


Legal Certainty in International Franchising: A Comparative Study between Indonesia and Singapore

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Abstract

Introduction: The rapid expansion of international franchises into Indonesia creates complex legal dynamics, especially when foreign entities from developed countries such as Singapore face protectionist regulations in developing countries. One of the central issues that reflects this tension is the policy of limiting the number of foreign franchise outlets to a maximum of 250 outlets. These policies create ambiguity in legal norms, threaten legal certainty, and create potential conflicts between domestic market protections and international commitments within the global trade framework.

Purposes of the Research: This study aims to examine and analyze legal certainty in cross-border franchise agreements, focusing on the comparison of the legal system between Indonesia and Singapore.

Methods of the Research: Normative juridical approaches and comparative methods are used to explore differences in legal structures, the principle of freedom of contract, and the role of the state in regulating franchise schemes in both jurisdictions.

Results of the Research: This study found that Singapore, with its minimalist common law approach, provides a high degree of contractual flexibility for business actors. On the contrary, the Indonesian legal system tends to be interventionist but does not fully guarantee legal certainty due to ambiguity of norms and overlapping regulations. Therefore, this study recommends the importance of harmonization of cross-border regulations in supporting the legal certainty of international franchise agreements.

Keywords: Franchise Agreements; Cross-Country; Legal Certainty, Investment Law; Comparative Studies.

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INTRODUCTION

The globalization of business has created a strong foundation for the rapid growth of cross-border franchising. The franchise model was chosen for its cost efficiency, ease of replication of the business model, and its ability to maintain brand consistency across multiple jurisdictions. This development is driven by the increasing global consumer demand for uniform products and services, as well as technological advancements that enable the integration of cross-border business systems.

International franchise agreements are one of the most effective business strategies for global expansion that allow companies to expand their market reach without the need to build infrastructure from scratch.¹ A proven operational system and a successful business model can enable the parent company to expand their operations into overseas markets through franchise partners. This is obtained by granting the right to use trademarks. This

¹ Mahadewi, E. P. *International Marketing*. (Sonpedia Publishing Indonesia, 2025).

operational system offers significant financial benefits for both parties (*franchisor* and *franchisee*), but in practice, this cannot be separated from major challenges, especially in the differences in the legal system between countries that are able to affect the validity and implementation of franchise agreements.²

