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THE LEGAL PROTECTION FOR THE CONSUMER OF BUSINESS
OPPORTUNITY VENTURES IN INDONESIA

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ABSTRACT

The understanding about Business Opportunity Ventures in Indonesia has not been entirely in accordance with what is indeed offered as from the origin country. The lack of understanding makes the business fraught with deception and/or injustice in doing business. The purpose of the study is to determine the form of legal protection for business opportunity ventures. The focus of the study discusses the means of legal protection for the consumer. The result obtained was legal protection for the consumer of Business Opportunity Ventures in accordance with the Article 1338 BW. In this protection, an agreement was applicable as the Law for the parties that made it or in its doctrine was *Pacta Sunt Servanda*. The parties must carry out their respective achievement if the parties did not meet the achievement, then the other parties could demand and take the legal effort through the dispute resolution agency which has been agreed in the agreement.

INTRODUCTION

Business Opportunity in Indonesia has grown and has assisted the development of the economy in Indonesia. In 2016, 63% of 698 franchises and local Business Opportunity were developed in Indonesia (Azzura, 2016). According to the data of the Indonesian Franchise Association (IFA), there are 98 Business Opportunities in Indonesia that have developed and are divided into various sectors, such as the sector of Pharmacy; Entertainment; Food & Beverage; Beauty; Health, Courier Services; Laundry Service; Automotive; Education; Photography; Printing; Tour & Travel; Retail; and so on. This development will help the people of Indonesia who will be faced with a demographic bonus of 2020-2030 in opening the wider job vacancies.

In Indonesia, Business Opportunity has not been regulated. The lack of knowledge about business opportunity has the potential to cause loss. Not only the consumer who experiences loss, but also the seller. In addition, in Indonesia Business Opportunity is often equated with franchise, even though both are different businesses, thus it cannot be confused.

The definition of Business Opportunity in Indonesia cannot be found in the Law and Regulation. Literally, Business Opportunity can be interpreted as a Business Opportunity Ventures. General definition of Business Opportunity that is understood and used by business actors is an alternative in running a franchise business, but with lower capital and wider opportunity. Business Opportunity is a business opportunity using products, tools, and/ or methods from Business Opportunity Seller. Business Opportunity is a form of business that has been running for less than 5 (five) years, but has the opportunity for investors in that form of business.

Legal protection for business opportunity is also often equated with franchising. Related to this matter, this study examines the Law and Regulation and other regulations relating to business opportunity ventures. Furthermore, these regulations are compared with the decision of American courts that have the same case.

This study aims to determine the characteristics of Business Opportunity Ventures as a legal form. Knowing the characteristics of business opportunity ventures can further indicate the form of legal protection for the actors. This relates to the effort to reduce the number of deception that is rampant in Indonesia in the Business Opportunity transaction.

RESEARCH METHOD

The type of research used in drafting this thesis was by using the legal research normatively juridical (Wiratraman, 2019). This study used the statute approach both national and International. In this study, the statute approach, conceptual approach and comparative approach were used.

Furthermore, researchers used primary and secondary legal sources. According to Black's Law Dictionary, source of law is something (such as constitution, treaty, statute, or custom) that provides authorities for legislation and for judicial decisions; a point of origin for law or legal analysis (Black, 2013). Indonesia as a country that adhered to the Civil law system has primary legal material in the form of the Law and Regulation (Marzuki, 2008). Secondary legal material had the usability to provide the researchers such as clues which direction the researchers should step in. Secondary legal material could be thesis, thesis, and legal dissertation and legal journals. Besides that, legal dictionaries and commentary decisions can also be used (Marzuki, 2008).

RESULT AND DISCUSSION

Characteristics of Business Opportunity Ventures

Business Opportunity had similarities with Franchise, a business format that was much earlier developed in Indonesia. However, Franchise put more emphasis on the obligation to use the system, method, etiquette, procedure,

marketing and sales methods, as well as other matters that have been determined exclusively by the franchisor, and might not be violated or ignored by the licensee (Sutedi, 2008). In definition between Business Opportunity and Franchise could be seen that, both of them were the special rights that were owned by individuals or business entities towards the business system that was given the right to other people to develop their business through a contract or agreement. But in truth, they were two different forms of business. Before further examining the differences between these two forms of business, the following was the characteristic which owned by each Business Opportunity and Franchise forms in Table 1 below.

