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LEGAL CHALLENGES FACED BY LOCAL MUSLIM ENTREPRENEURS IN FRANCHISE INDUSTRY

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Abstract:

The Malaysian franchise industry continues to achieve healthy growth by contributing RM27 billion to the country's gross domestic product ('GDP') in 2017 while the annual growth rate for 2018 is 9 percent. As of February 2019, 877 current domestic and international franchise brands are registered with the Malaysian authority. Before the enactment of the Franchise Act in 1998, franchising in Malaysia was generally governed by contractual principles. Since the enforcement of the Franchise Act 1998, Malaysia has been promoting the franchise industry extensively via government bodies, especially the Ministry of Domestic Trade and Consumer Affairs. Malaysia does not have a specific framework for Syariah compliant business which is suitable to the local Muslim entrepreneurs, especially in the franchise industry. In fact, Malaysia has vast opportunities in expanding its franchise industry through the amendment of the relevant legal framework. The objective of this article is to look into the legal challenges faced by the local Muslim entrepreneurs in the franchise industry and suggest some proposals on how to make the franchise business and industry Syariah friendly as in some circumstances the franchisors and franchisees are Muslims. This is a qualitative study that involves a systematic study of philosophical and academic views through literature. Therefore, this study is not an empirical study but rather a library study from various primary data sources such as Quran, Hadis, franchising agreement, and secondary data sources namely articles and journals from an online database. The study found that challenges faced by local Muslim entrepreneurs in the franchise industry in Malaysia include the issues of the prohibition against the same business, financial concern, and monopoly by the franchisor. As such, it is suggested that the need for a unique legal framework for Islamic franchising business in Malaysia in order to protect the local Muslim entrepreneurs.

Keywords:

Franchise Law, Legal Challenges, Muslim Entrepreneurs, Malaysia

Introduction

Franchising has become a blooming sector in Malaysia, especially in the food and beverage industry. Franchise business allows the Malaysian companies to develop and expand their business and brand to the International level. Before the enactment of Franchise Act 1998 (hereinafter referred to as 'the FA 1998'), franchising in Malaysia was generally governed by contractual principles. Due to the absence of complex statutory provisions or guidelines, the parties are freely to negotiate the terms of their franchising arrangement with a higher degree of flexibility. Subsequently in 1998, the Malaysian Parliament enacted the FA 1998 to govern the franchise business in Malaysia.

The term 'franchise' has been defined in section 4 of the FA 1998 as a contract or an agreement, either expressed or implied, whether oral or written, between two or more persons by which—

(a) the franchisor grants to the franchisee the right to operate a business according to the franchise system as determined by the franchisor during a term to be determined by the franchisor;

(b) the franchisor grants to the franchisee the right to use a mark, or a trade secret, or any confidential information or intellectual property, owned by the franchisor or relating to the franchisor, and includes a situation where the franchisor, who is the registered user of, or is licensed by another person to use, any intellectual property, grants such right that he possesses to permit the franchisee to use the intellectual property;

(c) the franchisor possesses the right to administer continuous control during the franchise term over the franchisee's business operations in accordance with the franchise system;

(d) (Deleted by Act A1442);

(e) in return for the grant of rights, the franchisee may be required to pay a fee or other form of consideration; and

(f) (Deleted by Act A1442).

Based on the above definition, franchise is an oral or written agreement between both franchisor and franchisee in which the franchisor grants the franchisee the right to use its trademark or intellectual property and operate the franchisee's business according to the franchisor's franchise system which is determined by the franchisor. However, the franchisor will remain the right to administer and control the franchisee's business operations to make sure that the franchisee complies with the franchise system determined by the franchisor. In return, the franchisee needs to pay a fee, loyalty or other form of consideration to the franchisor.

Prior to the Franchise (Amendment) Act 2012 (hereinafter referred to as 'the 2012 Amendment Act'), there were six elements in the definition of franchise. However, the extensive definition has been further revised by section 3 of the 2012 Amendment Act. Two previous elements for 'franchise' have been inserted in other part of the FA 1998. These two elements are:

- (d) *the franchisor has the responsibility to provide assistance to the franchisee to operate his business including such assistance as the provision or supply of materials and services, training, marketing, and business or technical assistance; and*
- (f) *the franchisee operates the business separately from the franchisor, and the relationship of the franchisee with the franchisor shall not at any time be regarded as a partnership, service contract or agency.*

According to explanatory statement number 4, Franchise (Amendment) Bill 2012 with regards to the 2012 Amendment Act, the removal of these two elements of ‘franchise’ is ‘*to facilitate the prosecution of the offence under the proposed Act by eliminating the elements of franchise which are not crucial to define franchise business*’ In other words, for a business to fall within the definition of ‘franchise’ in the Act, it is necessary that all the four existing elements of franchise are to be fulfilled with.