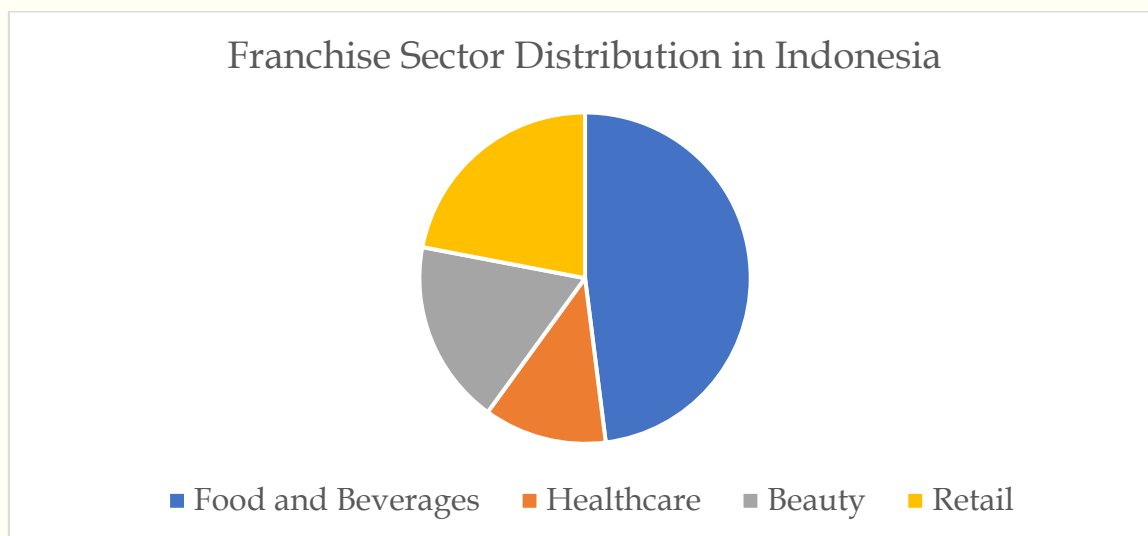


Figure 1. Franchise Sector Distribution in Indonesia

Based on the results of observations made by the author in the implementation of the International Franchise, License, and Business Concept Expo and Conference (IFRA) in 2025, it shows that there is a trend of increasing participation of foreign franchises in domestic economic activities.³ The participation of 350 franchise outlets, most of which came from developed countries such as Singapore, reflects the tendency of dominance of cross-border business actors in the structure of Indonesia's franchise market. This phenomenon is important to study in the context of competitive inequality between foreign franchisors who have access to large capital, technology, and established managerial systems, and domestic business actors who still depend on regulatory support and the capacity to adapt to global business models. Therefore, the dominance of foreign actors in the franchise ecosystem needs to be placed within the framework of legal analysis that considers the dimensions of economic sovereignty, equality of market access, and contractual certainty for all parties.

The Minister of Trade at the opening of IFRA 2025 underlined the urgency of policy reformulation amid external pressures due to global economic uncertainty and international geopolitical turmoil. In this case, the high dependence on foreign franchise investment can actually create asymmetry in legal relations, if it is not accompanied by a regulatory system that is responsive and oriented towards the protection of national businesses. Therefore, it is necessary to formulate legal policies that are not only adaptive to global dynamics, but also proactive in maintaining a balance between economic openness and the sustainability of local business sector development. The harmonization of regulations, the evaluation of positive legal instruments, and the affirmation of the principle of non-discrimination in international agreements are important elements in responding constructively to the challenge of foreign franchise domination.

² Yumetri Abidin, Y. *Book: Introduction to International Economics*, 2022.

³ Adri, A. (2025). 350 Brands Enliven the Franchise Exhibition at ICE BSD. <https://www.kompas.id/artikel/ifra-2025-buka-peluang-wirusaha-dan-rambah-pasar-luar>

Franchising is a business model that allows entrepreneurs to run a business by reducing risk through knowledge transfer and proven systems.⁴ However, while this business model is promising, the success of franchise cooperation is determined not only by the quality of the products and systems offered, but also by how the agreements between the parties involved are drafted and executed.⁵ The creation of franchise agreements, especially those that are cross-border, requires special attention in selecting the right legal jurisdiction to avoid legal conflicts that can be detrimental to the parties involved.

