Economic Analysis of Law Review

The Legal Aspects of Franchise in Indonesia

Os aspectos legais da franquia na Indonésia

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RESUMO

O McDonald's foi fundado em 1940 e entrou na Indonésia em 1991. Naquela época, os direitos de franquia Master do negócio de fast food foram dados a Bambang Rachmadi. Bambang Rachmadi controla os direitos de franquia do McDonald's e controla treze pontos de venda na Indonésia. Naquela época não havia regulamentação governando o negócio de franquia. Não havia lei nem regulamentação para essa cooperação. Com base na prestação de PP. 20/1994, em seguida, em seu desenvolvimento e, possivelmente, como uma estratégia expansionista da franquia com a marca da letra M com esta cor amarela, em 1994, foi entre o centro McDonald's (ou seja, através de sua empresa-mãe MIPCO) com Bambang Rachmadi formando um nova joint venture chamada PT. Bina Nusa Rama (adiante abreviada como BNR). O BNR é uma cooperação entre a PT. Sumber Rezeki (outra empresa de propriedade de Bambang Rachmadi) com a própria MIP-CO através de sua empresa afiliada denominada International Development Services Inc. (doravante abreviada como IDS). Os negócios de capital próprio do BNR provêm de empréstimos. Noventa por cento do empréstimo é um empréstimo de intercomunicação do MIPCO. Os dez por cento restantes vêm de bancos comerciais. Por quase quatorze anos operando na Indonésia correu bem e os pontos de venda da McDon-ald agora chegam a 116 (cento e seis adolescentes) lojas. No início de 2009, houve uma disputa entre as duas partes. A RM processa o BNR e outras partes porque se sentem lesadas devido à transferência de todos os activos do BNR na forma de 97 (noventa e sete) pontos de venda (juntamente com o seu terreno e edifício) e os seus direitos de gestão ao PT. Rekso National Food (daqui em diante abreviado como RNF). Além disso, a RNF, uma subsidiária do Grupo Rekso, controladora do produtor PT Sari Sosro Teh Sosro, assinou um Master Franchise Agreement com a MIPCO, que dá licença para operar todos os restaurantes anteriormente operados pela PT Bina Nusa Rama e abrir novos restaurantes. na Indonésia.

Palavras-chave: Investimento, Franquia, Mc Donald, Aspectos Legais

JEL: K21, L49

ABSTRACT

McDonald's was founded in 1940 and entered into Indonesia in 1991. At that time the Master franchise rights of the fast food business was given to Bambang Rachmadi. Bambang Rachmadi controls McDonald's franchise rights and controls thirteen outlets in Indonesia. At that time there was no regulation governing the franchise business. There was no law and regulation for this cooperation. On the basis of the provision of PP. 20/1994, then in its development and possibly as an expansionary strategy of the franchise with the brand of the letter M with this yellow color, then in 1994 it was between McDonald's center (ie through its parent company MIP-CO) with Bambang Rachmadi forming a new joint venture named PT . Bina Nusa Rama (hereinafter abbreviated as BNR). BNR is a cooperation between PT. Sumber Rezeki (another company owned by Bambang Rachmadi) with MIPCO itself through its affiliated company called International Development Services Inc. (hereinafter abbreviated as IDS). BNR own capital business comes from loans. Ninety percent of the loan is an intercompany loan from MIPCO. The remaining ten percent comes from commercial banks. For nearly fourteen years operating in Indonesia went well and McDonald's outlets now number 116 (one hundred and sixteen) outlets. In the early 2009 there was a dispute between the two parties. RM party sues BNR and other parties because they feel aggrieved due to the transfer of all assets of BNR in the form of 97 (ninety seven) outlets (along with its land and building) and its management rights to PT. Rekso National Food (hereinafter abbreviated as RNF). In addition, RNF, a subsidiary of Rekso Group, the parent company of PT Sari Sosro Teh Sosro producer, has signed a Master Franchise Agreement with MIPCO which giveslicense to operate all restaurants previously operated by PT Bina Nusa Rama and open new restaurants throughout Indonesia.

Keywords: Investment, Franchise, Mc Donald, Legal Aspects

R: 09/08/2018 **A:** 02/09/2018 **P**: 03/09/2018

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1. Introduction

McDonald's was founded in 1940, founded initially by two brothers namely Dick and Mac McDonald. But in its development, shares of this company were later purchased by Ray Kroc and even in the hands of Ray Kroc, McDonald's became the largest fast food franchise in the world thanks to its expansive strategy. In 1965, the company named the parent McDonalds International Property Company (hereinafter abbreviated as MIPCO), began selling its shares to the public and became a public company.

McDonald's franchise itself entered into Indonesia in 1991. At that time the Master franchise rights of the fast food business was given to Bambang Rachmadi. Furthermore, through PT. Ramaco Gerbangmas which he founded in 1991, Bambang Rachmadi controled McDonald's franchise rights and its thirteen outlets in Indonesia. At that time there was no regulation governing the franchise business. There was no law and regulation for this cooperation.

Then in 1994 the enactment of Peraturan Presiden Number 20 year 1994 (hereinafter abbreviated as Government Regulation No. 20/1994) concerning Share Ownership in Companies Established in the Framework of Foreign Investment. In Article 2 Paragraph (1) of PP. 20/1994 mentioned that:

Foreign investment can be done in the form of:

a. joint ventures between foreign capital and capital owned by Indonesian citizens and or Indonesian legal entities; or

b. directly, in the sense that all capital is owned by a citizen and / or a foreign legal entity.

Then in Article 6 Paragraph (1) of PP. 20/1994 also mentioned that, "Indonesian participant's shares in the company established as intended in Article 2 paragraph (1) letter a, at least 5% (five percent) of the entire paid up capital of the company at the time of establishment".

On the basis of the provision of PP. 20/1994, then in its development and possibly as an expansionary strategy of the franchise with the brand of the letter M with this yellow color, then in 1994 it was between McDonald's center (ie through its parent company MIPCO) with Bambang Rachmadi forming a new joint venture named PT . Bina Nusa Rama (hereinafter abbreviated as BNR).

BNR is a cooperation between PT. Pure Rezeki (another company owned by Bambang Rachmadi) with MIPCO itself through its affiliated company called International Development Services Inc. (hereinafter abbreviated as IDS). BNR own capital business comes from loans. Ninety percent of the loan is an intercompany loan from MIPCO. The remaining ten percent comes from commercial banks. The composition of shareholders from BNR itself are:

a. IDS has a share of ninety percent (90%);

b. RM owns a ten percent stake (10%).