Table 1. The Differences in Characteristics of Business Opportunity Ventures and Franchise.

<i>Business Opportunity Ventures</i>	Waralaba
<ul style="list-style-type: none"> ● The offer between seller and consumer of BO; ● Payment for BO; ● BO seller provides location for the use or operation of equipment, exhibition, vending machine, or similar equipment, owned, leased, under control, or paid for by the consumer; or ● Providing bookkeeping, account, or customer as a whole, but there are no restriction, internet connection, account, or customer for the needs or services of the consumer; ● <i>Buyback</i> system. ● The Parties, BO seller, BO consumer, people who are appointed or recommended by BO seller. ● Product uniqueness; ● Business concept; ● The seller not only offer goods or services but also their business; ● The consumer gives a fee at the beginning of the agreement; ● Assistance provided by the seller is only at the commencement of business operation; ● Assistance in the form of providing location, product, and production equipment; ● Bookkeeping. 	<ul style="list-style-type: none"> ● Basic element; ● Product uniqueness; ● The total business concept; ● Franchise consumer use and sell the product; ● Franchise seller receives a Fee and Royalty; ● There is management training and special skill; ● Registration of trademark, patent or copyright; ● Funding assistance for franchise consumer from franchise seller or financial institution; ● Purchasing product directly from franchise seller; ● Promoting and advertising assistance by franchise seller; ● Location selection service by Franchise seller; ● Exclusive marketing area; ● Quality control and uniformity; ● Containing the certain brand element and business system; ● Bookkeeping.

Means of legal protection for the consumer of business opportunity ventures

The protection of business opportunity ventures according to the Federal Trade Commission (FTC) of United States

Deception and injustice that occurred in the Business Opportunity continuing to spread in the United States was prevented by the Disclosure Document rule. This was regulated in the FTC Rules concerning "Disclosure Requirements and Prohibition concerning Franchising and Business Opportunity Ventures" effectively applicable from October 21, 1979 (Tifford). Several countries that had the rules regarding franchise disclosure were California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Oregon, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin (Tifford, 1981).

Disclosures rule was a method to prevent potential deception and injustice in the Franchise trading practice (Atwell, 2019) fa. Initially the disclosure document was only applied to franchising, but with the development of the BO, the regulation was also applied because of the rampant deception and injustice cases in the BO. However, as time went by the application of the rule, BO consumer who was the victim of deception on this form of business commented to the FTC that the regulation regarding BO was only distinguished from franchise regulation, although both had similarities. However, the regulation which put together would not provide the legal certainty to the business actors of BO. Furthermore, regulation to protect Business Opportunity was made. The regulation was contained in Part 437 Business Opportunity Rule. The FTC was regulated things that were not allowed in running BO's business, things that were not allowed, namely:

- (a) Disclaim, or asked the prospective consumer to throw off trust, any statement which was made in document or attachment that was needed or permitted to be disclosed based on the regulation;
- (b) Making any claim or representation, verbally, visually, or in writing, which was contrary to or contrary to the information that must be disclosed by the basic disclosure document and income claim document of this regulation;
- (c) Every material or information other than which explicitly requested or permitted by this regulation enclosed in the disclosure document or the statement of profit claim. For the main purpose of increasing the ability of prospective consumers in maneuvering through electronic versions from the disclosure document or the profit and loss statement, the seller can enclose the scroll bar and internal link. All other features (e.g. Multimedia tools such as audio, video, animation or pop-ups) were prohibited;
- (d) Misinterpreting the amount of sales, or gross profit or net profit or the profit that prospective consumer can obtain or it has been earned by previous consumer; Misinterpreting that every entity, law or regulation of government prohibited the seller to provide income information to the prospective consumer;

