

Resolution of Breach of Contract Disputes in Franchise Agreements by the Franchisee against the Franchisor in Decision Number 612/Pdt.g/2017/Jkt. Sel

¹Devi Fahwi Kurniastuti ²Destina Rina Susanti

¹Duta Bangsa University

²Duta Bangsa University

Email: devifahwikurniastuti@gmail.com

Email: drinasusanti@gmail.com

ABSTRACT

The purpose of this research is to analyze the resolution of breach of contract disputes in franchise agreements through a case study of Decision No. 612/Pdt.g/2017/Jkt. Considering that contract violations can occur in any legal agreement, this study aims to examine various measures available to address such issues. The research utilizes a qualitative approach with primary sources being written laws, namely the Indonesian Civil Code (KUHPerdara), Franchise Agreements, and Licensing Agreements dated April 25 and June 18, 2015, as the validity of these agreements is deemed equivalent to law for the involved parties. The focus of the breach of contract dispute began when the Defendant failed to pay royalties for the MySalon franchises in Jababeka and Galaxi Bekasi from June 2016 to September 2017, resulting in losses for the Plaintiff. Various steps can be taken to resolve breach of contract disputes, including issuing warnings, conducting negotiations, and resorting to litigation if no agreement is reached. However, due to the Plaintiff's continued evasion and failure to fulfill their obligations in good faith, the Plaintiff eventually filed a lawsuit with the South Jakarta District Court on September 12, 2017. The panel of judges ruled that the Defendant had committed breach of contract and was obligated to compensate the Plaintiff for the incurred material losses.

Keywords: franchise, franchisor, default

INTRODUCTION

The competition in Indonesia's business world is intensifying, demanding entrepreneurs to continuously seek innovative approaches and breakthroughs to capture market share. This fierce competition requires business players in Indonesia to persist amidst the economic conditions in our country, which have not fully recovered since the pandemic. National economic development is guided by economic democracy aimed at creating a national economic structure to empower strong small and medium-sized enterprises (SMEs) and foster mutually beneficial partnerships among economic actors to strengthen competitiveness. This is in line with the enactment of Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises (MSMEs), which replaced the previous Law Number 9 of 1995 concerning Small Enterprises. Law Number 20 of 2008 on MSMEs stipulates that economic development based on economic democracy can be achieved through various means, including partnerships. Partnership can be defined as cooperation, whether direct or indirect, based on the principles of mutual necessity, trust, strengthening, and mutual benefit involving micro, small, and medium enterprises with significant advantages. Partnerships can be executed under various models, one of which is franchising, a rapidly growing business model. Franchising was first discovered in Germany in the 18th century when a company granted licenses and financial management assistance for exclusive marketing rights for several beer brands. However, franchising began to flourish alongside the dynamic economy of the United States. Since 1863, various companies have adopted modern franchising models, distributing products ranging from soft drinks, automotive industries, oil producers to restaurants. The franchising model became known in Indonesia in the 1950s with the emergence of motor vehicle dealerships through licensing. By 1970, franchising became even more innovative with the introduction of the licensing plus system where franchisees not only acted as distributors but also had the right to produce the products. Franchise businesses or franchising are highly sought after because they are considered to have minimal failure risks,

as they involve following or purchasing an established business system from others that is already operational or even well-known. In Indonesia, there is a wide variety of franchise businesses, ranging from local to foreign franchises including bakery products, cafes, internet services, pharmacies, property agents, education, jewelry, and even logistics services. The public is also very familiar with foreign franchise brands such as McDonald's, Pizza Hut, Bread Talk, Starbucks, and Kentucky Fried Chicken. In their operation, what is sold is the master franchise. The master franchise has the right to manage independently or resell to franchisees in a specific area, depending on the agreement. Franchise businesses have grown very rapidly in Indonesia due to the participation of local franchise brands such as Primagama, Alfamart, Martha Tilaar, Roti Buana, Tepung Bogasari, Baking Center and various other names. For example, the development of franchise businesses in the minimarket sector such as Indomaret and Alfamart has certainly had several positive impacts on economic development, including creating investments and job opportunities for young people in the region. However, on the other hand, their presence has negative impacts on the economic climate, which can lead to unhealthy competition between franchises and traditional traders and small kiosks. When compared between small traders and franchises with large capital and supported by excellent locations, consumers are certainly interested in shopping at Indomaret or Alfamart franchises because they feel more comfortable and prices are cheaper. If the increase in minimarkets is not properly monitored by the government, it will affect small businesses which will be forced to shut down.

