LEGAL COMPLIANCE IN THE FOREIGN FRANCHISE SECTOR: EXAMINING THE ALIGNMENT BETWEEN FRANCHISE AGREEMENTS AND BUSINESS LICENSING IN INDONESIA

Muhammad Al Haadi Nugraha[1*], Indriya Fathni[2], Ridha Kurniawan[3], Herlina Damanik[4], Agus Irawan[5]
[1,3,5]Universitas Adiwangsa Jambi, Indonesia
[2,4]Universitas Jambi, Indonesia
haadinugraha@unaja.ac.id[1*], indriya.fathni@gmail.com[2], ridhakurniawan28@gmail.com[3], herlinadamanik@gmail.com[4], agusirawan11222@gmail.com[5]

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Abstract

This study analyzes the legal implications of regulatory disharmony between Government Regulation No. 35/2024 on Franchises and Government Regulation No. 28/2025 on Risk-Based Business Licensing, focusing on the position of the Franchise Registration Certificate (STPW) within the Online Single Submission (OSS) system. Using a normative juridical method with statutory, conceptual, and comparative approaches, the research relies on secondary legal materials legislation, scholarly works, and prior studies examined qualitatively through legal certainty theories and relevant doctrines. Findings indicate three main issues. First, overlapping requirements between STPW and OSS create administrative duplication and potential dual-track enforcement, resulting in legal uncertainty. Second, conflicts arise between public law obligations and private contractual practices in foreign franchise agreements, particularly regarding exclusive supply clauses that contradict local content and MSME partnership requirements. Third, comparative analysis shows that Malaysia's Franchise Act 1998, strengthened by the 2020 amendment, ensures stronger legal certainty through ex-ante registration, clear deadlines, and enforceable criminal sanctions, providing more credible deterrence than Indonesia's framework. The study concludes that Indonesia's franchise regulation remains fragmented and lacks binding statutory authority, which undermines investor confidence and domestic economic protection. It recommends the enactment of a comprehensive franchise law at the statutory level, full integration of STPW within the OSS system, and reinforced sanction mechanisms to enhance legal certainty and create a more conducive business climate.

Keywords: franchis business licensing, STPW, regulatory disharmony, legal certainty

INTRODUCTION

The franchise business model has become one of the most influential forms of enterprise in the development of the modern global economy (Ghani, Hizam-Hanafiah, et al., 2022). A franchise is a business arrangement that utilizes contractual agreements to organize the distribution of goods or services to consumers. The International Franchise Association, the world's largest franchise association, defines franchising in its glossary as a business scheme in which the franchisor being the owner of a business or trademark grants a license to a third party, the franchisee, who is authorized to use the brand, operational systems, and intellectual property for the purpose of operating their own business (International Franchise Association, 2025).

From an economic perspective, a study conducted across 40 countries demonstrated that this business model contributes at least USD 3.7 billion in annual sales per country (Samsudin et al., 2018) The International Franchise Association reported in 2022 that the global economic contribution of franchising exceeded USD 860 billion, derived from approximately 790,000 franchise units operating worldwide (Niu, 2022). Furthermore, research examining 49 countries across five continents during the period 2006–2015 revealed a positive trend of franchising in driving economic, social, institutional, and infrastructural development. Countries that have adopted the franchise business model for a longer period were confirmed to have reaped greater positive impacts on economic growth (Lanchimba et al., 2024)

The growth of franchising in Indonesia has shown an increasing trend in recent years. The Indonesian Franchise Association recorded a rise in public enthusiasm for franchising, as reflected in the annual growth rate of franchises in Indonesia, which reaches 7–10% each year. (Oktaviani, 2024). In addition to the massive shift in lifestyle, the increase in purchasing power, return on investment, and market demand are the factors behind the rapid growth of franchising in Indonesia. The forms of franchises that dominate the Indonesian market are fast-food restaurants such as KFC, Pizza Hut, McDonald's, Mixue Ice Cream, and Starbucks (Redjeki et al., 2011), this reality illustrates the significant economic contribution generated by the franchise sector in Indonesia, ranging from the increase in GDP scale, the expansion of employment opportunities, to the growth of the foreign direct investment climate. However, the massive dominance of foreign franchises has implications for the increasing complexity of the resulting legal risks.

