

Legal Analysis Of Legal Protection Of Franchisors Over Unilateral Termination Of Franchisee's Franchisel In Indonesia

(Study of South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel)

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ABSTRACT

Unilateral termination of franchise agreements is a recurring source of dispute in Indonesian franchise practice, and it can originate from either the franchisor or the franchisee. Existing literature has focused predominantly on protecting franchisees from franchisor overreach, leaving the reverse scenario comparatively underexplored. This study examines the legal basis for terminating franchise agreements under the principle of good faith, and the legal protection afforded to a franchisor when its franchisees unilaterally terminate their agreements, based on Decision Number 854/Pdt.G/2022/PN Jkt.Sel of the South Jakarta District Court. Using a normative legal method with statutory, case, and conceptual approaches, this study analyzes the Indonesian Civil Code (Articles 1266, 1320, 1338, and 1365), Government Regulation Number 42 of 2007 on Franchising, Minister of Trade Regulation Number 71 of 2019, and the court decision itself. The findings show that Article 1266 of the Civil Code requires termination of reciprocal agreements regardless of which party initiates it, so that a franchisee who terminates unilaterally, even while alleging the franchisor's own non-compliance with franchise-disclosure obligations, commits an unlawful act under Article 1365. In the case examined, the court granted the franchisor's claim partially, declared four franchise and license agreements void, and ordered the two franchisees to pay material damages of Rp. 315,464,970 and Rp. 121,467,000 respectively, while dismissing the franchisees' counterclaim as procedurally defective (obscure liability) without reaching its substance. The decision illustrates that Article 1266's judicial-termination requirement operates reciprocally, protecting whichever party did not initiate the termination, and it highlights an unresolved gap in how franchisees can seek redress for a franchisor's own regulatory non-compliance.

Keywords: franchise; unilateral termination; unlawful acts; legal protection of franchisors; Decision Number 854/Pdt.G/2022/PN Jkt.Sel.

INTRODUCTION

Franchising, or what is known in English as a franchise, is a form of business collaboration that has grown rapidly in Indonesia. Etymologically, the term "franchise" comes from the word "wara," meaning more, special, or superior, and "laba," meaning profit or advantage. Therefore,

a franchise can literally be interpreted as a business that offers greater or special benefits.¹In business practice, a franchise is understood as a marketing or distribution system for goods and services, in which a parent company (franchisor) grants individuals or small and medium-sized businesses (franchisees) special rights to carry out a particular business system in a specified manner, for a specified period of time, and in a specified location.²

The development of the franchise business in Indonesia can be understood as a two-pronged approach. On the one hand, the franchise scheme provides a relatively quick way for brand owners to expand their business network without having to open their own branches in every location. On the other hand, this scheme opens up opportunities for small and medium-sized businesses to start businesses with a proven system and a well-known brand. However, behind this convenience and promise of profits, there are legal risks that parties often only become aware of when disputes arise, particularly when one party, either the franchiser or the franchisee, decides to terminate the agreement before the agreed-upon term.

One of the most common issues in franchising is unilateral termination. This action almost always results in losses for the party who did not want the termination.³Ideally, termination of an agreement should be based on the principle of good faith (*goede trouw*) as stipulated in Article 1338 paragraph (3) of the Civil Code (KUHPerdata), which emphasizes that every agreement must be executed in good faith. This provision implies that the parties are obliged to carry out their rights and obligations honestly, fairly, and without harming the other party. The inability of one party to implement this principle can result in a breach of contract, or even an unlawful act, which can be the basis for a lawsuit in court.

Furthermore, provisions regarding termination of agreements are regulated in Article 1266 of the Civil Code, which in principle states that the cancellation of a reciprocal agreement must be requested from the court, unless the parties have expressly agreed otherwise. This provision is general and applies to any party wishing to terminate the agreement, including not only the franchisor.⁴Thus, franchisees who feel they have been harmed by the franchisor must still take legal action to cancel their agreement, rather than ending it unilaterally.

¹R. Subekti, *Contract Law* (Jakarta: Intermasa, 2019).

²MY Harahap, *Franchise Agreement Law in Indonesia* (Jakarta: Sinar Grafika, 2020).

³M. Firdaus, "Unilateral termination of a franchise agreement based on Government Regulation Number 42 of 2007 concerning Franchises and the Civil Code," *Faculty of Law Journal* 8, no. 2 (2021): 145–162; D. Yuliana, "Legal consequences of unilateral termination of a franchise agreement," *Jurnal Panorama Hukum* 7, no. 2 (2022): 112–128.

