



REVIEW PAPER

# Legal Protection of Brand Rights for Franchise Agreements in Indonesia

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## Abstract

Business concept in franchising has become one of the centers of attention that can provide breakthroughs in the diversity of the economic market in Indonesia. Franchising here can be a means to assist business development for business owners in Indonesia to become more and more competitive in a sustainable way. This exploratory research aims to shed light on emerging Intellectual Property Rights concerns in the developing country context of Indonesia related to franchising businesses. This research uses the normative juridical method, which looks positive norm written in the book. Seeing the success and progress of franchising made this thing finally in great demand by entrepreneurs who then turned their business into a franchise for expansion. The results revealed that the key to the concept owned by this franchise business lies in its intellectual property rights; Intellectual Property Rights are special rights held directly by individuals or business entities against business systems that have a distinctive characteristic. Unique in its business, this is certainly done to attract market interest and then be able to market goods and/or services that have been proven successful so that success can be utilized and/or used by parties who also want to follow this kind of business model. The importance of this study is to see this development, which is growing faster and faster; of course, the legal protection of Intellectual Property Rights in this franchise agreement is important and needs to be protected. The study brings several theoretical and practical key insights for business lawmakers, scholars, government agencies, and entrepreneurs in Indonesia and the rest of the developing countries.

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## INTRODUCTION & BACKGROUND OF THE STUDY

Business is an organized or institutionalized personal (private) business activity to produce and sell goods and services to benefit from the community's needs.

The term business has a more specific meaning than the general economic term; business is more focused on commercial enterprises and the interactions between the actors, which are related to enterprise economics/microeconomics. The characteristics of a business mainly lie in the goal of achieving profit. Business activities include the production, distribution, and sale of goods and services to earn a profit (Hartmann, Germain, & Grobecker, 2015).

In the Indonesian Dictionary, business is trading, a commercial business inside the world of trade (business sector) (Pendidikan, 1990). Nurmalina, Sarianti, and Karyadi (2018) defines business as the overall activity organized

by people working in commerce (producers, traders, consumers, and industry) to improve their standards and quality of life (Suryo, 2010).

Franchising is a form of a business in which the first party, also referred to as the franchisor, gives the right to the second party, which is also referred to as the franchisee, further to distribute the goods/services within a certain area and a period, by using the brand, logo, and operating system that is owned and developed by the franchisor (Disemadi, Prananingtyas, & Sari, 2020). Article 4 chapter (1) Undang-Undang No. 42 years 2007, which regulates Franchising, stipulates that: Franchising is carried out based on the written agreement between the franchisor and the franchisee with due regard to the law in Indonesia. One party is granted the right to use the intellectual property rights, inventions, or commercial features of the other party and is

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rewarded based on the requirements provided for the provision or sale of goods and services. In simpler terms, the common thread of franchising is the sale of a comprehensive and ready-to-use business package that includes trademarks, materials, and management (Hermoko, 2008).

The franchise agreement is one aspect of legal protection for consumers party of bad faith from the other party. This is because the agreement can provide a strong legal basis for enforcing the legal protection for the parties, especially if there is a dispute in the future. Through the agreement, it can also be known about the position of responsibility of each party (Adilman, 2010).

The growth of local franchises is currently much higher than the growth of foreign franchises in Indonesia. This is because local franchisees provide various conveniences in purchasing their franchises. The tolerance given is also quite wide, plus continuous promotion and marketing. General Elucidation of PP Number 42 years 2007 concerning Franchising states that to improve business development with the Indonesian concept, it is necessary to encourage domestic entrepreneurs, especially small and medium enterprises, to grow as a reliable and competitive franchise provider at home and abroad. Especially in the context of local marketing products (Hanim, 2021; Giwanatara & Hendrawan, 2021).

Franchising for intellectual property rights purposes grants licenses or rights to jointly use two specific intellectual property rights namely trademarks (including trademarks, service marks, and indications) and trade secrets. The rights to use and two types of intellectual property rights cannot be separated (Budiana, Scolastika, et al., 2021). If the Intellectual Property Rights granted are only the rights to sell or distribute goods or services using certain brands, which are not accompanied by the authority and or actions to do certain things, either in the form of management or further processing that adds value to the product. The goods being sold are not much different from a form of charcoal distribution (Basarah & Mufidin, 2008).

Brands here become very important in the world of business, with both services and the certain goods that have become famous and sold in the market, manufacturers and other entrepreneurs compete with other well-known products for their products, even in this case there tend to be unhealthy fights tend to occur. A brand as an identifier or a distinguishing mark can describe the guarantee of personality (individuality) and reputation of the goods and services produced by their business when they are traded. "Besides ordinary (single) marks, collective marks are also known, namely marks are used on goods/services with similarity

which is commerce by several legal entities jointly to distinguish them from other goods and/or services that are similar" (Dianggoro, 2001).

From the manufacturer's perspective, the brand is owned by the manufacturer not only guarantees their production, especially in terms of quality but also helps to support the promotion and expansions of the products on the market. Commerce is generally the process of buying goods from one place and then selling the goods later to make a profit in another place. Furthermore, from the consumer's perspective, brands are needed to select products and know what to buy. Of course, if the product is not branded, the product in question is not known to the consumer. Therefore, a product (whether it is a good product or not) needs a brand. It is not impossible for a brand that is widely known to consumers for its quality and price can always be persecuted, counterfeited, "hijacked," and even counterfeited by other unfairly competing manufacturers (Nurani et al., 2021). There is no denying that.

