

Development of Franchising in Indonesia through protection in PP No. 42 of 2007 concerning Franchising Facing the ASEAN Economic Community (MEA) in Indonesia's Growth Efforts

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The development of franchises in Indonesia is very fast starting from large scale to small scale, namely patents, brands, brands and trade secrets. In this paper I will examine the franchise development in Indonesia in relation to Law No. 14 of 2001 concerning Patents, this study uses an empirical normative judicial approach. Normative juridical refers to the principles, national and international legal norms, by reviewing data libraries or secondary data consisting of primary, secondary, tertiary legal materials, as well as use of descriptive analysis research specifications. The empirical factor is the effectiveness of implementing statutory provisions to achieve its objectives.

Key words: *Franchise, MEA.*

Introduction

Franchise businesses are one form of business that appeals to many entrepreneurs today, either new or beginning entrepreneurs as well as experienced entrepreneurs. In addition, the year to year growth of franchise businesses, especially in the field of food and beverage, is an interesting phenomenon. It can be observed there are a lot of very diverse new businesses offering various types of products and services, such as modern food and beverage businesses.

The concept of a franchise business offers a viable possibility for a profitable business for someone who has material capital but is less experienced in building their own business, especially when buying a franchise from a well-known trademark. This type of business has the potential for long-term profitability, but it should be noted that not all types of franchise businesses are suitable for everyone (Marikxon, 2015).

Franchise businesses are a business trend that is popular today among people creating new businesses or who have previously operated businesses. For people with funds that have never started trading activities, franchises can facilitate acquisition of a profitable business, with a populate trademark. This business opportunity has a very lucrative potential. This can be seen in the data shown by Prof. Dr. Sudarmiatin, MSi, which indicated that the development of domestic franchises is up to 8-9% per year and for foreign countries, 12-13% per year, although failure rate of these businesses is markedly different. For domestic businesses, 50-60% fail while for overseas businesses, 2-3% fail (Prof. Dr. Sudarmiatin, 2011; Marikxon, 2015). Franchise development is strongly influenced by educational factors because in conducting franchise activities not only requires implementation but also requires a foundation in the form of education.

Education plays a very important role for business people within franchises to carry out business activities. Educational background is a strong capital for local franchise businesses to survive the Asean Economic Community (MEA). MEA is a Southeast Asia (ASEAN) economic cooperation that includes countries in ASEAN with a system of cooperation in the form of free trade. It covers 9 countries with the term ASEAN Economic Community or AE (Rahardjo, 2015).

The MEA was implemented in 2016, following the initial ASEAN community cooperation in 2003. The activity of this cooperation was carried out by ASEAN member countries with the aim of increasing the economic income of these countries. The MEA's activities itself are in the form of cooperation which frees each ASEAN member to conduct business activities without being limited by national boundaries. This activity not only cover goods traded by business actors but also applies to the workforce, such that employees needs good skills to compete with each other. The existence of this MEA means that every workforce of each ASEAN member has the right to develop its potential in ASEAN countries (Arifin, 2016).

According to the Chairman of the Indonesian Franchise and Licensing Association (WALI) in Kontan.co.id news, there is nothing to fear from the MEA. With the entry of foreign franchises in the MEA era, Indonesian franchises have become better. Data obtained indicates that gross income can reach Rp 200 trillion, with 60% of foreigners contributing to that. In competition for foreign franchises, many businesses open business opportunities to other countries. For example, Bumbu Desa, has a franchise in Malaysia and Singapore.

Additionally, there are business people from The Andru Spa who have opened their franchises in Malaysia (Levita, 2015).

Symptoms of the diversity of business activities carried out by many business entities interested in franchise business activities are predicted to continue to grow, as is reflected in the progress of such business activities (Karamoy, 2014). According to the Chairperson of the Indonesian Licensing and Franchise Steering Board (Wali) in *Bisnis.com* news, some companies that were not previously involved in business activities included selling goods and services to consumers for their own, family or household interests, have now entered into activities both as the franchise founder or franchisee due to the promising opportunities of franchise businesses considering that the State of Indonesia has a very large number of graduates. Seeing it from the business point of view, the business category that can make a major contribution to the franchise economy are businesses engaged in the food sector. This is in accordance with data obtained, namely, data which showed that income can reach Rp 40 million with a net profit of at least 35%, with other franchise businesses having good development.