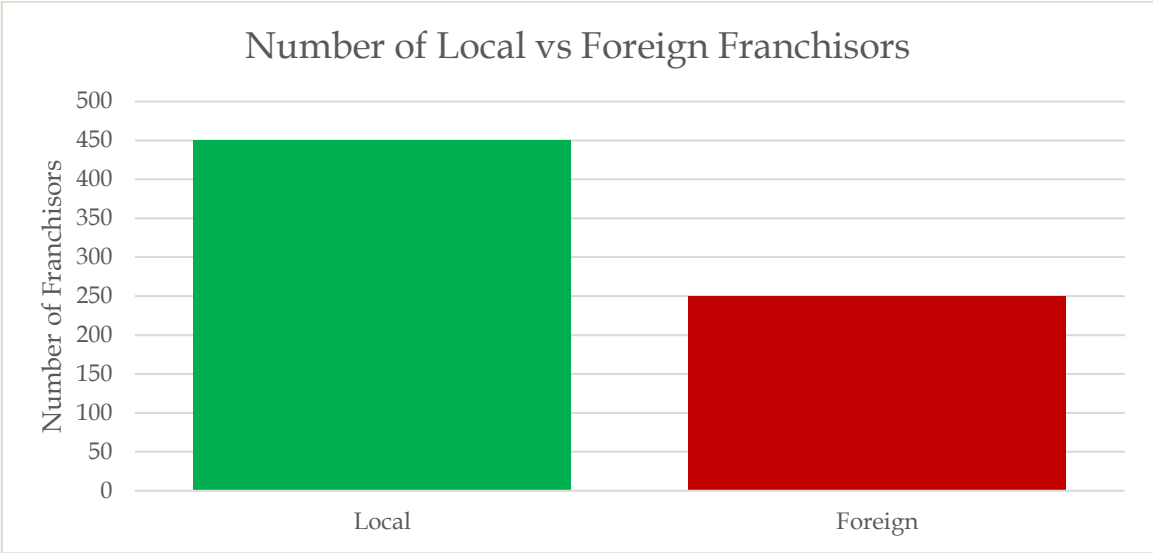


Figure 2. Number of Local vs Foreign Franchisors

The dominance of foreign franchises identified through the IFRA 2025 event not only raises the problem of domestic market inequality, but also creates friction between national interests and Indonesia's commitment to the international trade system, especially under the *General Agreement on Trade in Services* (GATS) regime within the framework of the World Trade Organization (WTO). When the Indonesian government implemented a restrictive policy such as in Trade Regulation No. 07/2013, which limits the number of foreign franchise outlets to 250 outlets, the policy actually reflects the protection efforts of local business actors. However, from the perspective of international law, such policies can be considered as non-tariff barriers that are contrary to the principles of *market access* and *national treatment* guaranteed in the GATS, especially if such restrictions are not imposed in a non-discriminatory and proportionate manner.

The conflict between domestic market protection and trade liberalization commitments creates complex legal tensions. On the one hand, the state has a sovereign right to regulate economic activities within its jurisdiction in order to maintain national economic stability and justice. On the other hand, Indonesia's attachment to international agreements requires the openness of the service market, including the franchise sector, to provide fair and equal treatment to foreign actors. In this context, a regulatory design is needed that is able to bridge national interests and international commitments, through legal harmonization mechanisms and *evidence-based* policymaking, in order to not only protect local actors, but also strengthen Indonesia's credibility in the global trade legal system.

⁴ Oktaviani, N. M. A. D. Franchising as A New Opportunity in the World of Entrepreneurship. *Vaisya: Journal of Hindu Economics* 3, no. 1 (2024): 14-26.

⁵ Arif, M. E., Anggraeni, R., & Ayuni, R. F. *Franchise Business*. (Malang: Brawijaya University Press, 2021).

One example of a dispute in an international franchise agreement also occurred between Breadtalk PTE LTD and PT. Talkindo Selaksa Anugrah. In this case, the agreement made on February 14, 2023 was made without involving a notary and used two different languages. The resulting difference of understanding eventually sparked a dispute, which led to a default claim by Breadtalk PTE LTD in 2022. This dispute then led to an arbitration process, which was ultimately canceled by the West Jakarta District Court. This case reflects the importance of clear and valid agreements in cross-border franchise agreements, which should be made in the form of a notarized deed in order to provide legal certainty and prevent potential disputes in the future. With a notary deed, the agreement will have a stronger legal foundation, and can avoid the parties involved from uncertainty that can harm them.⁶ This difference in understanding eventually triggered a dispute and led to a default claim by Breadtalk PTE LTD in 2022, which led to an arbitration process and finally the annulment of the arbitration decision by the West Jakarta District Court.

Although Indonesia offers enormous market potential in the franchise industry, cross-border franchise agreements often face significant challenges, especially regarding the differences in legal and regulatory systems between the country of origin and the country of franchise. This issue becomes even more complicated when agreements are carried out informally, a practice that is still widely practiced in Indonesia. Many franchise agreements in Indonesia are made "underhand," without official oversight or legal documentation, even though the business transactions involved are worth billions of rupiah. This ambiguity adds to contractual risks, both for local and foreign franchisors, and creates legal uncertainty that can affect the smooth operation of franchises.

This legal challenge is exacerbated by existing regulations in Indonesia, even though there are clear arrangements in place. One of the regulations that regulates franchising in Indonesia is Government Regulation Number 42 of 2007 concerning Franchising. In Article 1 Paragraph (1), it is explained that franchising is a form of business cooperation between the franchisor and the franchisee which is carried out based on a written agreement. This Agreement aims to run a business that has a trademark, business system, and/or operational procedures that have been tested. Furthermore, Article 3 Paragraph (1) emphasizes that the franchise agreement must be made in writing between the two parties which contains mutually binding provisions. In addition, Regulation of the Minister of Trade Number 07 of 2013 concerning the Implementation of Franchises. In this regulation, one of the important things is the obligation for franchisors to register a franchise agreement with the Minister of Trade. Article 3 Paragraph (1) states that franchisors are required to register a franchise agreement before carrying out the franchise business activities. This regulation aims to create transparency in the implementation of the franchise and protect the interests of both parties involved, both the grantor and the franchisee. In addition, Article 4 Paragraph (1) emphasizes that in a franchise agreement, both the franchisor and the franchisee must comply with the provisions stipulated in the applicable laws and regulations. This regulation also regulates the rights and obligations of each party which must be clearly stated in the agreement, so that there are no disputes in the future. Article 6 Paragraph (2) adds that franchisors are also obliged to provide complete information about the business system to be run, including operational and financial procedures, so that franchisees can run their business in a more targeted and structured manner. This regulation

⁶ Directory of Decisions of the Supreme Court of the Republic of Indonesia. (2024). *Supreme Court Decision Number 941 B/Pdt.Sus-Arb/2024*

aims to ensure that the franchise business in Indonesia runs in accordance with fair, transparent, and compliant with the applicable laws.

