

Implementation of The Agreement Between the Giver and The Recipient in The Franchise Business “Ayam Penyet XXX” During Covid-19

Theresia¹, Yusriando², Tiromsi Sitanggang³
{siawangster@gmail.com¹, yusriando@unprimdn.ac.id², dokortirosi@gmail.com³}

Postgraduate Program of Law, Universitas Prima Indonesia, Medan, Indonesia¹²³

Abstract. The legal instrument regarding franchises in Indonesia is currently in force is Government Regulation Number: 42 Year 2007 On Franchising. The purpose of this research is to: analyze the implementation of agreements between givers and recipients in the franchise business "Ayam Penyet XXX"; analyze legal protection in franchise business agreements against franchisees in the event of a covid-19 pandemic. The type of research used is qualitative research. The results of the analysis based on juridical reviews obtained: The implementation of the agreement between the giver and the recipient in the franchise business has not been fully implemented based on the agreement that has been agreed especially during the covid-19 pandemic; Legal protection of franchisees is very weak in franchise business agreements during the covid-19 pandemic, making the franchise business forced to close without the presence of franchisors to help overcome special situations such as the covid-19 pandemic. The advice given is: Freedom of contract must contain a sense of mutual justice between the giver and the recipient.

Keywords: Freedom of Contract, Franchise Business, Covid-19 Pandemic

1 Introduction

Franchise business is one way that can accelerate profitability for the perpetrators. The ups and downs of franchise development do not fade the attractiveness of this form of business, franchise remains an attractive option for anyone who wants to be entrepreneurial (Slamet, 2016). The development of franchise business has grown rapidly and become a new force for the domestic economic sector in Indonesia. The increasing trade of goods and services with the franchise system, because the system is more profitable for both franchisees and franchisees (Idrus, 2017).

Based on data from the Ministry of Trade, there are more than 600 franchises throughout Indonesia. Of these, 400 franchises are foreign franchises and the rest are local franchises. The number of outlets reached 24,400 outlets with total revenue of 172 trillion Rupiah in 2015. However, the number of franchises that already have a Franchise Registration Certificate (STPW) is only 360 franchises with details of 308 foreign franchises and 52 franchises in the country (bisnis.tempo.co, 2020).

In general agreements that franchise agreements are subject to book III of the Civil Code as a general arrangement and Government Regulation Number: 42 Year 2007 as a special arrangement. The franchise agreement contains a set of terms, conditions and commitments

made and desired by the parties. The franchisee or franchisee is a party whether it is an individual individual or a business entity whether incorporated or not granted the right by the franchisee to utilize the franchisee owned by the franchisee. On the other hand, a franchisee or commonly referred to as a franchisor is an individual or business entity either incorporated or not who grants the right to utilize the franchise that he owns to the franchisee. These two parties are included in each franchise agreement (Aidi & Farida, 2019).

An Agreement is a legal act that gives rise to a change in the waiver of rights, or gives rise to a legal relationship and in that way. The Agreement gives rise to legal consequences that are the purpose of the parties. If a legal action is an agreement, then the persons who take legal action are called parties. Based on the provisions of the applicable law in Indonesia, every franchise business to be held then the franchise business must be conducted based on a written agreement between the franchisor and the franchisee. Written agreements made by the franchisor and the franchisee must comply with the provisions of the applicable treaty law, in which case the agreement does not conflict with the terms of the validity of an agreement as stipulated in Article 1320 of the Civil Code (Sumardi, 2012).

In a franchise agreement usually contains a collection of terms and commitments made and desired by the parties, both the franchisee and the franchisee. As well as the franchise agreement also contains the provisions of the rights and obligations of the parties, including the territorial rights owned by the franchisee, location requirements, costs required to conduct the business where such costs must be paid by the receiving party (Dewi, 2009).

The success of the franchise agreement can be seen from the synergy cooperation, so it is important for both parties, namely the franchisee and the franchisee to the franchisee, then the term of the franchise agreement and other provisions governing the relationship between the franchisee and the franchisee know their respective positions and responsibilities. In order for the cooperation to be carried out properly by both parties concerned (Suryono, 2008).

However, during the covid-19 pandemic, many business sectors experienced a collapse. To contain the spread of this virus, the government issued various policies namely social restrictions where this policy invites the whole community to keep a distance from others as well as a second policy, working from home or (WFH). In addition, the government also asked all people to wear masks when outdoors. Most activities involving the public are restricted, such as offices or agencies being disbursed, restrictions on religious activities and restrictions on public transportation. Closures also occurred in the restaurant sector. Some restaurants are closed and there are only a few that still serve orders online (liputan6.com, 2020).

2 Research Methods

Based on the problems studied, the type of research used is qualitative research. Qualitatively analyze data by collecting primary, secondary and tertiary legal materials. With reference to several views as stated by Bogdan and Taylor that qualitative research methods are research procedures that produce descriptive data in the form of words or words from people and observable behavior.