With a franchise, business people can easily grow their business. In addition to these management and business running activities, the standardization offered with a franchise is aimed at the development of the company. This is an added advantage for businesses that choose to operate their business activities in the franchise sector. However, in order to save capital in carrying out business activities, franchisees must understand such business activities and conduct business activities in accordance with the agreement on activities to be carried out (Karamoy, 2014). This knowledge is useful for businesses to develop franchise activities that support business competition globally, namely within the ASEAN Economic Community (MEA). According to the Deputy Minister of Trade, Indonesia is required to be able to compete in this MEA by using trade opportunities in ASEAN by increasing competitiveness, maintaining the quality of national business and increasing the delivery of Indonesian products.

ASEAN can also be used as an investment for franchisees. The role of the government is to encourage business people to face the MEA, so that people do not need to worry about the efforts made by the government. Business people continue to argue that the inability to face the MEA will have a negative impact on the Indonesian economy because of the large number of foreign products entering Indonesia that affect the country's gross income. Therefore, the government seeks to issue policies by utilizing franchise business opportunities in ASEAN. (Bayu, 2014).

A study entitled *Improving Indonesian Employee Competitiveness*, aimed to look at the correlation of input of labor support in the face of MEA. According to this study, improving

labor competitiveness must be carried out long before the AEC 2015 really begins, namely by linking labor support inputs so that Indonesian workers have mental readiness and ability. With this research, it can be concluded that labor must fulfill several correlations in order to compete and have competencies, namely: Education, Communication and Technology. (Pratiwi & Mahmudah, 2015).

Another study entitled Asean Economic Community (AEC) and the Indonesian Economy, stated that the MEA has a goal to look at strategies and steps to ensure that Indonesia is ready and can benefit from the momentum of the MEA, which includes the characteristics of collective agreements in ASEAN countries' policies and goods distribution / services, investment, capital flows and free human resources. Economic zones are able to compete healthily to improve the nation's economy associated with ASEAN community competition. It is precisely with this that it can be used as capital to improve the economy in Indonesia, particularly considering that the Indonesian nation has a number of product sales or commodities from a sale, compared to sales of products or commodities in the industry or as many as 250 million producers. Given that in the MEA, the number of product sales or commodity sales, compared to product sales or commodities in the industry or producers as a whole is 625 million people, Indonesia has a great opportunity. The result is that the government approaches potential business sectors in Indonesia, such as the automotive industry and SMEs. The government must be able to strengthen the business sector potential with, for example, policies issued with the aim of increasing and protecting the industrial business sectors (G.T.Suroto, 2015).

As reported in another study aimed at describing the extent to which free market politics from the MEA implemented in 2015, is able to provide positive and negative opportunities for Indonesia's economic development and their influence on the expansion of industrialization and new business opportunities for Indonesia's development, the Indonesian economy will face challenges in the economic field aside from the challenges of the global crisis in 2009. There is a need for readiness in the face of the Asean Economic Community which is a reality that must be faced by Indonesia in various industrial fields, one of which is Small and Medium Enterprises (UKM). Industrial contribution in the UKM sector is very large because it can absorb many workers. With the large number of absorbed workers increasing economic growth in Indonesia, SMEs are able to survive the monetary crisis because SMEs produce products that are directly consumed, do not rely on capital from banks, and produce selective goods based on consumption needs. MSMEs generally come from termination of employment. The existence of a very large population of Indonesia (252 million) causes Indonesia to have the potential to greatly supports economic growth compared to the population of other ASEAN countries. With this population factor, Indonesia actually has 50 percent of ASEAN citizens, which has the potential to increase the economic growth in

Indonesia. The existence of the MEA is a good opportunity for Indonesia to improve the economy with the potential described above. (Abdurofiq, 2015).

