

Analisis Perjanjian Waralaba antara H dengan BK Berdasarkan Putusan Nomor 321/PDT/2021/PT. DKI = Analysis of Franchise Agreement between H and BK based on Ruling No 321/PDT/2021/PT. DKI

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Abstrak

Waralaba menjadi salah satu kegiatan usaha yang digemari oleh pebisnis pemula karena tidak membutuhkan modal yang terlalu banyak. Waralaba dilakukan berdasarkan suatu Perjanjian Waralaba yang diatur syarat formilnya dalam undang-undang mengenai waralaba salah satunya mengenai klausul minimal yang harus tercantum dalam Perjanjian Waralaba. Ketika perjanjian waralaba tidak memenuhi syarat formil perjanjian waralaba yang telah ditentukan dalam undang-undang maka perjanjian tersebut menjadi batal demi hukum sebagai perjanjian waralaba. Dalam praktik ditemukan Perjanjian Waralaba yang tidak memuat klausul minimal dalam perjanjian waralaba tetapi Majelis Hakim tidak membatalkan Perjanjian Waralaba antara para pihak. Penulisan ini menggunakan metode penelitian yuridis normatif dan jenis data sekunder. Hasil penelitian ditemukan perjanjian waralaba merupakan perjanjian formil sehingga keabsahannya harus memenuhi syarat formil dari perjanjian waralaba. Majelis Hakim pada tingkat pertama dan tingkat banding dalam Putusan Nomor 321/PDT/2021/PT DKI kurang tepat dalam memberikan pertimbangan dan putusannya karena seharusnya perjanjian waralaba antara para pihak batal demi hukum. Karena Perjanjian waralaba antara para pihak tidak memenuhi syarat formil dari perjanjian waralaba sebagaimana ditentukan dalam PP 42/2007 dan Permendag 53/2012. Para pihak harus melakukan penelaahan sebelum membuat perjanjian waralaba dan pemerintah sebaiknya merubah peraturan mengenai perjanjian waralaba sehingga perjanjian waralaba dibuat menjadi suatu akta notaril dan pemerintah harus memberikan sosialisasi kepada masyarakat terkait dengan penyelenggaraan waralaba yang sesuai dengan undang-undang

.....Franchising is one of the business activities that is favored by novice business people because it does not require too much capital. Franchising is carried out based on a Franchise Agreement which is regulated by formal conditions in the law regarding franchising, one of which is regarding the minimum clause that must be included in the Franchise Agreement. When the franchise agreement does not meet the formal requirements of the franchise agreement that have been specified in the law, the agreement becomes null and void as a franchise agreement. In practice, it was found that the Franchise Agreement did not contain a minimum clause in the franchise agreement but the Panel of Judges did not cancel the Franchise Agreement between the parties. This writing uses normative juridical research methods and secondary data types. The results of the study found that the franchise agreement is a formal agreement so that its validity must meet the formal requirements of the franchise agreement. The Panel of Judges at the first level and appellate level in Decision Number 321/PDT/2021/PT DKI was not quite right in giving their considerations and decisions because the franchise agreement between the parties should have been null and void. Because the franchise agreement between the parties does not fulfill the formal requirements of the franchise agreement as specified in PP 42/2007 and Permendag 53/2012. The parties must conduct a review before making a franchise agreement and the government should change the regulations regarding franchise agreements so that the franchise agreement is made into a notary deed and the government must provide socialization to the public regarding the implementation of franchising in accordance with the law.