

## Franchise in The Perspective of Islamic Contract Law

### Abstrak

**Bustanul Arifin**  
Jurusan Syari'ah,  
Sekolah Tinggi Agama  
Islam At-Tahdzib  
Jombang, Indonesia  
Email:  
[arifelbustany@gmail.com](mailto:arifelbustany@gmail.com)

**Background.** *The construction of an agreement based on Islamic Law must fulfill the principles of mu'amalah, the pillars (rukun) and conditions for the validity of the agreement, the provisions of the agreement and the prohibition of cooperating in committing a sin, and the ability of the parties to carry out legal acts. The valid condition of an aqad (agreement) is that the purpose of the agreement is fulfilled as the main consequence of an aqad.*

**Aims.** *This article examines franchise business agreements according to the normative provisions of Islamic Law.*

**Methods.** *Library research studies emphasize the legal aspects of franchises. Conceptual data are tracked on the internet with the keywords franchise and Islamic perspective and the results are analyzed descriptively.*

**Results.** *Franchise is a form of cooperation agreement (syirkah) which provides special rights and authorities to the franchisee as the recipient. Franchise is a reciprocal agreement, because the franchisor as the franchiser and the franchisee, both are obliged to fulfill certain achievements. Franchise agreements are permitted according to Islamic Law because they are beneficial and do not contain elements that conflict with the concept and process of syirkah and fulfill the pillars of ijarah: 'uqud (people who have aqad, namely the franchisor and franchisee), sighthat 'uqud (found during negotiations), ujarah (wages), and benefits (business).*

**Keywords:** *franchise, agreement, Islamic law*

### INTRODUCTION

Franchise regulations in Indonesia have undergone several significant changes. Government Regulation Number 16 of 1997 concerning Franchises initially became the legal basis for franchise activities. Changes and updates were made with the issuance of Government Regulation Number 42 of 2007 concerning Franchises. This Government Regulation does not stand alone, but is supported by the Regulation of the Minister of Trade. Regulation of the Minister of Trade Number 12/M-Dag/Per/3/2006 initially regulated the provisions and procedures for issuing franchise business registration certificates.<sup>1</sup> The Regulation of the Minister of Trade was then changed with the issuance of Regulation of the Minister of Trade Number 31/M-Dag/Per/8/2008 concerning Franchise Implementation. The development of this regulation shows that the government is actively involved in regulating and supervising the franchise sector. The existence of these regulations provides business certainty and legal certainty for business actors running franchises in Indonesia. Changes in regulations that have occurred since 1997 show the government's commitment to ensuring the development and sustainability of franchise activities in accordance with the demands and dynamics of the business world.<sup>2</sup>

The law for Muslims is Islamic Law, which is the entire legal rules that originate from the *Qur'an*, and for a certain period of time were further concretized by the Prophet Muhammad Saw in the words, behavior (deeds) and provisions of the Prophet which are commonly called the *Sunnah* of

<sup>1</sup> Adrian Sutedi, *Hukum Waralaba*, Cet. 1 (Ciawi, Bogor: Ghalia Indonesia, 2008), h. 22.

<sup>2</sup> Sutedi, h. 23.



the Apostle. Islamic Law is a translation of the term Islamic *Sharia* (*asy-syari'ah al-Islamiyyah*) or Islamic *Fiqh* (*alfiqh al-Islami*).<sup>3</sup> Islamic *Sharia* and Islamic *Fiqh* are authentic Islamic terms that come from the treasury of Islamic studies since long ago. Islamic *Sharia* and Islamic *Fiqh* in Indonesia are used interchangeably with meanings that are sometimes different, but also often similar, and often cause confusion among the community, even among experts.

An overview of the ability of Islamic Law (*Syari'at*) to answer the challenges of modernity can be seen by stating several principles of Islamic Law, including the principles related to *mu'amalah* and worship. The original law of everything in the field of *mu'amalah* is permissible unless there is evidence that shows that something is forbidden. The original law in the field of worship is forbidden unless there is evidence that underlies it. Based on the principles of *mu'amalah* and worship, it can be understood that modernization related to all forms of *mu'amalat* is permitted by Islamic Law as long as it does not conflict with the principles of Islamic Law. Islamic Law in the field of *mu'amalah* is open to the possibility of modernization. Islamic Law in the field of worship is not open to the possibility of modernization, but its material must be oriented to the texts of the *Qur'an* and *Hadith* which have clearly regulated the procedures for carrying out worship. Islamic Law in the field of worship that is open to modernization is in the field of worship facilities and infrastructure.

The creation of an Islamic franchise business system requires the application of the *Sharia* value system as a moral foundation for business. The *Sharia* value system functions as a filter that aims to prevent various business deviations, such as *Maysir* (speculation), *Asusila*, *Gharar* (fraud), *Haram*, *Riba*, *Ikhtikar* (hoarding/monopoly), and *Dharar* (dangerous). The *Sharia* value system in the context of a franchise business is considered a form of marketing and distribution activity. Large companies in practice grant rights or privileges to individuals and smaller companies to run a business in a certain way at a certain time and place. Franchising is understood as a method of producing and distributing goods or services to consumers with certain standards and exploitation. Standards and exploitation in the franchise model include similarities in the company name, brand, and production system, packaging, presentation, and distribution procedures. Government Regulation of the Republic of Indonesia Number 42 of 2007 concerning Franchises Article 1 Number 1 defines a franchise as a special right owned by an individual or business entity to a business system with certain characteristics. Special rights are granted in order to market goods and/or services that have been proven successful and can be utilized by other parties based on a franchise agreement. The Indonesian government has accommodated the development of the business world that is developing in society by issuing laws and regulations governing modern era economic transactions as an effort to regulate economic transactions. The majority of the Indonesian population is Muslim. Positive law (*ius constitutum*) that regulates franchise businesses needs to be studied for clarity according to Islamic Law.

