

Authority Of The Regional Head Of Franchise Enforcement Who Does Not Register Based On Government Regulation No. 42 Of 2007 Concerning Franchises

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Abstract: *The higher growth rate of franchise business as one of the profitable business alternative compared to the compliance of the perpetrators to register the franchise business. As one of the obligations that have been determined based on government regulation number 42 of 2007 on franchises, it is required to register its business. Because, if it is not registered then the interested official can take action in the form of sanctions in accordance with the level of wrongdoing made.*

Key Words: *Franchise, Registration, Enforcement.*

1. INTRODUCTION:

In fact the law aims to make changes in the way of thinking and being the life of the community in the face of development [1]. Without a change in the way of thinking and behaving in life, the introduction of modern institutions will not succeed. Therefore, the development of activities in the economic sectors will have a logical consequence, namely the opening of opportunities for the community to carry out economic activities. The wide opening of opportunities requires processes, arrangements, directing and limiting, in particular the economic and economic losses of the wider community.[2] The wide opening of opportunities requires processes, arrangements, directing and limiting, in particular the economic and economic losses of the wider community. Thus, the existence of law in the economic field and in the growth of the economic sector is a reciprocal [3] symptom or mutual influence and complement.[4] In line with legal and economic development in national, regional and global relations, international transactions are inseparable.

Aristotle, the ancient Greek polymath and acknowledged founding father of political science – characterized humankind as a distinctively “political animal” (*zoon politikon*), further explained by Hans Kelsen "man is a social and Political being meaning that humans are social beings who are destined to live in togetherness with each other in society, and creatures who are carried away by nature as social beings. it's always organized.[5] Thus, this concept is also actualized in state life where one country has dependence on other countries. The most visible concrete example is the export-import between countries globally. Franchising has several subjects involved. Broadly speaking, there are 3 (three) parties involved, namely the franchisee, the franchisee, and the government agency as the holder of the regulations. Even though the franchise is sourced from the civil law section, that is, it is inspired by an agreement. However, along the way, regulations related to the existence of franchises and their technical journey are also determined by applicable law, here the role of the Government as a policy maker [6] has the responsibility to ensure a balance between the regulations it makes and the agreements made by market participants. Government Regulation No. 42 of 2007 concerning Franchising regulates Chapter IX, general provisions, criteria, Franchise agreements, obligations of Franchisors, registration, guidance and supervision, sanctions, transitional and closing provisions, especially in chapter V concerning registration, which requires that the Provider or Franchisees are required to register their Franchise agreements. Meanwhile, if the agreement is not registered, it can be subject to sanctions.

2. CONCEPTUAL FRAMEWORK:

a. Head Of Region

Regional heads as stated by Law No. 23 of 2014 concerning Regional Government, that each region is led by a regional head of government called the regional head. at the local level which is one of the mechanisms of decentralization activities in Indonesia.

b. Franchise

Martin Mandelsohn [7], the franchise in question is a business format franchise: Granting a license from one person (the franchisor) to another (the franchisee), the license entitles the franchisee to operate using the trademark or trade name of the franchisor and to use the entire package, consisting of all the elements necessary to create a previously untrained person. in the business and to run it with continuous assistance on a pre-determined basis.

c. Franchise Agreement

The franchise agreement is a special agreement for the parties bound in it, because it relates to intellectual property rights and the standard agreement model with the application of standard clauses is very unbalanced in terms of fulfilling achievements, besides that franchise agreements are almost always made in the form of standard agreement with standard clauses, considering that the agreement relates to the "request" of the recipient of the franchise (franchisee) to be able to use the trademark of the franchisor, therefore the franchisor must protect his special rights, in this case the method use standard agreements and standard clauses.

2. THEORITICAL FRAMEWORK:

a. Theory of Authority

The term theory of authority comes from the English translation, is authority of theory, in Dutch Theorie van het gezag, while in German it is called theorie der autoritat.[8] Every state and government administration must have legitimacy, namely the authority granted by law.

b. Theory of Legal System

The legal system, according to Lawrence M Friedman, is composed of sub-systems of law in the form of legal substance. Legal structure (where these three elements must synergize with each other, so that the desired goals can be achieved. These three legal subsystems determine whether a legal system can run well or not. Legal substance is usually concerning aspects of legal regulation or statutory regulations. The legal structure is more related to the apparatus and legal facilities and infrastructure itself, while legal culture concerns the behavior of the community.[9]

