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Franchise Agreements from a Commercial Law Perspective

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Article Info	ABSTRACT
Keywords: Franchise Agreement, Franchise, Commercial Law, Legal Protection, Arbitration.	The dynamic development of the business world has encouraged the emergence of various business partnership models to accelerate market expansion, one of which is through the franchise system. However, in practice, this legal relationship often triggers asymmetric bargaining positions and potential disputes due to the blurring of the rights and obligations of the parties within the scope of business law. This study aims to analyze the legal standing and validity of franchise agreements within the Indonesian commercial law system, as well as to examine the ideal form of legal protection for franchisors and franchisees to minimize the risk of default. The research method used is normative juridical with a statute approach and a conceptual approach. Secondary data obtained through literature review was analyzed qualitatively using deductive reasoning. The results indicate that a franchise agreement is a valid, anonymous agreement based on the principle of freedom of contract (Article 1338 paragraph 1 of the Civil Code) and the requirements for a valid agreement (Article 1320 of the Civil Code). From a commercial law perspective, formal validity requires compliance with specific regulations (lex specialis) in the form of a written contract in Indonesian, the issuance of a prospectus, and possession of a Franchise Registration Certificate (STPW). Ideal legal protection for franchisors rests on Intellectual Property Rights (IPR) protection through a confidentiality agreement (NDA) and a non-compete clause. Conversely, protection for franchisees is realized through the right to validity of prospectus data, territorial exclusivity (territorial protection), and the right to receive cure notice before contract termination. In the event of a business dispute, a choice of forum clause through an Arbitration Institution is the most ideal mechanism due to its confidentiality, efficiency, and final and binding decision.
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INTRODUCTION

Globalization and economic modernization have significantly transformed the business landscape, triggering intense competition among businesses to maintain their existence. Facing fast-paced market dynamics, businesses are required to innovate and find efficient expansion strategies without incurring excessive financial risk (Katrinasari & Hadi, 2017). This phenomenon has given rise to various forms of modern partnerships that integrate capital, branding, and management systems. Amidst these demands for efficiency, partnership-based business systems have become the most adaptive and primary option for accelerating market penetration in various regions (Idrus, 2017).

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One of the most rapidly developing and sought-after forms of business partnership in the modern era is the franchise system. This business system involves a contractual collaboration between the owner of a brand, concept, or technology (franchisor) and an independent party (franchisee) who purchases the rights to use that business identity (Mayasati, 2018). Through this mechanism, business owners can expand their business network significantly, while business partners benefit from the ease of starting a business with a well-known brand. This mutual synergy is what makes franchising a major driver of the real sector and the current national economy (Haryani, 2018).

From a legal perspective, franchising is not merely an economic practice, but a legal act subject to the provisions of commercial law. Commercial law serves as a special law (lex specialis) that protects, regulates, and legalizes every commercial transaction to ensure it operates according to the principles of justice and legal certainty (Riva'i, 2012). Within this context, franchising activities give rise to complex civil legal relationships, involving the transfer of commercial rights, distribution of goods, and operational standardization. Therefore, locating franchises within the framework of commercial law is crucial to ensuring the strong legitimacy of all business activities (Bhakti, 2017).

The core of a franchise business relationship lies in a contractual document called a franchise agreement. This agreement serves as a legal document for both parties, and serves as the primary legal instrument guaranteeing certainty of rights and obligations (Aldi & Farida, 2019). This document regulates all crucial aspects, from royalty payments and business coverage areas to raw material supply procedures and trade secret protection. Given its vital function, the drafting of a franchise agreement must be carried out carefully and accurately, and must not conflict with applicable legal principles (Atmko, 2019).

