

---

---

## Legal Efforts To Protect Franchisees Against Termination Of Employment Agreements

Nur Ifani Chaerunisa<sup>1</sup>, Mutia Cherawaty Thalib<sup>2</sup>, Sri Nanang Meiske  
Kamba<sup>3</sup>

<sup>1</sup> Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: [nurifanichaerunisa99@gmail.com](mailto:nurifanichaerunisa99@gmail.com)

<sup>2</sup> Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: [mutiathalib@ung.ac.id](mailto:mutiathalib@ung.ac.id)

<sup>3</sup> Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: [srinanangmeiskekamba@ung.ac.id](mailto:srinanangmeiskekamba@ung.ac.id)

---

### ARTICLE INFO

#### **Keywords :**

Protect; Agreement; Work

#### **How To Cite :**

Nur., Thalib, M. C.,  
Kamba, S. N. M. (2019).  
Legal Efforts To Protect  
Franchisees Against  
Termination Of  
Employment Agreements  
*Estudiante Law Journal*. 1  
(2): 321-377

#### **DOI :**

### ABSTRACT

products. The approach used is a juridical approach and analytical technique using qualitative analytical methods. The results showed that the form of legal protection against franchisees in agreements with franchisees is contained in the Regulation of the Minister of Trade Number: 12/MDAG/Per/3/2006, in Article 7 that the term of the franchise agreement (franchising) is valid for at least 5 years. These terms provide legal protection to the franchisor as the franchisor, as such the franchisor cannot terminate the agreement at any time or at any time. It is necessary to immediately regulate regulations that directly or indirectly concern franchise business practices made in the form of legislation, such as the Antitrust or Antitrust Act and the current Business Competition Act.

@2019 Nur., Thalib, M. C., Kamb,S. N. M.

Under the license CC BY-SA 4.0

## I. INTRODUCTION

### A. Background

The business world is always moving dynamically, business actors are always looking for breakthroughs in developing their business. So in modern times is an era where humans are required to develop themselves.<sup>1</sup> This is increasingly felt in today's global era where the expansion of the business world has penetrated the boundaries of space, time, and territory of a country. One of the breakthroughs made by business people is business development through the franchise system in Indonesia termed franchise. This system for some entrepreneurs who want to develop their business is considered effective and appropriate in the development of a company because it does not require direct investment but involves the cooperation of other parties. The emergence of franchise business certainly brings a logical consequence to the legal world, adequate legal institutions are needed to regulate the law such business in a country, for the sake of the creation of legal certainty and protection for the parties involved in this business.<sup>2</sup> Indonesia is one of the countries that put forward the constitution in every aspect of national and state life.<sup>3</sup> State involvement is also one of the characters of the phenomenon of conflict.<sup>4</sup> So that this becomes a constitutional right for every citizen of Indonesia.<sup>5</sup>

The legal relationship between the Franchisor and the Franchisor is also governed in a contract that is tangible into the rights and obligations of the parties. This means that there is a link between the parties to comply with the contents of the agreement which if violated can cause legal consequences by the agreement in the franchise agreement. The relationship between the Franchisor and the Franchisor is reciprocal. On the one hand, the Franchisor assists the Franchisor and on the other hand, the Franchisor gives profits/royalties to the Franchisor so that the two cooperate in improving the marketing of their products in the community through the procedures that have been determined by the Franchisor. "With the help of capital from Franchisees who also bear the risk, and have high dedication, the company's growth can run smoothly and lightly so, the balance of rights and obligations between the Franchisor and the Franchisor must be realized in the franchise agreement to provide legal certainty or protection for both parties.<sup>6</sup> Mochtar

---

<sup>1</sup>Bakung, Dolot Alhasni. (2020) Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right. JALREV 2 (1), 67

<sup>2</sup>Darmawan Budi Suseno, *Successful Franchise Business Easy, Low Risk and Profitable*. (Yogyakarta: Cakrawala, 2017), 19

<sup>3</sup> Fakhris Lutfianto Hapsoro, (2020). Interpretasi Konstitusi dalam Pengujian Konstitusionalitas untuk Mewujudkan The Living Constitution, Jurnal Law Review. 2 (2), 144

<sup>4</sup> Yudha Chandra Arwana, (2019), Jalur Mediasi dalam Penyelesaian Sengketa Pertanahan Sebagai Dorongan Pemenuhan Hak Asasi Manusia. Jurnal Law Review. 1 (2), 216

<sup>5</sup>Nggilu, N., & Wantu, F. M, (2020). Menapaki Jalan Konstitusional Menuju Zaken Cabinet: Ikhtiar Mewujudkan Pemerintah Berkualitas Konstitusi. Jurnal Hukum Samudra Keadilan, 15(1), 128

<sup>6</sup>Sonny Sumarsono, *Manajemen Bisnis Waralaba*, Yogyakarta: Graha Ilmu, 2019, hal 88.

