

## Perspective of Intellectual Property Rights Related to Copyright in the Scope of Franchise Business

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### KEYWORDS

Intellectual Property Rights,  
Franchise, Franchisor,  
Franchisee.

### ABSTRACT

Franchise business is closely related to Intellectual Property Rights. Intellectual Property Rights, especially copyright, are exclusive rights that need to be protected because they are made based on the creativity, ideas, energy, and time of the creator. Legal protection of IPR in the franchise business is carried out to protect related parties from losses and actions that occur outside the franchise agreement. Indonesia itself has accommodated the need for IPR protection or exclusive rights with applicable laws and regulations. These laws and regulations not only protect the rights of the franchisor, but also regulate and protect the rights and obligations of the franchisee. In the international arena, Indonesia also participated in the Forum Agreement Establishing the World Trade Organization (Agreement on the Establishment of the World Trade Organization).

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### Introduction

Intellectual Property Rights (IPR) have an important role in the scope of franchise business, especially in terms of copyright protection. In the context of franchising, copyright is a crucial aspect because franchising involves the use and utilization of intellectual property rights from the franchisor to the franchisee. Copyright is a legal protection afforded to the creator of original works, such as logos, trademarks, product designs, and operational guidelines (Rachman & Hendrawan, 2021). Therefore, copyright is needed to protect the brand identity, corporate image, and unique operational systems of a franchise business. By having a strong copyright, franchisors can ensure that their brand identity and products are maintained and not misused by other parties, while franchisees can utilize the intellectual property to build and develop a franchise business safely and reliably (Yanto et al., 2023).

Judging from the normative side, IPR is a 'product of mind' or by the World Intellectual Property Organization (WIPO) called 'creation of mind' which means a human work that is born with an outpouring of energy, time creation and cost (Mendis et al., 2019). IPR is the exclusive right of everyone to all the results of their creativity and intellectual work, where this right can be in the form of business, commercial, and social use (Bouchoux, 2016). Indonesia accommodates the need for the protection of IP or exclusive rights by participating in the Agreement Establishing the World Trade

Organization forum which includes the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement)" (Susanti et al., 2019)

In Indonesia, regulations regarding copyright are contained in Law Number 6 of 1982 concerning Copyright, but only five years into force, this Law was revised and updated again to Law Number 12 of 1997 concerning Amendments to Law Number 6 of 1982 concerning Copyright because it was considered not in accordance with the demands of the community. To perfect the needs of the community and adjust to the development of law and times, Law Number 28 of 2014 concerning Copyright (hereinafter referred to as UUHC) was passed.

Referring to the franchise itself, in essence franchising is a marketing concept in order to expand networks and business connections effectively and quickly. The franchise business marketing strategy is as strong as the conventional strategy in terms of business development. Franchising is carried out as a very effective distribution channel to bring products closer to consumers through the hands of franchisees. In Article 1 of the Republic Government Regulation Number 42 of 2007 concerning Franchising, it is stated that Franchising is a special right of an individual or business entity in order to market goods and / or services that have proven success and can be utilized by other parties based on franchise agreements. The franchise agreement is the main basis or referred to as the legal basis that applies as if it were a law in operationalizing the franchise relationship by containing agreed provisions. In the franchise agreement, it has been regulated regarding the protection of IPR specifically, namely by promising 6 Ibid, page. 24. 6 regarding what restrictions the franchisee must comply with, which are directly or indirectly intended to protect intellectual property rights from the franchisor (Ludiyanto & Margono, n.d.).

## **Research methods**

In relation to these matters in the introduction, the problems that I formulate in this paper are as follows: 1) What is the perspective and legal protection of intellectual property rights of franchisors and franchisees, especially regarding copyright on franchise businesses? 2) What are the solutive measures to protect the copyrights of franchisees? To answer this, I apply the necessary research methods that are relevant to the problem formulation that I have made. Methodologically, this paper uses a normative juridical approach, where research is carried out with an approach and review of applicable laws and regulations (Ginting, 2023).

This approach is about limiting business practices and case assessment, related to legal issues discussed in this study. The specification of the study is descriptive analysis, which means that the author analyzes the legal problems studied by relating to legal theories and practice of implementing positive law in Indonesia. The data collected are secondary data used to find answers to legal problems in this study, which are then outlined in the form of descriptive research results (Geovani et al., 2021).

