NIZAM: International Journal of Islamic Studies
***e*-ISSN: 3026-0671**
Volume 2 Number 1 (2024)
https://journal.csspublishing.com/index.php/nizam

The Profit-Sharing Method in Franchise Business from the Perspective of Islamic Economic Law

Saharudin[1], Masrofi Bahrul Ulum[2*], Muhamad Shodaqta Ian Syahputra[3]
UIN Raden Mas Said Surakarta, Indonesia [1,2,3]
e-mail: ulumulum07@gmail.com

Abstract
Franchise business is one of the rapidly growing business models in Indonesia, in line with the increasing competition in global trade. This study aims to analyze the profit-sharing method in franchise businesses from the perspective of Islamic economic law. The research method used is normative juridical, which focuses on the study of literature or secondary data related to regulations and legal provisions governing franchising, as well as relevant sharia principles in the implementation of franchise agreements. The research findings show that a franchise agreement is essentially a form of cooperation (syirkah) that is legally valid according to Islamic law, as long as the goods being traded do not contradict sharia principles. Profit sharing in franchise businesses can be implemented through a fair profit-sharing system, in line with the principles of justice, transparency, and prudence in Islamic law. This profit-sharing arrangement should be clearly defined in the agreement between the franchisor and franchisee, taking into account sharia principles to avoid uncertainty or losses for either party. This study is expected to provide a deeper understanding of the implementation of Islamic economic principles in franchise businesses and their contribution to the development of a more just and sustainable business model.
Keywords: Franchise, Profit-Sharing Method, Islamic Economic Law, Royalty, Sharia.

INTRODUCTION

Doing business is one of the efforts made by society to improve the quality of life and well-being. Trade businesses are one of the methods used by people to earn profits by buying goods at a certain price and then selling them at a higher price to generate a profit. In today's era, global trade competition is becoming increasingly intense, which necessitates supportive marketing methods. Developing countries like Indonesia continue to make innovations in economic aspects. The rapid economic growth of a country is marked by the development of marketing systems in various business sectors, such as Franchising, Credit Cards, Electronic Fund Transfer (EFT), Electronic Commerce, and so on.

One marketing technique that is currently growing and increasingly popular among local entrepreneurs to compete with foreign businesses is the franchise marketing system. The franchise system serves as an attractive option for new entrepreneurs who wish to own a business, but not necessarily have full ownership. This system is considered effective and efficient because it does not require a large initial investment to own a business and can help save costs in starting a venture. Franchise business is a business model where the business owner (Franchisor) grants the right to another party (Franchisee) to use the trademark, operational system, and proven business support. This business model has proven to be a popular choice for many individuals who want to own their own business without having to start from scratch (Yusuf, 2009).

In franchise businesses a contractual agreement is formed between the franchisor and franchisee, which results in legal actions that fulfill the respective rights and obligations of each party. A franchisor grants the franchisee the right to operate in the same field using their trademark or trade name and other intellectual property rights, while maintaining the franchisor's quality standards and reputation in relation to the use of the trademark for the agreed-upon goods and/or services (Salim HS, 2003).

The regulation of the rights and obligations of the franchisor and franchisee must be transparent, fair, and have clear boundaries, so that its implementation does not lead to any abuse of power by either party. Both the franchisor and franchisee must comply with the franchise regulations as set out in Government Regulation No. 42 of 2007 on Franchising, to ensure that both parties adhere to the prevailing rules. One of the provisions in the agreement relates to the royalty sharing between the franchisor and franchisee. Payment of royalties is one of the key features of franchising. Referring to the Minister of Trade Regulation No. 12 of 2006, a franchise is a binding agreement between the franchisor and franchisee, where the franchisee is granted the right to operate a business by utilizing and/or using the intellectual property rights or distinctive business features of the franchisor, along with the obligation to provide continuous operational consulting support from the franchisor to the franchisee.

According to Islamic law, a franchise agreement is a form of cooperation (syarikah) that is permissible, as long as the subject matter of the franchise agreement does not involve anything prohibited by Islamic law. If the object of the franchise involves something forbidden in Sharia, then the agreement is automatically contrary to Islamic law and is not allowed (Suhrawardi, 2004). In the implementation of a franchise agreement, each party has its own method for profit-sharing or royalty arrangements, whether under civil law or Islamic law. In Islamic law, the profit-sharing or royalty method is known as the *bagi hasil* (profit-sharing) system. For example, in the case of Kebab Turki Babarafi, the profit-sharing system is 50:50, which has been mutually agreed upon by the parties involved. This differs from civil law, where profit-sharing is done using a percentage system, with the amount already set by the franchise parties and outlined in the agreement, so the profit distribution is based on mutual agreement. Therefore, in a profit-sharing system, the profit division should be mutually determined before the parties enter into the agreement, prior to discussing the percentage of profit that each party will receive until a consensus is reached. Based on the explanation above, the author is interested in examining the profit-sharing method in franchise businesses (Franchise Agreements) from the perspective of Islamic Economic Law.