Kusumaatmadja stated that *force majeure* can be accepted as an excuse for not fulfilling the implementation of obligations due to the loss/disappearance of objects or purposes that are the subject of the agreement. This situation is directed towards the physical and legal implementation, not because it is only difficult to carry out obligations.<sup>7</sup> The basic principles that mark *universal clean government* include legal certainty, transparency, and accountability.<sup>8</sup>

The author raised the same issue that occurred in the Indomaret franchise in the city of Gorontalo, Indomart is a business in the retail sector that provides daily needs. Here Indomart offers to people who want to franchise cooperation with Indomaret. The franchise agreement involves both parties, namely *the franchisee* (franchisee) which means the recipient of the brand, in this agreement that is (CV. Indah) and *franchisor* (franchisor) which means the brand giver is PT Sumber Alfaria Trijaya and also listed provisions relating to the rights and obligations of *franchisees* with *franchisors*. In addition to the agreement being canceled or decided unilaterally then there is also a legal spinning which means (1) it does not apply; invalid: the agreement is declared; (2) it did not take place; delayed; *urung*: yesterday's meeting was forced, because the attendance was less than two-thirds of the number of members; (3) it did not work; fail.<sup>9</sup> Thus, voiding or declaring void means that an agreement that has been mutually agreed to is invalid or does not occur. While null and void is a limitation that occurs based on the law, resulting in the legal act in question never occurring. Thus, the void is a contract that should not be executed or settled at all.

The Franchise Agreement that occurred between Indomaret as a Franchisor and Mr. Krisna Maltali as a franchisee in the case of in Pak Kristina has paid to get Indomaret franchise which is shopping retail in which there are basic needs, short story short franchise agreement both according to the contract should run for 5 years, but only 1 year running PT Indomaret decided its franchise agreement by looking at the trademark retail store. The franchise has been running a franchise business that has been operating for approximately one year. As long as the outlet is operating, the franchisee is considered to have failed in meeting the number of sales of PT merchandise products. Indomaret as a result of low market share or the business run by franchisees is considered undeveloped and cannot meet the minimum standards set by the franchisor. If the cooperation continues to be maintained, it will harm or decrease the reputation of the franchise company PT.

---

<sup>7</sup> Harry Purwanto, (November, 2011). *Keberadaan Asas Rebus Sic Stantibus Dalam Perjanjian Internasional*, Jurnal Mimbar Hukum. Edisi Khusus, 115.

<sup>8</sup>Fitria Andalus Handayani dan Mohamad Ichana Nur. (2019), *Implementasi Good and Clean Governance di Indonesia*. Jurnal Pemikiran Administrasi Negara. 11 (1), 8

<sup>9</sup> Nanin Koeswidi Astuti. (April, 2016). *Analisa Yuridis Tentang Perjanjian Dinyatakan Batal Demi Hukum*. Jurnal Hukum Tora. 2 (1), 281.

Indomaret so that the franchisor is very forced to go down the road with the termination of the contract on the grounds of the failure of the franchisee in running its franchise business. Whereas in the clause that has been agreed by taking into account Article 5 of Government Regulation no. 42 of 2007 on Franchising on point K in its clause is not written in the event of the expiration of the contract or the unilateral cooperation that the point of non-fulfillment of minimum sales standards is the reason for the termination of the agreement, obviously this harms franchisees. So that these actions harm the general public and often even often violate the legal norms that apply to the general public.<sup>10</sup> Norms that develop in society are flexible and encourage creativity in providing good public services.<sup>11</sup> So with this the need for supervision in their respective work environments.<sup>12</sup>

Referring to Article 5 letter k of Government Regulation No. 42 of 2007 on Franchising above, it is stipulated that the procedure for termination of a franchise agreement must be outlined in a franchise agreement clause. As with a general agreement, the terms of termination of an agreement are always included in the agreement. From the illustration of the case above, we do not know about the terms of the termination of the agreement. Thus, the terms of termination of the agreement should have been included in the franchise agreement in the above case.

From the example of the case above can be seen still weak legal protection received by the franchisee, because the position of the contract that has been arranged in such a way by the franchisor that makes the position of the franchisee weak in the agreement, the result is that there will be losses to the franchisee, even though the franchisee has paid a small amount of money to get the franchise rights to the franchisor and build a franchise. Business. Interested in the above issues, the author tried to raise the issue and poured it into the writing of a thesis with the title Analysis of Legal Protection of Franchisees against Franchisees in the Franchise Business Model Due to unilateral Termination of The Agreement (Research in Indomaret City South of Gorontalo).

## **B. Problem Statment**

This paper formulates issues related to how legal efforts protect franchisees against termination of employment agreements.

---

<sup>10</sup> Novendri M. Nggilu dan Ahmad (2020). Denyut Nadi Amandemen Kelima Undang-Undang Dasar 1945 melalui Pelibatan Mahkamah Konstitusi sebagai Prinsip the Guardian of the Constitution. *Jurnal Konstitusi*, 16 (4), 785-808

<sup>11</sup> Norma L.P. Wemben. (2010). "Kinerja Pelayanan Pada Kantor Badan Pertanahan Nasional Kabupaten Gorontalo." *Jurnal Legalitas* 3 (2), 131

<sup>12</sup> Iriyanto Tiranda. (July, 2019). Konsep Ideal Penanganan Perkara Tindak Pidana Korupsi Pungutan Liar Berdasarkan Asas Peradilan. *Jurnal Law Review*. 1 (2), 132

### C. Research Methods

The research method used is the dualism of normative-empirical legal research whereby research uses normative-empirical legal case studies in the form of legal behavioral products.<sup>13</sup> The approach used is a juridical approach and analytical technique using qualitative analytical methods.