For nearly fourteen years operating in Indonesia, McDonald's outlets now number 116 (one hundred and sixteen) outlets. All went well until mid-2008 and early 2009 there was a dispute between the two sides.

RM party sues BNR and other parties because they feel aggrieved due to the transfer of all assets of BNR in the form of 97 (ninety seven) outlets (along with its land and building) and its management rights to PT. Rekso National Food (hereinafter abbreviated as RNF). In addition, RNF, a subsidiary of Rekso Group, the parent company of PT Sari Sosro Teh Sosro producer, has signed a Master Franchise Agreement with MIPCO which gives permission to operate all restaurants previously operated by PT Bina Nusa Rama and open new restaurants throughout Indonesia.

2. Discussion

A. The Aspects of Capital Investment Law

The presence of franchise agreement by M Donald in Indonesia has actually started to exist due to the occurrence of investment constraints. The businessman quite possible carries out a capital investment outside of his country. In this case, many ways can be taken by the investor, either through direct investment.[1] or indirect investment.[2] In the scheme of capital investment, in 1991 Indonesia had sets of legal instruments in the forms of Law No. 1 the Year 1967 (hereinafter called "UU No.1/1967") on PMA (Foreign Capital Investment) and Law No. 8 the Year 1968 (hereinafter called "UU No.8/1968").[3]

Article 18 the Law No. 1/1967 limited the business period sought for foreign companies for 30 (thirty) years. While Article 6 of the Law No. 6/1968 limited the business period for foreign companies in Indonesia as follows:[4]

a. In trade, to end on December 30, 1977;

b. In industry, to end on December 31, 1977 and

c. In fields other than the two, to be subsequently determined by the Government with a deadline of 10 to 30 years.

Law No. 1/1967 and Law No. 6/1968 were then followed by the Government Regulation Number 36 the year 1977 (herein after abbreviated to PP No. 36/1977) and Decree of

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[1] Direct Investment has a specific characteristic on:1) its establishment in Indonesia in the form of "Limited Liability Company", and equity capital in this case it acts as a Subsidiary Company , 2) equity participation,3) with the characteristic of managing the company directly nor 4)bearing the risks pursuant to the capital directly invested. Rahmi jened,, *Teori Hukum dan Kebijakan investasi Langsung (Legal Theory and Policy of Direct Investment)*, (Prenada Media 2016) .30-1 .

[2] Rudhi wrote that indirect investment does not have any characteristics as stated above (direct investment). The Indirect Investment, among other, is the forms of off-shore loan, technical assistant agreement, management assistant agreement, portfolio investment and franchise, ibid.32-4.See also.Rudhi Prasetya, *Capital Investment Law, Teaching Materia Handout* , Post Graduate Program – Doctor of Jurisprudence, (Airlangga University, 2010) 4-5.

[3] These two laws are becoming the Law No. 25 the year of 2007 on Capital Investment due to Ratification Agreement on Establishing the Worl Trade Oranization trough the Law No 7 of year 1994.

[4] Jened,, *Teori Hukum dan Kebijakan investasi Langsung (Legal Theory and Policy of Direct Investment)*(n1)31-2 .

Minister of Trade Number 77 the year 1978 (herein after called SK Mendag No. 77/III/1978) on The Termination of Foreign Business Activities In The Trade Sector.[5]

Furthermore in 1988 there was Government Regulation Number 19 the year 1988 (hereinaftercalled PPNo. 19/1988) which was followed by Decree of Minister of Trade and Industry Number 376 the Year 1988 (hereinafter called SK Menperindag No. 376/KP/ XI/88) on Limited Trade Activities For Capital Investment Companies.[6]

Basically, these provisions stipulated that foreign direct investment (FDI) is prohibited to market its products directly to the final consumer (customer), but the company must coop-erate with the national company (loco partner) as the supplier (distributor. In this regard, the FDI company has to establish a Distributor Company by means of appointing its nationalloco business partner as his cooperation partner. Due to such a trade limitation, and in addition to the sense of insecurity upon his investment, the said businessman will look for other alterna-tives, among others, by conducting the Indirect Investment, including the Franchise. As did Mc Donald at the beginning of its business in Indonesia in 1991 when appointed Bambang Rachmadi as the Master franchise.[7]

For years, the provision on Investment Negative List specifies that the retail trade sector is closed for the full foreign investment (100% of the shares are owned by foreign party), but it is opened when it is conducted in the form of a Joint Venture.

The common provisions on the entry of expatriates (foreign workers) can influence the franchise business. There is a tight parameter for the entrance of expatriates related to the Vi-sa. In addition, the biggest problem in this business is the matters of rules and procedures of taxation influencing the effectiveness of franchise business operation.

After that Indonesia ratified Agreement on Establishing the World Trade Organization (WTO) through the Law Number 7 year 1994 subsequent with Government Regulation Num-ber 20 of year 1994. in Article 6 Paragraph (1) of PP. 20/1994 also mentioned that, "Indone-sian participant's shares in the company established as intended in Article 2 paragraph (1) letter a, at least 5% (five percent) of the entire paid up capital of the company at the time of establishment".

On the basis of the provision of PP. 20/1994, then in its development and possibly as an expansionary strategy of the franchise with the brand of the letter M with this yellow color, then in 1994 it was between McDonald's center (ie through its parent company MIPCO) with Bambang Rachmadi forming a new joint venture named PT . Bina Nusa Rama (hereinafter abbreviated as BNR).

BNR is a cooperation between PT. Pure Rezeki (another company owned by Bambang Rachmadi) with MIPCO itself through its affiliated company called International Develop-ment Services Inc. (hereinafter abbreviated as IDS). BNR own capital business comes from

[5] Peraturan Pemerintah Nomor 36 Tahun 1997 (PPNo. 36/1977) Tentang Pengakhiran Kegiatan Inves-tasi Asing dalam Perdagangan.

[6] Surat keputusan Menteri Perdagangan Nomor 77/KP/III/78(SK Mendag No77/KP/III/78). and SKMendag No. 376/KP/XI/88) Tentang Pembatasan kegiatan Perdagangan Bagi Perusahaan Penanaman Mod-al Asing.

[7]

loans. Ninety percent of the loan is an intercompany loan from MIPCO. The remaining ten percent comes from commercial banks. The composition of shareholders from BNR itself are:[8]

a. IDS has a share of ninety percent (90%);

b. RM owns a ten percent stake (10%).

