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**THE FEASIBILITY STUDY OF *MUSHĀRAKAH* AND
MUDĀRABAH IN FRANCHISE INDUSTRY**



DOCTOR OF PHILOSOPHY

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**THE FEASIBILITY STUDY OF *MUSHĀRAKAH* AND
MUDĀRABAH IN FRANCHISE INDUSTRY**

By

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**Thesis Submitted to the Director of Postgraduate Studies Unit, College of
Business, Universiti Utara Malaysia, in Fulfilment of the Requirement for the
Degree of Doctor of Philosophy**



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Tandatangan

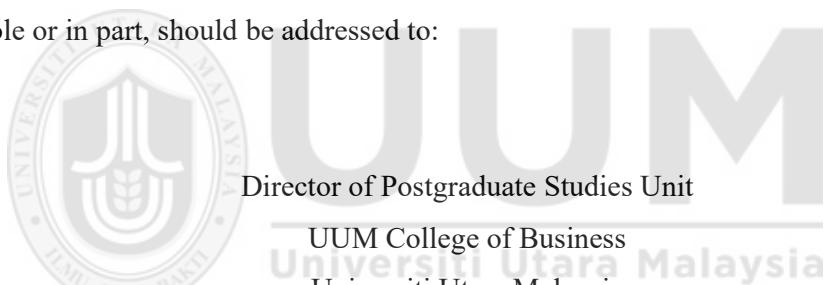


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Abstrak

Pengamalan kontrak usaha sama musyarakah dan mudarabah telah berkembang pesat dalam sektor kewangan Islam kontemporari seperti industri perbankan dan pasaran modal. Walau bagaimanapun, penggunaannya dalam sektor perniagaan sebenar seperti industri francais masih terhad. Kajian eksploratori kualitatif ini bertujuan untuk mengkaji kebolehlaksanaan penerapan kontrak musyarakah dan mudarabah dalam industri francais dan mencadangkan penggunaannya sebagai kontrak Islam alternatif. Menggunakan kaedah kajian kes, data dikumpul melalui temu bual separa berstruktur bersama lima responden yang terdiri daripada pakar dalam kontrak *mu'amalah* dan industri francais, serta enam francaisor. Analisis tematik digunakan untuk menganalisis data. Hasil dapatan menunjukkan bahawa francais berasaskan musyarakah dan mudarabah beroperasi atas dasar perkongsian keuntungan dan kerugian, bukannya mengenakan yuran francais dan royalti. Kepercayaan dan keikhlasan merupakan elemen teras dalam pemilihan rakan kongsi untuk kedua-dua kontrak tersebut. Tanda dagangan, jenama, nama baik dan kepakaran dinilai dan dianggap sebagai modal tidak nyata. Pengamalan musyarakah melalui musyarakah *al-'inān* dilihat lebih komprehensif berbanding mudarabah. Musyarakah menawarkan fleksibiliti kepada kedua-dua pihak untuk menyumbang modal perniagaan dalam pelbagai bentuk, termasuk modal kewangan dan kepakaran yang membawa kepada tanggungjawab bersama dalam menanggung risiko. Sebaliknya, mudarabah melibatkan *sāhib al-māl* (penyumbang modal) dan *mudārib* (usahawan), yang menyumbang tenaga dan kemahiran. Konsep perkongsian ini membolehkan francaisor bertindak sebagai *mudārib* (usahawan) dan *sāhib al-māl* (penyumbang modal), dan begitu juga dengan francaisi. Hubungan ini memenuhi keperluan kedua-dua francaisor dan francaisi untuk menampung keadaan khusus mereka, dan menawarkan fleksibiliti untuk pengembangan dan pertumbuhan perniagaan. Kajian ini membangunkan kerangka konseptual yang boleh dijadikan panduan kepada pembuat dasar, francaisor dan francaisi Muslim mengenai kebolehlaksanaan musyarakah dan mudarabah dalam industri francais di Malaysia. Namun, satu keterbatasan kajian ini ialah ia hanya melibatkan pakar dan francaisor tanpa mempertimbangkan perspektif francaisi. Kajian masa depan perlu melibatkan francaisi untuk memberikan pemahaman yang lebih komprehensif mengenai kebolehlaksanaan kontrak musyarakah dan mudarabah dalam industri francais.

Kata kunci: *musyarakah, mudarabah, francais, syirkah al-'inān, mudārib, sāhib al-māl*

Abstract

The application of *mushārakah* and *muḍārabah* partnership contracts is well-established in contemporary Islamic financial sectors, such as banking and capital markets. However, their utilization in real business sectors, such as the franchise industry, remains limited. This qualitative exploratory study aims to examine the feasibility of applying *mushārakah* and *muḍārabah* contracts in the franchise industry, proposing them as alternative Islamic contracts. Using a case study method, data was collected through semi-structured interviews with five experts in *mu ‘āmalah* contracts and franchise industry, and six franchisors. Thematic analysis was employed for data analysis. Findings indicate that franchises based on *mushārakah* and *muḍārabah* operate on a profit and loss sharing basis, rather than imposing franchise fees and royalties. Trust and sincerity are crucial in partner selection for both contracts. Trademarks, brands, goodwill, and expertise are valued as intangible assets. The application of *mushārakah*, particularly through *mushārakah al-‘inān*, is more comprehensive compared to *muḍārabah*. *Mushārakah* offers flexibility for both parties to contribute business capital in various forms, including financial capital and expertise, leading to joint risk-bearing responsibilities. On the other hand, *muḍārabah* involves a *ṣāhib al-māl* (capital provider) and a *mudārib* (entrepreneur), who contributes energy and skills. This partnership allows franchisors to act as both entrepreneurs and capital providers, extending the same flexibility to franchisees. Such a relationship accommodates the specific circumstances of both franchisors and franchisees, offering flexibility for business expansion and growth. This study develops a conceptual framework to guide policymakers, Muslim franchisors, and franchisees regarding the feasibility of *mushārakah* and *muḍārabah* in Malaysia's franchise industry. However, one limitation of this study is that it only involved experts and franchisors, without considering the perspectives of franchisees. Future research should include franchisees to provide a more comprehensive understanding of the feasibility of *mushārakah* and *muḍārabah* contracts in the franchise industry.

Keywords: *mushārakah*, *muḍārabah*, franchise, *shirkah al-‘inān*, *mudārib*, *ṣāhib al-māl*

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“Look around you and be thankful for all that you have been given in this short life.”

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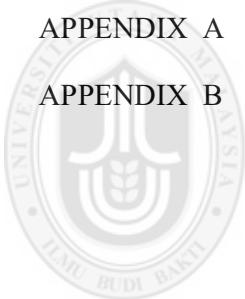
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List of Abbreviations

AAOIFI	Accounting and Auditing Organization for Islamic Financial Institution
BNM	Bank Negara Malaysia
KOMASA	Poly-Tech MARA Cooperative College Kuala Lumpur Berhad
KOSIS	Koperasi Siswazah Berhad
FA	Franchise Act
FRGS	Fundamental Research Grant Scheme
IPDS	Islamic Private Debt Securities
LMX	Leader-Member Exchange
MARA	Majlis Amanah Rakyat
MFA	Malaysian Franchise Association
PERNAS	Perbadanan Nasional Bhd
PRISMA	Preferred Reporting Items for Systematic Review and Meta-Analysis
SOM	Self-Organizing Map
USDOC	United States Department of Commerce

List of Statutes

Franchise Act 1998

Islamic Financial Services Act 2013



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Transliteration Table

b	=	ب	z	=	ز	f	=	ف
t	=	ت	s	=	س	q	=	ق
th	=	ث	sh	=	ش	k	=	ك
j	=	ج	§	=	ص	l	=	ل
h	=	ح	đ	=	ض	m	=	م
kh	=	خ	ť	=	ط	n	=	ن
d	=	د	ڙ	=	ڦ	h	=	ه
dh	=	ڏ	‘	=	ع	w	=	و
r	=	ر	gh	=	غ	y	=	ي
Short a	=		Short i	=	ڦ	Short u	=	ڻ
Long ā	=	ا	Long ī	=	ي	Long ū	=	و
Diphthong ay	=	اي	Diphthong aw	=	او			

Source: International Islamic University Malaysia (IIUM). “Transliteration Guide

Table for International Journal of Fiqh and Usul al-Fiqh Studies (IJFUS).”

CHAPTER ONE

INTRODUCTION

1.1 Introduction

Trading involves activities of buying and selling or exchanging goods or services between people or countries. On the contrary, businesses deal with a particular area of the commercial activity of making, buying, selling, or supplying goods or services for money (Oxford Learner's Dictionary of Academic English, 2014). Thus, business is a part of trading. However, Islamic trade and business are different from the Western definition at any cost as all the activities should manifest Allāh and as a bridge to achieve *al-falāh* (success) in this world and the hereafter (Yusof, 2010).

Islam emphasizes the importance of trading as a part of creating wealth which is also considered part of *'ibādah*. The Qur'ān also indicates few terms such as *tijārah*, *al-ba'y*, *ishtirā* and *tadaiyantum* (Nur Zaroni, 2007). These terms demonstrate that trade and business is essential not only for worldly matter but also for the hereafter (Nur Zaroni, 2007). Further, trading and business is a catalyst to develop any civilization as it elevates the economy (Ab. Ghani, 2005). Moreover, Islam was spread through trading. The spread of Islam in most of inner Asia, Southeast Asia and sub-Saharan Africa is known to have occurred primarily through contacts with Muslim merchants. Direct trade was the practice during that time where Muslim merchants personally carried goods over long distances along the trade routes rather than relying on intermediaries (Michalopoulos, Naghavi, & Prarolo, 2017). The people were attracted to Islam through the *akhlāq* (Islamic ethics) of the merchants (Basri, 2008).

On the other hand, Prophet Muhammad s.a.w was also a successful trader. Prophet Muhammad s.a.w before prophecy traveled to Syria for business. He was the trading partner of Khadijah which applied *mudārabah* as the mode of business and make an enormous profit. *Mudārabah* was an accessible mode of business in pre-Islamic Arabia during that time (Suwandi, M. Shafaii, & W. Abdullah, 2016; Shahid, 2018).

Since the era of Prophet Muhammad, the use of '*aqd* or contract has been widely used in daily transactions. This phenomenon demonstrates that a contract is essential in carrying a transaction, and what more when involving a transaction on exchanging of ownership of property or benefits from the property. Besides, the transactions may involve only one party, two parties or more. In order to comply with Shariah, a contract must observe all the pillars and conditions of the contract. The reason is to ensure that the existence of the contract has a strong foundation and authority particularly from Qur'ān, Sunnah and *ijtihād* (independent reasoning) of the scholars (Billah, 2006).

The formation of *al-'aqd* or contract in business is governed by *shara'* (the Sharī'ah law) to ensure the welfare of each party is guaranteed and a targeted goal can be achieved perfectly. *Al-'aqd* represents the execution of the contract which demands compliance with the agreement during the period in which it progresses. The need for *al-'aqd* is highlighted through certain characteristics and conditions according to the discipline of Islamic *mu'amalāt* covering various angles starting from *sīghah* (expression of offer and acceptance), contractual parties, matter of contract and the effect of the contract on the *hukm* (ruling). The advantages of adhering to this principle are not only for Muslim entrepreneurs, but also across religion, customs, and culture. The franchise business, on the other hand, is a business that is conducted based entirely

on the contract, especially on the relationship between the giver (franchisor) and the franchisee.

Following that, Islam is a religion that upholds fairness, welfare and forbids oppressiveness to its followers. Therefore, the systems have never outraged anybody, whether in the systems of economy, social, political, and so forth. Everything is based on the principle of Shariah and by following the Qur'ān and Sunnah. In general, Islam covers three main scopes of human *mu'āmalāt* (interactions or transactions) which are his dealings with God, with himself and with the society ('Abdur Rahman, 2007). It is sufficient to describe Islam is complete and perfect. It is a blessing for those who can appreciate and practice Islamic systems which are *shumūl* (inclusive/comprehensive). Islam covers everything from little to significant matters. One of the branches in Islam is the *mu'āmalāt* aspect. In general, *mu'āmalāt* concept encompasses all activities and relationships between humankind. The scope of *mu'āmalāt* concept is so broad that this study will only focus on Islamic business particularly in franchise business that is in line with Shariah principles.

1.2 Background of Study

The twenty-first century has witnessed a resurgence in the observance of fundamental Islamic business practices around the world. The Malaysian government is firmly committed and actively promoting franchising as one of the strategies in developing local entrepreneurs since the early 1990s, especially among the Malay community (Mohd Hizam Hanafiah, 2019). The Malaysian government through Perbadanan Nasional Bhd (PERNAS) intends to cultivate 5,000 franchise entrepreneurs by 2025, with over 90% coming from micro, small, and medium enterprises. This economic plan involved a total of RM1.47bil in shareholders' funds (Franchise News, 2024).

The government also emphasized on development of the franchise sector in the country based on the Madani Economic framework which emphasises on the economic activities based on ethical principles, social justice and sustainability including halal matter. The government's commitment on halal matter is to create an economic environment that accommodates to the needs of various communities in Malaysia, especially the Muslim population and international visitors (Franchise News, 2024). However, it is an undeniable fact that the current state of business is under the system of capitalism in most cases in the Muslim world remains far from the Islamic ideal.

Franchise business also contributes to the growth of the economy. The franchise trade is a comparatively new business method that was formally introduced in Malaysia back in the early 1990s (Mohd Hizam Hanafiah, 2019; Sharifuddin Abdul Rahim, 2019). Despite this, currently, many Malaysian home-grown franchise brands have emerged in recent years and some have already become industry players globally. Furthermore, franchising is the fastest growing method of doing business and has become the most important and popular method of creating new businesses (Md. Isa et al., 2012).

There are 863 registered franchise businesses in Malaysia, and it is expected to grow by 2020 (Amri, 2018). For record, a total of 65 franchise companies had been registered compared to 51 companies in 2021. Overall, from 2011 to 2022, the food and beverage sector recorded the highest number of company registrations, totaling 393 companies, which accounts for 51.8% compared to other sectors. As of December 31, 2022, there were 915 registered franchise companies in Malaysia. Of these, 447 companies (49%) were non-Bumiputera owned, 207 companies (23%) were foreign-owned, and 205 companies (23%) were Bumiputera owned. A total of 56 companies (5%) had canceled their franchise registrations, with the majority being involved in the

food and beverage, clothing and accessories, and services and maintenance sectors (Economic Analysis and Strategic Data Division, 2022). While in 2023, there were 92 registered companies (57%) were non-Bumiputera owned, 24 (15%) were Bumiputera owned, and 45 companies (28%) were foreign-owned (Economic Analysis and Strategic Data Division, 2023). There were slight decreasing in number for registered franchise companies compared to previous year. Further, the franchise industry is expected to increase its sales value to RM22.66 billion by 2025 from RM14.65 billion in 2020 (Bernama, 2023).

On contrary, franchise is a method of marketing or distribution in which the franchisor grants the franchisee the right to use the brand or trademark, the trade secret, any confidential information, intellectual property, and the right to operate a business according to the franchise system as determined by the franchisor within a specified term, at an agreed location. Franchisor assists franchisee, and as the reward franchisee pays certain initial fee and royalty (Franchise Act 1998 (Amendment) 2012, 2012). In Islamic law, this kind of franchise model is almost similar to *Shirkah* (partnership contract) and *mudārabah* (equity-based partnership contract) model, but the existing franchise model practiced is a hybrid model where it combines with other types of *Shirkah* and a part of *Ijārah* (lease-based contract). Furthermore, it is essentially crucial to keep in mind that all the patterns of transactions regulated by Islamic law highly stress on morality and ethics. Islam emphasizes that *akhlāq* and ethics on business conjoin together inseparable because Islam is not just a religion but it projects a perfect way of life.

Following that, recently, there is a lot of news on Islamic franchise business where they conducted Islamic business with halal products and Shariah compliance.

Prominent sectors encompass food and beverages, education and learning centers, health and wellness, retail, and services. An interview with Executive Director of Malaysian Franchise Association (MFA), Norol Azali said that one of the Islamic franchise systems that are successful is Seri Malaysia Hotel, where it does not serve alcohol and any entertainment that is contradicting to Islam. Therefore, he proposed that this concept should be adopted and developed and opened to new franchise entrepreneurs (Utusan Malaysia, 2007). Other examples of Islamic franchise is Al-Rahnu Bank Rakyat and Saba Islamic Media (Utusan Malaysia, 2007). The halal franchise business is rapidly growing in Malaysia and presents strong opportunities in international markets (Wong & Pua, 2022).

Interestingly, based on the bajet report 2023, the government provided RM21.5 million for various franchise entrepreneurship program. Among the allocation are for halal franchise industry such as capacity development program for halal industry entrepreneurs (RM1.5 million), halal product capacity development program (RM1.5 million), innovation and halal technology program (RM2.5 million) and *Program Pengantarabangsaan Usahawan Halal* or Halal Entrepreneur Internationalization Program (RM1 million) (Budget 2023 Speech, 2023).

Currently, most of the Islamic commercial contracts take place in financial sector such as in finance and banking, capital markets and *takāful*. The research limitation of *fīqh mu‘āmalāt* on Islamic financial sector will restrict the future development of Islamic economics. Thus, this will cause Islamic trade and commerce will not grow and huge gap will arise in the research in this area (Nasr, 1987). For example, the application of the *mushārakah* in Malaysia was in the form of equity purchase financing partnerships and business partnerships. In business partnership products, customers

and banks will collectively contribute capital to running a business. The share ratio is based on mutual agreement. Usually, the bank's capital ratio was larger. The management of the business is carried out by the customer with a salary derived from the profit of the company. Business profits will be divided by mutual agreement while losses are based on the ratio of capital contributed by the parties (Muji Tahir & Ahmad, 2009; Wan Mohamed Ali, 2012).

Mushārakah is also used in investment products. In this partnership, investors (customers) and banks share capital to invest in a business such as a real estate business. Management is carried out by banks because banks are more specialized in this area. Business profits will be divided by mutual agreement at the beginning of the contract, whereas in the case of the loss, it is in proportion to the capital contribution (Nasri Md. Hussain, Nasri Naiimi, & M. Sollehudin Shuib, 2013; Wan Mohamed Ali, 2012; Nyazee, 2006; Akilu Aliyu Shinkafi & Ali, 2018; Abdul Aziz, Tamrin, Saad, Mokhtar & Muhamad Nor, 2023).

Following that, *mushārakah mutanāqīṣah* (diminishing partnership) is a partnership contract between two parties, where one partner gradually buys the whole parts of the property. This partnership contract is offered by the bank to customers in financing real estate purchases such as home. The bank provides customers with a lower-profitability compared to *mushārakah* financing. Over the course of the financing period, the share of the bank will decline, while the share of the customer will increase until the maturity of the asset being fully transferred to the customer (Muji Tahir & Ahmad, 2009; Abdul Aziz, Tamrin, Saad, Mokhtar, & Muhamad Nor, 2023; Akilu Aliyu Shinkafi & Ali, 2018).

In addition, *mushārakah* is also applied in *sukūk* (Islamic bond). The *sukūk* issuer initially had ambitious projects ideas that were expected to generate profits such as business, enterprise and production projects but limited in funds. Therefore, *sukūk mushārakah* is issued between issuer and investors. In this case, the asset owner or issuer of the *sukūk* will also contribute capital as a fund with interested investors. The benefits of the project will be shared by mutual consent of all parties involved (Ayub, 2007; Muji Tahir & Ahmad, 2009; Akilu Aliyu Shinkafi & Ali, 2018).

On the other hand, *mudārabah* is currently practiced limitedless to individuals, but extended to individuals and institutions. Generally, *mudārabah* is applied in limited investment account products, unlimited *mudārabah* investment accounts, corporate financing, working capital financing and securities-based products such as *mudārabah sukūk*. *Mudārabah* is also applied in money market products. Some takaful companies chose *Mudārabah* principle in managing their investment funds.

Apart from that, *mudārabah* is also been utilized in financing-based products. In practice, Islamic financial institutions as the capital owners fully fund a business or investment project that is to be carried out by an entrepreneur who agrees to share profits which is included into the agreement. The bank will not interfere with the project management, but can monitor and follow up. Loss will be borne by the bank unless due to negligence, malpractice, and misuse of the entrepreneur (Borhan, 2005; Wan Mohamed Ali, 2012; Akilu Aliyu Shinkafi & Ali, 2018).

Following that, the application based on *mudārabah* is also applicable in Islamic security assets. For example, in the year 1994, Cagamas Berhad issued an Islamic private debt securities (IPDS) without interest known as *Sukūk al-mudārabah*

Cagamas. The *mudārabah-ṣukūk* certificate holders and Cagamas will share the profit in the agreed ratio. The *ṣukūk* formation combines together *mudārabah* and *bay' al-dāyn* as the underlying contract (Muji Tahir & Ahmad, 2009; Wan Mohamed Ali, 2012; Akilu Aliyu Shinkafi & Ali, 2018).

Further, Poly-Tech MARA Cooperative College Kuala Lumpur Berhad (KOMASA) has adopted *mudārabah* in their acquisition of funds instruments, such as shares, general savings, special savings, and utilization of funds such as in business project enterprise, and joint venture projects with *Koperasi Siswazah Berhad* (KOSIS) (Ali & Ab Ghani, 2015).

While in the practice of takaful, *mudārabah* is applied in the investment management, where the takaful operator act as *mudārib* (entrepreneur). The takaful operator will receive a takaful instalment or Takaful contribution from investors (capital contributors or takaful participants). *Mudārabah* agreement is considered as a business venture involving a profit sharing according to the agreed ratio to be divided between the takaful operator and the participants (Takaful Ikhlas, 2018; Haji Wahab & Abu Hassan, 2023).

An exploratory study carried out in 2023 by Mohammad Nasir, Ishak, & Ahmad Jamaluddin presented three models of crowdfunding for single mother entrepreneurs namely *mudārabah*-based crowdfunding, *qard*-based crowdfunding, and *infāq*-based crowdfunding. The study provided in-depth discussion both in theory and practice regarding Islamic crowdfunding model for single mother entrepreneurs and also analyzed potential models to be adopted into Islamic crowdfunding platforms to

support micro-entrepreneurs in Malaysia (Mohammad Nasir, Ishak, & Ahmad Jamaluddin, 2023).

Hence, this section described the application of *mushārakah* and *mudārabah* in Malaysia where it can be seen that the application is dominant to cater debt-based financing products.

1.3 Statement of Problem

Mushārakah and *mudārabah* will serve as alternative contracts in franchising, based on profit-sharing mechanism and mutual collaboration. Franchisors and franchisees especially the Muslims may opt for real partnership mechanism in managing their franchise business. Since *mushārakah* and *mudārabah* currently been applied in the Islamic financial system, the application in the real business setting is yet very limited.

The current practice of *mushārakah* and *mudārabah* are dominant in micro-finance or debt-based financing such as in *sukuk mushārakah* and *sukuk mudārabah*, *mushārakah mutanāqīṣah* house financing, *mudārabah* working capital, and *mudārabah* deposits products (Khalifah, Aslan & Abdullah, 2024). Further, a bibliometric analyses of Islamic banking and finance studies on *mushārakah* have been conducted where the findings revealed that the of topics *mushārakah* is within the Islamic banking industry, Islamic banking literacy, and *waqf*. Sorting by year of publication, the oldest article on *mushārakah* was published in 2005, no study found in 2006–2008, one article was published in 2009, and 84 articles were published in 2020, 105 articles were published 2021, and 115 articles in 2022 (Langlang Buana, Mohd Dali, Makmun, Firmansyah, & Taufik Akbar, 2024).

On the other hand, from 2001 to 2021, research publications on *mudārabah* contracts at Islamic financial institutions increased significantly, totaling 857 articles in eight clusters, such as implementation of *mudārabah* contracts, the influence of the *mudārabah* agreement, and other problems related to *mudārabah* agreements (Budianto & Nindi Dwi Tetria Dewi, 2024).

However, there were few studies found related to *mushārakah* and *mudārabah* applied in the franchise business in Indonesia. As for *mushārakah*, Hadi carried out a case study on a tuition centre known as Jarimatika which claimed to adopt *mushārakah* in their franchise business (Nurjannah & Nazarudin Wahid, 2014). While *Mudārabah* is applied by Ayam Bakar Wong Solo, with the franchisor serving as the *mudārib* (entrepreneur) and the franchisee as the *sāhib al māl* (capital provider). Profit from the business was divided according to the agreed ratio in the agreement (Taufiqur Rahman, 2015). Surprisingly, there was a study on issues in franchise related to contract and fees based on *ijārah*. The study concentrated on franchisee who run self-service laundry franchise business. The researcher found that the franchisee was obliged to pay an additional payment which was not stated in the contract, unclear contract content, and the absent of mutual consent from the parties involved (Husain, Rahman & Razif, 2021). Hence, it can be concluded that there is betrayal in the franchise contract which cause to oppression particularly towards franchisee.

Another preliminary study in *ijārah* to be proposed in the franchise industry has been carried out by Nasri, Nurli and Munirah (2022). The study also focused on another *mu‘āmalāt* contracts namely *mushārakah*, *mudārabah* and *hibah*. The findings in the research provide new insights on the feasibility of these four *mu‘āmalāt* contracts to be utilized in the franchise industry which is contradict with the current practices. The

study of *mushārakah* and *muḍārabah* in the Islamic financial sector was actively carried out, but very limited number in the franchise sector.

Therefore, it is necessary to conduct an exploratory study to examine the feasibility of *mushārakah* and *muḍārabah* in Malaysia franchise industry. For record, there was 205 companies (23%) were Bumiputera owned in 2022 (Economic Analysis and Strategic Data Division, 2022) and 24 (15%) in 2023 (Economic Analysis and Strategic Data Division, 2023). This study also aims to provide relevant information and to propose a conceptual framework on the feasibility of *mushārakah* and *muḍārabah* in the franchise industry where in can boost the industry and assist especially the Muslims franchisors and franchisees, and policy maker on the uniqueness of Islamic partnership contracts to be utilized in the area as there are more rooms for Islamic commercial contracts to be explored within the needs of the franchise business.

1.4 Research Questions

As indicated in the preceding discussions of *mu‘āmalāt* contracts, it is apparently seen most of the contracts were applied in the Islamic financial system which covers the banking, finance, and capital market products. Currently, franchising in Malaysia was based on the Franchise Act 1998 where franchisor permits franchisee to use his brand to operate the business. Whereas in return, franchisees are obliged to pay the royalty fees towards franchisor. Therefore, this research explores the feasibility of the Islamic contracts particularly *mushārakah* and *muḍārabah* to be an Islamic alternative contract in the franchise business in Malaysia.

This research aims to study the feasibility of *mushārakah* and *muḍārabah* in the franchise industry. Hence, research questions to be addressed are as follows:

1. What is the concept of *mushārakah* and *mudārabah* in the *mu‘āmalāt* which governed the franchisor and franchisee?
2. How is the *mushārakah* and *mudārabah* is feasible to be applied in the Malaysian franchise industry?
3. What is the Islamic franchise framework based on *mushārakah* and *mudārabah*?

1.5 Research Objectives

The current research explored the feasibility of *mushārakah* and *mudārabah* as alternative contacts in the Islamic franchise in Malaysia. The researcher presents the discourses among the professionals encompasses of academicians, franchise industry expert and franchisors as the practitioners in the field.

The scarcity of literature in Islamic franchise contract was a hope for the researcher to share the findings for the benefits of all in this area particularly the Muslim franchisors, franchisees, and policy maker. In addition, it is hoped that the thesis will provide some endeavors information regarding the topic discussed for the development of Islamic franchise in the future. Hence, the objectives of this study are as follows:

1. To examine the concept of *mushārakah* and *mudārabah* in *mu‘āmalāt* which governed the franchisor and franchisee.
2. To analyse the feasibility of the *mushārakah* and *mudārabah* to be applied in the Malaysian franchise industry.
3. To propose new Islamic franchise framework based on *mushārakah* and *mudārabah*.

1.6 Scope and Limitations of the Research

The proposed research is mainly about analyzing the importance and applications of *mushārakah* and *mudārabah* in franchise contracts in Malaysia. Following that, the researcher targets the study to come out with new insight relating to the feasibility of *mushārakah* and *mudārabah* as the underlying contracts in franchise business. It is a hope the research in the area may benefits the law maker, the franchisors, and the franchisees in Malaysia.

As been addressed, the current practice of *mushārakah* and *mudārabah* has been dominated in the Islamic financial sector, unlike to the real business sector. In addition, this study only focuses on Muslim franchisors and franchisees in the West coast of Peninsular Malaysia as the time constraint and cost. The study collects the data since October 2016 to May 2018. Moreover, the Islamic contracts proposed are more comfortable to approach the Muslim entrepreneurs rather than the non-Muslims as the nature of the contracts are related to the Islamic teaching which comprises of faith and believe.

1.7 Significance of the Research

Extensive research has been carried out on *mushārakah* and *mudārabah* in relation to the Islamic financial sector such in finance, banking, capital market, and *takāful*, contrasting to franchising which is in real business sector. Based on bibliometric analysis, there are 304 studies on *mushārakah* related to Islamic banking and finance conducted in 2020 to 2022 (Langlang Buana, Mohd Dali, Makmun, Firmansyah, & Taufik Akbar, 2024). While 857 studies on *mudārabah* was published from 2001 to 2021 (Budianto & Nindi Dwi Tetria Dewi, 2024)

Two studies related to *mushārakah* and *mudārabah* were identified which related to the franchise business. The *mushārakah*-based franchise was applied in educational sector (Nurjannah & Nazaruddin Wahid, 2013), while the *mudārabah*-based franchise was utilized in food and beverage sector (Taufiqur Rahman, 2015). Both studies were conducted in Indonesia. In addition, there was a study conducted in service sector, namely self-service laundry which is based on *ijārah* (Husain, Rahman, & Razif, 2021). Moreover, a preliminary study on the feasibility of *mushārakah*, *mudārabah*, *ijārah*, and *hibah* in Islamic franchising was conducted in Malaysia. This exploratory study aimed to identify key features of these four contracts for application in franchising (Nasri, Nurli & Munirah, 2022).

Therefore, the researcher believes that this research will be beneficial, as well as it will spark new insight and outlook to the Shariah compliance products and services in helping to promote the concept of Islamic *mu‘āmalāt* in the real business setting.

This research will generally contribute to provide general guidelines on the feasibility of *mushārakah* and *mudārabah* in the franchise business. Besides, the researcher insists that this small effort could promote *fiqh mu‘āmalāt* contracts related to trade and business particularly in Islamic franchise by providing a conceptual framework on the feasibility of *mushārakah* and *mudārabah* in the franchise business. It is a hope that this small contribution can contribute to the body of knowledge as well.

1.8 Organization of the Thesis

This thesis is divided into six chapters. Chapter One provides the background of the study, problem statement, research questions, research objectives, research significance, research scope, and thesis outline. While Chapter Two covers an

overview of franchise and its supporting elements, and also reviews the concept of *mushārakah* and *mudārabah* from the *fiqh mu‘āmalāt* point of view. While Chapter Three describes the research methodology employed in the study which includes the research design, research data collection and research data analysis. The next chapter is followed by Chapter Four, which presents the analysis based on the qualitative approach. Chapter Five is devoted to the discussion and findings of the study based on the research questions and research objectives. Finally, Chapter Six comprehends the conclusion and recommendations of the study through the summary of the finding, limitations, implications, and recommendations for future study.

1.9 Conclusion

This chapter has provided an overview on the feasibility of *mushārakah* and *mudārabah* in Malaysia franchise industry in the future, *In syā’ Allāh*, establishing the context, research objectives and significance of the study. The research is meant to serve a new insight towards the policy maker, franchisor and franchisee in the area of franchise business within the *mu‘āmalāt* framework. The research questions and objectives outlined serve as guiding principles for this research to be carried out. As the study progresses, Chapter Two will delve deeper into the franchise business and Islamic partnership contracts, employing appropriate methodologies to address the research aims. This research seeks to make a meaningful contribution to the existing body of knowledge and offer valuable insights into the feasibility of *mushārakah* and *mudārabah* in the franchise industry, with potential implications for both theory and practice.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

Every business operation and organization involving contracts with customers, suppliers of goods and services. A contract is a formal agreement made between two parties or more, which is binding and enforceable by court. The general idea of a contract is to protect the parties involved in it. This chapter will provide an overview of the franchise business and to examine what are the elements of franchise contracts that usually been practiced in the franchise business.