Therefore, the IPR is a very important thing of a franchise because, without the IPR included in the franchise, the business is not a franchise, so the legal protection of IPR in a franchise agreement is very important. It is important to support your franchise business. Franchising as a trading sub-sector requires adequate protection. That's why the author wants to research legal protection for brand holders in franchise agreements.

### Research Problem

Seeing many issues related to trademark rights protection, in this study, the author limits the discussion to only covering how legal protection measures can be given to a trademark right in a franchise agreement. It is required to perform studies on franchises in various industries from other cultural settings, especially the evidence from developing country context is rare in the existing literature. This study aims to bridge this gap and explore how Indonesian policies govern the presence of well-known brands. There is a wide spectrum of innovation and unique approaches to arrangements. The first step in preparing a franchise agreement is to ensure that all partners are on the same page (Wulandari, 2021). Following that analysis of opposing franchise agreements, understanding the varied approaches and the importance of the law-franchising connection will go a huge way toward developing a contractual relationship. Thus, it necessitates an in-depth exploration of the current legal framework related to this unique phenomenon and provides this research's theoretical and contextual significance.

## RESEARCH METHODS

The author uses a normative juridical research method; this approach can include a conceptual approach, a law approach, a case approach, and a comparative approach. Or the secondary data used. Normative is legal research aimed at gaining normative knowledge of the relationship between one regulation and another phenomenon (Ibrahim & Sewu, 2004). In this study, normative knowledge about intellectual property rights and legal aspects of franchising business in Indonesia was tapped. Normative Juridical Research is a type of research that views law as a doctrine or a set of normative rules (law in a book). This research was conducted to study or research legal literature (Priyono, Riyanto, & Priyono, 2022). Thus based on comprehensive literature search in recent databases, books related to intellectual property rights, laws, and regulations from Indonesian legal literature and magazines were consulted to gather, organize, content analyze and infer conclusions from available data for this normative legal research. Standard legal and methodical approaches were followed during this process.

## LITERATURE REVIEW

### Definition and Implementation of Franchise Business in Indonesia

Franchising means rights or freedoms. In a broad sense, it is defined as the relationship between the brand owner of a product and the brand's users. Franchising can also be interpreted as a partnership business activity in a more general language. Franchising is the freedom to use brands, products, and operational systems for a certain time that has been agreed upon. In other words, brand owners and brand users have a certain business relationship. In franchising, the party who grants the rights is often referred to as the franchisor. The partners who receive the franchise are called franchisees. The term franchise is a combination of "wara" which means more, and "laba," which means profit. Franchising in Indonesia itself is regulated in Government Regulation PP No. 42 years 2007 concerning Franchising. Many franchises are growing rapidly in Indonesia, such as restaurants, convenience stores, cafes, coffee shops, etc.

According to Article 1 of the Indonesian Government Regulation Number 16 years 1997 concerning Franchise dated June 18, 1997, and Article 1 of the Minister of Industry and Trade of the Republic of Indonesia Number 259/MPP/KEP/7/1977 concerning Provisions and Procedures for Implementing registration of the franchise, the definition of Franchise (Franchisee) is: "an agreement in

which one of the parties is granted the right to utilize and or use intellectual property rights or inventions or business characteristics—owned by another party with a fee based on terms and/or the sale of goods and services (Burhanuddin, 2021).

More specifically, the franchise is an agreement where the franchisor gives its right to utilize and or use the intellectual property rights of business characteristics owned by the franchisor with rewards based on the franchisor's requirements that are related to the provision and/or sale of goods and services. Meantime, The Indonesia Franchise Association understands a franchise as a system for selling goods or services to end customers where the franchisor gives the rights an individual or company the rights to do business with a brand, name, system, procedure, and method. Given for a specific period that covers a specific area (Amiruddin, Annisa, & Putra, 2017). In Indonesia, the franchise system is divided into at least four types, as follows:

1. Franchise with business format system.
2. Franchise profit sharing.
3. Investment cooperation franchise.
4. Product franchise and trademarks.

Of the four franchise systems, the franchise system currently developing in Indonesia is product and trademark franchise and business format system franchise (Isnaeni, 2016). Product and trademark franchise is the simplest form of franchising. For product and brand franchises, the franchisor grants the franchisee the right to sell the products that are developed by the franchisor in combination with a permit to use the franchisor's brand (Pohan, 2020). Thus, there are two parties involved in a franchise agreement, namely the franchisor and the franchisee. The franchisor is the party who gives rights to other people to take advantage of their intellectual property or sell and use the products and characteristics of the business they own. At the same time, the franchisee is a business entity or individual who has the right to use the intellectual property that has been granted by the franchisor (Ginting, 2021; As & Purba, 2017).

