franchisor is responsible for running the business in accordance with the operational standards and guidelines provided by the franchisor. They must maintain a trademark reputation, provide good service to customers, and promote products or services according to established guidelines.

Third parties, as customers or the public, have the right to products or services that meet the promised quality standards. Franchisees and franchisors must ensure that there are no fraudulent practices or violations of the law in business operations. They must also provide satisfactory service, maintain customer satisfaction, and respect consumer rights as well as carry out the applicable principles of business ethics. The position and responsibilities of each of these parties may vary depending on the terms of the agreed franchise agreement. Therefore, it is important for all parties to understand their rights and obligations and to carry out the agreement in good faith. The validity period of a franchise agreement may vary depending on the agreement between the franchisor and the franchisor. Generally, franchise agreements have a specified period of time, which can be a certain period, for example five years, ten years, or longer. During the term of the agreement, the franchisor has the right to use the trademarks, business systems and support from the franchisor. On the other hand, the franchisor is obliged to run the business in accordance with established standards and guidelines.

In addition, the franchise agreement also usually contains provisions regarding the extension of the agreement. The parties can agree to extend the validity period of the agreement after the period ends, with or without certain revisions to the existing provisions. This depends on the agreement between the franchisor and the franchisor, as well as the performance and success of the business achieved during the term of the agreement. However, keep in mind that there are also situations where the franchise agreement may expire before the expiration date specified. For example, if one party violates the terms of the agreement seriously or does not fulfill its obligations, the other party can terminate the agreement for that reason.

In practice, it is important for the parties involved to regularly evaluate the performance and compliance with the franchise agreement. This can help ensure the continuity and success of the franchise business and identify possible extensions or extensions of the term of the agreement. Default and risk are two things that need to be considered in a franchise agreement. Default refers to a serious violation of the terms of the agreement by one of the parties, while risk refers to the possibility of failure or loss in the operation of the franchise business. Both of these aspects can have a significant impact on the relationship between franchisor and franchisor. Default can occur if one party does not fulfill the obligations set out in the agreement. For example, the franchisor may not provide the promised support, or the franchisor may not operate the business according to established standards and guidelines. Such defaults can result in customer dissatisfaction, financial loss or a bad reputation for the franchisor.

On the other hand, in a franchise agreement there are risks that must be considered. Business risks may include external factors such as regulatory changes, intense competition or market fluctuations. Operational risk can also arise in the form of system failure, lack of product or service quality, or non-compliance with established standards. In order to reduce risks and potential defaults, it is important for both parties to communicate well, understand each other's expectations and obligations, and set up clear dispute resolution mechanisms. Effective monitoring and management of franchisees against franchisees can also help minimize risks and ensure compliance with agreements. In any franchise agreement, it is important for both parties to understand the risks and legal implications involved, and to take proactive steps to prevent default and manage risks wisely. The legal evaluation of franchise business contracts using civil law involves research and analysis of the provisions stipulated in the franchise agreement. Civil law regulates civil relations between individuals or legal entities, including contracts and agreements made between parties involved in the franchise business.

In evaluating franchise business contract law using civil law, several things that need to be considered include:
1. Agreement of the Parties: It is necessary to analyze whether the agreement between the franchisor and the franchisor is valid and based on the free and voluntary will of each party. If there is an indication of significant pressure, fraud or error in the formation of the agreement, this may affect the validity of the contract.
2. Contract Terms: The terms of the franchise agreement must comply with the applicable civil law principles. This includes provisions regarding the object of the agreement, rights and obligations of the parties, limitations and fulfillment, as well as dispute resolution clauses.
3. Legal Protection for Weaker Parties: Civil laws often provide special protections for weaker parties, such as franchisors. Evaluation must ensure that the franchise agreement does not violate the principles of consumer protection or provide an imbalance of rights and obligations to the detriment of the weaker party.
4. Dispute Resolution: The evaluation must also pay attention to the dispute settlement clause in the agreement. This involves an analysis of the prescribed dispute resolution mechanism, whether through mediation, arbitration, or court, and whether the mechanism complies with applicable civil law requirements.

Analysis of the agreement between the franchisor and the franchisor in terms of the validity of the contract is very important in evaluating the law of franchise business contracts using civil law. In this analysis, it is necessary to consider several factors that can affect the validity of the agreement, such as pressure, fraud or significant errors in the formation of the agreement.
1. Pressure: Does either party feel compelled or pressured to enter into a franchise agreement without free and voluntary will? Pressure can be in the form of physical threats, legal threats, or psychological pressures that affect the party's ability to make decisions freely.
2. Fraud: Was there any act of fraud involved in the formation of the agreement? For example, franchisors provide wrong or misleading information about the potential benefits or risks of the franchise business to franchisees. If there is any indication of significant fraud, it may affect the validity of the agreement.
3. Significant Error: Whether either party made a significant error in forming the agreement? Errors may include misunderstanding of the terms of the agreement, errors in calculating royalties or franchise fees, or other errors that may affect the substance of the agreement.

If significant pressure, fraud or error is found in forming a franchise agreement, this can affect the validity of the contract. In some civil law jurisdictions, contracts made under these conditions may be declared invalid or may be annulled by the injured party. Therefore, it is important to carry out a careful analysis of the agreement between the franchisor and the franchisor to ensure the validity of the contract and ensure that the agreement is based on the free and voluntary will of each party without any significant pressure, fraud or error.

CONCLUSION

In order to evaluate franchise business contract law using civil law, there are several important points that need to be considered. The agreement between the franchisor and the franchisor must be analyzed to ensure the validity of the contract based on the free and voluntary will of each party. Significant indications of pressure, fraud or error in the formation of the agreement may affect the validity of the contract.

Advice that can be given is: Pay attention to the Principles of Consumer Protection: Make sure that the franchise agreement does not violate the principles of consumer protection. Ensure that the franchisor does not provide misleading information or engage in practices that are detrimental to the franchisee. Franchisees must also provide quality products or services according to established standards. Consult a Legal Expert: It is important to involve a legal expert competent in private law in the process of evaluating a franchise agreement. Legal experts can provide appropriate legal views and advice to ensure the validity and compliance of the agreement with applicable legal requirements. Check the Contract Terms: Check all the terms in the franchise agreement, including the rights and obligations of the parties, limitations and fulfillment, and dispute resolution clauses. Ensure that the provisions comply with applicable civil law principles. Risk and Benefit Evaluation: Conduct a thorough evaluation of the risks and rewards associated with a franchise agreement. Consider business opportunities, competition, regulatory changes and other operational aspects to identify risks that may arise and how to manage them. Communication and Transparency: It is important for both parties to maintain good communication and transparency in executing the franchise agreement. Sharing information, understanding expectations and obligations, and conducting periodic evaluations will help maintain good relationships and be successful in the franchise business. By taking into account the above matters, franchisors and franchisors can ensure that their franchise agreements comply with the principles of civil law, run well, and are mutually beneficial.

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