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Legal Review of Health Clinic Franchise Business Practices in Indonesia

Fredy Ied Fitriadi[1], Aryono[2], M. Habib[3]
Duta Bangsa University Surakarta, Indonesia

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Abstract

This thesis, entitled "Legal Review of the Franchise Business Practice of Health Clinics in Indonesia," examines the legal issues arising from the rapid growth of health clinic franchises, particularly breaches of franchise agreements and the legal responsibilities of franchisors and franchisees in healthcare services. The study employs a normative juridical research method using a statutory approach. The primary legal materials include the Indonesian Civil Code, Law Number 17 of 2023 on Health, and Government Regulation Number 35 of 2024 on Franchising. Legal materials are analyzed through juridical interpretation to examine the applicable legal framework. The findings reveal that breaches of franchise agreements in health clinic businesses constitute multidimensional legal violations involving civil, administrative, and health law aspects. Consequently, dispute resolution should not rely solely on the Indonesian Civil Code but must also consider the provisions of Law Number 17 of 2023 on Health and Government Regulation Number 35 of 2024 on Franchising. This integrated approach enhances legal certainty while ensuring a fair balance of rights and obligations between franchisors and franchisees. The study further concludes that existing legislation has not comprehensively regulated the allocation of legal responsibility between franchisors and franchisees, particularly where patient harm results from both deficiencies in the franchise system and operational negligence by the clinic. This regulatory gap may create legal uncertainty in resolving disputes involving health clinic franchises.

Corresponding Author:
Fredy Ied Fitriadi
Duta Bangsa University Surakarta
Email Coresspondent: fredyie@gmail.com

1. INTRODUCTION

The development of franchise-based health clinics has been driven by several factors. First, there is a growing need for rapid business expansion while maintaining standardized healthcare services across different regions. Second, investor interest in the healthcare sector has increased significantly, as it is considered a stable industry with strong long-term growth prospects. Third, regulatory reforms introduced through Law Number 17 of 2023 on Health have established a new legal framework for the administration of healthcare facilities, including risk-based licensing and policies aimed at facilitating business activities. Nevertheless, the expansion of franchise-based health clinics has generated various legal issues. Previous studies indicate that violations in franchise business practices are relatively common, including non-compliance with franchise licensing and registration requirements under Government Regulation Number 42 of 2007, financial losses suffered by franchisees due to standard operating procedures (SOPs), business systems, or operational support that

are inconsistent with the franchise agreement, as well as various forms of breach of contract and malpractice in franchise agreements.

These legal issues warrant further investigation for several reasons. First, franchise disputes such as unilateral termination of franchise agreements, discontinuation of medical equipment supplies, or conflicts in business management may disrupt the operation of health clinics and directly affect patient care. One example is a dispute involving Family Dental Care, where patients complained that the treatment provided did not meet their expectations, disputed the costs of follow-up treatment, and demanded accountability from the franchisor (head office). Second, in the absence of clear and effective dispute resolution mechanisms, legal uncertainty may arise, causing financial losses to franchisees and undermining the investment climate in the healthcare sector. A representative case involved a patient who underwent orthodontic treatment (dental braces) at one branch of a dental clinic operating under a national franchise brand. The patient paid an orthodontic treatment package costing approximately IDR 25–30 million, which covered a two-year treatment period. After six months of treatment, the patient experienced persistent pain, worsening tooth alignment, and frequent gum bleeding. Upon seeking a second opinion from another dental clinic, it was concluded that the placement of the orthodontic brackets had been inappropriate, indicating possible negligence in orthodontic treatment.

The patient subsequently reported the matter to the branch clinic and requested a re-evaluation, corrective treatment at no additional cost, and a refund. However, the branch clinic merely instructed the patient to continue regular check-ups and failed to conduct any formal medical investigation or issue an official incident report. When the patient later requested a refund, the branch rejected the request on the grounds that the treatment package had already commenced. The patient then contacted the customer service department at the franchisor's head office, considering that the clinic operated under a national brand. The head office responded that each branch was independently managed and advised the patient to resolve the dispute directly with the branch where the treatment had been provided. Third, if such disputes are not resolved promptly, they may result in an increasing number of legal claims, including demands for both material and non-material damages. Fourth, effective dispute resolution is essential to prevent violations of professional standards and to safeguard patient safety. Fifth, prolonged disputes may damage the reputation of the franchise brand and diminish public trust in franchise-based healthcare services.