This agreement is a special agreement because the franchise contract, according to the concept of civil law that considered a special agreement because it is not written in the Civil Code (KUHPerduta). A franchise contract is recognized as an agreement based on the principle of freedom of contract as stated in the provisions of Article 1338 of the Civil Code. Article 1338 of the Civil Code stipulates that an agreement made legally by the parties applies as law for those who make the contract agreement. An agreement is declared valid if it fulfills the provisions of Article 1320 of the

Civil Code regarding the conditions for a valid agreement. The conditions for the validity of the agreement based under Article 1320 of the Civil Code are as follows:

- a. The agreement between parties binds them.
- b. The ability to participate.
- c. There is a certain subject matter.
- d. A lawful reason

From a legal perspective, franchising involves areas of contract law, particularly agreements on licensing, the law on commercial names, brands, patents, models, and designs. These legal fields can be grouped into contract law and intellectual property rights. Firstly, franchising was introduced in the 1850s by Isaac Singer, a Singer sewing machine manufacturer who wanted to expand sales of his machines. Although his efforts failed, he was the first to introduce this franchise business format in the United States. This method was then followed by another successful franchisee, John S. Pemberton, The founder of Coca-Cola.

In practice, the franchise agreement must be written/made in good and correct Indonesian by referring to the existing legal rules, as has been written in Article 4 PP No.42 years 2007 that:

(1) Franchising will be conducted based on a written agreement between the franchisor and the franchisee in consideration of Indonesian law.

(2) If the contract in the chapter (1) is written in a foreign language, the contract must be translated into Indonesian.

Article 5 of PP No.42 years 2007 also explains that the Franchise agreement must at least contain the following (Shubhan, 2020):

- a) Party name and address;
- b) Type of Intellectual Property Rights;
- c) Activities of the business;
- d) Rights and obligations of parties;
- e) Assistance support, equipment, operational guidance, training, and marketing that the franchisor provides to the franchisee;
- f) Business land/area;
- g) The term of the agreement;
- h) Procedure for payment of compensation;
- i) Ownership, change of ownership, and right of heirs;
- j) Dispute resolution; and
- k) Procedures of extending, termination, and contract termination.

More details are explained in PERMENDAG No.53/M-DAG PER/8/2012, the franchise agreement which explains the contents of the franchise agreement contains at least:

1) The names and addresses of the parties that deal with the agreement, namely the franchisor and the franchisee

- a. Company name/address;
- b. Name/address of the owner/person in charge of the company;
- 2) Types of Intellectual Property Rights, namely the type of IPR of the franchisor, such as company brands and logos, outlet/store designs, management/marketing systems, and franchised condiments (which are engaged in the F&B business)
- 3) Business activities namely agreed on business activities such as retail, education, restaurants, pharmacies, or workshops;
- 4) Rights and Obligations of the franchisor and franchisee, namely the rights owned by both the franchisor and the franchisee (Sanjaya, 2016), such as :
  - a. The franchisor is entitled to receive a royalty fee from the franchisee, and the franchisor is obliged to provide continuous guidance to the franchisee;
  - b. The franchisee has the right to use IPR or characteristics of the business owned by the franchisor; then the franchisee is obliged to maintain the code of ethics/confidentiality of IPR or business characteristics given by the franchisor;
- 5) Facility assistance, operational guidance, training, and marketing provided by franchisors to franchisees, such as facility assistance in the form of provision, computer maintenance, and Information Technology (IT) programs for the management of business activities;
- 6) Business Land/Area, namely the area restrictions given to franchisees by franchisors to develop franchise businesses such as Sumatra, Java, Bali, or the whole of Indonesia;
- 7) The term of the agreement, namely the start and end of the agreement as of the agreement letter, is signed by both parties;
- 8) The procedure for payment of compensation, namely the procedure for provisions including the time and method of calculating the amount of compensation such as a fee (royalty fee) if agreed upon in the agreement, which is the responsibility of the franchisee;
- 9) Settlement of disputes, namely the determination of the location/location of dispute resolution, such as through the Arbitration Court with due observance of Indonesian law;
- 10) The procedure for extending, termination, and contract discontinuation end automatically if the period specified in the agreement has ended. The agreement can be extended again if desired by both parties with the provisions that are mutually determined;
- 11) Guarantee from the franchisor to continue to carry out his obligations to the franchisee in accordance with the contents of the agreement until the term of the agreement ends;

12) Several garages are to be managed by the franchisee. In the franchise agreement registration, the franchisee and franchisor must register a franchise agreement with a written statement (prospectus). The registration needs to be carried out in the context of fostering business by way of franchising (Nurmalina et al., 2018). In this case, Article 10 chapter "1 PP No. 42 years 2007 about Franchising" also explains that the Franchisor is required to register a Franchise offer prospectus before making a Franchise agreement with the Franchisee (Siregar, 2018). Written in Article 11, chapter 1, Franchisees are required to register a Franchise agreement.