RESEARCH METHODS

The research method used in this study is a normative juridical approach. This approach involves studying legal materials or secondary data, including laws and regulations, legal literature, and relevant previous studies related to the topic being researched. This study aims to analyze the concept and implementation of the profit-sharing method in franchise businesses from the perspective of Islamic economic law. In this approach, the author will explore the legal provisions governing franchise agreements, both at the national level (such as government regulations and ministerial trade regulations) and from the perspective of Islamic economic law, particularly in relation to sharia principles in profit sharing (royalties) between franchisors and franchisees. Through this literature review, the research is expected to provide a deeper understanding of the alignment between franchise agreements and Islamic economic principles, as well as examine to what extent the implementation of such agreements complies with the applicable legal regulations.

RESULT AND DISCUSSION

Franchise Business Concept

Franchise is a term derived from the words "wara," meaning more or special, and "laba," meaning profit, thus franchise can be understood as a business that provides extra or special profit. According to the Indonesian Minister of Trade Regulation No. 12 of 2006, a franchise is an agreement between the franchisor and the franchisee, where the franchisee is granted the right to operate a business by utilizing the intellectual property rights or distinctive features of the franchisor's business, with the obligation to provide continuous operational consulting support. The Indonesian Franchise Association (AFI) states that a franchise is a system for distributing goods or services where the brand owner grants the right to an individual or company to operate a business using the brand, name, system, procedures, and methods previously established for a certain period and within a specified area.

The terms franchise and franchising are not recognized in classical fiqh; however, in practice, the franchise model emphasizes two main issues: intellectual property rights and business partnerships. Scholars agree that intellectual property rights (IPR), including copyright, are considered property because they have value and benefits, as explained in the Fatwa of the Indonesian Ulema Council No. 1/Munas VII/MUI/15/2005 on the protection of Intellectual Property Rights. From the various definitions above, it can be concluded that franchising is a partnership business based on mutual trust and transparency.

The franchisor provides the entire business concept, including the brand and related attributes, as well as entrepreneurship training to the franchisee, with the expectation that the franchisee can manage their business well. Similarly, the franchisee believes that the business developed by the franchisor is a promising and profitable opportunity. In carrying out this business, both parties are motivated by good faith to cooperate under the terms of the agreement that has been mutually agreed upon. The franchise system involves three main components: 1) Franchisor, the party that owns the system or methods in running the business, 2) Franchisee, the party that purchases the franchise system from the franchisor and has the right to operate the business using the methods developed by the franchisor, 3) Franchise, the system or methods of business itself, which include the knowledge or specifications of the business sold by the franchisor to the franchisee.

A franchise agreement is a legal action that creates rights and obligations for both parties. In the franchise agreement, the franchisor grants the franchisee the right to operate a business in the same field using the trademark, trade name, and other intellectual property rights, while maintaining the franchisor's quality standards and reputation related to the use of the trademark on the agreed-upon goods or services (Sulityaningsih, 2017). The franchisee has the right to operate the business with the trademark name and all the technical management aspects they have received in the agreement, and to receive specific training in the field of business by paying the franchise fee to the franchisor (Dermawan, 2008).

Franchise agreement business reviewed from Islamic Economic Law

Franchise business in Islamic economics is known as syirkah or musyarakah, which means partnership between two or more individuals. Syirkah represents a form of cooperation in business or wealth management. Islam acknowledges and permits doing business through partnership or cooperation (Chundri, 2012). In the context of sharia franchise, this business is a form of mutually beneficial cooperation between the franchisor and the franchisee. This concept aligns with the principles of ta'awun and syirkah, which form the basis of franchise business, as mentioned in Allah Ta'ala's words in Q.S Al-Maidah: 2.