## II. DISCUSSION

### Legal Efforts To Protect Franchisees Against Termination Of Employment Agreements

In line with the progress and so rapid science and technology today.<sup>14</sup> Indomaret Franchise Business is easy to find in residential areas, office buildings, and public facilities because the placement of outlet looks is based on the motto "easy and frugal". More than 3,500 types of food and non-food products are available at competitive prices, meeting almost all the needs of everyday society. Supported by 12 distribution centers, which use state-of-the-art technology, Indomaret is a very promising business asset. At this time Indomaret mini-market has grown rapidly, to various regions including in Gorontalo. For Gorontalo its headquarters are in Manado., Indomaret mini market is also available in several districts in the city of Gorontalo spread almost in all sub-districts in Gorontalo province, one of which is in the southern city district of Gorontalo city, in this sub-district, there are a total of 6 Indomaret Shops that have been built were 5 of them are still operating to date and only 1 store. Indomaret in the Southern city experienced unilateral closure by the Indomaret. Indomaret franchise as a way of cooperating in the field of business between two or more companies, which on the one hand as a franchisee and on the other as a franchisee, it has been affirmed that the franchisor as the owner of a brand and technology gives his rights to franchisees to do business based on the brand and technology.<sup>15</sup>

The provision that becomes the legal basis in positive law in Indonesia is referring to Article 1320 of the Civil Code. However, against the legal protection of franchisees themselves based on Article 1338 of the Civil Code about freedom of contract and since June 18, 1997, enacted PP No.16 of 1997 on franchising as a foundation of franchising in Indonesia and then updated with the issuance of PP No.42 of 2007 on franchising and Regulation of the Minister of Trade (percentage) No.31 / MDAG / PER / 8/2008 on the implementation of franchises. Moreover, contract law in Indonesia adheres to an "open system" that provides freedom for everyone to make contracts, especially regarding the material. As in Article 1233 of the Civil Code, which states that every

---

<sup>13</sup> Abdulkadir Muhammad. *Hukum dan Penelitian Hukum Cet-1*, (Bandung:PT Citra Aditya Bakti, 2014), 52

<sup>14</sup> Lakoro, A., Badu, L. W., Achir N, (2020). Lemahnya Kepolisian Dalam Penanganan Tindak Pidana Perjudian Togel Online, *Jurnal Legalitas*. 13 (1), 32

<sup>15</sup> Sentosa Sembiring, *Hukum Investasi*, (Bandung: Nuansa Aulia, 2010), 1

engagement is born from:

1. Agreement;
2. Bill

Therefore, franchisees and franchisees must understand very well the agreements made by both parties so as not to become a problem in the future.<sup>16</sup> The provisions of the above legislation show that in terms of regulatory law related to the legal protection of franchise law has been designed in such a way that the implementation of the business can run very well but in reality, the protection related to the recipient of this Franchise is still very less even very weak in the implementation of franchise agreements that occur. Franchisees are not in the same position or the same as the franchisor in the implementation of this franchise agreement in practice The franchisor has a higher position than the franchisee, this is because as the business owner who rents the business to the franchisee provided that the franchisee will be subject to the clause of the agreement required by the franchisor later. This position allows the franchisor to determine the contents of the agreement and even decide the agreement unilaterally.

As in the case of unilateral termination of Indomaret franchise in the southern city termination of the agreement or franchise contract according to the narrative of the franchisee is because wherein running the franchise they do not meet the target sellers that have been set so that it will make the owner and ppenerima franchise lose money later.<sup>17</sup> This is a loophole that there is indeed no form of strong legal protection for franchisees, Usually, the termination of this unilateral agreement is found to occur in this franchise business model, in the rules unilateral termination related to this franchise business is regulated in an agreement called the Franchise Agreement where in this franchise agreement is special and specific as outlined in Article 5 PP 42/2007 the minimum in the agreement must include, among others:<sup>18</sup>

- a. Names and addresses of the parties;
- b. Types of Intellectual Property Rights;
- c. Business activities;
- d. Rights and obligations of the parties;
- e. Assistance, facilities, operational guidance, training, and marketing provided by the Franchisor to the Franchisor;
- f. Business area;
- g. The term of the agreement;
- h. Payment procedures for rewards;

---

<sup>16</sup>Yustian Ismail, *Pengembangan Franchise dan larangan Ritel besar masuk Kabupaten*, (Busines News, 2009), 3

<sup>17</sup>Munir Fuady, *Hukum Kontrak Dari Sudut Pandang Hukum Bisnis*, (Bandung: PT. Citra Aditya Bakti, 2011). 174

<sup>18</sup>Lihat Pasal 5 huruf k Peraturan Pemerintah 42/2007 tentang Waralaba



- i. Ownership, change of ownership, and rights of heirs;
- j. Dispute resolution; and
- k. Procedures for the renewal, termination, and termination of the agreement.

