

# LEGAL PROTECTION FOR FRANCHISEES IN CASE OF TERMINATION OF FRANCHISE AGREEMENT SEEN FROM ACT NO. 30 OF 1999 ABOUT ARBITRATION AND ALTERNATIVE OF DISPUTE RESOLUTION (A CASE STUDY

**Submission date:** 24-May-2019 01:35PM (UTC+0700)

**Submission ID:** 1184208419

**File name:** BUNGAN\_SIBARANI,\_SH,\_MH.\_-\_LEGAL\_PROTECTION\_FOR\_FRANCHISEES.docx (52.98K)

**Word count:** 7483

**Character count:** 38896

## OF DECISION NO. 659 /

*by* Sabungan Sibarani

# LEGAL PROTECTION FOR *FRANCHISEES* IN CASE OF TERMINATION OF FRANCHISE AGREEMENT SEEN FROM ACT NO. 30 OF 1999 ABOUT ARBITRATION AND ALTERNATIVE OF DISPUTE RESOLUTION (A CASE STUDY OF DECISION NO. 659 / PDT.G / 2012 / PN SBY)

Sabungan Sibarani <sup>1)</sup>

## ABSTRACT

Letter <sup>11</sup>mination agreement received by the recipient of the franchisee, the franchisee no longer eligible to use and / or marketing products or services on behalf of (brand) of the franchisor in the future, Products or services the. The problem faced in this thesis is: Does the <sup>12</sup>franchise agreement is a standard agreement? And how legal protection for franchisees in terms of Act no. 30 of 1999 on Arbitration and <sup>20</sup>Alternative Dispute Resolution (a Case Study of Decision No. 659 / Pdt.G / 2012 / PN SBY). "The research method used by the writer in this research is the normative juridical approach that the franchise agreement using the standard agreement is legally valid and will be valid as legislation for both the the franchise agreement is the implementation of the standard agreement in the franchise agreement, causing <sup>3</sup> the franchise to be a franchise agreement. Discuss the contents of the agreement Article 5 of the Government Regulation No. 42 Year 2007 on the franchise agrees that the franchise agrees on the basis of clauses on dispute resolution. Any disputes Choice of law is essential in a franchise agreement, if there is a dispute as Well as the place where the chosen law to resolve disputes that arise. In addition there is a selection of disputes under litigation. The need for a more robust organization about the position of the Franchise agreement in the Indonesian legal system, together with the Franchisee by the Franchisor.

Keywords: Legal Protection, Franchisee, Franchisor.

## 1. INTRODUCTION

Economic growth in the era of globalization is increasingly increasing, including in the form of business cooperation. The business world is always moving dynamically, business actors are always looking for new breakthroughs in developing their business. One of the breakthroughs that are currently developed in Indonesia is the development of the business through the *franchise* system or in Indonesian better known as the franchise business system.

In Indonesia, franchising is not a new thing. Franchising began to be known in the 1950s and growing in the 1980s even though before 1997 there was no legal basis that specifically regulates the franchise. Prior to such regulation, the franchise agreement made by the parties <sup>20</sup> an innominate agreement so that the agreement <sup>1</sup> is made under a written agreement which refers to the principle of freedom of contract contained in Article 1338 of the Civil <sup>36</sup> Code (1) which states that "all agreements made legally valid as a law for those who make it". The Agreement can not be withdrawn other than by mutual agreement. <sup>2)</sup>

Franchising is based on a written agreement called a franchise agreement <sup>1</sup> The franchise agreement involves two parties, the franchisor as the franchisor, as the owner of a product, service, operating system typical of a particular brand that is usually patented. *Franchisee* as a franchisee is person or entrepreneurs who conduct business with trade names, logos, designs, brands belonging to the franchisor to give royalties to the franchisor.

The reciprocal relationship that occurs between the franchisors who provide assistance to the franchisor and in return, the franchisor gives a profit / royalty so that both can work together to run the business properly. However, sometimes the reciprocal relationship does not work well according to

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<sup>2)</sup> Salim HS, *developments outside the Contract Law of the Civil Code*, (Jakarta: PT. RajaGrafindo Persada, 2007),

<sup>2</sup> the agreement that has been made jointly by both parties.<sup>3)</sup> The franchise agreement covers business tips in the form of methods and procedures for the manufacture, sale, and service performed by the franchisor and also provide assistance in advertising and promotion and consulting services.<sup>4)</sup>

The franchise agreement requires a closed agreement in its clause, when the franchisor and the franchisee provide no room for other competitors to enter into their business activities. Franchising is an improvement of the business development system that uses direct investment. With this franchise system, there will be investment cost savings that should be required to establish and maintain an extensive distribution network. These savings because of the distribution network will occur naturally with increasing number of buyers franchisee and the franchisor will receive royalties from sales of licenses.<sup>5)</sup>

The franchise agreement also relates to intellectual property rights (IPR) so that the basis of the agreement is licensed, but also enacts three laws as the basis for legal protection of intellectual property of a company, namely Law Number 14 Year 2001 On Patents, Law Number 19 of 2002, Copyright Act No. 15 of 2001 on Marks. The Patent Law is used for imitation, then the Trademark Law becomes the legal basis for the government to provide legal protection to the company registering its mark against possible imitation, forgery or illegal use of its trademark.<sup>6)</sup>