The differences with countries like Singapore, which have a more liberal and efficient legal system, are increasingly felt. Singapore offers more minimal and more structured regulations, providing clearer legal certainty for foreign franchisors looking to enter the market, legal uncertainty and irregularities in the implementation of franchise agreements in Indonesia can be a major obstacle for foreign players looking to invest or grow their business here.⁷ This inequality shows that although Indonesia has great market potential, the challenge of poorly managed regulations can be a serious obstacle in the development of the franchise industry. For this reason, it is important for related parties, both the government and industry players, to further strengthen the implementation of existing regulations, such as Regulation of the Minister of Trade Number 07/2013, in order to create a more transparent, safe, and attractive business climate for franchisors, both local and foreign.

Legal uncertainty is an important issue that has the potential to harm the parties involved, both local and foreign franchisors. A legal system that is inconsistent and often not equipped with formal oversight in franchise agreements, especially those conducted informally, creates uncertainty in the application of the law. Hans Kelsen, in outlining legal certainty, emphasized that law must be understood as a clear and structured system of norms.⁸ In his view, every legal norm must be predictable and objectively accepted by the community so that it can be applied consistently. In relation to franchise agreements in Indonesia, the legal uncertainty arising from informal or poorly documented agreements is at odds with Kelsen's view of law as a system of norms that must be structured. Existing regulations, such as Government Regulation Number 42 of 2007 and Regulation of the Minister of Trade Number 07 of 2013, although they have existed, have inconsistent implementation created legal uncertainty, which hindered the sustainability of the franchise business, especially for foreign franchisors.

H.L.A. Hart in his book *The Concept of Law* states the importance of the concept of rule of recognition and legal certainty in the legal system. Hart argues that the law should have clear rules that are accepted by society and legal institutions.⁹ In this case, Indonesia's legal system that does not always closely monitor franchise agreements, especially those carried out informally, adds uncertainty for the parties involved, both local and foreign. Based on Hart's theory, in order to create real legal certainty, Indonesia needs to enforce stricter rules regarding the administration of franchises and increase supervision of the agreement. That way, the parties involved in the franchise will better understand their rights and obligations, and cross-jurisdictional legal risks can be minimized, creating a more stable and predictable business climate for foreign investors. Regulatory inequities in the implementation of franchises in Indonesia, especially related to the unclear supervision of agreements carried out informally, create legal uncertainty and cross-jurisdictional contractual risks.¹⁰ The difference in the application of international and domestic law and the franchise arrangement that is not yet fully strong makes many parties, especially foreign investors,

⁷ Noor, T. "The Comparative Law of Franchise Agreements in Realizing Protection Between Parties". *JPH*, 10, no. 2 (2023):

⁸ Hadi, S., & Michael, T. Hans Kelsen's Thoughts About The Law And Its Relevance To Current Legal Developments. *Technium Soc. Sci. J.*, 38, (2022): 220.

⁹ Flanagan, B., & Hannikainen, I. R. "The folk concept of law: Law is Intrinsically Moral". *Australasian Journal of Philosophy*, 100, no. 1 (2022): 165-179.

¹⁰ Kristianto, F., & Gracia, F. "Franchising in the Form of Partnership". *Indonesian J. Int'l L.*, 19, (2021): 641.

face uncertainty that can affect the sustainability of their business. Therefore, the author is interested in researching more about this issue. This research aims to delve deeper into the regulatory inequities in cross-border franchise agreements and how this can create legal uncertainty that hinders the development of the franchise industry in Indonesia. This research is expected to provide recommendations to improve the implementation of existing regulations in order to create better legal certainty in carrying out cross-border franchise agreements.