### Franchise Arrangements in Indonesia

The essence of legal certainty regarding the franchise format in Indonesia began on June 18, 1997, with the Government Regulation (PP) No. 16 of 1997 concerning Franchise. PP No. 16 years 1997 concerning Franchising has been revoked and replaced with PP No. 42 years 2007. With the issuance of this Government Regulation to improve business development with franchising throughout Indonesia, it is necessary to encourage national entrepreneurs, especially small and medium-sized entrepreneurs, to grow as national Franchisors who are reliable and have competitiveness at home and abroad, especially in the context of marketing domestic products (Dube & Mutalib, 2021). In addition, the government believes it needs to recognize the legality and integrity of overseas and domestic franchisor businesses in order to increase the transparency of business information provided by domestic companies in the making of goods and/or services with franchising. In addition, the government can monitor the data on the franchises, both on the number and types of businesses being franchised. For this reason, before entering into a Franchise Agreement with the Franchisor, the Franchisors need to provide the government and potential franchisees with a franchise prospectus. On the other hand, if there is a franchise agreement, the franchisee must present the franchise agreement to the government (Priyono et al., 2022).

The franchisor must submit a Franchise to offer prospectus to the Government and the prospective Franchisee. On the other hand, if there is an agreement on a Franchise agreement, the Franchisee must submit the Franchise Agreement to the Government.

This government regulation is expected to provide franchisors and franchisees with business and legal security in marketing their products. Furthermore, other provisions that support legal certainty in the franchise business format are as follows:

1. KEMPEN Industry and Trade of the Indonesian Republic No. 259/MPP/KEP/7/1997 Dated July 30, 1997, concerning Provisions on Procedures for Implementing Franchise Business Registration.
2. PERMIT of Industry and Trade of the Republic of Indonesia No. 31/M-DAG/PER/8/2008 concerning Franchising Implementation.
3. UU No.14 years 2001 about patents.
4. UU No.15 years 2001 about brands.
5. UU No.30 years 2000 about Trade Secrets.

There are still many who are skeptical of legal certainty, especially in the Indonesian franchise industry. However, legal certainty in running a business in the form of a franchise is much better than before 1997. The increasing number of legal umbrellas that can protect franchises proves this (Triasih & Muryati, 2020). The development of franchises in Indonesia, especially in the fast-food sector, has progressed very rapidly. This is possible because our entrepreneurs who are registered as franchisees must develop their business with the main franchise they received by seeking or appointing a follow-up franchise. The network in the form of a franchise business using a pyramid system or grid system will continue to grow in the future (Sugeng & Adi Nur Rohman, 2019). There are several franchise associations in Indonesia, including APWINDO (Indonesian Franchise Entrepreneurs Association), WALI (Indonesian Franchise and Licensing Association), and AFI (Indonesian Franchise Association). International Franchise and Business Concept Expo (Dyandra), Franchise License Expo Indonesia (convex panorama), Info Franchise Expo (Neo magazine and Indonesian Franchise).

### Explanation of Brand Rights Legal Framework

Trademark rights are exclusive rights granted by the state to the owner of a mark registered in the general register of trademarks for a certain period of time using the mark himself or giving permission to a person or several people or a legal entity to use it. Exclusive Rights can strengthen a strong market position, return investment, increase sales and negotiating power, provide a positive image for the company, as well as increase the opportunity to acquire consumers. Trademark rights as immaterial property rights can also be transferred or transferred. This is evidence UU No. 20 years 2016 concerning Marks and Geographical Indications has followed the principles of property law adopted by all countries in the world in the preparation of their trademark laws. As an immaterial object, a brand must also be respected as a personal right of the wearer (Santoso, 2009). The form of respect for personal rights is the recog-

inition by law of the existence of property rights, whether it is ownership rights to material objects or property rights to immaterial objects such as trademark rights. Property rights as the most perfect material rights, of course, when compared to other material rights provide perfect enjoyment to the owner. One form of acknowledgment of the perfect material rights is the permission by law for the material rights to be transferred or transferred by the owner (Suryo, 2010).

Trademark rights are signs in the form of images, names, words, letters, numbers, colour schemes, or a combination of these elements that are distinctive and are used in the trading of goods and services. Based on Article 1 point 1 UU Trademark No. 15 years 2001, a mark is considered valid if the mark has been registered in the trademark register. The first party to register has the right to the mark and can exclusively use the mark, while the other party may not use it, except with permission (Soliman, Hagar, Ibid, & El Sayed, 2015). Without registration, there will be no rights to the mark. This is stated in Article 3 UU No. 15 years 2001 which states, "Trademark right is a special right that the owner of a trademark registered in the general trademark register can use it by himself/herself, jointly use it by one or more persons, or permit a corporation to use it." . From the law, it is necessary to explain that the use of a mark is different from the ownership of a mark (Purwandoko, 2002).

Not all marks can be registered. Article 4 UU Trademark No. 15 years 2001 states, "Marks cannot be registered on the basis of an application submitted by an applicant with bad intentions". A mark cannot be registered if the mark contains one of the elements as referred to in Article 5:

1. Contrary to the prevailing laws and regulations, religious morality, decency, or public order;
2. Has no distinguishing power;
3. Has become public property. Or a description or relationship of a product or service;
4. For which registration is requested.