3. LITERATURE REVIEW:

The State of Indonesia must strive to always uphold the rights of the people and realize the expectations of its people because the sovereignty of this country is basically on the people. To achieve this, it is impossible for the service of its people to be centered in a single government (central government), but also be channeled to regional government administrators. Local governments in Article 18 of the 1945 Constitution have the authority to regulate and manage their own government and have the right to stipulate regional regulations and other regulations in the context of implementing regional autonomy and auxiliary tasks. In order to realize the concurrent distribution of government affairs between the government, the provincial government and the regency/municipal governments, criteria for the distribution include externalities, accountability and efficiency. The use of these three criteria is applied cumulatively as a unit by considering the compatibility and fairness of the relationship between levels and structures of government.[12]

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4. METHOD:

This research is a legal study with empirical juridical research form, an approach that aims to see the workings of law in the field. This study uses a statutory approach and a case approach.[14]

5. DISCUSSION:

The law cannot flourish without economic support. However, the economy will not grow and develop if the law is not able to guarantee definite justice and fair certainty. Thus the law can also function and function as a means of driving and directing in order to achieve the goals of a society in the economic field.[15] The development of franchising has actually been known for a long time in Indonesia. This is evidenced by the existence of several overseas franchise businesses that live and grow in Indonesia. However, regarding the institutions that regulate franchising in Indonesia, there are still differences of opinion. This difference of opinion is not unique in Indonesia. Based on the literature, it is known that there are countries that deliberately do not issue special regulations in the field of franchising, for example the UK and Australia. While the United States is very rich, with special franchise laws. The purpose of these arrangements is more focused on protection for franchisees who are generally weak in terms of cooperation agreements and their implementation.[16]

Government Regulation No. 16 of 1997 concerning Franchise underwent renewal within a period of 10 years since the issuance of Government Regulation no. 16 of 1997. Government Regulation No. 16 of 1997, the Franchise arrangement is intended for orderly business and consumer protection. However, in its development, the Franchise arrangement underwent a renewal, namely with the issuance of Government Regulation No. 42 of 2007 concerning Franchising. As for the point of considering Government Regulation No. 42 of 2007, the intended purpose of the renewal regulation is in addition to regulating the rules of franchising business, it is also to provide broad opportunities related to franchising business nationally. The data from the Honorary Chairman of the Indonesian Franchise Association (AFI), Anang Sukandar said, currently the number of local franchises is around 120 companies. Meanwhile, foreign franchises amounted to about 460 companies.[17] However, if you look at the reality, in the period since this franchise arrangement was held by the government, business development with this system has grown rapidly. This growth certainly does not stand alone where this growth goes hand in hand with purchasing power and the economy. Therefore, the Franchise business which initially developed in big cities then continued in the regions.

6. ANALYSIS:

A. Authority of Local Government in the Implementation of Franchise Registration

Franchise arrangements were born only based on a derivative of the concept of an agreement which was inspired by the Civil Code ((Burgelijke Wetboek, Staatblads 1847 No. 23). Therefore, as an initial step, the regulation regarding franchises in Indonesia began with Government regulation No. 16 of 1997 concerning Franchise. Government Regulation No. 16 of 1997 concerning Franchising as the initial legal instrument governing franchising contains 11 articles. These articles require that the first authority obtained by the Government legally can be found in Article 7 which states that related to franchise business, it is registered with the Ministry of Industry and Trade. This is the forerunner to the birth of a franchise arrangement where the Government is present as a facilitator and policy maker in franchise regulation in Indonesia. Through Government Regulation No. 42 of 2007 it is stated that the government's authority remains as the recipient of the franchise registration application. in terms of other authorities of the government, in this case the Central Government grants authority to the Regional Government as the implementation of regional autonomy to conduct guidance and supervision.

The purpose of supervision according to Abdurrahman, is to find and correct weaknesses, deviations so that the implementation of a job is in accordance with the established plan. Referring to the development of licensing nationally, most business permits are carried out through the online single submission (OSS) system, one of which is the trade sector business licensing. Franchise is one of the businesses in the trade sector so that business licensing is carried out through OSS as stipulated in the Regulation of the Minister of Trade No. 77 of 2018 concerning licensing services that seek to be integrated electronically in the trade sector. Franchisee is a franchise agreement, especially food franchisee. In Bukittinggi, the juridical provisions related to the authority of the Local Government of the City of Bukittinggi are regulated in the Regional Regulation of the City of Bukittinggi No. 6 of 2013 concerning Business Permits in the Trade and Industry Sector, Article 14 regarding the registration of local franchise businesses (TU-WL) in which the authority is obtained based on derivative of Government regulation No. 42 of 2007 concerning Franchising and regulation of the Minister of Trade as its derivatives.