Based on existing research, research has not been conducted that discusses the Study of the Effect of Franchising Development in Indonesia in Facing the Asean Economic Community (AEC) in Efforts to Improve the Indonesian Economy. This is an important issue to consider because Franchising has a very good potential to increase economic growth in Indonesia related to the activities of the MEA. Therefore, this study aims to examine the effect of Franchise Development in Indonesia in the face of the ASEAN Economic Community (MEA) in an effort to improve the Indonesian economy.

Formulation of the problem

Based on the background above, the formulation of the problem in this study is:

1. What are the Effects of Franchising Development in Indonesia in Facing the Asean Economic Community (MEA)?
2. How are efforts to Improve the Indonesian Economy related to franchising in MEA?

Research purposes

The results of this study are expected to be useful for the government and the wider community so that they are ready and able to face the MEA that has been implemented in Indonesia today.

Literature review

Franchise

Munir Fuady (2005) provides an understanding of franchising, namely a cooperation agreement between 2 (two) business people or more in a company, where the first party will act as a franchisor and the second party and so on as a franchisee, in a commercially made arrangement, chosen for success and renewed from time to time, both on the basis of an exclusive or non-exclusive relationship, and otherwise certain rewards will be paid to the franchisor in connection with that (Fuady, 2005).

Law Number 42 of 2007, concerning franchise Article 1 paragraph 1, states that the definition of "franchise is a privilege owned by an individual or business entity to a business system with business characteristics in order to market goods and / or services that have been proven successful and can be utilized and / or used by other parties based on a franchise agreement "

Franchise according to the Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 259 / MPR / Kep / 7/1997 concerning Provisions and Procedures for Implementing Franchise Business Registration, refers to "agreements where one party is given the right to use and or use intellectual property rights or discoveries or characteristics from businesses owned by other parties in return based on the conditions specified to provide and or sell goods and services."

Asean Economic Community (MEA)

Asean Economic Community (MEA) is a form of cooperation agreement between Southeast Asian communities that are interrelated in economic activities including Manpower in the form of competitive human resource development, production of both products and services that are able to compete among Southeast Asian countries to increase growth economy in the territory of that country (Fajar, 2015).

Another definition states that the ASEAN Economic Community is a business activity in which there is cooperation and agreement to conduct business activities between business people in Southeast Asian countries both in the field of goods and services (Danarkusumo, 2016).

Type / Form of Franchise

In practice, franchises consist of four forms, Su'ud (1994: 4445):

1. Product Franchise

A form of franchise where the recipient of the franchise only acts to distribute the product from its partner with restrictions on the area.

2. Processing or Manufacturing Franchise

This type of franchise gives rights to a business entity to make a product and sell it to the public, using the franchisor's trademark and brand. This type of franchise is often found in the food and beverage industry.

3. Business Format or Franchise System

Franchisors have a unique way of presenting products in one package, as did McDonald's by making a variety of products in packages.

4. Franchise Group Trading

A franchise that refers to granting rights to manage wholesale stores and retailers that are carried out by department stores.

Whereas according to the International Franchise organization which has members in the world, there are four basic types of franchises commonly used in the United States, namely:

1. **Product Franchise:** Manufacturers use franchise products to regulate how retailers sell products produced by producers. Manufacturers give shop owners the right to distribute factory property and allow shop owners to use factory names and trademarks. Shop owners must pay fees or buy minimum inventory in return for these rights. For example, a tire shop that sells products from the franchisor, uses a trade name, and the marketing method set by the franchisor.
2. **Manufacturing Franchises:** This type of franchise gives rights to a business entity to make a product and sell it to the public, using the franchisor's trademark and brand. This type of franchise is often found in the food and beverage industry.
3. **Business Opportunity Ventures:** This form specifically requires business owners to buy and distribute products from a particular company. The company must provide customers or accounts for business owners, and in return the business owner must pay a fee or performance as compensation. For example, business of automated sales machines or distributorship.
4. **Business Format Franchising:** This is the most popular form of franchising in practice. Through this approach, the company provides a proven method for operating business for business owners using the name and trademark of the company. Generally, companies provide a certain amount of assistance for business owners paying a fee or royalty. Sometimes, companies also require business owners to buy supplies from the company (<http://ekonomi-holic.blogspot.com/2012/10/pengertian-jenis-danseliti-bisnis>).

