

Conception of Franchise Agreement in Protecting the Legal Interests of Parties Based on Indonesian Civil Law

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Abstract

Franchising is an effective way to expand business networks and respond to modern challenges, because the system does not require direct investment, but involves cooperation with other parties. In other words, franchising is a form of partnership based on a mutually beneficial relationship (mutualistic symbiosis) between the franchisor and the franchisee. The success or failure of a business with a franchise system depends entirely on the ability of the franchisee business partner to develop and run the franchise business through the procedures, processes and rules set by the franchisor. In the franchise system, the franchisee is given the right to take advantage of the intellectual property rights and the operating system of the franchisor, whether the use of trademarks, service marks, copyrights on logos, industrial designs, patents or trade secrets. This research is a type of normative legal research. Normative legal research is research whose data comes from secondary data and since this research data is secondary data, it is included in the type of normative legal research. This type of research used in this writing is library research. Library research means research using written documents as data, and data sources used in this study include primary legal materials and secondary legal materials. Based on the research results, it is known that the provisions of Article 1338 of the Civil Code confirm that all agreements made legally are valid as laws for those who make them. An agreement cannot be withdrawn as long as both parties agree or for reasons that are stated by law to be sufficient for that. An agreement must be carried out in good faith. On the basis of the provisions contained in Article 1338 of the Civil Code, it will be known the principles of freedom of contract, namely that every person is free to enter into an agreement or is free to determine the contents of an agreement as long as it does not contradict the law and public order..

Keywords:

Franchise Agreement, Interests of the Parties, Indonesian Civil Law

How to cite:

Pohan, Masitah. (2020). "Conception of Franchise Agreement in Protecting the Legal Interests of Parties Based on Indonesian Civil Law", *IJRS: Internasional Journal Reglement Society* Vol. 1 (2), Pages 103-112.

A. Introduction

Developments in the business world, especially trade, are increasingly dominating and showing rapid progress. In this day and age, trading with the concept of cooperation between traders is widely practiced by people in Indonesia. This activity has spread widely in big cities. This trade cooperation is called a franchise or franchise. The system of cooperation between merchants is considered to be more profitable for both the franchisor and the franchisee. For the franchisor, it becomes an advantage when he can expand the distribution system with a minimum capital, so that he can expand without having to pay a lot of money.

Franchising is an effective way to expand business networks and respond to modern challenges, because the system does not require direct investment, but involves collaboration with other parties. In other words, franchising is a form of partnership based on a mutually beneficial relationship (mutualistic symbiosis) between the franchisor and the franchisee. The success or failure of a business with a franchise system depends entirely on the ability of the franchisee business partner to develop and run the franchise business through the procedures, processes and rules set by the franchisor. In the franchise system, the franchisee is given the right to take advantage of the intellectual property rights and the

operating system of the franchisor, whether the use of trademarks, service marks, copyrights on logos, industrial designs, patents or trade secrets.¹

In a business world that is always moving dynamically, business actors are always looking for new breakthroughs in developing their business. This is increasingly felt in today's global era where the expansion of the business world has penetrated the boundaries of space, time and territory of a country. One of the breakthroughs made by business actors is business development through a franchise system which in Indonesia is termed a franchise. This system for some businesses wishing to develop their business is considered effective and effective in developing a company because it does not require direct investment but involves the cooperation of other parties. The emergence of a franchise business certainly brings a logical consequence to the world of law, an adequate legal institution is needed to regulate the business in a country, in order to create legal certainty and protection for the parties involved in this business.²

