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# LEGAL REVIEW PERIOD OF OPENING OF CULINARY BUSINESS PARTNERSHIP AGREEMENT

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## ABSTRACT

Culinary business in Indonesia is currently growing rapidly following the times and technological developments, culinary developments in Indonesia are not only carried out conventionally but have begun to implement a franchise system and also partnership agreements, one of the most common and easy to use is culinary business partnerships, problems arise there are not many influencers who trade their business brand using a partnership system without looking at future profit projections like a franchise business which requires the company to have been established for at least five years. This becomes sad when many culinary partnership businesses only develop rapidly at the beginning of weakness. The purpose of this study is to describe the negative impact of the ease of entering into culinary partnership agreements in Indonesia. This research uses normative legal research methods or library research or document studies. Normative legal research is a legal research whose research is conducted by examining literature (secondary data) to answer the legal issues under study. Based on the results of the study it was found that in the absence of rules regarding the period of time allowed

for a business to open a partnership agreement to the development community, partnership agreements, especially in culinary businesses, do not get legal certainty if in the future the business carried out suffers a loss.

**Keywords:** partnership agreement; Franchise; and culinary business

## INTRODUCTION

The development of the culinary business world is currently very rapid and touches all groups in all regions of Indonesia, even in areas where there are rarely well-known culinary brands or brands, now we can easily find them. The growth of the food and beverage industry in the third quarter of 2022 reached 3.57%, higher than the same period last year which was recorded at 3.49%. Even though it was affected by the Covid-19 pandemic, the food and beverage industry sub-sector still survived and even grew and contributed to the non-oil and gas industry growth of 4.88%.<sup>1</sup>

The culinary business in Indonesia is growing rapidly with various models including the franchise pattern or commonly referred to as franchises and partnerships. Franchising is a business model in which a company referred to as (the franchisor) sells its business ownership rights to another party, referred to as the (franchisee), using an agreement model. This business trades names, goodwill, products and services, marketing procedures, skills, operational procedures systems, and facilities using a system of royalties or management service fees to the franchisor company.<sup>2</sup> Many Indonesians are involved in the use of this business because they are tempted by big-name companies or owners and also management of companies that are well structured and managed. In the beginning, franchising was a business concept regarding the granting of the use of intellectual property rights and operational activity systems by the franchisor to the franchisee.<sup>3</sup> Franchise business activities will give rise to a legal relationship between the franchisor and the applicant, in this case the partner who will use the

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<sup>1</sup> Kementrian Perindustrian Republik Indonesia, "Industri Makanan dan Minuman Tumbuh 3,57% di Kuartal III-2022," Siaran Pers, 2022, <https://kemenperin.go.id/artikel/23696/Kemenperin:-Industri-Makanan-dan-Minuman-Tumbuh-3,57-di-Kuartal-III-2022>.

<sup>2</sup> Sri Hudiarni, Galuh Kartiko, dan Hudriyah Mundzir, "Waralaba Model Bisnis Baru Yang Berkelanjutan Ditinjau Dari Aspek Hukum," *Jurnal Panorama Hukum* 3, no. 1 (2018): 60, <https://doi.org/10.21067/jph.v3i1.2432>.

<sup>3</sup> Norman Syahdar Idrus, "Aspek Hukum Perjanjian Waralaba (Franchise) dalam Perspektif Hukum Perdata Dan Hukum Islam" 4, no. 1 (2017): 28.

franchise, the legal relationship arising from the business activity is a franchise agreement or contract.

In addition to the franchise business, one type of business that is widely used by Indonesian people is the partnership business. This business is easier to do than franchising, even though franchising is a partnership business pattern. Partnership is cooperation in business relations, both directly and indirectly, on the basis of the principles of mutual need, trust, strengthening and benefit involving Micro, Small and Medium Enterprises (hereinafter referred to as UMKM) and Large Enterprises.