METHODS OF THE RESEARCH

This research uses a normative research method that focuses on the analysis of applicable legal regulations and underlying legal principles, in order to find answers to existing legal problems, especially those related to cross-border franchise agreements. This normative approach studies law from a normative perspective, which aims to understand and interpret the applicable legal rules and how they are applied in people's lives. The main focus of this research is to explore how Indonesian laws and regulations govern international franchise agreements, particularly regarding the legal certainty offered by these agreements. In particular, this study examines existing regulations in Indonesia's positive law, such as the Civil Code, Government Regulation Number 42 of 2007 concerning Franchising, as well as international law related to cross-border transactions. In addition, the Regulation of the Minister of Trade Regulation of the Minister of Trade Number 07 of 2013 concerning the Implementation of Franchises is also studied in this study. This research is not only limited to the study of the substance of the applicable law, but also includes an understanding of relevant legal concepts, such as international civil law and legal arrangements regarding notary deeds, to provide an overview of the importance of legal certainty in cross-border franchise agreements. The primary source of legal data in this study is the Civil Code as the primary legal source that regulates agreements in general and the conditions for the validity of agreements, especially Article 1320 which regulates the legal conditions of an agreement. In addition, Government Regulation Number 42 of 2007 concerning Franchising is also used as a source of primary legal data that regulates the implementation of franchises in Indonesia, including the obligation for franchisors to make written agreements with franchisees. In addition, the Regulation of the Minister of Trade Number 07 of 2013 concerning the Implementation of Franchises is also a source of primary legal data. The secondary legal data sources in this study are books, journals, or literature on law that discuss the theory of treaty law, international civil law, notary deeds, and franchise agreements.

RESULTS AND DISCUSSION

A. Legal Regulation of Cross-Border Franchises in Indonesia and Singapore

The franchise business has become a top choice for many companies looking to expand their market reach more quickly and efficiently. The main advantage of this business model is the ability to introduce well-known brands and proven operational systems to business partners, without the need to build new infrastructure from scratch.¹¹ The case of limiting the number of foreign franchise outlets through Regulation of the Minister of Trade Number 07/2013 is an example of a protectionist policy that creates tension between national

¹¹ Arif, M. E., Anggraeni, R., & Ayuni, R. F. . *Bisnis Waralaba*. (Malang: Universitas Brawijaya Press, 2021).

interests and the principle of international trade. This policy, which limits foreign franchise outlets to a maximum of 250 outlets, is implemented without an adaptive mechanism that takes into account the business expansion needs of foreign franchisors. This not only hinders the growth of the international franchise business in Indonesia, but also creates ambiguity in legal norms that can threaten legal certainty, especially in relation to contractual relationships across jurisdictions. This provision is contrary to the spirit of the international legal system which emphasizes non-discrimination and equal treatment of foreign business entities, and creates space for potential lawsuits in international arbitration forums for violations of commitments within the framework of multilateral trade agreements.

Legal certainty is a fundamental principle in legal theory that requires clarity, consistency, and predictability of the applicable legal rules, so that legal subjects can adjust their behavior rationally and avoid unexpected legal risks.¹² In relation to **cross-jurisdictional** contractual relationships, legal certainty is becoming increasingly important because parties from different legal systems must have confidence that the contracts they enter into will be enforced fairly, transparently, and based on predictable legal norms. When a country like Indonesia in the case of limiting the number of foreign franchise outlets through Trade Regulation Number 07/2013 issues policies that are inconsistent with international legal practices, the country risks creating legal uncertainty for foreign business actors. Such restrictive policies without an adaptive basis not only cast doubt on investment stability, but can also be considered to violate the principle of non-discrimination that is part of international trade law, especially within the framework of the WTO (World Trade Organization) or FTA (Free Trade Agreements) agreements that guarantee equal treatment of cross-border business entities.¹³

These regulatory inequities and differences in the legal system are also reflected in the dispute case between Singapore's Breadtalk PTE LTD and its local partner PT. Talkindo Selaksa Anugrah. The franchise agreement made on February 14, 2023 was carried out without the involvement of a notary and was drafted in two different languages, which opened up room for double interpretation. Disputes arising from differences in understanding the content of contracts show weaknesses in the application of the principle of legal certainty in Indonesia, especially in cross-border agreements. Although Indonesia adheres to a civil law system that theoretically prioritizes legal certainty through written rules, practices in the field often show weak oversight and lack of compliance with legal formalities, including the need for a notary deed.¹⁴ In contrast, in a common law system such as Singapore, flexibility in drafting contracts is protected by the principle of precedent and the active role of judges in interpreting contracts, which in turn provides greater protection for the intent and will of the parties. Therefore, this case reflects that although Indonesia has a written regulatory structure, without consistent implementation and strengthening of supervisory institutions, the principle of legal certainty is difficult to achieve substantially.