Subsequently, this chapter also will deliberate on on *mushārakah* and *mudārabah* as Islamic partnership contracts. Both *mushārakah* and *mudārabah* are profit-loss sharing contracts which generally involve in the merging of capital and management in conducting such business activities to generate profit. The discussion in this chapter covers *mushārakah* and *mudārabah* in term of their definition, legislation, types, terms, and application in franchise industry.

2.2 Definition of Franchise

Franchising is a form of business management that originated from ancient French in the eighteenth-century. According to the American Heritage Dictionary of the English Language, the word franchise comes from the old French word *franche*, which means free or exempt (Blair & Lafontaine, 2005). In medieval times, a franchise was considered as a right or privilege granted by a sovereign power. Sovereigns granted *franchises* for various activities, from building roads, holding fairs, organizing markets, or for the right to maintain civil order and collect taxes (Blair & Lafontaine,

2005). Following that, an individual or group of people been given an exclusive right on the activity and location for a specific period by the sovereign. General practice required the grantee to make a payment to the sovereign for this right or privilege given in the form of share of the product or profit. This kind of payment was known as *royalty*, which the term still in use in the present day (Blair & Lafontaine, 2005).

On the other hand, the English word ‘franchise’ in origin describes liberation from any prohibition, permission, privilege of the do’s and the don’ts toward something for which it would not have right in normal status (Dicke, 1992). In a simple word, franchise is a method of doing business or distributing goods and services which comes together with its rules and regulations (Dicke, 1992; Kamus Dewan, 2010).

Another definition of a franchise is a mutual relation occurs between franchisor and franchisee to manage a business where franchisor will provide supervision and training to the franchisee. On the other part, the franchisee will provide a financial aid in the form of payment on particular cost and is granted an authority to use the franchisor’s trademark, type, and business system (Mendelsohn, 1995).

As a result, franchise is a business strategy in distributing products or services where the franchisee been given by the franchisor an exclusive right to use its trademark, trade name, products, and business system in exchange for a share of profits in the name of royalty or fees. The franchise contract binds the two parties involved.

2.3 History of Franchise

The evolution of the franchise business system is following the changes in the business environment. The first phase of the franchise system known as tied-house systems involving the German brewers who contracted with taverns exclusively to sell their

brand of beer. The second phase of the franchise system known as product-trade name franchising which appeared in the nineteenth century. It was pioneered by Singer Sewing Machine Company to sell its products to its sales force, which in turn had to find markets for Singer. The system requires Singer to distribute new machine to people and provided training to customers on the use of the machines. The system comes together with a legal structure of selling and the right to distribute the service or product. The third phase of franchise development known as the business format franchising, where it is presently practiced (Hui Chong, 2011).

Martha Matilda was the first entrepreneur to create the actual business-format franchise system. She established her network of Harper Beauty Shops in the early 1890s using a business model that included all the components of a business format as described by the United States Department of Commerce (USDOC). Another example of franchise firms was the supermarket chain Piggly Wiggly, Hertz Car Rentals, A&W Restaurants, Maid Rite (a hamburger restaurant chain), and Terminix Termite and Pest Control. These firms started franchising in the 1920s and presently still exist in the franchise industry (Blair & Lafontaine, 2005).

2.4 Franchise in Malaysia

Tun Mahathir Mohamad inspired the concept of franchise business in the 1990s (Noraini Ibrahim, 2000). Franchise business was a fast method of marketing and to expand the business rapidly (Dicke, 1992). Franchising in Malaysia starts to develop in the 1940s, where Bata was the first company to set up a franchise in 1946, later followed by Singer in 1948. Following that, the franchise business expanded to automobile and petrol station dealers. However, it gained prominence when fast-food service restaurants such as A&W in 1963, KFC in 1970, and McDonald's in 1981

commended their operations and expanded rapidly in the country (Noraini Ibrahim, 2000; Abu Talib, 2018).

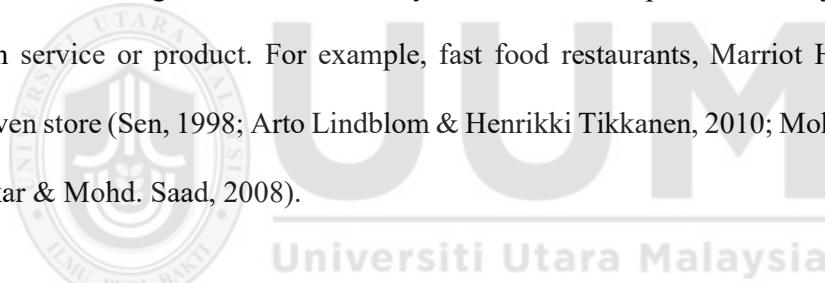
Interestingly, the concept of “*pawah*” has been practiced by Malaysians for years, and the concept almost similar to the franchise system. *Pawah* is an arrangement by giving the right to utilize agriculture or breeding farms. Through this system, the landowner gives the right to farm the agricultural land or to breed livestock. As a reward, both parties will enjoy the profit-based upon an intimate understanding. No *pawah* written agreement was practiced during that days. The development of new home-grown franchises started in the early 1980s, mainly in the food sector (Sate Ria, Marrybrown), automotive sector (EON), petrol stations (PETRONAS) and crafts/gifts (Royal Selangor). Initially, *Majlis Amanah Rakyat* (MARA) was given the task by the Government to facilitate the development of home-grown franchises (Noraini Ibrahim, 2000).

Moreover, franchising was acknowledged by the public only after the government launched the franchise development program in 1992 and the Malaysian Franchise Association (MFA) was founded in 1994 (Rosliana, Noorfaizawati, & Nor Hidayah, 2013).

2.5 Business Format Franchise

Business format franchising is defined as a legal relationship between two parties; franchisor and franchisee, which involves providing licensing, the rights and obligations to duplicate unique retail positioning products or services to serve customers’ needs (Kaufmann & Eroglu, 1999). In business format franchising, franchisees are not only granted the right to use the franchisor’s brand or distribute

their products but also to create an integrated business network. Through this system, franchisees will duplicate the entire business system of the franchisor and other franchisees within the same network. Franchisees will practice everything that the franchisor practices, including the products or services offered, trademarks, marketing strategies, quality control, and operations. The main elements in business format franchising include the franchisor's direct involvement in concept development, site selection, preparation of operating manuals, training programs, human resource development, accounting systems, promotions, and advertising. Additionally, the franchisor is also responsible for continuous business development. While on the other hand, franchisee serves as a seller or service provider for franchisor. In order to perform the obligation, franchisee may sell and install a product in conjunction with such service or product. For example, fast food restaurants, Marriot Hotels and 7-Eleven store (Sen, 1998; Arto Lindblom & Henrikki Tikkainen, 2010; Mohd. Jani, Hoe, Bakar & Mohd. Saad, 2008).

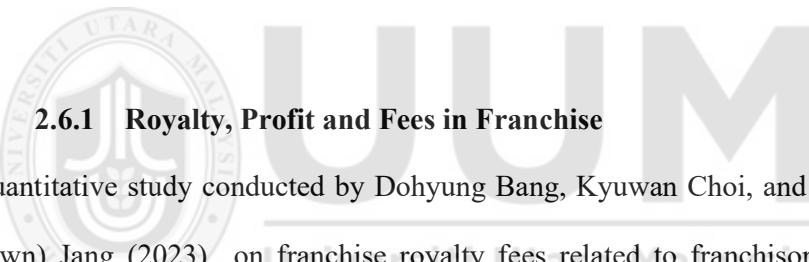


Malaysia is currently practicing business format franchising. Business format franchising is widespread, as it promoted win-win basis. Franchisee who buys a franchise business is provided with a ready-made and proven business (Dicke, 1992). While the franchisor, on the other hand, has successfully gone through trial and error, discovered what works well and what does not. On the contrary, the franchisee often offered by the franchisor an ongoing support and training, access to discounts through bulk buying, and advertising and marketing. Other than that, franchisor benefited from the money he receives from the initial franchising fee while the franchisees themselves pay for all their capital for the equipment and premises which allows the business to expand rapidly without the franchisor expending its precious capital or borrowing large amounts of money (Gehan Gunasekara & Alexandra Sims, 2007).

Therefore, business format franchising is a type of business model where franchisor provides a full set of services and system to the franchisee to sell the goods or services supplied by the franchisor (Sen, 1998; Kaufmann & Eroglu, 1999; William & Gary, 2012).

2.6 Past Studies Regarding Franchise

The discussion below provides literature related to this study. The goal of this literature review was to examine how royalty and fees be considered as essential criteria in franchise, to examine profit and share in franchise, to explore what form of relationship occurs between franchisor and franchisee, to analyze the features of franchise contract and to examine how power and control management practiced in the franchise system.



2.6.1 Royalty, Profit and Fees in Franchise

A quantitative study conducted by Dohyung Bang, Kyuwan Choi, and Soo Cheong (Shawn) Jang (2023) on franchise royalty fees related to franchisors' support of franchisees by examining the evidence from the restaurant industry. This study collected its data from Entrepreneur, a United States economic magazine which was annually published. The magazine compiled a list of the world's top 500 franchise brands across various sectors, providing detailed franchisor information, including company overviews, franchisee data, founding year, number of units, years in franchising, financial requirements, franchise fees, financial and operational support options, training information, and employment requirements. The financial requirements encompass specifics on initial franchise fees, capital investments, cash requirements, and ongoing fees. This study used a balanced panel data of 113 restaurant franchisors collected from 2019 to 2021. Initially, 550 restaurant franchisors were identified in 2019, with 138 selected for annual updates in 2020 and 2021. The

finding stated that restaurant franchisors actively provide operational and financial support to increase the gross royalty rate. This support is likely motivated by the insufficiency of ongoing fees in the restaurant industry to generate profits and the relatively high financial risk faced by restaurant franchisees. The findings indirectly revealed on a win-win support from the franchisor to franchisee to generate more profit by providing financial aid and operational assistance.

Panda, Paswana, and Sailendra (2018) investigated the positioning strategies employed by franchisors and investigates their relationship with the franchise fee structure namely upfront fee and royalty rate. The study was conducted in two phases, where they analyzed the content of 100 franchisor websites. The finding discovered three broad types of positioning strategies used by the franchisor as a benchmark. The first positioning type was reliability franchising which includes experience and network size. Secondly, service orientation namely classroom and on-the-job training and support, and thirdly, was selectivity (franchisee net worth). While in the second phase, they utilized 1234 US franchisors where the output revealed that both upfront fee and royalty rates were positively associated with the finding from the first phase, which excludes franchising experience and support services (Panda, K. Paswana, & Sailendra P. M, 2018). Overall, the franchisee net worth and size determined the rate of an upfront fee and royalty rate. This research, however, should come out with franchisee's opinion on the issue to check and balance on the finding. Nevertheless, the finding provides an insight into factors to be considered in determining the percentage of fee and royalty rate.

Frazer (1998) conducted a study on motivations for franchisors to use flat continuing franchise fees. He compared two calculation methods of franchise fees using flat

continuing fees and percentage-based continuing fees. The researcher employed a qualitative and quantitative methodology. In qualitative method, he administered a purposive sampling through interviews of 30 Australian franchisors. While in the quantitative method, he mailed 816 questionnaires to franchisors and were able to get 592 franchisors. Surprisingly, the finding revealed that both methods do have different characteristics to franchises where the flat fee franchises offer less ongoing support, conduct less monitoring of franchisee operations, have a faster growth rate of franchised outlets, and was less expensive to enter. The flat continuing fees were more prevalent in Australia rather than in the USA. The reason was due to differences in the two countries such as the comparative ease of entry by Australian franchisors, which may have encouraged the use of more innovative methods of structuring these fees. On the other hand, franchisors who rely on percentage-based continuing fees were motivated to provide more monitoring and ongoing support to their franchisees to patronage them to increase their sales, and in turn, the franchisors enjoyed more profit generated from the sales (Frazer, 1998). However, the finding may not applicable to be used in *mushārakah* and *muḍārabah* as these two contracts are based on profit-and-loss sharing basis.

Kotliarov (2011) reported on the royalty rate structure in franchising which was based on the differences between licensing and franchising. He verified that models of royalty rate calculation developed for licensing was not applicable in franchising as the benefits received by both the licensee and the franchisee were different. The researcher suggested to include in the model of royalty calculation on risk reduction generated by the franchisor's effective technologies and managerial support (Kotliarov, 2011). However, the evidence for this finding was inconclusive due to the

calculation used in the study exclude the initial franchise fee. The initial franchise fee acts as an income to the franchisor and, in most cases, considered as a compulsory fee.

A preliminary work on the presence of royalties in several retail contracts was carried out by Fadairo (2013) based on the theory of contracts. Econometric analysis was used to analyze French franchise contracts to explain the presence of royalties in contractual distribution relationships. The result revealed that the franchisor management, the transmission of concepts and know-how to retailers, and advertising, and promotional campaigns affect the royalty's distribution. In general, this study indicates what elements to consider in designing distribution contracts particularly related to royalty (Fadairo, 2013). However, no discussion on royalty shared by the parties was discussed.

Another quantitative approach conducted by Sen (1990) explained on franchising's fee structure, theory of principal agency and labor economics theory. The data was collected from two different sources, namely The Source Book of Franchise Opportunities, and the annual publication Franchising in the Economy (US Department of Commerce, 1988). Apart from that, questionnaires were mailed to 1046 franchisors. Significantly, the result indicated that channel control was the primary factor influencing the payment design (Sen K., 1990). This study contributes to contract designing which influence the determination of franchising fee by the franchisor.

On the other hand, Nurjannah and Nazaruddin (2013) examined on calculation of royalty fees in Jarimatika Darussalam franchise in *mushārakah*, contract and the strategy applied to determine profit sharing basis. Data was collected through in-depth

interviews and document content analysis. Interestingly, the result exposed that the profit-sharing system was the mechanism employed by Jarimatika Darussalam to determine the royalty fee. The operational cost of 15% was deducted from the total profit made by the franchisee, while the balance was divided between the franchisor and the franchisee in a ratio of 60:40. Surprisingly, the fixed amount of 15% for operational cost led to the shortfall for franchisee which consequently, franchisee experienced incompetent to pay the royalty fee on schedule. Moreover, the operation cost burdened only to franchisee alone (Nurjannah MR & Nazaruddin A. Wahid, 2013). Overall, this research imparts an insight into using the profit-sharing mechanism as a tool to determine the royalty rate. However, the implementation of *mushārakah* in Jarimatika Darussalam reflects a deficiency of the true nature of *mushārakah* as the franchise act still bonds the *mushārakah*-based applied.

A preliminary work on *mudārabah* in franchise business applied by Restaurant Ayam Bakar Wong Solo in Indonesia provided a fascinating idea. The *mudārabah* arrangement takes place where the Restaurant Ayam Bakar Wong Solo who was a franchisor serves as a manager (*mudārib*), while the franchisee as investor (*sāhib al-māl*). Both parties agreed to form an alliance in the franchise business involving of venture capital and working management. The profit from the business was divided between them according to the mutual agreement. The franchisor who grants for his business format received 50%, while the franchisee who contribute the capital enjoys 40%, and another 10% was contributed for *fit sabīlillāh* (the path to Allāh). Interestingly, this profit-sharing concept substitute the concept of franchise fee and royalty fee practiced in the franchise business (Taufiqur Rahman, 2015). The franchisor and the franchisee who opt for *mudārabah* concept enjoy their profit based on profit-sharing ratio which has been agreed in the contract. Further, franchisee is not

burden to pay for royalty and franchise fee towards franchisor. The finding in this study is useful as a basis for analyzing *mudārabah* feasibility in the franchise business.

In summary, the upfront fee, and royalty rate serves as return revenue to franchisor and franchisee. However, it is more prevailing as a return on franchisor. The rate of royalty was determined based on several factors such as franchising experience, the theory chose such as theory of contracts, principal-agency theory, labor economics theory, and profit-and-loss sharing theory. In addition, the calculation method applied either flat continuing fees or percentage-based continuing fees determine the franchise fees' rate. To make it clearer, the diagram 2.1 below simplifies the discussion in this part.

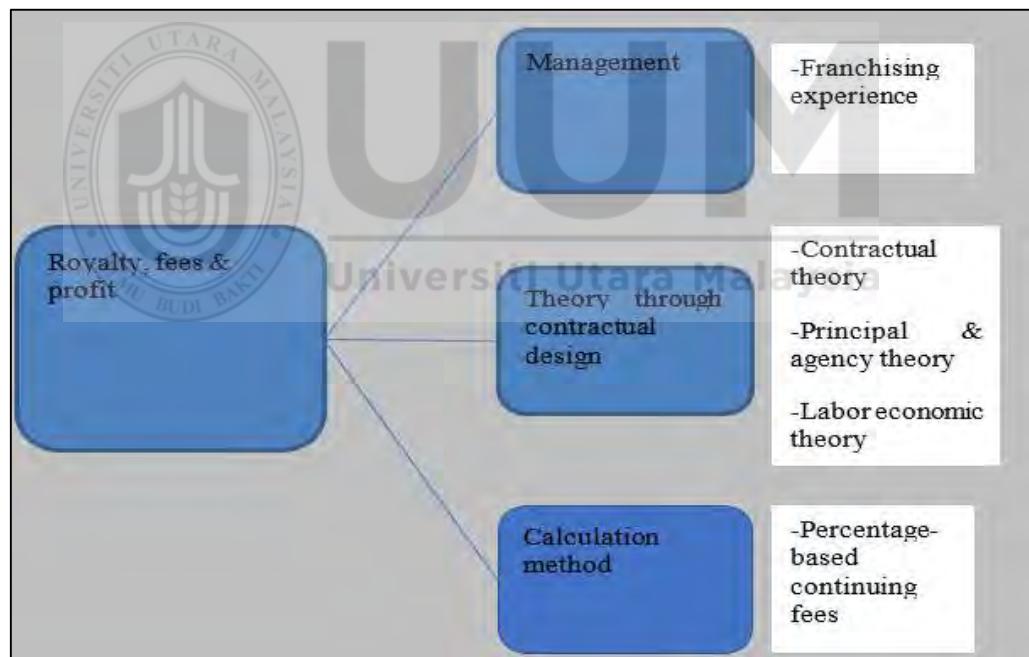


Figure 2.1
Factors that Determine Royalty, Fees and Profit Rate in Franchising

In conclusion, royalty and initial fees implemented in the franchise system serve as income and profits to franchisors. It also reflects as security for franchisor towards

franchisee from an opportunistic behavior as the trademark and brand name is the franchisor's earlier effort.

2.6.2 Relationship Between Franchisor and Franchisee

Franchising comprises of legal-contractual relationship which binds the franchisor and the franchisee. Generally, the franchisor is obliged to fulfill his obligation to the franchisee such as know-how and training, wherein the franchisee operates under a common trade name, format and/or procedure owned or controlled by the franchisor. At the same time, the investment capital contributed by the franchisee comes from his resources (Paul, 1978). The success of the franchise business depends on the quality of the relationship between franchisor and franchisee. Factors such as trust, genuine commitment, excellent communication, and relationship satisfaction contribute to the success of franchise business (Adams Adeiza, Noor Azizi Ismail, & Marlin Marissa Malik, 2017; Victoria Bordonaba-Juste & Yolanda Polo-Redondo, 2002; Rahatullah & Raeside, 2015; Khairi Ishak, 2016).

A quantitative study conducted in Egypt by Mahmoud Sayed and Omar Alsetoohy (2021) aimed to identify the main factors affecting the franchisee-franchisor relationship quality and the extent of their impact on the operational and financial performance of franchise restaurants. The study employed on the theory of the Leader-Member Exchange (LMX). The researchers conducted surveys on 50 local and international franchise restaurants. The findings presented that mutual trust, commitment, and franchisor support are essential determinants of the franchisee-franchisor relationship quality. The findings in the study can serve as fundamental elements to be considered in this study.

A study conducted by Adams Adeiza et al. (2017) on relationship factors that influence franchisees' overall satisfaction and intention to stay in business. The authors carried out a personal interview involving 26 franchisees from different franchise brands across Nigeria. They found out trust in the franchisor, commitment of franchisors, the effectiveness of communication as well as the closeness of the relationship between the two parties were the four factors strongly emerged as the antecedents of the relationship problem in the franchise system (Adams Adeiza, Noor Azizi Ismail, & Marlin Marissa Malik, 2017). However, as the study conducted in Nigeria, a qualitative study is suggested for future research to know more in-depth.

There was another study conducted in Spain by Victoria Bordonaba-Juste and Yolanda Polo-Redondo (2002) on factors that influence successful long-term relationships between franchisors and franchisees. By using a quantitative approach, they mailed a questionnaire to 107 franchisors randomly, while convenience sample of 102 franchisees also through email. As a result, they figured out that mutual trust and commitment contribute to the long-lasting relationship between franchisor and franchisee to maintain the business (Victoria Bordonaba-Juste & Yolanda Polo-Redondo, 2002). The result, however, supported the previous study conducted in Nigeria, where mutual trust and commitment were the essential elements to sustain a good relationship between both parties.

A qualitative study was conducted in 2022 by Mohd Hizam-Hanafiah, Abdul Ghani, Mat Isa, and Abd Hamid on critical success factors in franchising. Focus group participants were selected consisted of five franchisors, two franchisees, academicians, Perbadanan Nasional Berhad (PERNAS) and the Malaysian Franchise Association (MFA) were interviewed. The findings presented that the franchisor's capability,

interconnection with franchisees, and constant innovation were the three critical success factors in franchise business. Further, the partnership's success or failure depends heavily on the connection between the franchisor and the franchisee. A strong franchisor-franchisee relationship is akin to a business marriage, requiring mutual cooperation and interdependence. Success hinges on good communication skills and sound business judgment. A solid corporate identity and consistent business strategies are foundational, while competent leadership and effective communication ensure active involvement from both parties. For franchisors, maintaining beneficial partnerships relies heavily on effective communication (Mohd Hizam-Hanafiah, Abdul Ghani, Mat Isa, & Abd Hamid, 2022). Therefore, these three factors may spark an insight in the study of *mushārakah* and *mudārabah* feasibility in the franchise industry. Moreover, study indirectly highlighted that the relationship between franchisor and franchisee are as partners and like marriage.

In addition, a preliminary study on exploring franchising growth factors of franchisor and franchisee was conducted in 2022 by Abdul Ghani et.al. This qualitative approach study stated that there were three factors contribute to franchise growth, namely; product and service innovation, franchisor-franchisee cooperation, and government support. Product innovation opens new market opportunities, helps businesses diversify, and attracts new customers. While meeting client needs enhances retention. Franchisors aim to help franchisees succeed by providing necessary tools and guidance, while franchisees make independent business decisions that impact their success. Moreover, government support also fosters growth by offering programs and initiatives that benefit both franchisors and franchisees (Abdul Ghani, Mohd Hizam-Hanafiah, Mat Isa, & Abd Hamid, 2022). The findings in the study emphasized on the importance of franchisor-franchisee collaboration which resulting to franchise growth

and success. Collaboration can be a good indicator in *mushārakah* and *mudārabah* concept as these two contracts are based on mutual cooperation or collaboration.

Moreover, flexibility, information exchange, and solidarity in the relationship also determine the success of the relationship built between franchisor and franchisee, thus lead to franchise victory (Khairol Anuar Ishak, Nazlina, & Khairi Ishak, 2018; Khairi Ishak, 2016). Khairol Anuar et al. (2018) and Khairi Ishak (2016) administered a cross-sectional study by distributing 400 questionnaires resulting in 133 questionnaires were successfully returned. The respondents were franchisees who operated business-format franchise in Malaysia. The result obtained can be a guideline to new or existing franchisors and franchisees in maintaining their excellent relationship.

On the other hand, formal and social control from franchisor on franchisee promotes trust and good co-operation among them (Raisa Yakimovaa, Martin Owensb, & Jörg Sydowc, 2019). The study by Raisa et al. (2019) aimed to investigate how do franchisor precise controls promote trust and brand-supportive behavior among franchisees. They adopted a multiple case study research design, which provides the opportunity to replicate relationships and produce a robust theory, based on real-world observations that are cross-checked across cases and integrated with theory, which later, a theoretical framework was developed. A purposive sampling of five cases was determined. This study can be a decent criterion to entrepreneurs, especially to the franchisor on how to control the franchise business as well the franchisee and, at the same time, maintain the business relationship that occurred between them.

Despite the previous mentioned studies, industry knowledge, financial stability, hardworking attitude, and interpersonal skills also play a crucial role in a franchise

success. Both the franchisor and the franchisee undertake themselves as partners in the relationship, where each party conductively responsible for the partnership's success (Jolene Lim & Lorelle Frazer, 2004). The relationship between both parties was more profound than just as partners. For example, franchisor can be a mentor, consultant employer and principal towards franchisee. On the contrary, franchisee was the mentee, client, employee, and agent to the franchisor (Brown & Dev, 1997; Jolene Lim & Lorelle Frazer, 2004; Guillermo Navarro Sanfelix & Francisco Puig, 2018).

Interestingly, there was a study published in 2023 on a systematic review on franchise business survival conducted in Malaysia by Othman, et al. This study aims to systematically review research on franchise survival to identify key factors that improve survivability. The Preferred Reporting Items for Systematic Review and Meta-Analysis (PRISMA 2020) guidelines were followed for the literature review. The study analyzed 37 articles published between 1997 and 2022 in English peer-reviewed journals from the Web of Science and Scopus databases. Findings indicate a predominance of quantitative over qualitative approaches, with franchisors being the main focus. Seven themes were identified in franchise survival: marketing, managerial capability, value proposition, franchisor-franchisee relationship, franchise resources, entrepreneurship, and other relevant themes. These fostering elements are crucial for improving franchise performance and are positively correlated with franchise survivability across economic cycles, ultimately contributing to a stronger franchise industry.

Moreover, the partnership that occurs in franchising also considers the role of performance, asset specificity, cultural sensitivity, continuous support, and training which influence the success of the business (Levent Altinay & Maureen Brookes,

2012). The finding in these prior studies indicated that the relationship ties between franchisor and franchisee in franchising was a partnership because both parties depend on each other to achieve long-lasting triumph the business. On the contrary, franchisee appears as an agent to franchisor, where franchisee distributed products or serve services as instructed by the franchisor (principle). Interestingly, this study resembles the contract of *mushārakah* and *muḍārabah*.

On the other hand, selecting an appropriate partner also contribute to the long-term relationship and success of the business franchise (Maureen Brookes & Levent Altinay, 2011). This study conducted in 2011 tried to identify the partner selection criterion employed both by franchisors and franchisees in master franchise agreements and later to find out how the different selection criteria interact within the selection process and influence the decisions taken by the parties. The finding demonstrated that among the criterion for selecting partners were credibility, mutual understanding, similar visions and goals, transparency and proficient in franchising impact the decision selection of a partner. This finding can contribute to the criterion needed for choosing a business partner in *mushārakah* and *muḍārabah* that adopted in this study.

Interestingly, Gaul (2015) conducted qualitative research on how to select relevant franchisee as a partner. To ensure having a right partner with applicable business criteria, she interviewed 33 respondents comprises of German and Austrian franchise experts who are the consultants or decision-makers in the franchisee selection process of their respected companies. The interviews were either orally conducted via a telephone conversation, or on a written basis via emailed questionnaires. As a result, she attained the conclusion that successful franchisees depend on non-financial and financial ability. For non-financial aspects are categorized into four groups;

satisfaction in partnership, sales and profit, reaching goals together, and system conformity. While the financial aspect is categorized into sale abilities, financial background, entrepreneurial talents, and leadership abilities (Gaul, 2015). Overall, this study provides pertinent franchisee selection criteria that are based on franchise literature and tested on experts which can be adopted in future research. The finding presented is relevant to be used in this study as well in *mushārakah* and *mudārabah* partner selection.

Moreover, a fair franchise legal contract comprises of franchise ownership structure, business format design, contract design which mutually agreed by both parties, behavior, and interaction skills of franchisor and franchisee, the age and size of the system and its units impart to the success of the franchise (Karlijn Nijmeijer, Isabelle Fabbricotti & Robbert Huijsman, 2014). In this study, a narrative synthesis was performed by selecting 126 peer-reviewed empirical journal articles. Therefore, there is a limitation in this study where the result obtained was theoretical in nature. However, it can be used as a guideline to conduct future research to develop a better franchising system in Malaysia. In addition, mutual consent or al-taradhi between the parties involved before concluding the contract is clearly important. Satisfaction from it resulting on a good relationship between them.

From the past studies, the researcher prefers to summarize it based on content analysis. The result revealed that the relationship between the franchisor and the franchisee varies from one to another. It depends on how both parties; the franchisor and the franchisee perceived the relationship and the consequence from the relationship developed. Table 2.1 below demonstrates form of the relationship which bind the parties in franchising together with the attribute values, financial and non-financial

dimension. Later, Table 2.2 illustrates theme which was classified based on organizational values. Surprisingly, most values occurs and correlate with the quality of the relationship between the franchisor and the franchisee has been studied in management studies, known as organizational values. Those organizational values evolution formed from organizational culture, where the values evolve from modes of conduct, communication styles and decision-making styles (Mitja Gorenak & Suzana Košir, 2012). These values determine, influence, and justify one's action and attitude (Amal Hayati Ishak, Muhamad Rahimi Osman & Ghafarullahhuddin Din, 2013).

Table 2.1
Attributes/Values Occur in Franchising

Attributes/Values		
Financial	Non-financial	Relationship
Financial abilities	Commitment	Consultant vs client
Sales abilities	Effective communication	Principal vs agent
Entrepreneurial talents	Mutual trust	Mentor vs mentee
Leadership abilities	Flexibility	Employer vs employee
Fair contract	Information exchange	Partners
	Solidarity	Marriage
	Formal control	
	Social control	
	Industry knowledge	
	Hardworking	
	Interpersonal skills	
	Responsible	
	Credibility	
	Mutual understanding	
	Similar goals	
	Transparency	
	Proficient	
	Satisfaction	
	System conformity	

Source: Researcher's own work produced from the discussion.

Table 2.2
Organizational Values in An Organization

Organizational Values		
Piety	Moral	Quality
Mutual trust	Solidarity	Leadership abilities
Transparency	Social control	Entrepreneurial talents
Satisfaction	Responsible	Sales abilities
Fair contract	Credibility	Commitment
	Mutual understanding	Effective communication
		Flexibility
		Industry knowledge
		Hardworking
		Interpersonal skills
		Information exchange
		Similar goals
		System conformity
		Sales and profit
		Formal control
		Proficient

Source: Adopted and adapted from Shakir Husein Kalid and Rushdan Jailani (2019).

Findings indicate that financial and non-financial attribute contribute to good cooperation and long-lasting relationship between franchisor and franchisee. The financial part of it are financial abilities, sales abilities, entrepreneurial talents, leadership abilities and a fair contract. While the attributes for non-financial aspects comprise of commitment, effective communication, mutual-trust, flexibility, information exchange, solidarity, formal control, social control, industry knowledge, hardworking, interpersonal skills, responsible, credibility, mutual understanding, similar goals, transparency, proficient, satisfaction, system conformity, and sales and profit. Their relationship in franchising can be described as a consultant and a client, principal-agent relationship, mentor and mentee, employer and employee, and partners. The franchise act clearly stated that the relationship between the franchisor and the franchisee nor a partner and nor an agent-principal. However, in the practice, it resembles otherwise. Table 2.2 presents the data that been arranged according to

organizational values based on three themes; piety, moral and quality. Organizational values are a part of ethics.

Thus, the relationship between franchisor and franchisee is unique on its own as it comprises of a relation as partner, principal and agent, employer and employee, mentor and mentee, and consultant and client, and marriage relationship. Nonetheless, the central concept from this relation is to build a functional interrelation and cooperatively to work together to achieve triumph in business, and in return, both enjoy the revenues.

2.6.3 Franchise Contract

According to Franchise (Amendment) Act 2012, since January 2013, the word ‘franchise’ been defined as a contract or an agreement, either it is expressed or implied, whether oral or written, between two or more persons by which:

1. 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;
2. 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;

3. 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; and
4. in return for the grant of rights, the franchisee may be required to pay a fee or other form of consideration (The Franchise (Amendment) Act 2012, 2012).

Based on this act, any franchise contract to be concluded should consider all the provisions stated in the act. The goal of this act is to protect both parties, the franchisor, and the franchisee.