## **Results and Discussion**

### **A. Perspective and Legal Protection of Intellectual Property Rights of Franchisors and Franchisees, Especially regarding Copyright of Franchise Business**

Franchise Business in the perspective of Intellectual Property Rights (IPR) is a grant of rights to utilize or use together two types of certain Intellectual Property Rights, namely trademark rights in this case include trademarks, service marks and trade secrets. According to Intellectual Property Rights, the right to use that can be granted is only the

right to sell or distribute goods or services using certain brands, either in the form of further management or processing that provides additional value to the products sold, so this is not much different from a form of distribution of goods (Arora, 2021).

Judging from Government Regulation Number 42 of 2007 concerning Franchising based on Article 1, there are important elements that can be a reference for a franchisor in granting useful rights to franchisees. The following elements, among others:

- a. Franchise is a special right which is an Intellectual Property Right owned by a person and/or certain legal entity;
- b. Franchising is organized on the basis of an agreement and/or contract.

Franchisees basically also contain the following basic elements:

- a. Franchisor is the owner / producer of goods or services that already have a certain brand and grant or license certain exclusive rights to the marketing of the goods or services.
- b. Franchisee is the party who receives the exclusive right from the franchisor.
- c. There is an exclusive transfer of rights (in practice covering various kinds of intellectual property / industrial property rights) from the franchisor to the franchisee.
- d. The existence of the establishment of certain areas, franchise areas where franchisees are given the right to operate in certain areas.
- e. There are returns from the franchisee to the franchisor in the form of Initial Fees and Royalties as well as other costs agreed by both parties.
- f. The existence of quality standards set by the franchisor for franchisees, as well as periodic supervision in order to maintain quality.
- g. Initial training, continuous training, organized by the franchisor to improve skills.

Viewed from an economic and business perspective, a franchise is a special right given to a person or group to produce, sell, market a product or service. The Institute of Management Education and Development (LPPM) introduced Franchise as the equivalent of the word Franchise. The Steering Board of the Association of Franchising and Licensing, Amir Karamoy said that franchising is not a direct translation of the concept of Franchise itself because the two have slightly different meanings. In the context of a franchise business, what is carried is the freedom to run a business independently in a certain region, while franchising comes from the word "wara" which means special and "profit" means profit. So, it can be interpreted that franchising means a business that must provide more profits for the franchisee because it has given privileges to the franchisee.

Through the perspective of legal science, franchising means legal approval of the privilege to market a product or service from the franchisor to the franchisee, which is regulated in a certain rule of the game. In terms of law, franchising involves the field of treaty law and the field of intellectual property rights law or intellectual property rights (intellectual property right) to grant licenses, laws about commercial names, patents, brands, designs and business models.

Minister of Trade Regulation No. 12/M Dag/Per/3/2006 concerning Terms and Procedures for Issuance of Franchise Business Registration Certificate confirms that "Franchising is an engagement between the franchisor and the franchisee in which the franchisee is given the right to run a business by utilizing and/or using intellectual property rights or business characteristics owned by the franchisee with a reward or achievement based on the requirements set forth in franchise agreement. Based on these

regulations, it can be understood that IPR is a key and the main element of the franchise business.

The main legal protection aspect for franchisors is the franchise agreement. Franchise agreements are crucial to provide legal protection for the franchisee's Intellectual Property Rights. Franchise agreements can also minimize losses or unwanted events committed by franchisees. The agreement becomes a strong legal basis in enforcing legal protection for the parties involved. As regarding the franchise agreement that has been discussed, it can be understood that the agreement has included provisions on IP protection specifically in the franchise business, namely by promising certain restrictions that must be complied with by the franchisee, which are directly or indirectly aimed at protecting the intellectual property rights of the franchisee.

