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LEGAL PROTECTION OF FRANCHISES AND FRANCHISES IN THE PERSPECTIVE OF LAW NO. 19 OF 2002 CONCERNING COPYRIGHT

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ABSTRACT

Franchise is a form of business that is growing and popular in today's business world. However, this business also requires strong legal protection, especially regarding copyright. This study aims to analyze the legal protection of franchisors and franchisees from a copyright perspective. The research method used is an inductive qualitative method. The results of the study show that legal protection for franchisors and franchisees from a copyright perspective is very important to prevent copyright infringement and ensure business continuity. In the perspective of Indonesian law, the Copyright Law provides strong legal protection for franchisors and franchisees. However, there are still challenges and problems in implementing this legal protection, such as a lack of awareness and understanding of copyright. Therefore, more serious efforts are needed from related parties, such as business owners, government and related institutions, to increase awareness and understanding of legal protection of franchising and franchisees from a copyright perspective.

Keywords: Franchise; Franchising; Copyright

INTRODUCTION

One of the implications of the development of information technology that is currently an important concern is its influence on the existence of Intellectual Property Rights (IPR). Intellectual Property Rights is a part of the law that is closely related to the protection of creative businesses and economic investment in creative businesses. Intellectual Property Rights do play an important role in modern world life where there are legal aspects that are closely related to technological aspects, economic aspects, and cultural arts.

The copyright holder is the creator as the copyright owner, or the party who receives the right from the creator or another party who further receives the rights from the party who receives the right. If a creation is designed by someone, but is realized and worked on by someone else, but still under the leadership and supervision of its designer, then the creator is the person who designed the creation.

There are many efforts from irresponsible parties in carrying out their wishes, one of which is like the case that the author experienced, where a portrait of the results of making a profile intended for promotion for the benefit of model management as a copyright holder who is free to promote in various media, taken without permission and knowledge by the perpetrator of the violation. This is certainly detrimental to copyright holders.

The system that is popular and tends to be in demand by entrepreneurs is how to do business using the franchise system or better known as franchising. The franchise system as a business partnership development model has proven its existence in the national economy because it offers a myriad of enormous opportunities to prospective entrepreneurs to own and develop their businesses with a high success ratio. Legal certainty in implementing a franchise system in Indonesia as one way to advance an entrepreneur's business is absolute, therefore everything about the concept, format, process and franchise product must not escape or be separated from the rules and laws in force in Indonesia.

Based on the description above, the author is interested in studying Legal Protection of Franchises and Franchises in the Perspective of Trademark Copyright. Based on this background description, the formulation of problems that become the main study in this study, namely:

1. What is Franchising or Franchising in a Copyright Perspective?
2. What is the Role and Importance of Copyright in Franchise Protection?
3. What is the Legal Protection for franchises in Indonesia?

RESEARCH METHODS

The type of research method used to create this journal is an inductive qualitative method. Making this journal uses qualitative methods that are inductive because the process is carried out by collecting as much data as possible. Data analysis is carried out inductively which process takes place from facts to theory. To draw conclusions in general, based on various specific scenarios.

DISCUSSION

Understanding and Characteristics of Franchise or Franchise in Copyright Perspective

The law governing copyright in Indonesia is Law Number 19 of 2002 concerning Copyright. This law applies to the protection of copyright and related rights in Indonesia, and regulates various aspects related to copyright, including the definition of copyright, object of copyright, rights granted, use of works, copyright licenses, law enforcement, and protection of related rights. Copyright is the exclusive right for the Creator or Copyright Holder to announce or reproduce his Work, which arises automatically after a work is born without prejudice to

restrictions under applicable laws and regulations. (LAW OF THE REPUBLIC OF INDONESIA NUMBER 19 OF 2002 CONCERNING COPYRIGHT ARTICLE 2 PARAGRAPH 1).

In a business context, copyright can be part of a franchise, where the franchisor can include their copyright as part of a franchise package sold to another party. Franchising is usually related to the copyright of the trademark, logo, design, or product produced. This allows the franchisor to give permission to the party buying the franchise to use the copyrighted work as part of their business.

Franchising or in other words Franchising in a foreign language. Franchising according to the Indonesian National Encyclopedia (ENI) is a form of sales cooperation between ballot owners and ballot buyers on the basis of contracts and kingliness payments. This cooperation covers the right of use for ballot holders who master the brand, ideas, processes, formulas, or special tools of their creation to the ballot buyer accompanied by technical support in the form of management. (Syahmin AK, Jakarta International Contract Law Raja Grafindo persada, 2006, pp.207-208).

