

Administrative Responsibility of Notaries in Making Franchise Agreement Deeds That Have Not Been Registered with the Ministry of Trade

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ABSTRACT

Franchise agreements are modern business contracts that carry legal implications based on the principle of freedom of contract in the Civil Code, as well as administrative provisions such as registration with the Ministry of Trade, regulated under Minister of Trade Regulation No. 71 of 2019 on Franchise Implementation. Notaries play a critical role in formalizing these agreements through authentic deeds. However, issues arise when franchise agreements are made without a Franchise Registration Certificate (STPW). While notaries can still create deeds based on the parties' will, they are obligated to provide a legal explanation regarding the administrative status and associated risks. This research employs a normative legal methodology using both legislative and conceptual approaches, with qualitative analysis of legal documents and regulations. The study aims to highlight the significance of franchise agreement registration and the notary's role in ensuring legal clarity. The findings suggest that notaries should be proactive in informing parties about the legal risks involved when a franchise agreement lacks an STPW, thereby enhancing legal protection for all parties. This research provides recommendations for both notaries and the government to strengthen the understanding of administrative obligations in franchise agreements and ensure better legal safeguards.

Keywords: Notary, Franchise Agreement, Legal Certainty

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INTRODUCTION

Franchise is a form of commercial agreement that is growing rapidly in Indonesia as part of an effective and efficient business expansion strategy. In a franchise relationship, there is cooperation between the owner of the brand or business system (franchisor) and other parties (franchisee) to use and utilize certain trademarks, operational systems, and business models within a certain period of time and territory. Legally, a franchise is a form of agreement that is subject to the provisions of general civil law, especially Book III of the Civil Code (Civil Code) regarding engagements and agreements. However, franchise agreements are also regulated more specifically through Government Regulation Number 42 of 2007 concerning Franchising, which requires the registration of franchise agreements at the Ministry of Trade of the Republic of Indonesia as a form of supervision and legal protection for the parties involved. However, in practice, many franchise agreements are not registered as they should, which then raises legal issues regarding the validity, protection of rights, and legal certainty for the parties (Adji, 2020; Atmoko, 2022; Elise et al., 2023; Rahayu et al., 2019).

In this context, notaries have an important role as public officials who are authorized to make authentic deeds. As stipulated in Law Number 30 of 2004 concerning the Notary

Position (UUJN) as amended by Law Number 2 of 2014, notaries are obliged to provide guarantees for the authenticity of deeds and ensure certainty, order, and legal protection in every deed made by them (Kementrian Hukum dan Ham, 2004; Putri, 2016; Ramadhan & Suhardini, 2019; Rizal, 2019; Simarmata, 2020). This function is very crucial in unregistered franchise agreements, considering that the absence of registration can raise doubts in proving and enforcing the law in the event of a dispute in the future. The notary not only acts as a registrar but also as a party who ensures that the contents of the agreement are in accordance with the applicable legal provisions, that the parties have the legal capacity to act, and that there is a valid agreement between the parties.

Legal problems that often arise in unregistered franchise agreements are the lack of clarity about the validity of the legal relationship that occurs, the absence of guarantees for the protection of the franchisor's intellectual property rights, and difficulties in the dispute resolution process. The franchisee, for example, may be harmed if it turns out that the trademark used is not legally registered with the Directorate General of Intellectual Property or if the franchisor does not provide training and assistance as promised. Similarly, franchisors can incur losses if the franchisee violates operational standards or damages the brand's reputation. In this situation, a deed of agreement made before a notary can be a strong evidentiary instrument before the court or arbitration institution (Imansah, R, 2024).

However, not all notaries understand the complexity of franchise legal relationships, especially related to administrative obligations such as signing agreements. Some notaries only focus on the formal aspects of the agreement, without further examining the registration obligation as a form of compliance with trade sector regulations. In fact, in accordance with the principles of prudence and professional responsibility, notaries should also provide legal counseling to the parties regarding the consequences of not registering a franchise agreement. This is important so that the parties not only focus on profitable business relationships but also understand the legal obligations that must be fulfilled for the certainty and sustainability of their business.