Based on the foregoing discussion, the implementation of the franchise system in the healthcare sector must continue to prioritize professional standards, the legal responsibilities of medical and healthcare personnel, and the protection of patients as consumers of healthcare services. These considerations provide the basis for the author to conduct this undergraduate thesis entitled **"**A Legal Review of the Franchise Business Practice of Health Clinics in Indonesia”

2. METHOD

This study employs a normative juridical legal research method, as it is conducted based on legal norms embodied in statutory regulations and by examining legal provisions of a normative nature, as well as legal materials derived from relevant literature. The research adopts a statutory approach, examining, among others, the Indonesian Civil Code (KUH Perdata)**,** Law Number 17 of 2023 on Health**,** Government Regulation Number 35 of 2024 on Franchising, and other laws and regulations relevant to this study. The legal materials used consist of primary, secondary, and tertiary legal materials**.** Data are collected through library research by reviewing legislation, legal literature, scholarly publications, and other relevant legal sources. The legal materials are analyzed using the interpretative

method, applying juridical interpretation to examine and resolve the legal issues addressed in this research.

3. RESULTS AND DISCUSSION

The franchise business cooperation agreement for health clinics constitutes a legal relationship with unique characteristics, as it lies at the intersection of civil law, business law, health law, and administrative law. Unlike franchise arrangements in the trade, food and beverage, or other service sectors, which are primarily profit-oriented, health clinic franchises encompass a public service dimension because they are directly related to the fulfillment of the public's right to healthcare services. Consequently, the legal status of health clinic franchise agreements within the Indonesian legal system cannot be understood merely as commercial contracts governed by the principle of freedom of contract. Rather, they must be analyzed systematically in accordance with the hierarchy of statutory regulations and the applicable legal principles governing both commercial activities and healthcare services.

When analyzed within the context of the Indonesian legal system, the legal status of health clinic franchise agreements is not solely governed by the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUH Perdata), but must also be interpreted in conjunction with the specific legal framework governing franchising. The regulation of franchising demonstrates that the State no longer regards franchising merely as a private contractual relationship, but rather as a business activity subject to government supervision in order to ensure legal certainty, protect business actors, and safeguard the public interest. Accordingly, the parties' freedom to determine the contents of a franchise agreement must be exercised in accordance with statutory provisions governing franchise operations, including requirements concerning business legality, the utilization of intellectual property rights, proven business systems, business development, government supervision, and the sustainability of the franchise relationship.

In the context of health clinics, this regulatory framework becomes more complex because the object of the franchise agreement extends beyond a business system to encompass the provision of healthcare services. A health clinic is a healthcare facility that provides primary and/or specialist medical services while prioritizing patient safety, quality of care, and compliance with professional standards. Therefore, although the franchisor has the right to establish business operational standards, such authority cannot be construed as permitting the reduction or modification of healthcare service standards prescribed by statutory regulations.

The legal status of health clinic franchise agreements becomes even more apparent when examined in light of Law Number 17 of 2023 on Health. This legislation recognizes healthcare services as an integral component of the fulfillment of citizens' constitutional right to health. Consequently, all legal relationships relating to the operation of healthcare facilities must prioritize the protection of patients as recipients of healthcare services. As a legal consequence, franchise agreements may not contain clauses that diminish the obligations of clinic operators to comply with healthcare service standards, patient safety standards, the competency requirements of medical professionals, or licensing requirements. Any contractual provision that conflicts with these mandatory statutory requirements is, from a normative legal perspective, unenforceable because it is contrary to the law.

1. Breach of Health Clinic Franchise Business Agreements under the Indonesian Civil Code

A health clinic franchise business cooperation agreement is, in essence, a legal relationship arising from the mutual consent between the franchisor and the franchisee. This

legal relationship gives rise to reciprocal rights and obligations that are binding upon both parties, as governed by Book III of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUH Perdata). Although franchising is not expressly recognized as a named contract under the Indonesian Civil Code, it nevertheless derives its legal legitimacy from Article 1319 of the Civil Code, which provides that all agreements, whether specifically named or unnamed, are subject to the general provisions governing obligations and contracts. Accordingly, any breach of a health clinic franchise agreement must be analyzed based on the general principles of contract law set forth in the Civil Code, without disregarding the specific statutory provisions governing the healthcare and franchising sectors.