The development of the business world does not stop there, entrepreneurs then not only talk about uniformity in the form of licensed Intellectual Property Rights, but also the obligations to comply with and carry out all and every order issued, including the operational implementation system for activities that are granted the license. . For this reason, franchising has begun to be developed as an alternative to business development, especially those carried out internationally. As with licensing, this franchise actually relies on the ability of business partners in developing and carrying out franchise business activities through procedures, processes and rules that have been determined by the franchisor entrepreneur. In this franchise, as a license can be said, as part of the compliance of the business partner with the rules of the game given by the franchisor, the business partner is given the right to take advantage of Intellectual Property Rights and the operating system of the franchisor entrepreneur, both in the form of brand use. trademarks, service marks, copyright on logos, industrial designs, patents in the form of technology, or trade secrets. The franchisor then gets a royalty reward for the use of Intellectual Property Rights and their operating system by the franchisee.³

The franchisor receives royalties on the use of intellectual property rights and the operating system by the franchisee. This means that the franchisee runs his own business by utilizing the methods and procedures or procedures established by the franchisor, which has a further consequence that a business with a franchise system is an independent business that cannot be combined with other business activities, so that franchising must be exclusive, even requiring a non-competition clause for the franchisee until the end of the franchise award. According to Richard Burton Simatupang, franchising is a method of doing business, which is a method for marketing goods or services to the public, namely a marketing system or distribution of goods and services, in which a parent company (franchisor) provides to other individuals or companies. small and medium scale (franchisee), special rights to implement a certain business system in a predetermined manner, for a certain time, in a certain place.⁴

The Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies does not regulate the relationship between the parent company and subsidiary companies, but the Law has used the words parent and subsidiary as contained in Article 84 paragraph (2) letter b which reads “shares the parent company of the limited liability company which is controlled by the subsidiary, directly or indirectly ”. Franchising as a business concept can be grouped into

¹ Norman Syahdar Idrus, “Aspek Hukum Perjanjian Waralaba (*Franchise*) dalam Perspektif Hukum Perdata dan Hukum Islam” *Jurnal Yuridis* 4, No. 1 (2017): p. 29.

² Dwi Atmoko, “Pelaksanaan Perjanjian Serta Perlindungan Hukum Praktek Bisnis Waralaba di Indonesia” *Jurnal Krtha Bhayangkara* 13, No. 1 (2019): p. 45.

³ Dwi Atmoko, “Pelaksanaan Perjanjian Serta Perlindungan Hukum Praktek Bisnis Waralaba di Indonesia” *Jurnal Krtha Bhayangkara* 13, No. 1 (2019): p. 46.

⁴ Norman Syahdar Idrus, “Aspek Hukum Perjanjian Waralaba (*Franchise*) dalam Perspektif Hukum Perdata dan Hukum Islam” *Jurnal Yuridis* 4, No. 1 (2017): p. 29.

microeconomics, because microeconomics studies how the behavior of each individual in each economic unit, which can act as a consumer, worker, investor, owner of land or other resources, or the behavior of an industry. In Islamic microeconomics there is no difference between positive economics and normative economics.⁵

Franchising as a business concept concerning the granting of the use of intellectual property rights and the operational activity system by the franchisor to the franchisee is a legal relationship between the franchisor and the franchisee as regulated in a franchise agreement, which is an agreement that documents the legal relationship of existing obligations between the grantor. franchisees and franchisees. In other words, that the franchise is a legal institution. Referring to franchising as a legal institution, the transactions carried out by the franchisor and the franchisee are based on an agreement, and the object in the franchise agreement is property, which is one of the basic transactions in the Islamic economy, while the objective of the Islamic economy is *mashlahah* (benefit) for mankind".⁶

Regulations for the franchise system in Indonesia are inadequate and if a law on franchising or franchise is to be made, it is hoped that it can provide legal protection to the parties, as well as being used as a reference as a way of resolving disputes that arise between franchisors and franchisees, especially with regard to franchise agreements was agreed upon by them. Franchise law in Indonesia is not the only factor behind this research. However, there are several aspects related to franchising, namely, such as a lack of public knowledge of the object of the franchise. Whereas what has actually been regulated in intellectual property rights or from the point of view of agreement law and more adequate legal protection for the parties, especially franchisees, is actually very weak than the franchisor. The scope of the franchise system is important, because it can protect business actors and also solve problems that arise from the franchise system. Legal certainty in implementing the franchise system in Indonesia is one of the ways to advance the entrepreneurial business is an absolute must, therefore all matters regarding the concept, format, process and franchise products must not escape or be separated from the applicable laws and regulations. in Indonesia. Various issues related to entrepreneurs and companies regarding franchise agreements, franchisors, and royalty fees and others, which are word pairs that are full of academic meanings.⁷