On the contrary, Popa and Ponorica (2012) examined the essential elements of franchising based on the legal phenomenon together with the behavior of existing and future entrepreneurs regarding the possibility of implementing the legal instrument. Using a quantitative approach, they distributed questionnaires to 52 entrepreneurs. Therefore, the result described that franchise contracts applied to the business world and the elements in the contract could be adopted as a development measurement (Popa & Ponorica, 2012). However, as the study was not presenting Malaysian franchise contract, it was a constraint and its suitability to be adopted in Malaysia can be questionable.

Spencer (2008) aimed to examine the balance of power and uncertainty in the usage terms of franchise contracts. A sample of 10 contractual terms from 19 franchise contracts was analyzed by looking at the purpose of the contract and later discussed the finding. The results confirmed that the contract terms indicate greater power to franchisor and franchisee experienced higher levels of uncertainty (Spencer, 2008). Thus, the study can serve as a guideline for this research to recommend on the issues

of power management and uncertainty of terms used in the contract in proposing suitable law for franchise using *mushārakah* and *mudārabah* in Malaysia.

In 1993, Dnes studied franchise contracts in the United Kingdom, which emphasized on control of the franchisee's lease, the role of specialized assets, the trademarking of assets, the fee schedule, termination conditions, and non-competition restrictive covenants. This study applied both qualitative and quantitative approaches. Dnes examined 15 contractual provisions in the United Kingdom cases which comprise of different franchise sectors such as restaurant chains, household services, and garage services. Each case study involves one franchisor and three franchisees. The result enlightened that the initial fees in the upfront franchise business considered as income to the franchisor as well as to appreciate franchisor as the trademark provider through his uphold investment earlier in the business. In the control management aspect, the franchisor controls franchisees via a unique system set up by the franchisor. The reason was to ensure the franchisees were free from optimistic behavior upon the business. Besides, royalty was considered as a part of income for franchisor. The percentage obtained from the sales made by the franchisees was determined by the franchisor. The royalty percentage influence the long-lasting relationships among them in franchising (Dnes, 1993). Overall, this study sheds bright insight into essential elements to be considered in structuring Islamic franchise contracts later.

Solís-Rodríguez and González-Díaz (2016) deliberated a study on franchise contract design by identifying different provisions to be included in contracts to avoid opportunistic behavior by both franchisor and franchisee. By scrutinizing 74 Spanish franchise contracts, they identified 157 different provisions and notable document differences in contract design. Surprisingly, they also found out on the existence of

unbalance franchise agreements. The franchisee's obligations were more than the franchisors' obligations. The reason because the franchise contract serves as a fundamental tool for the franchisor to attenuate franchisees' opportunism (Solís-Rodríguez & González-Díaz, 2016). Nevertheless, this study represents franchise contract provisions in Spain may not be truly applicable in Malaysia. However, some similar provisions could be considered to be adapted with the Malaysian context.

Another study conducted by Ilir Hajdini and Aveed Raha (2018) in Austria on determinants of contractual restraints in franchise contracting gave significant insight into designing franchise contact. Questionnaires were administered to senior managers who were responsible for franchise expansion. Besides, data also collected from the franchise systems in Germany and Switzerland. As a result, franchisors tend to use more contractual restraints to utilize their efficiency-enhancing properties and safeguard their transaction-specific investments if uncertainties perceived were high. On the contrary, if franchisors experience high trust in the franchisee, the likelihood of contractual restraints used was less, and trusted franchisees been given more autonomy (Ilir Hajdini & Aveed Raha, 2018). This study is a good indicator of designing franchise contracts later in the future where trust plays a vital element in contract restraints between franchisor and franchisee.

A similar study conducted by Calderon-Monge and Pastor-Sanz (2017) examined on how formal (contracts) and relational (trust) governance mechanisms affected franchisor performance in a service sector franchise for the period of 2008–2015. Using the self-organising map (SOM) method, they found out that franchisors may decide either to use contracts or trust alone or a combination of a contract and trust as the governance mechanism depending on the franchisee's profile, and it has no effect

on franchisor's performance (Calderon-Monge & Pastor-Sanz, 2017). Overall, even though trust plays an important role and affecting the franchise contract, it is better to combine both as the best governance mechanism to avoid unexpected things in the future event.

On the other hand, a qualitative documentary study on digital era and franchising challenges in Malaysia was conducted in 2022 by Siong, Abdull Manaf, and Amiruddin. The study revealed that transitioning from a traditional franchise model to a digital franchise model requires addressing several key issues, including updating franchising agreements to reflect new business procedures. These agreements must clarify the roles and responsibilities of both parties in the digital landscape, outline different profit-sharing methods, and specify responsibilities for collecting and processing customer data. To prevent potential disputes, franchisors and franchisees should clearly define their duties, precisely detail their contracts, and include specific provisions related to the digital franchise business (Siong, Abdull Manaf, & Amiruddin, 2022). Therefore, this study highlighted on the need to updating agreements to clarify roles, profit-sharing methods, and data responsibilities, ensuring clear definitions and specific provisions to prevent disputes and effectively manage new business procedures in transitioning to a digital franchise model.

Nevertheless, an exciting evaluation by Budi (2017) explored franchise businesses from the Islamic law perspective. He claimed that through Ijtihad, Muslims might provide franchise law based on Islamic law. His thinking associates the operation of a franchise similar to the *mushārakah* contract. The franchise contract was the development of the forms of cooperation (*sharikah*) where the existence of the franchise contract will automatically form a cooperative relationship for a specified

time. Such cooperation intends to gain profits for both parties (Budi Prasetyo, 2017).

Even though this study was conceptual in nature, the idea given by the researcher can be adopted in this study to explore on the suitability of franchise contracts in *mushārakah* and *muḍārabah* in Malaysia which is governed by Malaysia franchise act.

The discussion on previous studies revealed the elements need to be considered in designing a franchise contract. The purpose was to secure both parties, the franchisors, and the franchisees from any optimistic behavior. However, most of the contract in the past studies seems to safeguard the importance of the franchisors' rights more rather than the franchisees'. Interestingly, the element of trust towards franchisee has a vital impact in designing the franchise contract as a governance mechanism. To make it clearer, Figure 2.2 below illustrated the whole discussion in a simple way.

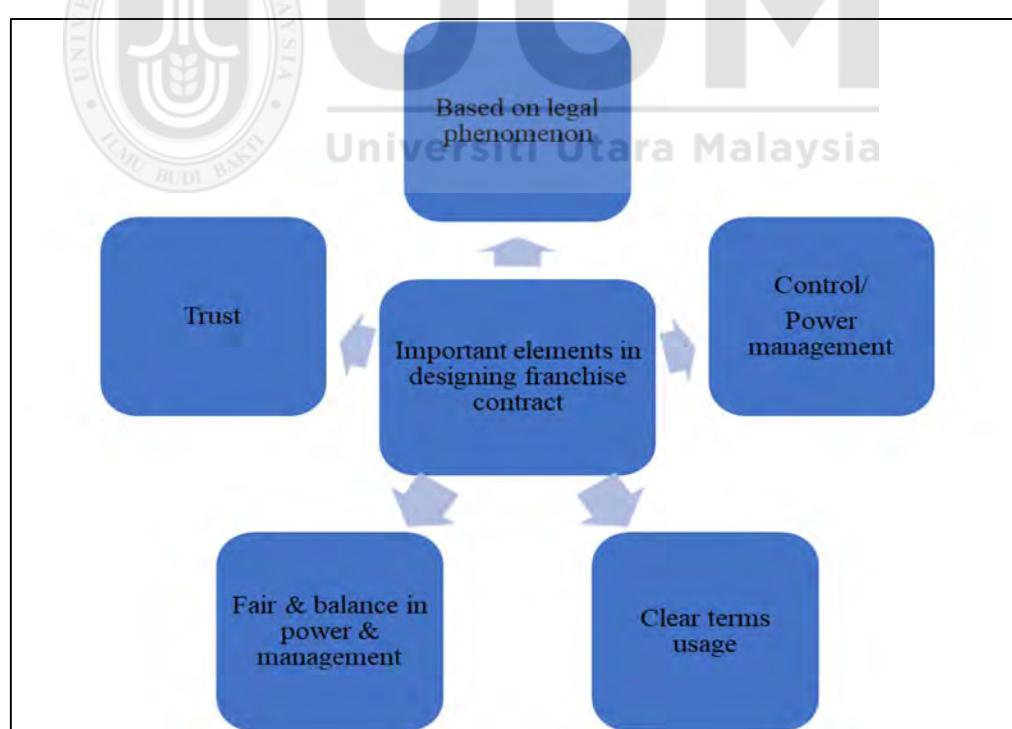


Figure 2.2
Important Elements in Designing Franchise Contract

Generally, any contract designation made in the franchise intends to protect both parties, the franchisor and the franchisee. A good contract should seek for mutual agreement from both parties before the contract was concluded. Good faith and consent from the parties were the core principle before the formal contract bind the relationship formally. Islam, on the other hand, stressed on the concept of *ihsān* (kindness) and mutual consent before concluding any contracts. Further, if the element of mutual consent was absent, the contract considered null and void resulting to no legal effect (Ramizah & Puteri Nemie , 2016). While *ihsān* will govern an individual whose fear in Allāh to do any action only to get the blessing of Him (Amal Salim, Shukri, Musa & Muhammad Ahmad, 2017).

2.6.4 Management, Power, and Control in Franchise

Management involves administrative. Both management and administration are crucial in every organization. Proper management and administration will lead to either success or failure of an organization including business (Atsan, 2016). Proper management and administration resulting towards smooth operation, development and growth, coordination, optimum use of resources etc. Functions of management and administration integrate planning, organizing, staffing, directing, monitoring, influencing and controlling (Eshteiwi, Saleh Salem Ghnaem, & Fakhurelden, 2016). In franchising, the visible part of management and administration can be seen in controlling and monitoring perspective.

Frazer, Merrilees and Wright (2007) studied the reasons for franchisees who exit from franchising and run the business independently. They explored the issue of power management by the franchisor and its relationship to brand piracy by franchisees. Using interviews as a data collection method, they revealed that effective contractual

design, dissatisfaction with franchise, level of dependence and expectations in the relationship, and franchisor-franchisee goal incongruence were the factors that influence the phenomenon. Overall, franchisor aimed to receive higher sales as his income, whereas the franchisee was more likely to be motivated by profits (Frazer, Merrilees & Wright, 2007). Despite all this, it was not applicable to be implemented in *mushārakah* and *muḍārabah* as these two contracts aim for profit-and-loss sharing basis on mutual consent between the parties involved.

Another study related to power and control management on service quality has been attempted by Roberto Sa'nclez Go'meza, Isabel Sua'rez Gonza'le and Luis Vazquez Sua'rez (2011). The study examined the factors which influence the control intensity exerted by franchisors on the service quality provided by the franchisees. They found out that audits, mystery shoppers, and mandatory purchase of inputs and products, and customer's polls were the mechanisms related to service quality (Roberto Sa'nclez Go'meza, Isabel Sua'rez Gonza'le, & Luis Vazquez Sua'rez, 2011). This research gave an insight idea on how to manage and control quality service by franchisees by considering the mechanisms which suitable and less cost for franchisors to apply.

On the other hand, a contribution to managing the franchise system from leadership and conflict avoidance perspective was carried out by Diaz-Bernard (2013). He discovered that a long-term approach to the relationship, use power appropriately, be flexible in the relationship with the franchisee, and show reciprocity and mutuality in franchisor-franchisee exchanges will provide the long-lasting business franchises with quality relationships (Diaz-Bernard, 2013). In this finding, it can be concluded that having win-win situation and flexibility between franchisor and franchisee in power and control management will impact the victory of franchise business.

Further, Kerim Karmen, Olivier de la Villarmois, and Adel Beld (2018) demonstrated that control management has a positive impact on innovation within a franchise network. By surveying 106 franchise outlets in France to collect data while partial least squares and mobilizing as an analysis tool, they revealed that knowledge creation was the crucial factor in managing control in franchising. Knowledge creation by franchisors in decision making, apply different control mechanism which was accordance with franchisee-franchisor resulting on positive impact towards business triumph (Kerim Karmen, Olivier de la Villarmois, & Adel Beld, 2018). Therefore, knowledge and leadership skills influence the franchisors in managing the power and control franchisees innovatively and sustain the excellent relationship that has been developed earlier.

On the other hand, a descriptive survey method on the level of franchisee satisfaction and the level of control mechanisms was carried out by Tan et al. (2015) in Philippines. The result exposed that the level of outcome control, behavior control and social control were the positive mechanisms that satisfy both the franchisor and the franchisee (Tan et al., 2015). Overall, this study demonstrated that formal and informal factors influence the satisfaction level and control mechanisms perceived by franchisors and franchisees in their cooperative way of conducting the franchise business.

Ishida and brown (2011) proposed that through agency theory on monitoring perspective, they described that ease monitoring implemented by the franchisor on franchisees improves mutual understanding between them. It was perceived when both parties understand what values and objectives they would like to achieve together. Good quality of communication was the key factor which leads to successful and

increase the solidarity of franchisee towards franchisor. The data collection for this study was administered through a random questionnaire (Ishida & Brown, 2011). Thus, this study illustrates that excellent communication was a tool to monitor the franchise business as well as the franchisee which may crowd out the opportunistic behavior. Excellent communication was identified as one of the important skills in leadership management. To acquire this skill, no matter what, gaining knowledge was the key to achieve it. Table 2.3 below shows success and failure factors of management, power and control in franchising.

Table 2.3
Success and Failure Factors in Franchise Management, Power and Control

Factors	
Success	Failure
Mandatory purchase of inputs and products	Relationship dependence and expectations level
Mystery shoppers	Contractual design
Audits	Incongruence goal
Customer's poll	Aims for higher return
Flexibility	
Mutual understanding	
Knowledge	
Leadership skills	
Outcome control mechanism	
Behaviour control mechanism	
Social control mechanism	
Communication	

Source: Researcher's own work digested from the discussion

Although the previous studies presented bright ideas on the issue of management, which include monitoring and controlling in franchising, not all are suitable to be implemented in *mushārakah* and *muḍārabah*-based franchise. It is because the theory comes from a conventional perspective, whereas *mushārakah* and *muḍārabah* are propounded from Qur'ān, Sunnah, *Ijmā'* and other Islamic sources.

The literature review below generally discussed management and administration from Islamic perspective. Hassan Al-Banna et al. (2013) conducted a case study on some basic principles which improve the employee's satisfaction and the performance of the quality management system according to the Islamic perspective. The case study was held in Malacca. The study revealed that *Insāniyyah* values, characteristics of *Ihsān* based on Tawhidic values, management by *Syūrā* and culture of *Istiqa'mah* (high commitment) in every action are the basic principles for Islamic quality management. The objective of these principles is to promote job satisfaction in this world and to aim the pleasure of Mighty Allah (s.w.t) (*Mardātillāh*) in this world and the hereafter (Hasan Al-Banna Mohamed, Ab. Mumin Ab. Ghani, & Siti Arni Basir, 2013). Even though the study was not conducted in a franchise firm, the finding is relevant to be adopted in Islamic franchise business management.

Another interesting finding by Muwdudur Rahman and Muhammad (1992) proposed a framework on control and evaluation from Islamic perspective. The proposed framework was derived from the Qur'ān based on *Surah al-Nūr* (24: 55), where it promotes the employees' satisfaction which was motivated by own inner self objective. Whoever has a clear objective that all his good deeds considered as part of *'ibādah*, he will fully commit and satisfied with his work. The paper also highlighted that economic considerations derive the improvement and efficacy in the secular system, while in Islam, it comprises both the economic considerations and to obey the Creator (Allāh) (Mawdudur Rahman & Muhammad al-Buraey, 1992). The finding from this study provides an inspiration value that inner self-consciousness within an individual influence the actions in doing something, which also reflects the quality of the work.

Another similar work carried out by Golam Mohiuddin (2012) demonstrated a model of controlling management from Islamic perspective. The author explored on management and leadership criterion of Caliph Umar al-Khattab. Through the case study, the author verified that the elements of controlling in the Islamic perspective were based on self-fearing perception towards Allah and the aid of technology. Further, the author also described that control systems (i.e., performance appraisal) bent together with society's culture, values, norms, leaders and individuals. Thus, to produce an Islamic organization, it must be supported by inculcating Islamic culture, social values, organizational leaders, and employees (Mohiuddin, 2012).

Interestingly, Khaliq (2003) illustrated an Islamic management model based on six principles namely i) visionary leadership; ii) strategic management; iii) management of change; iv) fair treatment and social justice among the employees; v) sincerity and commitment, and vi) motivation based on merit. The principles were derived from the leadership criterion of the Prophet Muhammad and his companions. Besides, the author emphasized flexibility in implementing Islamic management principles according with the situation without compromising the tenets of Islam and Shariah (Khaliq A., 2003). In 2015, Azhar and Khaliq expanded the earlier finding to service quality management. The *tawhīdic* approach was being emphasized where all the good deeds of a person considered as '*ibādah*'. A case study on eight organizations operated in Malaysia were chosen. The authors administered semi-structured interviews. The *tawhīdic* concept such as Islam (submission to God), *īmān* (faith), *taqwā* (God consciousness), *iḥsān* (love for God), *haq* (truthfulness), *itqān* (Conscientiousness and good knowledge applied to all efforts), *sabr* (patience), '*ibādah* (worship of God), *ikhlāṣ* (sincerity), '*adl* (justice in thought and actions), '*ahd* (keeping promises), act as *khālifat-ul-ard* (vicegerent of Allah on earth), consider resources as Allah's *amānah*

(trust), objectives of *hasanah fī al-dunyā* (the rewards of this world), and *hasanah fī al-ākhirah* (the rewards of the hereafter), achieve *falah* through service to community, encouragement of ‘*amal-sālih* (virtuous acts), *niyyah* (intention), and *tawbah* (repentance) were the principles examined through the practicality of the organizations. The finding demonstrated that these principles, when transformed into practices and embedded in regulation, rites, and rituals resulting in creating Islamic environment, resulting in good Muslim behavior and a better employer-employee relationship. For example, attending congregational *zūhr* prayer was made compulsory to all staff (Azhar & Khaliq, 2015). The same findings on the study also been contributed by Yusof and Suhaimi (2011) in the same area.

Muhammad Mushraq et al. (2014) studied on the Islamic management system and its application in the 21st century world. The authors presented a model based on the principles of *falāh*, ‘*aml sālih*, *sabr*, ‘*adl*, *ikhlās*, *amānah* and *ihsān*. The model promotes on social welfare system rather than modern exploiting approaches. It emphasized on accountability of both parties, the employer and the employees, as the interest was to gain Allah’s blessing (Muhammad, Saghir, Munir & Tayyab Alam, 2014). The finding in this article provides win-win situation for both parties involved as it relies on the social welfare system. To achieve the success of the system, both parties should collaborate and cooperate in the best manner. This concept was similar to the Islamic concept of *ta ‘āwun*. This concept was the core principle in *mushārakah* and *muḍārabah* contract. Figure 2.3 below simplifies the above discussion on Islamic management.

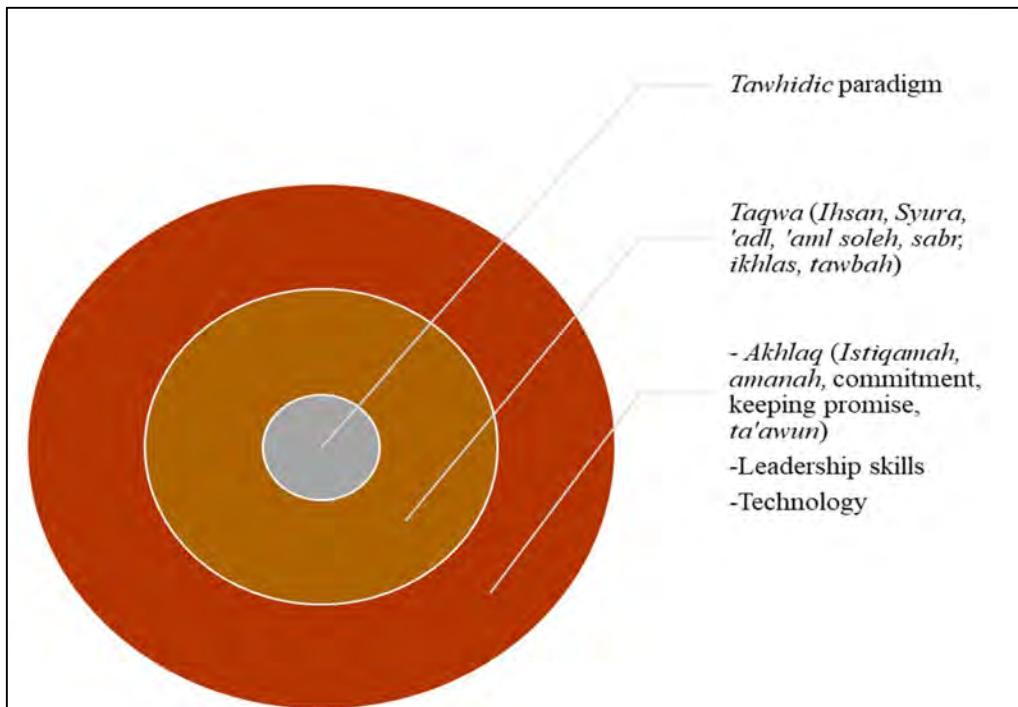


Figure 2.3
Management, Power, and Control Mechanism in Islamic Perspective

Thus, it can be concluded that the Western and conventional thought in management in the franchise business aims to gain success and improve profits. The effects promote on economics sustainability and worldly achievement. On the other hand, Islamic research on management did not focus on franchise business specifically. However, the finding can be adopted in the area as the basic understanding as there no fixed Islamic management system. The system comes with flexible mode congruent with the changes of time and space which acknowledging the principles of Islam and Shariah.

The next sub-chapter will represent on *mushārakah* and *mudārabah*.

2.7 Definition of *Mushārakah*

Mushārakah is an Arabic word denotes the meaning of “partnership”. *Sharaka* (شراكة) is the root word of *mushārakah* (Wan Mohamed Ali, 2012).

Literally, *sharikah* carries two meanings:

Mixing or *ikhtilāt*; where it denotes the meaning of mixing of the shares from the capital contributed. The mixing of the shares cannot be distinguished from one another. When two partners participate, they bring about the mingling of wealth (*khalīt*) and the wealth is held jointly by them.

The contract partnership itself as it is the cause of *khalīt*

Technically, *sharikah* means partnership which arises through a contract or through the mixing of wealth (Nyazee, 2006). Following that, the term *shirkah* or *sharikah* was the most recognized and used (Ibn Manzur, 1956). Al-Jaziri (1986) described that *shirkah* means the mixing of one property with another and it could not be distinguished between (al-Jaziri, 1986). While *jumhūr* recognized *sharikah* or *mushārakah* as a contract related to company even there was no mixture of shares takes place, as the contract is the cause of the mixture (al-Zuhaili, 1996).

The *fuqahā'* provide different definition towards *mushārakah*. The explanation in brief is as follows:

1. According to the *Mālikī* scholars, “*sharikah*” refers to the permissibility granted by both contracting parties to one another pertaining to the management of the shared property (Wan Mohamed Ali, 2012).
2. The *Hanbālī* scholars refers “*sharikah*” as the mutuality given to both parties in terms of eligibility of rights as well as rights to management (*taṣarruf*) (al-Zuhaily, 1996; Ibn Qudamah, 1999; Wan Mohamed Ali, 2012).

3. The *Shafi'i* scholars define “*sharikah*” as an entitlement of mutual rights of ownership of a particular item involving two or more persons (al-Zuhaily, 1996). This co-ownership is known also as *sharikah al-milk* (Wan Mohamed Ali, 2012).
4. The *Hanafī* scholars refer to “*sharikah*” as a contract for sharing capital and profit between two parties. Based on the various opinions mentioned above, the definition provided by the *Hanafī* scholars is the most relevant for this study since it specifically refers to *sharikah* as a contract, while other definitions focus on the purpose of contract and its implications (al-Zuhaili, 1996).

Based on the above definition by the scholars, it can be concluded that, the definition unable to covers all types of *sharikah* or *mushārakah*. This is the reason the juristic scholars divided the types of partnership into *sharikah al-ibāhah* (common sharing of things); *sharikah al-milk* (co-ownership); and *sharikah al-'aqd* (contractual partnership or partnership through contract) (Nyazee, 2006).

After the evolution of words, *shirkah* or *sharikah* carries the meaning of inclusion or partnerships or the merger of members (Ibn Manzur, 1994). *Sharikah* in the Arab countries is interpreted as partnerships or corporation. The term *sharikah musāhamah* is used to distinguished between the legal forms which means company or corporation (Nyazee, 2006). *Mushārakah* in the modern concept was implemented from the traditional *fiqh*-nominated partnership with some innovations (Wan Mohamed Ali, 2012).

According to Taqi Usmani (2000), *mushārakah* in the context of business and commerce explains on a joint company where all partners share profits or losses from

the same venture (Taqi Usmani, 2000). While Securities Commission Malaysia defined *mushārakah* as a partnership arrangement between two or more parties to finance a business venture whereby all parties contribute capital either in cash or in kind, while the profit will be distributed based on a pre-agreed profit-sharing ratio and the loss is based on basis of capital contribution (Wan Mohamed Ali, 2012).

Further, the Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI) stated that *mushārakah* is applicable only for contractual partnership (*mushārakah al-‘aqd*). *Mushārakah* is defined as a contract between two or more parties agree to combine their assets or properties or to merge their services or obligations and liabilities with the intention of making profits (Wan Mohamed Ali, 2012).

In the context of franchising, the definition outlined by the Securities Commission Malaysia is suitable to be applied. Hence, it can be concluded that, *mushārakah* is a contractual partnership comprises of two or more parties aim to generate profits which mingling together their assets and labor. The accumulated profit is distributed based on a pre-agreed profit-sharing ratio, while loss is based on capital contribution.

2.7.1 Legislation of *Mushārakah* from the Qur’ān

There is no dispute among the scholars regarding the validity of the *mushārakah* based on clear evidence from the Qur’ān, the Sunnah of the Prophet as well as the consensus of the scholars (*ijmā’*). In general, the validity of the *mushārakah* contract from the Qur’ān is derived from the following Qur’ānic verse:

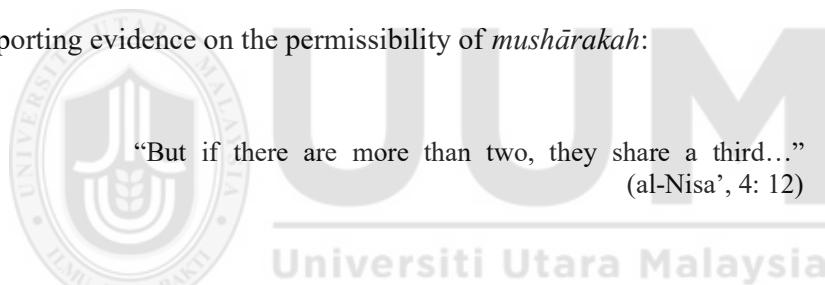
“.... And indeed, many associates oppress one another, except for those who believe and do righteous deeds – and few are they.”

(Al-Şād, 38:24)

The term “*khulatā*” in the above verse is translated as “*shurakā*” or partners. Ibn al-Humam explains “*ikhtilāt*” as a feature of property found in a mixed condition, thus defined as a mixture of property which cannot be separated or differentiated. Therefore, once both parties participated in the shares, simultaneously they are taking with them the mixture property (*khalti*). Hence, both partners together possessed the wealth (Ibn ‘Abidin, 1979).

In addition to the above-mentioned verse, the following verse may also serve as supporting evidence on the permissibility of *mushārakah*:

“But if there are more than two, they share a third...”
(al-Nisa’, 4: 12)



Even though the above verse specifically refers to the validity of partnership relating to inherited wealth, it has been agreed that the permissibility can be generally applicable to any partnership contracts.

2.7.2 Legislation of *Mushārakah* from the Sunnah

Evidence from the Sunnah of the Prophet as reported by Abu Hurairah in the following Ḥādīth *Qudsī* (Divine Revelation reported by Prophet Muhammad):

“I am the third of the two partners so long one does not cheat the other, and when he cheats, I withdraw myself”
(Hadith Abu Daud & al-Hakim), (al-Bayhaqī, 2003)

The hadith guarantees Allah's blessings on any partnership arrangement as long as all the partners remain honest and trustworthy as well as not cheating or betrayal one another. However, the blessings will be withdrawn in the presence of dishonesty or treachery which may lead to disputes and conflicts among the partners which resulting on the partnership might suffer losses and eventually failed. The importance of Allah's blessings is also highlighted in another hadith where the Prophet said that Allah's hand or blessings will remain as long both partners do not breach the trust given to one another (Ibn Qudamah, 1992).

2.7.3 Legislation of *Mushārakah* from *Ijmā'* (Consensus)

Generally, there is a consensus among all scholars relating to the permissibility of *mushārakah* arrangement. However, they differ in terms of the specific forms of *mushārakah* and the relevant conditions. The scholars are currently working on the detailed parameters of several types of *mushārakah* arrangements based on the principles derived from the Qur'ān, the Sunnah as well as the practice of the companions (al-Zuhaili, 1996).

2.7.4 Types of *Mushārakah*

Mushārakah is generally divided into two broad categories, namely property-based (*mushārakah al-amlāk*) and contract-based (*mushārakah al-‘uqūd*) (al-Zuhaili, 1996), while the *Hanafīs* come with one additional category known as *mushārakah al-ibāhah* (al-Misri, 2005). Figure 2.4 below shows several variants of *mushārakah* according to majority of *fuqahā'* including *Mālikī* and *Shāfi‘ī* jurists (Al-Zuhaili, 1996).

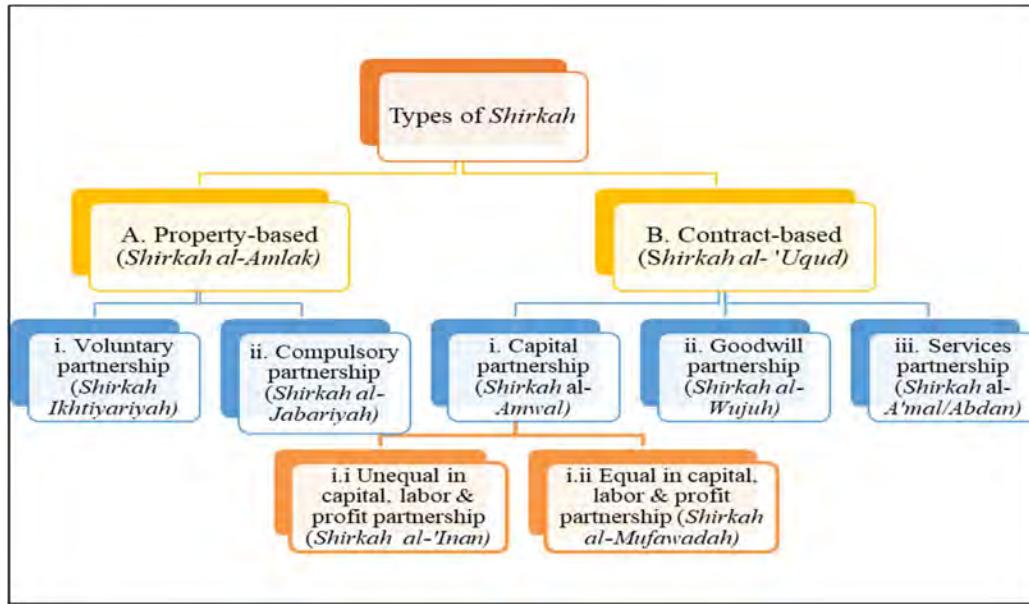


Figure 2.4
Variants of Mushārakah according to majority of fuqahā' including Mālikī and Shāfi‘ī jurists. Sources adopted from al-Zuhaili (1996)

2.7.5 General Terms of *Mushārakah*

Mushārakah al-‘uqud is commonly known and cited as *mushārakah*. There are several conditions for the different types of *mushārakah*. Some of these conditions are generally accepted by the scholars of the four schools, while some conditions are subjected to differences of opinions. The rules and conditions discussed below are the general rules and conditions for all types of *mushārakah al-‘uqud*.

1. The first general condition relates to capital. In principle, all scholars agree that capital in a *mushārakah* arrangement must be in the form of liquid asset such as gold (*dīnār*) and silver (*dirham*) which value can be accurately ascertained beyond doubt (Ibn Qudamah, 1992; al-Kasani, 1982). However, other form of asset such as commodity, bonds, shares, money market funds can be accepted subjected to the agreement of all partners and accurate assessment

of value needed to determine the proportion of capital being contributed to the partnership (al-Kasani, 1982; Taqi Usmani, 2000).

