

Intellectual Property Rights and Royalties in Franchise Business Taxation

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Received : 16 November - 2024

Accepted : 12 December - 2024

Published online : 16 December - 2024

Abstract

Intellectual Property Rights (IPR) are rights that are born from human thought, producing useful products or processes. IPR gives the right to obtain economic benefits from creativity. This study aims to understand the concept of IPR and royalty in franchise business tax, with a normative juridical approach and literature analysis to review the applicable rules. In the franchise business, royalties, engineering services, and business income are the objects of Income Tax. IPR protection includes trademark, patent, and copyright rights. Franchise taxes on royalties help regulate Indonesian legal entities according to Tax Law Number 7 of 2008. The law specifies conditions and tax rates for different businesses. Corporate taxpayers face a 25% tax rate, while domestic corporations on the stock exchange with at least 40% shares traded pay 20%. Companies with a gross turnover under Rp4,800,000,000 pay a 1% tax rate.

Keywords: Intellectual Property Rights, Royalties, Franchise, Business Tax.

1. Introduction

Intellectual Property Rights (IPR) are rights that arise from human thought, which results in products or processes that are beneficial to human life. Essentially, IPR allows the owner to enjoy the economic benefits of intellectual creativity, as explained by Mahardhita & Sukro (2018); Sukarmi & Kowagam (2005). IPR has become an important part of modern economic development, so legal provisions related to IPR, including copyright and industrial property rights, need to be strengthened in Indonesia. Patents, trademarks, industrial designs, trade secrets, plant varieties, and genetic engineering are all part of the realm of industrial intellectual property rights (Mahardhita & Sukro, 2018).

In its development, IPR has increasingly entered the economic and business sectors, especially in the franchise system (Tirandika & Karma Resen, 2023). In the franchise industry, the concept of intellectual property rights involves granting permission to use specific intellectual assets like logos, brand names, and confidential information. In Indonesia, franchising often involves granting rights to use and utilize IPR that are closely related to the characteristics of the product or service. These rights include aspects such as brands, methods, formulas, formats and other distinctive features that distinguish each franchise (Hanim, 2011). These elements provide a unique identity for each franchise, so that there is a difference between one franchise and another, both in terms of nature, form, and type of IPR franchised (Khairiyati, 2016).



Franchising itself is an effective marketing concept to expand business networks quickly (Safitri, 2018). This concept is often considered equivalent or more strategic than conventional business development methods. In terms of funding, human resources, and management, the franchise system has many advantages. In addition, franchising is a distribution channel that allows products to be closer to consumers through franchisees (Meylen, 2013). In Indonesia, taxes are imposed on various sectors, including the franchise business (Kuswiratmo & Aji, 2016). A franchise involves unique privileges granted to an individual or company to operate a particular business model, sell established products or services, and permit third parties to utilize them in accordance with a franchise contract (Akbar et al., 2015).

Agreements in franchising basically grant special rights and authorities to franchisees in the form of:

- 1) Product sales rights: Franchisees can sell goods or services using a particular name or trademark.
- 2) Right to business format: The franchise owner is allowed to run the business based on the guidelines set by the franchisor.

Franchise businesses often involve payments in the form of rewards, such as royalties, fees for technical services, or profits from the entire operation. All of these forms of rewards are the object of Income Tax (Nuratika, 2015; Saraka, 2020). This article aims to further examine the application of the concept of IPR and royalties in the context of taxes on franchise businesses.

2. Methods

The research methodology employed is normative juridical, which involves evaluating the effectiveness of regulations related to Intellectual Property Rights and Royalties in Franchise Business Tax using a literature review as the primary method of data collection. Provisions on Legal Protection and Franchise Tax Collection in other countries will also be referred to for comparison. The research specification is descriptive analysis by describing the problems of the IPR Concept on Royalties in Franchise Business Tax to be analyzed. The data analysis technique for the formulation of the first problem uses the systematic interpretation method, namely interpreting the law as part of the entire legislative system by connecting it with other laws. In addition, it also uses the analogy legal construction analysis method, namely a special event is made general which is not written in the law and concluded from the general provisions of the special event, to analyze the second problem.

