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JURIDICAL ANALYSIS ON THE LEGAL CHOICE CLAUSE AND DISPUTE SETTLEMENT IN THE FRANCHISE AGREEMENT

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Abstract- Collaboration in the trade sector both at the national and international levels in the form of a franchise looks simply, but behind it, there are various problems that require attention from both the public or parties as well as from the Indonesian government. This is because the franchise agreement conducted by the parties often involves foreign parties who have a different legal system from Indonesia. This situation has the potential to create a conflict of law. Therefore, this study aims to provide legal solutions to disputes that may occur between the franchisor and the franchisee so that neither parties is burdened because of the lack of laws covering it. Normative legal research is used to analysis the problem of this research. The data source of this research uses primary legal materials and secondary legal materials related to clauses in the franchise agreement. Likewise, for the settlement of disputes on an agreement that has not yet determined the choice of law, several theories in international civil law can be used, such as the lex loci contractus theory, the lex loci solutionis, the proper law of contract, and the theory of the most characteristic connection to find laws that should apply (lex cause) For the settlement of legal disputes (conflict of law), especially in franchise agreements, the settlement of disputes does not have to go through litigation or court but can be resolved through Alternative Dispute Resolution (ADR) including arbitration institutions, which have the advantage of solving them, namely efficiency (cost and time).

Keywords: Clause, Dispute Resolution, Franchise Agreement, Legal System

I. INTRODUCTION

Collaboration in the field of trade both at the national and international levels in the form of a franchise looks simple, where the process of running this business is only seen as a business system owned by the franchisor that gives permission or license to franchisees to run a business using Intellectual Property Rights (IPR) in the form of names, logos, and brands or inventions or business characteri`stics owned by the franchisor. However, behind all that there are various problems that need attention from the government and society. According to (Imanullah, 2008) that there are several issues that need more attention, such as political, social, cultural, and legal issues. Legal factors make a significant contribution to the implementation of franchising in Indonesia. Both the franchisor and the franchisee will be faced with legal issues, especially regarding the provisions in the franchise agreement such as the rights granted to the franchisee and the obligations of the franchisee.

Likewise, issues related to business formalities and the implementation of franchise business activities, the parties must pay attention to problems such as the provisions that need to be obeyed in establishing a franchise business, labor issues, profit sharing related to taxation, and problems related to the choice of law and settlement of disputes between them if there is a conflict/legal dispute in the future. In order for the franchise agreement to have binding force, the agreement must be made in writing and contain the principles of the agreement regulated in the prevailing laws and regulations in Indonesia as stipulated in Article 4 Paragraph (1) Government Regulation Number 42 of 2007 concerning Franchising which states that "the franchise is carried out based on a written agreement between the Franchisor and the franchisee with due observance to Indonesian law". Likewise in the provisions of Article 5 Paragraph (1) of the Regulation of the Minister of Trade Number: 53/M-DAG/PER/8/2012 concerning Franchising which states that: "Franchising must be based on a Franchise Agreement which has equal legal standing and the law of Indonesia applies to them".

The franchise agreement is an example of written agreements (Sutedi, 2008). It is a business that is lively and growing rapidly in Indonesia. The franchise business system was first introduced in the 1850s by Isaac Singer, a Singer sewing machine maker, when he wanted to increase the distribution of his sewing machine sales. Then, Isaac Singer's way of business was followed by John S. Pemberton, who was the founder of the Coca-Cola beverage company in the United States. However, according to other sources that followed in Isaac Singer's footsteps, it was not Coca-Cola but the United States automotive industry, namely General Motors Industry in 1898 (Serfiyani, Purnomo, & Hariyani, 2015). In Indonesia, the franchise business became known in the 1950s with the emergence of motor vehicle dealerships through license purchases and the second stage of development around the 1970s with the start of the plus license system in which the franchisee did not only act as a dealer (distributor/agent) but also had the right to make the product.