2. The second general condition relates to profit earned. Islam permits profit taking based on four stipulations. Firstly, it must be free from *ribā*; secondly, it must be free from unequal value resulting from the exchange of two items not known to the party suffering the losses when the contract took place the time of contract, known as *ghabn*; thirdly, it must be free from element of uncertainty or *gharār*, and fourthly, it must be free from element of monopoly, or *ihtikār* (Shamsiah, 2002).

In general, distribution of profit and losses in a *mushārakah* agreement is based on ratios of capital contribution (al-Jaziri, 1986). A *mushārakah* contract entails that profit to be shared by each partner must be accurately determined and mutually agreed by all partners when the contract is made. The rate of profit to be distributed is stated in terms of percentage or ratio (al-Jaziri, 1986). It should be noted that the *Hanbālī* scholars and the majority of *Hanafī* scholars allow the profit percentage rate to be different from the ratio of capital contribution provided that it is agreed upon by all contracting parties (Ibn Qudamah, 1992) and the fact that the additional increment in profit ratio is not in favor of a nominal or sleeping partner (al-Kasani, 1982). This condition must be fully observed to prevent future disputes due to certain uncertainties in the contract. On the other hand, the scholars from the four schools unanimously agree that losses resulting from *mushārakah* arrangement is determined based on the ratio of capital contribution of each partner (Ibn Qudamah, 1992).

The third general principle states that the partnership must involve in business which is permissible under the Shariah. In addition, the purpose of doing business must be valid according to the Shariah law and does not involve activities that are prohibited by Allah.

Mushārakah al-amlā' refers to mutual ownership among two or more persons who share ownership several assets in the absence of partnership agreement or *mushārakah* contract (al-Jaziri, 1986). This occurs due to various situations involving inherited property, gift (*hibah*) or purchase contract. In this instance, the two persons receiving the inheritance or gift in the form of land or other property which may or may not be divided. The said persons must share the gift or inherited wealth or its resulting income according to stated proportion until they have made the decisions to divide the said wealth or gift. Specifically, there are two types of *mushārakah al-amlā'*; *mushārakah ikhtiyāriyyah* (voluntary) refers to a situation where both parties continue to share the ownership of a divisible property, while *mushārakah jabariyyah* (no options) include those cases involving inseparable property or due to constraints of mutual ownership. Since each partner in a *mushārakah al-amlā'* arrangement is only responsible for his own share of the partnership, therefore a partner cannot represent other partners without their consent (al-Zuhaili, 1996).

Another type of *mushārakah* is *mushārakah al-‘uqūd*, which the *Hanafī* scholars refer to as a contractual relationship between two or more persons to share wealth or property and the resulting profits (al-Zuhaili, 1996). In general, *mushārakah al-‘uqūd* can be described as a contract of mutual agreement between two or more persons to share capital and profit (Ibn al-Humam, n.d.). The *al-Shāfi‘ī* scholars categorized *mushārakah* into four types; namely *mushārakah al-‘inān*, *mushārakah al-*

mufāwadah, *mushārakah al-abdān* and *mushārakah al-wujūh* (al-Sharbini, 1958).

Among these four types, *mushārakah al-‘inan* is accepted by the *Shāfi‘ī* scholars. They rejected the other three as invalid and void (Ibn Rushd, n.d.). The *Shāfi‘ī* scholars view the concept of *sharikah* from the aspect of management (*taṣarruf*) on something specific and concrete compared to other contractual aspects.

Continuing the discussion, *mushārakah* is an agreement whereby two or more persons agree to contribute a certain amount of capital to obtain the right to administer the asset as well as mutually agreed proportion of income, while losses will be shared based on contribution of capital (Sabiq, 1999). Each of the partner verbally permit each of them to take part in managing (*taṣarruf*), failure to do so resulting to in valid *mushārakah* (al-Jaziri .-R. , 1986). In addition, the implementation of *mushārakah ‘inān* does not demand equal capital contribution, *tasarruf* and distribution of earnings. In other words, it is permissible to have unequal contribution of capital as well as unequal managerial participation from the partners. Similarly, *mushārakah ‘inān* arrangement also offer flexibility in the distribution of income, which can be equal for all partners or can be based on a mutually agreed proportion (Sabiq, 1999). In a nutshell, there is a consensus as to the permissibility of *mushārakah* in general; however, the scholars differ in their opinion relating to the specific conditions such as the nomenclature used (al-Zuhaili, 1996).

On the other hand, the *Ḥanafī* scholars view this type of *mushārakah* as *mushārakah al-amwāl*. This type of *sharikah* occurs when two or more capital providers contribute certain amount for investment purposes in a proposed venture. Each partner will be awarded from the income earned based on mutually agreed proportion (al-Sarakhsi, 1978). *Mushārakah al-amwāl* in general refers to an agreement between two or more

capital providers to share capital as well as the resulting income or losses in a specific business venture. *Mushārakah al-amwāl* in the form of ‘*inān* has long been practiced before Islam. The *Qurāish* were known to share their wealth and property together with related rights and obligations based on this *mushārakah* arrangement (al-Sarakhsī, 1978).

On the other hand, another type of *mushārakah*, which is known as *mushārakah mufawwadah* which literally means equal, is formed when there is equality in capital contribution, profit distribution, proportion of management involvement and other related matters. From the perspective of terminology, *mushārakah mufawwadah* refers to a situation where two or more persons agree to work together in a venture with the condition that they have equal share in capital contribution, management participation and religion. Each partner becomes a guarantor (*kafīl*) for one another in terms of the company’s business rights. Each partner is equally responsible for the partnership. In conclusion, the main condition for this type of *mushārakah* is equal participation in terms of capital contribution, managerial input, tasks, responsibilities, and debt liability (Ibn ‘Abidin, 1979). According to *al-Shāfi‘ī*, the term can be defined as initiating mutual conversation, or derived from the term *fawdā* which is used to describe people (al-Sharbīnī, 1958). The scholars differ in their opinion regarding the application of this *mushārakah mufawwadah*. It is generally accepted by both the *Hanafī* and *Mālikī* scholars (al-Zuhailī, 1996).

Another type of *mushārakah* is known as *mushārakah al-wujūh*. This type of partnership is formed based on goodwill or creditworthiness. The company established under *mushārakah al-wujūh* does not require capital since the partners will buy the goods on a credit arrangement or deferred payment and later sell the merchandise for

profit, which will then be divided among the partners (al-Jaziri, 1986). The practice of granting credit to those with high degree of creditworthiness is common in the business community. *Mushārakah al-wujūh* is acceptable among the *Hanafī* and *Hanbālī* scholars, while the *Mālikī* and *Shāfi‘ī* scholars reject this type of *mushārakah* (al-Zuhaili, 1996).

Mushārakah al-a‘māl or *al-abdān* exist when two or more persons share labor and effort in a specified project or task or service. This type of partnership does not require financial capital. The partners will divide the profit according to the mutually agreed terms of the contract (al-Zuhaili, 1996). For instance, the collaboration between an architect and an engineer in providing consultation services. The *Hanafī*, *Mālikī* and *Hanbālī* scholars allow the practice of *mushārakah al-a‘māl*, while the *Shāfi‘ī* scholars reject this type of *mushārakah* (al-Zuhaili, 1996).

Table 2.4
Differences Opinions of Four School of Thoughts Concerning to Recognition of Shirkah

<i>School thoughts</i>	<i>of Mushārakah al-‘inān</i>	<i>Mushārakah al-Mufawwadah</i>	<i>Mushārakah al-Abdān</i>	<i>Mushārakah al-Wujūh</i>
Shāfi‘ī	/	X	X	X
Hanafī	/	/	/	/
Mālikī	/	/	/	/
Hanbālī	/	X	/	/

Source: Researcher's own work.

Therefore, based on above discussion, it can be concluded that the application of *mushārakah* is generally permissible based on the evidence from the Qur’ān, Sunnah and *Ijmā‘*. However, the scholars differ in their opinion regarding the types and

detailed conditions of *mushārakah* arrangement. This difference is due to two reasons. Firstly, majority of *fuqaha* divided *mushārakah* into two categories; *mushārakah al-milk* and *mushārakah al-‘aqd*, whereas some of the *Hanafīs* jurists add on one more category known as *mushārakah al-ibāhah*. Secondly, the jurists were differed in their methodologies and thoughts in discussing the topic. Majority of the *fuqahā* made a thorough discussion on the topic as a whole part, while the *Shafī‘ī* is only made into attempt *mushārakah al-‘inān* in their discussion.

2.7.6 Termination of *Mushārakah*

In general, *mushārakah* contract falls under non-binding arrangement (*ghayr lāzim*), which means that each partner can withdraw himself along with his contribution from the partnership. In addition, the following general matters that will invalidate the *mushārakah* contract (al-Zuhaili, 1996):

1. When the objective of partnership is achieved and the profit has been distributed among the partners. Any losses, if any, should be distributed according to the ratio of capital contribution.
2. The partnership has been terminated by one of the partners. Termination can occur because *mushārakah* contract is an executable contract (*‘aqd jāiz*) but not binding (*ghayr lāzim*).
3. When one of the partners of the partnership *mushārakah h* dies, the *mushārakah* contract will be terminated/void/cancelled. Death of the partner automatically lead to loss of ownership along with the right to involve in management. Furthermore, death of a partner will terminate the contract with

or without knowledge of the other partners. This is because when a partner is a representative of one another, the death of one will invalidate the contract regardless irrespective of knowledge of the partner. Death causes a legal deprivation of power (al-Zuhaili, 1996). Nonetheless, the heirs can replace the deceased partner with the approval from all partners (Ayub, 2007).

4. One of the partners become apostate and leave for enemy country. This situation is treated similarly to case of death.
5. One of the partners become crazy permanently. This situation is treated similarly to case of death of a partner. In other words, the crazy partner is no longer qualifies to be a representative of other partners (al-Zuhaili, 1996).
6. When the total capital of the *mushārakah* is destroyed or lost.
7. When one of the partners is obstructed from performing his rights over his own share (Ayub, 2007).

Nonetheless, contemporary scholars discussed the possibility of *mushārakah* agreement to be continued despite of death, insanity, or apostasy of a partner when the *dhimmah* (liability) of the *mushārakah* is based on the partnership entity, and not on each partner on an individual basis. They agreed that the concept of *dhimmah* should be under the responsibility of the *mushārakah* entity to avoid from contract termination.

In principle, *dhimmah* can only be accepted on human being as *al-shakhsiyah al-tābi'iyyah* (natural person or a real human being) whose existence and personality can

be determined. In other words, the inherent characteristics of human being enable them to obtain rights and to accept responsibilities. Thus, implying these special characteristics cannot be conveyed to a non-living or non-human being. Nonetheless, due to public interest, a company is treated as *al-shakhsiyah al-i 'tibāriyyah* (fictitious person or legal entity) which enable it to accept *dhimmah mustaqillah* or independence to enable it to accept responsibility on its own (al-Zuhaili, 1996). These needs were not derived from the Qur'ān nor the Sunnah but were based on the needs (*maṣlahah*) to facilitate the interest of the society (Khaffif, t.t.).

Therefore, the Islamic jurisprudence acknowledge the rights of ownership (other than the rights of Allah) in religious matters which is divided into two types of personality or ownership entity, namely; *al-shakhsiyah al-tābi'iyyah* (natural person or a real human being) or *al-shakhsiyah al-i 'tibāriyyah* (fictitious person or legal entity) (al-Zuhaili, 1996). The need of *al-shakhsiyah al-i 'tibāriyyah* to exist is by considering the permissibility of *mushārakah* arrangement to enjoy *shakhsan ma 'nawiyān mustaqillan* or the invisible personal rights towards all the partners' legally. *Shakhsiyah al-i 'tibāriyyah* enable *mushārakah* to obtain the specific rights (liability) to property or *dhimmah māliyyah khāṣṣah* (Khayyat, 1994). This provision indirectly provides the legal backing to give additional life for the *mushārakah* venture to accept certain rights and perform certain responsibilities (Khayyat, 1994). There is no evidence from the Qur'ān or the Sunnah which prohibit a *mushārakah* from accepting *dhimmah mustaqillah* (Khayyat, 1994). Furthermore, the *Shafi'i* book does mention that a mosque as an institution is conceptually a form of *al-shakhsiyah al-i 'tibāriyyah* which enable the mosque to obtain *dhimmah mustaqillah* through property ownership on its own capacity and to accept waqf (Ramli, 1938). This provides additional support for the permissibility of granting *dhimmah mustaqillah* to an established *musharakah*.

venture. Consequently, the *mushārakah* venture will obtain full ownership rights of all property initially contributed by the partners.

The partners will no longer own the property of the *mushārakah* venture. Rather, their ownership will be indirect in the form of shares of the partnership along with the resulting profit earned from the *mushārakah* venture. They will only get back their contribution in the event of liquidation of the venture (Khayyat, 1994). This right is a form of transferrable personal rights. In the event of liquidation, the venture will lose its right of *al-shakhṣiyah al-i 'tibāriyyah*, thus returning the rights back to the partners of the *mushārakah* (Khayyat, 1994).

2.7.7 Application of *Mushārakah* in Franchising

Recently, the application of *mushārakah* contract has been extended to the entrepreneurial area, specifically in the franchise business sector. As mentioned earlier, there is one master's dissertation focusing on the application of *mushārakah* in the Indonesian education franchise sector, specifically the Jarimatika franchise (Hadi, 2015). In this arrangement, both the franchisor and the franchisee agree to contribute capital providing that 60% of the profit given to the franchisor and 40% to the franchisee. The franchisee contributes financial capital encompasses of the initial license fee, while the franchisor contribution is in the form of the educational program, material preparation, training and courses which can be valued in financial value (Hadi, 2015). It appears that Jarimatika franchise is applying *mushārakah al- 'inān*. Nonetheless, the franchisee must pay royalty to franchisor. Besides, a penalty mechanism is imposed to franchisee due to non-compliance to certain obligations agreed upon in the contract or delay in paying certain charges to the franchisor (Hadi, 2015). Thus, even though the pillars seems to resemble *mushārakah al- 'inān*

arrangement, its implementation however does not yet purely comply with *mushārakah*.

Mushārakah is potentially can be promoted as an alternative contract in the franchise business. *Mushārakah al- 'inān* is proposed to be the basis of establishing *mushārakah*-based franchise. This is due to its flexibility which enable two or more persons who agree to contribute a certain amount of capital to obtain the right to administer the asset as well as mutually agreed proportion of income, while losses will be shared based on contribution of capital (Sabiq, 1999). Each of the partner verbally permit each of them to take part in managing (*taṣarruf*), failure to do so resulting to in valid *mushārakah* (al-Jaziri '.-R., 1986). Interestingly, the implementation of *mushārakah al- 'inān* does not demand equal capital contribution, *taṣarruf* and distribution of earnings. In other words, it is permissible to have unequal contribution of capital as well as unequal managerial participation from the partners.

Similarly, *mushārakah al- 'inān* arrangement also offer flexibility in the distribution of income, which can be equal for all partners or can be based on a mutually agreed proportion (Sabiq, 1999). Therefore, it complies with the nature of the franchise business where franchisor may contribute financial capital either in financial form or in non-financial form such as expertise, brands, providing training and consultation, in condition that all these should be made known its monetary value before concluding the contract, and mutually agreed by all members. Having consider on the contribution of the franchisor on the matter which indirectly the franchisee benefits from this arrangement, the franchisor entitle to earn higher profit compared franchisee. The reason is because the partnership comprises of initial effort of the franchisor in sustaining the business until it is well-known. The franchisor has work hard, facing up

and down time to establish its reputation. Therefore, it is reasonable for franchisor to earn more compared to franchisee regardless of their capital contribution. However, losses will be shared according to ratio of capital contribution by the parties.

Furthermore, *mushārakah al-‘inān* also allow the various form of capital contribution either it is made on tangible or intangible capital. In the franchise setting, franchisee contributes in financial form such as in cash, while the franchisor contributes capital in the form of trade mark, business format, product, preparation of training and courses, as well as other form of asset which can be valued in financial value. Under these circumstances, the *Mālikī* School appears to be more practical and suitable with the franchise nature. The *Mālikī* scholars allow *mushārakah* investment in the form of merchandise (goods) except food stuff that is measurable. In *mushārakah* arrangement, the value of goods contributed as capital will be estimated for its monetary value as it is related in determining the share of each partner in profit, losses and labor put in the partnership.

Corporate name, trade mark, literary produce, innovation, and discovery are intangible asset which is accepted as capital in condition that it is measurable to find its monetary value. These intangible assets are recognized by the Shariah law (Bouheraoua, Mohamad, Kasri, & Abdullah, 2015). For example, franchisor is acceptable to contribute capital in the form of intangible asset once the asset has been valued by a trusted appraiser, while the franchisee contributes capital in the form of cash.

Looking from the financial risk aspect, both the franchisor and the franchisee will be more responsible and careful in their decision making since both parties contribute capital to the business. Besides, all parties are entitled to intervene together in

managing the business. It is obvious that the franchisor who owns the trade mark of the business will strive for the best in the success of the business and safeguard his reputation. On the other hand, the franchisee will also be responsible and committed to ensure that business will prosper and able to generate profit as he also contributes capital to form the partnership. Briefly, it is notable that the franchisor and the franchisee are mutually share capital, management, profit, and losses as well jointly bear the risks associated with the business. More importantly, the *mushārakah* contract is lies on the principle of honesty, trustworthiness in carrying out the responsibility as each partner is a representative of one another. For the same reason, any risk which may lead to losses must be avoided in the attempt to sustain the harmonious relationship between both partners.

Furthermore, the nature of franchising emphasizes on controlling aspect to ensure high quality, thus maintaining the good reputation of the franchisor. To achieve this, the franchisor as the partner and the owner of the business trade mark has the right to set certain conditions (*taqyid*) to franchisee. For example, the franchisor can clearly specify specific terms during the initial agreement to ensure that the franchisee fully comply with the said condition determined by the franchisor.

In a nutshell, the feasibility of *mushārakah*-based franchise to be promoted as alternative contact in the franchise industry is possible. However, some aspects should be carefully reviewed to ensure fairness to all contracting parties simultaneously observing the concept of franchising.

2.8 Definition of *Mudārabah*

Mudārabah is derived from the phrase “*al-darb fi al-ard*” which means to embark on a journey or to travel (Ibn Manzur, 1994) seeking the bounty of Allah (Nyazee, 2006).

Long time ago, this type of partnership requires one of the partners to embark on a long and far away journey for business and trading purposes (Ibn Manzur, 1956).

Accordingly on his travel and work, the *muḍārib* (worker or entrepreneur) is entitled to enjoy his part of profits from the venture (Nyazee, 2006). Some of the *Hanafī* and *Hanbālī* scholars use the term *mudārabah* while the *Mālikī* and *Shāfi‘ī* scholars use the term *qirād*. Another term used by other classical scholars is *muqāradah*. Both *qirād* and *muqāradah* originated from the word *qarada* which means cut. This is because the capital provider (*sāhib al-māl*) cut part of his wealth for the purpose of trading (al-Zamakhshari, n.d.).

2.8.1 Classical and Contemporary Definitions of *Mudārabah*

The *Hanafī* jurists described *muḍārabah* as a profit-sharing contract with capital from one party and work from the other. The contract is initially considered as a *wadi‘ah*, followed by a *wakālah* while the business is in progress. Finally, a partnership emerged upon accumulation of profits (Wan Mohamed Ali, 2012).

According to the *Hanbālis* jurists as stated by Ibn Qudāmah, who quoted from al-Khirāqī, *muḍārabah* is the participation of body and wealth (Nyazee, 2006). The *Hanbālis* later defined *muḍārabah* as an agreement between a person who places his capital with another who later trade with it, with the purpose of sharing the profit on agreed distribution ratio (Wan Mohamed Ali, 2012).

The *Malikīs* scholars defined *mudārabah* as “*qirād* as an agency for trading in delivered cash for part of the profits if their extent is known”. While the *Shāfi‘ī* defined *qirād* and *mudārabah* as a contract comprising of agency by the owner to another by giving him wealth to be traded with it and later share its profits. (Nyazee, 2006)

On the other hand, Muhammad Taqi Usmani as the contemporary scholar defined *mudārabah* as a partnership where one party provides capital (*sāhib al-māl*) to another (*mudārib*) for investing in a commercial enterprise (Wan Mohamed Ali, 2012). Similarly, *Majallat al-Ahkām al-‘Adlīyah* refers *mudārabah* as a type of *sharikah* where wealth is contributed from one side, while labor from the other side (Nyazee, 2006).

While Securities Commission Malaysia stated *mudārabah* as a contract involving two parties; the capital provider (*sāhib al-māl*) and an entrepreneur (*mudārib*) to venture in a project based on the Shariah principles. Profit from the investment will be divided accordingly based on the pre-agreed ratio at the commencement of the contract. However, any losses will be fully borne by the capital provider.

The term *mudārabah* refers to cooperation between two or more parties, specifically the capital provider (*sāhib al-māl*) and the entrepreneur (*mudārib*) to undertake a business venture for the purpose of making profit. The profit from the partnership will be distributed according to a mutually agreed ratio, while any losses is borne by the capital provider. This is because the entrepreneur had suffered in terms of labor, time, and effort. Nonetheless, the entrepreneur will be responsible for losses due to his

misconduct (*ta‘addī*), negligence (*taqṣīr*) or breach of contract terms (*mukhālafat al-syuruūt*) (al-Jaziri, 1986).

Based on the above discussion of definitions, it can be concluded that *mudārabah* comprises of the concept of *sharikah* where the mingling (*khalt*) of things in the contract is not verified or visible. The *mudārabah* contract involves one party provides capital or act as an investor, and another party provides labor which aims to acquire profits.

2.8.2 Legislations of *Mudārabah*

All scholars of the four schools of thought agree that *mudārabah* contract is lawful and permissible under the Islamic law. The permissibility is supported by evidence derived from the Qur’ān, Ḥadīth and *Ijmā‘* (consensus among the scholars).

There are a few verses from the Qur’ān which provide explain about *mudārabah*:

“...and others travelling throughout the land seeking (something) of the bounty of Allāh ...”

(al-Muzzammil, 73:20)

The term *yadribūna* from the above verse is the origin of the term *al- mudārabah* which means exerting effort through travelling, time, labor, and idea (al-Kasani, 1982).

In another verse, Allah swt says:

“And when the prayer has been concluded, disperse within the land and seek from the bounty of Allāh, and remember Allāh often that you may succeed.”

(al-Jumu‘ah, 62: 10)

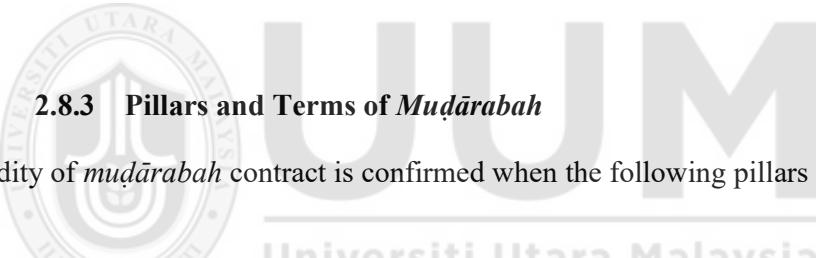
This verse encourages the Muslims to travel in carrying out commercial and trading activities in the pursuit of making a living. Even though these sentences do not specifically focus on *mudārabah*, the scholars have derived the permissibility of *mudārabah* from the phrase referring to those who travel for the purpose of trading and making lawful earnings (al-Kasani, 1982). Thus, gaining profit through the *mudārabah* mechanism is considered as part of effort to gain lawful earnings.

The permissibility of *mudārabah* is derived from a hadith narrated by Ibn Abbas. The hadith refers to a situation where Abbas Ibn al-Mutalib specifically stated his conditions to the *mudārib* when he contributed his capital, the entrepreneur is prohibited from going across the ocean, across the hillside and buy a sick animal as well the need to pay compensation in case of failure to comply to the terms. Ibn Abbas then relates the story to the prophet, and the prophet gave his approval of the practice (al-Zuhaili, 1996). This type of *mudārabah* is known as *mudārabah muqayyadah* (restricted *mudārabah*). In particular, the capital provider (*sahib al-mal*) is allowed to set specific conditions to the entrepreneur in running the business. In other words, the entrepreneur is restricted from performing any activities beyond those stipulated by the capital provider (al-Kasani, 1982).

In another hadith narrated by Ibn Majah, the Prophet Muḥammad said: “There are three things that are blessed, namely differed sale, *muqāradah* (*mudārabah*) and to mix wheat and barley for household need but not for sale”. Furthermore, before being appointed as the final messenger, he used to cooperate in a *mudārabah* contract with Siti Khadijah, whereby Siti Khadijah was the capital provider and merchandise to the prophet as well as other persons for trading purposes. As the *mudārib*, the Prophet was given the responsibility to run the business. Profits earned from the partnership

will be distributed among the capital provider and the *mudārib* based on mutually agreed ratio. This form of partnership is a common practice and become a tradition among the Arab during pre-Islamic era (Sulaiman, 2008).

In a nutshell, the above evidence indicates that *mudārabah* has been long a long tradition among the Arabs. Even the companion and the Prophet Muḥammad himself was involved in the *al-qirād* system or *mudārabah*. Furthermore, there is no evidence which indicates disapproval against *mudārabah* contract. Thus, the companions unanimously agree as to the permissibility of the *mudārabah* arrangement from the Shariah perspective. Consequently, the Muslims accept *mudārabah* arrangement based on the consensus of the companions, known as *ijmā‘*.



2.8.3 Pillars and Terms of *Mudārabah*

Validity of *mudārabah* contract is confirmed when the following pillars are fulfilled:

1. The contracting parties namely the capital provider (*ṣāhib al-māl*) and entrepreneur (*mudārib*)

The contracting parties of the *mudārabah* contract can be accountable, free from *mu‘āmalāt* restrictions, and has the capability in *al-wakālah* (agent). In general, the contracting parties must be fully qualified in terms of membership but not required to be attained the age of maturity, a Muslim and an independent. It is also permissible for *mumāiyiz* (capable of distinguishing) person, slave, *kāfir dhimmi*¹ and *kāfir musta‘min*²

¹ *Kāfir dhimmi* refers to a non-Muslim subject (often a Christian or Jew) who lives under an Islamic state and is granted protection (*dhimmah*) in exchange for paying a tax known as *jizyah*. They have certain rights and responsibilities within the Muslim community.

² *Kāfir musta‘min* refers to a non-Muslim who has been granted temporary safety or protection while visiting or residing in a Muslim territory. This status can be due to a treaty, diplomatic relations, or other agreements that ensure their safety.

. Nonetheless, if one of the partners who are deemed with stupidity was allowed to administer the wealth, the contract become invalid (al-Zuhaili, 1996). Additionally, the *mudārabah* contract does not limit the partnership to Muslims only, thus allowing *muḍārabah* contract with non-Muslims such as *kāfir dhimmī* or those non-Muslims who live in Muslim countries (al-Kasani, 1982).

2. Capital (*rā's al-māl*)

Most scholars are on the opinion that capital must be in the form of cash such as gold and silver, and not in the form of commodity which the value fluctuates with the passage of time and place (al-Kasani, 1982). Immovable and movable assets are not acceptable as capital due to the possibility of uncertainty (*gharār*) which may lead to difficulty in determining the resulting profit and loss in the future (Ayub, 2007; al-Zuhaili, 1996). This may lead to later disputes among the contracting parties.

Nonetheless, there are some scholars such as Ibn Abi Layla and al-Awza‘ī who in view that capital does not necessarily be in the form of cash, it could be in the form of goods which can be financially valued. Assessment and determination of the goods value must be mutually agreed at the time of the contract. More importantly, the goods must be present at the time when the contract is sealed. In addition, debt between partners cannot be accepted as capital in *muḍārabah* arrangement. For instance, capital provider's money in the form of debt by the entrepreneur is forbidden to be included as capital in the *muḍārabah* contract (Ibn Qudamah, 1992). However, some scholars allow using debt as capital subjected to approval of the capital provider (al-Kasani, 1982). Both capital and profit must be clearly determined using a specific method to ensure accuracy of profit calculation. Capital must be immediately submitted to the

entrepreneur to enable him to start working on the business (al-Kasani, 1982; al-Zuhaili, 1996). On the other hand, the Hanbali scholars do not require the submission of capital to the entrepreneur, thus allowing the entrepreneur to start running the business even though the capital still remain with capital provider (Syarbini, 1958; al-Zuhaili, 1996).

3. Effort or Project ('*amal* or *masyrū*)

The effort or project carried out by the entrepreneur execute must be well-defined, legal from the Shariah perspective and mutually agreed by all contracting parties. In general, there are two types of *muḍārabah*, namely; *muḍārabah muṭlaqah* (unrestricted *muḍārabah*) and *muḍārabah muqayyadah* (restricted *muḍārabah*).

Unrestricted *muḍārabah* occurs when the capital provider allows the entrepreneur to manage the business venture without stipulating the details such as type of business, location, time, method of payment, and others. The entrepreneur is given full freedom to manage the business based on trust that he is the expert in the business venture. Even this type of *muḍārabah* is unrestricted, some of the *Shāfi'i* and *Hanbālī* scholars stated that the entrepreneur needs the capital provider's approval in matters relating to providing financing or taking any form of financing (al-Zuhaili, 1996).

Under a restricted *muḍārabah* arrangement, the capital provider determine specific conditioned on the arrangement such as type and duration of investment, location and specific types of goods deemed to be of benefit to the *muḍārabah* activities. The criterion used in determining whether the restrictions are beneficial or otherwise is based on '*urf* or custom or common practice in the industry. If the restrictions are deemed beneficial, then they will be allowed. If found otherwise, the *muḍārabah*

contract is considered not exist (Nasri Md. Hussain, Nasri Naiimi, & M. Sollehudin Shuib, 2013).

4. Profit ratio (*ribh*)

All contracting parties in a *mudārabah* contract is required to mutually agree to the ratio of profit at the time of the contract is concluded. Distribution of profit is based on percentage or in the form of fraction such as $\frac{1}{2}$, $\frac{1}{3}$ or $\frac{1}{4}$ as mutually agreed by all partners (Syarbini, 1958). The absence of profit rate distribution will invalidate the *mudārabah* contract. It should be noted that the profit ratio may be changed later as long as both capital provider and the entrepreneur agree to the changes. More importantly, profit should not be in fixed amount based on the capital because it can lead to *ribā*. The basis of *mudārabah* calculation will be counted at the time of capital inflow and investment starts (al-Zuhaili, 1996; Nasri Md. Hussain, Nasri Naiimi, & M. Sollehudin Shuib, 2013).

5. Verbal offer and acceptance (*sīghah*)

Mudārabah is a sharing arrangement between *mudārib* as the entrepreneur and *sāhib al-māl* as the capital provider. Both parties must indicate approval to offer and accept the *mudārabah* contract. All terms stipulated in the contract should be made clear to both parties, and then is approved before signing the contract. The details of the agreement must be documented to serve as evidence to avoid future disputes. The signing session must be accompanied by witness as additional precautionary measures to strengthen the contract. *Mudārabah* agreement can be cancelled any time before the entrepreneur start working on business (al-Zuhaili, 1996).

2.8.4 Termination of *Mudārabah*

A *mudārabah* which has not yet started is known as non-binding contract (‘*aqd ghāyr lāzim*). Thus, it may be cancelled by giving notice to the other partner. Cancellation or termination of *mudārabah* contract may occurs in the following circumstances:

1. Negligence on the part of the entrepreneur such as mismanagement of capital or executing actions which violate the objective of the *mudārabah* arrangement. Under this circumstance, the *mudārabah* contract is void and the entrepreneur is accountable for the loss of capital.
2. Death of the capital provider or the entrepreneur.
3. *Fasakh*, restraining from managing the business or loss of authority.
4. One of the contracting parties become insane.
5. Destruction of property or capital under the responsibility of the entrepreneur.

When the *mudārabah* arrangement comes to an end, the entrepreneur must immediately liquidate the capital to return to the relevant party such as heirs, trustee and the like (Ayub, 2007; Nasri Md. Hussain, Nasri Naiimi, & M. Sollehudin Shuib, 2013).