The main legal issue that arises lies in the disharmony between specific regulations concerning franchising and business licensing regulations based on risk, which are now fully integrated digitally through the *Online Single Submission* (OSS) (Cahyaningtyas, 2022). Regulations on franchising refer to Government Regulation Number 35 of 2024 concerning Franchising, which requires all business actors operating under a franchise scheme to obtain a Franchise Registration Certificate (STPW), categorized as sectoral business licensing. The issuance of an STPW entails further obligations, including periodic business activity reporting, prioritization of local product usage, and partnerships with MSMEs. Meanwhile, regulations on business licensing refer to Government Regulation Number 28 of 2025 concerning the Implementation of Risk-Based Business Licensing, which stipulates that all business licenses must be processed through a single window via the OSS platform under the principle of single submission, thereby prohibiting any additional permits outside the risk-based licensing framework. (Permatasari, 2021).

This constitutes a form of disharmony that represents a legal issue, since even though the application for an STPW can now be processed through the OSS, the essence of the STPW is positioned as an additional permit outside the general risk-based business licensing framework (Government Regulation Number 35 of 2024 concerning Franchising). This condition indicates the existence of a dual administrative burden, in which business actors are required to register their businesses under the principle of risk-based licensing while simultaneously registering their franchises. Such overlapping obligations may result in legal uncertainty, for instance, whether a franchise business can be deemed legitimate merely by obtaining a Business Identification Number (NIB) from the OSS, or whether business actors must also possess an STPW to be formally recognized.

Another legal issue arises when there is a substantial discrepancy between Indonesian regulations, which fall under public law, and the private contractual practices within foreign franchise agreements. For example, the obligation imposed on franchises to prioritize the use of domestically produced goods and services, as well as to cooperate with MSMEs as suppliers of goods or services, often conflicts with contractual clauses in foreign franchise agreements, which frequently stipulate the exclusivity of imported raw materials as is commonly enforced by foreign franchise companies(Ginting, 2021).

In addition, the obligation to register franchises with the Ministry of Trade is often violated through bypass practices, in which foreign franchisors continue their business operations through private contracts without first registering them officially as stipulated in the constitution. (Widiarty, 2024). This practice further illustrates the ambiguity of norms, wherein private contracts may be considered valid under civil law while disregarding the administrative legality required by public law.

Table 1. Legal Inconsistencies with Franchise Practices in Indonesia

No	Regulation in Indonesia	Legal Practice	Form of Legal Disharmony
1	Mandatory use of local products & establishment of partnerships with MSMEs	Foreign franchisors require the use of imported raw materials	Conflict between public norms and private contract clauses
2	Agreements must be registered with the Ministry of Trade	The widespread practice of bypassing by foreign franchise business actors.	Weak law enforcement in Indonesia

It should be noted that the regulation of franchising in Indonesia is currently limited to Government Regulation Number 35 of 2024 and its implementing provisions, with no legislation at the statutory level that comprehensively governs franchising (Nicholas, 2023). The absence of specific legislation at the statutory level renders the legal framework of franchising in Indonesia partial, lacking sufficient binding force, and failing to provide absolute legal certainty for franchise business actors in the country. In this regard, the researcher will conduct a comparative study with Malaysia, which has established a more comprehensive franchising regulation.

Malaysia has enacted comprehensive legislation on franchising since 1998, known as the Franchise Act. The presence of this statutory-level regulation reflects the application of the principle *lex superior derogate legi inferiori*, the implication of which is the provision of stronger legal certainty accompanied by strict sanctions and more adequate binding force (Dhiba, 2019), in the end, both franchisors and franchisees are better protected compared to those in Indonesia.