While the Copyright Act to protect the creation of a person derived from the ability, imagination, dexterity, skills or expertise that poured in a unique and personal form. The existence of a franchise business as a business has its own characteristics in economic life, but can also cause problems in the field of law because the franchise business is based on an agreement that raises the rights and obligations of the parties, so it needs a mutual legal protection for each party. Pursuant to Article 5 paragraph k of Government Regulation No. 42 Year 2007 on Franchise, it is clearly stipulated that the procedure for termination of a franchise agreement must be set forth in an agreement clause franchise. As with any agreement in general, the terms of termination of an agreement are always included in the agreement. From the case illustration above, we are not aware of the termination of the agreement.

In respect of the arbitration clause in the agreement, it is an out-of-court dispute resolution forum elected by the parties to resolve the dispute arising. Thus, if there is a loss to be prosecuted, then the claim for compensation shall be filed through an arbitration forum. Although the basic agreement (franchise agreements) has expired, but the arbitration clause does not become lost and remain binding on the parties (*severability clause*). It is stipulated in Article 10 letter h Act 30 of 1999 on Arbitration and Alternative Dispute Resolution.

Please note that the termination letter of the agreement received by the Franchisee has met the terms of the agreement, the franchisee shall no longer be entitled to use and / or market any products or services on behalf of the franchisor in the future, including to profit from the proceeds of sale Products or services. If after the expiry of the agreement, the franchisee still using the brand of the franchisor, it is considered that there has been a tacit agreement on an initial agreement (*silent agreement*) so that the Franchisor remains entitled to collect royalties and / or other rights set out in the franchise agreement it. On the other hand, if the franchisee hesitated upon termination of the agreement the dispute regarding termination of the agreement can be completed through the forum using the UNCITRAL Arbitration rules are held in New York which is a *seat* that has been agreed upon by the parties (*lex arbitri*).

In this regard, the authors raised the case of a franchise agreement in the field of beauty salon that is between Beauty Salon De Grace who cooperated with Beauty Salon and Slimming "Yemember" with the franchise system as an effort to improve services in terms of beauty and

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<sup>3)</sup> Adrian Sutedi, *Law Franchising*, (Jakarta: Ghalia Indonesia, 2008), p. 182.

<sup>4)</sup> H. Moch. Basarah & HM Faiz Mufidin, *Business Franchise and Legal Aspects*, (Bandung: PT. Citra Aditya Bakti, 2008), p. 34.

<sup>5)</sup> Edi Wahjuningati, "Legal Protection against Franchisee Franchisor Regarding Unilateral Measures", (Surabaya: Faculty of Law: University Bhayangkara, 2011), p. 1.

<sup>6)</sup> Gunawan Widjaja, *Series Business Law Understanding the Principle of Transparency in the Civil Code*, (Jakarta: PT. RajaGrafindo Persada, 2008), p. 132.

slimming. But with the existing development, the Beauty Salon and Slimming "Yemember" can not meet agreements that have been agreed together (default), resulting in legal issues.

That, the APPLICANT is the owner of beauty salon "DE GRACE" who serve hair beauty treatment services which is located at Jl. Sukomanunggal Jaya 3-Z / 26 Surabaya (East Java), whereas **RESPONDENT** is the owner of beauty care and slimming salon "YEMEMBER" which serve the first beauty and body care services established at Jl. Boulevard Raya No. 2, Sukajadi, RT.004 / RW.001, Sukajadi Village, Batam City Sub-district, BATAM.

That, on August 31, 2010, APPLICANT and RE-MAID have created and entered into a Deed of Cooperation Agreement. Franchise No. 34 dated August 31, 2010, drawn up and signed in the presence of NATALYA YAHYA PUTERI WIJAYA, SH, Notary in Surabaya, which in the Deed of Cooperation Agreement of Franchise is RESPONDENT claiming to be the sole and authorized owner of the name and system of YEMEMBER beauty and slimming treatment program with The trademark of the YEMEMBER franchise, which then sells the franchise rights "YEMEMBER" to the individual ie PETITIONER.

That, furthermore in Article 1 of Scope of Franchise Cooperation Agreement No. 34 "The Contracting Parties agree that the scope of this agreement includes the right to use the Yemember Franchise system on the SANFEED Program of beauty care and slimming that FRANCHISOR has provided to FRANCHISEE for the periods to be mentioned below and subject to the terms, conditions and provisions set forth In this agreement "That, then on January 25, 2012, TERMOHON (formerly as the APPLICANT) filed a claim to the Indonesian National Arbitration Board (BANI) of the Surabaya Representative of the APPLICANT (formerly as RESPONDENT) and registered with No. 31 / ARB / BANISBY / I / 2012. In the verdict, the judge rejected the petition of the arbitral award filed by the applicant with the registration of the case Number 659 / Pdt.G / 2012 / PN.Sby.

In this regard, legal protection for *franchisees* in the case of termination of the franchise agreement is given there should be a balance between the parties, but in reality is not always so. There is always the possibility that one party has a stronger position either from the economic side or from the mastery of the technology or a specific invention. So between the rights and obligations between the parties sometimes do not work well, and cause a default.