The legal arrangements of cross-border franchises in Indonesia and Singapore show significant differences, both in terms of the legal basis used and the way it is implemented. In Indonesia, regulations regarding franchising are clearly regulated in Government

¹² Sales, P. "Certainty and Flexibility in the Law". *Judicial Review* 1, no 12 (2025).

¹³ Edwards, P. Hans Kelsen, "International Law and The 'Primitive' legal Order". *Jurisprudence* 1, no. 30 (2025).

¹⁴ Zulkifli, S., & Noor, T. "Reconstructing Legal Protection Regulations for Parties in Franchise Agreements Based on Dignified Justice". *Khazanah Hukum*, 6, no. 3 (2024): 223-233.

Regulation Number 42 of 2007 and Regulation of the Minister of Trade Number 07 of 2013, which require a written agreement and must be stated in a notary deed. In addition, franchise agreements in Indonesia must go through a fairly long administrative procedure, including registration with the Ministry of Trade. While there are rules that strictly govern franchising, their implementation is sometimes inconsistent and many agreements are not well documented, which has the potential to create legal uncertainty. This is especially felt by foreign franchisors investing in Indonesia, as they are at risk of facing legal disputes that could be detrimental to their business, especially when the agreement is not formally and legally drafted according to the applicable provisions.

Meanwhile, Singapore, although it does not have specific regulations governing franchises in detail, provides a more flexible approach through the common law system they adopt.¹⁵ In this system, a franchise agreement is considered a contract that is subject to the applicable principles of general contract law. There is no obligation for franchisors and franchisees to register their franchises, which provides convenience in the administrative process. However, Singapore has institutions such as the Singapore Franchise Association (SFA) that provide guidelines and ensure that the franchise practices carried out are fair and transparent. SFA helps maintain ethical standards and professionalism in running a franchise, although there are no formally binding written regulations like in Indonesia. The advantages of Singapore's more flexible legal system provide convenience for foreign franchisors looking to grow their businesses, as they can focus more on expansion without being burdened with complicated bureaucracy. When compared in terms of the legal system, Singapore, which adheres to the common law system, provides greater freedom in terms of making and adjusting franchise agreements in accordance with the agreement of the parties.¹⁶ In the common law system, judges have a greater role in interpreting contracts based on existing legal precedents. This provides flexibility for franchisors and franchisees to set up their business relationships as needed, as long as they do not violate applicable laws. On the other hand, Indonesia, which adheres to the civil law system, emphasizes more on written rules and stricter procedures.¹⁷ Indonesian law prioritizes clear and structured regulations, which require stricter registration and supervision of franchise agreements. Although this system provides clearer legal certainty, the lengthy bureaucratic process is often an obstacle for business people, especially foreign franchisors. Significantly, the fundamental differences between the concept of legal certainty in franchise agreements between Indonesia and Singapore can be reflected in the following table:

Table 1. Comparison of Cross-Border Franchise Legal Arrangements between Indonesia and Singapore

Aspects	Indonesia	Singapura
Legal System	Civil Law (codification-based)	Common Law (precedent-based)
Franchise Setup	Specifically regulated through Government Regulation No. 42/2007 and Permendag No. 31/2016	There are no specific regulations; Using the legal principles of general contracts

¹⁵ Sugianto, F., Tanaya, V., & Michael, T. A Brief Comparative Study between Indonesian Contract Law Under Indonesian Civil Code and Singapore Contract Law. *Journal of International Trade, Logistics and Law*, 9, no. 2 (2023): 132-143.

¹⁶ Adcock, A., Ing, C., Santaniello, D., Cohen, J., Oeurn, M., Mol, D., ... & Piemwichai, W. "An Overview of Franchising Law in Southeast Asia". *Franchise Law Journal* 41, no 2 (2021): 247-268.

¹⁷ Wardhani, L. T. A. L., Noho, M. D. H., & Natalis, A. (2022). "The adoption of various legal systems in Indonesia: an effort to initiate the prismatic Mixed Legal Systems". *Cogent Social Sciences* 8, no. 1 (2022): 2104710.

