# SIGn Jurnal Hukum

E-ISSN: 2685 – 8606 || P-ISSN: 2685 – 8614
https://jurnal.penerbitsign.com/index.php/sjh/article/view/v7n2-19

Vol. 7 No. 2: October 2025 - March 2026 Published Online: December 11, 2025

Article Title

## Reconstruction of Trade Secret Clauses in F&B Franchises: Mitigating Loss Aversion through a Risk Allocation Approach

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How to cite:

Sinaga, I. P. A. S., & Mulyono, F. K. B. (2025). Reconstruction of Trade Secret Clauses in F&B Franchises: Mitigating Loss Aversion through a Risk Allocation Approach. *SIGn Jurnal Hukum, 7*(2), 939-957. https://doi.org/10.37276/sjh.v7i2.537

**ABSTRACT**

*The Food and Beverage (F&B) franchise sector in Indonesia faces a juridical paradox. Aggressive trade secret protection efforts precisely result in systemic unenforceability in court. This study aims to dissect the root causes of evidentiary failures regarding the "reasonable steps" element in franchise disputes and to formulate a proportional, enforceable operational clause model. Through a normative juridical method with an interdisciplinary approach, this study integrates Legal Certainty Theory, Prospect Theory from behavioral economics, and Risk Allocation Theory as diagnostic, evaluative, and prescriptive analysis tools. Research findings reveal that ambiguous and lop-sided protection clauses are not merely administrative errors. They constitute a manifestation of the franchisor's irrational loss-aversion bias. Excessive fear of losing vital assets drives the creation of excessive contracts that violate the principle of good faith and fail to fulfill the objective requirements of an agreement. This condition fatally undermines the validity of digital evidence under Law Number 11 of 2008. As a prescriptive solution, this research recommends a fundamental reconstruction of contractual instruments, shifting from the loss-aversion paradigm to an equitable Risk Allocation Theory. The proposed operational clause model includes a limiting definition of a secret object, layered confidentiality obligations, a notice-and-cure mechanism, and reasonable time and territorial restrictions on the non-competition clause. This reconstruction aims to guarantee practical legal certainty and the sustainability of the national franchise business ecosystem.*

*Keywords:* *Franchise Agreement; Loss Aversion; Prospect Theory; Risk Allocation; Trade Secret.*

## INTRODUCTION

The franchise industry in Indonesia, particularly in the Food and Beverage (F&B) category, currently faces a paradox: the need for economic expansion and the vulnerability of intellectual property protection. On the one hand, the franchise business format offers a proven replication mechanism for the franchisor to expand its market network with efficient capital investment. Simultaneously, this model provides the franchisee with access to an established business system (Sukandia & Budiartha, 2022). However, the success of this business model relies heavily on the transfer of technical knowledge (know-how) and secret operational systems. The information disclosure required for franchise operations creates a fatal loophole that opens the door to potential conflicts and legal disputes. These potential disputes primarily relate to the misappropriation of core intellectual assets following the termination of the cooperative relationship (Crisyanti et al., 2023).

The intellectual asset constituting the heart of competitive advantage in the F&B franchise ecosystem is the Trade Secret. This asset comprises vital intangible assets. Unlike other Intellectual Property Rights regimes requiring constitutive registration, trade secrets—as defined in Law Number 30 of 2000—arise automatically as long as the information possesses economic value, is not known to the public, and is kept confidential (Ibrahim et al., 2023). In the culinary context, this protection spectrum is extensive. Its scope includes recipe formulas, production methods, raw material compositions, Standard Operating Procedures (SOP), marketing strategies, and supplier databases (Karmana et al., 2024). Protection of undisclosed information is also an international legal mandate enshrined in the TRIPS Agreement. Indonesia has ratified this instrument through Law Number 7 of 1994 to guarantee a healthy business competition climate (Mafulah, 2020; Setyoningsih, 2021).