Based on the description above, the focus of the problems to be discussed in this study can be drawn, namely what is the legal position of the franchise agreement in Indonesian civil law? And what is the conception of a franchise agreement that protects the legal interests of the parties according to Indonesian civil law? This research is a type of normative legal research. Normative legal research is research whose data comes from secondary data and since this research data is secondary data, it is included in the type of normative legal research. This type of research used in this writing is library research. Library research means research using written documents as data, and data sources used in this study include primary legal materials and secondary legal materials. Primary legal materials are legal materials that are binding or that make people law-abiding, including legal products that are subject to study and legal products as tools of criticism. Secondary legal materials include explanations of primary legal materials in the form of expert doctrines found in books, journals and websites.⁸

⁵ Adiwarman Karim, *Ekonomi Mikro Islam*, Jakarta : The International Institute of Islamic Thought Indonesia, 2003, hlm.1

⁶ Norman Syahdar Idrus, "Aspek Hukum Perjanjian Waralaba (*Franchise*) dalam Perspektif Hukum Perdata dan Hukum Islam" *Jurnal Yuridis* 4, No. 1 (2017): p. 31.

⁷ Henry D Sitompul, "Perlindungan Hukum Bagi Para Pihak dalam Perjanjian *Franchise*" *Jurnal Mercatoria* 3, No. 2 (2010): p. 147.

⁸ Rahmat Ramadhani, "Jaminan Kepastian Hukum yang Terkandung dalam Sertipikat Hak Atas Tanah" *De Lega Lata: Jurnal Ilmu Hukum* 2, No. 1 (2017): p. 142.

B. Discussion

1. Legal Position of Franchise Agreement in Indonesian Civil Law

In practice, besides the term agreement, another term is also known, namely the term agreement. However, in discussing the franchise business system, researchers use the term agreement, because in addition, the term agreement is commonly used in society. The term of the agreement includes a clearer and more precise meaning when compared to the term agreement. According to R Subekti, the problem associated with this agreement in the Civil Code is regulated in Book III, which regulates the open system and the principle of freedom of contract. This means that the Civil Code gives freedom to the parties holding the agreement to determine the contents of the agreement on the condition that it does not contradict decency and public order, while the articles in the Civil Code are only complementary laws. This means that if the parties have regulated themselves in the agreement, the articles in the Civil Code can be set aside, but on the other hand, if the parties have not regulated in the agreement, the provisions contained in the Civil Code will apply.⁹

The provisions of Article 1338 of the Civil Code confirm that all agreements made legally are valid as law for those who make them. An agreement cannot be withdrawn as long as both parties agree or for reasons that are stated by law to be sufficient for that. An agreement must be carried out in good faith. On the basis of the provisions contained in Article 1338 of the Civil Code, it will be known the principles of freedom of contract, namely that every person is free to enter into an agreement or is free to determine the contents of an agreement as long as it does not contradict the law and public order.

A franchise agreement is an agreement that the franchisor holds with the franchisee, the franchisor grants the franchisee the right to produce or market goods (products) and / or services (services) within a certain time and place agreed by the franchisor, while the franchisee pays a certain amount of money to the franchisor for the rights he has acquired. . By taking into account the definition of the franchisee agreement as referred to above, several elements of the franchise agreement can be seen, namely:¹⁰