Martin (1995) defines the franchise as an agreement between the franchisor and the franchisee in running the business. The franchisor will provide supervision, monitoring and guidance to the franchisee in running the franchise business, while the franchisee's duty is to provide a paid-in investment at a certain cost level which has been agreed by both parties in order to obtain permission to use the brand, type and variety of franchise systems under franchisor ownership (Martin, 1995). This definition is in line with our section 4 of the FA 1998.

The Malaysian franchise industry continues to achieve healthy growth by contributing RM27 billion to the country's gross domestic product (‘GDP’) in 2017 while the annual growth rate for 2018 is 9 percent (Rithauddin, 2018). There are currently 877 domestic and international franchise brands registered with the Malaysian authority as of February 2019 (MDTCA, 2019). Since the enforcement of the FA 1998, Malaysia has been promoting the franchise industry extensively via the government bodies by providing financial assistance to the franchisors and franchisees. These financial assistances include Franchise Financing Scheme (‘SPF’), Franchise Development Assistance Fund (‘DBPF’) and Small Franchise Financing Scheme (‘SPKF’) (MDTCA, 2019). The DBPF was introduced in 2005 to assist companies in developing their brands or franchise businesses and in this respect, 85 local franchise companies have received RM5.65 million in funds from the programme (MDTCA, 2019). To date, the number of Malaysian franchise brands that have expanded worldwide has increased to 65 brands in 66 countries, with a total of 4,271 outlets (MDTCA, 2019). Many halal restaurants franchises have been set up with funding from Islamic banks around the world, paving the way for the use of Syariah compliant instruments in dealing with the lucrative business opportunities developed by the halal brand. For example, *Al Islami*, standing relationships with their customers over a period of 35 years has made significant progress in advancing the franchising of the halal brand and has plans to expand to the United Kingdom and France (Al Islami, 2011). Thus, attention should be given to the issue of Syariah compliance in franchising industry as over 60 percent of the Malaysian population is Muslim. Local Muslim entrepreneurs faced same legal challenges in franchise industry in Malaysia.

Hence, this study begins with an overview of the existing legal framework for franchise business in Malaysia. The next section examines challenges faced by local Muslim entrepreneurs in franchise industry in Malaysia, namely the issues of prohibition against the

same business, financial concern and monopoly by the franchisor. Subsequently, the authors will discuss the need for unique legal framework for Islamic franchising business in Malaysia.

Literature Review

The relationship between franchisor and franchisee is contractual in nature and a mutually beneficial business arrangement (Bradach, 1998). The franchise contract requires the franchisor to guide the franchisee in operating the business operation and system including operating hour, menu, providing training, financial obligations, etc. and to create a framework for their relationship. In order to achieve objectives, both franchisor and franchisee need to be interdependent and to cooperate with each other.

Franchising is also classified as a form of strategic alliance from the business perspective (McIntyre & Huszagh, 1995; Hoy & Stanworth, 2003), because the formal franchise contract listed out the rights and obligations of both parties. It is submitted that the franchisor-franchisee relationship is very complex that requires the complex delineation and integration of individual roles for both franchisor and franchisee (Kaufman & Dant, 1998). This complexity in franchising partnership can potentially lead to hazards for the franchisor (Davies et al., 2011) and conflicts between franchisors and franchisee regarding priorities, timing and revenue stream (Garg & Rasheed, 2006). This situation arose due to dissimilarities between franchisor and franchisee in handling the franchise business. For example, a franchisee had taken legal action against Burger King (franchisor) over the \$1 double cheeseburger promotion (Heher, 2009). In this case, the restaurant owners contended that the offer, which was launched in October 2009, forces them to sell the product at a loss. As a result, the franchisees may have their contract terminated due to non-compliance by the franchisor. The franchisees stand to lose their investments. Thus, Khan (1999) argued that mutual understanding between franchisor-franchisee plays important role to ensure the success of the relationship in franchise business.