This article examines franchise business agreements according to the normative provisions of Islamic Law. The construction of an agreement based on Islamic Law, in addition to having to fulfill the principles of *mu'amalah*, must also fulfill the pillars and conditions for the validity of the agreement, as well as fulfill the provisions of the agreement and the prohibition of cooperating in committing a sin, as well as the ability of the parties to carry out legal acts. The valid condition for an *aqad* (agreement) is that the purpose of the *aqad* is fulfilled as the main consequence of an *aqad*.<sup>4</sup> An agreement or obligation is etymologically an agreement or obligation is a bond. According to terminology, an agreement or obligation is an act; a person binds himself to one or more others.<sup>5</sup> An agreement is an agreement with two or more people binding themselves to carry out something in the field of wealth.<sup>6</sup>

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<sup>3</sup> Rifyal Ka'bah, *Hukum Islam di Indonesia: Perspektif Muhammadiyah dan NU*, Cet. 1 (Jakarta: Universitas Yarsi, 1999), h. 25.

<sup>4</sup> Mardani, *Fiqh ekonomi Syariah: Fiqh Muamalah*, Ed. 1., cet. 1 (Jakarta: Kencana, 2012), h. 37.

<sup>5</sup> Titik Triwulan Tutik, *Hukum Perdata Dalam Sistem Hukum Nasional*, Ed. 1., cet. 1 (Jakarta: Kencana, 2008), h. 22.

<sup>6</sup> Abdulkadir Muhammad, *Hukum Perikatan* (Bandung: Citra Aditiya Bakti, 1990), h. 78.

According to Islamic Law, the word “agreement” comes from the word “*aqad*” (عقد), which etymologically means to conclude.<sup>7</sup>

جمع طرفي حبلين و يشدّ احدهما بالأخر حتى يتصلا فيصبا كقطعة واحدة

“To gather two ends of a rope and tie one to the other so that they are connected, then both become one object.”<sup>8</sup>

According to terminology, something with which two kinds of wills will be perfectly combined, either by words or otherwise, and then because of this, certainty/certainty will arise on both sides.

ارتبط الايجاب بقبول على وجه مشروع يثبت الترضى

“The agreement of *ijab* and *qabul* that is permitted by *syariah*’ that establishes the satisfaction of both parties.”<sup>9</sup>

The word *aqad* in linguistic terms means a bond and a binding rope. The meaning of *aqad* is then translated linguistically as: “connecting two words, including promises and oaths, because an oath strengthens the intention to promise to carry out the contents of the oath or leave it. A promise functions as a glue between the two parties who promise and strengthen it.”<sup>10</sup>

The concept of franchise and the problems of Islamic Law raise several problems: Is the concept of franchise business in accordance with the concept of Islamic Law (*fiqh*)?; how is the legal protection for franchises?; and are there any socio-political implications behind their implementation?

The methodological reasons for choosing franchises as an entry point for the debate between Islamic Law and positive law: Franchises are a form of business where each product does not necessarily have legal protection for Intellectual Property Rights; Franchises are so far a very profitable form of business.

## LITERATURE REVIEW

The term franchise has its roots in the French word “Franchir,” which means giving freedom to the parties. The definition of franchise basically reflects the meaning of independence and freedom. Franchise in Latin, is interpreted as “francorum rex,” which means “free from ties,” referring to the freedom to have business rights. Franchise as a concept is rooted in the principle of giving freedom to individuals or business entities to have and run a business right.<sup>11</sup> Franchise in the Oxford English dictionary is defined as authorization granted by the government or a company to a particular individual or group allowing the parties to carry out commercial activities, for example, acting as a product agent for a company. Franchise in the United States is defined as a concession.

Franchise in Indonesia is defined as the right to market a company’s goods and services in a certain area. The right is granted by the company to an individual or group of individuals, a group of marketers, retailers, or wholesalers.<sup>12</sup> “Franchise is also defined as a marketing system or business system to market certain products or services.”<sup>13</sup> The definition of franchise in several regulations in Indonesia also serves as the legal umbrella for its implementation. Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 259/MPR/Kep/7/1997 Concerning Provisions and Procedures for the Implementation of Franchise Business Registration defines Franchise as an

<sup>7</sup> Mahmud Yunus, *Kamus Arab Indonesia* (Jakarta: Mahmud Yunus, t.t.), h. 278.

<sup>8</sup> Hendi Suhendi, *Fiqh Mumalah: Membahas Ekonomi Islam Kedudukan Harta, Hak Milik, Jual Beli, Bunga Bank dan Riba, Musyarakah, Ijarah, Mudayanah, Koperasi, Asuransi, Etika Bisnis dan lain-lain*, Cet. V (Jakarta: Raja Grafindo Persada, 2007), h. 44.

<sup>9</sup> Suhendi, h. 46.

<sup>10</sup> Abdul Aziz Muhammad Azzam, *Fiqh Muamalat: Sistem Transaksi dalam Fiqh Islam* (Jakarta: Amzah, 2010), h. 15.

<sup>11</sup> Moh Idil Ghufro dan Inas Fahmiyah, “Konsep Waralaba Perspektif Ekonomi Islam,” *Amwaluna: Jurnal Ekonomi dan Keuangan Syariah* 3, 1, 133–48, 2019, <https://doi.org/10.29313/amwaluna.v3i1.4287>.

<sup>12</sup> Linda Firdawaty, “Perjanjian Waralaba Menurut Hukum Islam,” *ASAS: Jurnal Hukum Ekonomi Syariah* 3, 1, 2011, <https://doi.org/10.24042/asas.v3i1.1652>.

<sup>13</sup> Sutedi, *Hukum waralaba*, h. 46.

agreement, one party is given the right to utilize and/or use intellectual property rights or inventions or business characteristics owned by another party with a reward based on the terms set in order to provide and/or sell goods and services.

According to the Government Regulation of the Republic of Indonesia Number 42 of 2007 concerning Franchises, (Revision of the Government Regulation of the Republic of Indonesia Number 16 of 1997 and the Decree of the Minister of Industry and Trade Number 259/MPR/Kep/7/1997 concerning the Provisions and Procedures for the Implementation of Franchise Business Registration), a Franchise is a special right owned by an individual or business entity to a system with distinctive business characteristics in order to market goods and/or services that have been proven successful and can be utilized and/or used by other parties based on a franchise agreement. Regulation of the Minister of Trade Number 31/MDAG/PER/8/2008 concerning the Implementation of Franchises Article 1 Paragraph (1) states that a Franchise is a special right owned by an individual or business entity to a business system with distinctive business characteristics in order to market goods and/or services that have been proven successful and can be utilized and/or used by other parties based on a franchise agreement. Regulation of the Minister of Trade Number 12/M-Dag/Per/3/2006 concerning the Provisions and Procedures for Issuing Franchise Business Registration Certificates confirms that a franchise is an agreement between the franchisor and the franchisee, the franchisee is given the right to run a business by utilizing and/or using; intellectual property or inventions or business characteristics owned by the franchisor with a reward based on the requirements set by the franchisor with a number of obligations to provide ongoing operational consulting support by the franchisor to the franchisee.