RESEARCH METHODS

Research methodology is a procedural guideline in conducting research using various methods depending on the encountered issues. In this study, the research method used is normative method because the problem-solving analysis is solely based on statutory regulations, while the type of research conducted is qualitative research. The significant difference between qualitative and quantitative research lies in the final results and data analysis methods. In qualitative research, the results consist of word reviews or explanations of a phenomenon or issue, whereas quantitative research expresses its findings using numbers, graphs, or specific diagrams used as explanatory tools. In this study, the focus is on resolving breach of contract in franchise agreements by taking a case study approach based on Decision Number 612/Pdt.g/2017 Jkt. Sel. The objective of this research is to analyze what constitutes breach of contract and the legal remedies available for breach of contract based on franchise agreements. Using related statutory regulations as primary legal sources such as the Indonesian Civil Code will assist in theoretical analysis to form a comprehensive conclusion that addresses the research questions. Not only primary legal sources will be used as references in the data collection method through literature review, but also secondary legal sources derived from journals, theses, books, magazines, or other credible written sources.

DISCUSSION

In this case, the Plaintiff is PT MySalon International represented by Thomas Lie as the company's director, while the Defendant is Ratnasari Lukitaningrum. The Defendant expressed interest in opening a salon business and subsequently decided to collaborate using the PT MySalon trademark, eventually opening the MySalon Jababeka outlet at Simprug Plaza Complex Block A3/12 Jl. Simprug Raya, Jababeka, Kel. Kertajaya, Kec. Cikarang Timur, Kab. Bekasi, West Java. This collaboration was formalized in a Franchise Agreement signed by both parties on April 25, 2015, along with a License Agreement on the same day. Under the franchise agreement, rights and obligations arose where the Defendant, as the franchisee, was obligated to pay franchise fees and royalty fees to the Plaintiff as stipulated in Article 13 paragraph (1) clause 1 of the Franchise Agreement, amounting to Rp 77,000,000

for the franchise fee and approximately Rp 2,000,000 monthly for royalty fees as specified in Article 4 of the Franchise Agreement. However, the royalty fee amount would later adjust based on the revenue from the Defendant's MySalon, where higher revenue would result in higher royalty fees. Disputes began in June 2016 when the Defendant started to neglect paying the royalty fees, and continuously evaded communication when the Plaintiff attempted to manage the operations and business income at the Defendant's MySalon outlet. Even until this lawsuit was filed at the South Jakarta District Court on September 12, 2017, the Defendant had shown no goodwill in paying the royalty fees, which rightfully belonged to the Defendant as the franchise giver. It turned out that disputes didn't just occur at the MySalon Jababeka outlet, but also at the MySalon Galaxy Bekasi outlet located at Taman Galaxi Indah Plaza Complex, Block A No. 09, Bekasi City. For this outlet, a Franchise Cooperation Agreement and License Agreement were in effect dated June 18, 2015. Similar to the previous outlet, here the Defendant was also supposed to pay a franchise fee amounting to Rp 61,600,000 as stipulated in Article 14 paragraph (1) of the Franchise Agreement and pay royalty fees adjusted according to the monthly salon revenue as specified in Article 4 of the Franchise Agreement. Due to having the same owner, the Plaintiff also did not receive any royalty fees from the MySalon Galaxy Bekasi outlet from July 2016 to September 2017. With no clarity on the royalty fee payments and considering that ignoring this would only increase losses suffered by the Defendant, based on Article 17 paragraph (1) of the Franchise Agreement which states that "One party is deemed to have been negligent or committed a breach of contract (default) if he does actions that can cause harm to the other party and/or does not implement the provisions and/or requirements as stipulated and determined in the Franchise Agreement or other agreements signed by the parties, which actions are not included as forced circumstances as regulated in Article 28 of the Franchise Agreement," the Defendant's actions in neglecting to pay the royalty fees can be considered as an act of breach of contract because it violates Article 4 of the License Agreement Jo. Article 13 of the Franchise Agreement dated April 25, 2015 and June 18, 2015. The implementation of the agreement between PT. MYSALON INTERNATIONAL and Ratnasari Lukitaningrum illustrates complex dynamics within the context of contract law and business practices. Firstly, from an administrative standpoint, the agreement clearly outlines the obligations that each party must fulfill. PT. MYSALON INTERNATIONAL, as the franchisor, sets forth provisions regarding royalty payments, which are crucial financial contributions to maintain the rights to use the trademark and operational system of MySalon. This administrative implementation underscores the importance of clarity and certainty in contract agreements to avoid ambiguity or misinterpretation. Secondly, from an operational perspective, Ratnasari Lukitaningrum's non-compliance in paying royalties has led to financial instability in managing MySalon's finances in Jababeka and Galaxi Bekasi. This non-compliance not only affects expected revenues from the franchise but also negatively impacts the brand image and reputation of MySalon. The readiness to comply with operational obligations as stipulated in the agreement is crucial in maintaining business operational sustainability. Thirdly, the negotiation and dispute resolution process reveal the complexity of handling disputes in the business world. PT. MYSALON INTERNATIONAL has demonstrated openness to seek amicable solutions by issuing warnings and attempting negotiations with Ratnasari Lukitaningrum before resorting to legal action. However, the defendant's failure to adequately respond has escalated the conflict, necessitating the initiation of litigation. Fourthly, the legal process outcomes underscore the importance of enforcing contractual rights to protect legitimate business interests. The court's decision ordering Ratnasari Lukitaningrum to compensate for the material losses suffered by PT. MYSALON INTERNATIONAL reflects justice and adherence to applicable legal principles. It also sends