Juridically, IPR in the franchise business is regulated and protected in Law No. 19 of 2002 concerning Copyright. Article 1 point 1 of the Copyright Law states that Copyright is the exclusive right for the creator to publish or reproduce his work or give permission for it without prejudice to restrictions under applicable laws and regulations". Furthermore, in Article 1 number 2 it is explained that Copyright is given to the creator or recipient of rights to a work. The creator in this case is one or several together whose inspiration gives birth to a creation based on the ability of the mind, imagination, dexterity, skill, or expertise poured into a distinctive and personal form. Article 1 number 3 explains that creation is the result of any work of the creator that shows its authenticity in the realm of science, art, or literature. Article 1 point 4 also clarifies regarding the copyright holder who is the creator as the copyright owner or the party who receives the right from the creator, or another party who receives further rights from the party who receives the right. Any person who uses someone else's work without the author's permission may be subject to criminal provisions, as mentioned in Article 72 and Article 73. The work or acceptance of copyright must also be accompanied by the maintenance of the image of the work itself, commonly known as trade secrets. The trade secret element plays a big role in the franchise business, a real case example is the safeguarding of secret recipes regarding the manufacture of Kentucky Fried Chicken (KFC) where the franchisee does not divulge the trade secret to the public in order to maintain the authenticity of the business and protect the franchisor's copyright.

With so much discussion about Intellectual Property Rights in the franchise business above, in fact, perspectives related to intellectual property rights in the franchise business pose challenges. One of them is related to copyright enforcement which is difficult to do in some countries, especially if the franchise business operates internationally. Differences in regulations in each country are a major obstacle for franchisors in protecting their copyrights effectively. The risk of copyright infringement is also a concern if franchisees do not comply with operational guidelines or agreements. In an economic environment, the franchise business becomes complex when the franchisor and franchisee's understanding of Intellectual Property Rights is less strong.

### **B. Solutive action to protect the copyright of franchise business people according to civil law and business law**

In the context of protecting the copyright of franchise businesses, there are several solutive actions that can be taken under civil law and business law. The first and very important is to draw up a franchise agreement. The parties in the franchise business can draw up a clear and detailed franchise agreement. This agreement must contain provisions protecting copyright and intellectual property related to the trademark rights, recipes,

trade secrets, operational methods, or know-how of the businesses that are part of the franchise. This agreement must include provisions regarding the use, protection, and maintenance of copyright, as well as strict sanctions that apply in case of infringement. Furthermore, it is recommended to franchisees to register their trademark registration, where franchise business people let alone owners are better off registering their trademarks with authorized institutions, such as the Directorate General of Intellectual Property or the relevant patent and trademark offices. Trademark registration provides strong legal protection against unauthorized use by others, and provides a clear basis for franchisees to sue for infringement of their copyrights. Furthermore, related parties in the franchise business are expected to enforce supervision related to copyright to ensure that copyright is properly protected in accordance with the applicable agreement between the franchisor and the franchisee. It is expected that franchisees conduct regular inspections to check whether their operational methods and trademarks are used correctly and in accordance with established provisions. In the event of infringement, they must be willing to take the necessary legal action to enforce their copyright, including filing a lawsuit with the court if necessary (Faeni, 2015).

In addition to repressive measures, there are also preventive measures to protect franchise businesses, namely by training and education. Franchisees can provide training and education to relevant parties, including franchisors and employees, about the importance of protecting copyright and how to implement and use it properly. By increasing understanding of copyright and intellectual property, it is hoped that it will reduce the risk of accidental infringement. The last protection recommendation is related to cooperation with authorities where franchise businesses can cooperate with authorities, such as police or other law enforcement agencies, to eradicate copyright infringement practices. They can provide information needed to assist in the investigation and enforcement of copyright infringement.

In protecting copyright in the context of franchising, it is important for franchisees to consult with legal experts experienced in civil law and business law to ensure the steps taken are in accordance with the legal provisions applicable in the relevant legal territory or country.

## **Conclusion**

Franchise Business in the perspective of Intellectual Property Rights (IPR) is a grant of rights to utilize or use together two types of certain Intellectual Property Rights, namely trademark rights in this case include trademarks, service marks and trade secrets. According to Intellectual Property Rights, the right to use that can be granted is only the right to sell or distribute goods or services using certain brands, either in the form of further management or processing that provides additional value to the products sold, so this is not much different from a form of distribution of goods. It should be understood that the franchise agreement is very crucial because it includes provisions on IP protection specifically in the franchise business, namely by promising certain restrictions that must be obeyed by the franchisee, which is directly or indirectly aimed at protecting the intellectual property rights of the franchisee. In protecting copyright in the context of franchising, it is important for franchisees to consult with legal experts experienced in civil law and business law to ensure the steps taken are in accordance with the legal provisions applicable in the relevant legal territory or country.

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