Apart from relationship between franchisor and franchisee, the earlier studies have not been much focus on legal issues relating to franchising whereas they were more focused on marketability, product offering, and the issues of dispute resolution and insolvency recently (Oseni, 2012; Oseni & Hassan, 2011). Further thereto, currently most of the Muslim-majority countries namely Gulf Cooperation Council (GCC) region and Association of Southeast Asian Nations (ASEAN) which practising franchise laws are not based on the Islamic law but either based on civil law or common law (Oseni, 2016). Thus, it is indeed a need to come up with a Syariah compliance legal framework that will regulate Islamic franchising industry which will benefit the local Muslim entrepreneurs (Oseni, 2013).

Findings

This section describes the research findings obtained by authors through various sources to achieve the research goal. Therefore, the authors divided the findings into the appropriate aspects so that the issues can be systematically identified. The authors would like to briefly discuss the existing legal framework for franchise business in Malaysia then to focus on legal challenges faced by local Muslim entrepreneurs in franchise industry in Malaysia.

Existing Legal Framework For Franchise Business In Malaysia

The Malaysian Parliament enacted the Franchise Act in 1998 while other countries namely Australia has their own Franchising Commissioners during the 1970s and 1980s (Michael &

Jenny, 2014). Franchising law also introduced in United States of America in 1978 (Zahira, 2006). Thus, franchising law in Malaysia is still considered at infant stage compared to other countries. Despite that, Malaysia took initiative to regulate law on franchising, namely Franchise Act 1998. The purpose of the FA 1998 is to register and regulate franchises in Malaysia. With a total of 61 provisions, there are seven parts in the FA 1998. They are: Preliminary (sections 1-4); Appointment of Registrar of Franchises, Registration, etc. (sections 5-17); Franchise Agreement (sections 18-28); Conduct of Parties and Termination of Franchise Agreement (sections 29-34); Franchise Advisory Board (sections 35-36); Offences and Penalties (sections 37-41); Enforcement (sections 42-52); and Miscellaneous (sections 53-61). Apart from extending the scope of the Franchise Act 1998, the new amendments in the 2012 Amendment Act attempt to introduce a more stringent legal and regulatory framework for franchising in the country (Ling, 2013).

Although the principal legislation regulating franchising in Malaysia is the FA 1998, other relevant substantive legislations are also relevant to the franchise business in Malaysia. These legislations include the Contracts Act 1950, the Copyright Act 1987; the Trademarks Act 1976; and the Patents Act 1983. The relationship between franchisor and franchisee is contractual in nature and a mutually beneficial business arrangement (Bradach, 1998). In Malaysia, every contract shall be governed under this Contracts Act 1950 as to ensure that the contract made is not null and void. In reference to franchise, the Contracts Act 1950 is still relevant as the initial relationship between franchisor and franchisee is contractual in nature. The basic elements of forming a contract will still fall under the Contracts Act 1950 as a contract will consist terms and conditions agreed by parties entering without having malice and ambiguity and thus defeats the formation of contract. The FA 1998 will focus solely on the formation of franchise and the relationships between the franchisor and the franchisee.

Upon existence of the contractual relationship, both franchisor and franchisee must require registering their franchise business as required by section 6(1) of the FA 1998. In the case of *Dr HK Fong Brain Builder Pte Ltd v. SG-Maths Sdn. Bhd. & Ors* [2018] 11 MLJ 701, it serves as a reminder to all franchisors, local and foreign, of the importance of abiding by the requirements of approval and registration under the FA 1998 if a business falls within the definition of a franchise. As such, the relationship between franchisor and franchisee could be maintained nicely via registration of the franchise business.

Legal Challenges Faced By Local Muslim Entrepreneurs

Prohibition Against Similar Business

Section 27 of the FA 1998 states on prohibition against similar business. Section 27(1) of the FA 1998 states a franchisee shall give a written guarantee to a franchisor that the franchisee and his employees shall not carry on any other business similar to the franchised business operated by the franchisee during the franchise term and for two years after the expiration or earlier termination of the franchise agreement. In this provision, the franchisee is not allowed to conduct similar business within two years after the expiration of the franchise agreement. This section may not pass the fair-trade test of Islamic commercial law. The issue is whether this clause Syariah friendly and fair to Muslim entrepreneurs in franchise industry? Section 27(3) of the FA 1998 states a person who fails to comply this section shall commit an offence. The issue of prohibition against similar trade is non Syariah friendly in the sense that it restricts the livelihood not only the franchisee but its employees too. There have been cases whereby

the employees of the franchisee are also forced to sign the non-disclosure and non-competition letter or agreement for not to disclose the trade secret to the third parties and will not compete with the current employers in the similar business. However, in Islamic law, there are authorities in the Quran and Hadith with regards to being fair and just in the trade dealings.