a strong message about the consequences of non-compliance with contractual obligations under civil law. Overall, the analysis of the agreement's implementation highlights the complexities involved in managing business contracts, from administration to legal enforcement. The importance of clarity, commitment, and compliance in executing agreements is key to creating a stable and fair business environment for all parties involved.

Implementation of the Agreement

Implementation of the agreement between PT. MYSALON INTERNATIONAL and Ratnasari Lukitaningrum describe complex dynamics in the context of contract law and business practices. First, in the administrative aspect, this agreement clearly regulates the obligations that must be fulfilled by each party. PT. MYSALON INTERNATIONAL as the party providing the franchise license sets the terms regarding royalty payments, which is an important financial contribution to maintaining the rights to use the MySalon trademark and operational system. This administrative implementation shows the importance of clarity and certainty in contractual agreements to avoid ambiguity or wrong interpretation. Second, from an operational perspective, Ratnasari Lukitaningrum's non-compliance in paying royalties leads to instability in the financial management of MySalon in Jababeka and Galaxi Bekasi. This not only affects the expected revenue of the franchise, but also negatively impacts the image and reputation of the MySalon brand. Readiness to comply with operational obligations stipulated in the agreement is crucial in maintaining the sustainability of business operations. Third, the negotiation and dispute resolution process shows the complexity of handling disputes in the business world. PT. MYSALON INTERNATIONAL has shown openness to finding a peaceful solution by providing warnings and trying to negotiate with Ratnasari Lukitaningrum before taking legal action. However, the failure of the defendant to respond adequately leads to the escalation of the conflict and the decision to initiate litigation. Fourth, the results of the legal process confirm the importance of enforcing contractual rights in protecting legitimate business interests. Court decision ordering Ratnasari Lukitaningrum to compensate for material losses suffered by PT. MYSALON INTERNATIONAL reflects fairness and compliance with applicable legal principles. It also provides a strong message about the consequences of non-compliance with contractual obligations in a civil law context. Overall, this agreement enforcement analysis highlights the complexities of dealing with business contracts, from administration to enforcement. The importance of clarity, commitment and obedience in implementing agreements is the key to creating a stable and fair business environment for all parties involved.

Contents of the Agreement

The plaintiff is a company operating in the salon services sector with the trademark "MYSalon" which has been officially registered since March 17 2005. The defendant is a party interested in opening a salon business using the trademark "MYSalon" through a franchise cooperation pattern.

Franchise and License Cooperation Agreement:

A. Parties Involved:

Plaintiff: The company with the trademark "MYSalon".

Defendant: Franchise recipient who opened MYSalon outlets in Jababeka and Galaxi Bekasi.

Franchise and License Cooperation Agreement for Jababeka Outlet:

Agreement Date: April 25, 2015.

Business Location: Simprug Plaza Ruko Complex Blok A3/12 Jl. Simprug Raya, Jababeka, Kel. Kertajaya, District. East Cikarang, Kab. Bekasi, West Java.

B. Defendant's Obligations:

Pay a franchise fee of Rp. 77,000,000,- at the time of signing the agreement.

Franchise fees are used for the right to use the "MYSalon" brand and procurement and training of workers.

Pay royalty fees, which are calculated based on the outlet's monthly income, every subsequent month.

C. Franchise and License Cooperation Agreement for the Bekasi Galaxy Outlet:

Agreement Date: June 18, 2015.

Business System:

Using an online system with the MYSalon application to record every transaction and bookkeeping at each outlet.

All employees must be registered in the MYSalon application and every transaction must be input into the application.

Problems that arise:

Since June 2016, the Defendant no longer pays royalty fees of an average of Rp. 2,000,000,- per month.

The Defendant avoided communicating with the Plaintiff, making it difficult for the Plaintiff to access operational data and business income for the MYSalon Jababeka outlet.

Default Action:

The Defendant's action in not paying the royalty fee since June 2016 is considered a breach of contract (default) according to Article 17 paragraph (1) of the Franchise Cooperation Agreement.