Given its automatic nature and lack of state registration, the franchisor's primary protection instrument relies entirely on the strength of the civil obligation, namely the franchise agreement itself. This agreement serves as a legal fortress grounded in the principle of freedom of contract, as regulated by the Civil Code (Rifaie & Suhendro, 2023). Ideally, the franchise agreement should include specific restrictive clauses. These clauses include a confidentiality agreement and a non-competition clause to prevent the disclosure of information to competitors or the public. The existence of these clauses is not merely a business instrument, but a manifestation of the principle of good faith that the franchisee must uphold to maintain the trust granted by the franchisor (Sudjana, 2022; Khalid & Naufal, 2024).

However, legal reality demonstrates a significant gap between the ideal protection objectives and contract drafting practices in the field. Various empirical studies and legal document analyses reveal that the majority of franchise agreements in Indonesia still employ trade secret protection clauses that are formulated ambiguously, overly broadly, and without measurable standards (Tanaya et al., 2021; Benia, 2022). Many contracts fail to define secret objects in the agreement attachment with sufficient precision, do not establish a reasonable protection period, and lack precise audit mechanisms (Farida, 2021). These redactional weaknesses are exacerbated by extreme inequality in bargaining power. In this condition, the franchisor often exploits its dominant position to impose lop-sided standard clauses. Such actions may constitute abuse of circumstances (Kemalasari, 2024).

The juridical implications of these redactional defects result in systemic enforcement failure (unenforceability) in court when disputes arise. When the franchisor files a lawsuit regarding information leakage committed by the franchisee or former employees, they frequently face a dead end in evidentiary proceedings (Purnamasari et al., 2023; Humaera & Yulinda, 2025). Judges tend to reject lawsuits when the franchisor fails to prove it has fulfilled the "reasonable efforts" element for maintaining confidentiality. Whereas, this element is cumulatively required by Article 3 of Law Number 30 of 2000 (Rabbani & Suherman, 2023). Furthermore, contractual clause ambiguity also weakens the validity of electronic evidence in the current digital era. Confidential data is often disseminated through digital communication channels without adequate protection, complicating proof under the prevailing evidentiary legal regime (Dirkareshza et al., 2025).

Although previous literature has successfully mapped the phenomenon of clause unfairness and the urgency of a confidentiality agreement, the majority of such studies remain limited to normative analysis (Indrawati, 2023). Few studies have attempted to dissect the behavioral root causes of why these clauses are irrationally designed from the outset, nor how to reformulate them to be court-tested. This study aims to fill that academic void by offering an interdisciplinary approach. It integrates Legal Certainty Theory with Prospect Theory from behavioral economics and Risk Allocation Theory. This approach is utilized to dissect the irrationality of loss aversion behavior in contract drafting and to offer a more equitable reconstruction solution.

Based on the background description, this study aims to analyze the fundamental weaknesses of trade secret protection clauses in F&B sector franchise agreements. This study also aims to formulate a proportional and enforceable operational clause model. The benefits of this research are expected to include a theoretical contribution by developing behavioral contract law analysis. Additionally, this study offers practical contributions for legal practitioners and business actors in designing franchise agreements that guarantee legal certainty and a balance of interests between the parties.

## METHOD

This study is constructed as normative legal research focused on examining rules or norms within positive law (Qamar & Rezah, 2020). Given the complexity of behavioral issues in contract drafting, this study applies an interdisciplinary statutory approach and a conceptual approach. This approach transcends conventional doctrinal analysis by integrating Behavioral Analysis of Law to dissect the rationality behind the drafting of the franchise clause. Specifically, the research utilizes Legal Certainty Theory as a normative parameter, Prospect Theory from behavioral economics as a diagnostic tool, and Risk Allocation Theory as a prescriptive foundation for contract reconstruction.