It is crucial for the Indonesian government to promptly resolve the issues of disharmony and legal ambiguity in the regulation of franchising in order to establish legal certainty, which is essential for business actors while also attracting foreign investors to invest in Indonesia (Apandy et al., 2021). Adequate legal certainty can foster a healthy investment climate while simultaneously protecting domestic economic interests.

This study will specifically examine the juridical consequences of regulatory disharmony between Government Regulation Number 35 of 2024 concerning Franchising and Government Regulation Number 28 of 2025 concerning the Implementation of Risk-Based Business Licensing, particularly with regard to the position of the Franchise Registration Certificate (STPW) within the OSS system and its implications for legal certainty for franchise business actors in Indonesia. Although studies on the franchise business scheme in Indonesia have previously been conducted by several researchers, for example, the study entitled *"Aspek Hukum Perjanjian Waralaba dalam Perspektif Perlindungan Mitra Usaha Kecil dan Menengah (UMKM)"* by Mentari (2024) which emphasized the legal protection of SME franchisees in franchise contracts, they did not address the aspect of regulatory disharmony concerning public law related to STPW and OSS.

Furthermore, the study conducted by I Made Dwi Wahyu Kartika et al. (2021) entitled *"Perlindungan Hukum Terhadap Penerima Hak dalam Perjanjian Waralaba di Indonesia"*, focused on the position of franchisees in franchise contracts with franchisors, but did not address the overlapping obligations between sectoral franchise regulations and risk-based business licensing regulations. Lastly, the study entitled *"Asas Kebebasan Berkontrak dan Asas Proporsionalitas dalam Perjanjian Franchise Indomaret"* highlighted clauses in franchise agreements that tend to unilaterally benefit franchisors, but did not yet discuss how such private contracts are connected to public legal obligations regulated under Government Regulation Number 35 of 2024 on Franchising and Government Regulation Number 28 of 2025 on Risk-Based Business Licensing.

The research gap of this study lies in the absence of a specific analysis on the disharmony between Government Regulation 35 of 2024 on Franchising and Government Regulation 28/2025 on Risk-Based Licensing (OSS-RBA), particularly concerning the position of the STPW within the integrated licensing system. Previous studies have mostly focused on the protection of franchisees, contractual clauses in franchise agreements, and aspects of freedom of contract, without thoroughly examining the potential overlap between public regulations and the private nature of franchise

agreements, nor addressing the possibility of dual-track enforcement. By conducting a comparative study between Indonesia and Malaysia through the 1998 Franchise Act, this research is expected to enhance the understanding of the urgency of legal certainty and provide normative recommendations for improving the franchising framework in Indonesia.

RESEARCH METHOD

This study employs a normative juridical method through a statute approach, a conceptual approach, and comparative legal research. Normative juridical legal research is a legal study conducted by examining theories, concepts, principles, and legislation through legal materials. This research is carried out to analyze the application of rules and norms in positive law (Rony Hanitojo, 1988). Soerjono Soekanto defines the normative juridical research method as a legal study conducted by examining library materials or secondary data as the primary source, which are then analyzed through a review of regulations and literature related to the legal issues under investigation (Soerjono Soekanto, 2008).

The statutory approach is carried out by examining regulations related to franchising and business licensing, namely Government Regulation Number 35 of 2024 on Franchising and Government Regulation Number 28 of 2025 on the Implementation of Risk-Based Business Licensing. The conceptual approach is applied by analyzing legal doctrines and principles such as the principle of *lex superior derogate legi generali*, which means that provisions governing a matter specifically override general provisions; the principle of *pacta sunt servanda*, which stipulates the obligation to honor agreements that have been made (Dhiba, 2019), and the theory of legal certainty, which is relevant to examine the issues of disharmony and legal ambiguity in this study. Lastly, the comparative approach is employed by comparing Indonesia's franchise regulations with those of Malaysia, particularly through the 1998 Franchise Act, in order to obtain an illustration of a more ideal regulatory model