The Government observes a very fast development in this franchise business, so that in the year 1997, Government Regulation of The Republic of Indonesia, Number 16 the year 1997 (hereinafter abbreviated to 'PP No.16/1997') on "Waralaba" was issued and the Decree of Minister of Trade and Industry of The Republic of Indonesia, Number 259/MPP/Kep/7/1997 (hereinafter called "SK Memperindag No. 259/MPP /7/1997") on the 'Provisions and Procedure in Franchise Registration'. [9]

This stipulation is to give the legal assurance and business certainty for the businessmen in running their franchises or waralaba / franchise. Furthermore, the Government thinks necessary to develop the franchise, considering the availability of the enlargement of job opportunities and business chances, as well as various efforts to improve the implementation of transfer of technology.

For nearly fourteen years operating in Indonesia, McDonald's outlets now number 116 (one hundred and sixteen) outlets. All went well until mid-2008 and early 2009 there was a dispute between the two sides.

RM party sues BNR and other parties because they feel aggrieved due to the transfer of all assets of BNR in the form of 97 (ninety seven) outlets (along with its land and building) and its management rights to PT. Rekso National Food (hereinafter abbreviated as RNF). In addition, RNF, a subsidiary of Rekso Group, the parent company of PT Sari Sosro Teh Sosro producer, has signed a Master Franchise Agreement with MIPCO which gives permission to operate all restaurants previously operated by PT Bina Nusa Rama and open new restaurants throughout Indonesia.[10]

B. The Aspect of Administrative Law

Nowadays, as the dispute between RM and BNR, Franchise is regulated by Government Regulation of The Republic of Indonesia, Number 42 the year 2007 (hereinafter abbreviated to 'PP No.42/2007') on "Waralaba(Franchise)" and the Decree of Minister of Trade of The Republic of Indonesia, Number 53/M-DAG/PER/8/2012 (hereinafter called "Permendag No. 53/M-DAG/ PER/8/2012 on the ' Franchise Management' and Regulation of Ministry of Trade (hereinafter called Permendag No. 57/M-DAG/PER/9/2014) on Some Change of"Permendag No. 53/M-DAG/ PER/8/2012 on the ' Franchise Management.

As mentioned in Article 4 Paragraph (1) PPNo. 42/2012 inline with Article 6 Permendag No. 53/M-DAG/PER/8/2012 determine that " franchise is based on written agreement between franchisor and franchisee with regard Indonesian law. In the case of agreement written in foreign language must be translated into Bahasa Indonesia. In a Franchise Agreement, the Franchisor and the Franchisee are tied in a legal relation in the form of 'Franchise Agreement'. Based on this agreement, the rights and obligations arise for the Franchisor and for the Franchisee reciprocally. In addition, there is an obligation to pay attention to the stake-

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9 Peraturan Pemerintah Nomor 16 Tahun 1997 Tentang Waralaba

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holders' interest and is also obliged to heed the provisions of other legal aspects related to Franchise Agreement

Before entering into a franchise agreement as a pre- contractual phase, franchisor are required to provide a prospectus that governed by Article7 PP No. 42/2012 inline with Article 7 Paragraph (1) and Paragraph (4) and Appendix List I Permendag No. 53/M-DAG/PER/8/2012. The prospectus as an openness to franchisee which consist information at least related to:

a. The identity of the Franchisor (Franchise Provider), such as ID card or passport of the share holders, commisioners;
b. The legality of franchisor such as permanent business license, trade license, permanent license tourism enterprise, permit the establishment of educational unit;
c. History of franchise business such as establishment, activity and business development;
d. Organization structure of franchisor such share board of directors, commissioners and shareholders;
e. The number of franchise business with the following countries or regions where business franchise' establishment;
f. The Franchisee list consist of the individual name and company;
g. Right and obligation of franchisor an franchisee.

Disclosure or openness is an essential matter in a Franchise Agreement, in the sense that the Franchisor or the Franchisee shall give the plain and timely disclosure information related to pre-contractual condition, during the contract implementation and the post-contractual condition.

In the practice of franchise business in Europe and in USA, several subjects constituting the part of the disclosure among others are as follows:[11]

a. Information on identity of the Franchisor.
b. The business experience of the Director and Executive Director of the Franchisor.
c. The business experience of the Franchisor.
d. Bankruptcy history of the Franchisor.
e. Description on the Franchisee.
f. Requirements of the Franchisor concerning with the affiliated parties to whom the Franchisee will do its business.
g. The recipes of the food to be provided or at least the food to be sold by the Franchisee.
h. Arrangement in funding.
i. Restricted selling.
j. Termination, cancellation and renewal from the Franchisor.
k. Statistic information on the number of Franchisees available on its network.
l. The choosing of location.
m. Training program.

[11] J. E., Pattison, *International Business Portfolios: Establishing A Transnational Franchise,* (Mathew Bender 2005) 1.04(8).

n. Involvement of public figures in Franchise Promotion.

o. Financial information from Franchisor and the like.

Article 4 Paragraph (1) of PP No. 42/2007 in connection with Article5 Paragraph (1) ,and Paragraph (4) of Permendag No. 5/ M- DAG/PER/8/2012 specifies that "Franchise is carried out based on the written agreement between the Franchisor (Franchise Provider) and the Franchisee (Franchise Receiver)." Therefore, the Government wants to have the written evidence upon the existence of this Franchise Agreement. This is one of the interventions of the Government intended to protect the weak party in which temporarily at present is identified to be the Franchisee comes from Indonesia. zThis written agreement comprehensively stating the intentions and obligation of all parties mutually to each other.

Furthermore based on Article 3 PPNo. 42/2012 an Article 2 Permendag No. 53/ M-DAG/PER/8/2012 determine that Franchise must meet the criteriaas follows:

a. has a special business characteristics;

b. shown to provide benefit;

c. have written standar prouct, goos and services;

d. Easily taught and applied;

e. Sustained support;

f. Registered intellectual property.

Further, Article 5 of PP No. 42/2007 related to Article Article 5 Paragraph (2) and Appendix Listing Rules II Permendag No. 53/ M- DAG/PER/8/2012 that the Franchise Agreement shall at least contain as follows:

1. Name, address and domicile of each company respectively, Name and position of each party who is authorized to sign the agreement.;
2. Name and type of the Right of Intellectual Property, such as trademarks, logos, industrial design or design lay-out an trade dress, the management or marketing system or recipe constituting the special characteristics becoming the franchise object;
3. Business activity such as retail, education, restaurants, pharmacy, car/automotive repair shop;
4. Right an obligation of Franchisor and Franchisee ;
5. The assistance , facility, operational assistance , guidance and training and marketing that provided to franchisee;
6. Marketing region;
7. Duration of the agreement;
8. Manner of payment , the calculation f remuneration, fee and royalty as agree;
9. Dispute settlement including choice of law and choice of forum;
10. The procedure in extending the agreement as well as the terms or conditions of the agreement extension.
11. warranties of the parties to perform their duties;
12. The number of outlets hat will be managed by the franchisee.