The basis of this research's argumentation relies entirely on secondary data obtained through library research techniques. The data is classified into primary and secondary legal materials (Sampara & Husen, 2016). The primary legal materials constituting the main object of study include the Civil Code as the general law (*lex generalis*), Law Number 30 of 2000, and Law Number 11 of 2008[1], all of which are relevant to digital evidence. This national legal framework is juxtaposed with the TRIPS Agreement as a ratified international legal instrument. Meanwhile, secondary legal materials include contract law literature, current scientific journals on intellectual property protection, and behavioral economics literature, particularly the seminal works of Tversky and Kahneman (1992) on decision-making under risk.

[1]Law Number 11 of 2008, as amended several times, lastly by Law Number 1 of 2024.

The data analysis technique is conducted through normative qualitative analysis utilizing deductive logic (Irwansyah, 2020). This technique is operationalized through three systematic analysis stages to address the research objectives. The first stage is a diagnostic analysis using Prospect Theory. At this stage, existing clauses in F&B franchise practices are dissected to identify traces of loss-aversion behavior that bias contract drafting. The second stage is a juridical evaluation using Legal Certainty Theory to test the validity and enforceability of these biased clauses before the court, particularly with respect to the fulfillment of the "reasonable efforts" element. The third stage is a constructive prescriptive analysis. Findings from the previous two stages are synthesized using Risk Allocation Theory to reconstruct a new operational clause model that is proportional, equitable, and legally valid as evidence.

## RESULTS AND DISCUSSION

### A. Contract Pathology: Manifestation of Loss Aversion in Franchise Clause Drafting

An in-depth analysis of franchise agreement structures in the Indonesian F&B sector reveals a disturbing empirical reality. Instruments that should serve as a foundation of trust have instead become apparatuses of lopsided domination. Based on an examination of various standard contract documents, a recurring pattern was found in which trade secret protection clauses are formulated in a "catch-all" manner, without clear limitations. This phenomenon, as identified by Tanaya et al. (2021) and Benia (2022), manifests in definition clauses stating that "*all company information is confidential*" without technical specifications. Furthermore, this phenomenon is visible in the non-competition clause prohibiting former partners from doing business in the "entire Indonesian territory" without a rational time limit. Farida (2021) asserts that this lop-sided clause construction is not merely an administrative oversight (drafting error), but a structural design. This design systematically places the franchisee in a subordinate position, forcing them to bear a disproportionate risk burden regarding the franchisor's intellectual assets.

To understand the root cause of this irrationality in contract drafting, a merely normative-juridical analysis is insufficient. A behavioral economics scalpel is required to diagnose the psychological motives behind the legal text. Prospect Theory, a seminal framework introduced by Tversky and Kahneman (1992), provides a precise explanation regarding this cognitive bias. This theory postulates loss aversion, stating that the psychological impact of "loss" (in this case, secret recipe leakage) is felt far more asymmetrically than the satisfaction from an equivalent "gain" (royalty income). In the context of F&B franchisors, recipes and SOPs are the business "lifeblood." The excessive fear of losing these vital assets drives franchisors to make decisions deviating from legal rationality. They design excessive and draconian clause fortresses as an effort for total risk mitigation, even though such actions violate principles of justice (Gisbert-Pérez et al., 2022).

This loss aversion behavior is exacerbated by the motive of self-interest dominating the contractual relationship. Franchisors view the franchise relationship as a zero-sum game. Kretzmann (1965), in his philosophical analysis of self-interest, highlights how rational actors tend to maximize their personal utility at others' expense when there are no strict moral or legal boundaries. In the drafting of franchise agreements, the drive to protect self-interest almost always leads the franchisor to shift the entire risk of information leakage to the franchisee. Consequently, confidentiality clauses are designed not to define what is protected, but to create the widest possible "safety net." This is done to ensure the franchisor feels psychologically secure, disregarding that such ambiguity precisely creates legal uncertainty for their business partners.

When the psychological bias of loss aversion and the self-interest motive meet with inequality in bargaining power, a legal pathology known as abuse of circumstances is created. Kemalasari (2024) outlines that abuse of circumstances occurs when one party exploits their psychological or economic advantage to impose their will upon a weaker party. In the franchise scenario, the franchisor utilizes its dominant position and the franchisee's ignorance to present a standard contract containing such excessive clauses on a take-it-or-leave-it basis. Enforcing a non-competition clause that deprives the franchisee of economic rights after the contract is concrete evidence of exploitation of the franchisee's bargaining position. This exploitation is driven by the franchisor's irrational fear, which fundamentally injures the principle of responsible freedom of contract.