⁴A. Pratama, "Legal analysis of default in franchise agreements," *Journal of Business Law* 15, no. 3 (2022): 234–250.

Legal studies on unilateral termination of franchise agreements in Indonesia have so far focused on the scenario of the franchisor terminating the agreement unilaterally and causing losses to the franchisee.⁵The opposite scenario, where the franchisee unilaterally terminates the agreement while the franchisor seeks legal protection, has received relatively little academic attention, even though doctrinally, the provisions of Article 1266 of the Civil Code apply equally to both parties. This gap underlies the novelty of this research: it specifically examines how legal protection is provided to the franchisor when the franchisee unilaterally terminates the agreement, including how the courts respond to the franchisee's defense arguments accusing the franchisor of failing to comply with its legal obligations.

This issue is concretely reflected in the South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, which raised a dispute between PT MY Salon International as the franchisor and two of its franchisees due to the unilateral termination of four franchise and license cooperation agreements by the franchisees before their term ends. This decision is interesting to study because it provides a concrete picture of the application of Articles 1266, 1338, and 1365 of the Civil Code by the judge in a scenario that is the opposite of most existing literature, while also being a benchmark for the form of legal protection that can be obtained by the franchisor when its franchisees take the shortcut of unilateral termination.

Formulation of the problem

Based on the background description, the problems in this research are formulated as follows:

1. What is the legal basis for terminating a franchise agreement in Indonesia based on the principle of good faith and the provisions of Articles 1266, 1320, and 1338 of the Civil Code?
2. What form of legal protection is provided for the franchisor against the actions of the franchisee who unilaterally terminates the franchise agreement, as reflected in Decision Number 854/Pdt.G/2022/PN Jkt.Sel?

Research purposes

Based on the problem formulation above, this study aims to: (1) analyze the legal basis for terminating a franchise agreement in Indonesia based on the principle of good faith and Articles

⁵R. Hidayat and DK Sari, "Legal protection of franchisees against unilateral termination of franchise agreements," *Journal of Legal Sciences Jagad Hukum* 7, no. 1 (2023): 89–104; B. Setiawan, "Legal protection of franchisors and franchisees in termination of franchise agreements," *Journal of Basic Education and Social Humanities* 2, no. 7 (2023): 1205–1220; NP Sari and IMA Wijaya, "Legal protection of rights recipients in franchise agreements," *Journal of Legal Preferences* 5, no. 2 (2024): 491–505; K. Wijaya and RA Putri, "Resolution of disputes over unilateral termination in franchise agreements," *Journal Equitable* 9, no. 1 (2024): 56–72.

1266, 1320, and 1338 of the Civil Code; (2) analyze the form of legal protection for the franchisor against unilateral termination by the franchisee as reflected in Decision Number 854/Pdt.G/2022/PN Jkt.Sel; and (3) analyze the court's attitude towards the franchisee's defense arguments and counterclaims in the case. This study is expected to complement the study of franchise law in Indonesia, which has so far tended towards one direction of protection,⁶ and contribute to the development of business law in a more balanced manner.

RESEARCH METHOD

This research uses a normative legal research method (normative juridical), namely a form of research that focuses on analyzing legal norms, legal principles, and provisions of applicable laws and regulations, without conducting field research.⁷ The approaches used in this research include three types, namely the statute approach, the case approach, and the conceptual approach.

The statutory approach is used to examine the relevant provisions in the Civil Code (KUHPerdota), Government Regulation Number 42 of 2007 concerning Franchising, and Regulation of the Minister of Trade Number 71 of 2019 concerning Franchise Implementation. The case approach is carried out by analyzing in depth the official copy of the South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel as a concrete case study, covering the case, the arguments of the parties (including the arguments of the defense and counterclaim), the legal considerations of the panel of judges, and the verdict. The conceptual approach is used to examine the legal principles of agreements that underlie the implementation and termination of franchise agreements, especially the principle of good faith (*te goeder trouw*), the principle of legal certainty (*rechtszekerheid*), the principle of justice (*billijkheid*), and the principle of *pacta sunt servanda* which emphasizes that a legally made agreement applies as law for the parties who make it.

The legal materials in this study consist of primary legal materials, namely the Civil Code (specifically Articles 1266, 1320, 1338, and 1365), *Herzien Inlandsch Reglement* (HIR), Government Regulation Number 42 of 2007 concerning Franchising, Regulation of the Minister of Trade Number 71 of 2019, an official copy of the South Jakarta District Court

⁶See for example A. Rappe, SS Kuahaty, and TL Pesulima, "Legal protection for franchisees in unilateral termination of agreements," *TATOHI: Jurnal Ilmu Hukum* 2, no. 1 (2022): 25–33.