The development of the franchise business in Indonesia is currently quite rapid and involves foreign franchisors or foreign franchises such as culinary franchises, namely: McDonald's, Kentucky Fried Chiken (KFC), Pizza Hut's, Starbucks, Dunkin Donnuts, Swensen, Burger King, and Seven Eleven and domestic franchisors or local franchises, such as Es Teller 77, which is a pioneer of local franchise operating systems in Indonesia, Kebab Turki Baba Rafi, Bakso Malang, Bebek Bali, California Fried Chiken (CFC) owned by domestic company PT. Pioneerindo, and recently there were modern retail/retail outlets such as Indomaret, Alfamart, and others. Likewise, there were also several television shows in Indonesia developed in the form of a franchise, such as talent scouting programs through television: Indonesian Idol, X-Factor, Indonesia's Got Talent, The Voice, Akademi Fantasi Indonesia, Master Chef, Miss World, Miss. Universe, got to dance, and others.

Franchising is the most preferred business model for business people because of its effective method of supplying a product to the market by granting the right to copy intellectual property owned by the franchisor, in the form of trademarks, products, and confidential information by providing support to franchisees in the form of training, marketing strategies, advertising, and sales arrangements. Slowly but surely franchising has become a big trend in the strategy of accelerating economic and business growth.

Franchising is a business based on a contractual relationship, which is a relationship based on a written contract or agreement between the franchisor and the franchisee. So that the substance or material content of the agreement must contain clauses which, when accumulated into one or all of them, are contained in a franchise agreement, both international and domestic, generally covering general provision, conditions precedent, franchise grant, limitation of franchise/intellectual property right, franchise price and payment terms, services by franchisor, standart and uniformity of operation, marketing and advertising complain, training, exclusivity, terms, premises, rights of inspection and audit, report procedures, non-competittion, confidentiality/non disclosure, government approval, employees, insurance, indemnification, taxes, transfer of rights, independent contractors or no agency, events of default/non performance, extention of agreement, termination of agreement, forum and

governing law, modification and waiver, damages, force majeure, severability of provisions, binding authority, settlement of disputes, cost and fee, noties, merger/entire angreement (Sutedi, 2015).

In the Regulation of the Minister of Trade Number: 53 / M-DAG / PER / 8/2012 of 2012 concerning Franchising in Appendix II, it is stated that the things that must be in the Franchise Agreement contain at least:

1. Names and addresses of the parties;
2. Types of Intellectual Property Rights, namely Intellectual Property Rights of Franchisor, such as brand and logo of outlet/outlet design company, management/marketing system, or franchised cooking spices;
3. Business activities, namely activities that are agreed upon, such as retail trade, education, restaurants, apothecaries, or workshops;
4. Rights and obligations of Franchisor and Franchisee:
    a. The Franchisor is entitled to receive fees or royalties from the Franchisee, and thereafter the Franchisor is obliged to provide continuous guidance to the Franchisee;
    b. The Franchisee has the right to use the Intellectual Property Rights or business characteristics of the Franchisor and furthermore the Franchisee is obliged to maintain the code of ethics/confidentiality of IPR or business characteristics provided by the Franchisor;
5. Facility assistance, operational guidance, training, and marketing provided by the Franchisor to the Franchisee;
6. Business area, namely an area boundary given by the Franchisor to the Franchisee to develop the franchise business;
7. The term of the agreement, namely the time limit for starting and ending the agreement;
8. Procedure for payment of compensation, namely the procedure/provisions including the time and method for calculating the amount of compensation such as fees or royalties;
9. Dispute resolution, namely the determination of the place/location for dispute resolution, such as through the District Court where the company is located/domiciled or through Arbitration using Indonesian law;
10. Procedure for extension, termination of the agreement;
11. Guarantee from the Franchisor to continue to carry out its obligations to the Franchisee;
12. The number of outlets that will be managed by the Franchisee.