Regulation of the Minister of Trade Number 12/M-Dag/Per/3/2006 also explains that a franchise company (franchisor) is a business entity or individual who grants the right to another party to utilize and/or use intellectual property rights or inventions or characteristics owned by the franchisor. The franchisee is a business entity or individual who is granted the right to utilize and/or use intellectual property rights or inventions or characteristics owned by the franchisor.<sup>14</sup>

Franchise is a method of distributing goods and services to consumers, sold to other interested parties. The owner of the sales method is called the franchisor, the party who buys the right to use the method is called the franchisee. The franchisor-franchisee relationship is built through a contract. The franchisor has an obligation to continue to provide attention and support to the franchise business by providing knowledge and training. The franchisee as the rights holder operates using the trademark, format, or procedure owned and controlled by the franchisor. Franchisors and franchisees also invest in the business they own. Before the enactment of Government Regulation Number 16 of 1997 concerning Franchises (which has now been replaced by Government Regulation Number 42 of 2007), the franchise problem was a big issue. At that time, the franchisor had to rely on a written agreement in the cooperation contract.<sup>15</sup>

Regulatory changes are important in the context of franchising because the cooperation contract requires both parties to be thorough and careful about what is agreed upon. The franchise contract aims to accommodate the wishes of the parties and validate the agreement in accordance with the principles of consensualism and the principle of freedom of responsibility. Legal certainty in the franchise business can be more effectively realized with regulatory changes.<sup>16</sup>

Franchisor is a party that has a system or methods of doing business. Franchisee is a party that buys a franchise or system from the franchisor. Franchisee has the right to run a business in the ways developed by the franchisor. Franchise is the system and methods of the business itself. The franchise system is the knowledge or business specifications of the franchisor that are sold to the franchisee.

Franchise business is run as a form of cooperation between the related parties. The franchisor is a party that sells its trademark or trademark to another party through a license agreement. The

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<sup>14</sup> Harun, "Bisnis Waralaba di Indonesia Perspektif Hukum Islam (Tinjauan Hukum Muamalat)," 2011, <http://publikasiilmiah.ums.ac.id/handle/11617/2264>.

<sup>15</sup> Agung Satriyo Wibowo dkk., "Legal Protection and Justice for Franchise Business Operators from an Islamic Law Perspective," *Journal of Ecohumanism* 3, 6, 27–40, 2024. <https://doi.org/10.62754/joe.v3i6.3892>.

<sup>16</sup> Sugeng, "Legal Protection for Recipients of Foreign Franchise Rights In Indonesia," *Indonesia Law Review* 9, 2, 2019, <https://doi.org/10.15742/ilrev.v9n2.530>.

franchisee is a party that uses the franchisor's trademark by paying royalties and other fees that have been determined in the agreement that has been made in advance by the parties.

The provisions of the Civil Code article 1338 state that: All agreements made in accordance with the Law apply to those who make them, the agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by Law, the agreement must be carried out in good faith.

## RESEARCH METHOD

Library research study emphasizes the legal aspects of franchise. Conceptual data is tracked on the internet with the keywords franchise and Islamic perspective and the results are analyzed descriptively, a problem-solving procedure that is investigated by describing or depicting the current state of the subject or object of research based on the facts that appear or as they are.<sup>17</sup> The analytical descriptive method is useful when researchers describe data, while explaining it rationally until empirical analysis results are achieved.<sup>18</sup> Descriptive analysis begins by describing data related to the franchise, then sorted according to research needs. This pattern is carried out repeatedly to ensure that the data obtained is in accordance with the focus of the research. The last step in descriptive analysis is drawing conclusions from the data mapping that has been carried out.<sup>19</sup>

## RESULTS AND DISCUSSION

### Principles of agreement in Islamic Law

Islamic Law uses the principles of: *Ibahah (mabda' al-Ibahah)*; Freedom of *Aqad (mabda' huriyyah at-ta'aqud)*; Consensualism (*mabda' ar-radhaiyyah*); Balance (*mabda' at-tawazun fi al-mu'awadhah*), the principle of benefit (not burdensome); Justice, and; the principle of *Amanah*.

*Mabda' al-Ibahah* is the general principle of Islamic Law in the field of muamalat in general. This principle is formulated in the andigum:

الاصل في المعاملة الاباحة حتى يدل على دليل لتحريم

Everything in principle can be done until there is an argument (*dalil*) that forbids it.<sup>20</sup> The principle of *mabda' al-Ibahah* is the opposite of the principle that occurs in the problem of worship. Acts of worship in Islamic Law apply the principle: "The valid forms of worship are the forms mentioned in the *shari'ah* arguments."

Hadith narrated by al-Bazar and at-Thabrani which means:

"Whatever Allah makes lawful is lawful, and whatever Allah forbids is unlawful, and whatever is silenced is forgiven, so accept it from Allah, the Forgiving. Truly God does not forget anything."

Hadith narrated by Daruquthni, classified as hasan by an-Nawawi, which means:

"Indeed, Allah has made some obligations obligatory, so do not waste Him and Allah has given some limits, so do not violate Him, and Allah has forbidden something, so do not argue with Him, and Allah has kept some things quiet, so do not discuss Him."<sup>21</sup>

Islamic Law adheres to the principle of *mabda' huriyyah at-ta'aqud*, a legal principle that states that everyone can make a contract or any type without being bound by the names that have been determined in *sharia* law and include any clauses into the contract that they make according to their interests as long as it does not result in consuming the property of others in vain. The texts of the

<sup>17</sup> Lexy J Meleong, *Metologi Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, 1989), h. 77.

<sup>18</sup> Catherine Marshall and Gretchen B. Rossman, *Designing Qualitative Research*, 6<sup>th</sup> ed. (California: Sage Publication, 2016), h. 65.

<sup>19</sup> Matthew B. Miles, A. M. Huberman, & Johnny Saldaña, *Qualitative Data Analysis: A Methods Sourcebook*, 3<sup>rd</sup> (California: Sage Publications, 2014), h. 87.