The aforesaid documents, if compared to those practiced in some countries in USA, Singapore and other countries, have several similarities, namely:[12]

1. Franchisor identity;
2. Director or executive officer;
3. Franchise to be purchased;
4. Obligation;
5. Initial or recurring payment;
6. Financing;
7. Required personal participation;
8. Termination, renewal and cancelation;
9. Site selection;
10. Financial representing and audited financial statement;
11. Sub franchisor grants sub l franchisee;
12. The rule of information in the disclosure statement

The franchisor is obliged to register its prospectus and also the franchisee is obliged to register the franchise agreement at the Ministry of Trade of the Republic of Indonesia. This registration is related to the Commercial Business Permit to run the franchise business in Indonesia. Having made the registration, the concerned will get the STPW (Franchise Commercial Business Registration Certificate). The legal ground for the enactment of the registration of franchise agreement is the Article 9 and 10 of PP No. 42/2007 related to Article 9 to 17 of Permendag No. 53/ M-DAG/PER/8/2012.

The registration is carried out by filling-in the Form for Request of Surat Tanda Pendaftaran Waralaba / STPW as The Franchise Commercial Business Registration Certificate and its conducted within the period of 2 (two) working days commencing from the effective date of the Franchise Agreement.

Article 12 Paragraph (5) nd Paragraph (6) PP No. 42/2007 in regard with Article 17 Paragraph (1) and (2) Permendag No. 53/ M-DAG/PER/8/2012) stated that the Franchise Commercial Business Registration Certificate (STPW) The validity period of STPW is 5 (five) years and can be renewal at the same time. The STPW is expired effective during or/ as long as the said Franchise Agreement still exists or the same with the validity period of the Agreement between Franchisor and the Franchisee or between the Franchisee and the Sub-Franchisee.

Thus, the registration at the Ministry of Trade and Industry is the effort of the Government in the scheme of assisting the development of the small-scaled and medium scaled enterprises applying the franchise system and also as the effort to maintain the orderly business in Indonesia.

Franchise is a form of business system in which internally there is a provision of licenses on certain rights becoming the main object in the Franchise Agreement, but it has more complicated nature compared to that of merely a licensing agreement, because the Franchisor

[12] Thomas J. Ehrar, *Guide To International Licensing* (Mc. Graw Hill2000) 117.

gives his right in one package of licenses [13] to produce, to sell and to get the profit from the use of the Right of Intellectual Property (HKI) to the Franchisee, including the use of business package system of the Franchisor by the Franchisee

The right given to the Franchisee is an obligation for the Franchisor and applicable reciprocally. Franchisee has the right of utilizing and using the know-how and the Right of Intellectual Property of its Franchisor operationally, such as the application pursuant to the goal and placement of the trademark, control on the access to the trade secret related to the key of operational practice and company management and others. In return the franchisor has the right in receiving various royalty payments and fees.

Then the franchisee has the right of obtaining the access for the supporting services of franchise business from the Franchisor. However the franchisor have authority under a flexible nature to amend or to modify the Franchise Agreement in order to be able to be adjusted to the legal, financial and market aspects at the place of franchise.

Furthermore the franchisee has the right of getting the protection concerning with certain territories. On the other hand the franchisor has the right to carry out the enforcement and implementation of the Franchise Agreement he has made, for example the right to prevent the deceitful competition through the enactment of a non-competition clause on its Franchise Agreement.

The franchise territory is also the right necessarily to be observed, since it concerns with the intention of franchise business, considering the fact that the territory is related to the market segments. However, the determination of territory exclusively in several countries concern with the issue of deceitful competition, particularly when there is an exclusive territory determination conducted tightly. In Indonesia, unless agreed otherwise, the Franchise Agreement is applicable throughout the territories of Indonesia. Article 6 PP No. 42/2007 stipulated that franchise agreement can appoint the sub- franchisee as the master franchisee must have and implement his/her at least one outlet.

The choice of location becomes a crucial subject, since it concerns with the decision on the specific characteristic of the Franchise Agreement. Appetites of the local market segments must be calculated in this franchise business, for example the fast-food restaurant of Kentucky Fried Chicken or McDonald provides a special menu of rice in Indonesia and it tastes hotter for its chili / sambal. The starred hotels in Bali are frequently found to use the Balinese specific flowers and traditional accessories to beautify their interiors and their exteriors.

Franchise emphasizes obligation to use the system, method, procedure, marketing and sale methods as well as other subjects already been determined by the Franchisor exclusively and this matter may not be breached by the Franchisee. This is the reason why ‘franchise’ is deemed to be an exclusive type of business, in which a person or a franchisee has no possibility to perform any similar activities or which is located in an area enable to cause a competition with the franchise business activities he has obtained from Franchisor, so that it is really under a non-competition nature. However franchisor can not appoint franchisees which have either direct or indirect control with the franchisor , as stated in Article 7 Permendag No. 5/M-DAG/PER/8/2012.

[13] Jened, *Franchising In Development Of Market Share In Indonesia*, (Airlangga University 2004), 24.

Article 8 PPNo. 42/2012 stipulated that the franchisor is obliged to provide guidance, training of management and marketing on an going basis. Article 9PP No. 42/2012 in line with Article 19 Permendag No. 53/ M-DAG/ PER/ 8/2012, franchisor an franchisee must prioritize domestic products as they meet the quality standard specified in writing by franchisor. Article 9 Paragraph 2 determine that franchisor an franchisee must cooperate with local business suppliers, small and medium entreprises as supplier along with the requirements set by franchisor.

Although it is possible not to determine the definite validity period of the Franchise Agreement, it is much better or suggestible to have a limited time. In common, the practice of Franchise Agreement runs for 5 (five) years in line with STPW or 10 (ten) years. Both Parties shall look for sufficiently reasonable period of time to get their investments returned.

The determination of this validity period shall also view the validity period of protection for its Right of Intellectual Property becoming the object of the Franchise Agreement. For example, the Patent protection is for 20 (twenty) years and after this period, the invention becomes the public domain. So, it must be avoided, for example when entering the licensing agreement, the remaining period of time for Patent protection is only for 8 (eight) years left, meanwhile its royalty payment follows the validity period of its Franchise Agreement for 10 (ten) years.

Commonly the way in settling the disputes is taken by using the approaches of the Choice of Forum and the Choice of Law.[14] The Choice of Forum can choose the forum of court or arbitration, whereas the Choice of Law is chosen pursuant to the approval of both parties. However in practice in the developing countries, usually they want to use their own national law applicable for the Franchise Agreement when dealing with the Foreign Franchisor due to the application of Local Jurisdiction Doctrine. Therefore, generally the arbitration is chosen and it is better if the Foreign Franchisor is accompanied by the Local Legal Consultants.