2.8.5 Application of *Mudārabah* in Franchising

The feasibility of *mudārabah*-based franchise as an alternative contract in franchise setting lies on the principle of trustworthiness. Trust and honesty are the essential elements of a *mudārabah* contract. As mentioned earlier, Prophet Muhammad saw stressed on the importance of not to betray each other in the partnership which includes

cheating and breach of trust. The *ḥādīth Qudṣī* explains that Allah becomes the third person between the partners in a partnership and His blessings will remain with the partners as long as both partners remain faithful to the terms of the contract. If one of the parties breach the trust, Allah's blessing will be withdrawn because Allah will no longer be with the partnership. The element of trust is highly emphasized in *muḍārabah* since the capital provider (*sāhib al-māl*) has given his full trust to the entrepreneur to invest the capital for making profit. In this instance, *sāhib al-māl* has put his capital at risk since profit is not guaranteed and there is possibility of loss.

The *muḍārabah*-based franchise was applied by Ayam Bakar Wong Solo in Indonesia in food and beverage sector. The partnership involved the Ayam Bakar Wong Solo as a manager (*muḍārib*) and franchisees as investors (*sāhib al-māl*) and the revenue from the activity is divided accordingly as been agreed upon. The Ayam Bakar Wong Solo offers two model of *muḍārabah*, namely *muḍārabah mutlaqah* and *muḍārabah muqayyadah*. This practiced concluded that it is suitable with the nature of franchise business and comply with *muḍārabah*'s pillars. In addition, no franchisee fee and royalty been imposed as it is substitute by profit-and-loss sharing basis (Taufiqur Rahman, 2015).

Muḍārabah mutlaqah occurs when *sāhib al-māl* (capital provider) lacking of skills, expertise, and management. Therefore, the *muḍārib* (manager) is the franchisor who handles all the business management. This model suits those who has financial ability but deficient in skills and expertise. While in *muḍārabah muqayyadah*, the *muḍārib* (franchisee) is given rights to own and manage the new franchise outlet following the ABWS's standard. The rights were granted for 5 years. The franchise rights include trademark, design and decoration, food decoration, facility, business operation manual,

managerial aspect such as accountancy, marketing, advertising, and right to accommodate the facility to live (Taufiqur Rahman, 2015). Capital in this context was provided by the franchisee (*mudārib*).

The uniqueness of applying *mudārabah* in the franchise system can be seen in the following scenarios. In the first scenario, the franchisor can act as the capital provider (*sāhib al-māl*), while the franchisee will be the entrepreneur (*mudārib*) who utilize the capital to manage the franchise business. In the second scenario, the franchisor become the entrepreneur (*mudārib*) and the franchisee plays role as capital provider. Thus, both situations are applicable depending on the existing circumstances occurred between them.

In the first scenario, the situation seems to risking the franchisor's franchise business. This is due to the full trust given by the franchisor as the capital provider as well as the owner of the franchise business to the entrepreneur (franchisee) in managing the business. Trust as the core element serves as the essence of partnership to ensure the good reputation or image of the business is not destroyed. Thus, the franchisor by any means is required to carefully select only qualified franchisee as *mudārib* to be appointed as his partner. This is in line with the following Qur'ānic verse:

“O you who believed, do not betray Allah and the Messenger or betray your trusts while you know (the consequence).”

(al-Anfal, 8: 27)

According to Ibn Kathīr, the phrase “*wa takhunū amānātikum*” means *amānāt* based on the interpretation by Ibnu Abbas. *Amānāt* refers to obligatory deeds which Allah

has stipulated on human being. While the phrase “*lā takhūnū*” means not to take lightly, be lazy and ignore those responsibilities given by Allah (Zulkhairi Muhamad, 2015). Thus, an honest and trustworthy partner is an essential element in the formation of *mudārabah* under this situation.

With respect to the capital arrangement, most scholars agree that the capital must be in cash. Movable and immovable assets are not acceptable due to the difficulty to accurately determine the amount of its value, affecting the difficulty to determine the profit and loss ratio. However, the *Hanāfi* and *Hanbāli* scholars allow the use of business merchandise in *mudārabah* capital. These merchandises must be assessed by certified assessor and mutually agreed by *mudārabah* partners; the capital provider (*sāhib al-māl*) and the entrepreneur, the *mudārib*. In this context, the opinion of *Hanāfi* and *Hanbāli* scholars appears to be more flexible and more appropriate with the nature of the franchise business. For example, the franchisor as the capital provider, invests in the franchise by using merchandise as capital. With mutual agreement, the franchisee can start the business immediately, as the franchisor provides all necessary resources. Therefore, it is reasonable for the franchisor to earn profits, as their investment includes the franchise brand, products, systems, and other related elements developed through their efforts. In this arrangement, the franchisee acts as a manager and is entitled to receive a wage for their work.

In respect of monitoring and risk management, *mudārabah muqayyadah* (restricted *mudārabah*) concept is recommended as franchisor has right to determine certain conditions to the *mudārib* (franchisee) in conducting the franchise business. This is meant to protect the interest of the franchisor because the franchisee is using his trade mark, thus to ensure the continued survival of his legacy.

Moreover, it is permissible to require the franchisee as *mudārib* to contribute certain amount of capital in creating commitment and responsibility towards the business. The capital contribution made by the *mudārib* in the scenario is valid by applying the *mushārakah* form of partnership. In this case, the profit and loss distribution must first adhere the *mushārakah* arrangement, then followed by the ratio of profit distribution as agreed in the *mudārabah* contract (BNM, 2015). Under these circumstances, the franchisee will be more committed to ensure the success of the business as he also contributed some capital in the business and liable to loss accordance to his capital contribution ratio.

Furthermore, the *mudārabah* arrangement in the second scenario resembles a franchise business. In this model, the franchisor acts as the *mudārib* (entrepreneur), while the franchisee acts as the capital provider (*sāhib al-māl*). This reflects the essence of franchising, which allows for business expansion without requiring the franchisor to provide financial resources. Essentially, franchising is a partnership between the product owner (franchisor) and the buyer of the franchise rights (franchisee). The franchisor supplies the necessary preparations to start and operate the business, such as a business system, while the franchisee contributes capital, human resources, and ongoing effort to ensure the business runs for the duration specified in the agreement (Rubin, 1978). Additionally, the franchisor, as the product owner and *mudārib*, can effectively manage the business due to their extensive experience. This arrangement also acts as a risk management tool in case the business venture fails. A business owner is unlikely to jeopardize their own legacy after overcoming past hardships.

Regarding capital investment, the franchisor must provide the franchisee, as the capital provider, with the monetary value of the assets before finalizing the contract;

otherwise, the contract is invalid. Profits are divided as mutually agreed, while the *sāhib al-māl* (franchisee) bears any losses. In practice, the franchisor is unlikely to compromise on anything that could harm the business, so the risk of failure is minimal.

In a nutshell, the *mudārabah*-based franchise arrangement is unique because it allows both the franchisor and the franchisee to take on dual roles as either *sāhib al-māl* (capital provider) or entrepreneur (*muḍārib*). This flexibility enables both parties to adapt to their circumstances. It is hoped that this flexibility in *mudārabah* will encourage more entrepreneurs to enter the industry.

2.9 Summary

Mushārakah can be concluded as a relationship occurs between two or more to collaborate in something which aim for profit. *Mushārakah* which synchronized with the Shari‘ah law requires high ethical values comprising of trustworthiness, no betrayal, and ethically fulfil all the partnership requirements. *Mushārakah* which is based on profit-loss sharing principle was based on two general concepts. Firstly, profit-loss sharing which is based on capital contributed by the involved parties. Secondly, it is based on an early arrangement agreed by the parties. Some of *Shāfi‘ī* scholars is in view that it is compulsory to divide the ratio of profit based on capital ratio contributed, while *Hanāfi* scholars permit on both concepts, either based on capital ratio or on early arrangement as agreed.

On the other hand, *mudārabah* is a relationship which combine the capital provider and an expertise (entrepreneur), which aim to generate profit from the collaboration. It is win-win concept where those who have capital but lack of skills and experience, may collaborate with those who are experts in the area to form a business venture to

generate income. The capital provider has right either to form a limited *mudārabah* (*muḍārabah muqayyadah*) or unlimited *mudārabah* (*muḍārabah muṭlaqah*). The profit from the partnership will be distributed according to agreed ratio, while any losses will be borne by the capital provider unless the loss was proven due to entrepreneur's misconduct (*ta 'addī*), negligence (*taqṣīr*) or breach of contract terms (*mukhālafat al-syurūt*). As a result, he will be borne for the loss.

2.10 Conceptual Framework

The analysis of the previous literature on the nature of franchise, *mushārakah*, and *mudārabah* resulting in the emergence of a proposed conceptual framework. The conceptual framework in the study is based on literature reviews, and personal experiences. According to Jabareen (2009), a conceptual framework is a network of interlinked concepts that provides a comprehensive understanding of a phenomenon. In this study, the conceptual framework integrates insights from the literature on franchising, *mushārakah*, and *mudārabah*, reflecting both theoretical foundations and practical insights.

Maxwell (2013) and Creswell (2013) emphasizes that researchers' personal experiences and insights play a crucial role in shaping their conceptual frameworks, providing unique perspectives that deepen the understanding of the studied phenomena. This integration of literature reviews and personal experiences ensures a well-rounded conceptual framework that aligns with established methodologies for theory building (Eisenhardt, 1989). Given the exploratory nature of this study, the focus is on developing a robust conceptual framework rather than immediate empirical validation. Saunders, Lewis and Thornhill (2019) emphasize that exploratory research

aims to generate insights and build a theoretical foundation for future studies. Figure 2.5 below presents the proposed conceptual framework in the study.

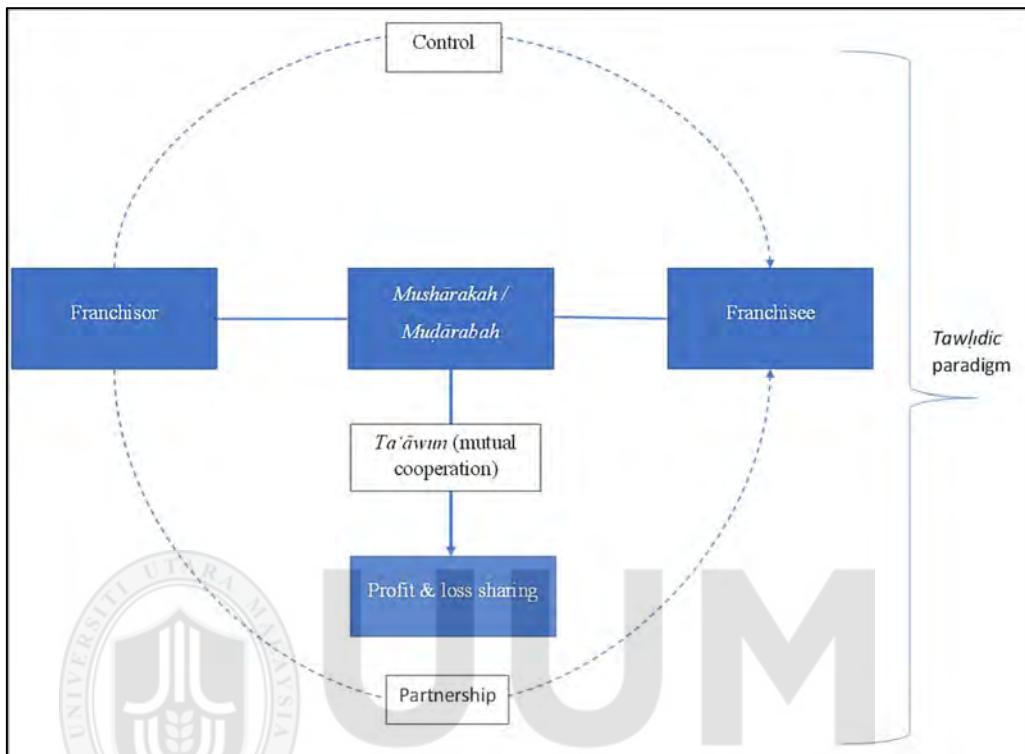


Figure 2.5
Conceptual Framework Employed in the Study by the Researcher

The diagram above shows that *mushārakah*, and *muḍārabah* as the independent variable, whereas the dependant variable is the feasibility of *mushārakah*, and *muḍārabah* in the franchise industry. The four variables in the study comprises of royalty, profit, and fee (management, theory through contractual design, royalty calculation method); relationship between franchisor and franchisee (financial and non-financial attributes, organizational values); franchise contract (important elements in designing franchise contract); and management, power, and control (success and failure factors, Islamic management).

In contrary, *mushārakah*, and *muḍārabah* as partnership contract was based on *ta‘āwun* (mutual cooperation) between two or more parties involved. *Tawhīdic* paradigm governs the whole system, for example; controlling on the franchise business and partners selection as *mushārakah*, and *muḍārabah* were derived from the Qur’ān, Sunnah and *Ijmā‘*. The *mushārakah*, and *muḍārabah*-based franchise will eliminate the application of royalty and fee as it is replaced by profit-loss sharing. The elimination of royalty and fee contradict with the current practice (The Franchise (Amendment) Act 2012, 2012). As for the relationship aspect, both franchisor and franchisee are partners in the franchise business. This is also contrary with the current practice as franchisor and franchisee are not considered as partners (Franchise Act 1998, 1998). While for the contract aspect, it is based on the mutual consent from the parties involved (Ramizah & Puteri Nemie , 2016) and not supreme by the franchisor (Spencer, 2008). While in managerial aspect, the parties involved may take part in the business operations based on type of partnership contract chose. The detail findings of these variables embedded within *mushārakah*, and *muḍārabah* framework are discussed in Chapter Five.

From the previous discussion on the literatures, it can be concluded that there is a room of applying *mushārakah*, and *muḍārabah* in the franchise industry. It can serve as new insights especially to the Muslims franchisor and franchisee as well as the policy maker to implement the Islamic partnership contract in the franchise industry in the future. Therefore, there is a need to study on the feasibility of *mushārakah*, and *muḍārabah* in franchise industry. This study may contribute to the dynamic *mu‘āmalāt* contracts particularly *mushārakah*, and *muḍārabah* in the real business setting such as franchise industry.

2.11 Conclusion

Chapter two deliberated on the overview of franchise from its history and development in general and in Malaysia. The elements of the franchise through previous studies, and the core principles and concepts that unite franchisors and franchisees to form the business franchise was royalty and fees. Royalty and fees were one of the business returns in franchising. Further, among the good ingredients for a long-lasting relationship recipe was trust, good leadership skills, good communication, financial stability, and many others. While in designing the franchise contract, some elements need to be considered such as trust, clear terms, fair and just which has been discussed before. On the other hand, one of the important aspects in franchising was controlling. It was meant to monitor the franchisees as well to protect the franchisor's trade name. This chapter deliberated past studies on how to balance the power and control in franchising from conventional and Islamic perspective. Interestingly, the Islamic of management, controlling and power in business organization was based on *Tawhīdic* paradigm which makes it different from the conventional way. Information conferred in this chapter may serve as guidelines for key features in *mushārakah* and *mudārabah*-based franchising and as a guidance to researcher in conducting the research.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

The research method is one of the important elements in research to ensure the objectives of the research can be achieved accurately and research questions can be answered. Three main issues were discussed in this chapter namely the research design, the research data collection, and the research data analysis.

The topic of this research is exploratory in nature. It is more prominent to apply qualitative research method in its data collection. Qualitative research been defined as “it is an inquiry process of understanding meanings people bring to them through their natural setting of inquiry that explore a social or human problem. The researcher builds a complex, holistic picture, analyses words, reports on detailed views of informants, and conducts the study in natural setting” (Creswell, 1998). Therefore, qualitative research is an inquiry process which involves to understand social problem or human problem based on holistic picture through deep informant views in its natural setting. This study chooses qualitative approach as it will help researcher to understand more on unknown phenomenon (Strauss & Corbin, 1998), in which it is to examine the feasibility of *mushārakah* and *mudārabah* in the Malaysia franchise industry.

3.2 Methodological Assumptions

Methodology concerns with strategy or plan of action which serve as the choice and use of particular methods in research. Methodology answers the questions of why, what, from where, when, and how data is collected and analyzed (James, 2012). The present research employs inductive mode as the basis in its methodology as it starts

from specific cases to general summaries. The objective of this research is to produce new knowledge and further developing existing knowledge (Hassan, 2018). The new knowledge is by providing a general framework of an alternative contract that can be used in future Islamic franchise business in Malaysia. The theoretical framework of the present research is based on the theory of ‘*aqd* (contractual theory) of *fiqh mu‘āmalāt*. The focus is merely on *mushārakah* and *mudārabah*. Generally, the current research is an exploratory base research design. Yin explained that an exploratory type of case study was applicable where the interventions being evaluated has unclear outcomes (Yin, 2009) and the topic desires to be understood in dept. The researcher aims to explore the feasibility of what and how *mushārakah* and *mudārabah* could be proposed as alternative Islamic contracts to be applied in the franchise industry.

Further, inductive research approach is flexible in nature as it allows any changes been made to fit the study being conducted and the researcher is a part of the research process (Saunders, Lewis & Tornhill, 2003). On theoretical perspective, Creswell argues that the role of the theory depends on the type of research. The case study research design needs clarity and implementation of theory in the first stage, because theory impacts on the formulation of research question, explanation, and interpretation of the findings (Creswell, 1998).

While Yin (1984) claims that the case study as a research strategy uses the theoretical perspective at the beginning of the investigation because it affects the research questions, analysis, and interpretation of findings. Yin states that “the complete (case study) research design embodies a theory of what is being drawn from the existing

knowledge base” (Yin, 2009). The existing theory is not considered to be fixed but merely to fill in any known gap with what will be discovered (Parkhe, 1993).

Therefore, Creswell views that the function of a theory in a research design is represents in methodologies or theoretical perspectives (Creswell, 1998). Further, Yin (1984) as a post-positivist researcher who rejects metaphysics emphasizes on the importance of modified-experimental measurement and observations. He believes that each of these tends to occurs in different type of error. Therefore, it is a need for a researcher to use triangulation across the studies to minimize the error and enhance trustworthiness and the quality of the research (Pamela Baxter & Susan Jack, 2008). On the other hand, conceptual framework is developed from the concepts from both theoretical perspectives and empirical findings on the topic such as from literature review. Conceptual framework serves the researcher a big picture on the main concepts related to the current study (Imenda, 2014).

Hence, the development of the interview questions in the study was constructed based on the concepts of *mushārakah* and *mudārabah* as been illustrated in chapter two. In addition, it also considered the findings from previous literature related to the nature of franchising.

3.3 Choice of Respondents

The study is designed to gather data and information from targeted subjects which specialize in the phenomenon of the study, where they are purposely selected to address the issues. Purposive sampling is a type of non-probability sampling strategy which not only considers cases based on a variety of criteria and within a wide range of situations to maximize the sample variation, but also depends on the researchers’

decision regarding what kind of participants would contribute appropriate data (Silverman, 2005).

This study aims to answer the research questions (How) *mushārakah* and *muḍārabah* can be proposed in Malaysia franchise industry. Thus, two groups of cases were selected;

1. experts on *mushārakah* and *muḍārabah* contract and knowledgeable in franchise industry, and
2. franchisors who are the practitioners in different franchise business sectors in Malaysia.

The first group was represented by individuals who were the experts and knowledgeable in *fiqh mu'amalāt* and franchise authorities. They were the representatives from regulators and academicians. While the second group was represented by franchisors who involves in the franchise business from different business sectors.

Marshal quoted Tremblay highlights the five characteristics of an “ideal” informant; 1) Role in community: their formal role should expose them to the kind of information being sought by the researcher; 2) Knowledge: the informant be able to absorb the information meaningfully; 3) Willingness: the informant should be willing to communicate their knowledge to the interviewer and to cooperate as fully as possible; 4) Communicability: they should be able to communicate their knowledge in a manner that is intelligible to the interviewer; and 5) Impartiality: the informants should be objective and unbiased (Marshal, 1996). The detail description of the informants

selected by researcher in this study follows the guidance by Tremblay are tabled as follows.

Table 3.1
List of Informants Represent the Experts

No.	Name	Organization	Interview date	Interview place
RE1	Dr. Ab Rashid Dail	An academician, Classical <i>Mu'amalāt</i> expert	22 Mac 2017, 9am	Bangi, Selangor
RE2	Afkhar Razi Mohamed	Franchise officer, Franchise Development and Direct Selling, Ministry of Domestic Trade, Cooperative and Consumerism	21 Mac 2017, 9am	Ministry of Domestic Trade, Cooperative and Consumerism, Putrajaya
RE3	Datuk Dr. Zulkifli Mohd Al-Bakri	Mufti, Wilayah Persekutuan Kuala Lumpur	20 Mac 2017, 2.30pm	Federal Territory Mufti Office, Putrajaya
RE4	Prof. Dr. Umar Oseni	International franchise expert at International Islamic Liquidity Management Corporation and an academician	Via email on 30 th October 2016	-
RE5	Prof. Dr. Asmadi Mohamed Naim	Contemporary Muamalat expert, an academician at Islamic Business School, UUM and member of Shariah Advisory Council of Bank Negara	2 May 2018, 9am	Islamic Business School, UUM

While Table 3.2 below presents the list of informants from franchisors.

Table 3.2
List of Informants Represent Franchisors

No.	Name	Organization	Interview date	Interview place
RF1	Dzulnuren Dzulkifli	Arrahnu Bank Rakyat	29 August 2017, 2.30pm	Bank Rakyat Twin Towers, Kuala Lumpur
RF2	Mohd Zaremdeen Mohd Zaman	Menara Optometrist Centre	30 August 2017, 11 am	Menara Optometry, Taman Tun Dr Ismail
RF3	Azmel Ahmad	Children Islamic Centre	19 Mac 2018, 2.30 pm	CIC Putrajaya, Putrajaya
RF4	Andri Nasrun	Ani Sup Utara	20 Mac 2018, 9am	Ani Sup Utara HQ, Shah Alam
RF5	Aisyah Ahmad	Traktif Dialysis Expert Centre	21 Mac 2018, 2.0pm	Traktif Dialysis, Wangsa Maju
RF6	Rozaidi Hamat	YaPEIM Smart Venture	30 Mac 2018, 9.30 am	YaPEIM, Kuala Lumpur

The total number of informants from both groups amount to 11. In qualitative research, there are no accurate answer on the number of suitable informants to be chosen for in-depth interview purpose. The number of sample size is often smaller compared to quantitative research methods. This is due to its nature where the focus is to gain an in-depth understanding of a phenomenon or on meaning which are often associated with “how” and “why” of a particular issue, process, situation, subculture, scene or set of social interactions (Shari, 2012).

Most scholars argue that the concept of saturation is the most important factor to consider on sample size decisions in qualitative research (Mason, 2010). Saturation occurs at the point in which the data collection process no longer sparks any new or

relevant data (Patton, 1994). Besides, larger sample size will lead to time consuming, financial burden and often simply impractical as it is purely labor intensive in nature, where it really depends on the researcher to extract the output (Mason, 2010). Other factors also influence the determination of sample size which include the research objective, research questions, research period, and financial ability (Patton, 1994).

3.4 Research Design

The design of this study is exploratory research which integrates Islamic studies and the business management in general. Case study is chosen as the research strategy, while the data collection is through in-depth interview. Case study will be used when the study tries to understand the complex relationship between factors as they operate within a particular social setting (Denscombe, 2010). A case study been defined by Merriam as “an intensive, holistic description and analysis of a bounded phenomenon such as a program, an institution, a person, a process, or a social unit” (Yazan, 2015). While Yin defines case study as “an empirical inquiry that investigates a contemporary phenomenon within its real-life context, when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidences are used” (Yin, 1984). The researcher chooses an exploratory case study where it is aims to explore any phenomenon in the data which serves as a point of interest to conduct the study. In this case, the researcher tries to seek views from Islamic scholars, academicians, and franchisors on how they perceive the Islamic contracts particularly *mushārakah* and *mudārabah* to be proposed and utilized in Malaysia franchise industry in the future. Table 3.3 below displays the research design adopted by the researcher in the study.

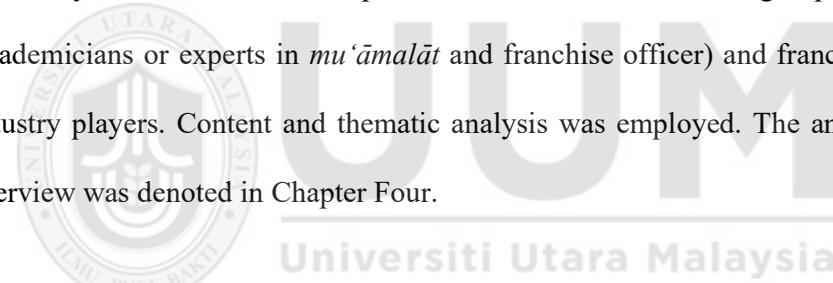
Table 3.3
Research Design Table

Problem Statement: Limited resources in the study of <i>mushārakah</i> and <i>muḍārabah</i> in the real business sector particularly in the franchise industry.					
General RO: To study the feasibility of <i>mushārakah</i> and <i>muḍārabah</i> as alternative contracts in the Malaysian franchise industry.	Specific RO	Research method	Data collection	Data analysis	
1. To examine the concept of <i>mushārakah</i> and <i>muḍārabah</i> in <i>mu ‘āmalāt</i> which governed the franchisor and franchisee.		-Documentary review	-Documents	-Content analysis	
2. To analyse the feasibility of the <i>mushārakah</i> and <i>muḍārabah</i> to be applied in the Malaysian franchising industry.		-Case study	-Semi-structured interview	- Content analysis - Thematic analysis	
3. To propose new Islamic franchise framework in the Malaysian franchise industry based on the <i>mushārakah</i> and <i>muḍārabah</i> .		-Documents	- Documents - Interview transcribe	- Thematic analysis	

Source: Researcher's own work.

The researcher used a documentary review to address objective one. This involved analyzing books, journals, previous theses, and websites through content analysis. The findings identified the types of *mushārakah* and *muḍārabah* suitable for the Malaysian franchise industry. Details of these findings are discussed in Chapter Two.

Once the first objective is confirmed, a semi-structured interview was conducted to answer objective two. A semi-structured interview was applied to gain an in-depth understanding of the respondents on franchise business, and *mu'amalat* contracts particularly *musharakah* and *mudarabah*. The researcher prepares the questions based on *musharakah* and *mudarabah* concepts, and these questions serve as guideline during the interview process. However, during the interview session, the questions prepared ahead of time may be adjusted the order, skip any redundant, or create new ones based on the current circumstances but within the questions provided. This is to maintain the consistency and comparability across the respondents resulting to facilitating nuanced data collection and analysis in this q study. The interview applied case study method where the respondents were divided into two groups, the experts (academicians or experts in *mu'amalat* and franchise officer) and franchisors as the industry players. Content and thematic analysis was employed. The analysis of the interview was denoted in Chapter Four.



Following that, Chapter Five presents the discussion of the analysis which answered the research objective three. Documents review and interview transcribed were utilized based on thematic analysis. The research conceptual framework is developed based on the findings and discussion.

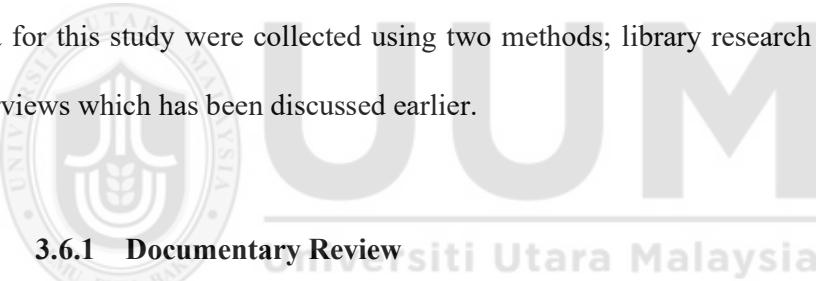
Hence, the research design in the study serves as blueprint along the journey, guiding the systematic data collection, analysis, and interpretation of data to ensure validity and reliability in addressing the research questions and objectives.

3.5 Scope of the Research

The scope of this study is conducted in West Malaysia only due to time and financial constraint. In concerning on its legal part, franchising in Malaysia is governed by the Franchise Act 1998 (Franchise Act), as amended by the Franchise (Amendment) Act 2012 which came into force on 1st January 2013, and the new amendment 2020 Franchise Regulations 1999 (amended by the Franchise (Forms and Fees) (Amendment) Regulations 2007). Most of the sources in the study were obtained from the previous study in *fiqh mu‘āmalāt* particularly on *mushārakah* and *mudārabah* comprises of research papers, publications, documents and interviews.

3.6 Data Collection Method

Data for this study were collected using two methods; library research and in-depth interviews which has been discussed earlier.



3.6.1 Documentary Review

Documentary review is a systematic study and detail examination of some aspect of library and information science and its conclusions are based on analyzed data collected which is accordance with pre-established research designs and methodologies.

Researcher obtains primary and secondary data in the form of documents such as the Qur’ān, Hadith, books, court cases, legal documents, journals, and textbooks provided by Sultanah Bahiyah Library Universiti Utara Malaysia.

Documents review in this research is crucial as it allows the researcher to systematically examine the existing literature, reports, and archival materials to gain

comprehensive insights in the franchise area within the framework of *mushārakah* and *mudārabah*, and develop the research conceptual framework.

3.6.2 Interview Method

Data will be collected from the interviews with stakeholders in this study as follows:

1. Islamic scholars such as *muftī*
2. Academicians in the area of *fiqh mu'āmalāt*
3. Person in charge in franchise matter from government sector
4. Franchisors

3.7 Data Collection Preparation Through Interview

According to Yin (1984), the preparation on collecting data involves four steps as follow:

1. Training and preparation for the specific case study
2. Developing a case study protocol
3. Screening of the case study nominations
4. Conducting a pilot case study

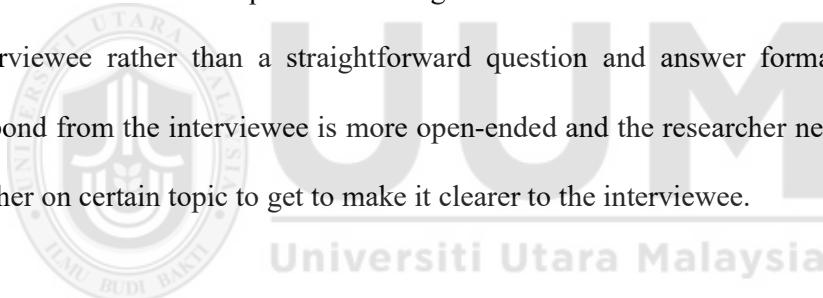
3.7.1 Training and Preparation on Specific Case Study

This phase involves reading materials on the issues, related theories to the study which lead to research design on the case study, methods and strategies on case study (Yin, 1984). The present research started with thorough discussion between researcher and supervisor as well as other researchers in December 2016 at Bustani Hotel, Jitra. The research was a part of Fundamental Research Grant Scheme (FRGS) where it aimed to produce basic research in generating knowledge which contribute to enhance

intellectual level, creating new technologies and nurturing dynamic culture which support the national aspirations. The researcher intensively focused on *mushārakah* and *mudārabah* in relation to franchising.

3.7.2 Developing a Case Study Protocol

Case study protocol and case study database should be developed as it is a strategy to strengthen reliability in case study (Yin, 2009). The present research indicates a semi-structured interview technique. The semi-structured interview method allows interviewer to not strictly follow a formalized list of questions. However, the topic and list of questions are there and ready to be asked (Denscombe, 2010). The researcher is flexible in term of questions arrangement which create a discussion with the interviewee rather than a straightforward question and answer format. Thus, the respond from the interviewee is more open-ended and the researcher need to explain further on certain topic to get to make it clearer to the interviewee.



3.7.3 Screening of the Case Study

According to Yin (2009), this stage involves making decision on how many candidates to be interviewed by creating systematic database. Later, the candidates chosen are based on the criteria determined by the researcher as the candidates' profile in franchise business, their knowledge in the subject matter and their availability to be interviewed.

3.7.4 Conducting a Pilot Case Study

Final preparation before conducting the field work study is conducting a pilot case study. A pilot case study assists researcher to refine the data collection plans with

respect to both the content of the data and the procedures to be followed. Besides, conducting a pilot case study is to ease researcher in developing relevant lines of questions-possibly, as well to provide some conceptual clarification for the research design (Yin, 2009). The first respondent interviewed was Dr. Rashid Dail from the academician group of respondents. Experience gathered from the session is regarded as reference to enhance the quality of the fieldwork research.

3.8 Interview Transcript

Transcription is a technical typing procedure for representing spoken discourse in text (Bloor & Wood, 2006). The interview is recorded using a recorder and later be transcribed into written text.