So, in the law of granting trademark licenses, it is expressly stated that the licensed mark is a mark that must be different from other marks that have been registered at the trademark office and therefore obtain protection in a separate law. According to Article 40 chapter (1) UU No.15 years 2001 concerning Marks, trademark ownership can be obtained by way of inheritance, will, grant, agreement, or other causes justified by law. While the use of the mark can be done by the owner himself, or by other people with the permission of the brand owner. This permission can be obtained through a license or franchise (Solihin & Santiago, 2021). If someone uses someone else's mark without the

trademark owner's permission, then the mark owner can sue the mark user without that permission (Syamsuddin, Nazir, & Saputra, 2007).

The claim can be made under civil law or criminal law. This can be concluded from Article 72 to Article 77 UU No.15 years 2001 concerning Brands. As Article 76 chapter (1) the owner of a registered mark can file a lawsuit against another party who illegally uses the trademark that is in principle or completely similar, with respect to similar goods or services, in connection with the use of the trademark. The owner can request the termination of the proceedings. The lawsuit as referred to in chapter (1) must be filed to the Commercial Court (Susanti, efendi, & sari, 2020).

It is explained in Article 77 where a lawsuit for infringement of a mark as referred to in Article 76 can be filed by the licensee of a registered mark either alone or jointly with the owner of the mark concerned. Civil lawsuits for compensation can also be filed by mark holders, particularly against geographical indications, as confirmed in Article 57 UU Trademark. The right to file a trademark lawsuit in civil law as stated in Article 76 chapter (1) and Article 77 does not reduce the state's right to commit criminal acts in the field of trademarks as confirmed in Article 90 to Article 95 (Wulandari, 2021).

The protection of the mark is a form of protection of the franchise agreement to create a climate of fair business competition in Indonesia. In UU No.20 years 2016 concerning Marks and Geographical Indications replacing Law No. 15 years 2001. The seriousness of the government in optimizing the protection of trademarks in Indonesia is expected to provide legal certainty for owners of registered marks in Indonesia and to accelerate the registration of trademarks in Indonesia. The three functions of the mark make the legal protection of the mark very meaningful. In accordance with the function of the brand, as a distinguishing mark, the brand owned by one person should not be the same as the brand owned by another person (Ginting, 2021).

### **Theory of Legal Protection**

Through some kind of effort from the government in a country through available legal advice. Among them is to help legal subjects recognize and understand their respective rights and obligations, as well as in dealing with problems of difficulty in obtaining infrastructure and facilities to obtain their rights (Jamil et al., 2020). The government as a representative of a country, as well as the goals of the country itself, the government must ensure the realization of rights and obligations, this aims to protect the nation in a country

and to realize social justice for all the people of that country is included in the meaning as legal protection (Hartanto & Ratnawati, 2020).

This paper is supported by the theory of legal protection because according to the author's view, the law here can protect a person's interests by sharing his power, then taking action in the context of his interests, where that interest is the target of rights. Fitzgerald (1966) explained: "That the law aims to integrate and coordinate various interests in society by limiting the variety of interests such as in a traffic interest on the other" (Amiruddin et al., 2017).

The legal protection that is pursued through legislation has basic legal principles. Likewise, legal protection is provided through efforts to make and include steps through legislation that has a purpose, the thing is planned through strategies and policies. All of these things can be found in any law that seeks the same goal, namely the protection of the law (Fuditia, 2021).

Protection is also a very important element in rights, as Houwing has stated that "rights are interests that are protected by law in a certain way" (Burhanuddin, 2021). Thus the law must consider these interests carefully so that it can then create a balance between these interests. Marzuki (2021) also argues that "the law must function in achieving the goal of peace and prosperity, the goal of achieving peace and prosperity can be realized if the law provides as much as possible a fair arrangement" (Syamsuddin et al., 2007).

While the right itself is power by law against legal subjects that are closely related to rights and obligations, rights are related to obligations, "meaning that if a person has rights, then his partner is an obligation to others" (Solihin & Santiago, 2021). Thus, rights are an essential thing that exists in every human being by nature, because with this right then the law is needed to maintain the continuity of the existence of rights in the pattern of social life, as well as other legal subjects where in this paper is a trademark right of existing intellectual property, of course, this requires definite legal protection so that its existence is also maintained. This is where this interest is not only created by the state because interests like this actually already exist in social life, then the state regulates which ones must be protected. According to Peter Mahmud, there are 3 (three) elements in a right, namely 1. The element of protection; 2. The element of recognition; and 3. The element of will. "If the principle of justice is implemented, then a good and ethical business will be born" (Prasetyo et al., 2013).

Thus the legal protection provided for this is an application of the principle of recognition and protection of human dignity which is guided by Pancasila and the principles that ex-

ist in the rule of law based on Pancasila. So that every legal subject can and has the right to get protection from the existing law because almost all relationships within the scope of the law must of course get definite protection from the law itself. So because of that, there are many kinds of legal protections that exist in the community in a country.

Isnaeni (2016) argues that basically the issue of "legal protection in terms of its source can be divided into two (2) types, namely "external" legal protection and "internal" legal protection (Aminlari, 2019). Thus, internal legal protection is basically meant to be packaged by the parties involved in the agreement, which at the time of forming the clause of the existing contract, the parties certainly want their interests to be accommodated on the basis of an agreement (Karamoy, 2013). Then all types of risks that exist and may arise must be endeavored so that they can be minimized through clauses that have been agreed on the basis of agreement, so that thus the parties will receive balanced legal protection in accordance with the agreements that have been made from the parties themselves so that the legal standing for the two of them to be relatively equal in the sense that the parties have the same/balanced bargaining power, thus on the basis of the principle of freedom of contract, the parties in the agreement have the flexibility to then state their will in accordance with the interests of each party. "This pattern is used as the basis when the parties assemble the clauses of the agreement they are working on so that the legal protection of each party can be realized in a straightforward manner on their initiative" (Masulili, Utomo, & Syechfani, 2010).