Allah's command about justice in surah An-Nisa (4) verse 135:

“O you who believe! Stand out firmly for justice, as witnesses to Allah, even though it be against yourselves, or your parents, or your kin, be he rich or poor, Allah is a Better Protector to both (than you). So follow not the lusts (of your hearts), lest you avoid justice; and if you distort your witness or refuse to give it, verily, Allah is Ever Well-Acquainted with what you do.”

Furthermore, Al Quran Surah An-Nisa (4), verse 29, says:

“O ye who believe! Eat not up your property among yourselves in vanities: But let there be amongst you Traffic and trade by mutual good-will: Nor kill (or destroy) yourselves: for verily Allah hath been to you Most Merciful!”

Al Quran Surah Al-Baqarah (2), verse 188 also says:

“And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of (other) people's property.”

The prohibition against same business clause was in there in the first place as the fear on the franchisors that all the franchisees and its employees after learning about the system will open up another similar business and be in competition with the franchisor who may have spent time, effort and millions of dollars in developing the research and development building up the system. This situation is unfair to the franchisors as they have spent so much capitals in investment of this business, skills and times in training the franchisees to set up this business. Although this clause is to protect the franchisors, but the livelihood of the franchisees and its employees should not be neglected.

In the recent case of *La Kaffa International Co. Ltd (“La Kaffa”) v Loob Holding Sdn. Bhd. (“Loob”)* [2018] 9 CLJ 593, La Kaffa, foreign franchisor of the ‘CHATIME’ franchise filed a suit against its master franchises in Malaysia, Loob and sought for several injunctions which include a prohibitory injunction in relation to the restraint of trade. In the High Court, the learned Judge dismissed the prayers relating to restraint of trade and only ordered the return of properties by Loob to La Kaffa. La Kaffa appealed to the Court of Appeal and the arguments involve the application of Section 27 of the FA 1998 which prevents a franchisee (including its directors, spouses, immediate family of the directors, employees) from carrying on business similar to the franchised business during the franchise term and for two years after the expiration or earlier termination of the franchise agreement. Rhodzariah Bujang JCA in her dissenting judgment has stated that if the injunction is not stayed pending the leave application, all 179 outlets of Tealive in Malaysia would cease operations and all 1171 of Loob's employees would be out of jobs. This scenario was not just a mere fear of losing business, customers, suppliers and goodwill but a real ramification from disallowing the stay. The hardship and

inconvenience will not just be suffered by Loob, as the wrongdoer, but also innocent third parties - its employees and their families which numbered more than a thousand. This included the owners of the premises where Tealive operated and with whom Loob had entered tenancy agreements with. Although this is a dissenting judgment, it reflects that there is a judge who is concerned about the livelihood of the franchisees in the franchise industry.

The FA 1998 has clearly stated the rules of prohibition against same business by the franchisees. In any event, Islam looks important to livelihood of human being. In Holy Quran Surah Az-Zukhruf (43), verse 32, says:

“Is it they who would portion out the Mercy of thy Lord? It is We Who portion out between them their livelihood in the life of this world: and We raise some of them above others in ranks, so that some may command work from others. But the Mercy of thy Lord is better than the (wealth) which they amass.”

On a hadith narrated by Abu Huhairah RA, the Prophet said, “When a man dies, his acts come to an end, but three, recurring charity, or knowledge (by which people) benefit, or a pious son, who prays for him (for the deceased) (HR. Muslim number 1631).” From this narration, it shows that as a human being, the hands of giving is better than the hands of receiving (charity of the finger). Imam Nawawi in explaining this hadith states: the scholars say, the meaning of this hadith is that the practice of the deceased will be cut off from the cause of death and will also be renewed for the merit of the reward except for these three practices. All the knowledge from the franchisor may be considered as giving from Allah and it can be rewarded by Allah.