3. Results and Discussion

In Indonesia, franchise agreements are mandated by government regulations, specifically Republic of Indonesia Number 42 of 2007 for Franchising and Minister of Trade of the Republic of Indonesia Number 12/MDag/Per/3/2006 for Issuing Franchise Business Registration Certificate. The regulations dictate that all parties partaking in a franchise system must have a legally binding agreement in place. The franchise agreement serves as a form of legal security for all parties involved, protecting them from potential harm. It establishes a solid legal foundation for enforcing protection within the franchise system. If one party breaches the terms of the contract, the other party has the right to take legal action under the relevant laws. In general, franchise agreements typically include the following provisions:

- a) The franchisee is given certain privileges by the franchisor. These privileges encompass the utilization of unique methods or recipes associated with a particular brand or trade name, the duration and scope of these privileges, and collaboration opportunities with other entities for acquiring operational necessities.
- b) The duties of the franchisor in exchange for the privileges granted and tasks performed by the franchisor when commencing the business, as well as throughout their tenure in the franchise system.
- c) Issues regarding the transfer of franchise rights to third parties. If the franchisee decides to not continue operating the business and opts to sell it to someone else, certain steps must be established beforehand.
- d) Issues concerning the end of the collaboration agreement for both parties.

The concept of intellectual property rights (IPR) in the franchising business is discussed in Article 1 of Government Regulation No. 42 of 2007:

- a) A franchise is a unique privilege that involves intellectual property rights belonging to an individual or specific legal entities.
- b) Franchising operates under a contractual arrangement.

Abdurrachman, as stated in the trade finance economics Encyclopedia, defines a franchise as an agreement between a manufacturer or wholesaler and a retailer, granting the retailer the permission to sell the manufacturer's products based on mutually agreed terms (Islamiyah, 2018). Numerous definitions of a franchise are given by Henry Campbell Black, such as:

- a) A franchise is a particular authority granted by the government to an individual or company, allowing them to carry out specific activities that are not typically available to all citizens.
- b) Franchising involves granting a license or selling the right to use a name, sell a product, or provide a service. It is when a manufacturer or supplier allows a retailer to use their products and brand name based on agreed-upon terms and conditions.
- c) A franchise is a permission granted by the owner of a business or brand to someone else to market a product or service using that specific name or logo.

Franchise typically comprises of the core components listed below:

- a) The franchisor is the proprietor of products or services carrying a specific brand, and grants exclusive rights for the distribution or licensing of these goods or services.
- b) The franchisee is the individual or entity that is granted the exclusive rights from the franchisor.
- c) The franchisor transfers exclusive rights, including intellectual property and industrial property rights, to the franchisee.
- d) A specific region is designated as a franchise area where the franchise is granted exclusive operating rights. For instance, they may be limited to operating only within Java Island.
- e) The franchise gives back to the franchisor through payment of an Initial Fee, Royalties, and other fees as determined by both parties.
- f) The franchisor has established quality benchmarks for the franchise, and regular monitoring is conducted to ensure these standards are upheld.
- g) Initial and ongoing training opportunities are provided by the franchisor to enhance skill levels.

From an economic perspective, a franchise is a privilege granted to individuals or a group, allowing them to manufacture, distribute, and market a particular product or service. Amir Karamoy explains that franchising involves obtaining permission to sell a product or service from the owner to a third party, governed by specific rules and regulations.

Franchise law involves a binding contract between two parties to collaborate on the production, assembly, sale, and marketing of a service or product (Hanim, 2011). Franchising, from a legal perspective, encompasses various aspects of contract law, particularly pertaining to licensing agreements, trade name regulations, branding, patents, and proprietary designs. These legal domains fall within the realm of contract law and intellectual property law. Legally, intellectual property rights in the franchise industry are well safeguarded by legislation, including laws that pertain to trademarks, copyrights, and patents.

1) Trademark Rights

The state grants special privileges to the owner of a trademark registered in the general trademarks registry for a limited time period, allowing them to either utilize the trademark or authorize others to do so (Hidayah, 2017). Trademark rights are also used in the sale and purchase of food, goods, and services in a franchise business agreement. Considering that according to the first article of Trademark Law No. 15 of 2001, a trademark is recognized as existing only once it has been officially registered in the designated trademark database.

A person who is engaged in a franchise business or other business activities that were originally registered trademark may use freely against the trademark, and other parties must be permission when they want to use the trademark. Trademark rights also have several requirements in order to be owned in the franchise agreement business, namely based on Article 5 of Trademark Law No. 15 of 2001 such as, contrary to using existing laws and regulations, moral beliefs, decency, or order of all people, does not have a differentiator, has become, belongs to others, and also includes information or related to the goods or services requested for registration.