⁷Harahap, *Franchise Agreement Law in Indonesia*.

Decision Number 854/Pdt.G/2022/PN Jkt.Sel along with the Supreme Court decisions referred to therein; as well as secondary legal materials in the form of books and scientific journals relevant to franchise agreement law and civil procedural law. All of these legal materials were collected through library research and analyzed qualitatively using a descriptive-analytical method, namely by outlining relevant legal facts including citing specific pages from copies of decisions in the analyzed sections, then analyzing them based on applicable legal norms and theories.

DISCUSSION

Concept and Legal Basis of Franchise Agreements in Indonesia

A franchise agreement is a form of business cooperation agreement that is growing rapidly in Indonesia, especially in the retail, culinary, service, and lifestyle sectors such as beauty salons. Conceptually, a franchise is defined as a special right held by an individual or business entity to a business system with distinctive business characteristics in order to market goods and/or services that have been proven successful and can be utilized by other parties based on a franchise agreement, as stated in Article 1 number 1 of Government Regulation Number 42 of 2007 concerning Franchises. This definition provides a legal basis for further regulation regarding the rights and obligations of the parties in a franchise relationship.⁸

From a civil law perspective, a franchise agreement is classified as a reciprocal agreement (*wederkerige overeenkomst*), in which both parties, namely the franchisor and the franchisee, have rights and obligations that are interrelated and dependent on each other. The franchisor is obliged to provide the right to use the brand, business system, operational support, training, and product supply to the franchisee, and as required by Article 5 paragraph (1) of the Minister of Trade Regulation Number 71 of 2019, submit a franchise offering prospectus no later than two weeks before the agreement is signed.⁹ In turn, the franchisee is obligated to pay a franchise fee, royalty fee, and management fee, as well as comply with operational standards established by the franchisor. This reciprocal relationship creates interdependence between the parties, so the implementation of the franchise agreement must be based on the principles of cooperation, mutual trust, and good faith on both sides.

⁸Harahap, *Franchise Agreement Law in Indonesia*.

⁹AAS Mahardika and AAS Indrawati, "Implementation of franchise agreements in retail businesses (Study on Circle K)," *Kertha Semaya: Journal of Legal Studies* 11, no. 3 (2023): 466–474, <https://doi.org/10.24843/KS.2023.v11.i03.p01>.

In practice, the imbalance of bargaining power in franchise relationships is not always one-way. Franchisors generally have greater power in determining the standard clauses of the agreement, but franchisees can also be in a position where it is difficult to monitor their compliance with payment and operational obligations, especially if they manage multiple branches simultaneously. This situation emphasizes that legal protection in franchise relationships should ideally be reciprocal, that is, protecting any party harmed by the other party's violation, and not solely aimed at protecting the franchisee from the franchisor. This principle of reciprocity aligns with the findings of Usman, Tjoanda, and Alfons.¹⁰, which shows that the legal consequences of unilateral termination of a contract, whether in the form of compensation for default or compensation for unlawful acts, apply regardless of which party takes the initiative to terminate the contractual relationship.

Legal Basis for Termination of Franchise Agreements in Indonesia Based on the Principle of Good Faith

The principle of good faith (*te goeder trouw*) is one of the fundamental principles in Indonesian contract law, which is stated in Article 1338 paragraph (3) of the Civil Code, which states that "every agreement must be carried out in good faith." This provision means that the parties are not only obliged to fulfill the contents of the agreement formally in accordance with the written text, but must also carry out the agreement with full honesty, openness, and commitment to maintaining a balance of interests between the parties.¹¹ This principle is closely related to the valid conditions for an agreement as regulated in Article 1320 of the Civil Code, which stipulates four conditions, namely: (1) agreement of the parties making the agreement; (2) capacity to make a contract; (3) a certain thing; and (4) a lawful cause. In judicial practice, failure to fulfill one of these conditions can result in the agreement being null and void, as explained by Amalia.¹² in his analysis of Supreme Court Decision Number 1572 K/Pdt/2015.

Regarding the termination of an agreement, Article 1266 of the Civil Code stipulates that the terms of cancellation are always considered to be included in the mutual agreement, and if one party fails to fulfill its obligations, the agreement is not legally void, but its cancellation must be requested from the court. This provision is neutral to the parties' positions and binds anyone,

¹⁰N. Usman, M. Tjoanda, and SS Alfons, "Legal consequences of unilateral contract termination," *Batulis Civil Law Review* 2, no. 1 (2021): 93–101.