Overall, this agreement regulates the rights and obligations of both parties regarding the use of the "MYSalon" trademark, payment of franchise fees and royalty fees, as well as business operations that use an online system for bookkeeping and monitoring transactions.

The analysis is based on the legal conditions of the agreement in article 1320 of the Civil Code:

1. There is an agreement

The defendant was interested in opening a salon business and then decided to collaborate using the PT My Salon trademark and finally opened a MySalon Jababeka outlet in the Simprug Plaza Ruko Complex Blok A3/12 Jl. Simprug Raya, Jababeka, Kel. Kertajaya, District. East Cikarang, Bekasi Regency, West Java. This collaboration is outlined in the Franchise Agreement which was signed by both parties on April 25 2015 and the License Agreement on the same day. Based on the franchise agreement, rights and obligations arise between the two parties where the Defendant as the franchise recipient has the obligation to pay royalty fees and franchise fees to the plaintiff as regulated in Article 13 paragraph (1) point 1 of the Franchise Agreement, namely Rp. 77,000,000,- for franchise fees and around IDR 2,000,000 per month for royalty fees as regulated in Article 4 of the Franchise Agreement. However, later the amount of the royalty fee will adjust to the amount of income from the defendant's MySalon, where the greater the income, the greater the royalty fee that must be paid.

2. Skills of the Parties

PT. MYSALON INTERNATIONAL, as plaintiff, demonstrated proficiency in carrying out its contractual obligations related to the MySalon Jababeka and MySalon Galaxi Bekasi franchise agreements. They have shown seriousness in managing and promoting the MySalon trademark in accordance with the agreed terms. This includes fulfilling the expected royalty payments to maintain service and operational standards in accordance with the agreement. On the other hand, Ratnasari Lukitaningrum, as the defendant, demonstrated incompetence in fulfilling his financial obligations in the franchise agreement. This failure occurred when the defendant failed to pay royalties from June 2016 to September 2017, which was clearly regulated in the contract. This inability not only causes financial

instability for MySalon, but also shows a lack of seriousness and responsibility in carrying out the signed agreements. PT. MYSALON INTERNATIONAL has attempted to resolve the dispute by providing warnings and conducting negotiations, Ratnasari Lukitaningrum's inability to consistently fulfill his obligations forced the plaintiff to take legal action. The decision to file a lawsuit with the South Jakarta District Court in September 2017 reflects the final effort to overcome the defendant's inability to comply with the franchise agreement. In the legal process, the court finally determined that Ratnasari Lukitaningrum had committed a breach of contract and was required to compensate for the material losses suffered by PT. MYSALON INTERNATIONAL. This decision emphasizes the importance of skills in complying with and carrying out contractual obligations in a timely manner and in accordance with the agreement agreed upon by both parties in the franchise agreement.

3. A Certain Thing

P.T. MYSALON INTERNATIONAL as the plaintiff and Ratnasari Lukitaningrum as the claimant, there is a dispute relating to the breach of contract referring to the MySalon franchise agreement. The dispute is rooted in the obligation of Ratnasario Lukitaningrum to pay royalties on the franchises MySaloon Jababeka and MySalom Galaxi Bekasi. This is an integral part of the agreement set forth in the contract, which establishes the payment of royalti as one of the forms of appreciation for the use of the trademark and mySalon operating system. In the face of this controversy, PT. MYSALON INTERNATIONAL has demonstrated its commitment to manage its trademarks professionally and comply with the terms of the agreement. They consistently reminded and negotiated with Ratnasari Lukitaningrum to resolve the problem peacefully. However, the persistent failure of the defendant to comply with his obligations, demonstrated by the failure to pay the royalties, resulted in financial losses for PT. MYSALON INTERNATIONAL. At some point, Ratnasari Lukitaningrum's inability to comply with his obligations regularly prompted MYSALON INTERNATIONAL to take legal action. The lawsuit filed before the South Jakarta State Court on September 12, 2017 marked a turning point in the settlement of this dispute. In the hearing, the court considered the evidence submitted by the plaintiff and the defendant, and ruled that Ratnasari Lukitaningrum committed a misconduct in accordance with the agreed terms of the contract. The court ruling mandated Ratnasari Lukitaningrum to compensate for material losses suffered by MYSALON INTERNATIONAL for breach of contract. It shows the importance for all parties to comply with contractual obligations with full responsibility, in order to maintain the stability and sustainability of the business in accordance with the rules agreed jointly in the franchise agreement.