In addition, another purpose of research using the case study method is to study intensively about the background of the current situation and environmental interactions of a social unit: individuals, groups, communities. This research is characterized by an in-depth study of a particular social unit, the result of which is a complete and organized picture.

3 Results and Discussion

3.1 Implementation of The Agreement Between the Giver and The Recipient in The Franchise Business "Ayam Penyet XXX"

The law specifies that a valid agreement has the force as law. All consents made legally apply as law to those who make them. The agreements are irrevocable, other than the agreements of both parties or for reasons that the law says are sufficient for them. Consents must be executed in good faith (Badruzaman, 2005). Therefore the "Ayam Penyet XXX" franchise agreement made by the franchisor parties and the franchise applies as the laws of both parties.

In the pre-contract phase, there is an agreement on the subject matter, which agreed upon a number of principles. If this preliminary agreement is not continued, then between the two parties is not considered a matter of indemnification. If in the pre-contract phase a detailed agreement is reached on the rights and obligations between the parties. The nature of the agreement is called "pactum de contrahendo" i.e., the agreement to enter into an agreement, then the issue of compensation can be disputed as the agreement is not reached.

A long journey but a feat, making the franchise "Ayam Penyet XXX" has a 'brand identity' that is worth selling high in this era of special culinary competition. This is obtained from effort and hard work, discipline and tenacity that remains firmly the principle of consumers is king. The franchise system "Ayam Penyet XXX" has several advantages such as: the concept of a superior and proven franchise business, high brand awareness, light royalty fee and franchisee obtain a transfer of knowledge so as to be able to manage outlets independently, get support in the establishment of outlets, licensing, recruitment and training of employees, information technology, and has been widely known by the public.

As agreed in the Ayam Penyet XXX agreement in Article 2 and Article 5, the giving party in its implementation assists the recipient in running the franchise starting from the marketing strategy, franchise layout, conceptualize everything needed in running the franchise but after some time, the giver has handed over completely to the recipient to run the chicken franchise until the covid-19 pandemic in Indonesia.

As it is known that during the covid-19 pandemic, Indonesia's economy experienced a strong shock due to the enactment of several government policies to anticipate the widespread spread of corona virus in Indonesia ranging from social distancing policies to large-scale social restrictions (PSBB). Psbb rules consist of eliminating activities in schools and workplaces, public facilities, crowd banning, political gatherings, sports, entertainment, sales venues such as restaurants, academic and cultural, transportation modes. But there are also exceptions in the psbb rules, namely supermarkets, minimarkets, markets, shops, sales of medicines and medical equipment, basic needs, social and cultural activities, public or private passenger transportation but still pay attention to the number of passengers and maintain distance between passengers, other activities related to defense and security to uphold state sovereignty, territorial integrity and protect the nation from the threat of disruption and realize security and public order.

As a result of the policy issued by the government has a huge impact on the Indonesian economy so many industries are experiencing bankruptcy or at least experiencing a decrease in income including small and medium-sized businesses such as the franchise "Ayam Penyet XXX" which was forced to close due to a decrease in revenue turnover to overcome the greater losses in financing the franchise business operations. If referring to the agreement, then in the agreement does not contain clauses on special matters if such as the occurrence of the covid-19 pandemic that impacts the decrease in sales turnover in the franchise "Ayam Penyet

XXX" until forced to close. Then if referring to the period of the agreement made in article 4 of the period that reads "Franchise agreement is valid for a period of 5 (five) years starting from September 24, 2018 and ending on September 24, 2023", then in terms of the term of the agreement, the franchisee certainly feels harmed because of the non-operation of the business that has not run from May 2020 where the franchisor still wants the agreement to run as agreed together.

However, if the giving party understands this situation, then by written article 12 of the XXX Treaty of Chickens which reads "Anything that has not been clearly regulated in the delivery of this franchise, will be followed later together with consensus by both parties and any changes and additions written on the sound of this agreement. Binding on the parties and the enactment of the terms of such amendments and additions have the same legal consequences as the sound of the previous provisions", then disputes can be avoided. In this case of course the receiving party submits an application for improvement of the agreement to be agreed so that the time of the agreement can be reviewed and other matters that are deemed necessary for mutual agreement to be taken so that the two parties do not feel harmed or in other words obtain a common justice.

3.2. Legal Protection in Franchise Business Agreements Against Franchisees In Case of Covid-19 Pandemic

Article 1313 of the Civil Code initiates the provisions stipulated in the Second Chapter of Book III of the Civil Code stating that: "an agreement is an act by which one or more persons bind themselves to one or more others". The actions mentioned in the initial formulation of article 1313 of the Civil Code explain that an agreement is only possible if there is a real action, either in the form of speech, or physical action and not only in the form of a mind solely so that an agreement is an act that gives birth to an agreement between the promised parties (Raharjo, 2009).

