



Franchise Dispute Resolution Through International Arbitration

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Abstract. Franchising is a method of product and service distribution that allows an independent business owner (the franchisee) to purchase the right to market goods and services under a parent company's brand name and to use the franchisor's operational network of outlets. The concept of resolution of franchise dispute is very urgent to be scientifically researched and analyzed considering that many business actors lack the knowledge of business dispute resolution through arbitration. The Law of the Republic of Indonesia Number 30 of 1999 about Arbitration and Alternative Dispute Resolution contains regulations governing arbitration. Though some of its provisions are outdated and out of step with Indonesia's corporate growth, the aforementioned law has not been reconstructed as of yet. The issues studied in this research include: (i) How is the legal relationship between a franchisor and a franchisee and (ii) How are the disputes of franchise business resolved through international arbitration? The research uses the method of normative research. The type of the data used is secondary data – data that originate from library research, that is to say, data collected not directly from the first source but from data that have been documented in the form of legal materials. Once collected, these data were analyzed using descriptive and argumentative techniques. This research finally reveals the legal relationship between franchisors and franchisees and how franchise business disputes are resolved through international arbitration.

Keywords: Franchise Dispute, International Arbitration, Franchise Legal Relationship

1 Introduction

In a contractual business relationship, franchising involves the franchisor granting the franchisee the right to sell specific goods or services within a given territory and time frame, or granting the franchisee the use of the franchisor's trade names, trademarks, goods, or services. The franchisee also uses the franchisor's knowledge and experience to develop profitable businesses, services, or methods of conducting business.

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A franchisee pays the franchisor a certain initial fee to obtain franchising rights and to use a promising business management system. The franchisee also settles a certain amount of money as a percentage of the actual sale of a product or service.

Through franchising, an independent business owner (the franchisee) can purchase the right to sell goods and services under a parent company's brand name and use its operational procedures. A franchisor is a company that runs a network of outlets. A franchisee is an independent business owner who buys the right to utilize a parent company's brand name and operating methods in order to sell goods and services. A corporation that operates a network of stores is known as a franchisor. Moreover, there are disputes that are cross-border Hendra (2012).

If both parties to the disagreement are not focused on finding a win-win solution, but rather a win-lose one, then going to court to resolve issues, including franchise conflicts, is typically a possibility. Because of this, the dispute resolution procedure drags on for a while, causing uncertainty for the parties or the company. Such commercial disagreements are regarded as being overly formalistic, complicated, unresponsive, and expensive compared to their resolution, which is also deemed ineffectual and inefficient. Future relations between the two parties may be strained by a court ruling that is a win-lose situation. As a result, because it does not meet the needs of the corporate world's development, litigation dispute resolution is not acceptable there. Courts are viewed as inefficient commercial dispute resolution mechanisms.

If arbitration has several advantages over the judiciary, it also has disadvantages. Implementation of the arbitration decision requires bona fide guarantees in the form of the parties' willingness to comply with the decision. An arbitration decision can completely lose its power if one of the parties or parties involved in the dispute does not meet the bona fide condition Wyasa (2008). Motivated by the description above, we believe that it is very necessary to study more deeply the resolution of franchise disputes through international arbitration.

2 Research Method

In this study, the norms of the Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution are reviewed in order to use the normative legal research technique.

This research uses several approaches to the problem. They are statute approach, conceptual approach and analytical approach. The data used are primary data and secondary data which were collected using documentation and recording techniques. The data were analyzed using hermeneutic and qualitative techniques.

By analyzing legal concepts, it is hoped that it can improve the ability of legal researchers to understand the substance of legal science. Analytical and conceptual approaches are also employed in normative research. Secondary data, or data sourced from library research—that is, data not directly from the original source but rather from data that has been documented in the form of legal materials—is what scholars employ in normative legal research.

3 Result and Discussion

3.1 Types of Franchise Agreements in Indonesia

A franchise is essentially a type of contract that is governed by the terms of Burgerlijk Wetboek (BW) Book III. The franchisee is granted unique rights and powers by the terms of the franchise agreement, which can be exercised in the ways listed below. In 2001, Gunawan:

- The ability to market goods and/or services under distinctive brand names or trademarks;
- The ability to conduct business using a franchisor-determined business format or based on one.