Referring to Article 5 letter k PP 42/2007 on Franchising above it is clear in the making of an agreement between the franchisor and the franchisee should not be out or not by Article 5 letter k PP 42 of 2007 concerning franchising and about legal protection of franchisees in franchise agreements making rules or contracts between these two parties can be said to be a form of preventive legal protection where if we Preventive law is where the subject of law is allowed to raise an objection or opinion before things are decided. The goal is to prevent disputes between the parties, therefore a binding rule is made and must be obeyed so that there is no such thing as alienation in the case of franchising where the *ketaarutarn* is poured in a contract where when the contract is violated then there are legal consequences that can be accepted.

This Preventive aspect is referred to primarily regarding the existence of existing franchise agreements both in terms of registration, obligation to open (disclose) the franchisee's business to franchisees, term, royalties, or termination issues. As the franchise practice that existed so far (Before the issuance of PP No.16 in 1997, namely before PP No.42 of 2007), it can be seen in terms of the contract received by the franchisee, namely Mr. Krisna, where the contents of this contract have been made from the beginning by the franchisor to make the position of the franchisee only approve the contents of the agreement until it looks the position of the franchisee is so weak because of the contract.

But in Article 10 paragraphs 1 and 2 pp No.42 of 2007 has required openness to franchisees and registration obligations for franchisees in franchising relations between them. The provision for registration is intended as oversight of the material of the franchise agreement to contain provisions that do not violate the boundaries of freedom of contract and control over the material of the agreement that does not provide a balance of rights and obligations. so that in terms of preventive protection the franchisee, in this case, exists with existing contracts and rules, but the recipient of the franchise in this case Mr. Krisna seems unprotected because of the problem from the beginning that the contract is only made by the franchisor and the franchisee only approves and follows the contents of the contract.

In Konark between the franchisee and franchisor, Mr. Krisna wherein the contract has been prepared all the things that are indeed in the franchise contract and the Articles in the Indomaret contract that the author gets his info from both parties:

## Article 1 Store

This clause describes the location of the franchise business premises, explaining that *the franchisee* has the right to use land and buildings, renovate or build Indomaret stores by the requirements of development by the *franchisor*.

## Article 2 Franchise rights

Dalam klausula ini menjelaskan tentang *franchisor* memberikan hak waralaba untuk menggunakan nama/merek dagang beserta seluruh mekanisme sistem The work of the store to *the franchisee* in operating the store with the standard of operation of the indomaret store owned by the *franchisor*, explaining that if the *franchisor* sees a good potential or is considered necessary a preventive measure by opening the store within a radius of 100 (one hundred) meters from the indomaret *franchisee* store then the *franchisor* gives priority to the *franchisee*. in the form of written offers before being offered to other parties or the *franchisor* himself.

## Article 3 Limitations on franchise rights

This clause describes the limitations on the use of names at the expiration of this agreement, the use of names and systems other than those permitted in this agreement is unlawful and the *franchisor* may seek damages to the *franchisee*. *Franchisees* are not allowed to provide any information about the condition of the store to other parties/mass media without written permission from the *franchisor*.

## Article 4 Business Risk

In this clause it is explained that the *franchisor* is not responsible for any risks that occur outside the franchisor's power either directly or indirectly such as the existence of similar business competition, changes in government policies or *regulations* regarding licensing, unable to run information technology systems, infrastructural damage by human resources, political economy and security that are less conducive to unstable, lack of store maintenance, natural disasters and other risks not caused by the *franchisor's* negligence. And *the franchisee* guarantees that it will not sue and/or sue and/or seek damages in connection with any business risk.

## Article 5 First party obligations

This clause describes the obligations of *the franchisor* to assist *franchisees* in terms of recommendations for the feasibility of store locations, labor selection assistance by the qualifications of Indomaret employees, planning and implementation and supervision of store renovation by the standards of exterior and interior design of the store, procurement and installation of all store equipment according to Indomaret store standards. *The franchisor* is



obliged to provide training to the *franchisee* and all store employees in an integrated exercise program with the materials and schedules that have been established.

#### **Article 6 Management of merchandise**

This clause describes the management of merchandise as the responsibility of the *franchisor* starting from evaluating the level of inventory of goods, loss and/or damage of goods during delivery, return of goods. *Franchisees* are obliged to provide in-store display places such as counter rentals, ATM area rentals, and terrace rentals at a rental price of Rp 3,500,000,- (three million five hundred thousand rupiah) per month. *Franchises* are prohibited from receiving, storing, displaying, and selling items other than store merchandise. *The franchisee* entitles priority to the *franchisor* that *the franchisee* will not preclude the *franchisor* from taking part and/or all of the store's equipment if the *franchisee* fails/ is unable to carry out the obligation to pay the goods debt of the first party.

#### **Article 7 Cash management**

This clause describes the management of cash that is the sale in cash entirely managed by *the franchisor*, *the franchisor* also has the right to cut directly / transfer the balance of franchisee funds to the *franchisor's* account for merchandise and other store supplies that are due. *Franchisees* will manage operational cash funds for regular expenses of store costs by submitting a budget every month and apply mandatory after 25 (twenty-five) months of cash surplus with a maximum amount of Rp 1,000,000, - (one million rupiah) per month.