## ANALYSIS AND DISCUSSION

### Protection of Brand Rights

Brands need to be protected because they are immaterial assets that can bring high economic benefits or are of high value. This can happen if they are used to market a particular product (Williamson, 2002). The high quality of a product is characterized by a well-known brand (attached to the merchandise). However, to discuss the legal protection of the franchise agreement, the author first suggests several strategic functions of the franchise agreement, namely:

1. Socio-Economic functions, this sector includes the provision of goods and services to consumers, contributes more than a part of economic growth, and contributes to the country's foreign exchange revenue.
2. Socio-political function, this sector is also very important, especially in terms of efforts to absorb workers and reduce poverty. The method of distribution of funds is closely related to the agricultural sector, and the possibility of pro-

moting economic development in rural areas is financially supported

3. Seeing the potential and very strategic functions, the government's contribution is to provide legal protection, both preventive legal protection, and repressive law.

1. Preventive legal protection is a form of protection that leads to preventive actions. The goal is to reduce the chances of trademark infringement (Tanya, Simanjuntak, & Hage, 2010). This step is focused on monitoring the use of brands, protecting the exclusive rights of trademark rights holders, and advising every franchise agreement to get legal protection.

2. Repressive legal protection is protection that is carried out to resolve or overcome an event or occurrence that has occurred, namely in the form of a violation of trademark rights. In repressive protection, the imposition of clear and firm sanctions for perpetrators of trademark infringement in accordance with the applicable Trademark Law must also be carried out by law enforcement officers in a firm and consistent manner. This consistently will provide legal certainty, especially for trademark rights holders. M. Yahya Harahap said that the legal protection for the owner of the mark includes the use or exploitation of the mark which consists of:

1) Protecting the use of exclusive trademark rights, including:

a. Using brand marks as logos, labels, or images in correspondence, on goods or services, on packaging in advertisements or promotions.

b. Exclusively enjoy the manifestations born of the brand, including goodwill or well-known, high reputation, the indication of the source of origin/geography, cultural touch (culture attachment), and a touch of familiarity (Marzuki, 2021) (familiar attachment).

2) Protect the exclusive right to use the mark as a means of exploitation to gain profit in trade, including:

a. Marketing of goods or services in national, regional, and global trade;

b. Keep goods protected by trademarks, provided that they do not conflict with the provisions of monopoly and speculation to increase prices;

c. Supplying goods;

d. Exporting goods.

3) Protect the right to expand the territory and marketing segment, in accordance with the market system or free trade and carry out in accordance with the principles of free, honest, and healthy competition.

4) Protect the transfer or transfer of trademarks in the form of:

a. Transfer based on the general title in accordance with the provisions of inheritance law;

b. Transfers in all forms of transactions permitted by law (selling, using, and donating);

c. In the form of a license, giving permission to another person or legal entity to use it.

Legal protection by using a constitutive system in determining rights to trademarks basically guarantees legal certainty. The existence of domestic products should be protected so that their rights are fulfilled (Khairiyati, 2018). Thus, cooperation in franchise agreements can help increase entrepreneurs who own brands of domestic products to obtain rights to their brands. Franchising is a reciprocal agreement because both the franchisor and the franchisee are obliged to fulfill certain achievements. From the given formula, we can describe the following things (Sugeng & Adi Nur Rohman, 2019).

Rules of contractual integrity, especially agreements in business dealings, are governed by the rules. The rules of the Indonesian Basic Law were then considered unnecessary to the spouses' interests, particularly in terms of legal recourse and conflict settlement (Besen & Raskind, 1991). The government releases many regulations that expressly control existing contracts is required to meet the juridical requirements of business persons. Companies, trademarks, contracts, and proprietary information are all examples of financial assets. Copyright owners must additionally establish the proprietary information that accompanies the franchise marketing strategies in order to receive more definite legal state protection. The legal protection franchise, directly and indirectly, intended the intellectual property rights.

## CONCLUSION

Legal protection for holders owned by the franchise will be more protected if the Franchise Agreement has regulated the protection of intellectual property rights, especially trademarks, namely by agreeing on certain limits that must be obeyed by the franchisee, which is directly or indirectly aimed at protecting the rights of the franchisee. In the Franchise Agreement that protects trademark rights, it is also stipulated that the mandatory protection of trade secrets is provided for at least 2 (two) years after the end of the agreement period. In addition to this, IPR in the franchise business is also very protected by laws and regulations relating to intellectual property rights, namely: Copyright Law, Trademark Law, and Trade Secret Law. This research not only provided highlights of the Indonesian legal system related to franchise and franchisee relationships



but also have highlighted the gaps in the framework to grab the attention of the policymakers and business law experts to overcome the real business challenges faced by entrepreneurs and SME owners in developing country context specifically in the Indonesian context.