Based on the provisions of Article 5 of Government Regulation Number: 42 of 2007 concerning Franchising, stipulates that the franchise agreement must contain a clause at least names and addresses of the parties, types of Intellectual Property Rights, business activities, the rights and obligations of the parties, assistance, facilities, operational guidance, training, and marketing provided by the Franchisor to the Franchisee, business area, duration of the agreement, reward payment procedure, ownership, change of ownership, and rights of heirs, dispute resolution, and procedures for extension, termination, and termination of the agreement.

Based on several descriptions regarding the clauses that must be in every franchise agreement as described above, it shows that one of the clauses that must exist is the clause concerning: forum and governing law and settlement of disputes. However, it should be understood that in general the clauses in the franchise agreement have been designed by the franchisor based on a standard agreement that has been prepared and made by the franchisor, so that the other party, namely the franchisee, is not given the opportunity to participate in conveying his interests directly in the agreement. This fact is in line with the views of Sutan Remi Sjahdeini, who formulated a standard agreement as an agreement in which almost all of the clauses have been standardized by the user and other parties basically do not have the opportunity to negotiate or request changes. Based on this research, the

researcher found the fact that in the franchise agreement in Indonesia there are still provisions or clauses that give the franchisor a stronger position than the position of the franchisee, which causes an unbalanced position, or in other words, an agreement that does not bear justice, especially the principle of distributive justice, with the principle of "the greatest equal principle" which states that everyone must have the same rights on the basis of the broadest freedom, as broad as the same freedom for all people (the principle of equal rights), and that has the potential to occur. conflict or legal disputes in running a franchise business, so that it deserves to be understood and analyzed in more depth regarding the forum choice clauses and legal jurisdiction and dispute resolution. Hence, this study aims to provide legal solutions to disputes that may occur between the franchisor and the franchisee so that neither parties is burdened because of the lack of laws covering it.

Based on this, two problem formulations can be constructed, first, how to resolve disputes against a franchise agreement that has not yet determined the legal choice, and second, what the form of dispute resolution in a franchise agreement is.

II. METHODS

Legal research is basically a scientific activity based on methods, systematics, and certain thoughts, which aim to study one or several certain legal phenomena by analyzing them and then seeking a solution to the problems that arise in these phenomena (Soekanto, 2003). This research is a type of normative legal research. The data used in this research is library research and data in the form of legal materials. Considering that this research is for academic and practical purposes, it is related to its substance that this research constitutes normative legal research and doctrinal research (Marzuki, 2005). Normative legal research is used in the analysis of this problem because the distinctive character of legal science itself is legal normative, while doctrinal research is used to analyze legal principles (contracts), legal literature, the views of scholars who have high qualifications (doctrines) and comparisons of law. The data source of this research uses primary legal materials and secondary legal materials related to clauses in the franchise agreement, namely choice of law and dispute resolution. Meanwhile, the technique of collecting legal materials is carried out by reviewing and studying books, documents, and other related research results. Analysis of legal materials used is by taking inventory as well as reviewing research from literature studies or secondary data studies.

III. RESULTS AND DISCUSSION

The term "franchise" in the formal juridical terms was originally found in the provisions of Article 27 of Law Number 9 of 1995 concerning Small Business, which regulates the arrangement of business partnerships between small businesses and medium and large enterprises, however, this law has been revoked and replaced with issued Law Number: 20 of 2008 concerning Micro, Small and Medium Enterprises, as contained in the State Gazette of 2008 Number 93 dated 4 July 2008. In Article 26 of Law Number: 20 of 2008 it is stated that the partnership is carried out in:

a. Plasma nucleus;
b. Subcontracting;
c. Franchising;
d. General trading;
e. Distribution and agency; and
f. Other forms of partnerships, such as profit sharing, operational cooperation, joint ventures, and outsourcing.