However, in practice, the implementation of franchise agreements often faces various legal obstacles and conflicts of interest between the parties. One of the main problems that frequently arises is the asymmetry of bargaining power, where the franchisor generally holds a much stronger economic and legal position than the franchisee (Mafriyani, 2012). This imbalance is often reflected in the drafting of standard contract clauses, which tend to be one-sided and disadvantageous to the franchisee. As a result, when business failures or operational problems occur, the franchisee is often at a disadvantage and struggles to seek justice (Iswanto, 2007).

In addition to bargaining power issues, the complexity of franchise relationships is further complicated by the inherent Intellectual Property Rights (IPR) inherent in the business system. Franchises always involve licensing the use of trademarks, logos, trade secrets, copyrights, and even patents on the franchisor's operational procedures (Adilman, 2010). The potential for legal disputes is very high if there is a violation of the use of the trademark, the leak of trade secrets to third parties, or the use of rights after the contract expires. Commercial law is required to be able to provide clear protection boundaries so that the exclusive rights of the brand owner are protected without violating the commercial rights of business partners (Hanim, 2011).

The Indonesian government has attempted to anticipate potential conflicts by establishing specific regulations governing franchise operations. These provisions range from the Civil Code (KUHPerdata) concerning the legal requirements for agreements to

Government Regulations and Minister of Trade Regulations requiring the possession of a Franchise Registration Certificate (STPW) (Arifiah, 2008). However, the dynamic development of new business models in the digital era often leaves existing regulations feeling outdated and creating legal gaps (legal vacuums). This misalignment between formal regulations and practical implementation requires in-depth study from a commercial law perspective (Felicia, 2010).

This research focuses on analyzing the validity of agreements, analyzing legal protection for the parties, and mapping legal solutions to frequently arising disputes. Through this focus, this research is expected to provide clarity on the future direction of franchise business law. As a concrete step to narrow the scope of the study for greater focus, this research formulates two main questions that will be addressed in subsequent chapters. First, what is the legal status and validity of franchise agreements when viewed from the perspective of the commercial law system and contract law applicable in Indonesia? Second, what is the ideal form of legal protection for franchisors and franchisees to minimize the risk of default and business disputes? Based on these problem formulations, the main objective of this study is to find a balanced, fair, and legally certain legal relationship formulation to support the growth of a healthy franchise investment climate in Indonesia.

METHOD

This research employs a normative juridical legal research method, namely library legal research conducted by examining library materials or secondary data as the basis for the research [1]. The research approach applied is a statute approach to examine all regulations related to franchising, and a conceptual approach to understand the doctrines and legal principles in commercial law that form the basis for the franchise legal institution. The research specification is descriptive-analytical, aiming to comprehensively and systematically describe the validity and legal protection of franchise agreements, then analyze them based on applicable legal norms to objectively address the problem.

The primary data source in this research is secondary data, grouped into three legal materials: primary, secondary, and tertiary legal materials. Primary legal materials consist of the Civil Code, the Commercial Code, as well as Government Regulations and Regulations of the Minister of Trade concerning the implementation of franchising. Secondary legal materials include legal textbooks, scientific journals, research results, and proceedings relevant to contract law and franchise business, while tertiary legal materials include legal dictionaries and the Great Dictionary of the Indonesian Language. All legal materials collected through document studies were then selected, classified, and analyzed using qualitative analysis methods with deductive reasoning to draw logical conclusions regarding the research problem.

RESULT AND DISCUSSION

Legal Status and Validity of Franchise Agreements in the Indonesian Commercial and Contract Law System

A franchise agreement is a business legal instrument with unique characteristics within the civil and commercial legal system in Indonesia. The dynamics of economic growth

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immediately demand legal certainty for business models not fully regulated in detail in classical legal codifications. As a legal act, a franchise integrates commercial rights and technology transfer, binding two independent legal entities into a fully binding relationship. Its existence confirms that the law is always dynamic, following and protecting the development of economic activity within society.