Furthermore, in the context of Indonesia as a country of law, the principle of legal certainty is one of the important principles that underlie the entire system of laws and regulations. Legal certainty requires that every legal action must be predictable, protected, and enforceable. In franchise relationships, legal certainty must include the protection of the rights of both parties, the existence of a valid and enforceable agreement, and the availability of legal instruments that can be used in the event of a dispute. The role of the notary in ensuring legal certainty cannot be underestimated. An authentic deed made by a notary has perfect evidentiary power as stipulated in Article 1870 of the Civil Code and Article 165 of the Civil Code. Therefore, even if the franchise agreement is not registered with the Ministry, the existence of an authentic deed made by a notary can still provide legal force for the parties, as long as it does not conflict with other positive legal provisions. From a legal protection perspective, the role of the notary can also be seen as a neutral party that bridges the interests of franchisors and franchisees. In the process of making an agreement, the notary is obliged to explain the content of the agreement clearly and impartially so that no party feels harmed or deceived. In addition, with the intervention of a notary, the content of the franchise agreement can be prepared with clear, systematic, and non-multi-interpreted legal language. This is very important in avoiding conflicts in the future, especially regarding the

interpretation of treaty clauses (Aprita, 2022; Dewi, 2019; Juliana et al., 2023; Nur Wijayanti, 2017).

Previous studies have addressed various aspects of franchise agreements and their legal implications, including the importance of registration for legal protection. Rizkita (2025) highlighted the legal issues arising from unregistered franchise agreements, particularly the challenges in protecting intellectual property rights and enforcing contractual obligations in case of disputes. Similarly, Imansah (2024) discussed the role of notaries in providing legal certainty in franchise agreements, focusing on the notary's function in ensuring the validity of the contract and protecting the parties' rights. However, these studies did not fully explore the gap in notaries' understanding of the administrative requirements of franchise agreements, particularly the registration process with the Ministry of Trade, and its implications for legal certainty. The study extends existing literature by emphasizing the need for notaries to actively provide legal counseling to parties involved in franchise agreements, thereby enhancing the professional responsibility and legal awareness within the franchise industry.

The study aims to examine in depth how the role of notaries in ensuring legal certainty in franchise agreements that are not registered with the Ministry, both in terms of legal authority, professional responsibility, and the effectiveness of authentic deeds in providing legal protection. This research is important considering the lack of optimal understanding of the business community, and even some notaries, on the legal position of franchise agreement registration and the importance of authentic deeds as a valid means of proof. In addition, this study is expected to contribute to the development of notary practices in dealing with the increasingly complex dynamics of modern business legal relations, especially in the field of franchising. Through a normative approach and case studies, this journal will explore the limits of notary authority in the context of franchise law, as well as its relevance to the protection and legal certainty of the parties.

METHOD

The study used normative juridical legal research methods. This research employs normative legal research methods, which are conducted with an approach to written legal norms and applicable legal principles. Normative legal research focuses on the study of literature by examining primary legal materials, such as relevant laws and regulations, including the *Civil Code*, *Law Number 30 of 2004 concerning the Notary Position*, and *Government Regulation Number 42 of 2007 concerning Franchising*, as well as secondary legal materials in the form of legal literature, scientific journals, expert opinions, and other official documents. The approaches used in this study include a *statute approach* and a *conceptual approach*, in order to understand the role and authority of notaries in ensuring legal certainty for unregistered franchise agreements. The analysis is carried out qualitatively by describing, interpreting, and examining the relationship between the applicable legal norms and practices in the field. The purpose of this method is to find clarity of legal norms as well as juridical arguments on the responsibility and legal force of notary deeds in the context of franchise agreements that do not fulfill administrative obligations in the form of registration at the Ministry.