The Franchise Agreement shall specify any things or subjects able to cause an agreement come into a halt (Termination Clause). Under such a circumstance, a fairness or justice shall be undertaken for both parties, including the determination on its compensation. The subjects able to terminate the agreement unilaterally are usually as follows:[15]

a. Default or failure.
b. Negligence to meet the obligation.
c. The Criminal acts.
d. Bankruptcy.

In addition, the provision of Force Majeure can be applied if either one of the parties fails to meet its obligations due to a condition occurring beyond their power or control and their wish, such as the presence of natural disaster, war, political turmoil, accident and the like. Based on Permendag No. 5/M-DAG/PER/8/2012 determine that The franchise agreement that terminated unilaterally by the franchisor before he expiration franchise agreement expires, the franchisor can not appoint new franchisee in the same area before agreement is reached in the settlement of disputes by the parties or until a court decision finalized.

[14] Standard form of Franchise Agreement.

[15] Jened, *Franchising in Development of Market Share in Indonesia, research Result* (n13) 28.

Based on Article4 Pararaph 1 PPNo. 42/2012 I relation to Article 6 Permendag No. 53/ M-DAG/PER/8/2012 state that In implementing the franchise agreement is made, the franchisor and franchisee shall comply with applicable laws and regulations among others, consumer protection law, health law, educational law, spatial law, labor law and intellectual property law.

C. The Aspect of Contract Law

Based on the afore said definition, franchise constitutes the arising contractual partnership, because there has been a 'Franchise Contractual Agreement' between Franchisor (Franchise Provider) and the Franchisee (Franchise Receiver). This contractual law is identified by several principles, and one of them is the "Consensual Principle"[16]

This is requiring an agreement or a contract to be established based on the consensus or agreement of both parties. Therefore, all parties shall adhere or obey the legitimate conditions of an agreement as stated in Article-1320 of Codes of Civil Law namely:

1. The parties' agreement;
2. the parties prowess,
3. certain objects;
4. allowed causa.

The parties' agreement an prowess are the subjective requirements , whereas the object and causa are objective are validity of agreement's requirements. When the agreement oes not meet the subjective requirements of the agreement can be canceled. When the agreement does not meet the objective requirements then the agreement is null and void.

Apart from the aforesaid subject, the Franchise Agreement is signed under the principle of Freedom of Contract (Article-1338 of Codes of Civil Law), either concerning with its content or its form, as long as not in contradictory with the rules of law, without any prejudice to the good faith, proper-ness, and appropriateness.

Under this Franchise Agreement, the consensus of all parties constitutes something special and sufficient to set up an agreement, so that the formalities in terminating the agreement are not very decisive for the existence of the said agreement. However, there are certain special requirements in setting up an agreement namely:[17]

a. Written legitimate conditions for certain contracts.
b. Notarial Deed is required for certain contracts.
c. The Deed of certain Official (not a Notary) for certain contracts.
d. Permits / Licenses from the authorized party.

In general the Franchise Agreement is in the 'Contract Standard Form'. The agreement is said to have the standard form because the clauses of such agreement have already been available and prepared by the Franchisor and the clauses in the said agreement are unable and impossible to be negotiated or bargained by the Franchisee and its nature is "The Take It or Leave it Clause".[18]

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[16] Djasadin Saragih, *Terjemahan BW (Neuwenhuis Translation: Contractual Law* (The Law Faculty of Airlangga University (2000) 2.

[17] Mariam Darus Badrulzaman, *Aneka Hukum Bisnis (Variety of Business Law)*, (Alumni 2004) 40.

[18] This standard clause/agreement has several forms, namely:

J. E. Pattison defines that:[19]

Franchise is a contractual partnership in which one of the parties is given the right to utilize and or to use the Right of Intellectual Property or the invention or the specific business characteristic owned by the other party with the compensation based on the terms or conditions specified by the said other party in the scheme of providing and or selling the goods, commodities and or services."

Further, Joseph E. Pattison states that the franchise in general can be classified into several types as follows:[20]

a) Product and package franchise that involves the grant right to operate a business pursuant to the franchisor's plan and trademark or service mark. Product are produced by franchisor and purchased by franchisee according to uniform specification. Common examples of such franchises are automobile franchises are automobile dealership, soft drink dealers and gasoline station

b) Package franchise essentially the same except that the franchisee produces the product or service according to the franchisor's specifications. Examples re fast food restaurants and convenience stores.

c) Business Opportunity Franchise that franchisor supply goods or designate supply goods to franchisee , who receive assistance in sales operations and usually actual sales outlets or locations already owned by the franchisor. This franchise

Due to the development of franchise business, according to the Report issued by Far East Asia Executive in the year 1983, various kinds of business modifications arise and can be classified into several categories, namely:[21]

a. Product Distribution Franchise:

The Franchisee acts just to distribute the products of his working partners with the area limitation, such as the Fuel Retailer of Caltex or British Petroleum.

b. Processing or Manufacturing Franchise:

The Franchisor only holds the role of "know-how" of a production process, such as the Coca-Cola Soft-drinks.

c. Business Format Franchise:

The Franchisor offers a standardized business package, and it concerns with the whole operations, including the procedure in producing the goods or services, the use of trademark or logo, quality control, operational guidelines, manpower training, and marketing strategy

a. One Sided Standard Agreement is an agreement whose contents are determined by the party having strong position in this agreement. This strong party is the one who deserves for the achievement.

b. Standard Agreement Specified by Government is standard agreement having the object on right of land (land title).

c. Standard Agreement Specified by Notary or Lawyer is the agreement whose concept has already been previously provided to meet the need of community requiring the assistance from Notary or Lawyer concerned. Ibid 45.

[19] Pattison, *International Business Portfolios: Establishing A Transnational Franchise,* (n 11) 1.04(8).

[20] ibid 1.04(4)-(5).

[21] Juajir Sumardi, *Aspek Hukum Franchise dan Perusahaan Transnasional (legal Aspects of Franchise and Transnational Company*), (Citra Adtya Bhakti 1995) 22.

and the like, such as the one occurring at the business of fast food restaurants, hotels and retailers. The samples are Mc Donald's, Kentucky Fried Chicken or Pizza Hut for restaurant, Hyatt, Shang-rila for hotel and Carrefour for retailer.