Legislation in Indonesia in Managing Business Activities

Indonesia as a country that adheres to the legal system of Civil Law certainly has the same characteristics as other countries, namely the existence of written law in regulating the community, known as legislation. In the system of legislation there are known hierarchies (order system). The legislation of a country is a system that does not want or justify or allow for regulatory conflicts in it. If it turns out that there is a conflict, this must be resolved within a legal system. Therefore, we need principles that govern the position of each statutory regulation. Related to this there are at least 3 principles (adagium) of legislation known as the principle of preference. According to Kusnu Goesniadhie (2010: 36) these are:

1. **The superior Lex principle derogat legi inferiori:**
Related to the principle of lex superior derogat legi inferiori, Kusnu Goesniadhie states, that legislation with a lower level should not conflict with higher-level laws and regulations that regulate the same normative material. If there is a conflict, then the higher-level laws and regulations will override lower-level laws and regulations, and because of the existence of hierarchies in the laws and regulations, this applies the principle of superior lex derogate legi inferiori.
2. **The principle of lex posteriori derogate legi priori:**

Furthermore, related to the lex superior principle of derogat legi inferiori, Kusnu Goesniadhie states, that contradictions can occur between the old laws and regulations with new legislation, which regulates the same normative material. If the new legislation is enacted by not revoking the old laws and regulations that regulate the same material while the two are contradicting each other, then the new legislation overrides the old legislation, this applies the principle of lex posteriori derogate legi priori.

3. Principle of lex specialis derogate legi generali:

Related to the generic principle of lex specialis derogate legi, Kusnu Goesniadhie states, that conflict can occur between general legislation with special legislation, while both regulate the same normative material. If this happens then the specific legislation will override general laws and regulations. Such matters will apply to the principle of lex specialis derogate legi generali.

Research methods

This study uses connectivism data was collection from one source to another through library research, then reviewed, interpreted and analyzed for further conclusions.

The method used in this study uses juridical normative and empirical research that refers to the legal norms contained in the law, as well as RI Government Regulation No. 16 of 1997 concerning Franchising. Government Regulation No. 16 of 1997 concerning this franchise has been revoked and replaced with the Government Regulation of the Republic of Indonesia Number 42 of 2007 concerning franchising, other provisions that support legal certainty in the format of franchise business Decree of the Minister of Industry and Trade No. 259 / MPP / KEP / 7/1997 dated 30 July 1997 concerning Provisions for the Implementation of Franchise Business Registration and Regulation of the Minister of Trade of the Republic of Indonesia Number 31 No.31 / M-DAG / PER / 8/2008 of 2008 concerning franchises.

While the empirical factor is the effectiveness of the application of legislation effectively by achieving its objectives, this was done through several business people in Indonesia and other countries.

This study uses descriptive analysis, with the aim of providing an overview of the facts with an accurate analysis of the effects of franchise development in Indonesia in the face of the ASEAN Economic Community (MEA) in the efforts of Indonesia's economic growth.

The research phase was conducted through library research and data announcements using documented studies. Data analysis used data to draw conclusions forming the results of the study. Both legal materials for primary and secondary data were analyzed using qualitative methods.

Result and Discussion

Legally Franchise means a legal agreement for granting rights or privileges to market a product or service from the owner (franchisor / franchisor) to other parties (franchisee Franchisee) which are regulated in a certain regulation. According to Government Regulation No. 16 / 1997Pasal I point 1 Franchising is an agreement in which one party is given the right to use funds or use intellectual property rights or inventions or business characteristics owned by another party with a reward based on the requirements applied by the other party in the context of providing and or selling goods and or services (Abdul Hadi et al., 2018).

The franchise itself comes from Latin, namely *fancorum rex* which means "free from bonding", which refers to the freedom to have business rights. While the definition of the franchise comes from medieval French. Taken from the word "french" (free) or "Francher" (free), which is generally interpreted as giving special privileges (Adrian Sutedi, 2008; 6).