## 2. LITERATURE REVIEW

### a. Understanding Agreement in general

#### 1. understanding Agreement <sup>14</sup>

According to Subekti the covenant is <sup>2</sup> event in which a person promises to another or where two persons promise to do something, a relationship exists between the two persons called an engagement.<sup>7)</sup>

According to Article 1313 of the Civil Code a treaty is an action by which one or more persons commit themselves to one or more persons.<sup>14</sup>

According to Wirjono Prodjodikoro argues that the agreement is a legal relationship between property between two parties, in which one party promises or is considered promising to do something or to not do something, while the other party is entitled to demand the execution of that promise.<sup>8)</sup>

#### 2. Legal Terms of Agreement <sup>8</sup>

Some conditions that must be met for a valid agreement, according to Article 1320 of the Civil Code required four conditions, namely:

- a) Agree those who bind themselves
- b) Proficient to enter into an agreement;
- c) Concerning a particular matter;
- d) A lawful cause.

<sup>7)</sup> Subekti, *Principles of Civil Law* , (Jakarta: Intermasa, 2003), p. 129

<sup>8)</sup> Wirjono Prodjodikoro, *Principles of the Law of Treaties*, ( Bandung: Mandar Maju, 2000), hlm.4.



The first two conditions above are called subjective conditions because of their persons or subjects entering into an agreement, whereas the latter two conditions are called objective conditions because of their own covenant by the object of the legal act done.

Agreed namely the suitability, suitability, meeting of the will of the contract or a declaration of will agreed between the parties. So the agreement is important to know because it is the beginning of the agreement.

#### 8 Principle of the Covenant According to the Civil Code

In contract law, there are several principles, namely:<sup>9)</sup>

##### a) Principle of Freedom of Contract

The principle of freedom of contract is one of the most important principles of the treaty law. This principle is the embodiment of free humanity, the emission of human rights. The principle of freedom of contract is closely related to the contents of the agreement, namely the freedom to determine "what" and with "who" the agreement is held.

##### b) The principle of consensualism

The principle of consensualism can be found in Article 1320 of the Civil Code. In Article 1320 of the Civil Code, it is expressly stated that for the validity of the agreement there must be agreement between the two parties.

##### c) The principle of balance

The principle of balance requires the parties to fulfill and implement the agreements they make. The creditor has the right to demand the performance by paying off the debt through the debtor's wealth, but the creditor also has a burden to execute the agreement in good faith, so it can be said that the position of the strong creditor is offset by the obligation to observe good faith so that the creditors and debtor positions are balanced.

##### d) The principle of trust

A person who agrees with others, fostering trust between the parties with one another will keep his promise to fulfill the achievement in the future. Without such trust, the agreement is not possible by the parties.

##### e) The principle of habit

The principle of custom is regulated in Article 1339 of the Civil Code under article 1347 of the Civil Code. According to this principle the covenant is not only binding for what is expressly regulated, but also things that are in the circumstances and habits commonly followed.

##### f) Subject of Agreement

The subject of the agreement is the parties involved in the agreement, ie the creditor entitled to the achievement and the debtor who is obligated to the achievement. The subject of the agreement is a supporter of rights and obligations consisting of:

- 1) Human,
- 2) Legal entity.

##### g) Object of Agreement

Object of the agreement is the creditor's rights and obligations of the debtor, generally called the achievement. Achievements can be:

- 1) Giving something.
- 2) Do something.
- 3) Do nothing.

##### h) The termination of the Agreement

The termination of an agreement may be caused by various factors:

- 1) Determined by the parties to take effect for a certain time.
- 2) The law determines the expiry of the agreement.
- 3) The parties or statutes determine that with the occurrence of certain events the consent will be abolished.
- 4) Statement suspend approval (*opzegging*) which can be done by both parties or by one of the parties to the agreement that is temporary for example a work contract.

<sup>9)</sup> Handri Raharjo, *Contract Law in Indonesia*, (Yogyakarta: Pustaka Yustisia, 2009), p. 43-46.

- 5) Judge's verdict.
- 6) The purpose of the agreement has been reached.
- 7) By agreement of the parties.

b. **Franchise agreement**

1) Understanding the franchise

The term franchise was first introduced by educational and development management institutions (LPPM).<sup>10)</sup>

The definition of a franchise is also provided by the educational institute and management, among others defines the franchise as follows:<sup>11)</sup>

- a) Franchise is a system of marketing or distribution of goods and services, where a parent company (*franchisor*) grants privileges to conduct business by way of a system, given time and location to individuals or companies (*franchisees*) are small and medium enterprises.
- b) Franchising is a method of distributing goods and services to the consumer society, which is sold to other interested parties. The owners of the methods being sold is called *the franchisor*, while the buyer the right to use such methods called *the franchisee*.
- c) Franchising is a relationship based on an agreement between the *franchisor* to the *franchisee*. *The franchisor* offers and an obligation to provide continuous attention on the franchise business through the provision of knowledge and training.