Formality Requirements	The agreement must be in writing, in the form of a notary deed, and registered with the Ministry of Trade	No special form or formality required in the agreement
Bureaucracy	Tall; requires registration, supervision, and official documents	Low; More flexible and efficient
Principles of Contract Enforcement	Prioritizes written rules, but is often weak in implementation	Relying on the intention of the parties and the judge's interpretation based on precedent
Legal Certainty	High in theory, but low in practice due to weak oversight and compliance	Higher substantively because of the protection of the parties' intentions
Protectionist Policy	Maximum restriction of 250 outlets for foreign franchises (Permendag No. 07/2013)	No limit on the number of foreign franchise outlets
Implications for Foreign Franchisors	High risk of legal disputes and contractual uncertainty	Better protected through flexible legal mechanisms and robust dispute resolution
Case Examples	Breadtalk PTE LTD vs PT. Talkindo Selaksa Anugrah; Disputes due to contracts without notaries and bilinguals	There are no notable similar cases, as the contract system is more adaptive

Source: Data processed by the author (2025)

Looking at these differences, it can be concluded that Singapore offers a more efficient and flexible legal system for international franchisors, which prioritizes ease and transparency in franchising practices. On the contrary, Indonesia needs to make improvements in terms of supervision and implementation of franchise regulations to create a more attractive business climate for foreign investors. This can be done by reducing administrative barriers and increasing legal certainty through the implementation of more consistent and structured regulations. In this context, the regulation of franchise law in Singapore can better facilitate the growth of cross-border franchise businesses, while Indonesia needs to improve the weaknesses in its legal system to better suit global investment needs.

B. The Principle of Legal Certainty in the Franchise Agreement between Indonesia and Singapore

Franchising has become an increasingly popular global expansion strategy, mainly due to its ability to expand market reach more efficiently without having to build an entire infrastructure from scratch.¹⁸ This model allows franchisors to distribute proven brands and operational systems through local partners (*franchisees*). However, in cross-border practice, the effectiveness of franchise agreements is highly dependent on the legal system that governs the contractual relationship.¹⁹ One of the fundamental principles that underpin the stability of business relationships is the principle of legal certainty, which ensures that the rights and obligations of the parties are protected by a predictable and enforceable legal system.

¹⁸ Alon, I., Apriliyanti, I. D., & Henriquez Parodi, M. C. (2021). A systematic review of international franchising. *Multinational Business Review* 29, no. 1 (2021): 43-69.

¹⁹ Guo, S. L. (2023). "When Less May Be More: A Dyadic View of Franchise Contracts". *Long Range Planning*, 56, no. 4 (2023): 102343.

The principle of legal certainty conceptually requires the clarity, consistency, and predictability of a legal norm so that individuals or business entities can behave according to the rules without fear of being harmed by uncertainty or sudden changes. In classical legal theory, Gustav Radbruch emphasized that legal certainty is one of the main values that must be maintained in the legal system in addition to justice and utility.²⁰ In cross-jurisdictional contractual relationships such as franchise agreements between Indonesia and Singapore, this principle is very important because the contract must be reliable for parties from two different legal systems in order to provide a sense of security and stability in doing business.

Legal certainty, according to Radbruch, means that the law must be predictable and consistent in force, so that individuals can know exactly how the law will apply to their actions.²¹ In the context of contractual relationships, including international franchising, this value becomes crucial. When two parties from different jurisdictions such as Indonesia (civil law) and Singapore (common law) enter into an agreement, legal certainty serves as a bridge of trust. The parties must feel confident that the contract they sign will be fairly protected and enforced by the legal system in which it applies. In practice, differences in legal systems can pose their own challenges. The civil law system such as in Indonesia places great emphasis on formality and compliance with written rules. On the other hand, the common law system such as Singapore's prioritizes the principle of freedom of contract and interpretation based on precedent.²² Therefore, in the absence of legal certainty guaranteed by both systems, the potential for conflict and misunderstanding can increase in cross-border agreements. For example, differences of opinion about the validity of a contract in non-notary form or about the language used can trigger a dispute as happened in the case of BreadTalk. Thus, in Radbruch's eyes, legal certainty is not only about attachment to written rules, but also concerns the reliability of the legal system in providing protection and certainty of anticipated outcomes. In the midst of the globalization of law and business, this value is increasingly important so that business actors can design, execute, and complete contracts with a sense of security without being trapped in cross-jurisdictional uncertainty.