¹¹Subekti, *Contract Law*.

¹²IQA Amalia, "Legal consequences of the cancellation of the agreement in Decision Number 1572 K/Pdt/2015 based on Articles 1320 and 1338 of the Civil Code," *Bonum Commune Business Law Journal* 1, no. 1 (2018): 61–72.

both franchisor and franchisee, who wishes to terminate the agreement before the end of the term without mutual agreement.¹³ Consequently, a party who feels aggrieved by another party is still required to file a lawsuit for cancellation in court, rather than unilaterally terminate the agreement, regardless of the compelling reasons for doing so. Although modern business contracts often include clauses that expressly override Article 1266 of the Civil Code, Ali and Hifni's research¹⁴ shows that the validity of such clauses is still debated among legal experts and has not been consistently applied in court decisions, so that parties who wish to rely on such clauses still bear the risk that their waiver may be rejected as valid by the judge.

The jurisprudence of the Supreme Court of the Republic of Indonesia consistently emphasizes that unilateral cancellation of an agreement by one of the parties is qualified as an unlawful act (PMH) because it is contrary to Article 1338 of the Civil Code which states that an agreement cannot be withdrawn except by agreement of both parties. This principle is emphasized, among others, in Supreme Court Decision Number 1051 K/Pdt/2014, Judicial Review Decision Number 580 PK/Pdt/2015, and Supreme Court Decision Number 28 K/Pdt/2016, all of which conclude that unilateral termination of a cooperation agreement, by any party, is an unlawful act that requires the terminating party to pay compensation.¹⁵ This understanding is important because it shows that legal protection against unilateral termination is not designed to protect a particular position (franchisor or franchisee), but rather to protect the principle of *pacta sunt servanda* itself, regardless of who is harmed by it.

In addition to the provisions of the Civil Code, the implementation and termination of franchise agreements are also regulated more specifically in Government Regulation No. 42 of 2007 concerning Franchising and Regulation of the Minister of Trade No. 71 of 2019 concerning Franchise Implementation. These two regulations provide more detailed provisions regarding the rights and obligations of the parties: the franchisor is obliged to submit a franchise offering prospectus and register a Franchise Registration Certificate (STPW), while the franchisee has the right to obtain complete and transparent information regarding the franchised business system. Violations of these obligations by the franchisor can be the basis for a separate lawsuit by the franchisee. However, as will be explained in the following section, the alleged violation

¹³Pratama, "Legal analysis of default".

¹⁴M. Ali and M. Hifni, "Legal analysis of the waiver of Article 1266 of the Civil Code in cases of termination of an agreement due to default," *Jurnal Hukum Lex Generalis* 6, no. 4 (2025): 1–13.

¹⁵VTR Safavi and T. Taun, "Legal aspects and evidentiary system of unilateral cancellation of agreement as an unlawful act," *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora* 7, no. 4 (2020): 881–893, <https://doi.org/10.31604/justitia.v7i4.881-893>.

must still be proven through the court process and does not in itself justify unilateral termination by the franchisee.

Legal Protection for Franchisors upon Unilateral Termination of Franchise Agreements by Franchisees in Decision Number 854/Pdt.G/2022/PN Jkt.Sel

a. The facts of the case

The plaintiff in this case is PT MY Salon International, the owner of the trademark "MY Salon" registered with the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia with Number IDM000031389 dated March 17, 2005, as the franchisor. Defendant I, CV Agatha Carissa Aglaia, is the franchisee for three MY Salon branches at Mall Tentrem Semarang (franchise cooperation agreement and license agreement dated November 25, 2020), Mall Ciputra Tangerang (December 1, 2020), and OPI Mall Palembang (December 7, 2021). Defendant II, Retno Margiastuti, is the franchisee for the Java Mall Semarang branch (August 26, 2020) and the owner of Defendant I.