وَتَعَاوَنُوا۟ عَلَى ٱلْبِرِّ وَٱلتَّقْوَىٰ ۖ وَلَا تَعَاوَنُوا۟ عَلَى ٱلْإِثْمِ وَٱلْعُدْوَٰنِ ۚ وَٱتَّقُوا۟ ٱللَّهَ ۖ إِنَّ ٱللَّهَ شَدِيدُ ٱلْعِقَابِ

The translation of the verse is:

And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in punishment." (Q.S. Al-Maidah: 2)

The positive value of partnership is also explained by Prophet Muhammad SAW in a Qudsi hadith. The hadith, narrated by Abu Dawood from Abu Hurairah, states that the Prophet SAW said:

إِنَّ اللهَ تَعَالَى يَقُوْلُ: أَنَا ثَالِثُ الشَّرِيْكَيْنِ مَا لَمْ يَخُنْ أَحَدُهُمَا صَاحِبَهُ، فَإِذَا خَانَ أَحَدُهُمَا صَاحِبَهُ خَرَجْتُ مِنْ بَيْنِهِمَا.

The translation of the verse is:
"Allah SWT says: 'I am the third party in a partnership between two individuals as long as neither of them betrays the other. But if one of them betrays the other, I distance Myself from them.'" (HR. Abu Dawood, authenticated by al-Hakim, from Abu Hurairah)

In Islamic jurisprudence, there are two important aspects regarding the concept of franchising. First, the purchase of Intellectual Property Rights (IPR), which includes trademarks, inventions, and distinctive features of products or business management as patents owned by the franchisor. In Islamic law, creations or inventions (ibtikar) are considered property that becomes the exclusive right of the inventor or creator, and they have the right to the material value if it is utilized by others with their permission. Second, the concept of cooperation in franchising can be categorized as Syirkah Uqud, which refers to an agreement between two or more parties to combine their assets for running a business, with the results, both profit and loss, being shared.

In Islamic jurisprudence, Syirkah uqud or transactional partnership is classified into five types. First, Syirkah ʻinan, which is a partnership between two or more people where each party invests and jointly manages the accumulated capital, with the agreement that both profits and losses will be shared. Second, Syirkah ʻabdan, where each party contributes only labor or expertise without any capital investment. Third, Syirkah Mudarabah (qiradh), a partnership between two parties where the first party provides the entire capital (shahib al-mal), and the second party is responsible for managing the capital (mudharib). The profits are shared according to the agreement, while losses are borne by the investor, unless caused by the negligence of the manager. Fourth, Syirkah wujuh, which is divided into two forms: first, a partnership between two managers (mudharib), which is still a form of mudharabah but with more than one manager, and second, a partnership between two or more people who have good reputations and trust. Fifth, Syirkah mufawadhah, which is a combination of several types of partnerships, such as when an investor provides capital to two engineers to build a building to be sold, where both engineers work and share the profit as agreed. This type of partnership combines elements of Syirkah ʻinan, ʻabdan, mudarabah, and wujuh.

Several elements are involved in a franchise partnership, including the following: First, agreement or franchise contract, referred to as ijab qabul.

Second, participants, which consist of the franchisor and the franchisee, where the franchisor acts as the party with capital, labor, and intellectual property rights to be incorporated into the partnership, while the franchisee contributes capital and labor to collaborate and participate in managing the franchise business. Third, equipment, which refers to the tools or resources used in the operation of the franchise business, and can be considered as capital. Fourth, profits, which are earned based on a profit-sharing arrangement, calculated according to a mutual agreement on the percentage of obligations assigned to each party.

The alignment of the elements in franchise businesses with real-world facts shows that the franchise model involves a partnership between the franchisor and franchisee to trade specific products under the brand and name established by the franchisor. The profits from this business are shared according to an agreed-upon ratio. In this context, Islamic law provides guidelines to maintain the halal and blessed values when conducting franchise business. Some key principles that guide franchise business in Islamic economic law include the importance of fairness in transactions, emphasizing equal rights and obligations between the franchisor and franchisee, and avoiding oppression or fraud. Additionally, maintaining quality and transparency is crucial, where the franchisor must provide clear and complete information to the franchisee about trademarks, procedures, and operational systems, ensuring that the products or services meet the established standards.