Based on Government Regulation Number 17 of 2013 concerning Micro, Small and Medium Enterprises, partnerships include the process of transferring skills in the fields of production and processing, marketing, capital, human resources and technology in accordance with the Partnership pattern, in which the partnership pattern includes the types of core businesses - plasma, subcontracting, franchising, general trading, distribution and agency, profit sharing, operational cooperation, joint ventures, outsourcing and other forms of partnership.

The main objective of the partnership agreement is awareness to share profits. In a partnership agreement, the parties are not required to have equal strengths and abilities, but what is most important is how each party has a comparable bargaining position based on the agreed rights and obligations.<sup>4</sup> so that the relationship that arises is not an agreement to do something work where there is a stronger party position but a relationship to carry out business activities together subject to the legal terms of the agreement contained in the laws and regulations.

Chairman of the Indonesian Chamber of Commerce and Industry Standing Committee for Franchise License & Networking Marketing, Levita G. Supit explained that in its current developments in society, all types of culinary business agreements, whether in the form of franchise agreements or partnership agreements, are often interpreted as the same agreement, namely a franchise agreement, which of course is will cause problems in the future.<sup>5</sup> The problem that is often found is the difference in perceptions regarding the rights and obligations of the parties to establish cooperation. The main purpose of the partnership

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<sup>4</sup> Ery Agus Priyono, "Perlindungan Hukum Bagi Para Pihak Dalam Perjanjian Jual Beli," *Diponogoro Private Law Riview* 21, No. 1 (2020): 1–9, <http://journal.um-surabaya.ac.id/index.php/JKM/article/view/2203>.

<sup>5</sup> Shafira Cendra Arini, "Belajar Dari Kasus Menantea, Ini Cara Bedakan Franchise dan Kemitraan," *DetikFinance*, 23 April 2023, <https://finance.detik.com/berita-ekonomi-bisnis/d-6673634/belajar-dari-kasus-menantea-ini-cara-bedakan-franchise-dan-kemitraan>.

agreement is a trust to generate mutual benefits by using an equal system between the defenders.

Currently, many culinary industries are implementing a partnership system. In recent years, many artists, celebrities, YouTubers, tiktokers, hereinafter referred to as Influencers, have also begun to enter the culinary industry by offering a partnership system. The types of culinary industry that many are involved in include various kinds of food and drinks such as fried chicken, Korean food, bread, cakes, burgers, various coffees, teas, contemporary drinks and so on.

Problems arise when the culinary industry is engaged in with only big names, popularity accompanied by a large number of followers on social media without any experience in the culinary business from influencers, only less than one year of opening a business, many influencers have offered partnership services to the community, this certainly has a lot of impact. a partnership business that only boomed at the beginning of its establishment because the owner was a well-known influencer but it didn't run smoothly when it was undertaken by partners, this of course happened one of them due to a lack of understanding of the type of business being undertaken and also minimal public understanding when buying a trademark using a franchise or partnership system.

One example of the type of culinary business that has received the spotlight on social media lately is the case of a tea drink with the brand "Menantea" owned by YouTuber Jerome Polin, because when it was first inaugurated this drink was very booming, but after time one of the business partners said that in a day they only able to sell ten glasses of tea, even though they have spent a very large amount of money. Franchise costs incurred by people who want to cooperate are around IDR 125,000,000 and will get an additional fee of IDR 50,000,000 if they add machines and this does not include the cost of space.<sup>6</sup> On the other hand, when asked for an explanation by business partners, the menantea stated that their type of business was a partnership and not a franchise, so they could not claim the same rights as a franchise agreement.

Based on one of these case examples, there is one problem that is of particular concern to the author, namely the absence of definite rules regarding the timeframe for business actors to be allowed to open partnership programs to the wider community, especially UMKM, in contrast to the franchise system which has a minimum company establishment time. the partnership agreement can freely open the partnership program to the wider community at any time. Based on this,

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<sup>6</sup> Arlina Laras, "Enam Fakta Penting Kasus Menantea Jerome Polin," *Bisnis.com*, 27 Maret 2023, <https://entrepreneur.bisnis.com/read/20230327/52/1640777/6-fakta-penting-kasus-bisnis-menantea-jerome-polin>.

the authors are interested in raising the title of research on legal review of the opening period for culinary partnership agreements in Indonesia. The purpose of this study is to describe the negative impact of the development of partnership agreements, especially in the culinary business.