Dogmatically, clause drafting based on this loss aversion bias constitutes a serious violation of the principle of good faith in the pre-contractual phase, as mandated by Article 1338 section (3) of the Civil Code. Good faith demands honesty and propriety in drafting agreement content (Wiraantaka et al., 2025). However, when the franchisor intentionally formulates ambiguous and unlimited clauses to entrap the franchisee in impossible-to-fulfill obligations, the good-faith element is injured from the outset, rendering the drafting bad faith. The intent to protect assets cannot justify creating contractual injustice that oppresses business partners. Indonesian contract law protects not only certainty but also the balance of rights and obligations of the parties.

The fatal implication of this pathology is a defect in the agreement's validity. Article 1320 section (3) of the Civil Code establishes "certain subject matter" (*een bepaald onderwerp*) as an objective requirement for the validity of an agreement. Trade secret definition clauses formulated ambiguously due to loss aversion—for example, the claim that "everything is confidential"—fail to fulfill this object specification requirement. The protected object becomes obscure, its boundaries cannot be identified, and ultimately, the clause is threatened to become null and void. Thus, the greatest irony of the franchisor's loss-aversion behavior is that their efforts to tighten protection through excessive clauses precisely yield legal instruments that are fragile and lack juridical binding power.

## B. Enforceability Failure: Validity Test of Trade Secret Evidence in Court

The juridical consequences of contract drafting dominated by loss aversion bias do not stop at mere textual injustice. These consequences manifest in a fatal failure regarding enforceability when disputes enter the litigation realm. In the Indonesian intellectual property legal system, trade secrets are categorized as proprietary rights over intangible assets arising without constitutive registration (Ibrahim et al., 2023). However, the absence of this ownership certificate places the burden of proof (*onus probandi*) entirely on the franchisor as the plaintiff. In the F&B sector, the object of dispute often involves specific assets, such as seasoning formulas, critical temperature processing techniques, and customer data algorithms (Karmana et al., 2024). The court demands high precision in arguing the ownership of these assets. This standard is frequently unmet because contract clauses were drafted vaguely and generically from the outset.

The most elementary evidentiary failure lies in the franchisor's inability to fulfill the cumulative elements required by Article 3 and Article 4 of Law Number 30 of 2000. The law establishes three pillars of validity: information must be confidential, possess economic value, and be guarded through "reasonable steps." Rabbani and Suherman (2023), in their jurisprudential analysis, found that judges tend to reject franchisor lawsuits for failure to prove the "economic value" element. "Catch-all" clauses claiming all operational information as confidential precisely backfire. When everything is deemed confidential, the court struggles to separate which information truly possesses intrinsic economic value and which belongs to the public domain. Without clear economic value specifications in the contract, the alleged damages become speculative and cannot be granted.

Evidentiary obstacles become steeper when entering the examination of the "reasonable steps" element. Humaera and Yulinda (2025) highlight that a confidentiality clause on paper is not automatically construed by judges as an adequate protection effort if unaccompanied by concrete internal governance evidence. Contractual ambiguity that fails to regulate specific security protocols—such as physical access restrictions or document labeling—prevents the franchisor from convincing the panel of judges that it has maintained the asset's confidential nature. In the logic of the law of evidence, an ambiguous contract indicates the absence of operational protection standards. Consequently, information leakage by the franchisee or former employees is not considered a legal violation, but rather a result of the secret owner's own fault (*culpa in causa*).