From the perspective of the Civil Code Book III on Contracts, franchise agreements are legally categorized as anonymous agreements. This term refers to forms of contracts not specifically and explicitly regulated in Chapters V to XVIII of the Civil Code, but rather arise from contemporary commercial practices. Although not included in the colonial-era codification, the existence and legality of these anonymous agreements are still legally recognized. The legal basis for its recognition rests firmly on Article 1319 of the Civil Code, which affirms that all agreements, whether specifically named or not, remain subject to general contractual rules.

The emergence of franchise agreements in Indonesia represents a concrete manifestation of the principle of freedom of contract (party autonomy or freedom of contract). This fundamental principle in business law is clearly enshrined in Article 1338 paragraph (1) of the Civil Code. This article explicitly states that all legally concluded agreements are lawful for those who enter into them. Through this legal doctrine, the franchisor and franchisee are granted full legal freedom to design, determine the content, draft clauses, and even establish the ultimate goal of their mutually agreed-upon business partnership.

While the principle of freedom of contract provides extensive freedom for business actors, this freedom is not absolute and limitless. Commercial and civil law impose strict limitations to ensure that this freedom of contract does not violate public justice and legal order. These contractual limitations are strictly regulated in Article 1337 of the Civil Code, which strictly prohibits an agreement from containing anything that violates the law, morality, or public order. Therefore, the franchisor's freedom to design business clauses must remain subject to applicable national regulations to ensure the contract is not void.

The relationship between general civil law and commercial law in the context of franchising is closely interwoven through the principle of lex specialis derogat legi generali. This legal principle asserts that specific rules will override or complement general rules. The Civil Code acts as a general legal umbrella (lex generalis), providing a basic foundation for the theory of contracts, valid conditions, and breach of contract. Meanwhile, commercial law acts as a special law (lex specialis), regulating commercial activities aimed at seeking sustainable commercial profit. The synergy between these two legal domains provides comprehensive operational certainty for the business world.

The absolute validity of a franchise agreement rests entirely on the fulfillment of the four valid conditions of an agreement mandated by Article 1320 of the Civil Code. The first and second conditions are classified as subjective conditions, which emphasize the subject or the parties who are binding themselves. According to the provisions, there must be a free agreement (consensus) without any defects of will such as coercion (dwang), error (dwaling), or fraud (bedrog). Furthermore, the parties must also have the legal capacity (bekwaamheid), which in the modern business context is generally represented by a legitimate legal entity or an adult with sound memory.

The third and fourth requirements in Article 1320 of the Civil Code are classified as objective requirements, which focus directly on the material object of the agreement itself. A franchise agreement must contain "a certain thing" in the form of a clear, tested, distinctive business system package with a commercial identity that can be validated. Finally, the business object must have a "lawful cause" (geoorloofde oorzaak), meaning that the type of franchise business being run, whether culinary, service, or retail, must not violate applicable Indonesian law. The legal consequences of failing to meet these objective requirements are fatal, namely, the agreement is deemed null and void.

To facilitate the legal mapping of this contractual instrument, the following table compares the actual implementation of the valid requirements of Article 1320 of the Civil Code in a franchise agreement document:

Table 1. Comparison of the actual implementation of the valid requirements of Article 1320 of the Civil Code

No	Conditions (Article 1320 of the Civil Code)	Types of Conditions	Implementation Concrete in Agreement Franchise	Legal Consequences of Violation
1	Agreement of the Parties	Subjective	Signing contract without existence coercion, manipulation of financial data, or fraud prospectus business.	Can Cancelled (*Voidable*) by the injured party.
2	Skills Act	Subjective	Director main act legitimate representing PT (*Franchisor*) and individual partners has fulfil limitation legal age.	Can Cancelled (*Voidable*) via judge's decision.
3	A Certain Thing	Objective	Clarity right license brand, rights riches intellectual property (IPR), SOP manuals, and system transferred operations.	Null *and* Void since contract signed.
4	Halal Reason	Objective	Type of commodity legal business, no sell goods illegal, and methods business comply law Indonesian trade.	Null *and* Void or considered No Once There is.