RESULTS AND DISCUSSION

Regulatory Disharmony Between Government Regulation 35/2024 on Franchising and Government Regulation 28/2025 on Risk-Based Licensing

The provisions in Government Regulation 35 of 2024 stipulate the obligation for parties engaged in franchise businesses to obtain a Franchise Registration Certificate (STPW), which serves as proof of business licensing in their franchise operations. The registration of the STPW can now be carried out through the OSS system under the category of Business Licensing to Support Business Activities (supporting license). From a normative perspective, the enactment of Government Regulation 28/2025 emphasizes the application of the *single submission* principle, which consolidates all business licensing into a single window system based on risk assessment (Kharimah & Isyuniandri, 2022), This practice does not allow for licensing requirements outside the OSS catalog. Nevertheless, Government Regulation 35/2024 on Franchising still requires the registration of franchises through the STPW, which is considered an administrative requirement. The inclusion of the obligation to register a franchise through the STPW creates ambiguity, as the STPW is positioned as an additional license outside of risk-based licensing, the existence of which is prohibited under the OSS framework.

Although in practice the STPW has already been integrated into the OSS, normatively the obligation to register the STPW under (Government Regulation Number 35 of 2024 Concerning Franchising) continues to maintain the practice of sectoral licensing. This results in the impression of overlapping legal norms, raising the question of whether the STPW is part of OSS supporting licenses or a violation of the *single submission* principle under the OSS. The impact on business actors is the emergence of juridical confusion regarding which licensing instruments are required for the legitimacy of their franchise operations whether it is sufficient to possess a Business Identification Number (NIB) and Business License through the OSS, or whether they are still obliged to obtain an STPW, which would subject business actors to a dual administrative burden.

The existence of STPW registration through the OSS indicates that the STPW is treated as a technical requirement that must be fulfilled. However, this reflects a form of disharmony in the formulation of norms, wherein the issuance of the OSS regulation was intended as a manifestation of the desire to simplify licensing, yet the regulation on franchising continues to maintain the notion of sectoral licensing. This creates the impression of an "additional layer" that is prone to causing confusion for business actors. (Rokhman et al., 2024). The presence of the STPW following efforts to simplify procedures through the implementation of the OSS system can be seen as undermining the attempt to realize good governance, particularly in terms of the indicators of effectiveness and efficiency within the principles of Good Governance. *(Nurhidayat, 2023)* The ambiguity arising from the normative gap between general regulations and sectoral regulations creates legal uncertainty for franchise business actors (Haisa et al., 2025).

There is another disharmony between these two regulations, wherein Government Regulation 28 of 2025 stipulates sanctions imposed on business actors who violate general obligations required under the OSS, such as failure to meet business standards or misuse of the Business Identification Number (NIB). Such sanctions may include written warnings, temporary suspension of business operations, freezing, and/or revocation of business licenses. On the other hand, the Franchise Regulation (Government Regulation Number 35 of 2024 Concerning Franchising) also provides provisions regarding sanctions that may be imposed on violations of franchise obligations, such as failure to register franchise agreements through the STPW, failure to prepare a franchise offering prospectus, and failure to submit periodic franchise activity reports, with potential sanctions including the revocation or cancellation of the STPW up to the termination of the franchise business. Neither regulation specifies whether the sanctions under these different frameworks will be automatically integrated; if not, this could result in dual-track sanctions, whereby a sanction imposed by the Ministry of Trade, such as the revocation of the STPW, may not be recorded in the OSS, thus allowing the business actor to still appear legally compliant administratively in the OSS, even though the STPW is already in violation.

The disharmony between these two interrelated regulations governing business activities under the franchise system is in contradiction with the principle of *Rechtssicherheit* or legal certainty, as business actors are left uncertain about which licenses must be obtained to lawfully and legally operate their businesses. Sudikno Mertokusumo (Mertokusumo, 1993) xplains that the principle of *rechtssicherheit* serves as protection against arbitrary actions by law enforcement authorities. The absence of legal certainty results in legal subjects not knowing what actions to take, thereby creating uncertainty and potentially giving rise to coercion due to the lack of firmness in the legal system. In this context, legal certainty refers to the clarity of the law's application in a consistent and stable manner, whose implementation cannot be influenced by subjective circumstances of any kind (Sidharta, 2006).