This evidentiary complexity escalates significantly in the digital era, particularly after the enactment of Law Number 1 of 2024. Although Article 5 section (1) of the law acknowledges electronic information as valid legal evidence, the material validity of such evidence depends heavily on the integrity of the surrounding system. *Franchisors* often submit screenshots of digital conversations as evidence of recipe or data leakage. However, without contract clauses mandating the use of encryption or verified communication platforms, such evidence becomes weak and easily refuted. The contract's failure to adopt digital security standards renders electronic audit trails inadequate to prove the occurrence of illegal transmission of trade secrets (Dirkareshza et al., 2025).

Beyond technical evidentiary challenges, enforceability failure is also triggered by a normative clash between excessive non-competition clauses and human rights in employment. Purnamasari et al. (2023) note that industrial relations and commercial courts in Indonesia tend to side with labor rights or the freedom of enterprise when faced with unreasonable non-compete clauses. Clauses prohibiting former employees or franchisees from working in the culinary field for life or within overly broad territories are often set aside by judges. Judges deem such clauses contrary to public order and the constitutional right to obtain a decent livelihood. In this regard, "excessive protection" due to loss aversion results in "zero protection" before the law, as judges choose to annul the clause in its entirety.

Furthermore, this evidentiary failure phenomenon reflects a gap in the implementation of international standards. Setyoningsih (2021) asserts that although Indonesia has ratified the TRIPS Agreement, judicial practices still show disparity in interpreting undisclosed information. The franchisor's unpreparedness in presenting structured evidence—ranging from specific contracts to security audits—blunts these international protection standards at the domestic level. Procedural mechanisms actually provided by law, such as closed hearings under Article 18 of Law Number 30 of 2000 to prevent the publication of trade secrets during trials, often become irrelevant. It occurs because lawsuits founder at the initial formal evidentiary stage before touching upon the material substance.

Thus, it can be concluded that the unenforceability of trade secrets in the F&B franchise sector is a systemic failure originating from the contract drafting table. Contracts drafted without object clarity, without economic value parameters, and without measurable security protocols automatically paralyze the franchisor's position in court. Evidentiary validity cannot be built upon a foundation of fragile clauses (Simbolon, 2023). Therefore, clause reconstruction is not merely an administrative need, but an absolute condition (*conditio sine qua non*) to restore legal binding force and guarantee business certainty within the national franchise ecosystem.

## C. Operational Clause Reconstruction: A Proportional Risk Allocation Approach

As an antithesis to the failure of contract models dominated by loss aversion, this study proposes an operational clause reconstruction grounded in Risk Allocation Theory. As postulated by Oroh et al. (2024), an efficient business contract does not aim to eliminate risk absolutely. Instead, the contract aims to allocate this risk to the party best able to control it at the lowest cost, known as the cheapest-cost avoider. In the franchise context, this paradigm shift requires the franchisor to abandon the "control without responsibility" mentality criticized by Callaci (2021) and move towards a reciprocal responsibility model. This reconstruction begins by redissecting the element of agreement-object uncertainty. To fulfill the "certain subject matter" requirement in Article 1320 of the Civil Code and avoid becoming null and void, definition clauses must transform from vague generalizations into precise specifications.

The first step in reconstruction is to affirm the boundary between general know-how and actual trade secrets. Nashkova (2023) emphasizes the urgency of this terminological separation to prevent excessive ownership claims over skills inherent to individual workers. Therefore, the proposed definition clause below explicitly refers to a separate attachment as an integral part of the agreement. The objective is to create "written evidence" from the outset that both parties have agreed upon which specific items (e.g., seasoning ratios, supplier data) are protected. This will curtail the room for interpretative debate in court later.

### Article 1

(1) The Parties agree that "Confidential Information" is any data or information not known to the public (non-public) disclosed by the Franchisor to the Franchisee in connection with the performance of this Agreement.

(2) Confidential Information as referred to in section (1) includes information disclosed orally, in writing, electronically, visually, in the form of demonstrations,

or in any other form whatsoever, regardless of whether such information is specifically marked as "Confidential" or not.