From the definitions above, the definition, as well as with consideration of the formulation that has been described, franchise can be said to be one form of licensing, it's just different from the definition of licensing in general. Franchising emphasizes the obligation to use systems, methods, procedures, marketing, and sales methods, as well as things that have been determined exclusively by the franchisor that may not be violated or ignored by the licensee. In addition, franchises have distinctive features compared to ordinary licenses. Businesses with the franchise format generally get business guarantees. This happens because the franchisor has tested the business system and can provide guarantees to the franchisee for the operation of the system (Saudi et al., 2019).

Because the franchise business has the potential to be very profitable, the equivalent words in the large Indonesian language dictionary (KBI) are called "franchises". Franchising comes from the word *wara* which means more or special and profit is profit. So if it is concluded, the definition of franchise according to KBI means a business that provides special benefits or more profits. Franchising is the right to sell a product or service or service. Whereas according to the Indonesian government version, what is meant by franchising is an agreement where one party is given the rights to use intellectual property (HAKI), or a meeting of business characteristics owned by another party, with a reward based on the conditions set by the other party in order to supply and/or sell goods and services (Sinaga et al., 2019).

In government regulation Number 42 of 2007, there is a definition of a franchise, namely, franchise is a special right that is owned by an individual or business entity to a business system with a business characteristic of marketing goods and services that have been proven successful and used by other parties based on a franchise agreement.

From the above definitions, it can be seen that at least the franchise agreement involves two parties, namely the franchisor as the party that gives permission to use the franchise, and the franchisee, namely those who get permission to use the franchise.

PP. No. 42/2007 concerning Juncto Franchise Regulation of the Minister of Trade No. 31 /M-DAG / PER / 8/2008

The birth of the PP is based on the government's desire to improve the development of franchise entrepreneurs throughout Indonesia so that it encourages national entrepreneurs, especially SMEs to grow as reliable national franchise businesses and have competitiveness domestically and abroad, especially in marketing domestic products. The government views the need to know the legality and reliability of the franchisor, both domestic and foreign, in order to create business information transformation that can be optimally utilized by national businesses in marketing goods and / or services through a franchise business. In addition, the government needs to compile franchise data, both the amount and type that are franchised. In this PP, franchises are defined as "special rights owned by individuals or business entities to business systems with unique characteristics of businesses marketing goods and services that have been proven to be successful and used by other parties based on franchise agreements." According to the definition above, then based on Article 3 PP Juncto Article 2 paragraph (1), the franchise business meets the requirements if the business: 1. has the characteristics of a business; 2. has proven to have advantages; 3. has standards for the goods and / or services offered that are made in writing; 4. is easy to teach and apply; 5. there is continuous support; and, 6. the intellectual property rights have been registered. In addition, based on Article 8 of PP No.42 / 2007, franchisees must provide training, operational guidance, management, marketing, research and development to franchise recipients on an ongoing basis, because if this is not done the franchisor may be subject to administrative sanctions in the form of revocation of Registration Certificate Franchise (STPW).

Sop and Royalty Fee in Franchise

According to Sudarmiati (2011), in every company whatever the field of business, there is the requirement to have a Standard Operating Procedure (SOP). SOP is a written standard of daily work regarding job descriptions. The contents of the SOP include what must be done, when, where, by whom, and in the most effective way. SOP is a guideline on how the process of a work function can be enforced. Its existence can be a medium of evaluation if something that is not optimal or inefficient is found. Many companies in Indonesia are not yet accustomed to making well written job descriptions, even though it is a guide to carrying out work in order to achieve goals. As a result, the work procedures are not clear, which ultimately makes the company run out of inefficient or suboptimal. This condition also

applies to franchise businesses in Indonesia. According to observations there are still many franchise businesses that do not make SOPs properly and correctly. Even if someone has made it, the SOPs made are different and not standardized. In a franchise business, SOPs are a key factor in the success of a business because the SOP will be given to the franchisee. That way, inevitably the SOP must be a written document package from the franchisor that is given to the franchisee, and the franchisee must follow it in order to be able to run the business. The function of the SOP in the franchise is additional to documents for administrative order and uniformity for all outlets. According to Sukandar (2009) SOPs in franchise business includes at least three things:

1. Introduction, which includes company history, company organizational structure and the rights and obligations of the franchisor and franchisee.
2. General operating rules, which include important success factors, quality standards, customer relations, inventory systems, product variations, operating procedures, pricing, how to maintain brand image, and customer service.
3. Nursing, which covers the fields of finance, marketing, operations and personnel.