Business stability and continuity must also be preserved, with attention to environmental, social, and employee aspects. Ethics, morals, and responsibility in Islamic economic law also emphasize that the franchise business must reflect honesty, integrity, and contribute positively to society. The distribution of profits should be fair and proportional according to the agreement, ensuring the enforcement of justice in Islam. In franchise business, it is necessary to apply a filter based on Islamic Sharia values to avoid moral hazards. Several aspects must be avoided in the franchise agreement, such as maysir (gambling speculation), asusila (business practices that violate social norms), gahrar (non-transparent transactions), haram (objects of transactions prohibited by Sharia), riba (interest on credit transactions or loans), ikhtikar (hoarding and monopoly of goods), and danger (transactions that harm individuals or society). By adhering to the guidelines of Islamic economics, franchise agreements can operate in accordance with the principles of benefit and harm prevention, aiming to provide maslahat (benefit) to humanity and avoid the losses that may arise from such practices.

Franchise Business Profit Sharing Method in Islamic Economic Law

Profit sharing known as the system of distributing profits between capital owners and business managers, refers to the division of business profits between the capital owner (shohibul mal) and the manager (mudharib) in Islamic economics. Franchise businesses are a development of syirkah or musyarakah, which is a partnership agreement between two or more parties to run a legitimate and beneficial business, with each party contributing capital and sharing profits and risks according to the agreement. A franchise can be classified as syirkah al-inan if both parties contribute capital and effort, or syirkah mudarabah if the franchisor only provides intellectual property rights and operational standards, while the franchisee bears all operational costs. Intellectual Property Rights (IPR) in franchises are regulated by the fatwa of the Indonesian Ulema Council (MUI), which emphasizes that losses must be avoided, benefits should be prioritized over harms, anything derived from what is prohibited is also prohibited, and one should not use someone else's property without permission.

In the franchise business, there are two main financial aspects: franchise fee and royalty fee. The franchise fee is the amount paid by the franchisee to purchase the franchise rights after meeting the franchisor's requirements, usually paid once in exchange for initial training and support for opening the outlet. Meanwhile, the royalty fee is a continuous payment made to the franchisor, usually calculated as a percentage of the franchisee's gross revenue, and is used for management assistance, promotions, or technical support. In addition to these fees, the franchisor may also charge additional costs such as advertising fees, raw material purchases, training, and consulting. Although the franchisor has the authority to set the fee amounts, they should not be excessively high to avoid burdening the franchisee. Clarity regarding the terms of the agreement, such as profit-sharing percentages and the division of losses, is crucial to prevent misunderstandings between the franchisor and franchisee.

The profit-sharing (royalty) distribution determined by the franchisor is often done unilaterally or without clear agreement between the franchisor and franchisee, which can disadvantage the franchisee. In Islamic economics, the determination of fees must be fair, where profits are shared equally, and losses are also borne together. This is reflected in the Fatwa of the National Shariah Council - Indonesian Ulama Council No. 114/DSN-MUI/IX/2017 regarding the syirkah contract, which emphasizes that profits must be shared according to the agreed or proportional ratio, while losses are borne proportionally by the relevant parties.

A sharia-compliant franchise agreement aims to provide benefits, where the franchisee earns profits from the capital provided to the franchisor, while the franchisor can run the business using the provided capital. In running a franchise, the parties involved must implement transparency and good partnership, and the shared profits must align with the initial agreement. The method of profit-sharing in franchise businesses based on Islamic economics uses two approaches: gross profit, which is the total income before deducting costs, and net profit, which is the income after deducting operational expenses. Unlike conventional franchises, some franchisees are often calculated based on sales turnover, with unclear profits, but still have to pay royalty fees, which can potentially harm the franchisee.

The concept of royalty fee payments in franchise businesses based on Islamic economic law states that the franchisee should not make royalty fee payments if the profit is below the agreed-upon threshold, as this would mean there is no element of profit-sharing in the arrangement. This is in accordance with the command of Allah SWT in Q.S An-Nahl, verse 90, which states:

إِنَّ ٱللَّهَ يَأْمُرُ بِٱلْعَدْلِ وَٱلْإِحْسَٰنِ وَإِيتَآيِٕ ذِى ٱلْقُرْبَىٰ وَيَنْهَىٰ عَنِ ٱلْفَحْشَآءِ وَٱلْمُنكَرِ وَٱلْبَغْىِ ۚ يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ

The translation of the verse is:
Indeed, Allah commands you to act justly, to do good, and to give to relatives; and He forbids immorality, wrongdoing, and oppression. He instructs you so that you may take heed (Q.S. An-Nahl, 16:90)