Although there are differences in formulating the definition of a franchise, but in general, as stated by Jetro K Libermann and George J. Siedel book Adrian Sutedi, the franchise has the following elements:<sup>12)</sup>

- a) Franchising is a reciprocal agreement between the franchisor and the franchisee.
- b) The franchisee is obligated to pay a fee to the franchisor.
- c) The Franchisee is permitted to sell and distribute the goods or services of the franchisor in the manner prescribed by the franchisor or to follow the business method of the franchisor.
- d) The franchisee uses either the company name brand or the franchisor's commercial symbols.

2. Forms of franchise

As noted by Douglas J. Queen, the form of franchise consists of:<sup>13)</sup>

- a) Franchise Business Format. And here the franchise gains the right to market and sell service products in certain areas with operational and marketing standards. The type of business format franchise consists of:<sup>14)</sup>

- 1) Franchise jobs;
- 2) business franchise; and

3) Franchise investment

b) Franchise Product Distribution

In the form of this franchise, franchise acquire an exclusive license to market a product from a single company in a specific location. In addition, the franchisor can also provide franchise territory, where sub franchisee or franchise owner bought the rights to operate / sell a franchise in a particular geographical area. The franchisors are responsible for some or all of the franchise marketing, training and assisting new franchise holders, and performing operational support controls and royalty billing programs.

<sup>10)</sup> Adrian Sutedi, Law Franchising, (Bogor, Indonesia Ghalia, 2008), p. 7.

<sup>11)</sup> V. Winarto, *Franchising Opportunities and Problems*, (Yogyakarta: Gadjah Mada University, Faculty of Law, 1992), p. 1.

<sup>12)</sup> *Ibid.*, p. 7.

<sup>13)</sup> Douglas J. Queen, *Guidelines for Buying and Running a Franchise: Demands Step By Step Towards a Successful Franchise*, (Jakarta: PT. Elex Media Komputindo, 1993), p. 5-7.

<sup>14)</sup> Juajir Sumardi, *Aspects of the Franchise Law and Transnational Corporations*, (Bandung: Citra Aditya Bakti, 1995), p. 18.

Briefly Bryce Webster suggests forms of franchise into four categories, namely:<sup>15)</sup>

a) *Product Franchise*

In this form, *the franchisee* under a license obtained from the franchisor sells goods production franchisor, thus bringing the trademark franchise. The relationship that arises is the relationship of distributorship between franchisee and franchisor. Franchise of this form, is still used today among others in the automotive industry.

b) *Manufacturing Franchises*

In this form, the franchisor providing material confidential (*secret ingredients or know-how*), which became the basis for the production of the franchisor. Franchisee only sell the production of goods in accordance with production standards and brands that have been established by the franchisor. Examples of this form is the soft drink industry, among others coca cola, pepsi, and others.

c) *Business Format Franchising*

As the previous understanding, this form is very popular today. The franchisor provides to *the franchisee* a license to use *the franchisor's* name. However, in following the standard method of operation and is under the supervision of the franchisor. In addition, the franchisee must pay a *fee* or royalty to the franchisor. As example is the *fast food chain* like California Fried Chicken, McDonald's, Texas Fried Chicken.

d) *Business Opportunity Ventures*

*Franchisee* here using a system owned *franchisor* in running and selling its products. Forms of this kind franchise can be exemplified, among others, such as vending machine (machine sales).

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c. Principle 8 Freedom of Contract in Franchise Agreement

That freedom of contract is one of the principles of the law of the covenant and it does not stand alone, its meaning can be determined only after we have understood its position in terms of the principles of the other covenant laws, which thoroughly constitute pillars, pillars, Of the treaty law.<sup>16)</sup> 8

The principle of freedom of contract relates to the contents of the treaty, namely the freedom of determining "what" and with "who" this agreement is held. Agreements made pursuant to Article 1320 of the Civil Code have binding power. Freedom of contract is one of the most important principles in the law of covenant, freedom is the embodiment of free will, the emission of human rights.<sup>17)</sup> 34

The principle of freedom of contract, according to Hartkamp in the book of Johannes Ibrahim states that we are bound to the agreement that must be met morally, legally because we are in a civilized and advanced society. Such societies have the freedom to participate in the juridical-economic traffic, for which a principle of freedom of contract is a part of human rights and freedoms.<sup>18)</sup>

d. Inclusion of provisions raw clause

The standard agreement needs to be disciplined because in terms of the content of the agreement there is an imbalance of the rights and obligations of the parties, and the standard agreement clauses tend to benefit business actors as well as burden the opponent, it is necessary to supervise the use of standard agreements so as not to serve as a means to harm others Because it required the legal protection of the parties namely the law no. 8 of 1999 on consumer protection, Article 18 stipulates the provisions of the inclusion of standard clauses, in every agreement made by business actors.<sup>19)</sup>

<sup>15)</sup> Muhammad Hidayana, *Legal Protection against Franchise Agreements in Indonesia*, (Jakarta: UI, , 2005), p. 56.

<sup>16)</sup> Mariam Darus Badruzaman, *Arts, Business Law* , (Bandung: Alumni, 2005), p. 40.

<sup>17)</sup> Mariam Darus Badruzaman, *Civil Code Book III Commitments by the Company Law* , (Bandung: Alumni, 1993), p. 27.