On March 21, 2022, the Defendants sent four letters requesting termination of the partnership to each branch, before the agreement expired and without the Plaintiff's consent. Through their attorneys, the Plaintiff rejected these requests (letters dated May 31 and August 29, 2022), arguing that there was no legal basis for the termination. The Defendants continued to unilaterally terminate the agreement and even changed the name of their salon business from "MY Salon" to "Erg Mooi Salon." The Plaintiff then registered the lawsuit on September 19, 2022 with register Number 854/Pdt.G/2022/PN Jkt.Sel, arguing that the Defendants' actions constituted an unlawful act (Article 1365 of the Civil Code) because they contradicted Articles 1266 and 1338 of the Civil Code, referring to Supreme Court jurisprudence Number 1051 K/Pdt/2014, 580 PK/Pdt/2015, and 28 K/Pdt/2016. The Plaintiff's primary petition demands, among other things, a declaration of nullity by law for the four agreements, material compensation of Rp. 315,464,970 from Defendant I and Rp. 121,467,000 from Defendant II, as well as immaterial compensation of Rp. 500,000,000 jointly and severally.¹⁶

¹⁶South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, pp. 1–15.

b. Arguments for Defense and Counterclaims by Franchisees

The Defendants deny all the arguments of the lawsuit and argue that the root of the problem is actually the Plaintiff, as the franchisor, who did not act in good faith and did not run the franchise business professionally. According to the Defendants, the Plaintiff never submitted a franchise offering prospectus as required by Article 5 paragraph (1) of the Minister of Trade Regulation Number 71 of 2019, did not notify the obligation to own a Franchise Registration Certificate (STPW) according to Article 10 of the same regulation, and did not provide continuous operational support. The Defendants also pointed to the precedent of the Supreme Court Decision Number 1064 K/Pdt/2020 between PT MY Salon International against Ratnasari Lukitaningrum, where the judge's considerations on page 11 of the decision found the fact that MY Salon had defaulted because it did not meet the minimum number of employees as per the franchise agreement.¹⁷ Based on these arguments, the Defendants filed a counterclaim which essentially demanded compensation for costs incurred in connection with the franchise and license agreement, based on the Plaintiff's alleged default.

c. Legal Considerations of the Panel of Judges

The panel of judges emphasized that, according to Article 1266 of the Civil Code, because there was no agreement between the Plaintiff and the Defendants to terminate the franchise and licensing cooperation agreements, the termination or cancellation must be requested from the South Jakarta District Court as the legal domicile agreed upon by the parties.¹⁸ Regarding the Defendants' argument regarding the Plaintiff's lack of good faith, the panel of judges is of the opinion that this "is a different matter and must still be proven by a court decision in order to request the cancellation of the agreement."¹⁹ In other words, even if true, the Plaintiff's alleged breach of contract does not automatically justify unilateral termination by the Defendants; it must be filed as a separate lawsuit in court. The panel of judges assessed that evidence regarding the Plaintiff's CEO's personal history and the precedent of Decision Number 1064 K/Pdt/2020 actually strengthen the principle that agreement termination must be filed through a lawsuit and court decision, not unilateral action.²⁰

¹⁷South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, pp. 16–19, 58–59.

¹⁸South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, pp. 57–58.

¹⁹South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, page 58.

²⁰South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, pp. 58–59.

Regarding the Defendants' counterclaim, the Panel of Judges considered that the proceeds from the costs incurred in implementing the agreement were in fact still used by the Defendants to run their business under the new name "Erg Mooi Salon", so that the counterclaim was deemed vague (*obscuur libel*) and declared unacceptable (*niet ontvankelijk verklaard*).²¹ It's important to note that this rejection is procedural in nature, specifically related to the formulation of the lawsuit, which was deemed unclear, and does not constitute a decision on the merits of the plaintiff's breach of contract. Ali, Krisdianti, and Puspaningrum also identified a similar pattern.²², which found that the discrepancy between the factual basis of the lawsuit (*fundamentum petendi*) and the demands (*petitum*) often resulted in the lawsuit being declared inadmissible without ever touching on the merits of the case.

d. Elements of Unlawful Acts (Article 1365 of the Civil Code) in the Decision

The qualification of the Defendants' actions as unlawful acts does not originate from a moral assessment of their intentions, but rather from the legal construction of Article 1365 of the Civil Code read together with Articles 1266 and 1338 of the Civil Code. Since Article 1266 of the Civil Code requires that the termination of a reciprocal agreement may only be carried out through a court decision, the act of unilaterally terminating the implementation of the agreement, regardless of the strong reasons underlying it, in itself violates the legal obligations established by law for each party in the reciprocal agreement. This violation of legal obligations, as also emphasized in Supreme Court Decisions Number 1051 K/Pdt/2014, 580 PK/Pdt/2015, and 28 K/Pdt/2016, is the basis for the qualification of unlawful acts, and not solely because the Defendants are franchisees.²³

Doctrinally, a new act can be qualified as an unlawful act based on Article 1365 of the Civil Code if it fulfills five elements cumulatively, namely: (1) the existence of an act; (2) the act is unlawful, either in the sense of violating the subjective rights of others, contradicting the legal obligations of the perpetrator, contradicting morality, or contradicting the propriety and caution that a person should have in social interactions; (3) there is an error on the part of the perpetrator, either in the form of intent or negligence; (4) there is a loss for the injured party;

²¹South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, p. 69.