Viewed from the principle of *lex specialis derogat legi generali*, Government Regulation 35 of 2024 can be positioned as a specific regulation on franchising that should take precedence over Government Regulation 28 of 2025 as a general regulation on licensing. However, it should be noted that both regulations occupy the same hierarchical level, namely government regulations, thereby limiting the application of this principle as well as the principle of *lex superior derogat legi inferiori*, in which a higher-hierarchy rule is able to override a lower one. (Dhiba, 2019), cannot be applied absolutely. This condition further reinforces the existence of legal uncertainty. On a larger scale, such disharmony may create doubts for foreign investors due to the lack of clarity regarding which licenses must be obtained. This explanation provides an initial illustration of the urgency for legislation at the statutory level that specifically and concretely regulates franchising.

Inconsistencies Between Public Legal Obligations and the Practices of Foreign Franchise Contracts

In the practice of franchise agreements, it is widely known that foreign franchisors often include "exclusive supply provisions," which allow them to use exclusive vendors in order to maintain the reputation and brand identity of the franchise (Medina, 2025). These exclusive vendor clauses may involve raw materials, packaging, and specialized equipment or technology required in the production of goods or services (Hall, 2025) The exclusivity of vendor designation is often protected by clauses within the franchise agreement.

In this regard, there is a discrepancy between the practice of private franchise agreements and public legal provisions, since Article 26 of the Franchise Regulation (Government Regulation Number 35 of 2024 concerning franchising) xplicitly requires both franchisors and franchisees to use domestically produced goods and services as well as to establish cooperation with MSMEs as suppliers of the necessary goods and services. This inconsistency may arise because public legal provisions appear coercive, without regard to the standards of product quality required in franchising

Although Indonesian law recognizes the principle of freedom of contract under Article 1338 paragraph (1) of the Civil Code, this freedom is restricted by Article 1339 of the Civil Code, which stipulates that the content of agreements must not conflict with statutory provisions. The implication of such a violation is that the agreement or contract will be considered invalid and null and void by operation of law (Novera & Utama, 2014). (Government Regulation Number 35 of 2024 Concerning Franchising) stipulates the obligation for both franchisors and franchisees to use domestically produced goods and services, as well as to cooperate with MSMEs as suppliers of the required goods and services. This inconsistency may occur because public legal provisions appear coercive, disregarding the importance of product quality standards in franchising.

Although Indonesian law recognizes the principle of freedom of contract under Article 1338 paragraph (1) of the Civil Code, this freedom is limited by Article 1339 of the Civil Code, which stipulates

that the content of agreements must not conflict with statutory provisions. The implication of this violation is that an agreement or contract may be deemed invalid and null and void by operation of law (Novera & Utama, 2014). This means that if a franchise contract between the parties allows exclusive imports without the option for local alternatives, the franchisee may be declared in violation of the provisions in Government Regulation 35/2024, and the contract itself could be considered invalid and null and void.

Furthermore, vendor exclusivity clauses in franchise contracts with foreign franchise companies may potentially violate the provisions of Article 15 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. This article prohibits agreements containing requirements that the recipient of goods and/or services will only supply to certain parties, as well as agreements that explicitly or implicitly require recipients of goods/services to purchase from designated suppliers. In economic terms, this practice is referred to as *exclusive dealing*, which, according to the study by (Laraswati et al., 2015) may affect the level of business competition.

Vendor exclusivity clauses through imports in franchise agreements have the potential to breach competition law if such exclusivity restricts franchisees or prevents local suppliers from entering the supply chain. If the clause results in franchisees being unable to use alternative vendors even when they meet quality standards, it may be considered a violation of *exclusive dealing* under Article 15 of (Law Number 5 on the Prohibition of Monopolistic Practices and Unfair Business Competition, 1999).