<sup>18)</sup> Johannes Ibrahim, *Pengimpasan Loans (compensation) and the principle of freedom of contract in the Bank Credit Agreement* , (Bandung: PT. Utama, 2003), p 27.

<sup>19)</sup> Mariam Darus Badruzaman, *Arts, Business Law* , (Bandung: Alumni, 2004), p. 71.



Article 18 of the consumer protection law makes a number of prohibitions on the use of the standard clause in the agreement, as follows:

- (1) Business actors in offering goods and / or services intended for trading are prohibited to make or include a standard clause in any agreement if:
  - a. Declare transfer of responsibility of business actors
  - b. Declares that the business actor has the right to refuse the redemption of goods purchased by the consumer.
  - c. Declare that the business actor is entitled to refuse the redemption of money paid on the goods and / or services purchased by the consumer.
  - d. To declare the granting of power from the consumer to the business actor, either directly or indirectly to perform any unilateral action relating to the goods purchased by the consumer in installments.
  - e. Arranges a matter of proof of loss of usefulness of goods or utilization of services purchased by consumers.
  - f. Giving business entrepreneurs the right to reduce the benefits of services or reduce the property of consumers who became the object of buying and selling services.
  - g. To declare consumer compliance to regulations in the form of new rules, additions, continued and / or follow-up changes made unilaterally by the business actor in the future of the consumer utilizing the services he / she purchases.
  - h. Declare that the consumer authorizes the business actor to impose the mortgage, liens, or warrant rights on goods purchased by the consumer in installments.
- (2) A business actor is prohibited to include a standard clause whose location or form is difficult to see or can not be read clearly, or whose disclosure is difficult to understand.
- (3) Any standard clause established by business actors in documents or agreements that meet the provisions referred to in paragraphs (1) and (2) shall be declared null and void.
- (4) The business actor shall comply with the standard clauses contrary to this law.

The provisions of Article 18 of the above law of consumer protection, the prohibition of the use of standard agreements relating to two things, namely the content and form of writing, in terms of its contents is prohibited to use the standard agreement containing unjust clauses, while in terms of form of writing, clauses It must be written in a simple, clear and bright manner so that it can be read and understood well by the parties.

#### e. **Dispute Settlement Agreement**

Legal protection of the parties with the settlement of disputes is often stated in the agreement clause. In the Indonesian legal system there is no legal provision that specifically regulates the settlement of disagreements in the franchise agreement and the choice of the settlement forum, but wherever possible the parties may resolve the dispute by deliberation, if deliberation is unsuccessful, the parties may make efforts through a third party. Namely through the courts to obtain a final decision binding on both parties.<sup>20)</sup>

In general, dispute resolution can be conducted through court forums, however, given the nature of franchising, especially business format franchises, dispute settlement through court forums is feared by franchisors will be an "open-open" forum for franchisees. Not well-intentioned. In order to avoid this, it is preferable that any dispute relating to the franchise agreement is resolved within the framework of alternative methods of dispute settlement, including the arbitration order. Many avenues for dispute resolution. A variety of dispute resolution models, both formally and informally, can be used as a reference to answer any disputes that may arise. The known process is the Process of Adjudication and Consensus Process.

There are several ways in the process of settlement of disputes.<sup>21)</sup>

1. Through litigation mechanism.

<sup>20)</sup> Adrian Sutedi, *op.cit.*, P. 145.

<sup>21)</sup> Ahmad Hasan, Settlement Through the efforts (Non Litigation) According to the legislation, AL-Banjari Vol. 15, No. 9, from January to June, 2016.



2. Through Arbitration mechanism.
3. Through the Alternative mechanism

Dispute settlement through litigation and arbitration is an adjudication process whereas Alternative Dispute Settlement is a Consensus Process.

### 3. HYPOTHESIS DEVELOPMENT

The development of this hypothesis refers to how the legal protection aspect of the franchisee in termination of franchise agreement is reviewed from Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution, in particular related to Decision Number: 659 / Pdt.G/2012/PN.Sby) So in this case will get some more concrete problem solving and effective.

### 4. RESEARCH METHODOLOGY

The type of research in scientific journals is the method of normative legal research or literature law research method is a method or way that is used in legal research conducted by examining existing library materials.<sup>22)</sup> The study aimed to obtain the objective laws (legal norms), namely by conducting research on legal issues. The second stage of normative law research is research aimed at obtaining subjective laws (rights and obligations).

The research conducted is descriptive that describes the symptoms in the environment of society to a case under study, the approach is a qualitative approach which is the method of research that produces descriptive data.<sup>23)</sup> used a qualitative approach by the author aims to understand or understand the phenomenon under study.<sup>24)</sup>

The type of data used is secondary data. Secondary data is data obtained from library materials.<sup>25)</sup> Secondary data include the official documents, books, research results are tangible reports, diaries and so on.<sup>26)</sup>

In legal research, secondary data comes from:

- a. Primary legal materials, ie data have binding legal effect such legislation. Primary legal materials used in this study include materials that are authoritative legal means to have the authority as the look of the Law of Civil Law, Government Regulation No. 42 Year 2007 on Franchise and Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.
- b. Secondary Law Material, ie data obtained through literature study, describes the primary legal materials related to the problems in this thesis research, including books, journals, magazines, papers, research results and internet data.
- c. Tertiary Law Material, ie materials that provide information about primary legal materials and secondary legal materials such as legal dictionaries and others.