After the issuance of Law Number 9 of 1995 concerning Small Businesses, the government issued Government Regulation Number 16 of 1997 concerning Franchising, with the aim of expanding job opportunities and business opportunities, as well as an effort to improve the implementation of technology. In addition, this government regulation is also intended to provide business certainty and legal certainty for businesses running franchises. Furthermore, in the framework of implementing Government Regulation Number 16 of 1997 concerning

Franchising and to increasing the role and participation of the public in the franchise business, several Decrees of the Minister of Industry and Trade of the Republic of Indonesia concerning procedures for implementing franchising, such as the Decree of the Minister of Industry and Trade Number: 259/MPP/Kep/7/1997 dated July 30, 1997 concerning Provisions and Procedures for Franchising, and most recently in the form of Regulation of the Minister of Trade of the Republic of Indonesia Number: 57/M.DAG/PER/9/2014 dated 17 September 2014 concerning Amendments to the Regulation of the Minister of Trade Number: 53/M-DAG/PER/8/2012 concerning Franchising. The legal basis regarding the franchise arrangement turns out to develop along with the development of franchising in Indonesia, so that on the basis of considerations to further improve business order by means of Franchising and increasing national business opportunities, the Indonesian Government issued Government Regulation Number 42 of 2007 concerning Franchising as a substitute for Government Regulation Number 16 of 1997 concerning Franchising.

The definition of franchise according to Article 1 paragraph (1) of Government Regulation Number: 16 of 1997 concerning Franchising which states that a franchise is: "special rights owned by an individual or business entity against a business system with business characteristics in order to market goods and/or services that have been proven successful and can be utilized and/or used by other parties based on a franchise agreement ". franchise is a system of selling products or services to end consumers under which the brand owner (franchisor) grants a person or company the right to do business under a specific brand, name, process, and methods. predetermined within a certain time frame and covering a specific geographic region.

Based on these two definitions, it can be concluded that the franchise consists of the following elements (Serfiyani et al., 2015):

1. Franchising is a business activity based on an agreement between a franchisor and a franchisee;
2. The business relationship between the franchisor and the franchisee is a business partnership so that the positions of both are equal;
3. The franchisor grants a license to the franchisee to use or utilize the franchisor's IPR;
4. The franchise agreement, although containing an IPR license, also contains a license to use the franchisor's business system, which includes management, finance, and marketing systems;
5. The franchisor is obliged to provide technical, management, financial, and marketing support in order to assist the smooth running of the outlet business managed by the franchisee;
6. Franchisor determines the number of fees that must be paid by the franchisee;
7. Franchising is classified in the business/trade sector so that its regulation and supervision fall under the authority of the Minister of Trade.

Paying attention to the provisions of Article 4 Paragraph (1) Government Regulation Number 42 of 2007 concerning Franchising which states that franchises are held based on a written agreement between the franchisor and the franchisee with due observance to Indonesian law, furthermore in Article 4 Paragraph (2) it states that in the agreement as referred to in paragraph (1) is written in a foreign language, the agreement must be translated into Indonesian. Regarding the franchise agreement originating from a foreign country, wishing to conduct a franchise business in Indonesia, the agreement must comply with Indonesian law (especially in Book III of the Civil Code on Engagement). As described in Article 1319 of the Civil Code states "All agreements, whether they have a special name, or those that are not known by a specific name, are subject to the general regulations contained in this chapter and the last chapter".

The inclusion of a franchise agreement in the real of contract law in Indonesia cannot be separated from the open nature of book III of the Civil Code, in which the open nature is born from the principle of contract law, namely the principle of freedom of contract. The freedom to contract is a principle that was born in the era of the *laisseiz faire* flow which in the economy was pioneered by Adam Smith, in order to prevent excessive government interference and to

become a form of worship of individualism (Ridwan, 2003). The development of the franchise business has shifted the position of the principle of freedom of contract which was originally a manifestation of justice for the interests of the parties based on a mutually beneficial agreement which in development only served as a mask for the strong to suppress the weak.