- (e) Failed to provide for the prospective consumer, and to the Commission upon request, written proof to claim the seller's income;
- (f) Misinterpreting how or when commission, bonus, incentive, premium, or other payments from the seller to consumer would be calculated or distributed;
- (g) Misrepresenting the cost or performance, efficacy, nature or main characteristic of business opportunity or goods or services which was offered to the prospective consumer;
- (h) Misinterpreting any material aspects of the assistance which was offered to the prospective consumer;
- (i) Misrepresenting the possibility that the main seller, searcher, or generator would find the location, outlet, account, or customer for the consumer;
- (j) Misinterpreting a term or condition of the seller's return or cancellation policy;
- (k) Failed to provide the refund or cancellation when the consumer met the term and condition which was disclosed in accordance with what has been set out in sec.437.4 (a);
- (l) Describing business opportunity as job opportunity;
- (m) Misinterpreting territorial exclusivity or territorial protection requirements which were offered to the prospective consumer;
- (n) Assigned to any consumer an exclusive recognized territory that actually covering the same or overlapping territories that have been assigned to another consumer;
- (o) Misinterpreting that every person, trademark or service mark holder, or government entity, directly or indirectly obtained the benefits from, sponsoring, participating in, supporting, approving, giving authority, or was related to selling business opportunity or goods or services which was sold through business opportunity;
- (p) Misrepresenting that:
 - (1) Everyone has purchased a business opportunity from the seller or has operated the business opportunity from the type which was offered by the seller; or
 - (2) Everyone could provide independent or trusted reports about business opportunity or the experience from the current or former consumer.
- (q) Failed to disclose:

(1) Every consideration which was promised or paid to someone identifying as a consumer or operator of the business opportunity from the type which was offered by the seller. Consideration included, but it was not limited to: payment, debt forgiveness, or the equipment supply, services, or discount to that person or to the third party on behalf of that person;

(2) Personal relationship or the past or present business relationship other than as a consumer or operator of business opportunity which was offered by the seller.

The legal protection for business opportunity venture parties based on the contract

Various kinds of regulation which regulated economic activities and the work in developing and enforcing these rules were in the hands of the government. At the global level, economic law carried the greater weight, considering its scope and the economic factors involved (Niyobuhungiro, 2019). Economic law was the branch of law that regulated public economic relationships among the government, its economic administrative institution, economic organization and their citizens (Albiston, 2019).

In 1770-1870, in the United States a concept called formalism was born. The concept of formalism was an attitude which stated that all the laws based on doctrine and principles can be concluded from precedents. In the case that arose from an agreement or contract, the Judge was only passive and interpretive. Based on formalism, the parties must make an agreement and choose the terms of the agreement independently; The court was only passive and interpretive; In order that the contract could function, then everything that was promised must be explicitly and clearly written in the contract; the justice in the contract was determined by the parties at the time of the bargaining; the parties could include the rights into the absolute terms in the contract (Sjahdeini, 2004).

The parties who made the agreement independently and there was no interference from other parties, did not mean that the freedom was unlimited. In countries that adopted a common law system, the freedom in contracting was limited by the Law and Regulation and public policy. If the contract violated these rules then the contract was considered illegal (Sjahdeini, 2004). The purpose of the restriction was that the contract was not only more profitable for one party or in other words it was made lame or biased. The restriction of a contract was not only the legal requirement, but also the principles that must be applied in the contract, such as the good faith principles of the parties which has been regulated in article 1338 BW. In fact Pancasila rejected the principle of unlimited contracting freedom. The country was not only authorized to protect or intervene, but the country must intervene to limit the work procedure of the principle of unlimited contracting freedom that has no restriction (Sjahdeini, 2004).

Based on Article 1349 BW, if there was any doubt, then an agreement must be interpreted for the loss of the person who has asked for something that has

been promised, and for the benefit of the person who has committed himself to it. For the promised loss, if an agreement contained a dubious promise/ clause, then the promise/ clause was interpreted for the loss of the party who promised it and therefore, for the benefit of the committed party (Satrio, 1995). This applied only if the doubts arose regarding what was promised by the party that promised and this matter was detrimental to the other party.