(3) Confidential Information includes, but is not limited to:
   a. all recipes, formulas, raw material compositions, and product processing or preparation techniques (including seasonings, sauces, and cooking methods);
   b. all production methods, packaging methods, and Standard Operating Procedures (SOP) for Outlet operations, quality management, and customer service;
   c. approved Supplier data and lists, pricing strategies, marketing strategies, and business plans;
   d. financial data, sales data, and customer databases; and/or
   e. operational technical knowledge (know-how), business systems, and software specifically developed or used by the Franchisor.

(4) Confidential Information as referred to in section (3) is further detailed and specifically listed in Attachment A (List of Confidential Information), which constitutes a single unity and an inseparable part of this Agreement.

Once the protection object is defined, the next crucial element is the legal subject binding mechanism through a layered confidentiality agreement. Khalid and Naufal (2024) underscore that leakage often occurs not through the franchisee as a corporate entity, but through operational employees in the field. Therefore, the reconstruction clause obligates the franchisee not only to maintain secrecy but also to bind its employees through derivative agreements actively. This expands the legal liability net and ensures that every individual with access to the franchisor's intellectual assets is personally bound. This measure closes the legal loophole frequently exploited in cases of recipe piracy by former chefs or outlet managers.

### Article 2

The Franchisee is hereby obligated and fully responsible to:

a. maintain and protect the confidentiality of all Confidential Information by applying a level of care at least equal to the level of care it uses to protect its own confidential information of similar confidentiality value;
b. not disclose, copy, reproduce, or disseminate Confidential Information, either partially or wholly, to any third party without prior written consent from the Franchisor;
c. limit internal access to Confidential Information only to its employees, directors, or agents on a need-to-know basis solely for the purpose of performing this Agreement; and

d. ensure that every employee, director, or agent as referred to in letter c, who receives access to Confidential Information, is bound by and has signed a derivative confidentiality agreement whose substance is at least equivalent to the confidentiality provisions in this Agreement, before such access is granted.

The most severe challenge in balancing business interests with human rights lies in the formulation of the non-competition clause. Indrawati (2023) argues that to be enforceable, this clause must pass a proportionality test covering time limits, territory, and business scope. The reconstruction clause below abandons the "entire Indonesia for a lifetime" approach and shifts to a limit of a 5-kilometer radius and a duration of 1 year. This limitation is designed to protect the franchise outlet's local market without killing the former partner's economic right to earn a livelihood elsewhere. Thus, the risk of annulment of a clause by judges on grounds of public order violation can be minimized (Gultom & Dewi, 2025).

## Article 3

(1) The Franchisee is prohibited from, either directly or indirectly, owning, managing, operating, or having a financial interest of any kind in another business that constitutes a Directly Competing Business.
(2) Directly Competing Business as referred to in section (1) is any enterprise or business selling products identical or similar to the Franchise Products, located within a radius of 5 (five) kilometers from the Franchisee's Outlet location.
(3) The prohibition as referred to in section (1) applies during the Agreement Term and continues to apply for a period of 1 (one) year after the expiration or termination of this Agreement (hereinafter referred to as the "Prohibition Period").
(4) The prohibition provisions as referred to in section (1) apply and are binding not only upon the Franchisee as a legal entity/business entity but also apply and are binding personally upon every director, controlling shareholder, and affiliate of the Franchisee.

The trade secret protection cycle reaches its critical point in the post-contractual phase. Sukandia and Budiartha (2022) note that technology transfer during the contract period must be concluded with a "clean break" mechanism upon the relationship's end. The following clause affirms the obligation to restore intellectual assets, ensuring that the franchisee no longer has physical or digital access to the franchisor's business system. The clarity of this data destruction obligation also functions as evidence of "reasonable steps" in court. It demonstrates that the franchisor consistently maintains the exclusivity of its assets until the very end of the cooperation.