From a normative legal perspective, the legal status of contracts within the Indonesian legal system is founded upon the principle that a valid agreement constitutes a binding source of law for the contracting parties. This principle is embodied in Article 1338 paragraph (1) of the Indonesian Civil Code, which provides that all lawfully executed agreements shall have the force of law for those who enter into them. Consequently, once an agreement satisfies the legal requirements for validity prescribed in Article 1320 of the Civil Code, neither party may unilaterally disregard or amend its provisions without the consent of the other party. In the context of health clinic franchising, this principle provides legal certainty for both franchisors and franchisees regarding the implementation of their respective rights and obligations, including the use of trademarks, the implementation of Standard Operating Procedures (SOPs), royalty payments, business development and assistance, quality assurance mechanisms, and the protection of intellectual property rights.

Nevertheless, the binding force of a contract does not confer unlimited freedom upon the parties to determine the entire content of their agreement. According to Subekti, the principle of freedom of contract should be understood as responsible contractual freedom, meaning that contractual autonomy is limited by statutory law, morality, public order, and the principle of propriety. This view demonstrates that the validity of contractual clauses depends not only upon the mutual consent of the parties but also upon their conformity with the applicable legal system. Therefore, within the practice of health clinic franchising, contractual provisions that conflict with statutory regulations governing healthcare services, patient protection, or the professional standards applicable to medical personnel cannot be justified solely on the basis that they have been mutually agreed upon.

When analyzed under Article 1320 of the Indonesian Civil Code, breaches of contract may occur both during the formation of the agreement and during its performance. At the contract formation stage, a breach may arise from the failure to satisfy either the subjective or the objective requirements for a valid contract. For example, where the franchisor provides false or misleading information regarding the success of the franchise business system, the business prospects, or the legal validity of the trademark, the franchisee's consent may be deemed to have been obtained through fraud (bedrog). Under such circumstances, the aggrieved party is entitled to seek annulment of the agreement on the ground that the element of genuine consent required under Article 1320 of the Indonesian Civil Code has not been freely and validly established.

2. Breach of Health Clinic Franchise Business Agreements under Law Number 17 of 2023 on Health

Breaches of health clinic franchise business agreements cannot be analyzed solely under the provisions of civil law concerning breach of contract (wanprestasi). They must also be examined from the perspective of Law Number 17 of 2023 on Health, which serves as the lex specialis governing the administration of healthcare services in Indonesia. This is because the subject matter of a franchise agreement extends beyond the commercial relationship between the franchisor and the franchisee to include the operation of healthcare

facilities that are directly related to the public's right to receive safe, high-quality, and accountable healthcare services. Consequently, any breach of contractual provisions that adversely affects the quality of healthcare services gives rise not only to civil liability but may also result in administrative sanctions and other forms of legal responsibility under the provisions of Law Number 17 of 2023 on Health.

From a normative legal perspective, Law Number 17 of 2023 on Health recognizes healthcare services as an integral component of the fulfillment of citizens' constitutional rights, as guaranteed by Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Consequently, all healthcare facility operators, including health clinics operating under a franchise system, are legally required to comply with the healthcare service standards established by the Government. This provision demonstrates that contractual relationships arising from franchise business arrangements may not override the legal obligations of clinic operators to provide healthcare services in accordance with professional standards, healthcare service standards, and patient safety standards. Accordingly, although the principle of freedom of contract is recognized under Article 1338 of the Indonesian Civil Code, such contractual freedom is limited by the mandatory provisions of Indonesian health law.

From the perspective of legal theory, the enactment of Government Regulation Number 35 of 2024 on Franchising reflects the application of Hans Kelsen's Theory of Legal Certainty. According to Kelsen, every legal norm must provide clear guidance regarding the rights, obligations, and legal consequences arising from its violation. In the context of health clinic franchising, Government Regulation Number 35 of 2024 establishes legal certainty by clearly defining the franchisor's obligation to provide continuous guidance and support, as well as the franchisee's obligation to operate the business in accordance with the prescribed standards. Through these regulatory provisions, both parties obtain legal certainty concerning the scope of their respective rights and obligations, thereby minimizing the potential for future disputes.