Unlike general civil contracts, which essentially adhere to the principle of consensualism (verbal agreements are sufficient for validity), commercial law requires a high degree of formality in franchising. Based on specific regulations governing the implementation of these partnerships, franchise agreements must be in writing (written contracts) and in Indonesian. This written element is no longer merely a means of evidence (ad probationem), but has evolved into an absolute prerequisite for the formal validity of a commercial partnership. This written document clearly defines rights and obligations to minimize future misinterpretation.

The next aspect of commercial formality that franchisors must fulfill before entering into a contract is the preparation and provision of a franchise prospectus. This prospectus is an information disclosure document that must be submitted to prospective franchisees no later than two weeks before the official signing of the agreement. This document must contain honest and valid data regarding the franchisor's identity, business legality, financial history for the past two years, number of active outlets, and the rights and obligations of the parties. The requirement to submit a prospectus aims to reduce information asymmetry and protect potential partners from investment fraud under the guise of a franchise.

The pinnacle of commercial legal formalities in the Indonesian franchise ecosystem is the mandatory possession of a Franchise Registration Certificate (STPW). Once a written agreement is signed by both parties, the contract document, along with the offering prospectus, must be officially registered with the Ministry of Trade. The STPW serves as authentic proof that the franchise activity has been recorded, verified, and fully legitimized by state authorities. This mandatory STPW registration solidifies the partnership's status, moving it from a private civil bond to a commercial business entity legally recognized by public law.

Failure by business actors to comply with administrative formalities—such as failing to submit a prospectus or apply for an STPW—carries serious legal consequences. While under civil law, the agreement remains binding on the parties under Article 1338 of the Civil Code, under commercial law and public law, the business is considered illegal. The government, through relevant agencies, has full authority to impose administrative sanctions in stages, ranging from written warnings and financial fines to revocation of the business's operating license. This administrative failure also weakens the franchisor's bargaining position in the event of a future legal dispute in court.

In the realities of the commercial business, almost all franchise agreement documents are presented in the form of standard clauses or standard contracts. Standard clauses are draft agreements that have been unilaterally prepared and drafted by the franchisor en masse, in which the franchisee is faced with the choice of accepting the entire contract or rejecting it entirely (take it or leave it). Under commercial law, standard clauses are permitted for the efficiency of large-scale business transactions. However, their drafting remains strictly monitored to prevent the inclusion of exoneration clauses that unfairly shift the franchisor's legal responsibility to a less economically advantaged business partner.

Finally, the legal standing of franchise agreements within the Indonesian legal system has a multi-layered and robust legal basis. The validity of this partnership relationship rests on the harmony between fulfilling the legal requirements of civil law (Article 1320 of the Civil Code) and compliance with legal formalities in trade (prospectus registration and possession of a Business License (STPW). When all these legal pillars are met without legal flaws, the franchise agreement acts as a perfect commercial law instrument. This instrument provides legal certainty, protects the economic rights of the parties, and minimizes the potential risk of future conflict or default.

Legal Protection for Parties in Franchise Agreements to Minimize the Risk of Default and Business Disputes

The legal relationship structure in a franchise business essentially places two independent legal entities within a single commercial contractual relationship. In economic reality, the parties' positions often reflect asymmetric bargaining power. The franchisor is generally in a stronger position due to its control over the business system, brand reputation,

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and established legal capital. Conversely, the franchisee is often more vulnerable to potential financial losses due to limited operational information. Therefore, commercial law must function as a balancing instrument to provide fair, proportional, and legally certain legal protection.

Legal protection in this business ecosystem is generally divided into two main forms: preventive legal protection and curative legal protection. Preventive legal protection aims to prevent disputes from occurring before the agreement is signed through clear contractual clauses. Meanwhile, curative legal protection serves as a means of resolving and imposing sanctions when contractual breaches or defaults occur during the course of the business. These two forms of protection must be spelled out in a balanced manner in the agreement to ensure that neither party feels exploited economically or legally.