RESULT AND DISCUSSION

The Role and Responsibility of Notaries in the Making of Franchise Agreement Deeds That Are Not Registered with the Ministry in accordance with the provisions of applicable laws and regulations

Franchise agreements are a form of business agreements that are growing rapidly in modern trade practices. Franchising involves granting the right to a certain party (franchisee) to use the trademark, business system, and operational support of the franchisor for a certain period of time for a certain amount of time. This agreement is basically subject to the principle of freedom of contract as stipulated in Article 1338 paragraph (1) of the Civil Code, which states that all agreements made legally are valid as laws for those who make them. Therefore, notaries play an important role in drafting and ratifying the agreement deed so that it has strong legal force and ensures legal certainty for the parties. However, in the context of Indonesia's positive law, franchise agreements are not only subject to the principle of freedom of contract, but are also required to be registered with the Ministry of Trade in accordance with the provisions of the Regulation of the Minister of Trade of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Franchises. In Article 3 of the regulation, it is stated that every franchisor who will make an offer and/or sign a franchise agreement must have a Franchise Registration Certificate (STPW). This requirement is intended to provide legal protection not only to franchisees but also to consumers, as well as to ensure openness and accountability of franchise businesses in Indonesia (Christy et al., 2020; Lilies Anisah & Eni Suarti, 2022; Syahfitri, 2021; Tim Anotasi Mahmakah Konstitusi, 2018; Zul Hendrial et al., 2022).

In practice, not a few franchise agreements are made without first registering or obtaining an STPW. This is where legal problems arise related to the role and responsibilities of notaries. Notaries as public officials appointed by the state have the obligation to act neutrally and ensure that every deed he makes is in accordance with the provisions of applicable law. Based on Article 1 number 1 of Law Number 30 of 2004 concerning the Notary Position as amended by Law Number 2 of 2014 (UUJN), notaries are tasked with making authentic deeds regarding all acts, agreements, and provisions that are required by laws and regulations and/or that are desired by the parties to be stated in an authentic deed. The notary has the responsibility to verify the validity of the substance of the agreement made by the parties, including conformity with positive law. If the franchise agreement is made without STPW registration, the notary can still make an authentic deed based on the will of the parties, but he is obliged to explain in detail the legal provisions that govern the registration obligation and the legal risks that may arise from non-compliance with these provisions. This is in line with Article 16 paragraph (1) letter a of the UUJN, which requires notaries to act honestly, independently, impartially, and safeguard the interests of the parties in every deed he makes.

It should be noted that the absence of an STPW does not mean that the franchise agreement is invalid according to the law. As long as the agreement meets the requirements for the validity of the agreement in Article 1320 of the Civil Code, namely the agreement of the parties, legal competence, certain objects, and halal causes, then the agreement remains legally binding. However, non-compliance with administrative obligations (STPW registration) can lead to administrative or even criminal consequences depending on the case. Therefore, even though it is legally valid, the agreement is in an "administratively defective" condition, which

can affect the execution of the agreement in the future, especially when a dispute occurs. In this case, the role of the notary is very crucial as a guarantor of certainty and legal protection. Notaries should provide legal opinions or at least legal advice to the parties that the franchise agreement deed they made has not met the administrative requirements required by laws and regulations. If the notary continues to make a deed without conveying this, he can be considered negligent in carrying out the duties of his position, which in certain conditions can be subject to administrative and ethical sanctions as stipulated in Article 85 of the UUJN, including temporary dismissal or permanent dismissal.

In terms of jurisprudence, several civil cases show that the evidentiary power of a notary deed on a franchise agreement is still recognized by the court as long as there is no indication of a violation of the law that is imperative. However, when the franchisee suffers losses due to an unregistered agreement, they can sue the franchisor for misrepresentation or negligence in fulfilling administrative obligations. If the notary is involved without providing adequate explanation, it is not impossible that he will also be pulled as a party responsible in a professional liability manner (professional liability). Practically, the notary is also responsible for refusing to make a deed if he knows that the content of the agreement is contrary to the law, public order, or morality, as stated in Article 16 paragraph (1) letter c of the UUJN. However, in the context of a franchise agreement that is only unregistered but does not contradict substantive legal norms, the notary can still carry out his duties, provided he includes a clause or record about the administrative status of the agreement in the deed made (Afrianto et al., 2020).