Meanwhile, man as khalifah (vicegerent) on earth possesses an ‘executive’ power, to speak and to management this earth. Thus, man is trustee of God’s wealth in this earth and as man does not owe anything. Whatever wealth knowledge and skills that man acquired are to be shared among human. This teaching applies in freedom of trade and running business. It is submitted that man should not restrict another man in freedom of trade. Thus, it is suggested that section 27 of the FA 1998 should be revised accordingly.

Financial Aspect in Franchising Business

The second legal challenge is the issue with regards to the financial aspect in franchising business for example the term of Liquidated Assessment Damages (‘LAD’) in the franchising agreement. Section 18(2) of the FA 1998 explains the requirement of franchise agreement including but not limited to the issues of payment of fees, rights to use the trademark, obligations of the parties, duration of the agreement and etc. Failure to comply with this subsection (2) shall render a franchise agreement null and void. Accordingly, the parties agree that if the master franchisee, the owners, the key operator, the master franchisee’s directors, officers or employees fails to use its best effort to prevent or stop such breaches and the breach results in material damage to the franchisor and/or the franchisor’s affiliates, the master franchisee will pay to the franchisor, in addition to any right or remedy the franchisor may have whether at law, liquidated damages of a one-time fee of an amount equal to four times of the master franchise fee preceding the breach (Adam, 2010). As a result, the issue of unfair and inequality of bargaining power will arise as the master franchisee has to follow all the instructions from the franchisor resulting franchisee has no right to bargain if there is a breach of the franchising agreement.

In Islamic law of contract, the parties should not state an amount of damages in the event of a breach of a fundamental term in the said contract (Hassan, Kayed, & Oseni, 2013). The parties cannot predetermine amount which is unquantifiable as this could amount to issue *gharar* (uncertainty) which is prohibited in Islamic law of transactions. Furthermore, if the parties predetermine the LAD, there will certainly have *riba* (usury) in it as it is additional relief that the master franchisor has apart from those remedies it has in law. This clause is used as a deterrent to the franchisee as not to breach the salient terms in the franchise agreement. As such, the franchise agreement should also be amended with regards to this issue (Mohamad, 2012; Zakaria, 2013). However, the franchisee has no right to bargain on this as this is the term imposed by the franchisor in the agreement and it is allowed in the FA 1998. Unfortunately, there is no specific LAD formula and it is totally the discretion of the franchisor to impose whatever amount the franchisor wish.

In the Holy Quran Allah has stated regarding fairness among the human beings and doing of good to kith and kin. He forbids injustice, unfairness and inequality.

Al Quran Surah Al Nahl (16), verse 90, says:

“Allah commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition.”

Al Quran Surah Al Nisa (4), verse 135, says:

“O ye who believe! stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well- acquainted with all that ye do.”

Al Quran Surah Al Maidah (5), verse 8, says:

“O ye who believe! stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to piety: and fear Allah. For Allah is well- acquainted with all that ye do.”

Al Quran Surah Al A'raf (7), verse 181, says:

“Of those We have created are people who direct (others) with truth. And dispense justice therewith.”

Thus, the issue of LAD in franchise business needs to deal with carefully. The Holy Quran teaches the mankind to be fair and justice in dealing the business. As such, the LAD clause may not be suitable to exist in the franchise agreement.

Monopoly Of The Business

The third legal challenge to the Muslim entrepreneurs in franchise industry will be the monopoly by franchisors. Although this issue is silent in the FA 1998, it is actually the consequence from the section 27 of the FA 1998, namely prohibition against similar business. It means there is only one player for the same business in the market and this sole player will monopoly the business in the market. The franchisors can dictate as who is the supplier of the raw materials and equipment that the franchisee must be used. This is where most of the franchisors will try to gain more profit for themselves by manufacturing, producing and supplying the raw materials and equipment to the franchisees at higher cost price. This is against the concept of 'economics of scale' in franchise business. When the franchisor buys the raw materials in bulk, the price so be lower. Thus, the franchisor should not charged higher price to the franchisee.