For franchisors, preventative legal protection focuses on protecting Intellectual Property Rights (IPR) and the reputation of the trademark they have built over many years. The greatest risks for franchisors are the leakage of trade secrets (know-how), misuse of logos, or unauthorized imitation of management systems by their business partners. To anticipate this, commercial law permits franchisors to require prospective partners to sign a Non-Disclosure Agreement (NDA) before submitting operational documents. This preventative instrument legally binds franchisees to maintain the confidentiality of all confidential formulas, recipes, and business strategies.

In addition to confidentiality protection, franchisors also require strong curative legal protection to mitigate the negative impacts if the franchisee is proven to have committed a violation. One of the most crucial forms of curative protection is the right to unilaterally terminate the contract in the event of a serious violation of Standard Operating Procedures (SOPs). If a franchisee uses illegal raw materials or lowers product quality standards, damaging the brand image, the franchisor has the right to immediately revoke the license to use the brand. This firm action is protected by commercial law to protect the interests of consumers and maintain the commercial value of the franchise network.

The dynamics of legal protection for franchisors are further strengthened by the existence of a post-contractual restriction clause, also known as a non-compete clause. This clause legally prohibits former franchisees from opening similar businesses or competing directly within a specified area and time period after the contract expires. This prohibition is crucial to prevent former franchisees from exploiting internal knowledge gained during the franchise period to establish new competitors. Commercial law views this restriction clause as valid as long as the time and geographic distance limits remain within the bounds of business decency.

On the other hand, legal protection for franchisees is aimed at protecting them from abuse of bargaining power by brand owners. Unequal bargaining power often forces franchisees to accept standard contracts unilaterally drafted by the franchisor, leaving no room for negotiation. Preventive legal protection for franchisees, in this case, has been accommodated by government regulations through the mandatory submission of a franchise prospectus. Through this mandatory mechanism, franchisees have the legal right to obtain honest and accurate financial, legal, and business track record information before depositing investment capital.

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If the information in the prospectus is later proven to be manipulative or fraudulent, the franchisee can file a lawsuit to cancel the agreement. Under contract law, data manipulation is categorized as a defect in will in the form of fraud (bedrog), which renders the contract voidable. This curative protection gives the franchisee the right to demand the return of the entire investment fee (franchise fee) paid to the franchisor. This legal measure ensures that the franchisor's freedom of contract is not used as a tool to commit fraud under the guise of a business partnership. Another form of preventative legal protection that is crucial for franchisees is the guarantee of market exclusivity (territorial protection). This clause provides legal certainty that the franchisor will not open new outlets, either its own or those of other partners, within a certain agreed-upon geographic radius. This territorial protection aims to prevent internal market cannibalization, which could damage the franchisee's revenue and the viability of its outlets. If the franchisor violates this territorial limit, it is categorized as an act of breach of contract, which entitles the franchisee to file a claim for damages.

Commercial law also provides strict guidelines regarding contract termination procedures to prevent arbitrary losses for franchisees. Franchisors are not permitted to abruptly stop the supply of raw materials or close partner outlets without a valid and objective legal reason. Valid contract termination must be preceded by an official warning letter or a cure notice within a reasonable timeframe. This mechanism provides certainty and an opportunity for franchisees to correct operational errors before the most severe sanction, termination of the partnership, is imposed.

If all preventative measures fail to mitigate the conflict and a breach of contract does occur, the parties must rely on the agreed-upon dispute resolution clause (choice of forum). An ideal franchise agreement structure should include a tiered escalation clause to minimize legal costs and maintain good relations. The initial stage of resolution must be achieved through internal deliberation and consensus between the two parties. If such deliberations fail, the parties can engage an independent mediator to mediate the conflict through a neutral business mediation process.