According to George A. Pelletier, in a franchise contract the parties are required to follow the provisions commonly used in making franchise contracts, which include the following George (1990):

- There are parties.
- Terms and definitions.
- The object that is agreed upon, an explanation of the things that are agreed upon, and the place of the franchise business to be run.
- Payment of royalty and method of payment of royalty.
- Franchisee's obligations which include:
 - a. Maintain and operate the franchise business in accordance with the best franchise business ethics.
 - b. Follow the rules and regulations set by the franchisor.
 - c. Follow the rules and regulations of the country where the franchise business operates.
 - d. Develop a franchise business according to the market.
 - e. Allowing the franchisor to recheck the rights that have been granted to the franchisee at a certain time.
 - f. Promote logos and trademarks in accordance with the provisions.
 - g. Follow the business location selection system according to the franchisor and comply with the terms, regulations, and procedures determined by the franchisor in terms of choosing a business location.
 - h. Provide the franchisor with monthly reports on operational standards together with other reports on a regular basis.
 - i. Submit an annual report on the management and condition (advancement/deterioration) of the business being managed accompanied by an analysis by a public accountant (independent) regarding gross income.
 - j. Allow the franchisor to check the bookkeeping.
- 1) Services provided by the franchisor include:
 - a. Operating guidelines and consulting services for franchisees.
 - b. Provide assistance to franchisees regarding how to maintain the business that

- has been achieved and its administrative system.
- c. Create trademarks, promotional materials and brochures at a cost that has been mutually agreed upon.
 - d. Advertise and promote, both at the national, regional and local levels.
 - e. Send a supervisor to visit and inspect the franchise system that has been given to the franchisee in terms of the administrative system that has been implemented.
 - f. Provide services for determining business locations, business systems, requirements and get payments for determining business locations if it is the franchisor who publishes the interests of the franchisee.
- 7) Relationship between the parties can be said to include the result of the condition of the franchisor being an independent party in the agreement and in this franchise agreement the parties may not create an agency relationship, partnership relationship, joint venture, or relationship between the employer and the employee (franchisor and franchisees).
 - 8) There are good facilities.
 - 9) Compensation and provisions regarding insurance.
 - 10) Validity period of the agreement, renewal of the agreement, expiration of the agreement, default, and transfer (every (main) franchisor as a party that has given its rights to the franchisee can refuse if the franchisee decides to sell or transfer the franchise).
 - 11) Rights and responsibilities in the event that the franchisee and franchisor part ways.
 - 12) Guarantee and earnestness from the franchisor.
 - 13) The law that will apply in the franchise agreement.

A franchise agreement places the franchisor and franchisee in an equal position. Nevertheless, this stance cannot be construed as an alliance in the sense that Article 1618 BW defines a partnership as follows: “An alliance is an agreement by which two or more people bind themselves to enter something into a partnership with the intention of sharing the profits obtained because of it.”

3.2 Resolution of Business Disputes through Arbitration

One of the most often used extrajudicial alternative dispute resolution procedures, arbitration is becoming widely recognized as a preferred method of resolving disputes, particularly for company owners. Therefore, it is not surprising that arbitration has developed rapidly in the last few decades, not only nationally but has also crossed national borders as transnational arbitration.

By an arbitration contract, what is meant is an agreement (before or after the dispute) to submit any disagreement between the disputing parties to arbitration.

Hutagalung stated that business people tend to choose arbitration due to several factors as explained below Sophar (2012).

- a. The confidentiality of disputes between the parties is guaranteed, because the decisions are not made public;
- b. Administrative and procedural issues can be avoided to prevent delays;

- c. The parties may select an arbitrator who, in their opinion, possesses adequate training, experience, and knowledge about the matter at hand;
- d. The parties may choose the applicable law to resolve the dispute as well as the arbitration's procedure and location; and
- e. The arbitrator's ruling is final and binding on the parties, and it can be put into effect through a straightforward or easy process.

3.3 Legal Relationship between the Franchisor and the Franchisee

Franchise pattern is declared as a partnership. As an implementing regulation regarding franchising which is regulated through this law, Government Regulation No. 42 of 2007 concerning franchises which are still valid today were then issued. This government regulation was issued because it was deemed necessary to increase order in doing business with the franchise system, to provide guarantees for legal certainty, and to be able to guarantee the rights of franchisors Intan (2004).

Contents of the franchise agreement provide special rights and authorities to the franchisee, which can be realized in the forms as described below Gunawan (2004).

- a. The authority to use specific trade names or trademarks while selling goods or services;
- b. The authority to conduct business using a business structure chosen by the franchisor, or based on one.