Indonesia, as a country with a civil law system, has a tendency to emphasize written rules and formalities as a condition for the validity of an agreement. In the context of franchising, this is reflected in Government Regulation Number 42 of 2007 concerning Franchising and Trade Regulation Number 07 of 2013, which requires franchise agreements to be stated in a notary deed and administratively registered with the Ministry of Trade. Normatively, this arrangement provides a strong framework of legal certainty. However, in practice, the application of these rules is not always consistent. Many franchise agreements in Indonesia do not meet these formal provisions, either due to a lack of understanding of business actors or due to bureaucratic procedures that are considered difficult. This inconsistency is evident in the case of Singaporean Breadtalk PTE LTD with its partner in Indonesia, PT. Talkindo Selaksa Anugrah. In such cases, the franchise agreement is signed without the involvement of a notary and uses two languages, which gives rise to differences in interpretation. As a

²⁰ Borowski, M. Gustav Radbruch's Theory of Legal Obligation. In *Theories of Legal Obligation* (pp. 99-122). Cham: Springer International Publishing, 2024.

²¹ Tan, S. H. "Radbruch's Formula Revisited: The Lex Injusta Non Est Lex Maxim in Constitutional Democracies". *Canadian Journal of Law & Jurisprudence*, 34, no. 2 (2021): 461-491.

²² Chan, D., & Teo, J. Y. "Re-Formulating the Test for Ascertaining the Proper Law of An Arbitration Agreement: A Comparative Common Law Analysis". *Journal of Private International Law* 17, no, 3 (2021): 439-472.

result, a dispute arose that led to the arbitration process and was eventually canceled by the West Jakarta District Court. This case shows that although Indonesia has written regulations that emphasize formality, weak implementation can hurt the principle of legal certainty itself, especially when it involves business actors from countries with different legal systems.

Meanwhile, Singapore adheres to a more flexible common law system in contract arrangements.²³ There is no need for any standard form or special administrative formalities in drafting a franchise contract, as long as the contract is legally agreed upon by the parties. Legal certainty in this system is built through precedent and the role of judges who are active in interpreting the intentions of the parties. Legal protection of the content of the contract is a priority, not just the fulfillment of administrative formalities. This provides greater room for franchisors and franchisees to tailor contracts to their business needs, as long as they do not conflict with common law. Therefore, Singapore is often considered a more friendly jurisdiction for foreign business actors in terms of certainty and contractual protection.

The inequality of the legal system between Indonesia and Singapore creates a gap in terms of protection of cross-border contracts. On the one hand, Indonesia demands high formalities, but it cannot always guarantee consistency in its implementation. On the other hand, Singapore offers flexibility and protection based on established court practices, yet demands clarity on the substance of contracts from the start. This inequality has an impact on the higher potential for disputes when a Singaporean franchisor operates in Indonesia, as reflected in the case of Breadtalk. In addition, Indonesia's protectionist policies such as the restriction on the number of foreign franchise outlets in Regulation of the Minister of Trade Number 07 of 2013 exacerbate legal uncertainty by sending signals that are contrary to the principles of international trade law, including the principle of non-discrimination and equal treatment of foreign entities.

Non-adaptive policies such as restricting outlets without considering the dynamics of foreign franchisor's business expansion pose additional legal risks. The provision could be considered a violation of Indonesia's commitments within the framework of multilateral trade agreements such as the WTO and bilateral agreements such as FTAs, which could ultimately trigger lawsuits through international arbitration forums. In this context, the principle of legal certainty is not only an internal need of the national legal system, but also part of the state's responsibility in maintaining credibility and business certainty for foreign business actors.

CONCLUSION

The differences in the legal system between Indonesia and Singapore have a significant influence on the legal certainty in cross-border franchise agreements. Indonesia, with its *civil law* system, has strict written regulations related to franchising, but its implementation is still weak and bureaucratic, thus posing legal risks for foreign franchisors. In contrast, Singapore, which adheres to the *common law system*, places more emphasis on contractual flexibility and protection of the parties' intentions, making it more adaptive and attractive to international business actors in the context of franchising. The principle of legal certainty

²³ Grebieniow, A. "Principles of Asian Contract Law at the Crossroads of Standardization and Legal Pluralism". *Asian Journal of Law and Society* 10, no. 2 (2023): 306-338.

is a fundamental foundation in cross-border contractual relations and demands the adjustment of national regulations with the principles of international trade law. Inconsistencies in the application of the law and protectionist policies such as limiting the number of foreign franchise outlets in Indonesia have the potential to violate the principle of non-discrimination and reduce the credibility of the national legal system. To increase competitiveness and ensure a conducive investment climate, Indonesia needs to reform franchise regulations to be more consistent, adaptive, and in line with international legal standards.

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