If the out-of-court settlement process fails to reach an agreement, the dispute will be referred to a final decision-making forum, according to the forum chosen in the contract. From a modern commercial law perspective, an arbitration institution (such as the Indonesian National Arbitration Board/BANI) is considered the most ideal forum for resolving franchise disputes. The franchise business's high reliance on maintaining public reputation and trade secrets necessitates confidentiality. Arbitration ensures that internal business conflicts are not exposed to the media, which could undermine stock prices or consumer confidence.

Besides confidentiality, the advantage of arbitration lies in the competence of the arbitrators, who are generally senior practitioners or academics in the field of business and commercial law. This differs from general courts, where judges examine cases in general and do not always specialize in complex franchise law. The decisions rendered by arbitration institutions are also final and legally binding from the day they are pronounced. This immediately binding nature of the decision bypasses lengthy appeals and cassation processes, thus providing immediate legal certainty for the parties' business continuity.

While arbitration offers many advantages, parties must also be prepared for the relatively higher operational costs of court proceedings compared to district courts. Therefore, the effectiveness of curative legal protection through arbitration depends heavily on the financial capacity of the parties at the time of the dispute. Commercial law still allows parties the freedom to choose the District Court as the resolution forum if it is deemed more financially efficient. This choice of forum must be clearly and firmly stated in one of the closing chapters of the franchise agreement to avoid future disputes over absolute competence.

The importance of harmonizing legal protection is based on the principle that the success of a franchise business depends heavily on healthy, long-term partnerships. Unequal relationships that disadvantage one party will only create a chain of disputes that damage the entire business ecosystem. Balanced legal protection acts as an economic safety net, minimizing the risk of financial loss due to default by one party. Legal clarity in contracts will ultimately increase the confidence of local and foreign investors in investing in the Indonesian franchise industry.

National regulations governing franchising are continuously updated to adapt to digitalization trends and new business models. The government, through relevant ministries, is obligated to continuously monitor the implementation of standard clauses to ensure there are no exoneration clauses that allow for a unilateral transfer of responsibility. Administrative law enforcement against franchisors who fail to comply with information disclosure regulations must be carried out consistently and without discrimination. This firm action by public authorities represents a form of indirect legal protection that is desperately needed to maintain real market stability.

CONCLUSION

The legal standing of a franchise agreement in Indonesia is valid and binding on the parties as an anonymous agreement (innominat) based on the principle of freedom of contract as stipulated in Article 1338 paragraph (1) of the Civil Code. From a commercial law perspective, the validity of this agreement rests not only on fulfilling the material legal requirements of civil law as stipulated in Article 1320 of the Civil Code, but also on fulfilling administrative formalities stipulated in special regulations (lex specialis). These commercial formalities absolutely require the contract to be drawn up in writing in Indonesian, the submission of an offering prospectus as a form of pre-contract information transparency, and the possession of a Franchise Registration Certificate (STPW) issued by the Ministry of Trade. Failure to comply with these administrative formalities results in the partnership losing its full legitimacy under public law and making it vulnerable to operational sanctions by state authorities.

Meanwhile, the ideal form of legal protection for the parties must be designed in a balanced and proportional manner to mitigate the risk of asymmetric bargaining power and potential default in the course of business. Legal protection for franchisors focuses on the protection of Intellectual Property Rights (IPR) through agreements to maintain trade confidentiality, the implementation of post-contractual cooperation limitation clauses (non-compete clauses), and curative rights in the form of termination of the partnership if the franchisee violates the SOP that damages the brand image. Conversely, legal protection for franchisees is realized through guarantees of the validity of investment data in the prospectus, protection of market exclusivity (territorial protection) to prevent turnover cannibalization, and the right to receive an opportunity to correct negligence (cure notice) before the contract is terminated unilaterally. In the event of a business dispute that cannot be resolved through deliberation, the choice of forum clause through the Arbitration Institution is the most ideal mechanism in commercial law because the trial is closed (confidential), led by business law experts, and produces a quick and final decision.

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