**Article 4**

Immediately upon the expiration or termination of this Agreement, for any reason whatsoever, the Franchisee is obligated, no later than a period of 7 (seven) calendar days from the date of expiration or termination of the Agreement, to:

a. permanently and completely cease the use of all Confidential Information, Trademarks, and Business Systems belonging to the Franchisor in any form;
b. return to the Franchisor all original documents and copies thereof, operational manuals, training materials, and other media in any form (including but not limited to digital copies) containing or relating to Confidential Information; and
c. permanently destroy all Confidential Information from every computer system, database, and electronic storage medium owned by or under the control of the Franchisee, and is obligated to provide a written statement signed by an authorized official of the Franchisee stating that such destruction has been fully executed.

In the digital era, the validity of trade secret protection now relies heavily on technological infrastructure. Humaera and Yulinda (2025) emphasize that cybersecurity systems are no longer an option, but a legal obligation. The clause in Article 5 below applies the principle of reciprocal risk allocation. The franchisor is responsible for providing a secure system (such as an encrypted Point of Sale (POS)), while the franchisee is responsible for complying with its usage SOP. This clear role division strengthens the franchisor's position regarding digital evidence, as mandated by Article 5 of Law Number 1 of 2024, because the security audit trail is verified rather than merely a unilateral claim.

**Article 5**

(1) The Franchisor is obligated to provide reasonable and adequate technical security infrastructure and systems to support the protection of Confidential Information in Outlet operations, including but not limited to:
    a. an encrypted Point of Sale (POS) system; and
    b. a secure internal communication platform for operational data exchange.
(2) The Franchisee is obligated to strictly implement and comply with all Security Standard Operating Procedures (SOP) established by the Franchisor in connection with the use of the infrastructure and systems as referred to in section (1), including but not limited to:
    a. the execution of periodic internal security audits in accordance with the Franchisor's guidelines; and
    b. the application of strict access control for employees regarding Confidential Information.

Aligned with the principle of good faith, which is the soul of Article 1338 section (3) of the Civil Code, legal enforcement in contracts must not be immediately *punitive* without warning. Sudjana (2022) suggests a notice-and-cure mechanism as a standard procedure to provide the partner with an opportunity to rectify. The clauses in Article 6 and Article 7 below balance the franchisor's right to impose strict sanctions for material violations with the franchisee's right to receive proper warning. This balance creates a constructive partnership climate and reduces the risk of frivolous disputes that burden transaction costs.

### Article 6

(1) In the event the Franchisor suspects a non-material violation has occurred by the Franchisee regarding confidentiality obligations in this Agreement, the Franchisor is obligated to submit a written notice regarding such alleged violation to the Franchisee.

(2) The Franchisee is obligated to perform rectification of the violation as referred to in section (1) within a period of 14 (fourteen) calendar days from the date of receipt of such written notice.

(3) The Franchisee's failure to perform full rectification within the period as referred to in section (2) grants the right to the Franchisor to pursue legal remedies available under this Agreement as well as applicable laws and regulations.

### Article 7

(1) Any violation by the Franchisee of the provisions in Article 2 and/or Article 3 of this Agreement constitutes a material breach.

(2) In the event of a material breach as referred to in section (1), the Franchisor has the right to:

   a. terminate this Agreement unilaterally and immediately with written notice; and

   b. claim compensation from the Franchisee for all actual damages incurred and legally provable resulting from such violation, without prejudice to the Franchisor's right to pursue other legal remedies (including but not limited to petitions for provisional decisions/injunctions).

Finally, the effectiveness of legal enforcement in trade secret disputes is heavily influenced by the chosen forum for dispute resolution. Crisyanti et al. (2023) recommend arbitration as the ideal forum due to its confidentiality, unlike district courts, which are open to the public. The clause in Article 8 directs dispute resolution to the Indonesian National Board of Arbitration (BANI). This choice is strategic to minimize the risk of "secondary leakage." This risk arises when trade secrets are precisely disclosed to the public through publicly accessible court decisions. Furthermore, this choice accelerates the business dispute resolution process, requiring time certainty.