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4. The Halal Reason

P.T. MYSALON INTERNATIONAL as plaintiff and Ratnasari Lukitaningrum as claimant, the root of the dispute stems from a violation by Ratnasari Lukitaningrum of the obligation to pay royalties under the MySalon franchise agreement. This is a form of remuneration stipulated in the contract as a reward for the use of the trademark and MySaloon operating system in Jababeka and Galaxi Bekasi. PT. MYSALON INTERNATIONAL has explicitly affirmed Ratnasari Lukitaningrum's obligations in accordance with the contents of the contract. However, the plaintiff failed to meet the obligation, which began from June 2016 to September 2017. This failure caused significant financial losses to the plaintiffs and had a negative impact on MySalon's operations at both locations. Despite efforts to settle peacefully, such as warnings and negotiations, PT. MYSALON INTERNATIONAL failed to resolve the ongoing disobedience of Ratnasari Lukitaningrum. As the plaintiff continued to ignore his contractual obligations, the complainant was eventually forced to take legal action by filing a lawsuit with the South Jakarta State Court in 2017.

The court ruling that Ratnasari Lukitaningrum committed a contract breach and ordered compensation for material losses suffered by PT. MYSALON INTERNATIONAL demonstrates the importance of complying with the terms of the contract. It affirms that in the business world, compliance with contractual commitments is an important factor in forming a stable relationship between the parties as well as the sustainable operational survival of the business.

Elements of Agreement

1. Essentialia element

Essentialia (essential elements) in the context of contract law, in particular in the agreement between PT. MYSALON INTERNATIONAL and Ratnasari Lukitaningrum, refers to the elements that must exist in order to make a contract valid and legally valid. Here is an analysis of these essential elements:

- A. Agreement of the Parties:** The first element is the existence of a clear agreement between the two sides. In the MySalon franchise agreement, this agreement is embodied in the determination of the rights and obligations of each party, including the obligation of Ratnasari Lukitaningrum to pay royalties to PT. MYSALON INTERNATIONAL as the owner of the trademark mySalon.
- B. Capacity to Contract:** This element affirms that each party involved in a contract must have the legal capacity to enter into a contract. This includes Ratnasari Lukitaningrum's legal ability to enter in and comply with the agreement, as well as the legal ability of PT. MYSALON INTERNATIONAL to grant a franchise license.
- C. Legal Object:** A contract must have a legitimate purpose under the law. In this context, the purpose of the contract is to pay royalties for the use of the MySalon trademark, which is legitimate and within the applicable legal framework.
- D. Intention to Create Legal Relations:** This element indicates that the parties must intend to create a legally binding legal relationship. In this case, PT. MYSALON INTERNATIONAL and Ratnasari Lukitaningrum intend to pursue the franchise agreement seriously, as demonstrated by efforts to enforce the rights and obligations of each party.
- E. Certainty of Terms:** Contracts must contain precise and clear provisions concerning the rights and obligations of the parties. This includes provisions regarding the payment of royalties, the duration of the agreement, and other rights and obligations expressly set out in the MySalon franchise agreement. The analysis of these essential

elements shows that the existence and fulfillment of all these elements is crucial to making a legally binding contract. In the context of an agreement between PT. MYSALON INTERNATIONAL and Ratnasari Lukitaningrum, the existence of a clear agreement, the legal capacity to conclude a contract, the legitimate purpose, the seriousness of the parties, and certain provisions play an important role in determining the validity and execution of the contract.

2. Natural elements

In contract law, the concept of "natural elements" refers to additional aspects that may not be legally binding, but may affect the execution and interpretation of the contract. Here is a potential analysis of natural elements relevant in the context of the agreement between PT. MYSALON INTERNATIONAL and Ratnasari Lukitaningrum:

- A. Response and Communication:** Although not explicitly required by contract law, the response and communication between the parties can affect the dynamics and implementation of the agreement. For example, the speed and courtesy of responding to a request or warning from P.T. MYSALON INTERNATIONAL to Ratnasari Lukitaningrum may affect the possibility of a peaceful settlement of a dispute.
- B. Cooperation and Openness:** The attitude of cooperation and openness between the parties can be the determining factor in the implementation of the agreement. If there is good cooperation in solving problems, such as joint efforts to find profitable solutions, it can strengthen sustainability and long-term success of cooperation.
- C. Time accuracy:** Although the due date and time period of the contract have been clearly stipulated in the agreement, the timing of fulfilling the obligation or giving notice may be an additional factor affecting the business relationship. The timing in making the payment of royalties or giving the warning will reflect professionalism and regularity in executing the contract.
- D. Business justice and ethics:** The principles of fairness and business ethics, although not always explicitly set out in contracts, can be important aspects inining a harmonious relationship between the parties. The fair play attitude in dealing with disputes or disagreements can also affect perceptions and trust between PT. MYSALON INTERNATIONAL and Ratnasari Lukitaningrum.
- E. Respect for the Rights of Others:** This element includes respect for the legal rights and interests protected by treaties. An attitude of mutual respect for each party's rights and obligations can help avoid unnecessary disputes and maintain a lasting relationship. The analysis of these natural elements highlights the importance of additional factors that can influence the implementation of agreements beyond the legally binding aspects. Observing these elements can help PT. MYSALON INTERNATIONAL and Ratnasari Lukitaningrum inining a positive and productive relationship within the framework of the MySalon franchise agreement.