Therefore, if you want to have trademark rights and can also use them in a franchise business agreement, the party that makes the business or can be said to be the franchisor must fulfill these elements so that it can obtain protection in its own law. The brand can be utilized by both the franchisor and the franchisee with the brand owner's authorization. The authorization can come in the form of a license or a franchise agreement. So that franchisees can use the right to use IPR together from the franchise business agreement.

2) Patent Rights

According to Law No. 14 of 2001 Article 1 (1), patents are awarded for novel inventions that demonstrate innovative qualities and have practical applications for businesses. It can be said that a patent is a special right of an inventor because of a technological invention for a certain time that can be used to implement the patent product itself or allow other parties to carry out the discovery. So that a product cannot be recognized and even used for its own benefit without the knowledge of the patent owner or the franchisor itself. If you want to use the patent rights of a product, the thing to do is to enter into a franchise business agreement with the patent owner itself or the franchisor.

3) Copyright

The special rights of the author or copyright recipient to notify or expand his invention or give permission and not reduce the provisions in the law (Hidayah, 2017). The rights of the invention can be transferred to other parties through several ways, such as, derivative property, wills, written agreements, and other causes that are corrected by legislation. So that apart from the copyright owner or franchisor, someone who uses the goods he created for his

own benefit in the franchise business without the knowledge of the copyright owner or franchisor is also not allowed to do other than by doing a franchise business agreement with the copyright owner or franchisor itself. The franchisor establishes and enforces various terms and conditions in the franchise agreement for the franchisee. Based on the writing of the Franchise Agreement, it is concluded that the contents of the Franchise Agreement are as follows (Hakim, 2015):

- a) **Distribution of Franchise Rights:** The franchisor will grant special rights to the franchisee, and the franchisee can take that special right, by using the name and mechanism of managing the franchisor's property in a place, within a certain period of time.
- b) **Venue:** The franchise place is chosen by the franchisee with the approval of the franchisor, after doing research and thinking about the situation and also the economic strength in the Franchise place.
- c) **Franchise Term:** The term is 2 years, effective from the date of establishment of the outlet for the first time. Furthermore, the franchise period can be added by written agreement between the two parties to the franchise business agreement.
- d) **Franchise Fee:** During the agreed period of time, the franchisee receives money for being granted franchise rights.
- e) **Royalties:** The franchisor agrees to give money to royalties to the franchisor according to the agreement.
- f) **Image Maintenance:** Elements of trade secrets must be given to franchisees, such as recipes in a product to be sold or marketed. With the aim that the franchisee is still dependent on the franchisor, for example, such as materials that are given in one-time use during production activities. So that the franchisee is obliged to use the ingredients in the finished product from the franchisor, without knowing the formula. The franchise business agreement between the two parties is being executed in accordance with the terms outlined in the franchise agreement.

In the world of franchising, franchisees are granted the privilege to utilize intellectual property rights such as trademarks, service marks, copyrighted logos, industrial designs, patents, and confidential information. In return, the franchisor receives royalties for permitting the franchisees to utilize these intellectual property rights and run their operations. Franchisor rights are defined as follows:

- a) **Oversee the execution of the franchise.**
- b) **Receiving regular updates on the progress of the franchisee's operations.**
- c) **It is necessary for the franchisee to uphold the secrecy of intellectual property, inventions, and unique business characteristics, including management processes, sales methods, and distribution strategies that define the franchise.**
- d) **Demand that franchisees refrain from engaging in any activities that may overlap, resemble, or potentially create conflict with the operations of the franchised business.**
- e) **Ability to choose to receive royalty payments in whatever form, type, or amount he considers suitable.**
- f) **When the franchise agreement ends, the franchisee should be asked to give back any data, information, or materials they acquired while working as a franchisee.**

The Franchise System is essentially a contract that outlines how products and services will be distributed to customers. This agreement allows a Franchisee to operate under the Franchisor's brand name in a specific location. The operations of the business need to be

conducted following the guidelines and techniques established by the Franchisor. The Franchisor offers support to the Franchisee, and in exchange, the Franchisee compensates with payment of initial fees and royalties. Hence, it is fitting for the regulation in Indonesia to define Franchise as a unique privilege granted to an individual or company to use a successful business model for marketing goods or services, which can be shared with other parties through a formal agreement. The form of rights obtained by the franchisor is an obligation of the franchisee, namely (Oktavi, 2013):