<sup>20</sup> A. Djazuli, *Kaidah-kaidah Fikih* (Jakarta: Kencana, 2016), h. 77.

<sup>21</sup> A. Djazuli, h.85.

*Qur'an* and the *Sunnah* of the Prophet Saw, as well as the rules of Islamic Law show that Islamic Law adheres to the principle of *mabda' huriyyah at-ta'aqud*.<sup>22</sup>

The principle of *mabda' huriyyah at-ta'aqud* is a further concretization of a more explicit specification of the principle of worship in mu'malat. The freedom of a person in the principle of *mabda' huriyyah at-ta'aqud* is intended to make any kind of agreement and contain anything according to his interests within the limits of morality and public order, even if the agreement is contrary to the rules or articles of the law of agreements.<sup>23</sup> For example, according to the rules of the law of agreements, goods traded by the parties must be delivered at the place where the goods are located at the time the agreement is closed.<sup>24</sup> The parties can also determine otherwise, for example, the seller must deliver and hand over the goods to the buyer's house.

According to al-Zarqa, *mabda' huriyyah at-ta'aqud* includes four aspects of freedom, namely: Freedom to enter into or not to enter into an agreement; Not bound by formalities, but sufficient solely based on agreement (permission); Not bound by named agreements, and; Freedom to determine the consequences of the agreement.<sup>25</sup>

The words of the Prophet Muhammad Saw in the *hadith* of 'Amr Bin Auf, which is confirmed by the *hadith* of Abu Hurairah, it is stated that "*As-Sulhu ja-iz baina al-Muslimin*" states that Muslims are permitted to make peace agreements in the implementation of their rights, but this permission applies within limits as long as it does not violate the provisions of halal and haram as can be understood from the continuation of his words, "*illa salhan harrama halalan aw ahalla harraman*."

The statement (*sabda*) stating the *mabda' huriyyah at-ta'aqud* is more clearly seen in the statement of the Prophet Muhammad Saw who stated, "*wal muslimin 'ala syurutihim illa syartan halalan aw ahalla harraman*." Muslims in this context are given the authority to enter into agreements by setting conditions, and the agreement is binding to be fulfilled within the limits of the provisions of halal and haram. The use of the word "*syurut*" in the plural form indicates that this includes all Muslims. Muslims can determine any conditions in their agreements by complying with the limits of the provisions of *halal* and *haram*, which means in accordance with the general order of the *sharia*.

The *'ulamas*, especially in the discussion about the principle of *huriyyah at-ta'aqud* and the determination of conditions, are divided into two opposing groups. The first group is the conservative group of scholars. The most conservative *'ulama* in recognizing the principle of *huriyyah at-ta'aqud* include the *Zahiri 'ulama*, especially Ibn Hazm. The second group is the broader group of *'ulama* in supporting the principle of *huriyyah at-ta'aqud* and are more inclined to accept conditions, namely the *Hanabilah 'ulama*, especially Ibn Taymiyyah. The debate between these two groups reflects the diverse views regarding the principle of *huriyyah at-ta'aqud in Islam*.<sup>26</sup>

Ibn Hazm views that basically the contract and conditions are forbidden to be fulfilled, unless there is a command from the text (Quranic text or *hadith*) that instructs to fulfill it. According to Ibn Hazm, every condition that includes a contract and unilateral promise will be considered valid only if its validity is recognized by the text. This means that conditions that are not recognized as valid by the holy texts of Allah are considered not to exist in religious teachings.

Ibn Hazm asserted that, if the parties involved mention these conditions when making a sale and purchase agreement, then the sale and purchase transaction becomes void, and these conditions are also considered void. Ibn Hazm's perspective states that the validity of a condition in a sale and purchase agreement depends on whether the condition is ordered or recognized by the religious provisions contained in the holy book of Allah. This approach reflects Ibn Hazm's conservative view of the formation and implementation of agreements, with an emphasis on compliance with the

<sup>22</sup> Abdul Ghofur Anshori, *Hukum Perjanjian Islam di Indonesia: Konsep, Regulasi, dan Implementasi*, Cet. 1 (Yogyakarta: Gadjah Mada University Press, 2010), h. 145.

<sup>23</sup> R. Subekti, *Hukum Perjanjian* (Jakarta: Intermedia, 1987), h. 13.

<sup>24</sup> Kitab Undan-Undang Hukum Perdata Pasal 1477.

<sup>25</sup> Musthofa Al-Zarqa, *Al-Fiqh al-Islami fi Sahihi al-Jadid* (Damaskus: Matabi' Alifba 'al-Adib, 1968), h. 462.

<sup>26</sup> YUSDANI, "Transaksi (Akad) dalam Perspektif Hukum Islam," *Millah: Journal of Religious Studies*, 71–84, 2002.

principles explicitly recognized by the text (*nash*).<sup>27</sup> A valid condition has been confirmed by the text and is therefore a condition contained in the book of Allah. According to Ibn Hazm, there are seven types of conditions, namely: Requiring a mortgage in a non-cash sale and purchase (as collateral for debt payment); Requiring a delay in payment of the price until a specified time; Requiring payment of the price at a flexible time; Requiring certain characteristics of the goods; Requiring no cheating; Requiring that the property of the slave sold by his master is for the buyer either in part or in whole, and; Requires that the fruit of the tree that has been mated that is sold by its owner is for the buyer, either partially or completely. Conditions outside the seven criteria according to the Zahiri school (*mazhab*) of thought are void.

Ibn Taimiyah's view, as a representative of the Hanbali school, brought significant developments in the understanding of the *mabda' huriyyah at-ta'aqud* and is in line, even almost parallel, with Western law. Ibn Taimiyah's perspective states that the validity of conditions in an agreement is not only limited to material agreements, but also includes marriage agreements. Ibn Taimiyah views that not only are the conditions in material agreements valid, but also the conditions in marriage agreements valid. For example, prospective husbands and wives can determine conditions related to property in marriage. According to Ibn Taimiyah, the conditions recognized in the book of Allah are not only conditions that are explicitly stated, but also involve conditions that do not contradict the book of Allah, even if not mentioned in the holy texts.