One important thing in Franchise Agreement is that the Franchisor himself or in cooperation with a financial institution frequently provides a fund to the Franchisee in order to be able to run the said franchise business, for example for the need of having a building. Meanwhile, the expenses required in franchise system commonly cover as follows:[22]

a) Royalty: - A payment by the Franchisee to the Franchisor is a compensation for the use of the Right of Franchisor.

b) Franchise Fee: - A payment to be made by the Franchisee to the Franchisor constituting the “Franchising Fee”, commonly made in a certain fixed amount and at the same time paid only once. The payment is made at the moment when the agreement will start or during the execution or signing of the agreement.

c) Direct Expenses: - The expenses to be paid directly in connection with the opening or the development of franchise business.

d) Rental Fee: - In the event that the Franchisor also provides the place for business, the Franchisee shall pay the Rental Fee for the said place to the Franchisor.

e) Marketing and Advertising Fee: - This fee arises because the Franchisor is the one who does the marketing and the advertising, therefore the Franchisee shall also participate to bear such a fee.

f) Assignment Fee: - It is the fee to be paid by the Franchisee to the Franchisor if the Franchisee transfers its business to another party, including the business constituting the franchise object.

D. The Aspect of intellectual Property law

Item-1 of Article-1 of Government Regulation No. 42/2007 defines that “Franchise is a special right owned by individual or enterprise against an association in which one of the parties is given the right to utilize and or to use the Right of Intellectual Property or invention or specific business characteristics owned by another party with a compensation based on the terms or conditions specified by the said other party in the scheme of providing and or selling the goods and or services.”

Intellectual Property has a significant role to the franchise agreement. Jill Mc Keough stated that:” Broadly speaking we can say that intellectual property is a generic term for the various rights or bundles of rights which the law accords for the protection of creative effort…”[23]

Mc Donald as franchisor has a bundles of rights of Intellectual Property. In the Mc. Donald Franchise Agreement, Copyright is related to the use of creation in the forms of logo, slogan, interior design lay-out, color composition or special characters, such as the doll of Randy Mc Donald, some layouts, manual book as well as the computer program as infrastructure and facility supporting the advertisement and operation of franchise business activities. Thus, there are more than one types of creation related to the franchise business. The logo

[22] ibid 25-6.

[23] Jill Mc Keough and Andrew Stewart, *Intellectual Property Right in Australia* (Butterworth1997) 68.

together with STPW shall be represented in the franchise business (Artice 18 Permendag No. 5/ M-DAG/PER/8/2012).

Law No. 28/2014[24] on Copyright can be used as a protection reference. 'Creation' means " the output of work of every creator in the specific form and it indicates its originality in the fields of science, arts and literatures" Creator is a person or several persons who jointly produce a creation based on the ability of the mind, imagination, adroitness, skill or expertise put into the specific form and has personal nature.

In this respect, there is a standard of copyright ability namely:[25] (1) originality; (2) creativity, and (3) fixation. The specific form is represented by the word 'fixation' meaning that a protection is given upon the materialization of idea, so that the said creation can be read, heard or seen. Copyright does not protect the idea. The word 'originality' refers that a creation should not be necessarily new, it may derive from the work creation of other party provided that its sources are mentioned and not just imitating the other existing creation. Further, creativity is represented by the phrase saying "based on intellectual personal creation and ."

Although copyright arise automatically but the government provides for the creation notification (hereinafter as Surat Pencatatan Ciptaan). The Letter of Creation Record is a primae facie evidence. Article 4 of Law No.28/2014 defines, "Copyright is the Exclusive Right that consist of economic right and the moral right. Its economic right is to obtain economic benefit from his creation, whereas the moral is right to have attribution and integrity of his creation.

In term of Patent, Mc. Donald might be protected by Patent for its machines with certain pressure and temperature as applied at the fast-food restaurant or even a business method applying computer media and internet is some countries as software related invention can be protected by a Patent.

Tthe Law No.13/2016[26] on Patent. Item-1 of Article-1 states, "Patent is the exclusive right given by the state to the inventor for his invention in the field of technology, in which for a certain period of time, carries out his aforesaid invention himself or gives his approval to other party to perform it." Therefore, the invention able to be given the Patent shall meet the patentability requirements, namely:[27] (1) Invention shall be new. (2) It shall contains the inventive steps, and (3) It can be applied at the industry. In addition such invention must be fulfill the provision of Article-9 of Law No.14/2001 that regulates non-patentable subject matters and does not fall under 'discovery ' subject to Article 4 the Law No. 13/2016.

The obtain of Patent follows "First to File Principle", meaning that the right of patent arises due to registration. The inventor oo the Patent Holder has the economic right and mor-

[24] Formerly Law Number 19 year 2002 on Copyright.

[25] Jened, *Penyesuaian Pengaturan Hak cipta Terhadap Persetujuann TRIPs(adjudjstment Copyright Regulation Towards TRIPs Agreement),* (Yuridika 2000) 28-31. See also in Jened,, *Hukum Hak Cipta (Copyright Law)* (Citra Aditya Bakti, 2014) quote from Earl W. Kintner and Jack Lahr, *An intellectual Property Law Primer* (Clarck Boardman 1983). 346-49.

[26] Formerly the Law Number 14 year 2001 on Patent.

[27] Jened, *Hukum Paten(Patent Law),* (Fakultas Hukum Universitas Airlangga, 2000) 34. See also in Jened, *Hak Kekayaan Intelektual: Penyalahgunaan Hak Eksklusif (IPR: Misuse Of Exclusive Right*) (Airlangga University Press 2007), 116-129.

al right The economic right to exploit his right through the License Agreement or the Right Assignment and the moral right as to be named of his invention.

Mac Donald as a franchisor has a number of trademark right such as for the name of Mac Donald, Mc. D., The big Letter "M"and its figurative element, and also the slogan " I am Loving It"

Trademark, as stipulated in Law No. 20/2016.[28] Trademark essentially is any sign that capable of distinguishing for trading goods and /or services.[29]The distinctiveness power can be obtained by fulfilling absolute grounds (Article 20 the Law No. 20/2016) [30] and relative grounds (Article 21 the Law No. 20/2016).[31] The new trademark law has already coveredthe international development indicates the presence of the Mark of Sound and the Shape as three dimensional mark the Color [32]

The right of trademark arises due to registration (under First to File System). The owner of the registered trademark has the exclusive right for a certain period of time to use the trademark himself or to give a permit to another party to use it. The exclusive right on trademark as the intangible asset provides the trademark owner ability to exploit his right.

The other subject which is also important is Trade Secret . . Regarding with the Mc Donald franchise the object of trade secret should include the recipe of fast-food, management skill, management product, marketing, business plan of the franchise business.