#### **Article 8 Franchise rights fees, royalties, and other expense obligations**

This clause describes the franchise rights fee of Rp36,000,000,- (thirty-six million rupiahs) that *franchisees* must pay for 1 (one) store every 5 (five) years. Other cost obligations that are the responsibility of the *franchisee* are such as store renovation, store procurement according to store standards, and the cost of opening a store promotion. Large Royalties that must be paid by *franchisees* every month, namely for the sales value of Rp 175,000,000,- (one hundred and seventy-five million rupiah) per month by 0%, for the sales value of Rp 175,000,000,- (one hundred and seventy-five million rupiahs) to Rp 200,000,000,- (two hundred million rupiahs) per month by 2%, for Rp 200,000,000,- (two hundred million rupiahs) to Rp 225,000,000,- (two hundred and twenty-five million rupiahs) per month by 3%, for the rest of Rp 225,000,000,- (two hundred and twenty-five million rupiahs) by 4%.

#### **Article 9 The obligations of the second party**

In this clause, the *franchisee's* obligations include starting from the management of routine store operations, all aspects of licensing, maintaining

the confidentiality of standardization of the store's operational system, and conducting business consultations from both parties if there is no implementation of dividend targets and also must concentrate fully and synergize with the *franchisor*.

#### **Article 10 Human Resources**

This clause describes the human resources in the Indomaret store consisting of salespeople, cashiers, merchandisers, assistant store heads, and/or shop heads who have been trained by *the franchisor*. All costs concerning employees such as salaries, social guarantees, medical money, personal accident insurance premiums, THR, pension funds, overtime, boarding fees become the responsibility of *franchisees*.

#### **Article 11 Time, extension, and termination of the agreement**

This clause describes the length of the validity of the agreement that is for 5 (five) years which if one party and or both are disengaged or die then this agreement is binding on the heirs until the agreement expires. The expiration of the agreement is due to several things including *the franchisee* being declared bankrupt, the *franchisee* violating one or all obligations, and having 2 (two) times with a grace period of 7 (seven) business days reprimanded *franchisor*. The extension can be done by submitting an official letter no later than 8 (eight) months to the *franchisor* and agreed no later than 6 (six) months before the expiration of the franchise period. In the event of the expiration of an agreement that is no longer renewed or expires prematurely, *the franchisee* is obliged to discontinue the use of the name/brand and all aspects included in the intellectual property, settle all payment obligations to the *franchisor*, restore practical guidelines, store administration, computer program packages, and all *franchisor* network devices. , as well as maintaining and maintaining the reputation of the country.

It can be seen from the sound of Article per Article in the Indomaret contract above that according to the author of this contract as a form of preventive protection provided by the franchisor in the case of Pak Krisna, and if we look at the Article of termination of the agreement where there is no mention that the agreement between the franchisor and the franchisor is terminated when the franchisee does not meet the sales target for 3 months, and according to the franchisee also that the termination of this contract is not given the most severe warning even the franchisee wants the net financial statements related to it is always not given by Indomaret itself which is only given is a gross trade report so it is seen that Indomaret is a loss in terms of sales.

It has also been confirmed to the Indomaret, namely Pak Arif as the head of the store were in his confirmation pak Arif insisted that indeed the Indomaret owned by Mr. Krisna suffered sales losses so that if it continued it would have an impact on business losses, operational payments to the payment of karywan

salaries because Indomaret employees themselves were contracted by Indomaret as franchisees.

Mr. Krisna as the recipient of the Indomaret franchise of The South City of Gorontalo said that the contents of Article after Article of the Indomaret Franchise agreement were by its implementation, in terms of brand type and store design, management system, or what they sold. Mr. Krisna also said the contents of the agreement were by his implementation in terms of the rights received by franchisees in the form of intellectual property rights to this Indomaret Store, facility assistance, operational guidance, training and marketing, agreement period, product payment time waivers, and fee payments.<sup>19</sup> Efforts that can be done on this are to bring the legal decision closer to the sense of justice lived by the community so that the implementation of the law further creates order in the community itself.<sup>20</sup> More important is that it is currently one of the most efficient steps in trying.<sup>21</sup> Quoting as said by Fence M. Want in his Journal that the nature of justice is a matter of judgment from one person to others, which is generally seen from those who receive treatment only.<sup>22</sup> The government through the law has given the starting point of justice, which is done for the sake of justice based on the Supreme Divinity.<sup>23</sup> to protect the fundamental rights or dignity and dignity of human beings, especially for seekers of justice.<sup>24</sup> The hallmark of responsive law is to look for implied values contained in regulations and policies. In this responsive legal model, they express disapproval of doctrines that they regard as standard and inflexible interpretations.<sup>25</sup> As the party that issues the policy, the Government must be able to see the balance in the life of society.<sup>26</sup> The results of policies issued by the Government are solely derived from the wishes of the community.<sup>27</sup>

---

<sup>19</sup>wawancara dengan penerima waralaba pak Krisna pada 23 Mei 2020

<sup>20</sup>Ibrahim Ahmad, (2010), Prinsip Keadilan Dalam Penyelesaian Sengketa Tanah Untuk Kepentingan Pembangunan. Jurnal Legalilas. 3 (2), 21