Ibn Taymiyyah's approach reflects a more progressive view on freedom of contract in Islam, by allowing for the determination of conditions in accordance with religious principles, even if such conditions are not specifically mentioned in the text. This view reflects the Hanbali school's adaptation to contractual issues and provides further elasticity in the formation of agreements, especially in the context of marriage.<sup>28</sup>

The *mabda' huriyyah at-ta'aqud* becomes clear when observed through the teachings of the *Qur'an*, the *Hadith*, and the rules of *fiqhiyah*. This teaching appears explicitly in the texts of the *Qur'an* and the *Hadith*, and is reflected in the principles of Islamic Law (*fiqhiyah*). For example, the hadith of 'Amr Bin Auf, although it has weaknesses in terms of sanad, its meaning is in harmony and supported by the teachings of the *Qur'an* and the *Hadith*.

Allah conveys deeper teachings about the *mabda' huriyyah at-ta'aqud* in the letter *Al-Maidah* Verse (1) which reflects that the values of the *mabda' huriyyah at-ta'aqud* are not only found in one source, but are strengthened by their connection with various Islamic holy texts. The understanding and implementation of freedom of contract in Islamic teachings can be explained through the parallels between the teachings of the *Qur'an*, *Hadith*, and the rules of *fiqhiyah*:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ أُحِلَّتْ لَكُمْ بَهِيمَةُ الْأَنْعَامِ إِلَّا مَا يُتْلَى عَلَيْكُمْ غَيْرَ مُحِلِّي الصَّيْدِ وَأَنْتُمْ حُرْمٌ  
إِنَّ اللَّهَ يُحْكُمُ مَا يُرِيدُ

“O you who believe, fulfill those vows. Permissible for you are livestock, except those that will be recited to you. (That is) by not allowing hunting while you are performing Hajj. Indeed, Allah establishes laws according to what He wants” (Q.S. Al-Maidah:1).

The word *aqad*<sup>29</sup> in the verse is in the plural form which is given alif-lam so that it becomes a general pronunciation. So this verse includes all kinds of covenants, both reciprocal and unilateral and all the conditions that a person binds himself to carry out in the future.<sup>30</sup>

Surat al-Nisa' Verse (29) limits that freedom within the limits of not consuming other people's property by false means and this is the general order of *Sharia'*. More complete as follows:

<sup>27</sup> Ibn Hazm, *al-Muhalla* (Beirut: al-Maktab al-Tijari, t.t.), h. 412.

<sup>28</sup> Ibnu Taimiyyah, *Majmu' al Fatawa* (Beirut: Dar Al-Fikr, 1980), h. 347.

<sup>29</sup> *Aqad* (agreement) includes: a servant's promise of loyalty to Allah and agreements made by humans in their interactions with each other. Imam Jalaluddin al-Mahalli dan Imam Jalaluddin as-Suyuti, *Tafsir Jalalain*, Translated. Bahrun Abu Bakar, Cet. 10 (Bandung: Sinar Baru Algensindo, 2004), I. 445.

<sup>30</sup> Abi Bakar Ahmad ar-Razi al-Jassas, *Ahkam al-Qur'an* (Beirut, 1993), h. 172.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا  
أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

O you who believe, do not devour each other's wealth in a false way, except by means of business which is carried out mutually between you. And do not kill yourselves; Verily Allah is Most Merciful towards you. (Q.S. Al-Nisa:29)

*Mabda' ar-radhaiyyah* states that to create an agreement it is sufficient to reach an agreement between the parties without the need to fulfill certain formalities. Hadith of the Prophet Muhammad saw:

أخبرنا الحسن بن سفيان أخبرنا سعيد بن عبد الجبار أخبرنا الدراوردي عن داود بن صالح بن دينار التمار عن أبيه عن أبي سعيد الخدري : أن يهوديا قدم زمن النبي صلى الله عليه و سلم بثلاثين حمل شعير وتمر فسعر مدا بمد النبي صلى الله عليه و سلم وليس في الناس يومئذ طعام غيره وكان قد أصاب الناس قبل ذلك جوع لا يجدون فيه طعاما فأتى النبي صلى الله عليه و سلم الناس يشكون إليه غلاء السعر فصعد المنبر فحمد الله وأثنى عليه ثم قال : ( لا ألقين الله من قبل أن أعطي أحدا من مال أحد من غير طيب نفس إنما البيع عن تراض ولكن في بيوعكم خصالا أذكرها لكم : لا تضاعفوا ولا تتناجشوا ولا تحاسدوا ولا يسوم الرجل على سوم أخيه ولا يبييع حاضر لباد والبيع عن تراض وكونوا عباد الله إخوانا )

Based on *QS. An-Nisa (4): 29* it can be understood that all transactions carried out must be based on mutual consent or willingness between each party, no pressure, coercion, fraud, and mis-statement are allowed. If this is not fulfilled, then the transaction is carried out in a void manner.<sup>31</sup> *Mabda' ar-radhaiyyah* is also found in the *hadith* narrated by Ibn Hibban and al-Baihaqi which means: "Indeed, buying and selling is based on permission (*rida*)."

*Mabda' ar-radhaiyyah* can also be seen in the Civil Code Article 1320 Paragraph (1) which determines that one of the requirements for a valid agreement is the existence of an agreement between both parties. *Mabda' ar-radhaiyyah* is a principle that states that agreements are generally not made formally, but are sufficient with the existence of an agreement between both parties which is a match between the will and statements made by both parties.<sup>32</sup>

Balance between the parties in a transaction, in fact, rarely occurs, but Islamic contract law still emphasizes the need for balance, both balance between what is given and what is received and balance in bearing risk. *Mabda' at-tawazun fi al-mu'awadhah* in transactions (between what is given and what is received) is reflected in the cancellation of an agreement that experiences a striking imbalance in performance. *Mabda' at-tawazun fi al-mu'awadhah* in bearing risk is reflected in the prohibition of usury transactions, in the concept of usury only the debtor bears all risks for business losses, while the creditor is completely free and must receive a certain percentage even when his funds experience negative returns. *Mabda' at-tawazun fi al-mu'awadhah* requires both parties to fulfill and implement the agreement.<sup>33</sup>

The principle of benefit means that the *aqad* that will be made by the parties is aimed at creating benefits for the parties and must not cause losses or burdensome circumstances. If during the implementation of the *aqad* there is a change in circumstances which cannot be known in advance, and which brings fatal losses to the party concerned so that it becomes burdensome for him, then his obligations can be changed and adjusted to a reasonable limit. The principle of benefit implies that all

<sup>31</sup> Fathrrahman Jamil, *Hukum Perjanjian Syariah dalam Kompilasi Hukum Perikatan* (Bandung: Citra Aditya Bakti, t.t.), h. 70.