### Limitations and Future Research Directions

This study has several time, space, and budget constraints and limited access to legal literature and official sources. These literary sources require huge effort and influence to

get proper access, and then organizing this data for a single study is another major challenge. Future studies may be financed by government bodies to overcome these barriers and enhance this research's generalizability. Future research attempts are welcomed in cross-cultural and cross-country contexts based on regional perspectives. A comprehensive comparison of such legal studies in the ASEAN region can bring several key policy insights for a wider audience in the future.

### REFERENCES

- Adilman, A. (2010). *Protection of rights in franchise agreements* (Masters thesis). Diponegoro University, Semarang, Indonesia.
- Amiruddin, N., Annisa, R. N., & Putra, B. C. (2017). Legal aspect of the foreign franchise protection in Indonesian business development. *Yustisia Jurnal Hukum*, 6(2), 467-482.
- As, Y., & Purba, C. S. (2017). The urgency of pontianak local public policy in embodying legal protection against teacher. *International Journal of Humanities, Arts and Social Sciences*, 3(6), 241-248. doi:<https://doi.org/10.20469/ijhss.3.20001-6>
- Basarah, M., & Mufidin, M. F. (2008). *Franchise business and its legal aspects*. Bandung, Indonesia: PT Citra Aditya Bakti.
- Besen, S. M., & Raskind, L. J. (1991). An introduction to the law and economics of intellectual property. *Journal of Economic Perspectives*, 5(1), 3-27. doi:<https://doi.org/10.1257/jep.5.1.3>
- Budiana, I. N., Scolastika, S., et al. (2021). Juridical analysis on the legal choice clause and dispute settlement in the franchise agreement. *Journal Equity of Law and Governance*, 1(1), 37-47. doi:<https://doi.org/10.22225/elg.v1i1.3243>
- Burhanuddin, S. F. (2021). Franchise agreement in civil law perspective. *Enrichment: Journal of Management*, 12(1), 39-43.
- Dianggoro, W. (2001). *Renewal of the trademark law and its impact on the business world*. Jakarta, Indonesia: Business Law Development Foundation.
- Disemadi, H. S., Prananingtyas, P., & Sari, R. K. (2020). Legal regulation and protections for the parties in the franchise business agreements in Indonesia. *Hang Tuah Law Journal*, 3(2), 202-209.
- Dube, A., & Mutalib, N. (2021). Franchising in Indonesia. *Franchise Law Journal*, 40(3), 473-491.
- Fitzgerald, P. J. (1966). *Salmond on jurisprudence*. Mytholmroyd, UK: Sweet & Maxwell.
- Fuditia, M. (2021). Franchise agreement and Islamic franchise concept. In *The 1st proceeding international conference and call paper*.
- Ginting, R. G. (2021). Legal comparisons regarding the content of franchise prospectus in legal system of United States of America, Australia, Indonesia for legal protection of fruit recipients in Indonesia. *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences*, 4(2), 2779-2790. doi:<https://doi.org/10.33258/birci.v4i2.1987>
- Giwanatara, G., & Hendrawan, D. (2021). Juridic review of legal protection for health personnel in radiology in relationship with legal assurance. *Journal of Advances in Humanities and Social Sciences*, 7(2), 59-63. doi:<https://doi.org/10.20474/jahss-7.2.3>
- Hanim, L. (2021). Perlindungan hukum hak dalam perjanjian waralaba di Indonesia. *Jurnal Hukum*, 26(2), 571-589. doi:<http://dx.doi.org/10.26532/jh.v26i2.210>
- Hartanto, H., & Ratnawati, E. T. R. (2020). Legal protection on franchise as business alternative development. *Unram Law Review*, 4(2), 123-137. doi:<https://doi.org/10.29303/ulrev.v4i2.122>
- Hartmann, J., Germain, R., & Grobecker, A. (2015). Antecedents of environmentally conscious operations in transitioning economies: Insights from Russia. *International Journal of Operations & Production Management*, 35(6), 843-865. doi:<https://doi.org/10.1108/IJOPM-02-2014-0050>
- Hermoko, A. Y. (2008). *Asas proporsionalitas dalam kontrak komersil*. Yogyakarta, Indonesia: Laksbang Mediatama.
- Ibrahim, J., & Sewu, L. (2004). *Hukum bisnis dalam persepsi manusia modern*. Bandung, Indonesia: Refika Aditama.