A franchise is defined as "a special right owned by an individual or business entity to a business system with business characteristics in order to market goods and/or services that have been proven successful and can be exploited and/or used by other parties based on a franchise agreement." This definition of franchising is found in both Article 1 point 1 of the Government Regulation of Indonesia No. 42 of 2007 concerning franchising and Article 1 point 1 of the Regulation of the Indonesian Minister of Trade No. 71 of 2019 concerning the Implementation of Franchise. It is intended that this strategy will yield the highest profit because the business system has been established in a manner similar to that of the franchisor.

Article 6 Regulation of the Minister of Trade of Indonesia No. 71 of 2019 stipulates that:

- (1) Franchise organization shall be based on the Franchise Agreement entered into by the parties with equal legal standing and to which Indonesian shall apply.
- (2) Franchise Agreement as referred to in subsection (1) shall be drawn up based on Indonesian law and shall contain at least materials or clauses as written in Appendix II which is an integral part of this Regulation of the Minister.
- (3) Franchise Agreement as referred to in subsection (1) shall be delivered to the prospective Franchisees and Advanced Franchisees in no later than 2 (two) weeks prior to the signing of the Franchise Agreement.
- (4) Franchise Agreement as referred to in subsection (1) shall be written in Indonesian.

Then, Article 5 of Indonesian Government Regulation No. 42 of 2007 states the criteria for a franchise agreement clause, as follows:

The franchise agreement shall at least contain the following clauses:

- a. names and addresses of the involved parties;
- b. nature of the commercial activity;
- c. the parties' rights and duties;
- d. support services, facilities, operational guidance, marketing, and training that the franchisor offers to the franchisee;
- e. Area of business;
- f. The agreement's duration of validity
- g. the methods by which compensation is paid;
- h. ownership, transfers of ownership, and heirs' rights;
- i. the resolution of a dispute; and
- j. the steps involved in extending, stopping, and ending the contract.

Dispute resolution clauses shall be agreed upon in the franchise agreement in accordance with the wishes of the parties.

The legal relationship between the franchisor and the franchisee is a reciprocal agreement between the rights and obligations of the franchisor and the franchisee. In principle, a franchise business activity reflects an activity in relation to the granting of permission from the franchisor to the franchisee to use the system or method of operating a business owned by the franchisor based on certain terms and conditions.

3.4 Binding Force of International Civil Dispute Decisions

Some of the advantages possessed by arbitration are reasons for those seeking justice in a simpler, final, confidential and binding way. Arbitration upholds a simpler and more efficient legal system in accordance with economic law theory, one of which emphasizes the principle of efficiency which wants welfare, profitable losses and more profitable profits (wealth maximization). Thus, arbitration is a method that is in accordance with the needs of business actors in the national and international legal systems.

When examining the arbitration agreement's purpose, the arbitral tribunal shall first evaluate the arbitration mandate clause to ascertain whether or whether the arbitral panel is qualified to handle the matter Gita (2019).

Article 2 of the Law on Arbitration and Alternative Settlements (UUAAPS) of Indonesia reads: "This law governs the resolution of disagreements or conflicts between parties to a particular legal relationship who have signed an arbitration agreement that specifically specifies that arbitration or alternative dispute resolution will be used to settle any disagreements or conflicts that arise from the legal relationship".

Franchise agreements are inseparable from the issue of fairness. Any contract, including a franchise contract, is a vessel that brings together the interests of one party to another, demanding a fair exchange of interests. Distributive justice is the origin of all kinds of justice theory Yudha (2015).

From the description above, it is clear that the principle of autonomy of the parties in contract law and franchise agreements, especially in making a choice of law, has been

universally recognized. Even though there are differences in the approach taken in the method of choice of law, in principle the law that applies to the parties to a contract is the law they have chosen. For example, the parties have determined a clause that the law that applies to the contract that they will enter into is through SIAC, so for the parties, this choice of law must be obeyed.

The arbitral award is binding for each party to the dispute and can be enforced in the country where the object of the dispute or the company's assets is domiciled and has legal certainty due to its final and binding nature.

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4 Conclusions

4.1 Conclusion

- Legal relationship between the franchisor and the franchisee is a reciprocal agreement between the rights and obligations of the franchisor and the franchisee. Essentially, a franchise business activity reflects an activity related to the granting of permission from the franchisor to a franchisee to use the system or method of operating a business owned by the franchisor based on certain terms and conditions.
- Resolution of franchise business disputes through arbitration is an alternative method for the disputing parties to avoid lengthy general court processes at considerable cost. The arbitral award is final and binding for the parties to the dispute.

4.2 Recommendations

In order to reduce the likelihood of disputes arising throughout the term of the agreement, the parties should have reviewed and comprehended the arbitration agreement's content, purpose, and ramifications before signing it.

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