Ijma' of Islamic scholars agrees that syirkah (profit-sharing) is permissible, although there are differences in opinions regarding its types. Therefore, the law of engaging in syirkah (profit-sharing) is considered mubah (permissible). Syirkah (profit-sharing) between a Muslim and a non-Muslim is also allowed. Profit-sharing is deemed invalid if it is conducted by someone who does not manage the assets or if there are elements of prohibition in the syirkah agreement. Islamic teachings encourage cooperation among individuals, especially in economic activities, with principles of mutual assistance (ta'awun) and ensuring benefits for all parties, without causing harm or deceit. Franchise businesses are essentially a form of cooperation that benefits all parties involved by developing potential, whether in the form of wealth or work. The wisdom that can be drawn from franchise businesses is the spirit of mutual help, cooperation in goodness, avoiding selfishness, refraining from betrayal, fostering mutual trust, and bringing blessings to the business.

CONCLUSION

Research findings indicate that franchise businesses, particularly in the context of shariah-compliant franchises, must operate under principles of mutually beneficial cooperation between the franchisor and franchisee. In this system, both parties are required to contribute to the business development while ensuring the halal, ethical, and moral aspects in line with Islamic values. The implementation of profit-sharing principles in Islamic economics, whether based on gross profit or net profit, serves as the foundation for fair profit distribution. In franchise practice, especially sharia-based ones, profit and loss distribution must be proportional according to the agreement between the parties to avoid practices that harm one party, such as unclear royalty fee calculations. The application of fair and transparent profit-sharing principles is crucial for fostering a harmonious and sustainable relationship in shariah-compliant franchise businesses.

BIBLIOGRAPHY

Abdul Rahman Ghazaly, et al., "Fiqh Muamalah", edisi pertama, Jakarta: Kencana Prenada Media Group, 2010.

Antonio, Syafi'I, "Bank Syariah Teori dan Praktek", Jakarta, Gema Insani., 2001

Antonio, Syafi'i. M. 1999. "Bank Syariah Wacana Ulama dan Cendikiawan". Bank Indonesia dan Tazkia Institute. Jakarta.

Darmawan, W. (2008). "Analisis Sistem Penetapan Franchise Fee Dan Royalty Fee Pada Franchise BRC".

Djuwaini, Dimyauddin. "Pengantar Fiqih Muamalah", Yogyakarta: Pustaka Pelajar.2008.

Dewi, Gemala. dkk. "Hukum Perikatan Islam di Indonesia". Cet. 2. Jakarta: Kencana Penada Media Group, 2006

Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia No. 114/DSNMUI/IX/20

Hasanudin, Maulana & Jaih Mubarok. "Perkembangan Akad Musyarakah", Jakarta: Sinar Grafika.

Kementerian Perdagangan RI, Himpunan Peraturan Waralaba (Jakarta: Direktorat Bina Usaha Perdagangan Direktorat Jenderal Peradagangan Dalam Negeri, 2015)

Lubis, Suhrawardi K. (2004). "Hukum Ekonomi Islam". Jakarta: Sinar Grafik Penerbit Kencana, 2011.

Puji Sulistyaningsih. (2017). "Sistem Bagi Hasil dalam Perjanjian Waralaba (Franchise) perspektif hukum Islam", 8(1), 139

Salim (2002). "Pengantar Hukum Perdata Tertulis (BW)". Jakarta: Sinar Graham.

Salim (2003)."Perkembangan Hukum Kontrak Innominaat di Indonesia". Jakarta: Sinar Graham

Sutedi, Adrian. 2008. "Hukum Waralaba". Jakarta: Ghalia Indonesia

Walid Darmawan, (2016). "Analisis Sistem Penetapan Franchise Fee Dan Royalty Fee Pada Franchise Brc" Al-Iqtishad Journal of Islamic Economics, Volume 2, Nomor 1, 2016.

Wibowo, Eko. "Analisis Faktor-Faktor Yang Mempengaruhi Pertumbuhan Jaringan Waralaba". Jurnal Sains Pemasaran Indonesia. Vol. VI No. 1.

Widiyastuti, Yuyun. 2020. "Analisis Fatwa Mui No.1/Munas Vii/Mui/5/2005 Tentang Perlindungan Hak Kekayaan Intelektual (Hak Cipta) Dalam Perspektif Maṣlaḥah Mursalah."Al-HAKIMVolume 2 N: 73–82.Yusuf, M. (2009). Tinjauan konsep bisnis waralaba (franchise) berdasarkan ketentuan hukum islam.https://digilib.uns.ac.id/dokumen/10204/Tinjauan-konsep-bisnis-waralabafranchise-