- a) Front Initial or "Up" Fee: The amount of money that must be given to the franchisor as a form of occurrence or birth of the relationship between the parties (franchisor and franchisee).
- b) Continuing Royalties: The obligation of the franchisee to pay for services during the agreement, where this kind of provision is specified in the franchise agreement by percentage even though there is no legislation governing the calculation, delivery method and determination of the percentage, the regulation of royalties is also intended to control the foreign exchange of the State.
- c) Other Fees: In addition to the fees payable above to the franchisor, the franchisee usually pays other fees for costs such as training fees, development or option fees, additional rent, commissions or deductions from suppliers to franchisees, relationships for late payments, audit fees.

3.1. Concept of Royalty Tax Collection Rules for Franchise Businesses

Running a franchise business comes with several benefits, including the financial obligations to both local and international entities (Nasrullah, 2021). The franchise business offers a variety of rewards such as royalties, technical service fees, and income from the overall business, which are subject to Income Tax. However, it is not easy to determine royalties, technical services and income from business as an object of Income Tax, and there are often disputes between taxpayers and tax authorities in determining royalties (Aditya, 2011).

Franchise agreement as a civil agreement containing commercial aspects will be bound by fiscal or tax. As referring to the imposition of income tax in Law of the Republic of Indonesia Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax in Article 23, when looking at Ester Oktaviani's opinion, domestic taxes such as royalties are taxed by the party who is obliged to pay, this implies that royalties from gross sales paid are deducted directly by the franchisee as a taxable entrepreneur of 15% of the royalty percentage or the franchisee as a domestic taxpayer is obliged to withhold income tax of 15% of the gross amount of royalty payments to the franchisor who is a domestic taxpayer. As for article 26, against foreign taxpayers, tax is deducted at 20% of the gross amount of the party obliged to pay it (royalties) or the franchisee as a domestic taxpayer is obliged to withhold income tax of 20% of the gross royalty payment in the event that the franchisor is from abroad. After describing several types of taxes imposed on the franchise business, the following is the imposition of tax rates in the franchise business:

- 1) Article 17 paragraph (1) letter a of the Director General of Taxes Regulation Number PER-32/PJ/2015 stipulates that Income Tax is classified into several rates as follows:
 - a. Article 21 Income Tax (PPh 21) for income recipients with a Taxpayer Identification Number (NPWP):
 - Taxpayers with annual income up to IDR 50 million: 5%;
 - Taxpayers with annual income above IDR 50 million - IDR 250 million: 15%;
 - Taxpayers with annual income above IDR 250 million - IDR 500 million: 25%;

- Taxpayers with annual income above IDR 500 million: 30%.
- For taxpayers without NPWP, the PPh 21 rate is 20% higher than the rate for those with NPWP.

Article 17 paragraph (1) letter a of the Director General of Taxes Regulation Number PER-32/PJ/2015 further explains that income recipients without an NPWP:

- For income recipients who do not have a Taxpayer Identification Number (NPWP), the Article 21 Income Tax (PPh 21) will be deducted at a rate 20% higher than the rate applied to taxpayers with NPWP;
- The amount of Article 21 Income Tax to be deducted, as referred to in paragraph (1), is 120% of the Article 21 Income Tax that should have been deducted if the individual had an NPWP;
- The deduction of Article 21 Income Tax, as referred to in paragraph (1), only applies to non-final PPh 21 deductions;
- If a permanent employee or pension recipient, whose income has been deducted under Article 21 Income Tax at the higher rate as mentioned in paragraph (1), registers to obtain a Taxpayer Identification Number (NPWP) within the same calendar year, no later than before the Article 21 Income Tax deduction for the December tax period, the 20% higher tax rate deducted will be adjusted with the PPh 21 due for the following months after obtaining the NPWP.

b. Income Tax Article 22 (PPh 22):