In Indonesia, the regulation on franchising is regulated in Law Number 7 of 2014 concerning Trade. This law regulates licensing and conditions that must be fulfilled by parties who will carry out franchise business activities in Indonesia. In addition, there is Government Regulation Number 42 of 2007 concerning Franchising which discusses matters related to franchising such as definitions, requirements, business licenses, rights and obligations of franchisees, and so on. Franchising is the specific right of a person or entity in a business system of a commercial nature to market goods or services that have been proven successful and used and can be used by other parties based on the franchise. (Government Regulation (PP) No. 42 Year 2007 concerning Franchise Agreement I CHAPTER 1 General Article).

In Government Regulation (PP) Number 42 of 2007 also regulates the parties involved in the franchise business. A franchisor is a person, individual or company that entitles the franchisee to use the franchise contract to which it belongs. A Franchisee is an individual or business that has been granted rights by the Franchisor to own and enjoy a Franchise owned by the Franchisor. The minister is the party that carries out government duties in the field of trade.

In the regulation of the Minister of Trade No. 12 of 2006, Franchising is a partnership between the franchisor and the franchisee in which the franchisee is given the right to conduct business by utilizing and/or using intellectual property rights or inventions or commercial features of the franchisee under conditions set by the franchisor. several commitments for ongoing operational advisory support from franchisor to franchisee (Regulation of the Minister of Trade of the Republic of Indonesia No. 12 of 2006 concerning Terms and Procedures for Issuance of Franchise Business Registration Certificate. In Chapter I Article I General Provisions).

According to Law No. 20 of 2008 concerning MSMEs, franchising is a system of cooperation between two or more parties that continuously and planned to use rights to a trademark, trade name, product, service, and/or other intellectual property rights registered for a copyright, patent, trademark, industrial design right, or copyright in running a business. In

general, franchising is a form of business cooperation between two or more parties that regularly and continuously uses a marketing, processing, and management system that has been tested and owned by the franchisor to market goods and services through a certain system in a way that has been determined and regulated by the franchisor to the franchisee with certain rewards.

The Role and Importance of Copyright in Franchise Protection or Franchise

Copyright holders give permission to other parties to use their copyright to develop the same or similar business as their own, with mutually agreed terms and conditions. In a franchise contract, it is usually regulated about the rights and obligations of the brand owner and the franchisee in using the copyright. The brand owner has the right to restrict the use of his copyright by the franchisee, so the franchisee is not allowed to use the copyright outside the agreed business context. In addition, the franchise contract also regulates the duration of copyright use, restrictions on the area of copyright use, and the obligation of the franchisee to pay royalties to the brand owner as compensation for the use of the copyright. This aims to protect the copyright of the brand owner from misuse or copyright infringement by the franchisee.

A franchise business contract here is a type of contract that includes an anonymous contract (innominate), which is a contractual agreement that is born, grows, lives and develops in the practice of human life. These anonymous contracts are contracts that are not specifically regulated. The existence of an anonymous contract is permissible in society as long as it does not contradict law, public order, and decency.

The drafting of contracts in practice is based on the principle of contractual freedom. The Franchise Business Agreement is executed by both parties. In making a contract or agreement, there are legal conditions for a contract in Article 1320 of the Civil Code which basically regulates the agreement of the parties, the professional qualifications of the parties, certain subjects and legal basis. (Ahmadi Miru, 2011, Contract Law and Contract Drafting, Rajawali Pers, Jakarta, p. 148)

Copyright infringement can occur in various types of works, including in the context of franchising. Copyright infringement in a franchise can occur when someone uses another party's trademark, logo, or business system without permission or license from the copyright owner. For example, copyright infringement can occur when someone opens a franchise business using trademarks and logos that are similar or the same as those of another franchise company, or when someone uses the same business system or franchise operating model without permission from the copyright owner.

Copyright infringement in the context of franchising can harm copyright owners, both financially and reputationally. In addition, copyright infringement can also harm legitimate franchise business owners, as it can lower the value of their trademark and affect customer trust.

From the example of copyright infringement cases, it proves that copyright is very important. Copyright has an important role in franchise protection because franchising involves the use of trademarks, product designs, advertising materials, and confidential information protected by copyright. By owning the copyright to these intellectual assets, franchisors can protect their brands and products from unauthorized use by others. In addition, the franchisor can

also avoid disputes with other parties who claim to have rights to trademarks and other intellectual assets related to the franchise business. In some cases, the franchisor may be held liable for copyright infringement committed by the franchisee, so it is important for the franchisor to have full control over the use of trademarks and other intellectual assets.