In this research, data collection techniques are used through literature study. Diketahui legal research Normative is limited to the use of document studies or library materials only on secondary legal data.<sup>27)</sup> The data collection is done by studying data on things such as notes, transcripts, newspaper and views that are relevant to the subject matter and sources of the general reference (book literature) as well as a specific reference (document) is directly adjusted With the issues discussed.

### 5. RESULT AND DISCUSSION

#### a. Position Case

This case is between THIO INGE CATHERINE CATHERINE, Employment of Self Employed, residing in Puncak, Permai I / 30, RT. 001 / RW. 001, Village Tanjungsari, District Sukomanunggal, Surabaya, as the **Applicant**.

Against

<sup>22)</sup> Soerjono Soekanto and Sri Mamudji, Legal Research Normative A Brief Overview, Mold-11. (Jakarta: King Grafindo Persada, 2009), p. 13-14.

<sup>23)</sup> Soerjono Soekanto, Introduction to Legal Research, (Jakarta: UI Press, 1986), p. 32.

<sup>24)</sup> *Ibid.*, 37.

<sup>25)</sup> *Ibid.*, p. 51.

<sup>26)</sup> *Ibid.*, 12.

<sup>27)</sup> *Ibid.*, p. 66.

NANIEK SOETRISNO Sutrisno, Occupation Housewife / Private, residing, at Boulevard Raya No. 2, Village Sukajadi RT. 004 / RW. 001 City Batam, Batam and / or Jl. Ngagel Jaya Selatan No. 159 Surabaya (East Java), as the **Respondent**.

Applicant is the owner of Beauty salon "DE GRACE" that serves hair beauty care services that address at Jl. Sukomanunggal Jaya 3-Z / 26, Surabaya (East Java), while the Respondent is the owner of Salon beauty care and slimming "YEMEMBER" airport services that beauty and slimming first kah established in Jl. Boulevard Raya No. 2, Sukajadi, RT.004 / RW.001, Sukajadi Village, District Kota Batam, BATAM.

Whereas, on 31 August 2010, the Applicant and the Respondent had made and held a Cooperation Agreement Deed. Franchising No. 34 dated August 31, 2010, made and signed in the presence NATALYA YAHYA PUTERI Wijaya, SH, Notary in Surabaya, which in the Deed of Cooperation Agreement Franchise The Respondent claimed to be the sole and rightful owner of the name and the system program beauty care and slimming YEMEMBER with YEMEMBER franchise trademark, which then sell the franchise "YEMEMBER" to an individual that is APPLICANT.

That, furthermore in Article 1 Scope of the Franchise Partnership Agreement No. 34 is "The Parties agree that the scope of this agreement includes the right of use of the system Franchise Yemember on System Care Program Beauty and slimming been given *FRANCHISOR* to *FRANCHISEE* for a period of time will be referred to below, and each is subject to the terms, conditions and provisions as outlined in this agreement "that, later on January 25, 2012, Respondent (formerly as the Applicant) filed a claim. the Indonesian National Arbitration Board (BANI) Surabaya Representative of the Applicant (formerly as Respondent) and registered with No. 31 / ARB / BANISBY / I / 2012.

In the verdict, the judge rejected the request arbitration award filed with the applicant's case registration Number 659 / Pdt.G / 2012 / PN.Sby.

**b. Legal Protection for Franchisees in Case of Termination of Franchise Agreement In terms of Act No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (A Case Study of Decision No. 659/Pdt.G/2012 / PN SBY)**

Basically, the legal protection in the franchise agreement, in the event of a unilateral termination of the agreement, *the franchisee* is the injured party, because since the beginning of *the franchisee* already pay a fee in exchange, direct compensation at the beginning of the signing of *the franchise agreement* . If the agreement is decided by *the franchisor* as a franchisor, then before the *franchisor* determine, *franchisee* new ones, should be resolved first of all the problems that arise with the *franchisee* long, including the issue of compensation.

As a form of government protection for the weaker party ( *the franchisee* ), based on Article 4 paragraph 1 and 2 of Government Regulation No. 42 of 2007 made in writing between *the franchisor* and *franchisee*. *Franchisees* need to obtain legal protection from termination arbitrarily *franchisor* . In the event of unilateral termination, *the franchisee* is the injured party, because since the beginning of *the franchisee* already pay a fee in exchange, direct compensation at the beginning of the signing of *the franchise agreement* .

With regard to this case, the Beauty Salon and Slimming "Yemember" can not meet the agreement that has been agreed (default), so merging legal issues. In the Indonesian National Board of Arbitration ruling No. 31 / ARB / BANI-SBY / I / 2012, clearly there is a gap between the demands of legal protection for *franchisees* already in default so that *the franchisee* is not entitled to invoke the protection of the law.