<sup>21</sup>Mohamad Rivaldi Moha, (July, 2020), Urgensi Pendaftaran Penyelenggara Sistem Elektronik Bagi Pelaku Usaha E-Commerce. Jurnal Law Review. 2 (2), 115

<sup>22</sup>Fence M. Wantu. (Juni, 2013). Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan Kemanfaatan Di Peradilan Perdata. Jurnal Mimbar Hukum. 25 (2), 206

<sup>23</sup>Fenty Puluhulawa, Lusiana M, Tujow, Sutrisno. (Oktober, 2020). Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim. Jurnal Gorontalo Law Riview. 3, (2), 184

<sup>24</sup>Dian Ekawaty Ismail. (Februari, 2009). Upaya Perlindungan Hak-Hak Tersangka/Terdakwa Melalui Mekanisme Praperadilan di Kota Gorontalo. Jurnal Mimbar Hukum. 21 (1), 85

<sup>25</sup>Arsil, Fitra. (2018). Menggagas Pembatasan Pembentukan Dan Materi Muatan Perppu: Studi Perbandingan Pengaturan Dan Penggunaan Perppu Di Negara-Negara Presidensial, Jurnal Hukum & Pembangunan, 48 (1), 8

<sup>26</sup>Elfrida Ratnawati, (2021). *The Impacts of Government Policy on Covid-19 to Airlines Liability: A Case Study in Indonesia*. Jurnal Law Review. 3 (1), 72

<sup>27</sup>Putri Handayani Nurdin, (July, 2019), Politik Hukum Pengaturan Pendidikan Politik oleh Partai Politik. JALREV 1 (2), 146

According to Mr. Krisna, the obstacle is the usual goods delivered by Indomaret Warehouse itself are often the longest, causing several times there is empty stock in the goods also because it is usual to make buyers disappointed and rarely enter the store again. In addition, the obstacle of Mr. Krisna is the location of the store that is not located in a densely populated area, the store is located in the office area where on Saturdays and Sundays many offices are closed to make the store quiet on that day the implication is that the target set by the franchise is often not achieved, but the problem is that the Indomaret does not do marketing or marketing assistance to increase sales. even though the assistance is a facility obtained by the franchisee in his clause. This makes franchisees even more disappointed with Indomaret.

The above is the reason why Indomaret does the unilateral termination of the agreement so that Indomaret in this case withdraws exclusive rights to its products such as system trademarks and product sales because Indomaret considers the unfulfillment of this sales target can cause losses for Indomaret itself both material losses such as the return of goods that do not sell or materials such as Indomaret trademark image in the community.<sup>28</sup>

The impact of unilateral termination of the agreement or contract by the franchisor is certainly very detrimental to the franchisee. So it does not rule out the possibility of franchisees to sue for compensation for the losses suffered. If the franchisee demands damages, the franchisor must pay the loss. Conversely, if the default or default is caused by the franchisee then the franchisor can also sue for compensation. Before stating that one of the parties of the default is either carried out by the franchisor or franchisee, then the parties resolve the dispute using deliberation first by giving a reprimand or some. Somali is regulated in Article 1238 of the Civil Code and Article 1243 of the Civil Code. In Article 1238 of the Civil Code it is explained that "the debtor is negligent, if he by warrant or by such a deed has been declared negligent, or for the sake of his engagement, is if this stipulates, that the debtor must be considered negligent with the passage of the specified time". Mr. Krisna then informed that the impact of the losses he got was a big wish on the purchase of the Indomaret brand itself he had to pay money worth 500,000,000,-- amounted to 500 million rupiahs and did not include the establishment of shop buildings and also operations.<sup>29</sup>

It can be said that indeed the legal protection related to franchising is still very weak as experienced by Mr. Krisna where the contract is decided unilaterally by Indomaret, in connection with this, the making of the contract should indeed be guided by Government Regulation No. 42 of 2007 and Regulation of the Minister of Trade Norm 12 related to franchising so that mandatory clauses in this Indomaret contract are more

---

<sup>28</sup>*Ibid*

<sup>29</sup>Wawancara dengan Penerima Waralaba Pak Krisna, 01 Juni 2021

considered so that franchisees feel protected. In addition to preventive legal protection above repressive legal protection has the aim to resolve disputes. Handling of legal protection by the General Court and Administrative Courts in Indonesia belongs to this category of legal protection. The principle of legal protection against government actions rests and stems from the concept of recognition and protection of human rights because according to the history of the west, the birth of the concept of recognition and protection of human rights is directed towards the restrictions and repressive laying of legal protection. Legal protection efforts are given solely to provide a sense of justice in the unilateral termination of employment. Because also human rights are part of the implementation of the judiciary within the framework of independent judicial power.<sup>30</sup> The existence of human rights will have no meaning if it is not followed up with the law that regulates the relationship of rights, meaning that the law formalizes human rights into a set of rules to maintain and protect so as not to become clashes in the life of society and state.<sup>31</sup> The government has not implemented the level of service expected, especially by the people who are targeted by their services.<sup>32</sup> This is a strategic step towards realizing this national goal.<sup>33</sup> This can happen if the village government realizes the inherited conditions are internalized into the development program (endogenous development).<sup>34</sup> Solely in the implementation of such development is nothing but the welfare of the people themselves.<sup>35</sup>