It is important to note that copyright not only protects trademarks and product designs, but also protects confidential information such as formulas, production processes, and technology used by franchise businesses. In many cases, this information is a competitive advantage of the franchise business and is critical to protecting it from unauthorized use by others.

In conclusion, copyright plays a very important role in franchise protection. By owning copyrights to trademarks, product designs, advertising materials, and confidential information, franchisors can protect their brands and products from unauthorized use by others, avoid disputes with others, and maintain their competitive advantage in the marketplace.

Legal Protection of Franchises in Indonesia

There are several parties involved in the franchise business, namely franchisees and franchisees. These two parties have previously entered into an agreement in organizing and running a franchise company. In the agreement must meet an agreement that can be accepted by both parties. In Law No.19 of 2002 in article 3 paragraph 2 makes the agreement an object of copyright.

In addition, in Indonesia there are also several institutions tasked with providing support and protection for franchisees, such as the Indonesian Franchise and License Association (WALI) and the Business Competition Supervisory Commission (KPPU). With the existence of the Franchise Law and supporting institutions, it is hoped that the franchise business in Indonesia can run fairly and transparently for all parties involved.

In the franchise agreement there are rights and obligations that must be accepted by the parties concerned. The rights received by the franchisee are royalty fees or payment of money for the business rights carried out. **Royalty** fee here is a fee that must be paid within a certain period of time that has been determined after the *franchise business* is running. [https://www.jurnal.id/id/blog/2018-cara-menentukan-franchise-fee-dan-royalty-fee-pada-bisnis-franchise/#Apa itu Franchise Fee dan Royalty Fee](https://www.jurnal.id/id/blog/2018-cara-menentukan-franchise-fee-dan-royalty-fee-pada-bisnis-franchise/#Apa%20itu%20Franchise%20Fee%20dan%20Royalty%20Fee)). The royalty calculation between the trademark owner and the franchisee is 5% of net sales, and the franchisee generates net sales of Rp 100 million in one month, then the royalty that the franchisee must pay to the trademark owner is Rp 5 million. In addition, there is also a royalty calculation based on units sold or products sold, and there can also be additional costs such as marketing and training costs. However, this calculation will be adjusted according to the agreement between the trademark owner and the franchisee.

As a franchisor, the franchisor has an obligation to ensure the success and sustainability of his franchise business. Obligations to be fulfilled by the franchisor:

1. Provide training
2. Provide support
3. Provide guidance

4. Safeguarding the trademark
5. Apply consistent standards
6. Monitor compliance

These obligations must be fulfilled by the franchisor to ensure that the franchise business opened by other parties can run successfully and continue to grow. However, it does not rule out the possibility of misappropriation of the agreed rights and obligations. This matter will end in the payment of damages.

Based on Law No.19 of 2002. Article 72 explains the penalties that franchisors will receive for infringing copyright:

1. Whoever intentionally and unlawfully commits an act as referred to in Article 2 paragraph 1 or Article 49 paragraphs 1 and 2 shall be punished with a minimum imprisonment of 1 (one) month and/or a maximum fine of Rp1,000,000.00. (one million rupiah) or a maximum imprisonment of 7 (seven) years and/or a maximum fine of 5 billion
2. Whoever knowingly transmits to the public, presents, distributes or sells a work or item created in violation of copyright or related rights under paragraph 1, shall be punished with imprisonment for not more than five years and/or a fine of not more to. IDR 500,000,000.00 (five hundred million rupiah).
3. Any person who intentionally and without rights reproduces the use of computer programs for commercial purposes shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp500,000,000.00 (five hundred million rupiah).
4. Whoever intentionally violates Article 17 shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp1,000,000,000.00 (One Billion Rupiah).
5. Whoever intentionally violates Article 19, Article 20 or Article 49 paragraph 3, shall be punished with a maximum imprisonment of 2 (two) years and/or a maximum fine of Rp. 150,000,000.00 (one hundred fifty million).
6. Whoever intentionally and unlawfully violates Article 24 or Article 55 shall be punished with a maximum imprisonment of 2 (two) years and/or a maximum fine of Rp150,000,000.00. (one hundred and fifty million rupiah).
7. Whoever intentionally and unjustifiably violates Article 25 shall be punished with a maximum imprisonment of 2 (two) years and/or a maximum fine of Rp. 150,000,000.00. (one hundred and fifty million rupiah).
8. Whoever intentionally and unlawfully violates Article 27 shall be punished with imprisonment for a maximum of 2 (two) years and/or a maximum fine of Rp. 150,000,000.00 (one hundred fifty million rupiah).
9. Anyone who intentionally violates Article 28 shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp1,500,000,000.00 (one billion five hundred million rupiah).