- Isnaeni, M. (2016). *Pengantar hukum jaminan kebendaan*. Surabaya, Indonesia: Revka Petra Media.
- Jamil, A., et al. (2020). *Legal protection of franchisor trade secret in franchise and work agreement* (Bachelor thesis). Universitas Islam Indonesia, Yogyakarta, Indonesia.
- Karamoy, A. (2013). *Waralaba-jalur bebas hambatan menjadi pengusaha sukses*. Jakarta, Indonesia: Gramedia Pustaka Utama.
- Khairiyati, F. (2018). Kajian teoritis perlindungan hukum perjanjian waralaba dikaitkan dengan asas kebebasan berkontrak (studi kasus di cv rocket fried chicken). *Rechtsregel: Jurnal Ilmu Hukum*, 1(1), 53-72. doi:<http://dx.doi.org/10.32493/rjih.v1i1.1923>
- Marzuki, P. M. (2021). *Pengantar ilmu hukum*. Jakarta, Indonesia: Prenada Media.
- Masulili, A., Utomo, W. H., & Syechfani, M. (2010). Rice husk biochar for rice based cropping system in acid soil 1. the characteristics of rice husk biochar and its influence on the properties of acid sulfate soils and rice growth in West Kalimantan, Indonesia. *Journal of Agricultural Science*, 2(1), 39-47.
- Nurani, N., et al. (2021). The protection of brand rights for the knitting manufacturer industry in the pandemic era of Covid-19 case study in Kampung Rajut Binong Jati Bandung Raya. *Turkish Journal of Computer and Mathematics Education (TURCOMAT)*, 12(11), 1184-1190. doi:<https://doi.org/10.17762/turcomat.v12i11.6016>
- Nurmalina, R., Sarianti, T., & Karyadi, A. (2018). *Studi kelayakan bisnis*. Jakarta, Indonesia: PT Penerbit IPB Press.
- Pendidikan, D. (1990). *Kebudayaan, kamus besar bahasa Indonesia*. Jakarta, Indonesia: Balai Pustaka.
- Pohan, M. (2020). Conception of franchise agreement in protecting the legal interests of parties based on Indonesian civil law. *International Journal Reglement & Society (IJRS)*, 1(2), 103-112.
- Prasetyo, A., et al. (2013). Penegakan hukum tindak pidana pembakaran hutan di wilayah kabupaten kotawaringin timur. *Diponegoro Law Journal*, 2(3), 1-10.
- Priyono, E. A., Riyanto, R. B., & Priyono, J. (2022). Legality and justice of the existence of the franchise agreement in Indonesia. *Journal of Legal, Ethical and Regulatory Issues*, 25, 1-7.
- Purwandoko, P. H. (2002). *Implikasi ketentuan agreement on TRIPs bagi Indonesia*. Jakarta, Indonesia: Yustisia.
- Sanjaya, U. H. (2016). Problematik penerapan undang-undang hak kekayaan intelektual tentang indikasi geografik pada undang-undang merek. *Jurnal Panorama Hukum*, 1(2), 17-28. doi:<https://doi.org/10.21067/jph.v1i2.1413>
- Santoso, B. (2009). *Pengantar HKI dan Audit HKI untuk perusahaan*. Semarang, Indonesia: Penerbit Pustaka Magister.
- Shubhan, M. H. (2020). Legal protection of solvent companies from bankruptcy abuse in Indonesian legal system. *Academic Journal of Interdisciplinary Studies*, 9(2), 142-142. doi:<https://doi.org/10.36941/ajis-2020-0031>
- Siregar, I. Y. (2018). Legal protections of trade secret in franchise agreements: A comparative study with the United States and Australia. *International Journal of Research and Review*, 5(5), 86-94.
- Solihin, S., & Santiago, F. (2021). Inter agreement balance branches business law. In *International Conference on Law, Social Science, Economics, and Education*, Jakarta, Indonesia.
- Soliman, S. M., Hagar, M., Ibid, F., & El Sayed, H. (2015). Experimental and theoretical spectroscopic studies, HOMO-LUMO, NBO analyses and thione-thiol tautomerism of a new hybrid of 1, 3, 4-oxadiazole-thione with quinazolin-4-one. *Spectrochimica Acta Part A: Molecular and Biomolecular Spectroscopy*, 145, 270-279. doi:<https://doi.org/10.1016/j.saa.2015.01.061>
- Sugeng, S., & Adi Nur Rohman, A. (2019). *Review artikel for recipients of foreign franchise* (Unpublished thesis). Fakultas Ilmu Hukum Universitas Indonesia, Jakarta, Indonesia.
- Suryo, U. T. (2010). *Hak kekayaan intelektual di era global*. Yogyakarta, Indonesia: Graha Ilmu.
- Susanti, D. O., efendi, A., & sari, N. K. (2020). Legal protection towards trade secret ownership and brands of salted fish production. *International Journal of Creative Research and Studies*, 4(11), 12-21.
- Syamsuddin, S., Nazir, R., & Saputra, S. (2007). Pengontrolan (posisi) motor servo Ac dengan metode pengaturan Volt/Hertz. *Universitas Andalas: Medan*, 2(27), 52-61.
- Tanya, B. L., Simanjuntak, Y. N., & Hage, M. Y. (2010). *Teori hukum strategi tertib manusia lintas ruang dan generasi*. Yogyakarta, Indonesia: Genta Publishing.
- Triasih, D., & Muryati, D. T. (2020). Legal protection of the parties in the franchise agreement. In *The 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020)*, Purwokerto, Indonesia.

- Williamson, O. E. (2002). The theory of the firm as governance structure: From choice to contract. *Journal of Economic Perspectives*, 16(3), 171-195. doi:<https://doi.org/10.1257/089533002760278776>
- Wulandari, R. (2021). Legal protection of franchisee in franchise contract which franchisor unilaterally terminates. *NORMA*, 18(1), 1-8.