²²M. Ali, KA Krisdianti, and G. Puspaningrum, "The lawsuit cannot be accepted on the grounds of *obscuur libel* in unlawful acts (Case study of Decision No. 67/Pdt.G/2021/PN Jmr)," *Semarang Law Review (SLR)* 5, no. 2 (2024): 162–182, <https://doi.org/10.26623/slr.v5i2.10732>.

²³Safavi and Taun, "Legal aspects and system of proof of unilateral cancellation of an agreement".

and (5) there is a causal relationship between the act and the loss that arises.²⁴In the context of the franchise agreement specifically, Aulia Rahman and Yulianingsih²⁵ shows that these five elements are commonly used to assess whether the actions of one of the parties, either the franchiser or the franchisee, meet the qualifications of an unlawful act, with legal consequences in the form of the cancellation of the agreement and the occurrence of material and immaterial losses that must be recovered.

These five elements were cumulatively proven to be met in the a quo case. First, the actions were evident, including the sending of four letters terminating the cooperation on March 21, 2022, and the termination of the agreement despite the Plaintiff's objections.²⁶Second, the act was unlawful because it violated the legal obligation stipulated in Article 1266 of the Civil Code to pursue legal action. Third, the element of fault was met because the Defendants continued to stop implementing the agreement despite receiving a written rejection from the Plaintiff's attorney, indicating intent and not merely administrative negligence.²⁷Fourth, the Plaintiff suffered actual losses in the form of lost royalty income and management fees. Fifth, the causal relationship between the unilateral termination and the losses is direct, because the losses arose from the month each branch stopped paying until the decision was rendered.²⁸By fulfilling these five elements cumulatively, the panel of judges was right to judge the actions of the Defendants as unlawful acts, regardless of whether or not the Plaintiff's argument of non-compliance that they put forward as a defense was true.

e. Verdict, Forms of Legal Protection, and Details of Losses for Franchisors

The South Jakarta District Court, in a decision handed down on February 6, 2024, granted the Plaintiff's lawsuit in the convention in part: declaring Defendant I and Defendant II to have committed unlawful acts; declaring the four franchise cooperation agreements and license agreements null and void; sentencing Defendant I to pay material compensation of Rp315,464,970,- and Defendant II to pay Rp121,467,000,- in cash and at once to the Plaintiff; and rejected the Plaintiff's lawsuit for other than and the rest, including the demand for immaterial compensation of Rp500,000,000,-. In the counterclaim, the Defendants'

²⁴R. Agustina, *Unlawful Acts* (Jakarta: Postgraduate Program, Faculty of Law, University of Indonesia, 2003).

²⁵Y. Aulia Rahman and W. Yulianingsih, "Unlawful acts in franchise agreements: How are they regulated?," *Kertha Semaya: Journal of Legal Studies* 11, no. 7 (2023): 1528–1543.

²⁶South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, page 13.

²⁷South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, page 13.

²⁸South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, pp. 58–59.

counterclaims were declared inadmissible. The Defendants were also ordered to pay court costs of Rp1,112,000,-.²⁹

This decision provides three forms of legal protection for franchisors. First, it provides legal certainty that termination of an agreement without due process does not nullify the contractual obligations of the party unilaterally terminating it, as an agreement can only be declared null and void by a court decision, not by the Defendants' unilateral action. Second, it provides the right to recover material losses arising from the termination of royalty and management fee payments before the end of the agreement. Third, it provides judicial recognition that unilateral termination by the franchisee, just as unilateral termination by the franchisor, is classified as an unlawful act under Article 1365 of the Civil Code, which confirms the reciprocal nature of the protection provided by Article 1266 of the Civil Code, as described above.