- a. There is an agreement agreed. Franchise agreement is made by the parties, namely the franchisor and franchisee, both of whom are qualified as legal subjects, either as legal entities or only as individuals;
- b. The existence of granting rights from the franchisor to the franchisee to produce or market goods and or services. With this franchise agreement, the right to use the franchise system is granted. Granting rights under the franchise name from the franchisor to this franchisee, then the rights given need to be regulated in the franchise agreement.
- c. Granting of these rights is limited to a certain time and place. In this case the franchisor gives the franchisee the right to use the name, trade mark and logo of his business to the franchisee limited to the place and time that has been agreed in the franchise agreement.
- d. There is payment of a certain amount of money from the franchisee to the franchisor. Some financial compensation must be submitted by the franchisee to the franchisor so that the relationship can be a franchise relationship. Although it is not absolutely a payment of money. Such compensation is usually included in the categories initial money, royalties and other money of an occasional or recurring nature.

The Civil Code does not place a franchise agreement as a direct agreement, such as buying and selling, leasing, and so on. Therefore, the provisions of the agreement law that apply to a franchise

⁹ Henry D Sitompul, "Perlindungan Hukum Bagi Para Pihak dalam Perjanjian *Franchise*" Jurnal Mercatoria 3, No. 2 (2010): p. 147.

¹⁰ Henry D Sitompul, "Perlindungan Hukum Bagi Para Pihak dalam Perjanjian *Franchise*" Jurnal Mercatoria 3, No. 2 (2010): p. 148.

contract are generally only the provisions in the general section of the agreement, namely those contained in Article 1233-1456 of the Civil Code, for example the validity of the provisions regarding the validity of the agreement, regarding the termination of the agreement etc. The terms and process for binding a franchise agreement are as follows:

- a. The terms of the franchise agreement The terms for the appointment of the franchise agreement are actually not much different from the terms of the agreement in general, which are those mentioned in Article 1320 of the Civil Code.
- b. Initially, the franchise agreement binding process starts with the success of the franchisor's business, through the franchise business format, the franchisor seeks to transmit the success of his business to the franchisee. Previously, the franchisor has done and made a standard formulation for success in accordance with his experience. This process is done through research and concept development, promotion, marketing activities, and building a good reputation and a known image.

Other regulations related to franchising are also carried out based on Article 1338 paragraph (1) of the Civil Code or what is known as the principle of freedom of contract and Article 1338 paragraph (3) known as the principle of good faith, Article 1338 is:¹¹

- a. All agreements made legally are valid as laws for those who make them.
- b. An agreement cannot be withdrawn other than by agreeing the two parties or for reasons which are stated by law to be sufficient for that.
- c. An agreement must be carried out in good faith.

From the provisions of the Article above, it can be explained that the will of the parties which is embodied in the agreement is the basis for binding an agreement in contract law. The will can be expressed in various ways, both verbally and in writing and binds the parties with all the legal consequences. Furthermore, in paragraph (3) of Article 1338 of the Civil Code, as mentioned above, each agreement must be made in good faith, thus in exercising its rights a franchisee and franchisor as the parties making the agreement must pay attention to the good faith between the two. parties as one of the important principles that must be done.¹²

The validity period of the franchise agreement is the length of time the franchisee uses the franchise system. The franchise agreement does not give the franchisee the right to use the franchise system and trademark continuously. The term of the franchise agreement for the time being in Indonesia is between 5 and 10 years with the possibility of extension. However, in practice the franchisor can cancel the agreement early if the franchise cannot fulfill its obligations. With the provisions of the agreement validity period with an agreement to extend or renew the agreement, the franchisor and franchisee feel safer.

Based on the Government Regulation of the Republic of Indonesia Number 16 of 1997 Article 1 number 1 states that Franchising is an agreement in which one party is given the right to utilize and or use intellectual property rights or inventions or business characteristics owned by other parties for a fee based on stipulated conditions. the other party, in the context of providing and or selling goods and or services. The provisions of Article 2 of Government Regulation of the Republic of Indonesia Number 16 of 1997 confirm that franchising is carried out based on a written agreement between the franchisor and the franchisee, provided that the franchise agreement is made in Indonesian and Indonesian law applies to it. This provision has the result that the parties to a franchise agreement are not allowed to

¹¹ Christie Pertiwi Mopeng, "Asas Kebebasan Berkontrak Terhadap Perjanjian Franchise di Indonesia" *Lex Administratum* 2, No. 3 (2014): p. 158.