Understanding the potential for violations of Article 15 of Law Number 5 of 1999 due to the application of vendor exclusivity clauses in franchise agreements, further analysis is important to examine how such exclusivity practices interact with Indonesia's business competition legal framework, particularly through the economic approach used by the KPPU in assessing their impact on the market. In the context of the relationship between supply exclusivity clauses in foreign franchise agreements and Indonesian competition law, an in-depth analysis based on the economic approach commonly used by the Business Competition Supervisory Commission (KPPU) is required. This is important because exclusivity practices often not only conflict with public legal obligations as stipulated in Government Regulation No. 35 of 2024 concerning Franchising, but also have the potential to violate the provisions of Article 15 of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. An exclusive dealing clause essentially requires the franchisee to purchase certain goods or services only from suppliers designated by the franchisor (Wicaksana & Herlambang 2022). In foreign franchising practices, this clause generally relates to the use of raw materials, production equipment, packaging, or special technology that is unilaterally determined by the franchisor. Although contractually intended to maintain global brand quality standards, this clause has the potential to hinder competition if it is not balanced with adequate economic considerations.

According to the KPPU approach, the assessment of the legality of this exclusivity agreement must begin with the determination of the relevant market, namely the relevant product market and the relevant geographic market. In many cases of foreign franchises, local substitute products are not available because the franchisor requires certain quality standards that can only be met by foreign suppliers or appointed distributors (Arif & Moh Erfan 2021). This results in a very narrow relevant market, making exclusivity more likely to have anti-competitive effects. Furthermore, KPPU conducts market share analysis to determine whether franchisees or exclusive suppliers have significant market power. If the supplier's market share is above 50%, or even 30-50% but accompanied by control over the supply chain, then such exclusivity can hinder access by other suppliers and create an uncompetitive market structure. In the practice of foreign franchising in Indonesia, franchisors often monopolize the supply chain through a single exclusive distributor, thereby creating structural barriers for local suppliers.

The KPPU also assessed the foreclosure effect caused by exclusivity clauses. If franchisees are required to use certain suppliers without any alternatives, local suppliers lose the opportunity to enter the franchise market. This condition contradicts the government's objective of promoting the use of domestic products and empowering MSMEs as required by Government Regulation No. 35 of 2024. In addition, KPPU also evaluates whether there are justifiable efficiencies from the exclusivity clause. Efficiency arguments, such as maintaining product quality, food safety supervision, or global brand standardization, are acceptable as long as the benefits outweigh the negative impact on competition. However, in cases where the franchisor requires all raw materials to be imported without opening opportunities for local suppliers who are able to meet the same standards, then the efficiency argument becomes disproportionate and cannot be used to justify the restrictions on competition that occur.

Given the potential for distortion of competition arising from exclusive supply practices, it is also important to pay attention to other forms of non-compliance in foreign franchise relationships, particularly those related to the use of commercial contracts that are not drafted in Indonesian as

required by law. Another inconsistency between public legal obligations and the practice of contracts with foreign franchises lies in the drafting and use of commercial contracts related to franchising without any official translation or version in the Indonesian language (Suyudi & Budi, 2022). This practice violates Article 31 paragraph (1) of Law Number 24 of 2009 concerning the National Flag, Language, State Emblem, and National Anthem, as well as Article 26 paragraph (1) of Presidential Regulation Number 63 of 2019 concerning the Use of the Indonesian Language, which stipulate the mandatory use of Indonesian in memoranda of understanding or agreements involving state institutions, government agencies, private institutions, or individual Indonesian citizens (Adelifka, 2024).

Although the regulation on the use of Indonesian in contracts is explicitly stipulated, many private contracts still use only foreign languages, or employ foreign languages exclusively in certain important terms or clauses (Marsha, 2025). Such conditions may create potential conflicts, as illustrated in the 2012 case between Nine AM Ltd. and PT Bangun Karya Pratama Lestari (BKPL) concerning a Loan Agreement drafted solely in English without any Indonesian translation. The lawsuit was filed as a breach of contract claim, which was granted by the West Jakarta District Court, declaring the agreement void for violating Article 31 of Law Number 24 of 2009 (Sugesty et al., 2016).