Research on franchising and partnership agreements has been carried out by many previous studies, but most of these studies examine the form of partnership agreements from the point of view of contract law in Indonesia and also the standard form of franchise and partnership agreements, but in this study the authors focused on discussing legal protection for partnership agreement business actors, especially regarding the period of time allowed to open a partnership system to the public.

## METHODS

This research uses normative legal research methods or library research or document studies. According to Soerjono Soekanto and Sri Mamudji, normative legal research is legal research whose research is conducted by examining literature (secondary data) to answer the legal issues under study. This study uses legal materials or secondary data such as laws and regulations, court decisions, textbooks, research results in journals and magazines, legal theory, opinions of scholars, legal dictionaries, and legal encyclopedias. This study uses a statutory approach (statute approach) and a conceptual approach (conceptual approach) with the aim of obtaining information from various aspects of the issues studied. The technique for collecting legal material in this study was using a document study technique, then it was inventoried and classified according to each problem formulation. Data analysis techniques or legal materials use qualitative analysis methods, namely by interpreting (interpretation) of legal materials that have been processed to provide arguments on the results of research conducted.<sup>7</sup>

## RESULTS & DISCUSSION

To meet the needs of human life, it is required to be intelligent in managing all aspects of life including opportunities in running a business. According to the

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<sup>7</sup> Muhaimin, *Metode Penelitian Hukum* (Mataram : Mataram University press, 2020).

Big Indonesian Dictionary, Business is an activity of exerting energy, mind, or body to achieve a purpose; deed, work, initiative, effort, effort to achieve something. Business is an activity in the field of trade with the aim of making a profit. One form of business activity is carried out by establishing cooperation with other parties in the form of an agreement.

The culinary business is a business engaged in the food sector, both in terms of making, presenting and selling certain products to customers. The culinary business industry is predicted to still be a leading sector as a support for the national economy and the manufacturing sector. The important role of the culinary industry can be witnessed by continuing to be consistent and significant in the development of the non-oil and gas industry's gross domestic product (GDP) as well as the increase in investment realization achieved in Indonesia. The government continues to strive to ensure the availability of raw materials for culinary industry players to remain able to compete globally, competition in the food and beverage industry is considered very competitive because there are so many of them, covering all elements ranging from small, medium and large businesses.<sup>8</sup>

The culinary business continues to grow rapidly, not only selling with a professional system such as opening stalls, kiosks or outlets, now the culinary system has begun to penetrate sales with the online system, the form of the company is not only limited to individual companies but has begun to be established by large business entities and even legal entities. By law, this type of business offers a lot of sales of brands or brands, this system is widely chosen because it is considered to be younger in the form of providing raw materials and usually already has a big name so that people are more interested than having to make a business from scratch, this type of business is run based on an agreement system between the parties.

The definition of an agreement as stipulated in Article 1313 of the Civil Code, that is a legal act when one or more binds himself to one or more persons. An agreement can also be interpreted as an event when one person promises another person or when two people promise each other to do something. Kartini Muljadi explained that the agreement is one of the sources of engagement. The agreement creates an agreement, which creates obligations on one or more parties to the agreement. Obligations imposed on the debtor in the agreement, entitle the

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<sup>8</sup> Nurmala Nurmala et al., "Usaha Kuliner Sebagai Penggerak Umkm Pada Masa Pandemi Covid 19," AKM: Aksi Kepada Masyarakat 3, no. 1 (2022): 65–74, <https://doi.org/10.36908/akm.v3i1.458>.

creditor to carry out the achievements in the agreement that was born in the agreement.<sup>9</sup>

Agreements made by the parties will give birth to an agreement, agreements made either verbally or in writing still result in an agreement and have legal consequences. This also applies to partnership agreements, as in general agreements, partnership agreements are also subject to book III of the Civil Code and related legislation. Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises which states that Partnership is cooperation in business relations, both directly and indirectly, on the basis of the principle of mutual need, trust, strengthening and benefit involving Micro, Small, and Medium Enterprises actors. and Medium Enterprises (UMKM) with Large Enterprises. Every partnership agreement made by the parties must be stated in the form of an authentic deed, in this case there must be a written agreement between the big business actor and the UMKM actor in the form of Indonesian.<sup>10</sup>