Therefore, the responsibility of a notary is not only limited to recording agreements, but also includes preventive aspects in preventing legal conflicts in the future. Notaries are obliged to ensure that each party understands the legal rights and obligations attached to the agreement they sign. In the case of an unregistered franchise agreement, the notary must ensure that both parties are aware of the legal status of the deed as well as the juridical implications that may arise, both to the legal relationship between the parties and to the supervision of government agencies. From the perspective of legal protection, the existence of a notary deed on a franchise agreement even though it is not registered still has strategic value. An authentic deed has perfect evidentiary power as stipulated in Article 1868 of the Civil Code, which states that an authentic deed is a deed made in the form specified by law by or in the presence of a public official authorized for it. So, in the event of a dispute, the notary deed becomes the main evidence in court. Nevertheless, it is important to emphasize that such evidentiary power does not necessarily legitimize the administrative disorder of the franchise agreement itself.

Notaries have a central role in ensuring legal certainty for the parties to a franchise agreement, even when the agreement has not been registered with the Ministry of Trade. The notary's responsibilities include not only the formal aspects of making the deed, but also the material aspects of explaining the legal status and risks of the agreement made. Although the notary deed on an unregistered franchise agreement remains legally valid, the notary is still obliged to carry out the principles of prudence, professionalism, and openness to ensure that the deed he makes meets the legal values that live in society and the applicable laws and regulations.

To what extent can the Notary Deed provide legal certainty for the parties to the franchise agreement who have not fulfilled the obligation to register with the Ministry as stipulated in the Regulation of the Minister of Trade?

A franchise agreement is a form of business agreement between the franchisor and the franchisee which has special characteristics because it involves the transfer of rights to the business system, trademarks, to management and technical support in business activities. In order for the legal relationship between the parties to the franchise agreement to run with certainty and clarity, the making of the agreement in writing and under the hand is often poured into the form of an authentic deed made by a notary. However, legal problems arise if the franchise agreement that has been legally made by the notary has not fulfilled the administrative obligations in the form of registration at the Ministry of Trade as stipulated in laws and regulations. The legal basis for franchise registration can be found in the Regulation of the Minister of Trade of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Franchises. In Article 3 paragraph (1) of the regulation, it is expressly stated that "Franchise Providers from within the country are obliged to register a Franchise Offer Prospectus to the Minister before the agreement is signed." This registration is intended as a verification and supervision step by the state of franchise-based business activities so as not to harm franchisees and consumers. Thus, STPW (Franchise Registration Certificate) is an administrative requirement that must be met before or at the same time as the implementation of the agreement.

However, in practice, many business actors run franchises without registering first. In this context, the question arises to the extent to which the notary deed that has been made on the basis of the franchise agreement can still provide legal certainty for the parties. To answer this, it is necessary to first understand the function and legal force of a notary deed in the Indonesian legal system. According to Article 1868 of the Civil Code (KUHPer), an authentic deed is a deed made in the form specified by law by or in the presence of an authorized public official, in this case a notary. Meanwhile, based on Article 1 number 1 of Law Number 30 of 2004 concerning the Notary Position (UUJN) as amended by Law No. 2 of 2014, a notary is a public official who is authorized to make an authentic deed regarding all acts, agreements, and provisions that are required by laws and regulations and/or that are desired by the parties to be stated in an authentic deed. Therefore, legally, a notary deed has perfect evidentiary power regarding what is contained and stated in it as long as it is not proven otherwise in court.