3. Element Accidentalialia

In the context of contract law, "accidental elements" refer to additional elements that may be agreed upon by the parties to a contract, but are not essential or mandatory to the validity of a contract. Here is a potential analysis of the elements of accidentalialia that are relevant in the agreement between PT. MYSALON INTERNATIONAL and Ratnasari Lukitaningrum:

- A. Cancellation Clause:**

A cancellation clause is one of the accidental elements that may be included in a contract to regulate what happens if one party wishes to terminate the agreement before the expiration date. For example, a MySalon franchise agreement may include provisions regarding cancellation procedures and penalties that apply if one side terminates the contract in advance.

B. Dispute Settlement Clause:

A dispute settlement clause is an important accidental element in determining alternative means of resolving a dispute that may arise between the parties. This clause may include mediation, arbitration, or court settlement, and serves to regulate the process to be followed in the event of a conflict that cannot be settled peacefully.

C. Agreement Modification Clause:

This accidental element may include provisions concerning how the contract may be modified or revised in time. For example, a MySalon franchise agreement may include a provision that any changes must be agreed in writing by both parties to avoid misunderstandings or misinterpretations.

D. Additional provisions:

The accidental element may also include additional provisions that are relevant to the specific interests of both parties. For example, a MySalon franchise agreement may contain provisions concerning rights and obligations related to additional licenses, joint promotions, or product innovations.

E. Privacy and Confidentiality Clause:

In the era of digital and highly valuable information, privacy and confidentiality clauses can be regarded as an important accidental element in protecting confidential information or personal data that may be shared or accessed between PT. MYSALON INTERNATIONAL and Ratnasari Lukitaningrum during the execution of the agreement. The analysis of this accidental element shows that while the essential elements must be met in order to make a valid contract, the accidental elements provide additional flexibility in detailing and regulating specific aspects of the agreement that are not essential, but essential for the clarity, protection, and arrangement of a sustainable business relationship between the parties.

Dispute Resolution

According to Article 1338 of the Agreement, "all agreements made in accordance with the law shall be the law of those who make them". For this reason, both the Licensing and Franchise Agreements dated 25 April 2015 and the Licence and Franche Agreements dated 18 June 2015 may be the legal basis for the filing of lawsuits in the event of a dispute because the agreements are equated to the law which means that the definition of the acts performed will also be the same. Failure to perform is an act in which a performance or obligation arising from the existence of a legal agreement between the parties is not fulfilled. There are four categories of non-performance: (1) no performance at all; (2) no performance unless it is not in accordance with the agreement; (3) no performance is only late performance than the agreed time; and (4) one of the parties has done something unregulated as performance even if it is a prohibited act. Mariam Daris Badruzaman's misconception is a legal event in which due to his fault the debtor is unable to fulfil his obligations. The phrase "because of his fault" is very important here because in the treaty there are provisions concerning force majeure where the fault could have occurred beyond the power of the debtor in a state of force major assuming only the natural disaster that caused him to be unable to fulfil his performance. Both are incapable of fulfilling the performance but there are differences in the burden of