Under the Law No.30/2000 on Trade Secret. The Article-2 of this law states, "The protection scope of trade secret covers the production method, processing method, selling method or other information in the sector of technology and/or business having the economic value and not known by public". Based on the aforesaid provision, the elements of trade secret are as follows:[33] (1) The information exists. (2) Such information has the economic value due to its secrecy, and (3) Sufficient efforts have been conducted to keep that secrecy

Article-1 of Law No.30/2000 states, "The Right of Trade Secret is the right on all trade secrets arising based on this law."Protection of trade secret arises without registration and is given as long as its secrecy is maintained. The owner of trade secret has the economic right to lecense or assign his/her right and enjoy the economic compensation.

Another field also important in franchise business is the Industrial Design as stipulated under Law No. 31/2000 on Industrial Design. Mc Donald franchisor might enjoy exclusive right on its design starting from the kitchen ware, bathroom accessories, furniture, product packaging,

[28] Formerly the Law Number 15 year 2001 on Trademark.

[29] Jened, *Implikasi Persetujuan TRIPs Terhadap Perlindungan Merek (the implication of TRIPs Agreement Towards TrademarkProtection)* (Yuridika , 1998). 11. See also in Jened, *interface Hukum Kekayaan intelektual dan Hukum Persaingan (interface IP Law and Competition Law*(Rajawali Press 2013),201.

[30] Absolute grounds of trademark registration. Jened, *Hukum Merek Dalam Era Global Dan Integrase Ekonomi (Tredemak Law In The Globalization And Economi Integration Era)* (Prenada Media2015)…

[31] Relative Grounds of Trademark registration. Ibid…...

[32] ibid quote from Michael Hart, *Trademark Law*, (University of Technology Sydney 1997) 4-5.

[33] Jened, "Perlindungan Rahasia Dagang dalam rangka TRIPs (Trade Secret Protection in the Frame TRIPs Agreement ") in Yuridika Journal of the Law Faculty of Airlangga University,(1999)14,16-18.

Based onArticle 1 item 1 Law No. 31/2000 stating that “Industrial Design is a creation on the form, configuration or composition of lines or color or combination of them in three dimension or two dimension forms giving the aesthetical impression and is able to be materialized in three or two dimension patterns able to be applied to produce a product, goods, industrial commodities or handicrafts.” .

Thus the elements of Industrial Design are:[34] (1) Creation in the form of new shape, configuration or new composition line and colors. (2) Having aesthetical value, and (3) Able to be manufactured (mass product).

The Right of Industrial Design is the exclusive right given by the State (under the First to File System) to use,l icense or to transfer his/her right to other party.

According to Government Regulation No. 42/2007 Article 12 Paragraph (5) and (6), “The Validity Period of Franchise Agreement is 5 (five) years and can be extended for the same time.” In connection with the use of the Right of Intellectual Property, although there is a provision on extension on validity period of Franchise Agreement, the agreement in the use of its Right of Intellectual Property may not be extended longer than the protection period for its Right of Intellectual Property.

It means that the economic benefit of the Right of Intellectual Property for the Franchisor is until the maximum validity period of protection for its Rights of Intellectual Property and the Franchisee needs not pay for the royalty of the Right of intellectual Property already becoming the public domain. To make a strategy on this matter, the Franchisor usually makes various business tricks, for example, up-dating the technology already been patented, renewing various items of its esthetical creation protected by the industrial Design and other means.

In addition, there is a provision in Franchise Agreement that needs to be carefully observed, namely the prohibition of License Agreement. “A License Agreement is prohibited to contain a provision able to inflict the loss for the Indonesian economy or to contain a provision causing an unhealthy business competition as stipulated at the applicable rules of law”.

A case has ever occurred to the Mc Donald’s Franchisor .[35] who has asked for the Indonesian Franchisee to buy the potatoes from a company in Delaware, USA, appointed by the Franchisor. The said imported potatoes are the raw material for French Fries with the reason that the domestic potatoes have too high water content, so that they cannot be used. We can imagine how big our foreign exchange is going out and if that thing is done by many foreign franchisors, certainly the economic losses in Indonesia are inevitable.

In connection with the use of raw materials, Article 9 Pragraph (1) and (2) PP No. 42/2009 in regard to Article 16 PermendagNo. 53/ M-DAG/PER/8/2012 stipulate the “Franchisor and Franchisee shall prioritize using the goods and or materials produced domestically as much as possible as long as meeting the quality standard for the goods and services provided and or sold based on the Franchise Agreement’. This provision gets the impression as

[34] Jened, ‘Perlindungan desain Industri dan Rahasia Dagang (Protection of Trade Secret and Industrial Design)’ (Japan Institute of Invention and Innovation, 2000) 8-10.

[35] Todung Mulya Lubis dan insan Budi Maulana, Strategi bisnis di Bidang hak Cipta, Paten, Merek (Business Strategy in the Field of copyright, Patent and Trademark, LPIHM, Jakarta,1996, p. 45-48.

being too excessive for the need of Indonesia to protect the domestic businessmen and the small-scaled enterprises.

However, If we are not careful and meticulous in observing this provision, it can even be considered as a new trade barrier, enabling the Franchisor to convey this subject as a complaint at the WTO Forum.[36]

Moreover, in the effort to protect the weak party who usually is the Franchisee, the Government obliges the registration for the License Agreement as stipulated at:

a. Paragraphs (2) and (32) of Article 83 of Law No.28/2014.
b. Paragraphs (1) and (2) of Article - 72 of Law No. 14/2001.
c. Paragraph (3) of Article - 43 of Law No. 15/2001.
d. Paragraphs (1) and (2) of Article - 8 of Law No. 30/2000.
e. Paragraphs (1) and (2) of Article - 35 of Law No. 31/2000.
f. Paragraphs (1) and (2) of Article - 27 of Law No. 32/2000.

Upon this registration, the aforesaid License Agreement will bring the legal consequences to the third party, so that franchisee can be protected from franchisors having bad intention to the company. Registration for the License Agreement is at the Directorate General of Law and the Right of Intellectual Property, recorded at the General Register and then promulgated at Official Gazette.[37]

One important thing in this case is that the License Agreement, including the Franchise Agreement, is made based on Freedom of Contract. In practice, almost 90% (ninety percent) [38] of the Franchisors and Franchisees do not register their Franchise Agreement. This is understandable, considering the fact that the agreement basically is only applicable for the parties (privity of contract).

The need for registration arises when they need an evidence or exhibit and binding the third party when there is a potential of conflict. It shall also be remembered that at the License Agreement there is no transfer of ownership, so that the function of registration is deemed to be a too far intervention of the government.