BO was a form of business that was vulnerable to deception, due to the lack of understanding of the business consumer regarding the form of Business Opportunity. Deception (bedrog) according to Article 1328 paragraph (1) BW, Deception was a reason for the cancellation of the agreement, if the ruse used by one of the parties, was such that it was clear and real that the other party has not made the engagement, if the ruse was carried out. Article 1328 paragraph (2) BW stated that deception was not suspected, but must be proven. Based on BW, the elements of deception were: there was the ruse, clear and real, triggered other parties to agree with each other, and the deception must be proven by those who feel that there was deception in an engagement. In the Business Opportunity Agreement, deception was experienced by the consumer when the business activity was carried out, but the assistance carried out by the seller was limited to the introduction of business and management methods. Furthermore, the business activity was not accompanied by the Business Opportunity seller, thus the business activity could not run as has been promised at the time of offering. The successful business activity that has been promised by the Business Opportunity seller with the assistance or other activities which has been agreed by the parties, it must be proven by the BO consumer that the agreement was a ruse from the Business Opportunity seller. The deception was proven in front of the court, thus, Business Opportunity consumers could receive the protection for the deception that has occurred upon these business activities. BO consumers could only take the legal action through a dispute resolution agency that indeed has been agreed by the parties in the agreement.

CONCLUSION

Business Opportunity agreement specifically has not been regulated by the Law and Regulation in Indonesia. In BW, there was also no known Business Opportunity Agreement, thus it could be concluded that the business agreement was an innominaat agreement or an anonymous agreement. Protection for BO business actors, for consumers, sellers, or persons who are appointed or chosen as the third party in this business, in accordance with what has been agreed in the contract made and agreed by the parties. In accordance with Article 1338 BW, an agreement was applicable as the law for the parties who made it or in its doctrine was *Pacta Sunt Servanda*. The parties must carry out their respective achievement, if the parties did not meet the achievement then the other parties could demand and take the legal remedies through the dispute resolution agency which has been agreed in the agreement.

Ethical clearance

This research does not involve any participants, rather it is descriptive study. This research was carried out in accordance with the research principles. This

study implemented the basic principle ethics of respect, beneficence, nonmaleficence, and justice.

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REFERENCES

- Albiston, C. R.(2019) ‘Structure, Agency, and Working Law, Law and Social Inquiry. University of California, Berkeley School of Law, Jurisprudence and Social Policy Program, 2240 Piedmont Ave, Berkeley, CA 94720, United States, pp. 1221–1230. Available at: <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85073381672&doi=10.1017%2Flsi.2019.52&partnerID=40&md5=a4c3e4fb95778020a985e02afae37498>.
- Atwell, C. (2019) ‘Franchising in France: An overview’, *European Business Law Review*. UNSW Sydney, Gonski Institute for Education, Australia, pp. 439–467. Available at: <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85067208328&partnerID=40&md5=3315ea1222d87691f2b5332897446610>.
- Azzura, S. N. (2016) ‘Total omzet waralaba RI capai RP 172 T dan serap 90.000 tenaga kerja’, <https://www.merdeka.com/uang/total-omzet-waralaba-ri-capai-rp-172-t-dan-serap-90000-tenaga-kerja.html>.
- Marzuki, P. M. (2008) ‘Pengantar Ilmu Hukum Edisi Revisi’, Kencana Prenada Media Group, Jakarta.
- Niyobuhungiro, J. (2019) ‘International Economic Law, International Environmental Law and Sustainable Development: The Need for Complementarity and Equal Implementation’, *Environmental Policy and Law*. Copyright Agency Limited (Distributor), 49(1), pp. 36–39.
- Satrio, J. (1995) *Hukum perikatan, perikatan yang lahir dari perjanjian: buku II*. Citra Aditya Bakti.
- Sjahdeini, S. R. (2004) ‘Kebebasan Berkontrak Dan Perlindungan Yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank Di Indonesia, Jakarta: Institut Bankir Indonesia, 1993’, Zulfadli Barus, *Berpikir Kritis Sistemik Dalam Filsafat Hukum Jakarta: FH UPN Veteran*.
- Sutedi, A. (2008) *Hukum Waralaba Ghalia Indonesia*.
- Tifford, J. M. (1981) ‘The Federal Trade Commission Trade Regulation Rule on Franchises and Business Opportunity Ventures’, *The Business Lawyer*. JSTOR, pp. 1051–1059.
- Wiratraman, H. P. (2019) ‘The challenges of teaching comparative law and socio-legal studies at Indonesia’s law schools’, *Asian Journal of Comparative Law*. Universitas Airlangga, Indonesia, pp. S229–S244. Available at: <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85072586347&doi=10.1017%2FASJCL.2019.15&partnerID=40&md5=33b9ae93db5e5b0ef0ad302d35c8f21f>.