error so that only errors arising in the ability and knowledge of the debtor can be called a failure. The provisions concerning non-performance are laid down in Article 1238 of the Covenant, which states that "the debtor is declared negligent by an order or by an act similar to that or on the basis of the force of an alliance itself, i.e. when this alliance results in the debtor to be considered negligible after the expiry of a specified period of time". This is in line with what the Defendant has done in the MySalon case where the defendant deliberately avoided communication from the Defender and refused to show good faith, therefore it is true to say that the Defensor has committed a misconduct. Then what can be done when the defendant fails to perform his performance? It is stipulated in article 1239 of the Covenant that when the debtor fails to perform his performance, he shall pay the costs, losses, and interest. A misconduct can only occur when the parties do not comply with an agreement that binds the parties because the position of the agreement is the same as that of the law. It is in line with the provision in Article 6 of the Act No. 71 of 2019 that "the franchise holding shall be based on a franchise agreement concluded between parties with equal legal status and against them Indonesian law shall apply". Failure in performance is the source of the inability or unwillingness of one of the parties to fulfil the obligations that have been stipulated in the agreement. Before discussing the losses suffered by the parties as a result of the occurrence of non-performance, we will first set out the obligations of the parties bound in the franchise agreement under PP No. 42 of 2007. The obligations of the franchisor are governed by Articles 7 to 9, which are as follows: a. Before entering into a franchise agreement, the franchisee must submit and explain the various types of available franchise packages so that the franchise recipient will have a full overview to consider whether to take or not take the offered franchise; b. If the franchiser subsequently agrees to cooperate with the franchising provider, he shall not discharge his hand as soon as the franchise fee has been paid, except that he shall provide good training in the form of good management processing until the way of conducting the marketing business so that it will not be different from the other franchise business; c. The franchisee shall give priority to the domestic product of all goods and/or services offered and as a form of support to the economic development, then the franchised business must also involve small and medium-sized enterprises. However, despite some of the obligations set forth in PP No. 42 of 2007 does not exclude the possibility of any other obligations arising in the agreement because the supreme legal basis remains the franchise agreement in which both parties have the right to add points of obligation and rights of each as long as they do not violate the rules of the laws in force. If the accomplishment of an achievement resulted in a failure, it would result in a loss on the part of the plaintiff. Berikut adalah beberapa kerugian yang diderita oleh Penggugat dalam kasus MySalon: a. Pihak penggugat belum menerima royalti fee baik dari MySalon Jababeka ataupun MySalon Galaxi Bekasi terhitung sejak bulan Juni 2016 hingga September 2017 yang mana artinya terjadi penunggakan pembayaran selama 13 bulan; b. Pihak penggugat tidak mampu mengakses laporan keuangan dari masing-masing outlet dikarenakan pihak tergugat yang selalu menghindar sehingga menyebabkan pihak penggugat tidak dapat menghitung secara pasti jumlah kerugian materiil yang dideritanya dan penggugat hanya mampu untuk melakukan perhitungan kasar dimana untuk perbulannya dihitung sebesar Rp 2.000.000,- untuk outlet MySalon Jababeka sedangkan untuk outlet MySalon yang ada di Galaxi Bekasi tunggakan pembayaran royalty fee adalah sebesar Rp 43.133.912,- c. Adanya tunggakan kewajiban pembayaran BPJS sebesar Rp 4.589.200,- Terhadap terjadinya wanprestasi pihak tergugat

maka seluruh perjanjian waralaba dan perjanjian lisensi tertanggal 25 April 2015 dan 18 Juni 2015 dinyatakan harus segera diakhiri. Pengakhiran perjanjian dilakukan berdasar Pasal 16 ayat (2) butir (8) Perjanjian Waralaba tertanggal 25 April 2015 yang menyatakan bahwa perjanjian harus diakhiri apabila “pihak kedua tidak melaksanakan ketentuan-ketentuan perjanjian waralaba dan perjanjian lisensi atau melakukan pelanggaran terhadap kewajiban-kewajibannya berdasarkan perjanjian waralaba dan perjanjian lisensi”. Sementara untuk Perjanjian Waralaba tertanggal 18 Juni 2015 hal serupa diatur dalam Pasal 17 ayat (2) butir (7). By the end of the agreement does not remove the obligation of the defendant to meet and pay the material losses suffered by the plaintiff. That's why the plaintiffs then chose to file a lawsuit on September 12, 2017. . The claims written in the position of the lawsuit are: a. The claim of Provisi stating requests to the Defendant to no longer use the trademark of MySalon either on the outlet Jababeka or Galaxi Bekasi because it will only continue to cause losses on the part of the Claimant; b. In the case requesting the judge to accept and satisfy the entire claim, asking to declare the Defender has committed a misconduct, termination of the franchise agreement and the license agreement dated 25 April 2015 and 18 June 2015, as well as the defendant must pay the losses materially. On the claim, then the judge issued the following judgment: a. To accept the claimant in reconvention for part; b. To declare the Reconvention defendant has committed a misconduct; c. Declaring the franchise agreement and the license agreement on April 25, 2015 and June 18, 2015 has expired with all its legal consequences; d. To punish Reconvention defendant to pay the material loss of Rs 77,000,000,- for the MySalon outlet in Jababeka and Rs 61,600,000,- to the MySalon outlet that is in Galaxi Bekasi. Of course against the judgment given by the judge the author fully agrees that it is true the defendant has committed an act of non-performance by violating the provisions contained in Article 14 paragraph (1) of the franchise agreement Jo. Article 4 of the license agreement dated 25 April 2015 and Article 17 paragraph 1 of the Franchise agreements Jo. In addition to the claims filed by the Applicant, there are several other efforts that can be made in order to resolve the dispute of non-performance against the franchise agreement, among them is the granting of a warrant and the execution of a settlement but if it is not the fruit of the good faith of the injured party then the litigation can be taken.