Legal Considerations in Case of Termination of Franchise Agreement between Salon De Grace Beauty Salon and Slimming "Yemember" Based on the legal considerations of a tribunal set forth in Decision No. 31 / ARB / BANI - SBY / I / 2012 can be seen that: First, form of default in which one of them is doing something that should not be done and the agreement as mentioned in Article 1234 of the Civil Code. In this case that each of the engagement or to not do something. This is exactly what is done by the Respondent Decision No. 31 / Arb / BANI-SBY / I / 2012 namely:

1. Respondent violated the clause of Article 5 and Article 6 letter c Deed No. 34 are essentially banned from establishing a business similar or the same without the knowledge of the *franchisor* (the Applicant)

2. The Respondent <sup>7</sup>violated the provisions of Article 6 letter b Deed No. 34 are essentially prohibited from providing / using tools or medicines alone without the consent or permission of the *franchisor* (the Applicant).
3. The defendant refused to make a payment on the franchise shortage of Rp. 20,000,000.00 (Twenty Million). With the judge's discretion, legislation and doctrine can be concluded that the Respondent has Defaults.

The legal consequences if it has a default of "The debtor is required to pay <sup>2</sup>for damages that have been suffered by the creditor" in Article 1243 of the Civil Code which reads "Replacement costs, damages and interest for non fulfillment of a tie (default) then began to be required, if the debt, after otherwise fails to meet fixed engagement it, or if something should be given or made, can only be given or made within the time limit that has been skipped".

Therefore, the Respondent has been in default. As a result of such default, then the applicant may request cancellation of the agreement / terminate the agreement by demanding compensation in the form of full payment to the claimant.

It refers to Article 1266 of the Civil Code which provides that "If one party does not fulfill its obligations / defaults, then the agreement is canceled."

Judge's decision in Case of Termination of Franchise Agreement Between Salon De Grace Beauty and Slimming Salon "Yemember" Council Decision Indonesian National Board of Arbitration Arbitrator Surabaya in decision No.31 / ARB / BANI-SBY / 1 / 2012 on the case filed by the litigants by both Catherine and Naniek Inge Thio Sutrisno, verdict states that:

First, the grant for the <sup>23</sup>majority on the petition filed by the applicant are in accordance with the provisions of the Article 56 paragraph (1) of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution which states that "Arbitrator / assemblies Arbitrator made a decision based on provisions of the law or by fairness and decency. And Darwan Prinst opinion stating that the lawsuit or petition attested upon <sup>23</sup>at trials will be granted in whole or in part.

Second, <sup>23</sup>the Indonesian National Arbitration Board (BANI) to investigate and resolve the case a quo which has been in accordance with the provisions of Article 4 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.

Third, punishing Applicant and the Respondent pay court costs of each half piece and as the Applicant has paid the court fee is the duty of the Respondent, the Respondent was sentenced to refund the cost of this case the applicant is <sup>23</sup>p. 13.555 million, (thirteen million five hundred and fifty-five thousand rupiah). Where it has been in accordance with the provisions of Article 183 paragraph (1) HIR which states that "the amount of court fees charged to one of the parties must be mentioned in the verdict".

All <sup>23</sup>disputes are settled by the Indonesian National Arbitration Board (BANI) Its decision is independent, final and binding on both parties to the dispute, a decision in the first and final <sup>23</sup>level. That means that the parties must implement the verdict after the verdict was read. Thus the Decision No.31 / ARB / BANI-SBY / 1 / 2012 binds both parties to the dispute both the Petitioner and the Respondent where it has been in accordance with the provisions of Article 60 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution Arbitration Award final and binding for both parties.

Legal protection is required for *franchisees* because that is considered weaker position in the franchise agreement, but did not rule out that the only *franchisee* which will be in default, the *franchisor* can only do defaults with greater power it has.

Because there are no offers for the *franchisee* to make the contents of the agreement. So that the *franchisor* has the authority to make arrangements and provide the terms and conditions that must be met by <sup>23</sup>franchisee. If it does not happen the ability to meet the requirements given by the *franchisor*, for example, if the *franchisee* does not meet sales quotas or franchises operating standards then this could lead to unilateral termination by the *franchisor*.

It was even possible to discontinue the contract with the *franchisee* with the intention of controlling these outlets. Indonesia's legal system does not yet exist specifically regulates dispute resolution forum to settle the franchise and selection. In the <sup>23</sup>franchise agreement, there is usually a clause regarding dispute settlement. Described in Article 5 of Government Regulation No. 42 of 2007



on Franchise Ta hun that the franchise agreement at least contains a clause on the settlement of disputes. 19 resolve the dispute in the franchise agreement has a clause of choice of law or forum selection in the event of a dispute.

Choice of law is essential in a franchise arrangement, if there is a dispute as well as the place where the chosen law to resolve disputes that arise. In addition there is a legal option there is also a selection of possible forum of dispute resolution by arbitration or the settlement of disputes under litigation. In the agreement, if there is no agreement in the dispute resolution through litigation that could be through the courts. So that the injured party may file a lawsuit to the court in accordance with Article 1266 paragraph 3 of the Code of Civil Law Act which states in such a case no agreement is null and void, but the cancellation must be requested to the judge. Dispute settlement through the courts forums can benefit the franchisee for the courts as a forum for the forum which proves franchisor that bad faith. However, as far as possible should the parties can resolve it amicably. If consensus is not successful, then the parties will continue to a third party. Attempts by such third parties may include conciliation to restore its original state or through arbitration or court efforts to obtain a final decision which will be binding on both parties. In the Indonesian legal system did not exist a legal provision which specifically regulates dispute resolution provisions of the franchise agreement and the choice of forum 32 settle. Forum options, both with regard to judicial or non-judicial institutions also need to be linked to the choice of law and specified in the agreement. If the choice of law and choice of forum has been arranged and specified in the franchise agreement, then in applying 13 the agreement to run well.