3.9 Research Instrument

Semi-structured interview questions were developed based on the existing legal provisions in respect of the current conventional franchise practiced as well as previous work and rely on research objectives that need to be achieved. The structure of the franchise business and theoretical aspects of *mushārakah* and *muḍārabah* serve as the basis in constructing the interview questions. While objectives of the research serve as a guidance in the questions formation.

Same set of questions were deliberated to both groups of respondents from the academicians or the franchise industry expert, and franchisors. The question was divided into three parts namely 1) profile of the respondents (4 items); 2) *muḍārabah* as an alternative contract (4 items) and *mushārakah* as a form of contract proposed to be used as an alternative contract in the future (3 items).

3.10 Qualitative Data Analysis Method

Data which were collected through library research was analyzed using content analysis while data collected through semi-structured interview technique was analyzed using the thematic analysis. Both qualitative content analysis and thematic analysis are classified under the qualitative descriptive design. Both techniques are used to analyze textual data, elucidate theme and they share similar characteristic. The key characteristics of these techniques comprises of a systematic process of coding, scrutinize the meaning, and establishment of a description of the meaning accordingly through the creation of theme (Vaismoradi, Turunen & Bundas, 2013).

Content analysis is used to examine trends and patterns in documents. It is a strategy to analyze text to determine trends and patterns of words (Patton, 1990) from written, verbal or visual communication messages (Elo & Kyngas, 2008) by looking at their frequency, relationships, and the structures through a systematic coding and categorizing the primary patterns in the data (Vaismoradi, Turunen, & Bundas, 2013). The purpose of content analysis is to describe the characteristics of the document's content by examining who says what, to whom, and with what effect (Bloor & Wood, 2006). On the other hand, thematic analysis is a method for identifying, analyzing, and reporting patterns (themes) within data (Braun & Clarke, 2006). Thematic analysis provides a purely qualitative, detailed, and nuanced account of data from an interview or sets of interviews (Vaismoradi, Turunen, & Bundas, 2013).

The process of data analysis in content analysis and thematic analysis is detailed out below in Table 3.4 which it describes on the process involve in content analysis, while Table 3.5 presents the process involve in thematic analysis.

Table 3.4
Analysis Phases in Content Analysis (Elo & Kyngas, 2008)

Preparation	Engage and immerse in the data by obtaining the sense of whole followed by selecting the unit of analysis and develop structured analysis matrices.
Organizing	Open coding, create categories, group the codes, formulate general description by categories and sub-categories as abstracting.
Reporting	Reporting the analysing process and results through models, conceptual systems, conceptual map or categories, and a story line.

Table 3.5
Analysis Phase in Thematic Analysis (Braun & Clarke, 2006)

Familiarizing with data	Transcribing data through reading and rereading and noting down initial ideas.
Generating initial codes	Generating initial codes systematically across the entire data by collating them with relevant code.
Searching for themes	Collating codes into potential themes and collating all extracted data within the identified themes.
Reviewing themes	Checking if the themes work and relevant to the coded extracts, and produce a thematic map showing relationships between themes and subthemes.
Defining and naming themes	Refine the specific of each theme and the overall story resulting from the analysis to ensure that they make sense.
Producing the report	Producing a report through vivid selection of final analysis extracts by relating the analysis to research question and literature.

Hence, the researcher chose data analysis procedures for content analysis as suggested by Elo and Kyngas (2008) and thematic analysis as suggested by Braun and Clarke (2006) in the study.

3.10.1 Validity and Reliability

The terms validity and reliability in qualitative research discussed the criteria for evaluating the scientific merit of qualitative research which are associated with the terms such as credibility, trustworthiness, truth, value, applicability, consistency and conformality (Lincoln & Guba, 1985). Validity in qualitative research refers to truth value. Truth value concerns with the integrity and application of the methods undertaken and the precision in which the findings accurately reflect the data clearly and accurately presents participants' perspectives (Noble & Smith, 2015). While validity in Islam refers to reality and truth (Nor Hanani Ismail, 2016) which concerns with the concept of verification, workability and usefulness.

Reliability describes consistency within the employed analytical procedures. Consistency in qualitative paradigm relates to the 'trustworthiness' by which the methods have been undertaken and is dependent on the researcher maintaining a 'decision-trail'; that is, the researcher's decisions are clear and transparent. Ultimately an independent researcher should be able to arrive at similar or comparable findings (Noble & Smith, 2015; Othman Lebar, 2014). Through the process of validity and reliability in qualitative research, a researcher is able to explain how the research output is gained supported with solid evidence and the findings are unquestionable. Even though validity and reliability is difficult to be carried out on existing natural phenomenon, but it could be achieved through proper data management and ethical (Merriam, 2001).

Table 3.6 presents the validity and reliability adopted from Lincoln and Guba which was employed in the present research.

Table 3.6
Validity and Reliability in Qualitative Research to Enhance Trustworthiness (Lincoln & Guba, 1985; Nor Hanani Ismail, 2016)

Criteria	Qualitative Criterion	Strategies employed in the present research
Validity	Credibility (truth value)	Triangulation (multiple method, multiple sources of data and multiple analysis) Recheck the interview transcript Recheck the findings report
	Applicability (Transferability)	Findings can be applied to other contexts, settings or groups
	<i>Dalīl 'aqlī</i> and <i>naqlī</i>	Use faculty of intellect and refers to al-Qur'ān and <i>hādīth</i>
Reliability	Dependability (consistency)	Audit trail of data (congruency of the research from the research questions, research objective, data analysis process and findings)
	Confirmability (Neutrality)	Research questions and data obtained are match

Further, trustworthiness in qualitative research refers to credibility, dependability, transferability and conformability. To verify the data, the researcher chose purposive sampling, select only relevant materials and cross checking with supervisors and peers on the matter.

Later, the data obtained is confirmed through audit trail to confirm its dependability. The researcher found that there is a match from the research questions, research objective, data analysis process and findings in the study. In addition, it is supported with the congruency of the research process with the philosophical view of research as presented in chapter one, chapter two (literature review), chapter four (*mushārakah* and *muḍārabah* analysis), chapter five (discussion), and chapter six (conclusion and recommendation).

In relating with the application criteria, the framework developed in chapter five serves as a guideline for future research on the implementation basis of *mushārakah* and *mudārabah* in Islamic franchise business system in Malaysia which may benefits the policy maker, the franchisors and the franchisees.

Thus, the process of validity and reliability in research which is based on trustworthiness, *amānah* and full of responsibility together with *ikhlāṣ* and *Ihsān* will ensure a good finding which benefits the *ummah* and to seek the pleasure of Allah.

3.11 Triangulation

Triangulation is a method aims to avoid bias in a study and strengthen the data validity. It is conducted through careful reviewing of data collected through different methods in sequence to achieve a more accurate and valid estimate of qualitative results and findings for a single phenomenon studied (Patton, 1994). According to Yin (2011), he mentioned that there are also studies which is lack of resources. In order to implement the method of triangulation, he affirmed that any information which can only be obtained through interviews should be obtained through at least three respondents. Whereas the information which is acquired through documents only must be obtained through three different types of documents. The present research employs multiple types of informants for interviews and in documents as well. The number of informants for interviews and documents selected were applicable more than three. This is to ensure the findings is accurate with no contradiction. Researcher also recheck all the transcribed data, documents chose, and data resources obtained to conform the credibility part. Figure 3.1 below displays the summary of data triangulation employs in the current study.

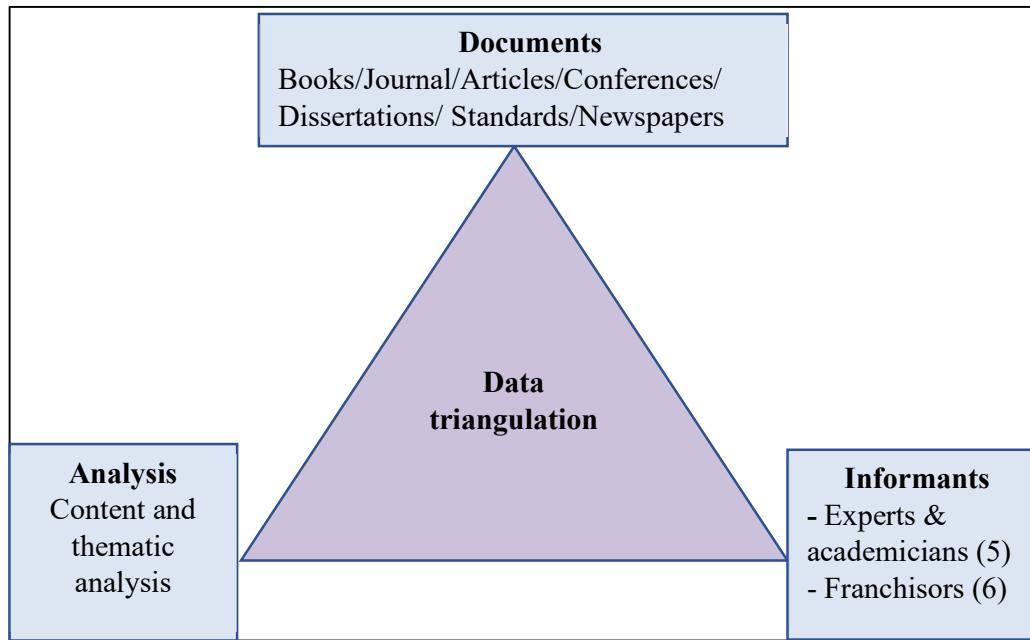


Figure 3.1
Data Triangulation Employed in the Current Study

3.12 Conclusion

This chapter emphasized on the research methodology adopted by the researcher as driven tool which manifest the philosophical assumptions of the research, strategy and methods used to collect information and data as well as how they are analyzed. These are to confirm that the research questions and the objectives are achieved.

CHAPTER FOUR

THE ANALYSIS OF *MUSHĀRAKAH* AND *MUDĀRABAH*-BASED FRANCHISE

4.1 Introduction

This exploratory study is designed to examine the feasibility of *mushārakah* and *muḍārabah* in the franchise business industry. *Mushārakah* and *muḍārabah* is a joint-venture or partnership contract which is contrary to the current franchise practice. Semi-structured interview was employed in the study as a data collection method comprising of two groups of respondents; the experts/referred and the franchisors.

The interview process of each respondent last between 60 to 90 minutes. Information from the interviews were recorded and converted into transcript to facilitate the analysis process. The thematic analysis was carried out using the DocTools , Microsoft Word, and Microsoft excel. The original transcript was in Malay language (Bahasa Malaysia) except for respondent named Prof. Dr. Umar Oseni was in English, and in written form through email. For this study, the completed analysis in Malay was translated to English. Thus, this chapter reports the findings of *mushārakah* and *muḍārabah-based* franchise business obtained from the analysis.

4.2 Interviewee

Discussions on this matter was conducted upon two groups of respondents. The first group consists of respondents with the knowledge in the field of franchising or Islamic *mu‘āmalāt* but with no experience in practicing the franchise business. The other group

of respondents were the practitioners in franchise industry known as franchisors from different franchise sectors. However, they did not formally study or learn the knowledge of franchising from the Islamic *mu'amalah* perspective. The selection of both groups were made on voluntary basis and agreed upon by them. In particular, the respondents in the first group are academicians or former academicians, Islamic financial consultant, and officer/expert in franchise industry. Table 4.1 below presents the list of informants from the first group.

Table 4.1
List of Informants Represent the Experts

No.	Name	Organization
RE1	Dr. Ab Rashid Dail	An academician, Classical <i>Mu'amalat</i> expert
RE2	Afkhar Razi Mohamed	Franchise officer, Franchise Development and Direct Selling, Ministry of Domestic Trade, Cooperative and Consumerism
RE3	Datuk Dr. Zulkifli Mohd Al-Bakri	Mufti, Wilayah Persekutuan Kuala Lumpur
RE4	Prof. Dr. Umar Oseni	International franchise expert at International Islamic Liquidity Management corporation and an academician
RE5	Prof. Dr. Asmadi Mohamed Naim	Contemporary <i>Mu'amalat</i> expert, an academician and member of Shariah Advisory Council of Bank Negara

While Table 4.2 below presents the list of franchisors as informants from the second group.

Table 4.2
List of Informants Represent as Franchisors from Different Franchise Sectors

No.	Name	Organization
RF1	Dzulnuren Dzulkifli	Arrahnu Bank Rakyat
RF2	Mohd Zaremdeen	Menara Optometrist Centre
RF3	Azmel Ahmad	Children Islamic Centre
RF4	Andri Nasrun	Ani Sup Utara
RF5	Aisyah Ahmad	Traktif Dialysis Expert Centre
RF6	Rozaidi Hamat	YaPEIM Smart Venture

4.3 Thematic Analysis

The interview transcripts were analysed using thematic analysis with the aid of the DocTools, Microsoft Word, and Microsoft Excel. The findings were reported accordingly based on the arrangement of the interview questions as described in the following sub-chapter.

4.4 *Mushārakah* Analysis

This report will start with the findings on *mushārakah*, and followed by *mudārabah*. The discussion will provides what is meant by franchising from the respondents perspective based on their knowledge and experience.

4.4.1 What is Franchise?

The preliminary information of these findings was obtained from RE2 who stated that theoretically, a franchise takes place when a franchisor wants to expand their business without having to provide capital and lends their expertise to the franchisee:

“Theoretically, it is possible to implement it that way as long as the franchisor is not seen to invest directly in the franchise business.”

This opinion is supported by RF6 as follows:

“the reason of opening [the franchise] is because we want to expand without using our capital, with minimum control from us.”

RF4 is of the view that a franchisor needs at least 10 years to be established, as expressed in RF4's statement:

“As a franchisor, we already have our own company, and to become a franchisor, we need to have at least 10 years of experience.”

4.4.1.1 Franchising New Business Outlet and Capital Concern

Based on the franchise theory, RE5 is of the opinion that a franchisor will expand their business by opening a new outlet if they could afford to do so:

“The franchisor creates a franchise because he does not have the capital, if he had the capital then what is the point of creating a franchise, he would open his own outlet.”

Meanwhile, RE4 is of the view that it is difficult for franchisors to contribute capital in the financial form:

“It is probably difficult for the franchisors to contribute capital in the financial form but not for the franchisees. Franchisees contribute financial capital while franchisors provide capital in the form of a business license and goodwill. This is clearly closer to the formation of a mushārakah-based business.”

RF6's opinion supports both views where RF6 stated that essentially, the franchise concept is to expand a business without the franchisor contributing capital:

“In a franchise, we have no capital but we want to multiply the number of branches using the franchisees' capital.”

According to one of the referred experts, RE3, appropriate modifications should be made. RE3 also suggested to patent the franchise in ensuring the successful practice of this contract:

“I agree. If we can make appropriate modifications, some people are smart. But no capital. Some people have the capital, but they are not smart. Some have the capability in both, but perhaps they are not strong and need help from others and so on. So, the concept can be used. It is not a problem. And for me, maybe we should patent it, let the franchise become like a company. When it is similar to a company, it will be easy. Can see that.”

Furthermore, RE4 is of the view that it is necessary to consider the current franchise practices to avoid any duplication by evaluating the existing documentation sets and completing new documentations: *“This can be done by detailing the documentation whereby the rights and compliance of each of the parties involved are documented, endorsed, enlightened and mutually agreed.”*

4.4.2 Do You Agree that the Future Franchise System can be Founded on a Percentage of Income from the Physical Capital Contributed by Both Parties?

This question tries to examine the feasibility of *mushārakah* which involved the mixing of capital to serve as basis contract in forming a franchise business. The discussion covers its feasibility and profit-and-loss sharing ratio.

4.4.2.1 *Mushārakah-Based Franchise*

To bring forth the *mushārakah* contract proposal in the franchise system, the first information obtained from RF6 is that the *mushārakah* contract is feasible, but it is different from the existing franchise contracts as no fee is imposed. This is expressed in his opinion:

*“It means that in the agreement, I do not impose a fee but later on when there is a profit, we will have the concept of *mushārakah*. To me, I think there is no problem.”*

This opinion is supported by RF4 and according to him, this concept is more similar to a partnership:

“To me, this is not a franchise concept...no...which means no initial capital, to pay a fee of RM50,000...not required ...what is the point of paying a fee of RM50,000...”

“Menara provides a certain portion of capital, the other person also provides a portion of capital...we collaborate, using the name of Menara. That is a joint-venture...”

This is supported by RE3 who stated that the *mushārakah* concept in the franchise system is in a specific form that is suitable to the franchise business itself:

“Since people will say the example of KFC, then KFC it is. So, he is going to benefit. So, it seems that it has something to do with sharikah. But not an investment from the financial aspect, and not physically as the two companies are separate, but only the use of the brand, the form and that's it. So maybe even if we want to enter into a sharikah, but it will be in a specific form.”

RE4 stated the need for compliance with *mushārakah* requirements and modifications to cater for the franchise business as mentioned in this statement:

“In forming a mushārakah-based franchise model, this concept can be used. According to this concept, it is not necessary for both parties to contribute physical capital. In a conventional franchise, the franchisor provides appropriate training and trademarks that can be used as the franchisor's capital contribution in the partnership.”

RE3 stated that a *mushārakah* franchise partnership occurs when a business partnership or merger involves brands and trademarks. The franchisee benefits from the franchisor's ownership rights, such as brands and trademarks. This matter is stated in his views as follows:

“It is as though first, he uses the brand, he uses the name, he even uses the form similar to KFC, designs and all that, he uses such that what is patented seems like his copyright. So he uses the copyright. So there it is as if he gets the benefits. Since people will say the example of KFC, then KFC it is. So, he is going to benefit. So it seems that there is a little bit to do with sharikah.”

This opinion is supported by RF4 as when this scenario occurs, the franchisee is more confident because the franchisor, who is already established in business, is involved as a partner as expressed in RE4's views as follows:

“Can [be done], possible, indeed better. So, both parties have confidence. The franchisor is confident with his business, the franchisee is confident he will not incur a loss, as the franchisor is involved.”

4.4.2.2 Profit and Loss

For the profit and loss ratio in the *mushārakah* franchise, RE4's view is that the profit ratio should be based on the capital contribution ratio, while the loss ratio should be based on the contribution of each member in forming the partnership, through this statement:

“In mushārakah, profit distribution is based on the capital contribution provided in the partnership.”

Meanwhile, RE1 and RF1 are of the opinion that the same capital contribution ratio does not mean that the profit ratio is also based on the percentage of capital contribution. According to RE1:

“This is the appealing part of the Hanafī sect. The reason is, in the Hanafī sect, when capital 50:50, it is not necessary that profit distribution is 50:50.”

RF1 added that even though the percentage of capital contribution is the same, the profit distribution can favour the partner who contributes more effort:

“For example, this capital with that capital becomes one ringgit, this person gets 50 cents, that person gets 50 cents. The reason is, it is equal in terms of contribution. But if that person does more, provides transportation in terms of logistics and all, collects from home, this person does nothing... He gets a bigger slice of the cake, his portion...maybe 60:40.”

4.4.3 Is It Legal that the Capital in the Form of Intangible Property Where It Is Valued in Financial Form to be Used as the Contributing Capital?

Mushārakah in general involves the merging of capital and labor. This part reported on type of capital contribution in *mushārakah*-based franchise as presented below.

4.4.3.1 Capital Contribution

In terms of capital contribution, RE1 is of the view that each partner should make a capital contribution. According to RE1: “If it is a real *mushārakah*, it would not be a problem if it is a real *mushārakah*. It means a real *mushārakah*, the responsibility is...based on capital. It means joint capital.”

In RE2’s opinion, capital can be tangible and intangible as mentioned in RE2’s following statement:

“In terms of capital valuation, that's right. It is even mentioned in the act, any consideration. Not necessarily in RM form. Whether in the form of labour man-hour, it's up [to the parties].”

RF1 stated that the capital contribution must be in the form of volume or something that can be quantified. RF1’s view is expressed as:

“His capital but it needs to be in the form of volume. Volume means quantity.”

RE4 stated that goodwill or customer confidence in a person or a brand is an asset and can be used as intangible capital but must be appraised by a valuer to determine its volume or amount. RE4's opinion is as follows:

“It is important to make a valuation of the intangible assets to derive their values before signing the mushārakah-based franchise agreement.”

This matter was also mentioned by RE5, as follows:

“It is possible, let say to create a franchise as a mushārakah, the person who did the branding will get the value of his brand appraised...and appraised by a certified valuer.”

According to RE3, a partnership in brands and trademarks owned by a franchisor benefits the franchisee:

“So his copyright is used. So it is as if he gets the benefit. Since people would say the example of KFC, then KFC it is. So, he is going to benefit.”

RF1, RF3, and RF4 are of the opinion that trademarks and brands are the franchisors' exclusive rights. Thus, the franchisors are reluctant to accept a *mushārakah* partnership that does not favour them as owners of the business trademark. RF1 explained:

“So for us to give everything outright, share the expertise and all, I think that it is impossible.”

RF3 concurred on this matter, stating that the franchisor is the exclusive proprietor of the trademark he has created:

“I think it is quite hard for us to implement the concept for the founder, the owner, after working at it for so long, going through the ups and downs, suddenly to implement that kind of method, it is quite hard.”

Furthermore, RF4 emphasized the franchisor's special right as the owner of the trademark, as follows:

“I understand musharakah but I do not agree, in business, first there are risks, what is our intention of doing business, first is of course for profit, so generally, it is usually for profit. As franchisors, we have our own business, must understand that.”

In addition to goodwill, RE3 is of the view that knowledge, expertise, capability, trust, and ability are intangible assets that can be appraised which RE3 referred to as *ikhtisāṣ*. All these items can be considered as the franchisor's capital contribution. According to RE3:

*“Because when we look at it, it is in the matter of *ikhtisāṣ*. When it is *ikhtisāṣ*. which are skills, expertise, then it is appreciated.”*

Meanwhile, RE1 is of the opinion that management has a value, as mentioned in the following statement by RE1:

“Management has a value, just as capital has a value.”

RE4 gave an example that training provision and branding by a franchisor can also be considered as the franchisor's capital. RE4's opinion is as follows:

“In a conventional franchise model, the franchisor provides appropriate training and brands that can be considered as

the franchisor's capital contribution in forming the partnership."

Meanwhile, RE2 stated that in the act, intangible capital is any consideration which is deemed as reasonable, as follows:

"In terms of capital valuation, that is right. It is even mentioned in the act, any consideration. Not necessarily in RM form. Whether in the form of labour man-hour, it is up [to the parties]."

However, RF3 stated that the valuation of an intangible asset such as goodwill and expertise is quite difficult and subjective. According to RF3:

"so the valuation of goodwill is actually an opinion, his [the valuer's] opinion and all, that's why it is called creative accounting in the accounts, it is more on creativity, so that is my opinion, subjective, very subjective."

Meanwhile, RE2 agreed that it is not impossible to implement the *mushārakah*-based franchise as long as the franchisor does not contribute capital in the financial form.

According to RE2:

"Theoretically, it is possible to implement it that way as long as the franchisor is not seen to invest directly in the franchise business."

RE3 also agreed for the franchisor to contribute only in non-financial forms in the franchise business:

*"But do not see it in physical terms only, but sometimes the non-physical, the intangible, has a great impact. So, the impact, *ikhtiṣāṣ*. expertise. All are humans, but trust, abilities, capabilities and so forth. Therefore, we now accept*

that knowledge learning is the main asset. So, the expertise is already there.”

RF4 agreed with RF3 on this matter through the following statement:

“I share without [contributing] capital, which means not in financial [terms]. Non-financial, material with non-material, you in material [form], me in non-material [form]. I agree if it is that way.”

4.4.4 Are You of the Opinion that New Franchise System Which Is Based on the Concept of *Mushārakah* Is Possible to be Practiced in the Future?

This part described on the feasibility of *mushārakah*-based franchise which include its management, fee and royalty, partner selection, mutual understanding, and suitable business sector.

4.4.4.1 *Mushārakah* Administration

According to RE5, the advantage of the *mushārakah* contract is that the franchisor has a right to intervene in the franchise business. RE5 stated it as follows:

*“If he enters into *mushārakah*, he has to bear the risk from the very beginning, not certain up to the sales, and he can interfere closely with the [running of the] shop, as he is also a partner.”*

4.4.4.2 *No Franchise Fee*

In applying the *mushārakah* contract in a franchise, RF2 and RF6 are of the opinion that the concept of fees is abolished. RF2’s statement is:

“To me, this concept is not a franchise...no ...meaning no initial capital, to pay a fee of RM50,000...not required...what is the point of paying a fee of RM50,000 ...”

RF6 stated that:

“It means that in the agreement, I do not impose a fee but later on when there is a profit, we will have the concept of musharakah. To me, I think there is no problem.”

In addition, RF3 proposed the need to establish a specific agreement to guarantee and safeguard the franchisors' interests. According to RF3:

“That is good but have to see that both parties make like an agreement, in case in the beginning [they] surely say everything can be done but in the end, for example when the business drops, maybe one of the parties does not want to take the responsibility, it can be done like this but have a guideline.”

4.4.4.3 Selective Partner – Trustworthiness

From the risk aspect, RE5's opinion is that in forming a *mushārakah* franchise, the franchisor needs to understand and is willing to face the initial risk of uncertainty in making profits. According to RE5:

“If he enters into a mushārakah, he has to bear the risk from the very beginning, not certain up to the sales, and he can interfere closely with the [running of the] shop as he is also a partner.”

Meanwhile, on the part of entrepreneurs, RF3's opinion is there is a possibility that the franchisee will take over the business built by the franchisor, and the franchisor has to bear the risk of losses and others if the franchisor has an irresponsible partner. This is apparent in the following statement:

“Usually, looking at a partnership, for example, if the business cannot go on, perhaps one party does not bear the risks, some people run away, some do run away and leave the

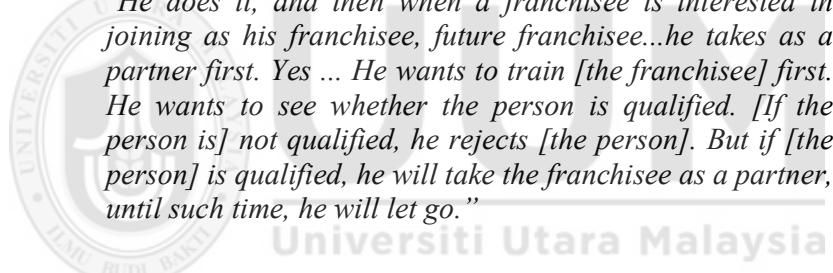
burden on the other party. That would probably be a problem.”

In addition, according to RE1, franchisors emphasize the aspect of trust in a *mushārakah* franchise business where it is crucial for franchisees to protect the business reputation:

“Because in mushārakah, perhaps he does not trust us to run the business.”

This statement is supported by RE2, who stated that franchisors have the right to choose partners whom they feel are qualified:

“He does it, and then when a franchisee is interested in joining as his franchisee, future franchisee...he takes as a partner first. Yes ... He wants to train [the franchisee] first. He wants to see whether the person is qualified. [If the person is] not qualified, he rejects [the person]. But if [the person] is qualified, he will take the franchisee as a partner, until such time, he will let go.”



4.4.4.4 Mutual Understanding

Meanwhile, RF5 emphasized through the following statement that understanding the nature and risks of a business sector is among the success factors of a *mushārakah* contract:

“Can [be done] but on the condition to make him really understand the concept, make him understand then [it] can [be done]. It cannot be explained blankly. Make him understand the concept of musharakah, ask him back what he understands, then can [be done].”

In addition, RF5 stated that the selection of a partner who understands the business risks and the nature of the business being carried out is crucial to the success of the partnership contract. According to RE5:

“Can [be done] but on the condition to make him really understand the concept, make him understand then can [be done].”

For example, RF1 described the form of partnership that can occur when one party produces a product while the partner markets it locally or internationally:

“Like my example earlier, the aborigine, he can make blowpipes, he can make baskets and all those, that is just one person. But something like this, there are 20 other people who can make the same thing, but just to make it with no sales, there is no commercial value there. So how can he market it? Find someone or a party that has the capability. For example, he goes to Vietnam, he goes to the US, he goes anywhere there is demand, people who appreciate those things, which have aesthetic values.”

4.4.4.5 Business Sector

In determining the suitability of the *musharakah* franchise business sector, RE5 and RF3 are of the opinion that the implementation of *mushārakah* is suitable for a newly expanding business or an already established franchisor. According to RE5:

“It can happen for a new brand, people do not have the confidence yet, it does not have a reputation yet, it can happen.”

RF3 agreed with this opinion:

“For example, I want to open a kindergarten, I do not have the capital, I have nothing, maybe this way is smarter, more efficient, raising the capital together, working together, and the sharing is the same, the same loss, because it is new,

initial stage, only at a start-up stage, maybe this concept is better.”

However, RF1 considers this contract unsuitable to be implemented in the financial sector:

“this field is already 24 years. So it is impossible for us to give this right to others arbitrarily as we have done it over the time, we have done everything from scratch, zero to something...systematic.”

Meanwhile, RF5 stated that the health sector such as dialysis centres could apply the *mushārakah* concept, but it is important to understand that this business needs a long time to make profits. It is easy to make profits in the food and beverage sector:

“Make him understand the concept of mushārakah, ask him back what he understands, then it can [be done]. Not just the capital you know, this thing involves...when you run a dialysis [centre], you cannot stop at will, close at will. It is different from a nasi lemak shop, if they withdraw...here, once you open a dialysis [centre], you deal with humans, with blood.”

4.5 *Mudārabah*

The discussion on this part described on *mudārabah* analysis obtained from the interview transcripts. The analysis starts with the concept of *mudārabah* which covers its feasibility in the franchise business, the relationship between *mudārib* and *sāhib al-māl*, and loss-and-profit sharing ratio as briefly stated in the following segment.

4.5.1 Is It Possible that There Will Be a Franchise System in the Future Where the Franchisor Provides Capital, While the Franchisee Manages the Affairs of the Business and Then the Profit Is Divided by Mutual Agreement?

This section presents the respondents' views on the feasibility of *muḍārabah* based franchise comprises of *sāhib al-māl*, *muḍārib*, and the loss-sharing provision.

4.5.1.1 *Muḍārabah-Based Franchise*

RE5 stated that:

"this model, which is in the contract form, is different from the existing models: "Those are available, can [be done], if it is like that. But the model is slightly different. Franchising is not a problem of not having the money, but he [the franchisor] does not want the headache of managing..."

RE4 is of the view that it is necessary to create a new model that will not only conform to Sharī‘ah requirements but also have an added value to make it better than the conventional franchise system. RE4 added that the *muḍārabah* franchise contract could be implemented by combining several supporting contracts such as *wakālah* and *ujrah*:

"This contract can be implemented but it may involve various contract structures. Not just an ordinary muḍārabah. I imagine this franchise contract will apply muḍārabah, wakālah, and ujrah."

Meanwhile, RE3 gave the opinion that franchises should be patented to make them similar to a company as well as establishing a monitoring body aimed at reviewing the commitment and integrity of franchisors and franchisees:

“That’s why if we look [at it], like in banks, or in established places, there is a monitoring body. There are disciplinary board members. There are reviews in terms of income, in terms of commitment, in terms of the integrity unit and so on.”

4.5.1.2 Uniqueness of Mudārabah Franchising

This *mudārabah* contract is unique as the franchisor can become the *mudārib* while the franchisee acts as the *sāhib al-māl* as stated by RE5, RF2, RF3, and RF4. According to RE5, the *mudārabah* contract can be implemented:

“Let say the capital is provided by the franchisee, he provides the capital, he opens my company, the profit is divided equally, I will bear the loss, that kind of franchise is acceptable, but it is a bit strange.”

RF2 believes that this concept can be implemented if the franchisor becomes the entrepreneur without having to contribute capital:

“Menara does not provide any capital...we run [the business] together...we use our expertise...the profits, we share according to the agreement.”

Meanwhile, RF3’s view is that risks could be reduced when the franchisor becomes the *mudārib*:

“If that is the case we do not provide the capital, we provide efforts, I think it will not be a problem, as we will not feel that we are bearing the risk, if [the franchisee] misbehaves, we will not really feel it.”

According to RF4:

“let say you is the franchisee, I am the franchisor, but you come to me, you say, I have half a million, I do not want to

open a shop, I want the franchisor to run the business. The money, you give it to me to open a shop. I am already a franchisor, I already have the expertise, that can also happen. Since he does not want to run the shop, he only provides the money.”