In more detail, the material losses granted by the court were calculated based on the accumulation of royalty fee and management fee payment obligations that should have been paid by the Defendants from the date of unilateral termination until the decision was made, multiplied by the number of months of delay for each branch: Rp. 315,464,970,- charged to Defendant I was the accumulation of the three branches he managed (Mall Tentrem Semarang, Mall Ciputra Tangerang, and OPI Mall Palembang), while Rp. 121,467,000,- charged to Defendant II was the accumulation of the Java Mall Semarang branch.³⁰ This loss is classified as a material loss because its value can be calculated with certainty based on the agreed contractual value, thus fulfilling the certainty requirements that are generally required in proving compensation in cases of unlawful acts.³¹

The Plaintiff's claim for immaterial damages of Rp. 500,000,000,-, which was argued by the Plaintiff as compensation for the loss of reputation and good name of the "MY Salon" trademark due to the unilateral termination and transfer of operations of the branches to the name "Erg Mooi Salon", was ultimately rejected by the panel of judges. This rejection was not because the court considered that immaterial damages conceptually could not be claimed in a case of unlawful acts, but because the Plaintiff did not explain in detail the basis for calculation or the concrete form of the immaterial damages in his lawsuit.³² This confirms that immaterial losses, unlike material losses that can be proven through definite contractual figures, require the plaintiff to specifically describe the form of non-financial losses experienced, such as

²⁹South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, pp. 69–71.

³⁰South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, pp. 58–59.

³¹Subekti, Contract Law.

³²South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, page 59.

decreased consumer confidence, damaged brand image, or loss of business opportunities, so that they can be considered and granted by the court. Mantili's comparative study³³ regarding the practice of immaterial compensation due to unlawful acts also confirms that Indonesian courts tend to be strict in granting immaterial claims if the basis for the calculation is not specifically and measurably explained by the plaintiff, in contrast to the practice in the Netherlands which gives judges a wider scope for assessment.

f. Analysis of Reasons for Termination by Franchisee and its Legal Consequences

The Defendants' defense actually contains a number of reasons which, if true, could potentially indicate a breach of contract by the Plaintiff as the franchisor. There are at least four main reasons put forward: first, the Plaintiff never submitted a franchise offering prospectus as required by Article 5 paragraph (1) of the Minister of Trade Regulation Number 71 of 2019; second, the Plaintiff did not notify the obligation to own a Franchise Registration Certificate (STPW) in accordance with Article 10 of the same regulation; third, the Plaintiff did not provide continuous operational support, even though continuous support is one of the characteristics that distinguishes a franchise from other forms of business cooperation; and fourth, the precedent of the Supreme Court Decision Number 1064 K/Pdt/2020 which has permanent legal force, which proves that the Plaintiff has been in breach of contract towards another franchisee because it did not meet the minimum number of employees requirement.³⁴

Regardless of the substance of these reasons, the legal consequences arising from the way the Defendants followed them actually harmed their own legal position. First, because the termination was carried out without a court decision, the action was still qualified as an unlawful act regardless of whether or not the argument of default that they accused the Plaintiff of was true. The panel of judges firmly stated that the argument of the Plaintiff's lack of good faith "is a different matter and must still be proven by a court decision."³⁵ Second, the four agreements that they had unilaterally terminated were declared null and void through a mechanism completely different from what they had intended, namely through a lawsuit filed by the Plaintiff and not through legal action they had filed themselves. Third, the Defendants were ordered to pay material damages and court costs, thus financially bearing the

³³R. Mantili, "Immaterial compensation for unlawful acts in practice: A comparison between Indonesia and the Netherlands," *DeJure Scientific Journal of Law: Legal Scientific Studies* 4, no. 2 (2022): 298–321.

³⁴South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, pp. 16–19.

³⁵South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, page 58.

consequences of their own termination actions. Fourth, their opportunity to prove the Plaintiff's breach of contract claim through a counterclaim was lost not because the substance of their claim was proven to be untrue, but because the counterclaim was formulated in a vague manner (obscuur libel) so that it was declared inadmissible without ever examining the merits of the case.³⁶ Thus, even though the reasons put forward by the Defendants were not without basis, their choice to take the path of unilateral termination instead of filing a lawsuit for cancellation or a lawsuit for breach of contract which had been carefully formulated in court, ultimately placed them in a position of being punished, not a position of being defended by law.

g. Critical Note: Gaps in Legal Protection for Franchisees

Although this decision clearly protects the franchisor's position, the Defendants' counterclaim was rejected solely on formal grounds (obscuur libel), not because the substance of the Plaintiff's claim of non-compliance with the prospectus and STPW obligations was proven to be untrue. This leaves an important question unanswered in this decision: whether the Defendants actually had a legitimate basis to claim damages from the Plaintiff, had the counterclaim been formulated correctly. The Decision Number 1064 K/Pdt/2020 they cited shows that the Plaintiff had previously been proven to have breached their contract with other franchisees in a similar manner, so the Defendants' argument is not without merit.