CONCLUSION

The MySalon franchise case reflects a turbulent legal process and ultimately results in a favourable decision on the part of the plaintiff. The lawsuit filed in the State Court in September 2017 marked a turning point in the settlement of the dispute between the plaintiff and the defendant. Although previous attempts at settlement and settlement were unsuccessful due to difficulties in communicating with the Defendant, the judge's ruling proved that the Defender had clearly violated his contractual obligations by not paying Royalty Fee for more than a year. The judge's ruling that the defendant is guilty of this misconduct is an important policy for the complainant to obtain compensation for the losses suffered as a result of the violation. The judgment reaffirms that litigation is an effective way to enforce rights in franchise contracts, especially when attempts to settle outside the court do not yield satisfactory results. The MySalon case also reminds that compliance with the terms of the contract is a crucial aspect inining the balance and fairness of the franchise relationship. With the ruling issued, the hope is to provide a lesson for the franchisor industry about the importance of compliance to the agreed obligations in order to maintain a healthy and mutually beneficial business relationship between franchisors and franchisees.

BIBLIOGRAPHY

Yuniarti, Rahmi. "Efisiensi Pemilihan Alternatif Penyelesaian Sengketa Dalam Penyelesaian Sengketa Waralaba." *FIAT JUSTISIA: Jurnal Ilmu Hukum* 10.3 (2016).

Refalia, Salsa, and Urbanisasi Urbanisasi. "Penyelesaian Sengketa Wanprestasi terhadap Perjanjian Waralaba oleh Franchise kepada Franchisor pada Putusan Nomor 612/Pdt.g/2017/Jkt. Sel." *Jurnal Ilmiah Wahana Pendidikan* 9.22 (2023): 841-847.

Munthe, Tanty SriAulia, and Ismed Batu Bara. "Tinjauan Yuridis Penyelesaian Sengketa Perjanjian Waralaba (Franchise): Studi Putusan Nomor 2297 K/Pdt/2012." *Rechtsnormen Jurnal Komunikasi dan Informasi Hukum* 1.1 (2022): 1-7.

Chrishans, Raffael Moreno. "EFEKTIVITAS ALTERNATIF PENYELESAIAN SENGKETA SEBAGAI UPAYA PENYELESAIAN SENGKETA FRANCHISE (WARALABA)." *Multilingual: Journal of Universal Studies* 3.3 (2023): 428-442.

Rustan, Rustan, Andi Tenri Sapada, and Ega Aprilia. "ANALISIS HUKUM SENGKETA PERJANJIAN WARALABA (FRANCHISE)." *Qawanin Jurnal Ilmu Hukum* 2.1 (2021).

Mopeng, Christie Pertiwi. "Asas Kebebasan Berkontrak Terhadap Perjanjian Franchise di Indonesia." *Lex Administratum* 2.3 (2014).

Saputro, M. Ramadoni Ali, and Eka Jaya Subadi. "Penyelesaian Wanprestasi Perjanjian Franchise." *Private Law* 3.1 (2023): 162-171.

Fuady, Munir. "Pengantar hukum bisnis: Menata bisnis modern di era global." (2016).

Agrianto, Muhammad Iman. "Pelaksanaan Perjanjian Franchise Menurut Hukum Perdata Di Kota Samarinda." *Journal Of Law (Jurnal Ilmu Hukum)* 6.2 (2021): 720-734.

PUTRI, IKA RACHMAWATI SUKARNO, and I. URBANISASI. "Tinjauan Yuridis Terhadap Sengketa Penipuan Dalam Praktik Waralaba." *Jurnal Ilmiah Wahana Pendidikan* 9.20 (2023): 317-326.

Yuniarti, Rahmi. "Efisiensi Pemilihan Alternatif Penyelesaian Sengketa Dalam Penyelesaian Sengketa Waralaba." *FIAT JUSTISIA: Jurnal Ilmu Hukum* 10.3 (2016).

Pariela, Marselo Valentino Geovani. "Wanprestasi Dalam Perjanjian Waralaba." *Sasi* 23.1 (2017): 35-45.

GUSTOPO, Alfonus Ageng. *Perlindungan hukum penerima waralaba terhadap pengambilalihan usaha waralaba oleh pemberi waralaba:: Studi Kasus Sengketa Restoran Waralaba-BEE'S Restoran*. Diss. Universitas Gadjah Mada, 2008.

Rizki, Maurid, and Devi Siti Hamzah Marpaung. "Efektifitas Alternatif Penyelesaian Sengketa Dalam Sengketa Rahasia Dagang." *University Of Bengkulu Law Journal* 6.2 (2021): 163-177.

Riyandhita, Herlinda, and S. H. Absori. *Perlindungan Hukum Bagi para Pihak dalam Perjanjian Waralaba (Franchise) di Surakarta*. Diss. Universitas Muhammadiyah Surakarta, 2018.