An opposite situation could also happen as mentioned by RF1, RF2, RF3, RF4, and RF6. RF1 gave an example where one party provides experience, capability or knowledge that is acknowledged as effort, while the other party provides facilities as the capital:

“I have the capability or knowledge in terms of motivating others, a motivator, but I don’t have the facilities...you have the facilities, you provide everything, we share. That is muqārabah.”

Meanwhile, RF2 explained how *muqārabah* could be implemented:

“Menara manages you...you provide everything...that possibility can happen but not with individuals...cooperatives...that can happen...”

RF3 explained it as:

“we provide everything, our capital, we appoint someone else as the operator, he carries out...”

4.5.1.3 Profit Ratio

In addition, in discussing the profit ratio for both parties, RF3 thinks that a higher percentage ratio should be allocated to the franchisor as the franchisor has provided everything:

“50:50 is impossible, 60:40 is tough, about 70:30 is acceptable... Yes, even though he provides the capital, everything is there already.”

One of the referred experts, RE2, gave the opinion that intellectual properties and trademarks are the exclusive property of the franchisor. Therefore, it is fair to allocate a higher percentage ratio to the franchisor. According to RE2, fairness is subjective:

“To me, it is not fair to the franchisor. Even though the franchisee has paid him, everything...in terms of...what is it...IP right at the time it is to be used in the contract, he has paid the capital, but the franchisor still has a right over the IP.

Fairness is...hard for me to justify. As it depends on the type of business. Some businesses, already...the franchisor has already developed it, his efforts to create the product, and it would be unreasonable for the franchisee to take it.”

On the contrary, RE3 is of the view that the profit distribution is based on the current situation and is not necessarily equal. RE3 gave the view that the service of a valuer is required for the current valuation:

“This is how I see the issue, it tends to depend on the situation. At times the financing is expensive, which means money is hard [to get], expensive. Expertise is in abundance. Or work or anything. So we see, at times, it is not necessary to divide equally. At times it is acceptable. At times the weightage is on this side. It depends on how the demand is. How the supply is... I look at it, a valuer is required. A current valuer. As a mediator between others, those with expertise as a valuer, they can appraise it. Get 3 people. A appraises at 10, B appraises at 20, C appraises at 15. Take the middle, 15.”

4.5.2 How Can Commitment and Sincerity Be Applied in a Franchise System with a Capital Sharing Pattern on the One Hand and Efforts on the Other?

Mudārabah emphasizes on commitment as *mudārib* is the person who is given trust to generate income from the financial resources provided by the *sāhib al-māl*.

Commitment and trustworthiness play important role in *mudārabah* formation and the topic appeared under partner selection. In addition, risk management and control also been presented in this sub-chapter.

4.5.2.1 Selective Partner

In the effort to form a *mudārabah* joint venture, the selection of entrepreneurs or the *mudārib* is crucial. According to RE3, both franchisors and franchisees cannot betray each other. RE3 added that both parties need to be sincere, earnest, committed, and trustworthy to make this contract a success:

“We just have to remember, that when in a company or merger, both parties must not be betray. No element of betrayal, no deceit. Be sincere, be earnest.”

RF4 holds the same view by stressing the importance of the concepts of honesty and sincerity in forming this contract. RF4 thinks that this contract can take place only among those who are well known and are close to each other such as family members:

“But the franchisor, actually he has to be honest in running the franchise business.”

“It requires sincerity, the concept is no grumbling in the future, it means you come as my trainee, you are new, you work for me first, then I provide capital for you, so this is yours, you will get the profit but you [must] buy goods from me, I provide all the facilities for you, a shop, everything 100 per cent. I have done this with a MARA trainee, he had no capital, nothing...”

“It usually happens with the people we are fond of, those we know, those we trust...it cannot be, suddenly someone from Sarawak comes to see me, I do not know [the person], it will be difficult...it often takes place among acquaintances, family members...”

4.5.2.2 Risk Management and Controlling

Furthermore, RF3 emphasized the importance of the franchisor exerting control on the franchisee as the mudarib:

“It is quite dangerous actually, maybe we are like Puan Fazrin said there is another agreement, which is stricter, not towards conventional but sometimes, is also Islamic in nature, that we should be thinking about.”

On this matter, RF5 is of the view that only one party, which is the franchisor, has the commitment due to the franchisee's lack of responsibility as the franchisee did not provide the capital:

“I feel that there should be a little bit of capital, a little bit of a sense of responsibility I feel, if there is capital he would feel that it is my money, I have to take care of the business, yes, in case of a loss it is not my money, he will think that way...”

4.5.3 Do You Feel Fair in the Concept of Profit Distribution in This Franchise System to be Implemented Equally in Terms of its Quantity?

The concept of capital and loss in *mudārabah* -based franchise is presented in this part as follows:

4.5.3.1 Capital Concern

In the discussion concerning the issue of capital, RE1 is of the view that the *sāhib al-māl* or capital contributor should control the contributed capital while the *mudarib* or entrepreneur does not need to contribute capital:

*“Yes. The financier should control his capital. It means...his personal security, he emphasises there. *mudārabah* has an element of separation. Management...That is, the person managing it does not contribute capital.”*

Meanwhile, RF1's view is that the capital contribution is in a tangible form and can be appraised:

"His capital but it has to be in terms of volume. Volume means quantity."

4.5.3.2 Profit Ratio

On the contrary, RE3 is of the view that the profit distribution is based on the current situation and is not necessarily equal. RE3 gave the view that the service of a valuer is required for the current valuation:

"This is how I see the issue, it tends to depend on the situation. At times the financing is expensive, which means money is hard [to get], expensive. Expertise is in abundance. Or work or anything. So we see, at times, it is not necessary to divide equally. At times it is acceptable. At times the weightage is on this side. It depends on how the demand is. How the supply is... I look at it, a valuer is required. A current valuer. As a mediator between others, those with expertise as a valuer, they can appraise it. Get 3 people. A appraises at 10, B appraises at 20, C appraises at 15. Take the middle, 15."

4.5.4 Are You of the Opinion that the New Franchise System with the Concept of *Mudārabah* Can Be Practiced in the Future?

This topic examines the views of the respondents on the feasibility of *mudārabah* - based franchise to be implemented in the future which include the suitability business sector, and franchisors' experience on managing business similar to *mudārabah* concept before.

4.5.4.1 Suitability Franchise Sector in *Mudārabah*-Based Franchise

Furthermore, in considering the suitability of a franchise business sector to adapt the *mudārabah* contract, RF1 thinks that it could be practiced except for in the financial business sector:

“But the exclusive right in terms of ownership of the trademark, and his ownership, in the financial form, is a bit hard...”

4.5.4.2 Franchisors’ Experienced Towards Mudārabah-Based Franchise

According to RF4, he has carried out a concept similar to *mudārabah*-based franchise:

“then I provide the capital for you, so this is yours, you will get the profit but you [must] buy goods from me, I provide all the facilities for you, a shop, everything 100 per cent. I have done this with a MARA trainee, he had no capital, had nothing...”

RF6 has also carried out a business with the same principle as *mudārabah*:

“because the franchisee has provided the capital, we provide the expertise it’s just the difference is we provide the expertise, the capital is from someone else, we look at it that way.”

RF3 has experienced implementing the *mudārabah* contract but it failed. The failure was caused by the irresponsibility on the part of the franchisee or *mudārib*. All risks were borne by the franchisor as the *sāhib al-māl*:

“somehow starting [from] last year, we owned the centre 100 per cent because the person could not do it anymore, it is not known where he went, then the burden fell upon us, with the bills, 5 thousand for water, we had to pay, his staff costs...”

4.6 Findings from the Interviews on *Mushārakah* as a Basic Proposal for the Islamic Franchise Business

This section briefly elaborate on the findings on *mushārakah*-based franchise based on the interviews conducted on two groups of respondents; namely the referred experts and franchisors which are displayed in Table 4.3 and Table 4.4.

Table 4.3
*Findings of the Interview with Referred Experts on *Mushārakah*-Based Franchise*

Respondents	<i>Mushārakah</i>
RE1	<ul style="list-style-type: none"> – Each member makes a capital contribution. – Franchisors emphasise on the trust aspect to the franchisees to protect their business reputation. – The same capital contribution ratio does not necessarily mean an equal profit ratio. – Expertise also has a value and can be part of the capital.
RE2	<ul style="list-style-type: none"> – <i>Mushārakah</i> can be implemented if the franchisors do not contribute capital directly in the franchise. – Capital contributions are in a tangible form. – Based on the act, intangible capital is any reasonable consideration.
RE2	<ul style="list-style-type: none"> – Franchisors have the right to choose partners who are deemed fit to become franchisees. – This contract is different from the existing franchises and will be a new model. – Theoretically, a franchise is aimed at expanding a business without providing capital and by providing expertise to the franchisee.
RE3	<ul style="list-style-type: none"> – Sharing of the franchisor's brand and trademark benefits the franchisee. – A merger of brands and trademarks occurs in a <i>mushārakah</i> franchise. – Capital contribution from the franchisor is an intangible capital in nature. – Goodwill or customers' confidence in a person or brand has a value that can be considered as part of the capital. – Intangible properties such as knowledge and expertise can be accepted as part of the capital and are known as <i>ikhtisās</i>. – Something that is in the <i>ikhtisās</i> and non-physical form such as trust, capability, ability, and knowledge is an asset and has a value. – <u>A specific contract is appropriate for the franchise business.</u>
RE4	<ul style="list-style-type: none"> – It is not necessary for every partner to contribute tangible capital. – Examples of intangible capital contribution by the franchisors are providing training and branding. – Goodwill can also be appraised as intangible capital. – It is essential to make a valuation of the intangible capital before entering a contract. – Profit distribution is based on the ratio of capital contribution. – Loss allocation is based on the contribution of each member in forming the partnership. – It can be implemented upon compliance with all <i>mushārakah</i> requirements.

RE5	<ul style="list-style-type: none"> – Franchisors have a right to interfere in the management. – Franchisors face risks when profit is uncertain. – <i>Mushārakah</i> can be practised, but it is suitable for a new brand. – Intangible assets such as brands can be appraised as capital. – It is suitable for franchisors who are already established.
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While the following Table 4.4 shows the interview findings with the franchise entrepreneurs.

Table 4.4
*Findings of the Interview with Franchise Entrepreneurs or Franchisors on *Mushārakah*-Based Franchise*

Respondents	<i>Mushārakah</i>
RF1	<ul style="list-style-type: none"> – Capital is in the form of volume. – It can happen when one party produces a product and the partner markets it in local or international markets. – The same percentage of capital contribution by each member does not mean that the profit and loss percentage is also the same. – Trademarks are the exclusive right of the franchisor. – <i>Mushārakah</i> is not suitable for the financial sector.
RF2	<ul style="list-style-type: none"> – It is a different concept from a franchise as fees are not imposed. – It is more of a joint venture or collaboration. – The capital contribution made by franchisors can be tangible and intangible, but the capital contribution made by franchisees are tangible or in the financial form. – It is not necessary to pay fees if a <i>mushārakah</i> contract is used.
RF3	<ul style="list-style-type: none"> – It is suitable for a new business. – Brands and trademarks are the exclusive property of the franchisor. – Franchisors must bear the risk if the partners are irresponsible. – Goodwill can be considered as an asset. – It is hard to make a valuation of something intangible such as an individual's performance. – Valuation of goodwill is subjective in nature. – There is a possibility that franchisee will take over the franchisor's business.

	<ul style="list-style-type: none"> – Trademarks are the exclusive property of the franchisor.
RF4	<ul style="list-style-type: none"> – The strength of a franchisor is apparent if the franchisor has been established for at least 10 years. – Franchisors contribute intangible capital while the franchisees contribute financial capital. – Brands and trademarks are the exclusive property of the franchisor. – <i>Mushārakah</i> can be implemented. – Franchisees have more confidence as their partners are already established in business.
RF5	<ul style="list-style-type: none"> – It is crucial for the partners to understand the nature of the business and its risks. – The business of a dialysis centre takes a long time to make profits. – Patients' health needs to be considered aside from the profits. – A business that involves a person's life is different from the food and beverage sector, which earns profits quickly. – A business that involves lives cannot pursue profits alone.
RF6	<ul style="list-style-type: none"> – Franchisors can expand their business without having to provide capital. – The concept of fees is abolished. – It is a new model in the franchise system.

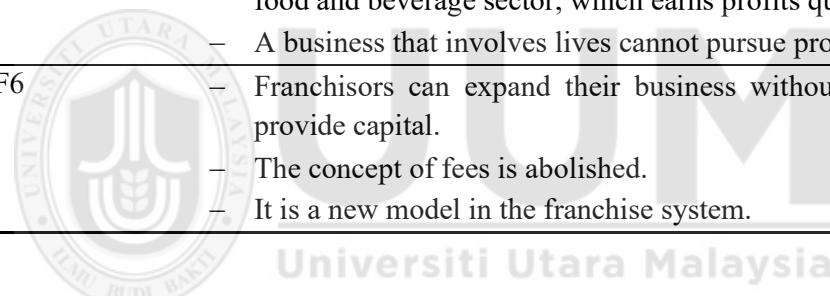


Table 4.4 above displays the findings for *mushārakah* analysis while the sub-chapter below displays the findings for *mudārabah* analysis.

4.7 Findings from the Interviews on Mudārabah as a Basic Proposal for The Islamic Franchise Business

This study continues with the *mudārabah* contract, which also involves the same two groups of respondents. Table 4.5 below shows the findings of the study from the referred experts.

Table 4.5
Findings of the Interview with Referred Experts on Mudārabah-Based Franchise

Respondents	Mudārabah
RE1	<ul style="list-style-type: none"> – The <i>mudārib</i> should control the contributed capital. – The <i>Mmdārib</i> does not make a capital contribution.
RE2	<ul style="list-style-type: none"> – Fairness is subjective. – Intellectual property rights and trademarks are the exclusive property of the franchisor, so the profit distribution percentage has to be fair.
RE3	<ul style="list-style-type: none"> – The contract needs to be modified to cater for the franchise. – The franchise needs to be patented to make it similar to a company.
TaRE3	<ul style="list-style-type: none"> – Franchisors contribute financial capital while franchisees contribute expertise. – Agrees for the contract to be implemented. – Both parties should not betray each other. – Sincerity, earnestness, commitment, and trust are necessary for ensuring the success of this contract. – A monitoring body should be established to review the commitment and integrity of both parties. – Profit distribution is based on current circumstances and may not necessarily be equal. – There should be a valuer for the current valuation. – It can be implemented with appropriate modifications.
RE4	<ul style="list-style-type: none"> – It can be implemented by considering current practices to avoid duplication. – There is a need to produce a model that not only conforms to Shariah requirements but also has an added value to make it better than a conventional franchise. – It is difficult for the franchisors to contribute financial capital. – Franchisees contribute financial capital while the franchisors provide the business license and goodwill. – It is similar to the <i>mushārakah</i>-based model. – It can be adapted with complete documentation. – It is determined after all related documentation sets are evaluated. – It can be implemented by restructuring various affiliated contracts based on <i>mudārabah</i>, <i>wakālah</i>, and <i>ujrah</i>.
RE5	<ul style="list-style-type: none"> – Franchisors will expand their business if they have the capital by opening a new outlet. – The franchisee will be the <i>sāhib al-māl</i> while the franchisor will be the <i>mudārib</i>. – It is different from the existing models. – More profits are given to the franchisor.

	<ul style="list-style-type: none"> – It can be applied if the franchisor becomes the <i>mudārib</i>, while the franchisee becomes the <i>sāhib al-māl</i>.
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Table 4.6 displays the interview findings with the franchise entrepreneurs or the franchisors.

Table 4.6

Findings of the Interview with the Franchise Entrepreneurs or Franchisors on Mudārabah-Based Franchise

Respondents	<i>Mudārabah</i>
RF1	<ul style="list-style-type: none"> – The financiers are the government or corporations. – Capital is in a tangible form. – One party contributes their experience, capabilities, or knowledge that can be capitalised while the other party provides their facilities as capital. – Franchisors seem oppressed unless the profit ratio allocated to the <i>sāhib al-māl</i> (franchisors) is higher. – It can be practised but not in the financial sector. – It is important to safeguard the exclusive rights of the franchisors.
RF2	<ul style="list-style-type: none"> – It can happen if the franchisor becomes the <i>mudārib</i> and the franchisee becomes the <i>sāhib al-māl</i>. – Franchisors seem to be oppressed. – The partners need to understand the risk aspect.
RF3	<ul style="list-style-type: none"> – Has implemented it following the <i>mudārabah</i> features. – The franchisor became the <i>sāhib al-māl</i> while the franchisee became the <i>mudārib</i>. – Failed to implement fully due to the failure of the <i>mudārib</i>. – Franchisors need to emphasise on the control aspect towards the <i>mudārib</i>. – The <i>mudārib</i> was not responsible. – Risks were borne by the franchisor as the <i>sāhib al-māl</i>. – A higher profit ratio for the <i>sāhib al-māl</i> or franchisor. – It can be applied if the franchisor becomes the <i>mudārib</i>, while the franchisee becomes the <i>sāhib al-māl</i>.

Table 4.6 to be continued

Respondents	<i>Mudārabah</i>
RF4	<ul style="list-style-type: none"> – Has implemented it following the <i>mudārabah</i> features. – The concept of sincerity is essential. – The franchisor became the <i>sāhib al-māl</i>, while the franchisee became the <i>mudārib</i>. – It takes place between those who know each other, for instance, acquaintances and family members (trust). – It can be applied if the franchisor becomes the <i>mudārib</i>, while the franchisee becomes the <i>sāhib al-māl</i>.
RF5	<ul style="list-style-type: none"> – Franchisees or <i>mudārib</i> should provide some capital to have a sense of responsibility towards the business being carried out. – Only the party that issues capital, such as the franchisor, is committed.
RF6	<ul style="list-style-type: none"> – The franchise concept is to expand a business without the franchisor contributing capital. – The franchisee becomes the <i>sāhib al-māl</i>, while the franchisor becomes the <i>mudārib</i>. – The entrepreneur should also contribute capital. – A higher profit ratio to franchisor.

4.8 Themes Developed from the Findings

This segment summarized the findings of the analysis which are illustrated in diagrams as presented in Figure 4.1 and Figure 4.2. Both diagrams encompass the codes, sub-themes, and themes developed from the analysis. Extensive discussion from the thematic findings obtained from the analysis will be discussed in Chapter Five.

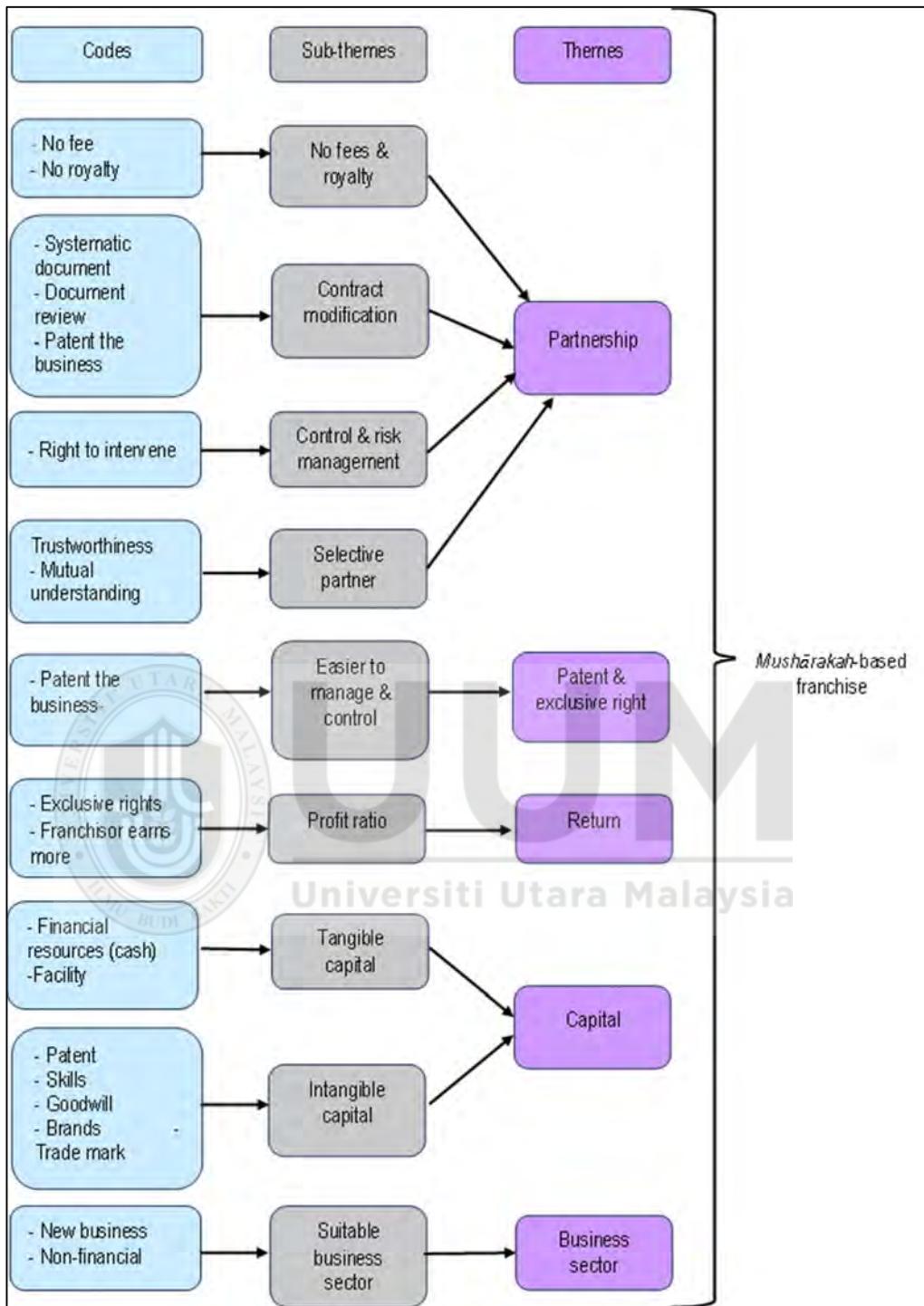


Figure 4.1
Musharakah-Based Franchise Codes, Sub-Themes and Themes Developed from the Analysis

Whereas Figure 4.2 below shows the codes, sub-themes and themes generated from the analysis.

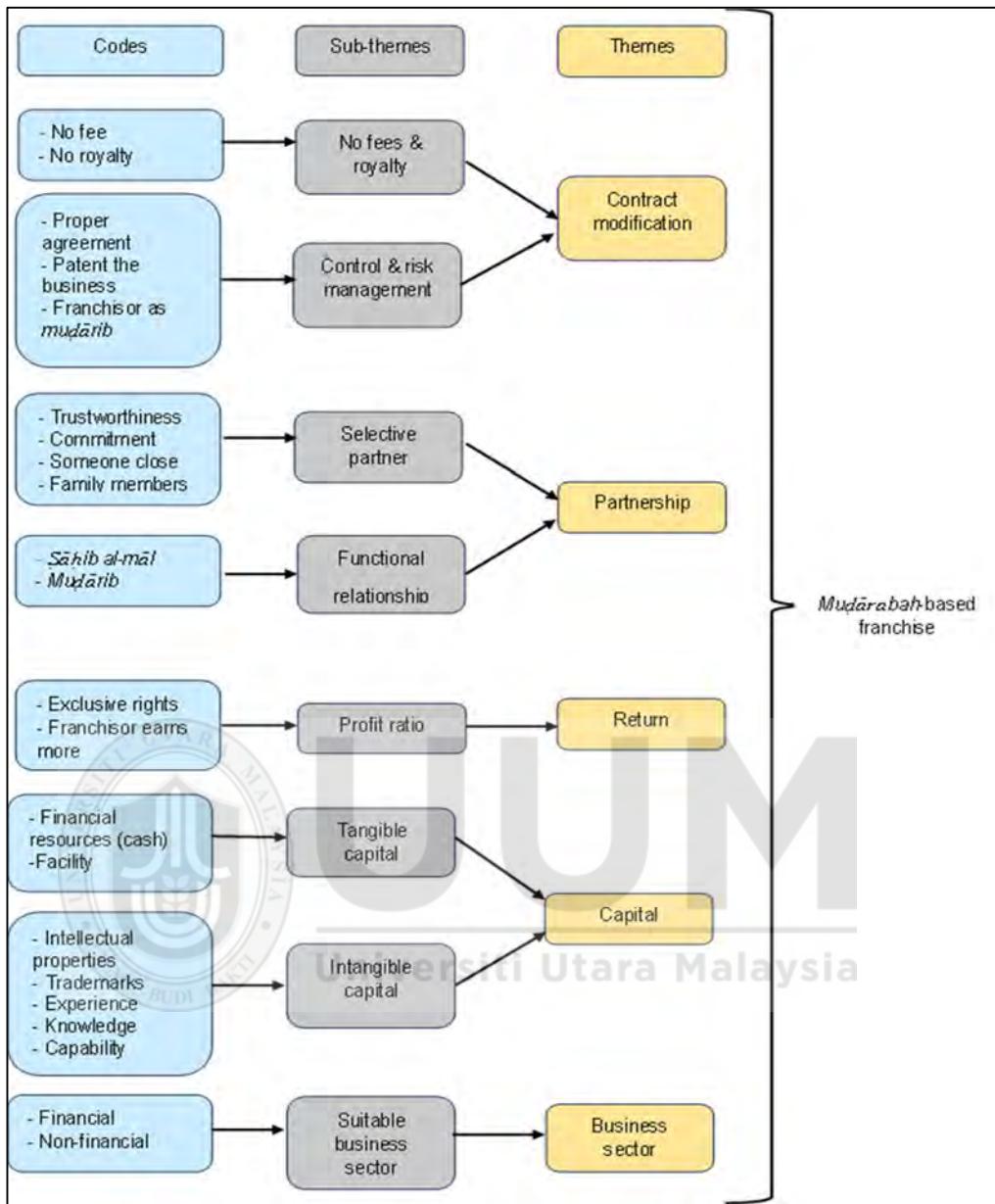
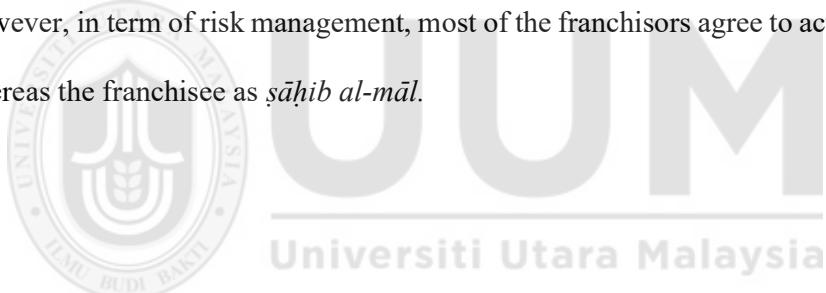


Figure 4.2
Mudarabah-Based Franchise Codes, Sub-Themes and Themes Developed from the Analysis

4.9 Conclusion

This chapter narratively reported the analysis obtained from the respondents' transcript to answer the question of this study. The findings are able to answer the question of what is *mushārakah* and *mudārabah*, and the feasibility of implementing these two contracts in the franchise industry.

The feasibility of *mushārakah* to be implemented in franchise industry is positive as the experts and the franchisors agree with the concept. Capital and profit-loss sharing ratio are the concerned elements in *mushārakah* concept. On the otherhand, *mudārabah* is unique where franchisor may acts as *mudārib* or *sāhib al-māl* which aims to facilitate their needs and circumstances. Similarly it goes to the franchisee. However, in term of risk management, most of the franchisors agree to act as *mudārib*, whereas the franchisee as *sāhib al-māl*.



CHAPTER FIVE

DISCUSSION

5.1 Introduction

Mushārakah and *mudārabah* are joint-venture contracts which aim to generate profit from the sharing of effort and financial resources among the members. Collaborating and cooperation are the core elements in *mushārakah* and *muḍārabah* to achieve the intention of alliance in such activity to gain profit. This contract is performed when some of the members do not have a proper need such as lacking of material resources, capability, or skill. Thus, this chapter discusses in depth to what extend the feasibility concept of *mushārakah* and *muḍārabah* to be utilized in the franchise business.

5.2 Why Franchising?

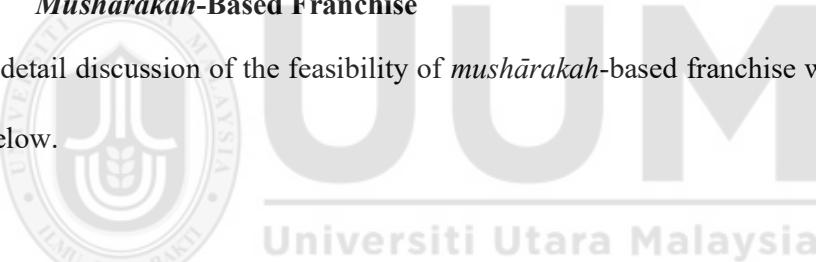
Franchisors need to expand their business by attracting financial resources to their businesses. One of the strategies is to franchise the establish business through entrepreneurship collaboration with franchisees. Franchisees through franchising provide the funds needed to achieve the desired goal, while the franchisors contribute the know-how and experience (Manuel Gonzalez-Diaz & Vanesa Solis-Rodriguez, 2012). In addition, franchising is a fast strategy of pooling of resources and capabilities. This finding is accordance with the preliminary information obtained from RE2 who stated that theoretically, a franchise takes place when a franchisor wants to expand their business without having to provide capital and lends their expertise to the franchisee. The statement was supported by RF4 where he stated that a franchisor needs at least 10 years to be established. This view is supported by a finding by Susan Turner and Al Endres where 50 percent of small-business owners end to close their small businesses by the 5th year. Surprisingly, only one third of small business startups

survive 10 years (Turner & Al Endres , 2017). During the period, an entrepreneur or a franchisor must face obstacles and challenges in the process of maintaining his business. Some of the obstacles and challenges are of lack of capital, competition, technology, management, communication, changes in demand and uncertain economic conditions (Azmi Abdul Manaf, Nik Hairi Omar , & Lee Kuan Yee , 2012).

The same view was shared by RE5, RE4 and RF6. Therefore, most of them agreed the feasibility of *mushārakah*-based franchise to be implemented in the future as the concern of the problem is financial resources. *Mushārakah*-based franchise offers solution in the matter and it is deeply discussed below.

5.3 *Mushārakah*-Based Franchise

The detail discussion of the feasibility of *mushārakah*-based franchise was presented as below.



5.3.1 Partnership

The first information obtained from RF6 is that the *mushārakah* contract is feasible, but it is different from the existing franchise contracts as no fee is imposed. This opinion is supported by RF4 where he said that the concept is more similar to a partnership as both parties involved in contributing capital. While RE3 stated that the joint-venture aspect alliance together resulting of sharing the brand, but the companies are two different entities.

The views of the respondents are in line with the previous study on the relationship ties between franchisor and franchisee in franchising was a partnership (Levent Altinay & Maureen Brookes, 2012). This is because both parties depend on each other

to achieve long-lasting triumph the business. On the contrary, franchisee appears as an agent to franchisor, where franchisee distributed products or serve services as instructed by the franchisor (principle) (Jolene Lim & Lorelle Frazer, 2004). The relationship between both parties was more profound than just as partners. For example, franchisor can be a mentor, consultant employer and principal towards franchisee. On the contrary, franchisee was the mentee, client, employee, and agent to the franchisor (Brown & Dev, 1997; Jolene Lim & Lorelle Frazer, 2004; Guillermo Navarro Sanfelix & Francisco Puig, 2018).

Moreover, RF4 stated the franchisee is more confident because the franchisor as his partner, who is already established in the business, well-known, and has a good name in the industry indirectly serves as assurance for the franchisee to success in the business. This idea is supported by Imed and Soheyb (2018) that franchising is a fast strategy to grow a business which is implemented through duplicating the whole system of a successful business from its trademark, brand, and operation manual. Further, this business model is significantly proven to reduce uncertainty and risk.