The fundamental thing in legal protection for franchisees is related to government interference in addition to the establishment of regulations concerning franchising as well as the establishment of an authoritative Indonesian Franchise Association (effectiveness of the existing Indonesian Franchise Association) and able to accommodate existing franchise issues. Both forms of human protection above the results of interviews with franchisees can be said that legal protection against franchisees is already at a repressive stage where the case is resolved in an out-of-court manner where Mr. Krishna requests improvement or compensation related to unilateral termination of the contract by Indomaret itself seeing the losses that have been suffered by Mr. Krisna so that mediation between the two parties is felt to be the most important thing. Safe to do so far. There is a legal action that occurs and can provide.

<sup>30</sup>Nabih Amer, (2020). Analisis Pembubaran Organisasi Kemasyarakatan Dalam Perspektif Negara Hukum. *Jurnal Legalitas*. 13 (1), 12

<sup>31</sup>Tijow, Lusiana. (2010), Perlindungan Hak Asasi Manusia Terhadap Hak Hidup Anak Dalam Kandungan Di Luar Pbrkawinan Yang Sah. *Jurnal Legalitas* 3 (2), 80

<sup>32</sup>Fahmi Kamuli, (2021), Regional Head's Authority in Determining Work Placement Due to Mutations of Government Employees, *Jurnal Law Review*. 3 (1), 39

<sup>33</sup>Ahmad Rustan Syamsuddin.(July, 2020) Pembuktian Penyalahgunaan Wewenang Dalam Perkara Tindak Pidana Korupsi Pengadaan Barang dan Jasa. *Jurnal Law Review*. 2 (2), 163

<sup>34</sup>Zamroni, S. (2016). Desa Membangun Tanpa Meninggalkan Kelompok Pinggiran. *Institute for Research and Empowerment (IRE)*, 2, 6

<sup>35</sup>Ariefulloh. (2019). Dilema Penerapan Sanksi Pelanggaran Lalu Lintas Terhadap Anak. *Jurnal Law Review* 1 (2), 199



Regarding legal protection for franchisees, it can be taken from the example of the above case, namely the imbalance in the contractual relationship between the franchisor and the franchisee, being an affirmation of whether the franchisee has received legal protection related to the franchise agreement that has been done between the franchisor and the franchisee is connected with existing regulations and then how to resolve the case if there is a dispute between the franchisor and the franchisee for discussion will be outlined at the next point.

### III. CONCLUSION

The form of legal protection against Franchising in the agreement with the Franchisor is contained in the Regulation of the Minister of Trade Number: 12/MDAG/Per/3/2006, in Article 7 that the term of the franchise agreement (franchising) is valid for at least 5 years. These terms provide legal protection to the franchisor as the franchisor, as such the franchisor cannot terminate the agreement at any time or at any time. In Article 14 it is stated that if the franchisor decides the agreement before the expiration of the franchise agreement then there will be legal consequences that occur, as done by Mr. Krishna who conducted arbitration efforts to the Indomaret party, Indomaret cannot decide the agreement unilaterally with Mr. Krishna. Legal sanctions against Indomaret if taken to a court that decides the agreement unilaterally with the recipient of the Franchise is in exchange for mine. This is by the provisions of Article 1239 to Article 1242 of the Civil Code, namely for engagements whose achievements are in the form of doing something or not doing something, the creditors, in addition to obtaining compensation can also demand the implementation of the agreement.

### IV. Suggestion

It is necessary to immediately regulate regulations that directly or indirectly concern franchise business practices made in the form of legislation, such as the Antitrust or Antitrust Act and the current Business Competition Act.

### REFERENCE

#### Book:

- Abdulkadir Muhammad, *Hukum dan Penelitian Hukum Cet-1*, Bandung: PT Citra Aditya Bakti, 2014
- Darmawan Budi Suseno, *Sukses Usaha Waralaba Mudah, Risiko Rendah dan Menguntungkan*. Cakrawala: Yogyakarta, 2017
- Munir Fuady, *Hukum Kontrak Dari Sudut Pandang Hukum Bisnis*, PT. Citra Aditya Bakti, Bandung, 2011
- Sentosa Sembiring, *Hukum Investasi*, Bandung: Nuansa Aulia, 2010



Sonny Sumarsono, *Manajemen Bisnis Waralaba*, Yogyakarta: Graha Ilmu, 2019

Yustian Ismail, *Pengembangan Franchise dan larangan Ritel besar masuk Kabupaten*, *Busines News*, 2009

### Journal:

Ahmad, Ibrahim, *Prinsip Keadilan Dalam Penyelesaian Sengketa Tanah Untuk Kepentingan Pembangunan*. *Jurnal Legalilas* 3 No. 2, (2010).

Ariefulloh, *Dilema Penerapan Sanksi Pelanggaran Lalu Lintas Terhadap Anak*, *Jurnal Law Review*. 1 No. 2 (2019): 192-211.