To be able to make a good SOP, a special team should be formed that has is coordinator and supported by high leadership. Each team has a different task, for example the sales team makes an SOP on sales, the purchasing team makes an SOP regarding purchases and so on. The sources used in the process of making SOPs can be taken from previous experiences, then those experiences are filtered and selected which are the best that can make the business run optimally. However, when making an SOP issues of convenience must be kept in mind. The SOPs made should not be difficult, but must be easy to understand and implement. If it is considered to be less than optimal, the SOP can be changed, but attention must still be paid to the conditions. In addition to SOPs, payment of royalty fees is also a requirement in running a franchise business. In essence the royalty is the honorarium paid by the licensee / franchisee, user of the concept, system, discovery, process, method / method (HAKI), logo, brand / name to the licensor / franchisor and owner. The term royalty fee may be familiar as it is often used by various media, such as newspapers and books, and often at seminars delivered for the public. However, the term is actually a commonly used in the fields of licensing, distribution and franchise. In each field, royalty fees are more focused on aspects of use because indeed royalty fees are fees that must be paid periodically for the use of concepts, systems, inventions, processes, methods (Haki), logos, brands / names. Franchises are a business format as outlined in an agreement between the franchisor as the owner of intellectual property, brand, logo and operating system and the franchisee as the recipient (concept, system, invention, process, method / method / Haki, logo, brand / name). The royalty fee must be paid by the franchisee to the franchisor as agreed. Regarding the amount, depending on the type of business and the calculation of the franchisor which includes feasibility aspects of a franchise business. However, the amount of a reasonable royalty fee ranges from 1% -

12%. This percentage is usually taken from gross turnover, not profit, because if calculated from profit, the calculation will be difficult because the profit has been included in the bookkeeping. Calculations of royalty fees must pay attention to this aspect. The existence of royalty fees should be used as the main source of income for the franchisor for the continuity of its business, because after all the franchisor needs these funds to finance all expenses in order to support their business such as: paying supervision fees, monitoring costs and ongoing costs of assistance. This means that as a franchisor must be able to create profits not from the franchisee but through the franchisee. This means that if the franchisee profits, the franchisor is also profitable. So, the relationship between the franchisor and the franchisee must be win-win. The franchisor should not collect royalties then release the franchisee. If there is a franchisor who in their promo claims they will not withdraw the royalty fee to the franchisee, that is inaccurate. It could be that the fee is included in the cost of raw materials or others. Although a fair royalty fee is in the franchise, collecting it must be the same for each franchisee. So, there should be no discrimination even though the franchisor has franchisees in several regions and the turnover is different. For example, if the franchisor sets a 5% royalty fee, all franchisees must pay 5%. Therefore, if you want to run a franchise business, then the turnover must be sufficient so that the royalty fee obtained is large.

Conclusion

Understanding of economic growth according to Adam Smith in classical theory states that economic improvement is strongly influenced by the development of the population, with the growth of populations that can produce production.

Another expert opinion on economic growth put forward by Robert Solow in the Neoclassical Theory states that economic progress rests on humans, the amount of capital, the use of the latest technology and the end result, increasing population can have good or adverse effects, therefore population increases must be managed for good things.

The Asian Economic Community (MEA) is influenced by many factors in its implementation, with the implementation of MEA the influencing factors must be able to contribute to improving the economy. These factors as stated by Jovanovic, who argues that the factor of economic integration is an effective policy choice for each country to act unilaterally, besides this integration has the advantage of a division of labor and the movement of goods or services that are easier in one organization agreed upon by several countries (Aida, 2011).



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