Based on the foregoing analysis, it can be concluded that breaches of health clinic franchise business agreements constitute multidimensional legal violations, as they involve not only civil law aspects in the form of breach of contract (wanprestasi), but also issues relating to administrative law and health law. Accordingly, disputes arising from such agreements cannot be adequately resolved solely through the application of contract law principles under the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUH Perdata). Instead, they must be addressed through an integrated legal approach that takes into account the provisions of Law Number 17 of 2023 on Health and Government Regulation Number 35 of 2024 on Franchising. Such an approach promotes legal certainty, ensures a fair balance between the rights and obligations of the contracting parties, and guarantees that the operation of health clinic franchise businesses remains oriented toward the protection of patients, the quality of healthcare services, and the public interest, in accordance with the principles of the Indonesian rule of law.

B. Legal Liability Between the Franchisor and the Franchisee in the Provision of Healthcare Services

The franchise business model for health clinics constitutes a legal relationship that differs fundamentally from franchising in the trade or other service sectors. This distinction arises from the object of the franchise arrangement, which encompasses not only the licensing of business systems, trademarks, and management practices, but also the provision of healthcare services that are directly related to the public's right to receive safe, high-quality healthcare in accordance with professional standards. Consequently, the legal liability of both the franchisor and the franchisee cannot be analyzed solely on the basis of

their contractual relationship but must also take into account the specific legal framework governing healthcare services and franchising.

From a juridical perspective, the legal relationship between the franchisor and the franchisee is fundamentally a civil law relationship arising from a contractual agreement. However, because the object of the agreement concerns the provision of healthcare services, the parties' legal responsibilities encompass both private and public law dimensions. On the one hand, each party is obligated to perform the rights and obligations stipulated in the franchise agreement. On the other hand, both parties are required to comply with the healthcare service standards established by law. Accordingly, the legal liability arising from health clinic franchising must be analyzed within three legal regimes: civil law, health law, and the administrative law governing franchise businesses.

1. Legal Liability under the Indonesian Civil Code

Under the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUH Perdata), the legal liability of the franchisor and the franchisee is governed by the law of obligations contained in Book III of the Civil Code. The contractual relationship becomes legally binding once it satisfies the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. Furthermore, Article 1338 paragraph (1) of the Civil Code provides that every lawfully executed agreement shall have the force of law for the contracting parties (pacta sunt servanda). This provision establishes that all contractual rights and obligations are legally binding and must be fulfilled by each party. In the context of health clinic franchising, the franchisor's legal obligations generally include granting the right to use the trademark, providing Standard Operating Procedures (SOPs), conducting training programs, supplying management systems, providing continuous business guidance, and maintaining the reputation of the franchised business system. These obligations constitute contractual performances within the meaning of Article 1234 of the Civil Code, which may consist of giving something, doing something, or refraining from doing something. Accordingly, where the franchisor fails to provide the agreed guidance or operational support, such conduct may legally constitute a breach of contract (wanprestasi).

Conversely, the franchisee is responsible for operating the business in accordance with the established business system, paying royalties, maintaining the confidentiality of the franchised business system, using the trademark in accordance with the franchise agreement, and providing healthcare services in compliance with the SOPs established by the franchisor. A failure to perform these obligations likewise constitutes a breach of contract, entitling the franchisor to seek specific performance, compensation for damages, or termination of the franchise agreement pursuant to Article 1243 of the Indonesian Civil Code. Nevertheless, a juridical analysis demonstrates that the Indonesian Civil Code governs only the contractual relationship between the franchisor and the franchisee. It does not regulate liability toward patients as recipients of healthcare services. Consequently, where patients suffer losses due to substandard medical treatment, the legal resolution cannot rely solely on the contractual doctrine of breach of contract but must also consider the specific provisions of Indonesian health law.

2. Legal Liability under Law Number 17 of 2023 on Health

Unlike the Indonesian Civil Code, which primarily regulates private legal relationships, Law Number 17 of 2023 on Health approaches the responsibilities of healthcare providers from the perspective of protecting the public interest. The Law requires every healthcare facility to provide services that comply with quality standards, professional standards, patient safety standards, and applicable licensing requirements. Accordingly, the legal responsibility of healthcare facility operators is determined not only by the terms of the franchise agreement but also by statutory obligations imposed under health legislation. Within the practice of health clinic franchising, the franchisee, as the operator responsible

for the day-to-day management of the clinic, bears direct responsibility for the healthcare services provided to patients. The franchisee must ensure that medical personnel possess the required professional qualifications, that healthcare facilities comply with regulatory standards, and that all healthcare services are delivered in accordance with applicable professional standards and Standard Operating Procedures. Where these standards are violated, the franchisee may be held legally liable under Indonesian health law.