Arsil, Fitra. *Menggagas Pembatasan Pembentukan Dan Materi Muatan Perppu: Studi Perbandingan Pengaturan Dan Penggunaan Perppu Di Negara-Negara Presidensial*, *Jurnal Hukum & Pembangunan*, 48 No. 1 (2018): 1-21

Bakung, Dolot Alhasni, *Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right*. *Jurnal Law Review* 2 No. 1 (2020): 65-82.

Dian Ekawaty Ismail, *Upaya Perlindungan Hak-Hak Tersangka/Terdakwa Melalui Mekanisme Praperadilan di Kota Gorontalo*. *Jurnal Mimbar Hukum*. 21 No. 1, Februari (2009): 81-92.

Elfrida Ratnawati, *The Impacts of Government Policy on Covid-19 to Airlines Liability: A Case Study in Indonesia*, *Jurnal Law Review* . 3 No. 1 (2021): 72-92

Fahmi Kamuli, *Regional Head's Authority in Determining Work Placement Due to Mutations of Government Employees*, *Jurnal Law Review*. 3 No. 1 (2021) 36-54

Fence M. Wantu, *Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan Kemanfaatan Di Peradilan Perdata*. *Jurnal Mimbar Hukum*. 25 No. 2, Juli (2013). 205-218.

Fenty Puluhulawa, Lusiana M, Tujow, Sutrisno. *Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim*. *Jurnal Gorontalo Law Riview*. 3 No. 2, Oktober (2020), 168-187.

Fitria Andalus Handayani dan Mohamad Ichsana Nur, *Implementasi Good and Clean Governance di Indonesia*. *Jurnal Pemikiran Administrasi Negara*. 11 No.1 (2019), 1-11

- Hapsoro, Fakhris Lutfianto, *Interpretasi Konstitusi dalam Pengujian Konstitusionalitas untuk Mewujudkan The Living Constitution*. Jurnal Law Review 2 No. 2 July (2020): 139-160.
- Harry Purwanto. *Keberadaan Asas Rebus Sic Stantibus Dalam Perjanjian Internasional*, Jurnal Mimbar Hukum. Edisi Khusus, November (2011): 102-121
- Lakoro, A., Badu, L. W., Achir N, *Lemahnya Kepolisian Dalam Penanganan Tindak Pidana Perjudian Togel Online.*" JURNAL LEGALITAS. 13 No. 1 (2020): 31-50.
- Moha, Mohamad Rivaldi, *Urgensi Pendaftaran Penyelenggara Sistem Elektronik Bagi Pelaku Usaha E-Commerce*. JALREV 2 No. 2 Juli (2020): 101-119.
- Nabih Amer, *Analisis Pembubaran Organisasi Kemasyarakatan Dalam Perspektif Negara Hukum*. Jurnal Legalitas. 13 No. 1 (2020): 1-15.
- Nanin Koeswidi Astuti. *Analisa Yuridis Tentang Perjanjian Dinyatakan Batal Demi Hukum*. Jurnal Hukum Tora. 2 No. 1 April (2016): 279-286
- Nggilu, N., & Wantu, F. M, *Menapaki Jalan Konstitusional Menuju Zaken Cabinet: Ikhtiar Mewujudkan Pemerintah Berkualitas Konstitusi*. Jurnal Hukum Samudra Keadilan, 15 No. 1 (2020): 126-140.
- Novendri M. Nggilu dan Ahmad, *Denyut Nadi Amandemen Kelima Undang-Undang Dasar 1945 melalui Pelibatan Mahkamah Konstitusi sebagai Prinsip the Guardian of the Constitution*. Jurnal Konstitusi. 16 No. 4 (2020): 785-808
- Nuridin, Putri Handayani, *Politik Hukum Pengaturan Pendidikan Politik oleh Partai Politik*. Jurnal Law Review. 1 No. 2, July (2019): 144-166.
- S, Zamroni, *Desa Membangun Tanpa Meninggalkan Kelompok Pinggiran*. 2. (2016): 1-10.
- Syamsuddin, Ahmad Rustan, *Pembuktian Penyalahgunaan Wewenang Dalam Perkara Tindak Pidana Korupsi Pengadaan Barang dan Jasa*. Jurnal Law Review. 2 No. 2, Juli (2020): 161-181.
- Tijow, Lusiana. *Perlindungan Hak Asasi Manusia Teriidadap Hak Hidup Anak Dalam Kandungan Di Luar Pbrkawinan Yang Sah*. Jurnal Legalitas. 3 No. 2 (2010)
- Tiranda, I. *Konsep Ideal Penanganan Perkara Tindak Pidana Korupsi Pungutan Liar Berdasarkan Asas Peradilan*. Jurnal Law Review. 1 No 2, July (2019):

Wemben, Norma L.P, *Kinerja Pelayanan Pada Kantor Badan Pertanahan Nasional Kabupaten Gorontalo.*" Jurnal Legalitas 3 No. 2 (2010)

Yudha Chandra Arwana, Jalur Mediasi dalam Penyelesaian Sengketa Pertanahan Sebagai Dorongan Pemenuhan Hak Asasi Manusia. Jurnal Law Review. 1 (2) (2019): 212-236.