<sup>32</sup> The principle of consensualism emerged inspired by Roman law and German law. In German law, the principle of consensualism is not known, but what is known is a real agreement and a formal agreement. A real agreement is an agreement that is made and implemented in real terms. While a formal agreement is an agreement that has been determined in a written form (either in the form of an authentic deed or a private deed). In Roman law, the terms *contractus verbis literis* and *contractus innominat* are known. Which means that an agreement occurs if it meets the form that has been determined. Salim HS dan Muhaimin, *Tehnik Pembuatan Akta Akad Pembiayaan Syari'ah* (Depok: Raja Grafindo Persada, 2018), h. 55.

<sup>33</sup> Muhammad, *Hukum Perikatan*.

forms of agreements entered into must bring benefit and benefit, both to the parties entering into the agreement and to the surrounding community, even though there is no provision for this in the *Qur'an* and al-Hadith. The principles of benefit and benefit are very relevant to the universal aims of Islamic Law. Islamic philosophers in the past such as al-Ghazali (w.505/1111) and ash-Syatibi (d. 790/1388) formulated the aim of Islamic Law based on the verses of the *Qur'an* and *al-Hadith* as realizing benefit. The purpose of welfare is to fulfill and protect five basic human interests, namely protecting religiosity, body and soul, mind and soul, dignity, self and family, and wealth.<sup>34</sup>

The principle of trust (*Amanah*) means that each party must have good intentions in transacting with other parties and it is not permissible for one party to exploit the ignorance of its partner. There are many transaction objects produced by one party through a very specialized expertise and high professionalism in today's life, so that when transacted, the other party becomes a transaction partner who does not know much about the ins and outs.<sup>35</sup> Transactions therefore depend greatly on the party who controls them. The principle of trust can be concluded from Article 1338 Paragraph (3) of the Civil Code which reads, "Agreements must be carried out in good intentions."

Justice is the goal that all laws seek to achieve. Justice in Islamic Law is a direct command of the *Qur'an* (QS. 5:8). Justice is the foundation of every agreement made by the parties. Often in modern times, contracts are concluded by one party to another without the opportunity for the other party to negotiate the contract clauses, because the contract clauses have been standardized by the other party. It is not impossible that in its implementation there will be losses for the party who accepts the standard conditions because they are driven by need. Contemporary Islamic Law has accepted a principle that for the sake of justice, standard conditions can be changed by the court if there is a reason for it.<sup>36</sup>

The franchise agreement is actually a development of the form of cooperation (*syirkah*). The franchise agreement automatically forms a working relationship for a certain period of time (according to the agreement) between the franchisor and the franchisee. The cooperation is intended to gain benefits for both parties. Franchises apply the principles of openness and caution; this is in accordance with the principles of transactions in Islam, namely *gharar* (uncertainty).

An Islamic franchise business system requires a *sharia* value system as a business moral filter that aims to avoid various business deviations (moral hazard), namely *maysir* (speculation), immorality, *gharar* (fraud), haram, *usury*, *ikhthikar* (hoarding/monopoly), and *dharar* (dangerous).

Cooperation in terms of buying and selling in Islamic Law is called *syirkah*.<sup>37</sup> *Syirkah* is divided into three forms: *Syirkah ibahah*, which is a partnership of all people's rights to be allowed to enjoy the benefits of something that is not yet under someone's control; *Syirkah amlak* (ownership), which is a partnership between two or more people to own an object, and; *Syirkah aqad*, which is a partnership between two or more people that arises with an agreement. *Syirkah aqad* is divided into four: *Syirkah amwal*, which is a partnership between two or more people in capital/property; *Syirkah a'mal*, which is a partnership agreement between two or more people to accept work from a third party that will be done together with the provision that the wages are divided into two; *Syirkah wujuh*, which is a partnership between two or more people with capital assets from outside parties, and; *Syirkah Mudharabah*, which is a partnership (association) between labor and assets, one (supplier) gives his assets to another party (manager) which is used for business, with the provision that the profits obtained will be divided according to the agreement of both parties. The basic form of *Mudharabah* is borrowing money for business purposes.<sup>38</sup>

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<sup>34</sup> Abu Hâmid Muhammad al-Ghazali, *al-Mustasfa min 'Ilm al-Ushul* (Beirut: Mu'assasat al-Risâlah, 1417), h. 96.

<sup>35</sup> Mohammad Daud Ali, *Asas-asas hukum Islam: Hukum Islam I: Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia* (Jakarta: Rajawali Pers, 1991), h. 93.

<sup>36</sup> Syamsul Anwar, *Hukum Perjanjian Syariah: Studi Tentang Teori Akad dalam Fikih Muamalat* (Jakarta: Raja Grafindo Persada, t.t.), h. 92.

<sup>37</sup> Ka'bah, *Hukum Islam di Indonesia*, h. 116.

<sup>38</sup> Mardani, *Fiqh ekonomi syariah*, h. 218.

*Syirkah Mudharabah* is divided into two forms: *Mudharabah mutlaqah*, the investor gives his assets to the executor to be *Mudharabahed* without specifying the type of work, place and time and person, and; *Mudharabah muqayyadah* (bound by a condition), namely the capital owner determines one of these types.<sup>39</sup>

*Gharar* means doubt, deception or an act that aims to harm another party. A contract contains an element of deception because there is no certainty, either regarding the existence or non-existence of the object of the contract, the amount or handing over of the object of the contract. According to the *Shafi'i* scholars, the forms of *gharar* that are prohibited are: (1) The seller is unable to hand over the object of the contract at the time the contract is made, whether the object of the contract already exists or not. For example, selling a fetus that is still in the stomach of a livestock without selling its mother; (2) Selling something that is not yet under the control of the seller. If goods that have been purchased from another person have not been handed over to the buyer, then the buyer is not allowed to sell the goods to another buyer. This type of contract contains *gharar*, because there is a possibility of damage or loss of the object of the contract, so that the first and second sale and purchase contracts are void; (3) There is no certainty about the type of payment or type of item sold; (4) There is no certainty about the specific nature of the goods sold; (5) There is no certainty about the amount of price that must be paid; (6) There is no certainty about the time of delivery of the object of the contract; (7) There is no certainty about the form of the transaction, namely there are two or more different types in one object of the contract without confirming the form of transaction chosen at the time the contract occurs, and; (7) There is no certainty about the object of the contract, because there are two different objects of the contract in one transaction. The condition of the object of the contract cannot be guaranteed to be in accordance with that determined in the transaction.