Based on the principle of freedom of contract, people may or may not make agreements. However, the parties who have agreed to make an agreement are free to determine what can and cannot be included in an agreement, including regulating the choice of law because the agreement made by the parties will bind them as law (Sumampouw, 1968), as meant by the provisions of Article 1338 of the Civil Code which reads “all agreements made legally are valid as law for those who make them. The agreements cannot be withdrawn other than by agreement of the two parties, or for reasons which are stated by law to be sufficient for this. Agreements must be executed in good faith.”

The implementation of this principle creates a vital space for the application of the consensual principle, which implies a balance of interests, risk sharing, and bargaining position. However, expectations that this balance will occur in a franchise agreement are sometimes blocked or conflicts occur during the implementation of the franchise agreement so that these expectations are not achieved. This is due to a deviation between *das sollen* (things that are regulated in regulation) and *das sein* (a concrete event that occurs) which results in default, where there is one party who does not carry out its obligations as stated in the franchise agreement, for example, the franchisee does not pay the franchise fee on time, does things that are prohibited, performs services that are not in accordance with the franchise system, or the franchisor does not provide guidance to the franchisee, does not want to help the franchisee in trouble when doing his franchise business, and other actions that cause conflict or dispute. This description provides an illustration that the franchise agreement is a form of the contractual legal relationship, where according to law both have rights and obligations that must be fulfilled. However, if there is a dispute or dispute, a settlement is required in the form of a forum and governing law and settlement of disputes.

The Settlement of Disputes on Franchise Agreement that has not yet determined a legal choice

Based on the description of legal regulations governing franchise business in Indonesia, it turns out that none of the regulations explicitly determine a clear choice of law for a franchise agreement except for the provisions contained in Article 4 Paragraph (2) Government Regulation Number 42 of 2007 concerning Franchising, which states that, "in the agreement as referred to in paragraph (1) written in a foreign language, the agreement must be translated into Indonesian". In fact, this provision is not in line with the reality of the development of the franchise business, which does not only come from local franchises but also the entry of a number of foreign franchises from various countries. In this situation, it is assumed that this is where there are weaknesses in the legal regulations governing franchise businesses in Indonesia that do not clearly define franchise agreements involving foreign parties so that the potential for causing smuggling/abuse of the law (Gautama, 1998). The main weakness in this legal regulation (Government Regulation Number 42 of 2007 concerning Franchising) exists because the legal regulations governing franchising in Indonesia are only at the level of Government Regulations and are implemented by Ministerial Regulations whose scope of regulation is not as broad as the content of the law. Likewise, government regulations are only implementing statutory provisions, as well as government regulations are statutory regulations that are purely administrative in nature

Thus, it is clear that the function of government regulation should be to carry out further arrangements to implement the law properly, whether expressly stated or not. And it is not right that government regulations are used to regulate franchise businesses which should be regulated by law because the material contained in law clearly regulates the material of human rights, rights and obligations of citizens, and other broader materials as intended by Article 8. Law Number 10 of 2004, Article 10 of Law Number: 12 of 2011. Law Number: 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Formation of Legislative

Regulations. So according to A Hamid S Attamimi (in Soeprapto, 1998), the characteristics of government regulations are:

1. Government Regulations cannot be established beforehand without the parent law;
2. Government regulations cannot include criminal sanctions if the law concerned does not include criminal sanctions;
3. The provisions of the Government Regulation cannot increase or decrease the provisions of the law concerned;
4. Government Regulations can be established even though the relevant statutory provisions do not explicitly require them;
5. The provisions of Government Regulations contain regulations or a combination of regulations and stipulations.