However, almost all provisions of the developing countries in the world are typically similar like that, and even Mexico is much more strict with its regulation that the unregistered License Agreement is considered to be illegitimate and has no legal effect. [39]

E. The Aspects of Competition Law

The Franchise Agreement inherently can be observed as one of the forms of economic constraint (economic restrictive). It means that the national law in one country can sustain the relation arising from the Franchise Agreement in order to be in conformity with their legal provision standard for competition.

This is to guarantee that through the Franchise Agreement, the parties will not create any new trade constraints in contradiction to the law. In their various forms, the national law

[36] Jened, Interface *Hukum Kekayaan intelektual dan hukum Persaingan (Interface IP Law and Competition Law*,(Rajawali Press 2013), 343-45.

[37] This provisions is the state intervention to the business activity in order to oversee transfer of technology

[38] Jened, *Franchising in Development of Market Share in Indonesia, research Result* (n13) 68-73.

[39] Todung Mulya Lubis dan insan Budi Maulana, *Strategi Bisnis Di Bidang Hak Cipta, Paten, Merek (Business Strategy In The Field Of Copyright, Patent And Trademark*,(LPIHM1996) 61-66.

can prohibit the practice of price fixing, binding agreement (tying arrangement) related to non-feasible requirements on the purchase of products or equipment as conditions for the Franchise Agreement, territorial restriction, covenant not to compete and other actions of trade limitation.

In Indonesia, however, item-b of Article-50 of Law No. 5/1999 on Prohibition on Monopoly Practices and Unhealthy Business Competition stipulates the exception to put this law into effect that:

The exception of the provision of this law (Note from the Writer: The Law on Prohibition for Monopoly and Unhealthy Business Competition) is the agreement related to the Right of Intellectual Property, such as license, patent, trademark, copyright, industrial product design, integrated electronic circuitry and trade secret and also agreement related to franchise……..

This means that although there is an abuse / misuse of Franchise Agreement able to create monopoly or unhealthy business competition, they will not be covered by this Law. As a matter of fact, if it is connected to various competitive advantages owned by the Franchisor which can be used to dominate, this can establish the acts on monopoly and deceitful competition.

As commonly found in other countries, the competition rules will be related to several things as follows: [40]

a. Approval of foreign franchise agreement;

b. Limitation on royalty rates and fees;

c. The length of contract term;

d. control exerted by foreign franchise over the franchisee by means as such inspection;

e. Requirement that franchisor only the proprietary informal technology as knowhow at the expression in franchise agreement;

f. Requirement that the right to all invention and improvement revert back to the franchisor;

g. Requirement that the franchise by all the equipment surplus or raw material exclusively from one particular source;

h. Requirement that restrict the franchisee to operate exclusively the franchisor business;

i. Requirement that all dispute be submitted to foreign court;

j. Requirement that the law of the franchisor govern the term of franchise agreement;

k. The language which contrct is written;

l. Any other aspects of the franchise agreement.

2.c. Provisions on Transfer of Technology and Royalty Limitation

The aspect causing many problems is the presence of rules of law on supervision on transfer of technology and payment of royalty, especially for the foreign Franchisor. Supervision can be carried out through the requirement that the Franchisee receives the payment of license for know-how or giving the Franchisee the ownership upon the know-how after a certain period of time.

[40] Willianm h. Bolen, *Contemporary Retailing,* (Prentitice Hall 2000) 165.

Further, there is also a regulation that Central Bank or similar institution tightly regulates the total limit of money for Royalty paid by the local Franchisee. In the year 1980s the Indonesian Government has already specified the guideline on the level of royalty payment at the range of 0.5% or lower. This provision has been no longer valid, because it will cause the Franchisor reluctant to continue his franchise business.

F. The Legal Aspect of Export, Import and Tax Law

Although the Franchise Agreement is established based on the Freedom of Contract, and this will be meaningless if there is a limitation on export and import. The Franchiser shall adhere the provisions on tariff of import, import quota, export permit requirements, and the similar limitations that might bring bad impact to the smooth flow of franchise product distribution. Including here in, there is also a rule of law concerning with the outgoing fund to or incoming fund from foreign country.

There are several things need to be considered, either in his country of origin or in the country in which his franchise business will be developed, among other are as follows:[41]

a. The application and level of tariff of the Income Tax.

b. The application of the deferred tax for the Royalty not yet been paid.

c. The opportunity to receive the income from the tax balance.

d. Expansion of calculation that may be obtained from foreign tax.

e. The tax to be borne by foreign executive workers.

f. The tax on Dividend and possibility to transfer the foreign exchange.

g. Tax from the transfer of profit.

h. Calculation from Royalty payment by the Franchisee.

i. Tax on the differed Interest when the loan is extended.

3. Implication of Trademark Franchising for Market Development.

It is different from the franchise in general characteristics.

3. Conclusion

There was a a change in investment form of Mc Donald which was initially indirect investment due to investment restrictions including negative list of fast food resto to joint venture company in line with Indonesia app ratification of the WTO subsequent with Government Regulation Number 20 year 1994.and opening the Negative list of retail business including fast food restaurant.

Finally BR withdrawn the lawsuit and appeared both parties have settled for peace outside the court.However this case influence the government policy, among other as determined in Regulation of Ministry of Trade (Permendag No. 5/M-DAG/PER/8/2012) that The franchise agreement that terminated unilaterally by the franchisor before he expiration franchise agreement expires, the franchisor can not appoint new franchisee in the same area before agreement is reached in the settlement of disputes by the parties or until a court decision finalized.

In the establishment of a franchise agreement, not only that it is applied what is agreed by the parties in accordance with the principle of freedom of contract (Article 1338 of the

[41] J. E., Pattison, *International Business Portfolios: Establishing A Transnational Franchise,* (n 11) 1.03 (11)-1.04.

Civil Code), but also it is governed by Government Regulation (PP No. 42/2007 with regard Regulation of Ministry of Trade Permendag No. 53/M-DAG/PER/8/2012 and Regulation of Ministry of Trade Permendag No. 57/M-DAG/PER/9/2014. These are the legal frame work of franchise agreement creation and of the government permit of franchise establishment.

The idea of trade mark franchising focuses on the permit of using the trademark in the scheme of granting the permit to sell the products of the Franchisor in a certain validity period and in a certain territory limit, in a market under non-competitive nature. There are some drawbacks of these regulations, but it is commendable that the government has political will to ensure the protection of domestic franchisee when dealt with foreigner in franchise agreement.

Lastly, it rings true a statement that regulating the business world, including franchise"… is like holding a glass, it shouldn't be not too tight, it will hurt you, nor should it be too loose it will fall and break into pieces. " This means despite that government's intervention is justified in the economic activities through law, regulation and policies; it shall neither hurt the economy by causing stagnation, nor by causing uncontrollable situations.