**Article 8**

(1) Any dispute, controversy, or difference of opinion arising from or in connection with the interpretation or performance of this Agreement (hereinafter referred to as "Dispute") must be resolved by the Parties in good faith through deliberation for consensus.
(2) If the Dispute cannot be resolved by deliberation as referred to in section (1) within a period of 30 (thirty) calendar days from the moment one Party sends a written notice regarding the existence of a Dispute to the other Party, then such Dispute shall be resolved finally and bindingly.
(3) Dispute resolution as referred to in section (2) shall be conducted through arbitration administered by the Indonesian National Board of Arbitration (BANI) based on the arbitration rules and procedures applicable at such institution, with the seat of arbitration in Jakarta and using the Indonesian Language.

Overall, this operational clause reconstruction model serves not only as a risk mitigation instrument. This model also functions as a concrete manifestation of legal certainty aspired to by Kilala et al. (2025) and Udayana and Putra (2025). By abandoning the irrational loss aversion approach and shifting to proportional risk allocation, the franchise agreement transforms into a true "Legal Fortress" (Rifaie & Suhendro, 2023). A fair, specific, and balanced contract, as reflected in the clauses above, provides an irrefutable evidentiary foundation for the franchisor before the law. This model simultaneously safeguards the franchisee's rights against exploitation, ensuring the sustainability of the F&B franchise business ecosystem within a dignified legal framework.

## CONCLUSIONS AND SUGGESTIONS

This study concludes that the systemic failure in trade secret protection in the F&B franchise sector in Indonesia is not due to the absence of a national legal framework. Instead, such failure is rooted in contract-drafting pathology driven by irrational behavioral bias. Based on a diagnostic analysis using Prospect Theory, it is found that existing protection clauses formulated ambiguously, excessively, and in a lop-sided manner constitute manifestations of the franchisor's loss aversion behavior. Excessive fear of losing intellectual assets drives the creation of "catch-all clauses" that precisely violate legal certainty standards and the principle of good faith as mandated by Article 1320 section (3) and Article 1338 section (3) of the Civil Code. Thus, the risk mitigation strategy currently applied by franchisors precisely becomes a boomerang that weakens their own legal position.

The legal implications of such contractual design defects are the failure to enforce in court. Evaluative analysis demonstrates that the ambiguity of secret object definitions causes the franchisor to fail in fulfilling the burden of proof (*onus probandi*) regarding the cumulative elements of "economic value" and "reasonable steps" required by Article 3 of Law Number 30 of 2000. Furthermore, the absence of specific digital security protocols in the contract undermines the validity of electronic evidence under Law Number 11 of 2008. It also triggers the annulment of the non-competition clause by judges as it is deemed contrary to human rights and public order. Therefore, a common thread can be drawn that legal uncertainty in franchise disputes is a direct consequence of disproportionate protection efforts.

As a prescriptive follow-up to these findings, this study recommends a fundamental reconstruction of franchise agreement instruments by shifting from the loss aversion paradigm towards a Risk Allocation Theory approach. It is suggested that legal practitioners and contract drafters adopt an operational clause model that distributes risk proportionally. This must begin by formulating specific, limitative definitions of "Confidential Information" in a separate attachment to fulfill the agreement's objective requirements. Additionally, it is necessary to apply a layered confidentiality agreement obligating the franchisee to bind its employees personally to close internal leakage loopholes.

Furthermore, it is also suggested that the non-competition clause be revised to be more humanistic and measurable with reasonable territorial radius and time duration limits (e.g., 1 year and a 5 km radius). Thus, such a clause possesses strong execution power and is not easily refuted by judges. Strengthening the evidentiary aspect must also be achieved through clauses imposing obligations on the franchisor to provide digital security infrastructure and on the franchisee to comply with SOPs. Finally, to ensure the sustainability of a healthy business relationship, the contract's legal enforcement mechanism should prioritize the notice-and-cure procedure before imposing termination sanctions. Arbitration should also be designated as the dispute resolution forum to maintain the confidentiality of business substance from public consumption. The implementation of this reconstructed clause model is expected to restore legal certainty, minimize transaction costs arising from disputes, and create an equitable franchise ecosystem.

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