Furthermore, from a regulatory perspective, the legal instrument regarding franchises in Indonesia is currently in force is Government Regulation Number: 42 Year 2007 On Franchising. Other regulatory instruments are regulation of the Minister of Trade of the Republic of Indonesia Number: 12/M-Dag/Per/3/2006 concerning The Terms and Procedures for issuance of franchise registration certificate which was last amended by Regulation of the Minister of Trade of the Republic of Indonesia Number: 53/M-Dag/Per/8/2012.

In addition, specifically concerning food and beverage franchises is stipulated in Regulation of the Minister of Trade Number: 58/M-Dag/Per/9/2014 concerning Amendments to Regulation of the Minister of Trade Number: 07/M-Dag/Per/2013 concerning The Development of Partnerships in Franchises for Types of Food and Beverage Services, and in the agreement in general franchise agreements are subject to book III civil code as a general rule and Government Regulation Number: 42 Year 2007 On Franchising as a special rule.

Under Indonesian law, the agreement is the same as the contract, but in the common law system, the agreement is different from the contract. Agreements have a broader understanding of contracts because they also include public legal relationships whereas contracts only include private legal relationships.

An agreement in a franchise is a special agreement that can be accepted by law by the existence of azas freedom in contracting so that the franchise agreement is made legally and applies as law to those involved in it. In the franchise business, the business continuity of the franchisee depends on the franchisor. The relationship on the basis of the franchisee puts the franchisee in a weak position with the existence of a standard clause that restricts competition

so that the receiving party is prohibited from establishing a business similar to the franchise business that has previously been run for a certain time.

The expected role of the law is the role of the agreement, especially involving unfairness in business practices. But in the practice of franchise agreements, it is not uncommon to contain a standard clause that restricts franchisees whose position is said to be consumers against franchisors. The weak position of the franchisee is seen by the existence of a standard clause that restricts the franchisee by stating that after the expiration of the agreement, the franchisee is limited not to conduct business similar to the franchise business that has previously been run for a certain time. This clause aims to keep the franchisor business running smoothly which in other words so as not to cause new competition with previous franchisees in the field of similar businesses even though cooperation with the franchisee has ended.

Therefore, it is appropriate to include the standard clause in the franchise business agreement between the giving party and the receiving party should ideally pay attention to the provisions as stipulated in Law No. 8 of 1999 concerning Consumer Protection Article 18 Paragraph (1) which states "Businesses in offering goods and/or services intended for trading are prohibited from making or stating standard clauses on any documents and/or agreements if: a) stating the transfer of responsibility of business actors, b) stating that businesses have the right to refuse the handover of goods purchased by consumers, c) states that businesses have the right to refuse the handover of money paid for goods and/or services purchased by consumers, d) declare the granting of power from consumers to businesses either directly or indirectly to take all unilateral actions related to goods purchased by consumers in installments, e) governing the evidentiary of the loss of usefulness of goods or utilization of services purchased by consumers, f) give the right to businesses to reduce the benefits of services or reduce the property of consumers who are the object of buying and selling services, g) declare the submission of consumers to regulations in the form of new rules, additions, follow-up and / or further changes made unilaterally by the businessman in the consumer's time utilizing the services purchased, h) states that the consumer authorizes businesses to charge dependent rights, mortgage rights or collateral rights to goods purchased by consumers in installments (Indonesian Law Number: 8 Year 1999 On Consumer Protection).

Ahmadi Miru revealed that the provisions in the creation of standard clause procedures are intended to put the position of consumers equal to businesses based on the principle of freedom of contract. One of the principles in the Consumer Protection Law that supports the provisions of Article 18 Paragraph (1) is the principle of balance of protection between businesses and consumers that can also be grouped into the principle of justice, given the nature of the balance in question is also justice for the interests of each party (Miru & Yodo, 2015).

This is in accordance with the theory of justice Thomas Hobbes who states that justice is an act can be said to be fair if it has been based on an agreed agreement. Justice or a new sense of justice can be achieved when there is an agreement between the two parties that promises. The agreement here is defined in a broad form not only limited to the agreement of two parties who are holding business contracts, leases and others (Nasution, 2017). According to Tashaekti Fadhila Rahmadany and I Ketut Tjukup suggested that the consequences of the standard clause that restricts franchisees in franchise agreements that are not in accordance with the provisions of Article 18 Paragraph (1) of the Consumer Protection Law and do not adhere to the principle of balance and the principle of justice can be applied to the provisions of Article

18 Paragraph (3) of the Consumer Protection Law that the standard clauses that have been established by businesses in the agreement can be declared null and void.

4 Conclusion

The implementation of the agreement between the giver and the recipient in the franchise business Ayam Penyet XXX has not been fully implemented based on the agreement that has been agreed especially during the covid-19 pandemic. Legal protection of franchisees is very weak in the franchise business agreement "Ayam Penyet XXX" during the covid-19 pandemic as agreed in the agreement listed in Article 4 related to the period and Article 10 related to the expiration of the agreement so as to make the franchise business forced to close without the presence of franchisor parties to help overcome special situations such as the covid-19 pandemic period.

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