However, the evidentiary power of a notary deed does not necessarily negate administrative obligations that have not been fulfilled. In the event of a franchise agreement that has not been registered with the Ministry, the notary deed remains legally valid as long as it meets the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code, namely the agreement of the parties, legal competence, certain objects, and halal causes. This means that a notary deed can still provide a guarantee of legal certainty within the scope of civil relations between the parties, especially in terms of rights and obligations arising from the agreement. However, in the administrative context and compliance with trade sector regulations, non-fulfillment of registration obligations may have an impact on the administrative validity of such agreements. As a result, in the event of a dispute and one of the parties files a lawsuit, the court may consider this aspect of the administrative violation as part of the basis for the cancellation or waiver of certain rights. For example, a franchisee who feels

aggrieved can claim that he or she did not obtain information transparently as stipulated in a prospectus that should be registered and verified by the government. In this situation, the existence of a notary deed alone is not enough to provide comprehensive legal protection if the formal legal aspects of the franchise sector administration are not met.

However, it is important to note that notary deeds still have an important role as strong evidence in proving the validity and chronology of the agreement. This deed reflects that the parties have really agreed consciously and voluntarily, and have poured out their agreement in the form of a valid law. This is especially important in the context of proving in court. In fact, if in the future the franchisor violates the contract, the franchisee can still file a lawsuit based on an agreement that has been notarized by a notary, even though it has not been registered with the ministry. In addition, notaries have an ethical and professional obligation to provide an explanation of the legal consequences of not carrying out STPW registration to the parties before the deed is signed. This is regulated in Article 16 paragraph (1) letter a of the UUJN, which requires notaries to act honestly, independently, impartially, and protect the interests of the parties. If the notary does not provide such an explanation, then he can be considered negligent and violates the code of ethics of the position which can be sanctioned in accordance with Article 85 of the UUJN, including written reprimands, temporary dismissal, or even permanent dismissal.

In the practice of jurisprudence, there have not been many court decisions that explicitly cancel franchise agreements simply because they have not been registered with the Ministry. However, in some cases, the non-fulfillment of these administrative obligations can be used as a basis to prove negligence or invalidity of part of the agreement, especially if important information such as business risks, prospectuses, and consumer protection rights are not properly conveyed. Therefore, the level of legal certainty provided by a notary deed in a franchise agreement that has not been registered with the ministry is limited. In the civil sphere, the deed still has legal force and can be enforced. However, in the scope of administration and comprehensive legal protection of all aspects of franchise agreements, the existence of STPW remains a legal instrument that must be fulfilled. Ideal legal certainty is only achieved if all formal and material aspects of the law are met, namely the validity of the content of the agreement and compliance with applicable administrative norms.

A notary deed can still provide civil legal certainty for franchise agreements that have not been registered with the Ministry of Trade, as long as the agreement meets the elements of contract validity and is made voluntarily by the parties. However, the level of legal protection is not comprehensive, because the administrative aspect still has the potential to cause legal problems, especially if a dispute or loss arises for other parties. Therefore, the role of the notary in this case is not only limited as a registrar, but also as a guardian of legal compliance who should advise the parties to carry out the administrative obligations of registration in order to create complete legal certainty and protection.

CONCLUSION

Notary Administrative Responsibility in Drafting Deeds of Franchise Agreement That Have Not Been Registered with the Ministry of Trade. For this reason, it is recommended that notaries always carry out the principles of prudence, professionalism, and openness in carrying out their duties, especially in agreements that are subject to administrative provisions such as

franchises. Notaries should ensure that the parties fully understand the legal status and risks of the signed deed. If the franchise agreement has not been registered, then the notary must include a special description or clause in the deed regarding the condition. In addition, the government, through the *Ministry of Trade*, is advised to continue to socialize and supervise the implementation of franchises so that business actors understand the importance of *STPW* registration as part of legal compliance and protection for all parties. Thus, a notary deed will truly function as an instrument of legal protection and complete legal certainty in the business world.

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