Business can be carried out in various forms and models as long as it does not conflict with laws and regulations, such as partnership agreements carried out using the pattern:

1. plasma nucleus;
2. subcontract;
3. franchise;
4. general trading;
5. distribution and agency; And
6. other forms of partnership, such as: profit sharing, operational cooperation, joint ventures, and outsourcing.

The partnership agreement is a development of the freedom to contract which is based on the principle of the agreement. The principle of freedom of contract is the pillar of civil law, especially the law of engagement which is regulated in Book III of the Civil Code. With the principle of freedom of contract, people can create new types of contracts that were previously unknown in named agreements and their contents deviate from the named agreements regulated by law, namely book III of the Civil Code, these contracts are known as unnamed

<sup>9</sup> Gunawan Wijaya Kartini Muljadi, *Perikatan yang Lahir dari Perjanjian*, 1 ed. (Jakarta: Raja Grafindo Persana, 2004).

<sup>10</sup> Anak Agung Gede Agung Dharma Kusuma Gede Agung Mahendra Krishna Bayu, "Tinjauan Yuridis Terhadap Perjanjian Kemitraan Yang Dilakukan Oleh Umkm Berdasarkan Hukum Positif Indonesia," *Jurnal Kertha Negara* 8, no. 7 (2020): 39–48, <https://ojs.unud.ac.id/index.php/Kerthanegara/article/view/74490>.

agreements. The principle of freedom of contract is universal, meaning that it applies also in various contract law systems in various countries and have the same provisions. Freedom of contract means that people can make/create new agreements that are not known in named agreements and whose contents deviate from the named agreements regulated in the law, thus with the principle of freedom of contract, we can imagine a general provision regarding the agreement is very necessary as a benchmark of the agreement.<sup>11</sup>

Partnership agreements became known with the existence of Law Number 9 of 1995 concerning Small Businesses which states that partnerships are business cooperation between small and medium businesses or large businesses accompanied by guidance and development by medium or large businesses with due observance of the principle of mutual need, mutual mutually reinforcing and mutually beneficial.<sup>12</sup> in Law Number 20 of 2008 concerning Micro, Small, Medium Enterprises which states, Partnership is cooperation in business relations, both directly and indirectly, on the basis of the principles of mutual need, trust, strengthening and benefit involving Micro, Small Business actors, and Medium Enterprises (MSMEs) with Large Enterprises. Likewise in government regulation number 44 of 1997 concerning partnerships giving the meaning of partnership is business cooperation between Small and Medium Enterprises and/or Large Enterprises accompanied by guidance and development by Medium Enterprises and/or Large Enterprises with due observance of the principles of mutual need, mutual strengthening and mutual benefit. The type of business that is mostly carried out with a partnership system is a business in the culinary field.

From the explanation of the meaning of partnership in laws and regulations, it can be concluded that the partnership system is very closely related to the type of business that involves Micro, Small and Medium Enterprises (UMKM) and large Entrepreneurs. So that there is a mutual symbiosis or mutual need between big businessmen and MSME actors in Indonesia, the existing regulations are still very minimal because the partnership process is carried out purely based on the freedom of the parties, this is different from franchise agreements which specifically have received more detailed arrangements. so that the facts in the field found various kinds of shortages in partnership agreements.

In a broader sense, UMKM are often interpreted as business management groups that are independent, and their business ownership is controlled by a group

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<sup>11</sup> J Satrio, *Hukum Perikatan Pada Umumnya*, III (Bandung, 1999).