However, in contrast, in 2018 the Jakarta District Court rejected a lawsuit filed by PT Kerui Indonesia (PT KI) against the Indonesian National Arbitration Board (BANI) and PT Agung Glory Cargotama (PT AGC) regarding a Settlement Agreement drafted only in English. The lawsuit was dismissed on the grounds that a violation of the language obligation does not automatically nullify the validity of a contract, particularly since both parties had declared their commitment to executing the contract. At the cassation level, the Supreme Court upheld the Jakarta District Court's decision and rejected the annulment claim on the same grounds (Hosen et al., 2021). This divergence demonstrates inconsistency in legal enforcement practices in Indonesia, adding another layer of legal uncertainty.

Comparison of Franchise Regulations in Indonesia and Malaysia in Ensuring Legal Certainty and the Protection of Business Actors

Indonesia and Malaysia have different legal systems due to their distinct colonial backgrounds: Indonesia was influenced by the Dutch and thus adopted the *civil law* system, which is based on codification and a hierarchical order of regulations where legislation holds binding legal force. In contrast, Malaysia was influenced by British colonial rule and follows the Anglo-Saxon or *common law* system, which places statutes and judicial precedents as important sources of law (Sitio & Bakhtiar, 2025).

Despite these differences, a comparative study of franchise regulation between Indonesia and Malaysia remains relevant, both in terms of regional and substantive contexts. From a regional perspective, Indonesia and Malaysia share geographical proximity as Southeast Asian countries within ASEAN, with strong trade interconnections. Comparing Indonesia with Malaysia is more relevant than with countries in Europe or America, as both Asian nations share similar market characteristics, such as a growing middle class, consumer culture of modern products, and high penetration of international franchises.

A report by MasterCard and CrescentRating (Sutrisno, 2025) highlights how Indonesia and Malaysia share strong preferences for similar brands based on certain indicators. From a legal standpoint, both Indonesia and Malaysia are members of the ASEAN Economic Community (AEC), making the harmonization of trade and investment standards a mutual priority (Bakhri, 2015). Despite many geographical, economic, and socio-cultural similarities, Malaysia has enacted a statutory-level law specifically and comprehensively governing franchising the Franchise Act 1998, which provides stronger legal certainty compared to Indonesia, where regulations exist only at the government regulation level. Hence, Malaysia serves as both a relevant comparator and an ideal reference point for evaluating how franchise regulation can be directed toward ensuring legal certainty and protecting business actors in Indonesia

Several key points illustrate the comparative legitimacy of franchise regulation between Indonesia and Malaysia:

a. Malaysia's Franchise Act 1998 as Specific Legislation

Indonesia continues to rely on Government Regulation Number 35 of 2024 as the main regulatory framework for franchising, often supplemented by Government Regulation Number 28 of 2025 for licensing matters. The absence of statutory-level legislation means that compliance details remain dependent on cross-regulation synchronization with OSS provisions. Although these regulations provide a formal legal framework for example, the obligation to register STPW via OSS as a supporting license, they still result in overlapping norms, reflecting regulatory disharmony. In contrast, Malaysia has enacted the Franchise Act 1998, which has been amended multiple times, including the Franchise

(Amendment) Act 2020 effective from April 28, 2022. The enforcement of this law falls under the Registrar of Franchises, providing stronger *lex superior* authority and more stringent administrative and criminal sanctions (Baskaran & Sean, 2021). Consequently, Malaysia possesses greater statutory clarity compared to Indonesia, which relies on inter-regulatory harmonization that leaves room for *grey areas*, such as the overlapping requirements of STPW registration under OSS alongside NIB and general business licenses. This demonstrates how Malaysia ensures clarity in mandate, process, and sanctions under its franchise legislation.

b. Ex-Ante Registration and Time Limits

Malaysia's Franchise Act 1998 clearly regulates the registration and approval mechanism before a franchise business can be offered or operated. Article 6 requires franchisors to register with the Franchise Registry, overseen by the Ministry of Domestic Trade and Cost of Living (KPDN), prior to conducting or offering franchise operations. For foreign franchisors, the process is stricter, involving a dual mechanism: prior approval from the authorities followed by registration with the Franchise Registry.