¹² Christie Pertiwi Mopeng, "Asas Kebebasan Berkontrak Terhadap Perjanjian Franchise di Indonesia" *Lex Administratum* 2, No. 3 (2014): p. 158.

make legal choices. This formulation is a coercive provision and must be obeyed by the franchisor and franchisee.

Based on Article 3 of the Franchise Law states that before making an agreement, the Franchisor is obliged to convey a written and correct statement to the Franchisee at least regarding:

- a. Franchisor, along with a description of its business activities;
- b. Intellectual property rights or inventions or business characteristics that are the object of the Franchise;
- c. Requirements that must be met by the Franchisee;
- d. Assistance or facilities offered by the Franchisor to the Franchisee;
- e. Rights and obligations of the Franchisor and Recipient;
- f. Termination, cancellation and extension of the Franchise agreement as well as other things that the Franchisee should know in the framework of implementing the Franchise agreement.

In a franchise contract, there are subjects and objects. The legal subjects in the franchise agreement are franchisors and franchisees; Franchisors are companies that give licenses, whether in the form of patents, trade marks, service marks or others to franchisees, while franchisees are companies that receive licenses from franchisors. And the object of the franchise is a license, which is a license given by the franchisor to the franchisee. Following are the rights and obligations of the franchisor, the obligation of the franchisor is to submit the license to the franchisee, while the rights of the franchisor are:¹³

- a. Trademark logos (trade-mark), trade name, and good name (goodwill).
- b. Business format or pattern
- c. In certain cases in the form of formulas, recipes, designs, and special programs
- d. Copyright for part of the above is in written form and protected in the form of copyright law.

Meanwhile, the rights and obligations of the franchisee are to receive a license, while the obligation is to pay royalties to the franchisor and maintain the quality of the goods and services being franchised.

2. Conception of Franchise Agreement Protecting the Legal Interests of Parties according to Indonesian Civil Law

As a social regulation in economic life, the presence of the franchise business has created problems in the legal field. This is as a result of the relationships in the franchise system which are built on the basis of a contractual relationship, which is known as a franchise contract. The franchise contract is a legal guideline that outlines the responsibilities of the franchise owner or the franchisor and the franchisee called the franchisee. Each franchisor generally has a standard contract that is offered to prospective franchisees to be agreed upon, where the form of the contract that has been made by the franchisor is compiled by its legal experts so that the substance is mostly beneficial to the franchisor or at least it does not harm and can protect it.

A franchise agreement is a form of agreement which gives special rights and authority to the franchisee, to sell products in the form of goods and / or services using certain trade names or trademarks and conduct business activities based on a business format determined by the franchisor. . The franchise agreement contains the following:¹⁴

¹³ Nila Trisna, "Tinjauan Yuridis Terhadap Kedudukan Franchisee dalam Perjanjian Franchise (Waralaba)" Ius Civile 2, No. 1 (2018): p. 18.

¹⁴ Zil Aidi dan Hasna Farida, "Perlindungan Hukum Para Pihak Dalam Perjanjian Waralaba Makanan" *Jurnal Cendikia Hukum* 4, No. 2 (2019): p. 214.