<sup>12</sup> R Hidayat, "Tinjauan Yuridis Terhadap Perjanjian Kemitraan Dalam Kitab Undang-Undang Hukum Perdata," *Journal of Law (Jurnal Ilmu Hukum)*, 2021, 5–24, <http://ejurnal.untag-smd.ac.id/index.php/DD/article/view/5200>.

of individuals who are not capable of large numbers with limited capital from these UMKM, the business scope is local with a small-scale company system. Globally, UMKM is likened to a driving force in the economy, with a percentage of around 90 percent of business in the world being run through the UMKM system by continuing to create new jobs, so that the development and development of UMKM in various countries reduces economic disparities.<sup>13</sup>

The fact is that currently there is a partnership pattern carried out by entrepreneurs, in this case influencers, in offering partnership cooperation which is set at an expensive price and already resembles a franchise system like big entrepreneurs, whereas in partnership arrangements that are regulated by a franchise pattern, priority must be given to the UMKM sector and must provide guidance in the form of training, management operational guidance, marketing, research, and development for franchisees on an ongoing basis. Based on the opinion of Siti Malikhatun Badriyah, one of the goals of an agreement is to achieve a balance between the two parties, balance is the main and very important thing, in fact it is the main thing to know the sustainability of the agreement from the start, namely from the pre-contractual stage (offer stage). , then when an agreement appears which gives rise to an agreement between the parties (contractual stage), up to the stage of implementing the agreement that binds the parties.<sup>14</sup>

The next problem that is most often found today is regarding the period of establishment of a business with the sale/offering of a partnership program, many influencers who have entered the culinary business in a short time and even several months have opened opportunities/offered partnership partnerships to the wider community, specifically laws and regulations. -In fact, there are no restrictions governing the period of time for a business to open a partnership program, but seeing as one of the main objectives of a partnership agreement is to gain profits and provide legal protection to develop the economy through the UMKM sector, of course this is a little contradictory because the timeframe is still too early. has not provided a sense of security regarding business continuity or projected future profits.

In contrast to partnership arrangements, based on Article 1 Number 1 of the Minister of Trade Regulation Number 71 of 2019 concerning the Implementation

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<sup>13</sup> Zakiah Nur Aziz Br Tarigan, Fadilah Novita Dewi, dan Yanuar Pribadi, "Keberlangsungan Usaha Mikro, Kecil, Dan Menengah Di Masa Pandemi: Dukungan Kebijakan Pemerintah," *Jurnal BPPK: Badan Pendidikan dan Pelatihan Keuangan* 15, no. 1 (2022): 12–23, <https://doi.org/10.48108/jurnalbppk.v15i1.666>.

<sup>14</sup> Yulias Erwin Nasaruddin, "Implementasi Asas Keseimbangan Dalam Perjanjian Baku Untuk Mewujudkan Keadilan bagi Para Pihak," *Journal Law and Government Magister Hukum Pascasarjana UMMAT* 1, no. 1 (2023): 17–40, <https://journal.ummat.ac.id/index.php/lago/article/view/12989>.

of Franchise, it states that Franchising is a special right owned by an individual or business entity over a business system with business characteristics in the context of marketing goods and/or services which have been proven successful and can be utilized and/or used by other parties based on the Franchise Agreement. Article 2 explains that a franchise business has characteristics that have been proven to have advantages and has experience of at least 5 (five) years and already has business tips for solving business problems, which in this case is proven by the survival and development of the Franchise Giver's business profitably.

Based on the regulation of the Minister of Trade, it can be seen that in order to open a business branch in the form of a franchise, an entrepreneur must have proof of success in running a business, marked by the ability of a business to survive for five years. UMKM actors without clear legal protection regarding business continuity. Economic growth must also be supported by the government to monitor running businesses. According to statistics from the Small Business Administration (SBA) it states that 50% of new businesses fail (in the first year), 47.5% of other new businesses fail (within 5 years), and only 2 successful businesses survive for 5 years. 5% only.<sup>15</sup> In principle, the government implements a partnership pattern that is interrelated with the franchise pattern regulated in Indonesian legislation, this principle is based on cooperation to develop UMKM, a partnership pattern is needed to grow and advance the existing system, because the system created is considered insufficient if only simply helping the continuity of the business which is temporary, the purpose of the partnership pattern is sustainability so that an independent and resilient economy grows as a manifestation of the principle of sustainability.<sup>16</sup>