### **Franchise in the perspective of Islamic Law**

A franchise can be understood as a form of cooperation agreement (*syirkah*) that grants special rights and authorities to the recipient. Franchise brings the dynamics of a reciprocal agreement, franchisor and franchisee; both have obligations to fulfill certain achievements.<sup>40</sup> First, there are similarities and differences between franchises according to Islamic Law and according to positive law. The similarities lie in the characteristics of the franchise as a form of mutually beneficial cooperation, so that it can be categorized as *syirkah* in Islamic Law. Second, there are achievements expected for the franchise recipient, in line with the principle of *syirkah Mudharabah muqayyadah*. Third, the existence of goods, services, and labor that meet the requirements of *syirkah* is also another similarity. Fourth, the transaction involves two or more people who agree, with a specific purpose that is recorded in writing and in accordance with the terms of the contract, especially *syirkah Mudharabah*. The differences between Islamic Law and positive law in the context of a franchise may include certain aspects that need to be explained in more depth. The comparison provides an overview of how the concept of a franchise can be analyzed and assessed from the perspective of Islamic Law and positive law.<sup>41</sup>

Franchise is significantly similar to *Mudharabah*, but there are several different aspects. First, *Mudharabah* requires capital in the form of money without involving goods, while franchise allows franchisor to provide capital assistance in the form of money, goods, or professional labor to franchisee. Second, in franchise there is cooperation in Intellectual Property Rights (IPR), especially trademarks, which in the context of Islamic Law is translated as *syirkah amlak* or property rights. Third, there are limitations in *Mudharabah* related to the prohibition of selling illicit goods, while in positive law there are no restrictions on transactions such as buying and selling pigs or dogs.

Franchising can be categorized as a development of the *muqayadah* type of *Mudharabah* partnership. Franchisees are bound by the rules set by the franchisor, which are similar to the role of the capital provider in a *Mudharabah* partnership. This development also includes the inclusion of IPR in the transaction, which in general can be considered a form of *ikhtiyariyah* partnership. It should be noted that although franchising is permitted with consideration of the development of partnership, the basic

<sup>39</sup> Anshori, *Hukum Perjanjian Islam di Indonesia*, h. 115.

<sup>40</sup> Mustofa, "Franchise in Islamic Law Perspectives," *Al-Mizan* 13, 2, 121–39. 2017. <https://doi.org/10.30603/am.v13i2.738>.

<sup>41</sup> Harun, "Bisnis Waralaba di Indonesia Perspektif Hukum Islam (Tinjauan Hukum Muamalat)."

principles of transactions in Islamic Law must still be followed, and the goods used in the transaction must not be contrary to the *Shari'ah* or fall into the category of goods that are forbidden in Islam.

Franchise business plays a significant role in supporting the development of small businesses and providing positive benefits in terms of welfare in accordance with the principles of Islamic Law. There are positive indications in the franchise transaction system which is generally permitted by Islamic Law. The question is whether this has been explained in detail in Islamic Law or specifically in the concept of *syirkah*. Franchise as a form of agreement, provides special rights and authorities to the franchisee. The reciprocal nature of the franchise agreement involves obligations for the franchisor and franchisee to fulfill certain achievements. The principle of openness and caution is upheld in the franchise, in accordance with the pillars and conditions of the agreement according to Islamic Law, and to avoid transactions involving “*gharar*” or ambiguity. The franchise agreement is formally made in written form in accordance with the demands of society to provide protection to both parties involved. The principle of openness reflects caution and transparency, in accordance with the values of Islamic Law in carrying out business agreements.<sup>42</sup>

Further study of the aspects of Islamic Law related to franchises needs to be conducted. Further research into the pillars and conditions of the contract, the prohibition of “*gharar*,” and other principles underlying Islamic Law, needs to be conducted to ensure full harmony and conformity with religious values. This is in accordance with the written principles in the *Qur'an* contained in *QS. Al-Baqarah: 282*.

Franchising as a form of business agreement, involves the principle of granting the right to utilize or use intellectual property, inventions, or business characteristics in return for the terms of the sale of goods or services.<sup>43</sup> This principle is in line with the principle of appreciation for work in Islamic Civil Law. Franchise agreements can thus be considered in accordance with Islamic *sharia* values.

The conformity of a franchise agreement with Islamic *sharia* depends on the object of the agreement. If the object of the agreement, such as food and drinks sold, is something that is prohibited in Islamic *sharia*, then the agreement automatically becomes contrary to *sharia*. The conformity of a franchise agreement with the principles of Islamic *sharia* depends on the validity of the object being traded.

The franchise system is basically not contrary to Islamic Law, with the note that, to ensure overall compliance, it is necessary to ensure that the object of the franchise agreement does not involve things that are prohibited by Islamic Law, such as the sale of food and beverages that are considered haram. The franchise business plays a role in increasing the development of small and medium enterprises in Indonesia, if the franchise activities to a certain extent can use domestically produced goods or to carry out activities that will not harm the interests of small and medium entrepreneurs. The franchise business in terms of welfare also has a positive value and can be justified according to Islamic Law. The franchise system is basically a good system for franchisees to learn, if one day they succeed they can free themselves from the franchisor because the costs paid are quite expensive and can then establish their own business or even build a new Islamic franchise.

The creation of an Islamic franchise business system requires a *sharia* value system as a business moral filter that aims to avoid various deviations in business morals. The filter is a commitment to avoid seven prohibitions: *Maisir*, all forms of gambling speculation that kill the real sector and are unproductive; *Asusila*, business practices that violate morality and social norms; *Gharar*, all transactions that are not transparent and unclear, so that they have the potential to harm one of the parties; *Haram*, objects of transactions and business projects that are prohibited by *sharia*; *Usury*, all forms of currency distortion into commodities by imposing additional (interest) on credit or loan transactions and exchanges, or bartering more between similar usurious goods; *Ikhtikar*, hoarding and monopolizing goods and services for the purpose of price games, and; All forms of transactions and businesses that endanger individuals or society and are contrary to the public interest.