- a. Rights which include the use of special methods or recipes, use of brands, trade names, periods, extensions and areas of activity and other rights granted by the franchisor to the franchisee;
- b. Rewards given by the franchisee for the rights received from the franchisor when the business starts to run;
- c. The arrangements that must be agreed upon in advance are related to the sale of the franchisee's rights to another party. In the event that the franchisee does not want to continue the franchise business and plans to sell it to another party;
- d. Provisions related to termination of franchise cooperation

The franchise agreement is one of the important aspects of a franchise, because that is where the legal protection for the parties will be regulated. Legal protection for parties is important in order to protect them from actions that harm other parties and provide legal protection for intellectual property rights. Franchise agreements provide assurance that someone will get their rights and obligations, so that the parties feel safe.¹⁵

Furthermore, talking about legal protection, legal protection that can be done to the parties, namely the subject of the franchisee and franchisor, namely preventive and repressive legal protection. Preventive legal protection aims to prevent the occurrence of a dispute that is carried out by both parties of the franchise business and provides signs or restrictions in carrying out obligations in the franchise. Meanwhile, repressive legal protection focuses on dispute resolution mechanisms in case of problems in the future. This legal protection is the final legal protection where the protection provided is in the form of sanctions such as fines, imprisonment, and additional penalties that are given when a dispute or an offense has been committed.¹⁶

Often the implementation of the agreement disputes due to the different interpretations and understanding between the two parties regarding the contents of the agreement. If this happens, the Civil Code provides several solutions that can be used to solve it, namely through Articles 1339 and 1347. As for the legal protection that can be provided to franchisees, namely in the form of:¹⁷

- a. Preventive legal protection, which can be carried out by:
 - 1) Government, through the laws and regulations issued. With the issuance of PP No. 16/1997 along with Kepmenperindag No. 259 / MPP / Kep / 1997, franchise businesses in Indonesia have received special arrangements. So that with the issuance of this regulation, the franchise business gets legal protection in the conduct of its business. Legal protection by the government as outlined in the articles of Government Regulation Number 16 of 1997 along with the Minister of Industry and Trade Decree Number 259 / MPP / Kep / 7/1997 has:
 - a) Arrangements for the form of a franchise agreement must be written in Indonesian and Indonesian law applies to it.
 - b) Requirements for a disclosure document before making an agreement, the franchisor has the obligation to submit a written and complete statement to the franchisee about the company in an honest and open manner so that it can be known by the franchisee. An explanatory document containing information is called a disclosure document.

¹⁵ Zil Aidi dan Hasna Farida, "Perlindungan Hukum Para Pihak Dalam Perjanjian Waralaba Makanan" *Jurnal Cendikia Hukum* 4, No. 2 (2019): p. 214

¹⁶ Zil Aidi dan Hasna Farida, "Perlindungan Hukum Para Pihak Dalam Perjanjian Waralaba Makanan" *Jurnal Cendikia Hukum* 4, No. 2 (2019): p. 214

¹⁷ Henry D Sitompul, "Perlindungan Hukum Bagi Para Pihak dalam Perjanjian *Franchise*" *Jurnal Mercatoria* 3, No. 2 (2010): p. 158.