Furthermore, several Regulations of the Minister of Trade which regulate franchising, when viewed from a strength perspective, are binding, based on the provisions of Article 8 Paragraph (2) of Law No. 12 of 2011 jo. Law Number 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Formation of Legislative Regulations which states "Legislation as referred to in paragraph (1), is recognized for its existence and has binding legal force as long as it is ordered by a higher level of legislation or is established based on authority." This means that when the Minister forming a Ministerial Regulation without an order from a higher level statutory regulation, then the Ministerial Regulation is still categorized as a statutory regulation, even though in the doctrine and constitution there is no known type of statutory regulation, so that from the perspective of statutory science especially in relation to statutory regulations as hierarchical legal norms, lower legal norms seek their validity at higher legal norms as stated by Hans Kelsen (Jimly & Safa'at, 2006). Such conditions cause confusion and legal uncertainty in franchising in Indonesia, especially regarding the choice of law and settlement of disputes in a franchise agreement.

This problem is assumed to require an effort guided by international civil law in determining the choice of law in a franchise agreement when the franchise agreement involves a foreign party with a different legal system (there are foreign elements and local elements) with legal regulations or legal systems adopted in the franchise agreement. Indonesia. In other words, international business relations are activities aimed at obtaining profits carried out by business actors that contain foreign elements (crossing national borders/involving more than one legal system of different countries). In international business relations, agreements/contracts are commonly used as a means of obtaining legal certainty, it should be expressly stated in an agreement with the words "This contract shall be governed by the laws of the Republic of Indonesia", but in reality, the parties do not provide a legal choice strictly because Indonesian law has not regulated it clearly, except only states that "agreements written in a foreign language, must be translated into Indonesian".

According to (Gautama, 1998), the legal choice is the freedom given to parties who agree to choose their own laws to use. So that the parties get the freedom to choose which law is treated for their consent. What is meant by "party" in an international contract is a legal subject that can make and sign an international (written) contract (Gautama, 2002). The provision of a choice of law in an international contract begins with the recognition of the concept of freedom of contract in civil law. For Indonesia, the principal or principle of freedom of contract is regulated in Article 1338 of the Civil Code, which gives the parties the freedom to freely make the contents of the contract based on their desired interests. However, this freedom is limited by the provision that "must have a lawful cause", which is not against the law, public order, and morals, based on Article 1337 of the Civil Code (as a source of Indonesian International Civil Law law). Sudargo Gautama further emphasized that although the choice of law factor is a form of the principle of freedom of contract, this freedom to choose does not mean arbitrary where the choice of law recognizes limits in its application (Gautama, 1976). The extent to which the limits of choice of law are applied is the task of modern choice of law, namely to further analyze the extent to which choice of law can be recognized. Sudargo

Gautama also argued that the choice of law must be limited so as not to violate public order, compelling provisions, and not causing the smuggling of laws. This principle gives the parties the freedom to enter into agreements and form agreements according to their own will as long as they do not exceed the limits set by the coercive rules of the legal system concerned. According (Fuadi, 2002) generally, there are types of legal choices, including:

1. Choice of law in this case the parties determine for themselves in the contract which law applies to the interpretation of the contract;
2. Choice of jurisdiction where the parties determine for themselves in the contract which court or forum applies in the event of a dispute between the parties in the contract;
3. Choice of domicile, in this case, each party makes an appointment of where the legal domicile of the parties is;

However, in practice, if there is a dispute over an international business contract where there is no choice of law and is related to two different legal systems, to resolve it, the lex cause (the law that should apply) must first be determined or the process of determining it is carried out or it depends on the judge who determines the decision. based on which doctrine or theory to determine the lex cause. Furthermore, (Putra, 2000) states that there are several theories in international civil law that can be used to find laws that should apply to the settlement of contract disputes where there is no choice of law. The theory is as follows:

1. The *lex loci contractus* theory, according to this theory, the applicable law for the settlement of contract disputes where there is no choice of law is the law in the place where the contract was made/created/born. This theory is a classical theory that is easily applied in the practice of modern international contract formation;
2. The *lex loci soluntionis* theory, according to this theory, the applicable law for the settlement of contract disputes where there is no choice of law is where the agreement is executed, not where the contract is signed, and this theory is used to determine the legal consequences of an agreement;
3. The theory of the proper law of contract, according to this theory, the law that applies to the settlement of contract disputes where there is no choice of law is the state law that most naturally applies to the contract, namely by finding the center of gravity or point the closest link to the contract;
4. The theory of the most characteristic connection, according to this theory, the applicable law for the settlement of contract disputes where there is no choice of law, is the view/analysis of the party making the most characteristic achievement. The advantage of this theory is that with this theory some difficulties can be avoided, such as the need to classify the *lex loci contractus*, or *lex loci soluntionis*, in addition to the promise of legal certainty earlier in this theory.

From the four theories, it can be concluded that submission of dispute resolution can be done both in Indonesia and in other countries. So the parties can choose to file the case based on an agreement between the parties who made an agreement.

Forms of Dispute Resolution in a Franchise Agreement

In community life, conflicts or disputes often occur, as well as for these disputes, it has also been regulated regarding ways of dispute resolution, either through litigation or non-litigation channels. These methods according to (Apeldoorn, 1986) are related to the justice that is to be achieved or realized as Aristotle's view in his work "Rhetorica" recognizes two kinds of justice, namely distributive justice and commutative justice. In relation to the justice that is intended to be manifested in the resolution of disputes that occur in the problem of a franchise agreement, then a way to resolve the dispute is sought through litigation to find distributive justice. Meanwhile, dispute resolution through non-litigation means to find commutative justice.

In essence, the law contains ideas or concepts, thus it can be classified as something abstract. This abstract group includes ideas about justice (gerectightheit), legal certainty (rechtmatigheid), and legal utility (zwechmatigheid) or *doelmatigheid* or utility. The existence

of law in various fields in society is expected to be able to function as a means of dispute resolution, a means of social control, social engineering advice, as well as a means of distributing justice (Magnis-Suseno, 1987). Among the various legal functions, the function of law as a means of dispute resolution, which in this case is represented by the court, plays an important role in improving the economy or supporting the prosperity of the nation. In essence, the law only emerges to be questioned if there is a violation of the rule of law, conflict, sobriety, or "unlawful" (unlaw, onrecht).

In general, the public is of the view that disputes/conflicts can only be resolved through court channels, even legal professionals have the same view. So that until now, many of them are just fixated on choosing the litigation route and forgetting or neglecting the methods of dispute resolution through non-litigation channels. But in reality, the litigation / judicial pathway is not the only way to resolve disputes/conflicts, as the view of Jacque M. Nolan-Haley in (Widnyana, 2014) states that Tool of Disputes Resolution, It is stated that his main purpose of writing the book is "…. to disabuse you of the "one size fits all" litigation mentality and to help you appreciate alternative dispute resolution (ADR). ADR is an umbrella term which refers generally to alternative to court adjudication of disputes such as negotiation, mediation, arbitration, mini-trial and summary jury trial".

In addition, dispute resolution carried out through court forums is the correct and applicable route, but considering the nature of the franchise agreement, especially the business format franchise, dispute resolution carried out through court forums will become an "open-ended" forum which will lead to several agreements which is contained in the franchise contract which should be a secret between the franchisor and the franchisee will be known to the public. Thus, alternative dispute resolution becomes the most effective and efficient way to resolve disputes or conflicts of interest and fulfill needs (Rachmadi, 2013). To avoid disclosing the contents of the agreement to the public if dispute resolution is carried out through a litigation forum, it is better if the dispute resolution related to the franchise agreement can be resolved within the framework of Alternative Dispute Resolution (ADR), including arbitration institutions.

The method taken to resolve business disputes other than the judiciary is through a method called negotiation, mediation, and arbitration. These three main types of dispute resolution are alternatives to court proceedings and are popularly referred to as Alternative Dispute Resolution (ADR) (Widnyana, 2014). Alternative dispute resolution is as stipulated in the provisions of Article 1 point 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (UU.APS), which determines several forms of dispute resolution outside the court, namely: consultation, negotiation, conciliation mediation, or expert judgment.