- For imports, the tax rate is 2.5% of the import value for those using an Importer Identification Number (API), 7.5% for non-API, and 7.5% of the auction sale price for non-controlled items.
- For purchases by DJPB, Government Treasurer, State-Owned Enterprises (BUMN), and Regional-Owned Enterprises (BUMD) = 1.5% of the purchase price (excluding VAT, non-final).
- For sales of produced goods, the tax rates are 0.1% of the VAT base for paper (Non-Final), 0.25% for cement (Non-Final), 0.3% for steel (Non-Final), and 0.45% for automotive (Non-Final).
- For the sale of produced goods or the delivery of goods by producers of fuel oil, gas, and lubricants, the withholding tax under Article 22 is final for distributors/agents and non-final for others.
- Purchases of materials for industrial or export purposes from collecting traders are subject to a rate of 0.25% of the purchase price (excluding VAT).
- Imports of soybeans, wheat, and wheat flour by importers using an Importer Identification Number (API) are subject to a rate of 0.5% of the import value.
- The sale of private aircraft with a selling price exceeding Rp20,000,000,000; yachts and similar vessels with a selling price exceeding Rp10,000,000,000; houses, including land, with a selling price or transfer value exceeding Rp10,000,000,000 and a building area of more than 500 m²; apartments, condominiums, and similar properties with a selling price or transfer value exceeding Rp10,000,000,000 and/or a building area of more than 400 m²; and four-wheeled motor vehicles designed for transporting fewer than 10 people, such as sedans, jeeps, sport utility vehicles (SUVs), multi-purpose vehicles (MPVs), minibuses, and similar types with a selling price exceeding Rp5,000,000,000 and an engine capacity of more than 3,000 cc are subject to a tax rate of 5% of the selling price, excluding VAT and Luxury Goods Sales Tax (PPnBM).

- For those who do not have an NPWP, the deduction is 100% higher than the Income Tax Article 22 rate.
- c. Income Tax Article 23 (PPh 23)
There are two different rates that can be applied to either the tax base or the total income amount. The rates are either 15% or 2%, and which one applies depends on the specific object being taxed as explained below:
 - A 15% tax rate is applied to the gross amount of dividends (excluding dividends distributed to individuals, which are subject to final tax), interest, royalties, prizes, and awards not subject to withholding under Article 21 Income Tax.
 - A 2% tax rate is applied to the gross amount of income derived from rents and other earnings related to asset use (excluding land or building rents), technical fees, management services, construction services, consultancy services, and other services outlined in Ministry of Finance Regulation No. 141/PMK.03/2016, as well as Income Tax Article 25 (PPh 25).

There are two types of Income Tax Article 25 installment payments for Individual Taxpayers (WPOP):

- Specific Individual Entrepreneurs (WP-OPPT), who engage in the sale of goods (wholesale or retail) or services with one or more business locations. The PPh 25 for OPPT is calculated as 0.75% of the monthly turnover for each business location.
 - Individual Taxpayers Other Than Specific Entrepreneurs (WP-OPPT), which includes freelancers or employees without their own business. The PPh 25 for OPPT is determined as Taxable Income multiplied by the tax rate under Article 17 paragraph (1) letter a of the Income Tax Law, divided by 12 months. For corporate taxpayers, it is calculated as Taxable Income multiplied by 25%.
- 2) Article 7 of VAT Law Number 42 2009 The tax rates imposed on Value Added Tax are:
- a. The VAT (Value Added Tax) rate is 10% (ten percent).
 - b. The VAT (Value Added Tax) rate of 0% (zero percent) is applied to:
 - The export of tangible Taxable Goods;
 - The export of intangible Taxable Goods;
 - The export of Taxable Services.
 - c. The tax rate referred to in paragraph (1) may change to a minimum of 5% (five percent) and a maximum of 15% (fifteen percent) as regulated by Government Regulation.

4. Conclusion

In the franchise business model, intellectual property protection involves the payment of royalties from the licensee to the licensor. This protection typically involves trademark, patent, and copyright rights. The imposition of franchise taxes on royalties is a way to regulate Indonesian legal entities in accordance with the Tax Law outlined in Law Number 7 of 2008, concerning Income Tax. The law outlines specific conditions and tax rates applicable to different types of businesses. For example, corporate taxpayers are subject to a 25% tax rate, while domestic corporations listed publicly on the Indonesian stock exchange with at least 40% of shares traded pay a 20% tax rate. Additionally, corporate taxpayers with a gross turnover below Rp4,800,000,000 are subject to a 1% tax rate.

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