Franchise agreements are one aspect of the legal protection to the parties from the actions harm others. This is because of the agreement can be a strong legal basis to enforce legal protection for the parties if one party violates the agreement, the other party may demand compensation to the adverse party in accordance with applicable law. Franchise need to obtain legal protection due to the imbalance of bargaining power (unequal bargaining power) in a franchise agreement to make the position does not have a strong enough bargaining position to defend what was rightfully his.

The franchisor sets forth the terms - the terms and standards to be followed by the franchisee that allows the franchisor to cancel the agreement if the judge franchisee can not meet its obligations. Legal protection for the franchise in terms of their unequal position in the agreement between the franchisor and the franchisee can be done in a way that the franchisee can refuse to perform or refuse to perform accomplishment achievement further, when the franchisor has to first do a default or breach of the agreement. Article 8 PP 42 Year 2007 on Franchise containing the franchisor is required to provide guidance in the form of training, coaching, guidance, operations, management, marketing, research and development to the franchisees on an ongoing basis. So if the franchisee experience difficulties in marketing franchise it, the franchisor is willing to provide guidance.

Based on the article, if the franchisor does not report registration of franchise offering prospectus / registration doing no franchise agreement the franchisor will be penalized. This is one of the government's efforts to protect the franchisee from the franchisor who only want to gain personal benefits. Legal protection that can be given to franchisees under Government Regulation No. 42 of 2007 and the Civil Code Book II is preventive.

Franchisees are also required to register franchise agreement. With the registration franchise agreement by the franchisee then the franchisees are given the opportunity to conduct a re-examination of the matters presented by the franchisor related prospectus franchise deals mainly concerning the rights and obligations of the parties in the franchise agreement. In addition to the agreement related to the registration of franchise then the franchisee can seek legal protection related to intellectual property rights owned by the franchisor if there are third parties who commit intellectual property infringement. Franchisees can file legal actions both in litigation and non-litigation according to the agreement contained in the franchise agreement 3

Thus, although the Act which specifically regulates franchise no Government Regulation No. 42 Year 2007 on franchise also supported provisions that can support franchise legal certainty in business 6 day which is as follows:

1. The Book of the Law of Civil Law (Civil Code).
2. Law No. 14 of 2001 on Patents.
3. Law No. 15 of 2001 on Marks.

4. Law No. 30 of 2000 on Trade Secrets.
5. Regulation of the Minister of Industry and Trade No. 31 / M-DAG / PER / 8/2008 on the Implementation of Franchise.

## 6. CONCLUSION

Of the existing problems in Chapter I, and based on the analysis described above, the writer can draw the following conclusion:

1. Agreement franchise agreement using standard is legally valid and will be valid as the Law for both case in the franchise agreement. The franchise agreement is fundamentally at odds with the principle of consensualism and the principle of freedom of contract. Implementation of the agreement standard in the franchise agreement, resulted in the franchisee was not given an opportunity by the franchisor to discuss the contents of the agreement. Franchisee forced by necessity, and therefore the franchisee is forced to approve and sign the agreement. Implementation of the agreement standard is contrary to Article 1320 paragraph (1) concerning an agreement and Article 1338 paragraph (1) of the Law on Principles of Civil Law of freedom of contract. However, application of the agreement standard is still recognized by the doctrine and jurisprudence. Legally, the agreement standard can be carried and used. However, it must meet the conditions stipulated in article 18 of Law No. 8 of 1999 on Consumer Protection. Forms tort committed by the franchisee is in the form of the same did not do the achievements, performing feats but too late, and performing feats but not perfect.
2. In Article 5 of Government Regulation No. 42 Year 2007 on Franchise that the franchise agreement at least contains a clause on the settlement of disputes. To solve the dispute in the franchise agreement has a clause of choice of law or forum selection in the event of a dispute. Choice of law is essential in a franchise arrangement, if there is a dispute as well as the place where the chosen law to resolve disputes that arise. In addition there is a legal option there is also a selection of possible forum of dispute resolution by arbitration or the settlement of disputes under litigation. Dispute settlement through the courts forums can benefit the franchisee for the courts as a forum for the forum which proves franchisor that bad faith.

## ACKNOWLEDGEMENT

This research was written by myself, for the preparation of a professorship. This research is supported by Professor El Thalassinos (European Chair Jean Monnet, Editor in Chief ERSJ), Prof. Dr. Tulus Suryanto, Akt., CA (STEBI Lampung) and Prof. Dr. Hj. Darwati S., MM., at LPPM of Borobudur University for publication in international journals (Scopus indexes). This research is funded by personal fund, remember me as a fix lecturer at the Law Faculty of Borobudur University and be hoped this case Able to Become professor. And there is an element of obligation to each lecturer writing an international journal.

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