1. Negotiation

Negotiation is a process of dispute resolution that takes place voluntarily between parties who have a problem or case by meeting face to face to obtain an agreement that is acceptable to both parties. The arrangement regarding this negotiation is as stipulated in Article 6 Paragraph (2) Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, so it can be concluded that negotiation is a way of settling disputes outside the court conducted by the disputing parties or their proxies directly through negotiation or bargaining so as to produce a mutual agreement.

2. Mediation

Mediation is a process of dispute resolution between parties carried out with the help of a neutral and impartial third party (mediator) as a facilitator, where the decision to reach an agreement is still taken by the parties themselves, not by the mediator. The provisions regarding this mediator are regulated in Article 6 Paragraph (3), Paragraph (4), Paragraph (5) of Law Number 30 Year 1999 concerning Arbitration and Alternative Dispute Resolution, regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Courts. Mediation based on the procedure is divided into two parts (Witanto, 2010) namely:

1. Mediation conducted outside the court, based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution;

2. Mediation conducted in court (Article 130 HIR / 154 R. Bg jo. Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Courts.

   From the description, it shows that the mediator plays a very important and decisive role in resolving a dispute, but decision making is not in the hands of the mediator but in the hands of the disputing parties, because the mediator may only provide suggestions for a resolution to the parties and assist the parties. parties to achieve results and convince them and in order to perform well. The peace agreement resulting from the mediation process will then be confirmed as a peace deed that contains executorial power (executorial kracht), as is the power of a judge's decision which has permanent legal force (inkracht van gewijsde).
3. Arbitration

The definition of arbitration is regulated in Article 1 number 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which defines as the settlement of a civil dispute outside a public court based on an arbitration agreement made in writing by the parties concerned. So what is meant by an arbitration agreement is an agreement in the form of an arbitration clause that is contained in a written agreement made by the parties before the dispute arises, or a separate arbitration agreement made by the parties after the dispute arises, as stipulated in Article 1 point 3 of Law Number: 30 of 1999. The arbitration agreement which is commonly known as the "arbitration clause" is an addition that is placed in the main agreement. That is why it is called an "assessor" agreement. Its existence is only in addition to the main agreement, and in no way affects the fulfillment of the main agreement. Furthermore, Harahap (2001) states that an arbitration agreement is a contract, and as an agreement, the arbitration *callusula* is a law for the parties making it (pacta suntservanda). And if the meaning of the pacta *suntservanda* is related to the provisions of Article 1338 of the Civil Code, and is linked to an agreement, there are several very essential principles to be applied to determine the authority of arbitration jurisdiction:

- Each agreement is binding on the parties;
- Its binding power is similar to that of the statute;
- Can only be withdrawn by mutual agreement of the parties.

IV. CONCLUSION

Based on the discussion in this study, the conclusions are as follows:

1. As for the legal regulations governing franchise business in Indonesia, it turns out that there is no single rule that explicitly regulates the choice of law in resolving conflict of law, but because the franchise agreement is a contractual agreement, both parties Franchisors and franchisees can make a choice of law based on the principle of freedom of contract as regulated in Article 1338 of the Civil Code and if a franchise agreement has not or does not specify a choice of law clause In resolving the dispute, several theories in international civil law can be used, such as the *lex loci contractus* theory, the *lex loci solutionis*, the proper law of contract and the theory of the most characteristic connection to be able to find the law that should apply (lex cause) for settlement of contract dispute that has no choice of law;

2. Regarding legal disputes (conflict of law), especially in franchise agreements, the dispute resolution does not have to go through litigation or court, but can be resolved through alternative dispute resolution institutions including arbitration institutions that have advantages in efficiency (cost and time) in dispute resolution, and can produce a mutually beneficial decision, as regulated in the provisions of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (UU. AAPS).

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