One of the functions of law is to provide protection for everyone, legal protection is an acknowledgment of the human rights that every human being has as a legal subject in a country based on law. Legal protection is present because every legal object requires legal certainty, legal certainty is expected to provide guarantees of protection from the emergence of arbitrary actions in carrying out

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<sup>15</sup> Lilian Danil dan Nina Septina, "Franchise business sustainability – west java province small medium enterprises," Research Report - Humanities and Social Science 2 (2015), <https://journal.unpar.ac.id/index.php/Sosial/article/view/1671/1590>.

<sup>16</sup> I Made Bagus Suardana dan I Wayan Wiryawan, "Kepastian Hukum Usaha Mikro Kecil dan Menengah Dalam Pola Kemitraan Sebagai Penerima Waralaba," Jurnal Magister Hukum Udayana (Udayana Master Law Journal) 9, no. 3 (2020): 547, <https://doi.org/10.24843/jmhu.2020.v09.i03.p07>.

order in society, with legal protection, fair law enforcement can be carried out included in the partnership agreement.<sup>17</sup>

Legal certainty emphasizes that the law or regulation is enforced as desired by the law/regulation. Everyone hopes that the law can be enacted in the event of a concrete event. How is the law that must apply, so basically it is not permissible to deviate, even though this world is collapsing but the law must be upheld. This is what legal certainty wants. Legal certainty as justifiable protection against arbitrary actions, which means that someone will be able to get something that is expected in certain circumstances. The community expects legal certainty, because with legal certainty the community will be more orderly. The law is tasked with creating legal certainty because it aims at public order.<sup>18</sup>

Legal certainty for perpetrators of partnership agreements has actually existed for a long time since Law Number 9 of 1995 concerning Small Businesses, followed by Law Number 20 of 2008 concerning Micro, Small, Medium Enterprises and finally Government Regulation Number 17 of 2013 concerning Micro Enterprises, Small, and Medium Enterprises, but these various kinds of legal regulations explain more about the procedures, patterns and scope of carrying out partnership agreements. Whereas currently the development of partnership agreements is much broader so that the rules of partnership agreements are easily ignored under the pretext of freedom of contract.

The partnership agreement has an important goal in national economic development, the success or failure of the implementation of development can be seen to what extent the partnership agreement in the community takes place, the type of business with a partnership pattern is expected to be a national development solution not a new problem.<sup>19</sup> So that if new legal regulations are not made regarding partnership patterns, in the future there will be many business actors who cannot survive in running their businesses and will have an impact on slowing down Indonesia's economic development.

## CONCLUSION

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<sup>17</sup> Socha Tcefortin Indera Sakti dan Ambar Budhisulistyawati, "Perlindungan Hukum Bagi Para Pihak Dalam Perjanjian Jual Beli Tanah Letter C di Bawah Tangan," *Jurnal Privat Law* 8, no. 1 (2020): 144, <https://doi.org/10.20961/privat.v8i1.40388>.

<sup>18</sup> Yohana Puspitasari Wardoyo Sulardi, "Kepastian Hukum, Kemanfaatan, Dan Keadilan Terhadap Perkara Pidana Anak," *Jurnal Yudisial* 8 no 3 (2015): 251–68.

<sup>19</sup> Zaenal Arifin, Soegianto Soegianto, dan Diah Sulistyani, "Perlindungan Hukum Perjanjian Kemitraan Pengadaan Barang/Jasa Pemerintah Pada Bidang Konstruksi," *Jurnal Usm Law Review* 3, no. 1 (2020): 59, <https://doi.org/10.26623/julr.v3i1.2134>.

Partnership agreements that are carried out only based on the freedom of contract of the parties without more detailed provisions in laws and regulations regarding the period of time for an established business to open/offer a partnership in the community will cause legal problems, because based on research a company is considered capable of surviving if it has achieved the age of five years, the number of business partnership agreements in the culinary field that have gone bankrupt indicates that there is no legal protection for partners, especially UMKM actors.

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