Additionally, franchisees are required to register signed franchise agreements with the Registry within 14 days. Violations of these provisions may result in administrative or criminal sanctions. This *ex-ante* mechanism, or pre-operational supervision

(Kerkovic, 2010) ith strict deadlines effectively eliminates the possibility of bypassing unregistered agreements, thereby ensuring legal certainty for all parties.

In contrast, Indonesia's Government Regulation 35/2024 obliges the registration of franchise prospectuses and agreements but does not specify deadlines or technical details. Malaysia, however, explicitly regulates timeframes in Article 15

(Franchise Act 1998, 2020) requiring franchisors to provide disclosure documents and a copy of the agreement at least 10 days before signing, along with annual reporting obligations (Article 16). Such clarity minimizes information asymmetry between franchisors and franchisees while strengthening procedural certainty.

c. Language Requirements in Franchise Agreements

Indonesia strictly regulates the mandatory use of the Indonesian language in agreements involving foreign parties through Law No. 24/2009 and Presidential Regulation No. 63/2019. By contrast, Malaysia adopts a more *pro-business* approach, allowing franchise agreements to be drafted in either Malay or English, provided that an official Malay translation is submitted to the Registrar during registration (Ghani et al., 2022). This demonstrates Malaysia's legal flexibility in accommodating international business practices while ensuring administrative compliance. This clarity contrasts with Indonesia, where despite stronger normative requirements, enforcement remains inconsistent, as seen in the divergent outcomes of the Nine AM Ltd. vs. PT Bangun Karya Pratama case and the PT Kerui Indonesia vs. BANI & PT Agung Glory Cargotama case.

d. Sanctions and Enforcement Certainty

Following the 2020 amendment to the Franchise Act 1998, violations of registration obligations, classified as administrative requirements, are categorized as *offences*, subject to criminal sanctions such as fines and imprisonment. For example, Article 6 stipulates that local franchisors who fail to register before offering franchises may face fines up to RM100,000 and/or imprisonment up to three years for individuals, and fines ranging from RM250,000 to RM500,000 for corporations. Similarly, franchisees who fail to register agreements within 14 days may face fines up to RM50,000 and/or imprisonment up to one year (Franchise Act 1998, 2020).

This firm sanction system represents *credible deterrence* a method of preventing violations through credible, measurable, and enforceable threats (International Organization of Security Commissions, 2023)

CONCLUSION

The findings of this study conclude that the regulation of franchising in Indonesia reveals three main points. First, there is disharmony between Government Regulation 35/2024 on Franchising and Government Regulation 28/2025 on Risk-Based Licensing, in which the obligation to register STPW, although technically integrated into the OSS, still carries normative ambiguity in the form of dual administrative burdens and the potential for dual-track enforcement, since sectoral STPW sanctions are not integrated into OSS. This results in legal uncertainty. Second, there is a mismatch between public law provisions and private contractual practices with foreign franchisors, particularly concerning vendor exclusivity clauses that potentially violate Article 1339 of the Civil Code and Article 15 of Law No. 5/1999

on Unfair Business Competition. Third, a comparison with Malaysia's legal governance on franchising, which has enacted the Franchise Act 1998 and adopted an *ex-ante* policy with mandatory registration deadlines and violations classified as offences, demonstrates a stronger framework for credible deterrence and higher procedural certainty compared to Indonesia.

This study recommends the establishment of statutory-level legislation governing franchising, with clear mandates, synchronized licensing requirements, defined administrative deadlines, and strengthened sanctions in order to achieve deterrent effects and ensure legal certainty.

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