If the franchisors infringe copyright, there will be serious legal consequences. If the franchisee uses a trademark or trade secret without the franchisor's permission or consent, then the franchisor may file a lawsuit against the franchisee. Conversely, if the franchisor misuses copyright by granting an unauthorized franchise license or infringing the copyright of another party, then the franchisor may be subject to legal sanctions.

Then what steps must be taken to strengthen the protection of franchisors so that they are safe to develop business in Indonesia. The franchisor can have a significant impact on the Indonesian economy. So that legal protection efforts against the franchisor must be carried out by all parties.

a. Government steps to improve legal protection for franchisors

- Encouraging national companies (SOEs, BUMDs, private companies, and cooperatives) that meet the requirements of the Franchise Index as local and bona fide franchisors are encouraged. (Karamoy, "Franchising and Exploitation of National Production", p. 6)
- Establish an office as a franchise development center in charge of organizing activities that must be followed by its members.
- Protection and promotion of potential and export-oriented local companies Facilitate and make policies for the development and utilization of domestic production in a cross-sectoral manner that does not conflict with policies in the WTO.

b. The association's steps in improving legal protection for franchisors

Increase its role and function in forming a code of ethics that becomes a norm and reference for its members in order to avoid monopolistic practices, besides that the association must be a good partner with the government and entrepreneurs in order to encourage the growth and development of the local franchise industry in the face of the free trade era.

c. The franchisor's steps in improving legal protection for his business

For Franshisors before entering into a franchise agreement, they should be even more careful. The franchisee should ask for the draft agreement to be carefully studied. Franchisees are advised not to prepare the place of business first so that if the agreement is canceled it does not suffer losses. The franchisee may also not pay a fee to the franchisor before the agreement is concluded.

d. Steps taken in improving legal protection of franchises in the perspective of copyright in Indonesia

Increase public and related parties' awareness of the importance of copyright in franchising business, increase supervision of unauthorized franchise business practices, and improve the effectiveness of copyright-related dispute resolution mechanisms in franchise business.

e. Steps taken in improving legal protection of franchises in the perspective of brand rights in Indonesia

- Register a franchise business brand that has been created

- Monitoring the use of the mark by other parties. This is done in order to avoid misuse of the brand by other parties
- Conduct law enforcement for parties who abuse and violate the brand rights owned by franchise businesses

CONCLUSION

Franchising and franchising are forms of business in which the business owner grants rights to other parties to use his trademarks, products, and business systems. In general, these two terms have the same meaning and are often used interchangeably. Franchising and franchising is a form of business in which the owner of a brand or business concept grants rights to other parties to use his trademarks, products, and business systems by paying fees or royalties. Both of these terms allow the acquiring party the right to run their own business with the support and guidance of the owner of that brand or business concept.

The role and importance of copyright in franchise protection or franchising is very large. This right protects intellectual property and business assets, and helps prevent copyright infringement that can harm business owners. In a franchise, copyright is important in protecting creative works such as logo designs, brochures, and other marketing materials used in the franchise. With strong copyrights, business owners can prevent the use of such works by unauthorized parties.

In a franchise business, copyright infringement can cause substantial financial losses, damage brand reputation or business concepts, and potentially cause serious legal problems. Therefore, protecting copyright is very important to ensure the success and sustainability of the franchise business. Copyright and trademark rights infringement in a franchise business can have serious legal consequences, such as:

1. Civil Claims
2. Criminal Prosecution.
3. Cancellation of Franchise Agreement.
4. Reputational Damage:

Therefore, it is very important for franchise business owners to ensure that copyright and brand rights are legally protected. In addition, every violation must be followed up firmly to prevent future violations and maintain the reputation of the franchise business.

SUGGESTION

Based on the discussion described above, suggestions can be proposed:

For each person/prospective franchisee who wants a franchise agreement, it must contain a written agreement that represents the balanced interests between the franchiser and the franchisee must have good faith in implementing the agreement. Prospective franchisees must understand and understand the contents of the franchise agreement so that there is no misunderstanding between the franchisor and the franchisee after the franchise agreement is terminated, which

under certain conditions does not include things that are general to the franchisee. However, it should also be more detailed for a particular environment. For example, the parties are obliged to maintain confidentiality about the extent of measures taken to maintain the confidentiality of the franchise.

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