Based on the description above, it can be concluded that the existence of franchisees in Bukittinggi is indeed true. The franchisee is a franchise agreement, especially the food franchisee. In Bukittinggi, the juridical provisions related to the authority of the Local Government of Bukittinggi are regulated in the Regional Regulation of Bukittinggi No. 6 of 2013 concerning Business Permits in the Trade and Industry Sector, namely Article 14 regarding the registration of local franchise businesses (TU-WL) in which the authority is obtained based on derivative of Government regulation No. 42 of 2007 concerning Franchising and regulation of the Minister of Trade as its derivatives.

B. Factors influencing franchisees do not perform The Obligation to Register a Food Franchise Agreement in Bukittinggi

Currently, the Government Regulation No. 16/1997 on franchising is no longer sufficient to regulate the dynamics of the development of franchise businesses in Indonesia related to the issue of intellectual property rights which are one of the objects of franchising. For this reason, the government issued Government Regulation No. 42 of 2007 concerning franchising to replace Government Regulation No. 16 of 1997 in the hope of providing greater business certainty and legal certainty for franchisors and franchisees in marketing their products, as well as in order to further improve business order through franchising. as well as increasing national business opportunities, especially to encourage small and medium-sized entrepreneurs to grow as national franchisors who are reliable and have competitiveness domestically and abroad.

In Bukittinggi, there are several franchise business actors, especially in the food sector that do not register franchise agreements, such as, D'Besto 5 outlets, Geprek Bensu, Captain Shell, Chicken Popop, Racha cha, and Ayam Gepuk Pak Gembus and other types of franchises, where the agreement This is an obligation for franchisees in order to know the legality and can be trusted with both the franchisee's business both from abroad and domestically and also to create transparency of business information which can be utilized as a whole by national businesses in marketing goods and/or services. with the franchise. Then if an agreement has been reached on a franchise agreement, the franchisee must submit the franchise agreement to the government, so that the government can monitor and compile data on the franchise, both the number and type of franchised business. Regarding legal issues in the form of vague legal rules, it is very evident in the provisions of Article 3 PP No. 42 2007 [19]: Franchising must meet the following criteria:

1. Have business characteristics;
2. Proven to be profitable;
3. Have standards for services and goods and/or services offered which are made in writing;
4. Easy to teach and apply;
5. There is ongoing support; and
6. Registered in intellectual property rights.

The author categorizes there are several factors that cause why the franchisee does not register his franchise agreement with the DPM-PTSP Industry and Manpower Bukittinggi by trying to relate why the legal system does not work as stated by Lawrence M. Friedman. These factors are as follows:

1. Legal Structure

The legal structure here is defined as the parties involved in the franchise agreement. Therefore, these parties are factors that influence the franchisee not to carry out the Obligation to Register for a Food Franchise agreement in Bukittinggi City. The parties are: a) Franchisor; b) Franchisee; and c) Bukittinggi City Government

2. Legal Substance

The legal substance here is defined as related to the laws and regulations, in this case the regulations concerning franchising. As in the previous discussion, the existence of franchising is regulated based on government regulations as contained in the preamble considering Government Regulation No. 42 of 2007 concerning franchising.

3. Legal Culture

Legal culture is a human attitude towards the law of the legal system. No matter how good the structure to implement the rule of law is, and no matter how good the quality of the legal substance is, if it is not supported by the legal culture of the people involved in the system and society, then law enforcement will not be effective. The community as consumers and connoisseurs of services from a franchise business is certainly not required and must know about the products that they enjoy. It's just that in this position the role of the community is really demanded to know more about what products and services he uses so that in this case it can help community participation in helping the tasks of the Government.

8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- The authority of the Regional Head to take action against franchisees who do not register based on Government Regulation No. 42 of 2007 concerning Franchising is very clear in the form of administrative sanctions for franchisees that do not register. It's just that political will is needed from each regional head to apply these sanctions because in terms of giving sanctions, of course there is a coaching and supervision function carried out by the government.
- The legal substance in the franchise arrangement, its legality is still too low, meaning that it does not have a special law so that its position is considered not to have a strong binding power. Then the legal structure, which in this case the parties involved, both the giver and recipient of the franchise and the government which seems to be running independently without being guided by the existing rules and legal culture, in this case the people whose level of awareness will enjoy a service does not yet have a legal structure. sufficient knowledge or already have knowledge but are reluctant to report.

9. SUGGESTIONS:

The suggestions given by researchers are as follows:

- To the Bukittinggi Government, to pay attention to every policy that has a regulatory basis to be carried out in general and to policies related to franchising in the Bukittinggi in particular.
- Recommend to the Local Government of Bukittinggi City to immediately formulate rules related to taking

action against the existence of local franchisees as a form of taking sides with local products and traders in Bukittinggi.

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