In 2010, Malaysia has enacted Competition Act 2010 (Act 712) (hereinafter referred to as "CA 2010") as to promote the economic development by promoting and protecting the process of competition, thereby protecting the interests of the customers. Although there is now a CA 2010 as to monitor competition in pricing, CA 2010 should also be looked into as whether it is Syariah compliance and whether all the guidelines proposed by Malaysian Competition Commission ('MyCC') is in accordance with the Syariah principles. MyCC has laid down specific guidelines for Franchise Agreements:

- 1. MyCC will assess the Franchise Agreements on the extent to which the agreement significantly forecloses competition in the relevant market. For most franchises, the relevant market will be wider than the franchise products and so unlikely to lead to any foreclosure to the market.*
- 2. Franchise Agreements normally include the license of intellectual property rights in relation to trademarks, signs and know-how for the sale of goods and services. Franchise agreements usually contain a number of vertical restraints including exclusive distribution and non-compete clause.*
- 3. Vertical price fixing is likely to be more anti-competitive than the non-price vertical arrangements. Vertical non price restrictions maybe anti-competitive because they foreclose part of the market to the competitors.*
- 4. In determining whether a vertical agreement significantly prevents, restricts or distorts competition, regard will be given to the market power of the enterprise imposing the vertical restrictions, the justification claimed for the restriction and the extent to which a market in the vertical relationship may be foreclosed.*
- 5. Anti-competitive non price vertical agreements may not be considered to have a significant anti-competitive effect if the market share of both the seller and buyer is less than 25% of their relevant market.*

There are some of the verses in the Holy Quran which Allah has stated regarding to be just in life and in trade dealings.

Al Quran Surah Al Ma'idah (5), verse 8, says

"O you who believe! Stand out firmly for God, as witnesses to fair dealing... Be just; that is next to piety; and fear God. For God is well acquainted with all that ye do."

Al Quran, As Shu`araa' (26), verses 181to184, Prophet Shu`aib tells his people:

“Give just measure and cause no loss (to others by fraud). And weigh with scales true and upright. And withhold not things justly due to men, nor do evil in the land, working mischief. And fear Him Who created you and (Who created) the generations before (you).”

Monopoly in a business could be derived from the greediness of people and resulting to cause unfair in trade dealings. Market monopoly or *ihtikār* is prohibited in Islamic law as this would cause unfair in trade dealings as there is only one party who controls all the businesses in the market (al-Douri, 2000). In the Holy Quran which Allah has stated that for us to be fair and not greedy, especially in trade dealing. Islam does not encourage *ihtikār* as stated in Al Quran Surah Fajr (89), verse 20:

“And you love wealth with immense love.”

Al Quran Surah Al-Aadiyaat (100), verses 6 to 8, says:

“Truly man is, to his Lord, ungrateful; And to that (fact) he bears witness (by his deeds); And violent is he in his love of wealth.”

Al Quran Surah Al-Humazah (104), verse 2, says:

“Who pileth up wealth and layeth it by ...”

Islamic law seeks protection to all parties, including both franchisors and franchisees. However, when the term of restriction becomes unreasonable until one party monopolies the business which caused the unfair dealings, the Islamic legal concept of *sū isti'māl al-ḥaq* shall apply to prevent a party to exercise the right which will have adverse effect on others' right (Oseni, 2016). Thus, it is suggested that reasonable restraint which are fair to both franchisors and franchisees should be adopted pursuant to the Islamic teaching.

Conclusion

The FA 1998 is a valuable Act to regulate and develop the franchise industry in Malaysia to greater heights. It provides for monitoring and quality control over a potential franchise business before it is offered to potential franchisees. Moreover, certain rights and protections to both franchisors and franchisees are offered in the FA1998. Franchise industry is still one of the vehicles which can spearhead the fastest economic growth in the country.

The presence of a successful Muslim entrepreneurs, especially in franchise industry can be a role model in the economic success of the Muslims. Thus, the relevant sections in the FA and Regulations 1998 should be amended and becoming more Syariah compliance. It would be highly recommended if the prohibition against the employees of the franchisees to be taken out as not to cause them harm in their livelihood as unlike the franchisee who may have other skills to depend on too. However, these employees shall not take advantage on this issue.

One of the forms that is considered appropriate for practice in this Islamic-based franchise is to apply '*akad hibah*' from franchisor to franchisee (Naiimi et al., 2018). Previously this '*akad*

hibah' is only applied in Islamic finance and Islamic property management. *Akad hibah* in a franchise business can occur when a franchisor alters the format and its complete franchise business system together with the business system to the franchisee without any financial rewards as it does in the conventional franchise system today.

Thus, the Government of Malaysia and the respective ministry namely Ministry of Domestic Trade and Consumer Affairs have to create awareness and educate the non-Muslim franchisors and franchisees on the benefits of converting the franchise system to be in Syariah mode.

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