These findings underscore the importance of two aspects for the future development of franchise law in Indonesia. First, the need for franchisors to comply with information disclosure obligations, such as the submission of franchise prospectuses and STPW registration, from the outset of the partnership to prevent such disputes.³⁷ Second, the importance of adequate legal assistance for franchisees, especially small and medium-sized business actors, in formulating lawsuits or counterclaims so that they are not dismissed due to formal defects alone, so that their substantive rights still have the opportunity to be examined by the court.

CONCLUSION

Based on the research results and discussion, the conclusions of this research are drawn up to answer the two problem formulations proposed in the introduction.

³⁶South Jakarta District Court Decision Number 854/Pdt.G/2022/PN Jkt.Sel, p. 69.

³⁷Mahardika and Indrawati, "Implementation of making a franchise agreement".

First, regarding the legal basis for terminating a franchise agreement in Indonesia, the termination is based on the principle of good faith as stipulated in Article 1338 paragraph (3) of the Civil Code, the valid conditions for an agreement in Article 1320 of the Civil Code, and the mechanism for terminating a reciprocal agreement in Article 1266 of the Civil Code which requires termination through a court decision, not a unilateral action by one of the parties. This provision is neutral regarding the position of the parties and binds both the franchiser and the franchisee equally, so that any party who wishes to terminate the agreement before the end of the term, regardless of the strong reasons behind it, is still required to take the cancellation lawsuit route to the court.

Second, regarding the form of legal protection for the franchisor, Decision Number 854/Pdt.G/2022/PN Jkt.Sel shows that the unilateral termination of four franchise and license cooperation agreements by the franchisee is qualified as an unlawful act under Article 1365 of the Civil Code, because the five elements of the act, unlawful nature, fault, loss, and causal relationship are proven to be cumulatively fulfilled. This legal protection is realized in three forms: a declaration of nullity by law of the four agreements through a court decision and not through unilateral action by the franchisee; recovery of material losses in the form of an obligation to pay outstanding royalty fees and management fees amounting to Rp315,464,970,- from Defendant I and Rp121,467,000,- from Defendant II; and judicial recognition of the reciprocal nature of Article 1266 of the Civil Code, which also protects the franchisor as it has been more commonly used to protect franchisees. The claim for immaterial damages of Rp. 500,000,000 was rejected not because immaterial damages conceptually cannot be claimed, but because they were not described in detail in the lawsuit.

Furthermore, regarding the defense arguments and counterclaims of the franchisee alleging non-compliance by the franchisor with the obligations of the franchise offering prospectus and STPW registration, the court is of the opinion that these arguments, even if true, do not in themselves justify unilateral termination and must still be proven through a separate lawsuit; consequently, the franchisee's counterclaim was declared inadmissible due to formal defects (*obscuur libel*), so that the substance of the allegations was never examined by the court, and the franchisee who initially attempted to terminate the agreement was instead sentenced to pay compensation for his own actions. Thus, this decision shows that the requirement for termination through the courts in Article 1266 of the Civil Code applies reciprocally and protects any party who does not want unilateral termination, but at the same time leaves a gap

regarding the effectiveness of legal channels for franchisees who have substantive complaints against their franchisors.

SUGGESTIONS

Based on these conclusions, the authors offer several suggestions. First, for franchisors, compliance with the obligation to submit a franchise prospectus and register a franchise agreement (STPW) from the beginning of the partnership must be consistently implemented, not only to fulfill the provisions of Minister of Trade Regulation Number 71 of 2019, but also to strengthen their legal standing should a dispute arise. Second, for franchisees who have complaints against the franchisor, no matter how compelling the reasons, the appropriate step is to file a lawsuit for cancellation in court in accordance with Article 1266 of the Civil Code, rather than unilaterally terminating the agreement, accompanied by adequate legal assistance so that the lawsuit or counterclaim filed is not obscure (*obscuur libel*) and its substance can be examined by the court. Third, for policymakers, it is necessary to consider strengthening franchise dispute mediation mechanisms that are more easily accessible to small and medium-scale franchisees before disputes progress to litigation, considering that the formal judicial process risks sacrificing the examination of the substance of justice due to purely technical procedural issues. Fourth, further research can trace the patterns of other decisions involving the same franchisor or similar dispute patterns to map the consistency of the application of Article 1266 of the Civil Code in franchise disputes in Indonesia.

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