<sup>42</sup> Ghufron dan Fahmiah, “*Konsep Waralaba Perspektif Ekonomi Islam*.”

<sup>43</sup> Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak Komersial*, Edisi Pertama (Jakarta: Kencana, 2010), h. 35.

There are two things that are assessed in the franchise concept in *Islamic Fiqh*. First, the purchase of Intellectual Property Rights (IPR) in the form of trademarks, inventions and product characteristics or business management as patent rights owned by the franchisor, while IPR is a meaningful object that has a selling value. *'Ulama* explain several things related to meaningful rights, such as in scientific works and research findings, are things that can be sold with the note that the franchisee who has received the license must receive guidance on product quality standardization, so that consumers are not harmed because of different product quality.

Second, the concept of cooperation in a franchise is related to *Syirkatu uquud*, which is cooperation between two or more people in an effort to obtain results that can be enjoyed together. *Syirkatul uqud* (cooperation in a trade contract) has five types: *Syirkatul 'inan*, two or more parties are united in capital and labor; *Mudharabah*, the parties are united in a transaction, one party with assets/capital and the other party with labor; *Syirkatul wujuh*, the parties are associated in a transaction without capital, but the parties can procure goods with capital of trust, position and the like; *Syirkatul abdan*, the parties are associated in a business with a body/force in a business and share the profits obtained, and; *Syirkatul mufawadhah*, a company which includes *syirkatul 'inan*, *Mudharabah*, *syirkatul wujuh*, and *syirkatul abdan*.

There are aspects that reflect *syirkatul 'inan* in the franchise concept. The franchisee provides capital for the operation of his business, while the franchisor provides his patent rights, including research results and supply of goods or products that are franchised. The franchisee and franchisor both contribute with capital and manpower. If the type of franchise only involves the provision of a trademark/license, product quality standard training, and operational management, with costs fully borne by the franchisee, then it is called *Mudharabah*. The franchisor will receive royalties from the business, also known as Intellectual Property Rights (IPR).<sup>44</sup>

The legal basis of *muamalat* is *mubah* (permissible) except for those that are prohibited. Any trade that is free from elements of usury, gambling, *gharar* (fraud), or *haram* goods is considered *mubah*. There are several factors in the franchise business that need to be reviewed in order to be clearer in determining its law according to *sharia* principles. The application of *sharia* principles can find a deeper understanding of *muamalat* law in the context of a franchise. This arrangement can be concluded in four things.

First, the type of product or service in the franchise must be *halal*, not containing things that are forbidden by *sharia*, for example, food products from processed pork, blood, carcasses, *khomr*, fanged animals, and unclean goods and so on, or goods that are dangerous to use. Likewise in the provision of *haram* services, for example, massage parlors or swimming pools that are mixed with men and women, rental of places and tools for sin, and others that are similar, and contrary to the word of Allah Ta'ala:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

“And help one another in (doing) good deeds and piety, and do not help one another in committing sins and transgressions. And fear Allah, for Allah is severe in punishment.”<sup>45</sup>

Second, the franchise to be purchased is a business that has proven its success, so that the franchisee after purchasing the franchise can take advantage of it for his business, because he already has a well-known brand. The money paid by the franchisee to the franchisor is the purchase of benefits or intellectual rights. Islam forbids selling something that has no benefits or *majhulul hal* (its condition is unclear). A product that has not been successful is certainly not useful for prospective franchisees, so that franchisees do not need to start their business from scratch again. If the franchisor sells a franchise in the form of a product that has not been successful, then it is the same as consuming wealth in a false way. Allah Swt forbids this act in His Word:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْخِلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

“And let not one of you consume the wealth of another among you in a vain way”<sup>46</sup>

<sup>44</sup> Tutik, *Hukum Perdata dalam Sistem Hukum Nasional*, h. 66.

<sup>45</sup> Kementerian Agama, *Al-Qur'an dan Tafsirnya* (Bandung: Sinergi Pustaka Indonesia, 2012), h. 34.

Third, the cooperation agreement must be clear and transparent so that there will be no disputes in the future, this is in accordance with the words of the Prophet Muhammad Saw: “Muslims should comply with their conditions (agreement).”<sup>47</sup> *Aqad* that is clear, transparent, and full of openness will eliminate elements fraud and running away from their respective obligations. Prophet Muhammad Saw forbade the sale and purchase of *gharar*, narrated by Abu Hurairah Ra: “The Messenger of God Saw prohibited the sale and purchase of the *Hashoot* system (a type of lottery) and also prohibited the sale and purchase of *Gharar* (not clear/there is an element of fraud).<sup>48</sup>

Fourth, the *aqad* that is reached cannot violate the *shari'a* because all agreements that are against Islam are invalid, from Aishah Ra, the Prophet Saw said: “Every condition that is not in the book of God is invalid even if it is a hundred conditions.”<sup>49</sup>

Islam respects and protects property very much, because property is a basic necessity for life. Islam commands that in acquiring wealth, it should be done in a good and lawful way according to the *Sharia'* in which there is no element of fraud, theft and so on. Allah Swt commands food and sustenance and commands to do good. Good sustenance cannot be separated from good efforts. The object of the franchise business is very dependent on the suitability of the franchise business field chosen. If the object of the transaction is something that is prohibited in Islamic *Shari'a* (for example, illegal food and drink), then the business is automatically against *Islamic Shari'a*.

## CONCLUSION

A franchise is a form of cooperation agreement (*syirkah*) which provides special rights and authority to the franchisee as the recipient. A franchise is a reciprocal agreement, because the franchisor as the franchiser and the franchisee are both obliged to fulfill certain achievements. A franchise agreement is permitted according to Islamic Law because it is beneficial and does not contain elements that conflict with the concept and process of *syirkah* and has fulfilled the pillars of *ijarah*: ‘*uqud* (people who have an agreement, namely the franchisor and franchisee), *sighat 'uqud* (present at the time of negotiation), *ujrah* (wages), and benefits (business).

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<sup>46</sup> Kementerian Agama, h. 6.

<sup>47</sup> HR. Abu Dawud, No.3120 At Tirmidzi, No. 1272

<sup>48</sup> HR. Muslim, No.1513 At Tirmidzi, No.1248

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