- c) The minimum requirements for the contents of the franchise agreement in an effort to provide legal protection for franchisees who generally have a weak position / position compared to government franchisors provide some sort of guide lines in making franchise agreements, which are regulated in Article 7 paragraph (1) Kepmenperindag Number 259 / MPP / kep / 7/1997, that the franchise agreement between the franchisor and the franchisee contains at least 12 clauses. However, in accordance with the principle of freedom of contract, each party is free to make an agreement with the terms and conditions they agree on. With the guide lines provided by the government, it is hoped that neither party will be disadvantaged or forced. Furthermore, the Minister of Industry and Trade or other appointed officials can provide recommendations on the improvement of the franchise agreement to protect the interests of the franchisees as regulated in Article 10 Kepmenperindag Number 259 / MPP / Kep / 7/1997.
- d) Regulations regarding the term of the agreement in Article 8 Kepmenperindag Number 259 / MPP / Kep / 7/1997, it is determined that the term of the franchise agreement is valid for at least 5 (five) years. The validity period of the franchise agreement is the length of time the franchisee can use the brand and system that is franchised. Granting a franchise, does not give the franchisee the right to use the brand and the franchise business system continuously. In practice, the term of the franchise agreement ranges from 5 (five) to 10 (ten) years with the possibility of extension. With this provision, it is hoped that both parties to the agreement will feel safe (protected).
- e) Regulations regarding registration Prior to the existence of Government Regulation Number 16 of 1997 and Kepmenperindag Number 259 / MPP / Kep / 7/1997, there was no regulation requiring a franchisor or franchisee to register a franchise agreement made with a particular agency or department. As part of the supervision carried out by the government on the operation of a franchise business in Indonesia, Article 7 paragraph 1 PP Number 16 of 1997 in conjunction with Article 11 paragraph (1) Kepmenperindag Number 259 / MPP / Kep / 7/1997, requires that the franchise agreement along with a written statement as referred to in Article 3 paragraph (1) must be registered at the Ministry of Industry and Trade by the franchisee no later than 30 (thirty days) as from the effective date of the franchise agreement.
- f) Arrangements regarding business location. Franchise agreements can be made as an exclusive agreement and a non-exclusive agreement. What is meant by an exclusive agreement is that in an agreement it is determined that for a certain area there is only 1 (one) franchisee. Non-exclusive agreement is that in a certain area there can be several franchisees provided there is coordination, especially regarding the marketing area.
- g) g) Regulations regarding the legality of Franchisors from abroad must have proof of legality from the authorized agency in the country of origin, known as representative officials in the country of origin and local representative officials of the Republic of Indonesia (Article 9 paragraph (1) Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 259 / MPP / Kep / 7/1997). The purpose of this provision is to protect local franchisees by attracting franchise businesses to Indonesia, so it is hoped that only foreign franchises that are well-known in the country of origin can enter Indonesia.

- h) h) Arrangements regarding coaching and training. One of the characteristics of a franchise business is a system and business process that can be well described and has a homogeneous product with consistently good quality. To be able to do so, a trained workforce is needed. Trained personnel can only be formed through coaching and training. In Article 7 paragraph 1 Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 259 / MPP / Kep / 7/1997 there is an obligation for the franchisor to guide and provide training to franchisees. The purpose of this provision is to achieve the goal of technology transfer for skilled workers.

b. Repressive Legal Protection

This expressive legal protection is needed in the event of a dispute or dispute between the franchisor and the franchisee. Given the possibility of a dispute, usually in the agreement the procedure for dispute resolution is stated. As stipulated in Government Regulation Number 16 of 1997 that the method of dispute resolution is one of the contents of a written statement (disclosure document) provided to the franchisee, is also one of the clauses in the franchise agreement, and is required in the event of a dispute between the franchisor and the franchisee, the settlement of the dispute uses law. Indonesia. In practice, when a dispute occurs in a franchise agreement, the parties usually prefer to settle it through an arbitration institution rather than through a general court institution. This is because business people consider that dispute resolution through the public court is too convoluted and takes a lot of time. Thus, in order to guarantee legal certainty in the franchise business in Indonesia, a law is needed that specifically regulates franchise issues in detail so that it is expected to be the basis for dispute resolution.

C. Conclusion

The provisions of Article 1338 of the Civil Code confirm that all agreements made legally are valid as law for those who make them. An agreement cannot be withdrawn as long as both parties agree or for reasons that are stated by law to be sufficient for that. An agreement must be carried out in good faith. On the basis of the provisions contained in Article 1338 of the Civil Code, it will be known the principles of freedom of contract, namely that every person is free to enter into an agreement or is free to determine the contents of an agreement as long as it does not contradict the law and public order.

Furthermore, talking about legal protection, legal protection that can be done to the parties, namely the subject of the franchisee and franchisor, namely preventive and repressive legal protection. Preventive legal protection aims to prevent the occurrence of a dispute that is carried out by both parties of the franchise business and provides signs or restrictions in carrying out obligations in the franchise. Meanwhile, repressive legal protection focuses on dispute resolution mechanisms in case of problems in the future. This legal protection is the final legal protection where the protection provided is in the form of sanctions such as fines, imprisonment, and additional penalties that are given when a dispute or an offense has been committed.

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