The franchisor, however, cannot entirely disclaim responsibility where patient harm results from operational systems, Standard Operating Procedures, or business policies established by the franchisor. For example, if the franchisor adopts SOPs that are inconsistent with current medical science or fails to update healthcare service standards in accordance with new legislation or medical developments, thereby causing medical errors, the franchisor may, from a normative legal perspective, bear legal responsibility for failing to fulfill its obligations of supervision and continuous business guidance.

This demonstrates that legal liability within health clinic franchising cannot be divided absolutely between the franchisor and the franchisee. Rather, liability should be determined according to each party's contribution to the occurrence of the legal violation. Consequently, where patient harm results directly from the negligence of medical personnel in providing healthcare services, primary liability rests with the clinic operator. Conversely, where the patient's loss is attributable to the franchisor's business system, operational standards, or corporate policies, the franchisor may likewise be held legally liable in accordance with the applicable principles of legal responsibility.

This analysis is consistent with Hans Kelsen's Theory of Legal Responsibility, which posits that legal liability arises as a consequence of violating legal norms and entails an obligation to bear the legal sanctions prescribed by law. Accordingly, any party who violates a legal obligation must be held accountable for the consequences of its conduct, whether such obligations arise from contractual agreements or from statutory provisions.

3. Legal Liability under Government Regulation Number 35 of 2024 on Franchising

Government Regulation Number 35 of 2024 on Franchising further clarifies the allocation of legal responsibilities between franchisors and franchisees in the operation of franchise businesses. The Regulation requires franchise relationships to be based not merely on profit-sharing arrangements but also on continuous business development, transparency, and effective supervision of the implementation of the franchised business system. Within the context of health clinic franchising, the franchisor is responsible for ensuring that the franchised business system complies with applicable legal and professional standards, providing training to franchisees, supervising the implementation of Standard Operating Procedures, and updating operational systems whenever regulatory changes or advances in medical science occur. These obligations demonstrate that the franchisor functions not merely as the owner of a trademark but also as the party responsible for maintaining the quality, consistency, and legal compliance of the franchised business system.

From the perspective of legal principles, this allocation of responsibility reflects the principle of proportionality, whereby each party is held accountable in accordance with its respective rights, obligations, and degree of fault. Furthermore, the application of the principle of lex specialis derogat legi generali indicates that the specific legal framework governing franchising and healthcare serves as the primary basis for determining the legal responsibilities of the parties, while the provisions of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUH Perdata) continue to apply insofar as no specific statutory regulation provides otherwise. In addition, the principle of lex superior derogat legi inferiori requires that any contractual clause purporting to exempt the franchisor from all liability for the quality of healthcare services must be deemed invalid to the extent that it conflicts with Law Number 17 of 2023 on Health.

4. CONCLUSION

Breaches of health clinic franchise business cooperation agreements constitute multidimensional legal violations, as they involve not only civil law aspects in the form of breach of contract (wanprestasi), but also issues relating to administrative law and health law. Accordingly, disputes arising from such agreements cannot be adequately resolved solely through the application of contract law principles under the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUH Perdata). Instead, they require an integrated legal approach that takes into account the provisions of Law Number 17 of 2023 on Health and Government Regulation Number 35 of 2024 on Franchising. Such an approach enhances legal certainty, ensures a fair balance between the rights and obligations of the contracting parties, and guarantees that the operation of health clinic franchise businesses remains oriented toward patient protection, the quality of healthcare services, and the public interest, in accordance with the principles of the Indonesian rule of law.

The legal allocation of responsibility in the operation of health clinic franchises in Indonesia has not yet been explicitly and comprehensively regulated under the existing statutory framework. Neither the Indonesian Civil Code (KUH Perdata), Law Number 17 of 2023 on Health, nor Government Regulation Number 35 of 2024 on Franchising provides clear legal parameters defining the extent to which a franchisor may be held liable where patient harm results from a combination of deficiencies in the franchise system and operational negligence on the part of the clinic. This regulatory gap has the potential to create legal uncertainty in the resolution of disputes involving health clinic franchise operations.

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