The exploration of *mushārakah*-based franchise to be applied in the context of entrepreneurship especially in the franchise business is possible. For record, this franchise business has actually been practiced in the education sector in Indonesia known as Jarimatika (Hadi, 2015). In this contract, franchisors and franchisees are seen to agree to withdraw their respective capital and the agreed profit ratio is 60% for the franchisor and 40% for the franchisee. Franchisee contribute his capital in the financial form to pay for the license initial fee, while franchisor contributes intangible capital which is assessed by a professional appraiser. The intangible capital of franchisor's comprises of educational programs, material preparation, training and

courses (Hadi, 2015). This joint-venture business was practiced by Jarimatika Darussalam reflects the *mushārakah* concept in the form of *mushārakah al-'inān*. Nevertheless, there is still an implementation of royalty payments from franchisee to franchisor. In addition, penalty mechanisms also imposed when the franchisee does not perform his obligations as agreed in the agreement or delays in paying certain fees toward the franchisor (Hadi, 2015). Therefore, it can be concluded that the requisites are similar to *mushārakah al-'inān*, but the implementation is not yet reflects the exact *mushārakah* concept as there is little adaptation been made to accommodate with the current franchise act.

The application of *mushārakah* in the franchise business as an alternative contract in Malaysia may be proposed through *mushārakah al-'inān*. *Mushārakah al-'inān* serves as the basis for the formation of the Islamic *mushārakah*-based franchise contract. This is because the nature of the franchise business itself indirectly resembles the element of partnership between franchisors and franchisees to run the franchise business. Further, both the franchisor and the franchisee share the industry knowledge, financial stability, hardworking attitude, and interpersonal skills to ensure the franchise success. They undertake themselves as *partners* in the relationship, where each party is conducively responsible for the partnership's and the business success (Jolene Lim & Lorelle Frazer, 2004). The relationship occurs between them was beyond than just as partners as been mentioned earlier.

In practicing *mushārakah al-'inān*, both franchisors and franchisees must withdraw some capital and be involved in the management of the franchise. This conforms to the definition of *mushārakah al-'inān* which stated that *mushārakah* is formed between two or more persons who agree to perform the contract based on certain

conditions, with their capital in doing business. While the profits is based on the ratio of capital contribution between them. In addition, each participant is required with a phrase indicating permission to carry out management (*tasarruf*) and if this part been denied, then the contract is considered as invalid (al-Jaziri '., 2001).

In the context of the franchisee's application of the franchise, franchisors as partner to the franchisee will provide the necessary assistance needed as the concept is the joint-venture of two parties to conduct the business. Forms of assistance extended to franchisees may include advertising, promotions, and training which are considered as part of the intangible capital contributions of franchisor's. More specifically, capital contribution which is clearly involved in this context are business names, corporate names, trademarks, brands, or inventions. These assets are considered as property of the holder. Shariah law recognized these intangible assets as property (*māl*). The intangible asset is considered as a source of wealth (*tamawwul*) that generates future benefits, and also can be compensated and exchanged (Bouheraoua, Mohamad, Kasri, & Abdullah, 2015). Instead, franchisees need to contribute capital in financial form. The contribution made in this way seen to be fairer among the franchisor and the franchisee. The reason is the franchisor is equipped with vast expertise and knowledge, having risked himself in sustaining the business from the start to success, and well experienced in the sector. Therefore, it is appropriate that all forms of cooperation such as advertising, promotion and training from the franchisor to the franchisees are considered as franchisor's capital contribution as these can be valued financially. The percentage of capital contributions in this form should be accurately assessed professionally and obtained the consent of all parties involved in order to avoid any future disputes especially in determining the percentage of profit and loss share between them.

In short, this *mushārakah*-based franchise contract is positively having great potential to be practiced in the future as an alternative contract in franchise business entrepreneurship. However, several aspects need to be observed more closely to ensure that the parties involved are not being mistreated.

5.3.2 No Fees and Royalty

In applying the *mushārakah*-based franchise, RF2 and RF6 are of the opinion that the concept of fees is abolished and as profit-and-loss is the basis of the partnership.

The implementation of the musharakah-based franchise is unique and different from the current practiced. According to The Franchise (Forms and Fees) (Amendment) Regulations 2022, there are new official fees been introduced such as approval fees for foreign franchisors, renewal fees and increased costs for existing fees (Franchise Act, 2023).

Mushārakah-based franchise offers the sharing of profit and loss among the members. In the context of franchising, no fees and royalty payment are required as it is replaced by the loss-sharing concept.

5.3.3 Contract Modification on Existing Document

To materialize the *mushārakah*-based franchise contract, some modification on the existing document should be made to ensure it is accordance with *mushārakah*. One of the *mu‘āmalāt* expert, RE4 stressed on the needs of considering the current franchise practices to avoid any duplication by evaluating the existing documentation sets and completing new documentations. However, the needs of this situation will come later *Insya’ Allāh* in the future once the demand of this contract to be utilized in the franchise

industry to protect both the franchisors and the franchisees occurs. Under section 4 of the Franchise Act 1998 (as amended by the Franchise (Amendment) Act 2020) (FA), the statutory stated the operation management of the franchise business must be carried out separately:

“The franchisee shall operate 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.”

The feasibility of *mushārakah*-based franchise in the future should stand on its own law which suits with the nature of *mushārakah* contract, particularly *mushārakah al- 'inān* as the current act prohibited franchising be regarded as partnership at any form. This area will be the future study to accommodate the needs of *mushārakah*-based franchise contract in protecting the welfare of the parties involved.

In addition, as been discussed in Chapter Two, there are six elements to be considered in designing a contract. They are control and power management (Spencer, 2008), clear usage terms (Ilir Hajdini & Aveed Raha, 2018), trust (Calderon-Monge & Pastor-Sanz, 2017), based on legal phenomenon (Popa & Ponorica, 2012), and mutual consent (Ramizah & Puteri Nemie , 2016). Hence, contract designation is constructed to protect both parties, the franchisor and the franchisee where good faith and mutual consent are the underlying basis before the contract is concluded.

5.3.4 Controlling in *Mushārakah*-Based Franchise

The advantage of the *mushārakah* contract is the right of franchisor to intervene in the franchise business. This is the concerned of RE5 on the matter. Interestingly,

intervening in the *mushārakah*-based franchise by franchisor indirectly prevail the method of controlling.

The success of the *mushārakah* contract in the franchise system requires the control aspect of the franchisor as the exclusive owner of the franchise business in carrying out the joint venture. Under the Franchise Act 1998, franchisors need to be able to exercise control over their systems for the franchise model to be more efficient. In relation to the matter, the franchisor necessarily asks the franchisee to agree in all predetermined conditions under which franchisees as different entities are prohibited from amending, damaging, or operating their franchises in conflict with the agreement (Franchise Act 1998, 1998).

In relation to the above statement, in the contract of *mushārakah*-based franchise, the franchisor as a partner must control his/her partner from taking any actions that could destroy the business. The uniqueness of the *mushārakah* in the context of the Islamic franchise is that it gives the franchisor the right as a partner to interfere in the administration of the business. Therefore, there needs to be a specific agreement and guidelines to guarantee the rights of the franchisor as the trademark owner to ensure that the franchise business is successful. This situation can be realized through the contract of *mushārakah muqayyadah* (limited partnership) when franchisors as partners and trademark owners can place certain conditions (*taqyid*) on franchisees. For example, the franchisor places specific conditions in the agreement at the beginning of the contract to ensure the compliance of the franchisee on the provided manual operation. Hence, as joint venture partners, the franchisor and the franchisee effectively share authority over the quality of the provided goods, products, services,

and adherence to operating procedures in order to safeguard the good name and continuity of the franchise business.

In addition, Muwdudur Rahman and Muhammad (1992) presented that the inner self's objective is very important which reflects ones good deeds. It is achieved once an individual always realizes in his inner self that all the good deeds considered as part of '*ibādah*', and the '*ibādah*' is only to seek for Allah's Pleasure. As a result, he will fully commit and satisfied with his work. Hence, the discussion on the issue of controlling in Islamic approach is closely related with the process of *ukhuwwah* in selection of a qualified partner.

5.3.5 Patent and Exclusive Right

One of the *mu 'āmalāt* experts, RE3, suggested that appropriate modifications should be made on the *mushārakah*-based franchise contract. He also suggested to patent the franchise in ensuring the successful practice of this contract. According to him, by patenting the franchise will lead to easier management of the business.

A patent refers to an exclusive right granted for an invention, either it is a product or a process to provide a new way of doing something, or to offer a new technical solution to a problem (Patent Basic, 2023). Patent lies under the term intellectual property which been in use for more than 150 years which refers to areas of law including copyright, trademark, design, and other related rights. The intellectual property works that are protected under the statute are copyright, trademark, patent, industrial design, integrated circuit design, geographical indication, and protection of new variants of plants (Azimon Abdul Aziz & Nazura Abdul Manap, 2009). Common Law provides protection to the confidentiality of information and unregistered trademarks or also

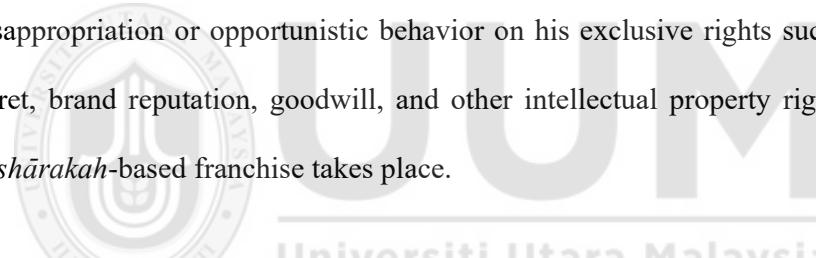
known as the misrelation law. Intellectual property provides not only protection to the creative work of its creator but also to the reputation of the creator. This can be seen from the protection provided through the trademark. Trademarks are governed by the Trademark Act 1979. This law provides protection to signs or symbols placed on goods or services that are intended to indicate the relationship between goods or services and the owner of the trademark in question and to be able to distinguish the goods or services of a particular company from the company. Trademarks including signs, brands, heads, labels, tickets, names, signatures, words, letters, numbers, or any combination thereof (Azimon Abdul Aziz & Nazura Abdul Manap, 2009), licenses and related rights "know-how" (Čović, Petrović & Čović Ilić, 2019).

On the other hand, patent law allows an inventor to monopolize and exploit his invention. At the same time, it is a form of reward given to creators so that they produce useful inventions in the future for the benefit of society. This intellectual property is governed by the Patent Act 1983. According to the Patent Act 1983, there is a list of non-patentable items including:

1. Discovery, scientific theory, and mathematical methods;
2. Diversity of plants or animals or biological processes to produce plants and animals, other than micro-organism, biological micro-processes, and the results of the micro-processes of the organisms which are all man-made products;
3. Schemes, rules, or rules for doing business, performing mental actions, and playing a game and
4. Methods for treating the human and animal bodies through surgery or therapy and diagnosis methods practiced on the human or animal body.

Once a patent has been registered, the patent owner has the exclusive right to make, use, import, sell and distribute the registered invention in Malaysia (Azimon Abdul Aziz & Nazura Abdul Manap, 2009).

In related to franchising, business-method patents permit a franchisor to prohibit others from utilizing its unique business model or, to claim the unique features of its franchise system. Any party against the law in practicing the business-method patent illegally may be held liable for infringement of the patent. For example, the methods of cooking hamburgers, cleaning services or painting automobiles are all potentially patentable (Christina Peterson, Jody DeStefanis, & Gregory Rosenblatt, 2002). Hence, once the franchisor has patented it intellectual property, he has safeguard himself from possible misappropriation or opportunistic behavior on his exclusive rights such as his trade secret, brand reputation, goodwill, and other intellectual property rights before the *mushārakah*-based franchise takes place.



5.3.6 Return (Profit Ratio)

In continuing the discussion, this section discussed on the profit ratio in *mushārakah*-based franchise. RE1 and RF1 are of the opinion that the same capital contribution ratio does not mean that the profit ratio is also based on the percentage of capital contribution. RF1 added that even though the percentage of capital contribution is the same, the profit distribution can favour the partner who contributes more effort.

Similarly, *mushārakah al- 'inān* arrangement also offer flexibility in the distribution of income, which can be equal for all partners or can be based on a mutually agreed proportion (Sabiq, 1999). Therefore, it complies with the nature of the franchise business where franchisor may contribute financial capital either in financial form or

in non-financial form such as expertise, brands, providing training and consultation, in condition that all these should be made known its monetary value before concluding the contract, and mutually agreed by all members. Having consider on the contribution of the franchisor on the matter which indirectly the franchisee benefits from this arrangement, the franchisor entitle to earn higher profit compared franchisee. The reason is because the partnership comprises of initial effort of the franchisor in sustaining the business until it is well-known. The franchisor has work hard, facing up and down time to establish its reputation. Therefore, it is reasonable for franchisor to earn more compared to franchisee regardless of their capital contribution. However, losses will be shared according to ratio of capital contribution by the parties.

5.3.7 Determining *Mushārakah* Capital and Loss in Islamic Franchise

In terms of capital contribution, RE1 is of the view that each partner should make a capital contribution. While RE2 mentioned that capital can be in tangible and intangible form. In addition, RF1 stated that the capital contribution must be in the form of volume or something that can be quantified. RE4 and RE5 agreed that goodwill or customer confidence in a person or a brand is an asset and can be used as intangible capital but must be appraised by a valuer to determine its volume or amount. In addition to goodwill, RE3 is of the view that knowledge, expertise, capability, trust, and ability are intangible assets Instead, RE3 explained that a partnership in brands and trademarks owned by a franchisor benefits the franchisee. Further, RF1, RF3, and RF4 are of the opinion that trademarks and brands are the franchisors' exclusive rights that can be appraised which RE3 referred to as *ikhtiṣāṣ* (expertise, skills). All these items can be considered as the franchisor's capital contribution. Meanwhile, RE1 is of the opinion that management has a value such as training and experience. Besides, in

term of capital contribution of franchisors, RF4 and RF3 agreed that franchisors may contribute non-financial capital in *mushārakah*-based franchise.

The investment capital in *mushārakah al-'inān* is typically provided by cash or historical forms of currency, which is gold (*dīnār*) and silver (*dirhām*). Gold and silver are acceptable by all *fuqahā'* as investment capital in *mushārakah al-'inān* (al-Sarakhsī, 1978; Ibn Rusyd, 1981; al-Ramli, 1938; Ibn Qudamah, 1999; al-Nawawi A., 1992). Additionally, capital may be made up of a portion of gold provided by one member and a portion of silver provided by another member (al-Sarakhsī, 1978; Ibn Rusyd, 1981). According to al-Kasani, the majority of jurists forbid capital investing in the form of goods since it is difficult to predict the return at the appropriate moment. This is due to the fact that the investment is based on the worth of commodities at that time, which is only estimated, and that there is a chance that there may be disagreements between members when it comes time to share profits later (al-Kasani, 1982). While bronze (*fulus*) in *mushārakah al-'inān* creates difficulties because its value fluctuates frequently, resulting to complicated distribution of revenue in the long run (Abraham L. Udovitch, 1970).

Based on the above discussion, there is no dispute on the capital contribution in currency form, regardless of either the currency is in the same currency or from different currency. Nevertheless, if the capital contribution is in non-currency form such as commodity, most *fuqahā'* disagree to it. This is because unexpected value makes it harder to compute the profit and, as a result, creates dispute among the involved parties on the revenue. The same argument applies to unstable currency, as it will make it more challenging to distribute earnings over the long term. However, it is acceptable in the franchise context for intangible assets which can be assessed by an

experienced appraiser as capital contribution in *mushārakah*-based franchise. The reason because there is *maṣlahah* to accomodate the circumstances of the franchisors and the franchisees in venturing their franchising.

Further, franchisor as the owner of the franchise business owns the trademarks, brands, business know-how, and even his goodwill. Therefore, in this venturing business, franchisees are required to contribute investment capital in the form of financial while franchisors contribute capital in the form of non-financial form which includes trademarks, business formats, products, providing training and courses, and consultation which is known as intangible assets. These intangible assets have monetary value. *Mālikī* scholars are considered more practical and consistent with the franchise system. Only the *Mālikīs'* jurists permit *mushārakah* investment in the form of goods, except for foods that can be weighed or measured. Before the *mushārakah* contract is concluded, the value of the goods which is used as capital contribution should be clearly known by all members involved as to enable the determination of each member's share in the profits, losses and work done. In addition, the Maliki jurists also allowed investment by members involved in the form of goods of different types based on the value of those goods (Malik Ibn Anas, 1905). This reflects *mushārakah* concept as it involving the mixing (*ikhṭilāṭ*) of property between one party and the other so that it can no longer be distinguished and separated (al-Zuhaily, 1996).

Interestingly, there is no requirement for equal equality in terms of capital, management (*taṣarruf*) and profit distribution in the formation of *mushārakah al- 'inān* provided that it is mutually agreed by all members involved. Hence, *mushārakah*-based franchise through *mushārakah al- 'inān* allows, the franchisor to expand his business through joint-partnership with the franchisee. The franchisors are not overly

burdened with the issue of providing financial resources, as the franchisee who provide the cash capital. As for the loss ratio, it is based on the ratio of capital contribution by each partner.

5.3.8 Partnership and Partner Selection

The selection of partner is crucial in any joint-venture business as it contributes to either a successful or failure of the business. The relationship between the importance of partner selection and franchise success has been proved in the previous study. Partner selection and successful franchisees depend on non-financial and financial ability (Gaul, 2015). One of the *mu ‘āmalāt* expert (RE5) said that the franchisee needs to understand and willing to face any initial risk of uncertainty in making profits. On the other hand, RF3 concerned with the possibility of opportunistic franchisee in taking over the business built by the franchisor, and the franchisor has to bear the risk of losses and other losses if the franchisor has an irresponsible partner. Therefore, trustworthiness in partnership is stressed out by RE1 and is supported by RE2 who stated that franchisors have the right to choose partners whom they feel are qualified.

Mutual understanding and trustworthiness are the concern of franchisors in selecting a partner franchise (Maureen Brookes & Levent Altinay, 2011). Selecting a qualified partner is a mechanism in mitigating risk as well. One of the potential risks in this franchise concept is the acquisition of franchisor business by franchisees. This is because the business was originally run by the franchisor. Franchisors have struggled in developing their businesses, especially some businesses that require high investment.

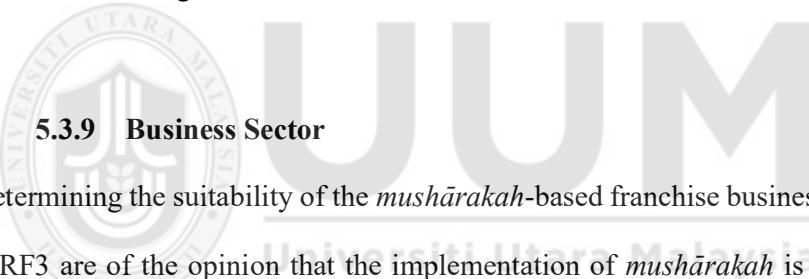
In addition, another risk that may occur is the incomprehension of the partner especially the franchisee in understanding the nature of the franchise business. The potential chances of failure is high. For example, franchise businesses in health sectors such as dialysis centers involving customers with health issues. The need to open a dialysis center requires a high volume of capital as this business involves certain expertise in the operation of the machines, and skilled staffs to handle the patients. Besides, there are also patients who seek for treatment with insufficiency on financial. Therefore, the profit revenue becomes overdue, and it will need some time to earn it. If such situation is not understood by a partner who only cares about profits in a short time, the likelihood of such business to fail is high. The situation is supported by Khairol & Muhamad (2010) with a statement that franchisors and franchisees need each other in achieving business goals. Nathan (2000) also concluded that the relationship between franchisors and franchisees is closely related to the success of a franchise business. Therefore, it is important for a franchisor to choose a partner he feels is worthy and understand the nature of the franchise business to run (Nathan, 2000). When franchisors and franchisees have a good relationship, this will indirectly result in the parties involved in the business being more committed and responsible (Khairol & Muhamad, 2010). On the other hand, the contract of *mushārakah* can be seen to reduce risks in the aspect of shouldering responsibility and committing to the joint venture business. For example, the concept of *mushārakah* requires that the parties involved should involve in contributing capital. Therefore, franchisees as partners will feel responsible as well as franchisees also jointly invest capital in financial form. This will create a “demand” towards franchisees to fully committed to the business to ensure its success. Therefore, this concept of joint-venture partnership will bring franchisors and franchisees together to share not only capital, management

and distribution of profits and losses, but also jointly-bear the risks in the franchise business.

Furthermore, the concept of *mushārakah* is based on the principles of trust and *wakālah* (agency/representative) where franchisors and franchisees put on trust on their partners towards the partnership, and each party becomes a representative on behalf of the other partner. Therefore, each member is responsible towards another as they represent each other, share capital and effort. Franchisor as the trademark owner will undoubtedly put all his best to sustain the business as it carries his name. On the other hand, franchisees as partners will feel responsible as well as he jointly share his capital in financial form. On this basis, any items that have a risk towards loss should be avoided collectively. Indirectly, it will maintain the good relations that have been established between the two parties.

Partner selection can be start with the concept *ukhuwwah*. *Ukhuwwah* is a way for hearts to unite and it is a part of Islamic teaching. Islam is made up of three components namely '*āqīdah* (faith), *Shari‘ah* (law), and *akhlāq* (ethics) (Hamjah & Mat Akhir, 2013; Wan Teh, Ismail, Mahamood@Fauzi, & Mohd Samuri, 2016; Juhan & Yahaya, 2020). Faith is the core principle of *ukhuwwah*. Faith in *ukhuwwah* allows for the closeness, friendship, unity, and cohesiveness where body, soul, mind, and heart work together to sake of goodness (Suhaimi Mhd Sarif, 2019). The pillars of *ukhuwwah* includes *ta ‘āruf* (knowing), *tafāhūm* (understanding), *ta ‘āwun* (cooperation) and *takāful* (protection). *Ukhuwwah* is a process which involve the *tarbiyyah* (Islamic education). The existence of *ukhuwwah* in the society at any level preventing one from sub-standard, fraud, mismanagement, and any other unacceptable misconduct (Sarif, 2019). Further, responsible collective work is the manifestation of *ukhuwwah* and is

achieved after going through the process of *ta‘āruf* and *tafāhūm*, followed by *ta‘āwun* and *takāful* (Siddig Ahmad, 2012). In the context of partnership, the attitude of collective work is a commendable value that makes a person always sensitive to the surrounding needs. The attitude is also capable of increasing the creativity of many parties when it results from a combination of various angles compared to individuals. In addition, it will give more satisfaction when the results obtained are better and guaranteed. Collaboration and assistance not only involve financial resources, but also includes energy, ideas and other support that can ease the burden on those who need it (Huefiros Efizi, Noor Naemah, & Nor Fahimah, 2020). This is achieved once the individuals are clearly understanding the main objective of the *ukhuwwah*, that is to sake for the blessing of Allāh in this world and the hereafter.



5.3.9 Business Sector

In determining the suitability of the *mushārakah*-based franchise business sector, RE5 and RF3 are of the opinion that the implementation of *mushārakah* is suitable for a newly expanding business or an established franchisor.

However, RF1 considers this contract unsuitable to be implemented in the financial sector: “this field is already 24 years. So it is impossible for us to give this right to others arbitrarily as we have done it over the time, we have done everything from scratch, zero to something...systematic.” Meanwhile, RF5 stated that the health sector such as dialysis centres could apply the musharakah-based franchise concept, but it is important to understand that this business needs a long time to make profits compared to food and beverage sector.

Based on the above arguments, it can be concluded that the feasibility of *mushārakah*-based franchise can accommodate non-financial sectors. This is justified by an expert (franchisor) who involves in financial franchise sector; *al-rahnu* (Islamic pawn broking). Based on his experience in financial sector, the company has invested such a huge amount of capital for research and development of the product and implement highly secured security system for the business, starting from scratch till it become systematic and success. Therefore, it is possible to share this exclusive right with the others. Besides, financial sector is governed by the Islamic Financial Services Act 2013 (Rahn, 2018) which all related matters should comply to it. On the other hand, it is flexible to those who would like to start new business or joint-venture with established franchisors from non-financial franchise sector. Example of non-financial sectors are health sector (e.g.; pharmaceutical, dialysis center), education (e.g.; kindergarten, international school, CIC Islamic School, Little Caliph), food and beverages (e.g.; sup Ani Utara, Secret Recipe) and other sectors. However, future research is suggested to study by including more franchisors in financial sector to accumulate more information. This information will benefit to more precise and accurate findings.

5.4 *Mudārabah*-Based Franchise

The respondents from the *mu‘āmalāt* franchise industry experts together with franchisors agree towards the feasibility of *mudārabah*-based franchise. As *mudārabah*-based franchise is based on partnership relationship, fees and royalty are abolished. The opinion of one of the *mu‘āmalāt* experts, RE5 stated that this model, which is in the contract form, is different from the existing models.

Meanwhile, RE3 gave the opinion that franchises should be patented to make them similar to a company as well as establishing a monitoring body aimed at reviewing the commitment and integrity of franchisors and franchisees.

The feasibility of *mudārabah*-based franchise as an alternative contract in franchise business industry promotes flexibility to farnchisors and franchisees in expanding their business. Trustworthiness is the underlying element in *mudārabah*. *Mudārabah* emphasizes on trustworthiness because *sāhib al-māl* as the capital provider gives full trust to the *mudārib* as an entrepreneur to invest the capital for profit. In this context, *sāhib al-māl* (capital provider) has risked his capital because the expected profits have not yet succeeded. The *mudarib* on the other hand is the *wakīl* (an agent) to *sāhib al-māl*, or in other word, he is a trustee for the capital/investment entrusted to him. In the case of the capital entrusted to him is destroyed without any negligence from of him, he is not liable and legally responsible towards it. The same ruling implies for any claim of disaster in respect of the capital which is proved and beyond any reasonable doubt (Ibrahim Jamiu Otuyo & Jumah Habeeblai Abiodun, 2021).

In reducing the risk in relation to trustworthiness, it is important to select a qualified *mudārib*. As been discussed earlier, the selection of a partner should start with the process of *ta’āruf*, followed by *tafāhūm*. Once the *ukhuwwah* relationship has emerged and tied the heart of the friendships, *ta’āwun* and *takāful* will come along. In the effort to form a *mudārabah* joint venture, the selection of entrepreneurs or the *mudārib* is crucial. According to RE3, both franchisors and franchisees cannot betray each other. RE3 added that both parties need to be sincere, earnest, committed, and trustworthy to make this contract a success.

If the concept is truly emerged between the parties, both will successfully achieve their desired goal as *ukhuwwah* stressed on the concept of *ta‘awun* and *takāful*. The spirit of the *ta‘awun* and *takāful* develops four values, namely goodness (*khāyr*), truth (*haq*), righteousness (*birr*), and piety (*taqwā*). These four values integrate laws, rules, duties obligations, values, manners, moral principles, behaviors, and practices to ensure trustworthiness, integrity, reliability, and justice in human relationships and human civilization (Sarif, 2019).

RF4 holds the same view by stressing the importance of the concepts of honesty and sincerity in forming *mudārabah*-based franchise contract. RF4 thinks that this contract can take place only among those who well-known and are close to each other such as family members.

Based on the franchisors's experience of managing similar *mudārabah*-based franchise arrangement before, the business fail to succeed due to betrayal and irresponsibilities of the party who manage the business. In this case, franchisor who funded for the financial resources. He suggested that this kind of business arrangement opportunity should be given to those are well-known such as family members.

In short, *mudārabah* is considered to have a great potential as an alternative contract for future Islam franchises. Nevertheless, there are certain aspects of *mudārabah* which need to be discussed and refined in order to ensure fairness for the franchisors and franchisees involved and to encourage Muslim entrepreneurs to venture into franchise businesses based on Islamic concepts. Selective a qualified partner in arrangement of *mudārabah*-based franchise serve as core element in ensuring the success of the contract and the business as a whole.

5.4.1 The Relationship Between *Sāhib al-Māl* (Capital Provider) and *Muḍārib* (Entrepreneur)

This *mudārabah* contract is unique as the franchisor can act as the *muḍārib* while the franchisee acts as the *sāhib al-māl* as stated by RE5, RF2, RF3, and RF4. Meanwhile, RF2 believes that this concept can be implemented if the franchisor becomes the *muḍārib* (entrepreneur) without having to contribute capital. In addition, RF3 is of the view that risks could be reduced when the franchisor becomes the *muḍārib*. In addition, RF4 agrees with the view if the franchisor is the *muḍārib* as the franchisor is equipped with expertise, facilities, and well-experience in the business.

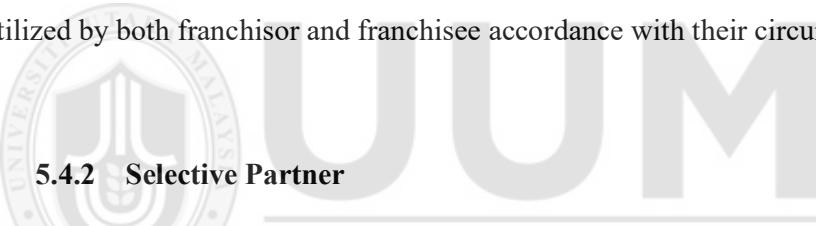
The uniqueness of *mudārabah*-based franchise feasibility emerged from the dual role of *sāhib al-māl* and *muḍārib*, where it can be considered as functional partnership. For example, in certain circumstances, franchisors can act as *sāhib al-māl* (capital provider) while franchisees as a *muḍārib* or an entrepreneur. This likely to happen when the franchisor is well-established and no longer requires financial aid in expanding his franchise business. This core element of trust is essential to ensure businesses that has been known with its own trademark and brand not to be damaged or simply destroyed. Therefore, only qualified and selected franchisees can be appointed as joint venture partners by franchisors. This is also in line with the saying of Allāh in the Qur’ān which means:

“O you who believe! Be not treacherous to Allāh and His Messenger; nor knowingly betray your trusts (obligations, duties, responsibilities in respect of wealth, property, confidences, knowledge, talents, time, opportunities, circumstances, power, social position, prestige etc. bestowed by other people, the community or by Allāh.)”

(al-Anfāl, 8: 27)

In the second situation, franchisors serve as a *mudārib* (entrepreneur) while franchisees is the capital provider or investor. In this situation, the risk of failure is reduced. The well-experienced franchisor as *mudārib* has vast experience in managing a business before. Besides, the franchisor as the franchise owner with prominent brands or trademark will probably nourish it, and not destroying his own hardship. The second scenario is closely reflected the nature of franchise business. Franchising is a method to expand a business without the franchisor need to provide capital or financial resources. In this scenario, the capital will be provided by the franchisee as *sāhib al-māl* (capital provider).

Hence, the dual role of *sāhib al-māl* and *mudārib* is unique and flexible where it can be utilized by both franchisor and franchisee accordance with their circumstances.



5.4.2 Selective Partner

In the effort to form a *mudārabah* joint venture, the selection of entrepreneurs or the *mudārib* is crucial. According to RE3, both franchisors and franchisees cannot betray each other. RE3 added that both parties need to be sincere, earnest, committed, and trustworthy to make this contract a success. While RF4 holds the same view by stressing the importance of the concepts of honesty and sincerity in forming this contract. RF4 thinks that this contract can take place only among those who are well known and are close to each other such as family members.

Based on the respondents' arguments, it can be concluded that the *ukhuwwah* process takes place when it comes to find a qualified partner in the *mudārabah* arrangement. The concept has previously been discussed in *mushārakah*-based franchise under

partner selection. Besides, the respondents also suggested that the well known partner usually comes from someone close such as family members.

5.4.3 Capital in *Mudārabah*-Based Franchise

In the discussion concerning the issue of capital, RE1 is of the view that the *sāhib al-māl* or capital contributor should control the contributed capital while the *mudārib* or entrepreneur does not need to contribute capital. Meanwhile, RF1's view is that the capital contribution is in a tangible form and can be appraised. Further, this venturing concept could also occur as mentioned by RF1, RF2, RF3, RF4, and RF6 where one party provides experience, capability or knowledge that is considered as effort, while the other party provides facilities as capital.

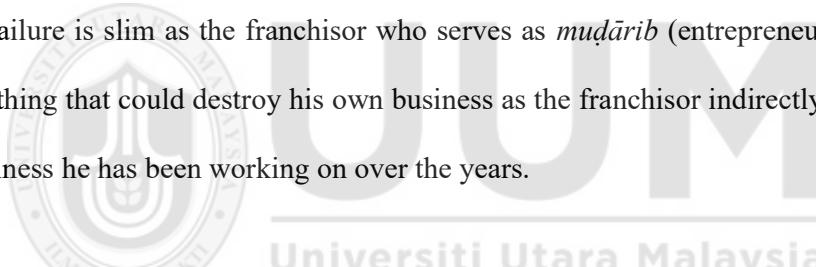
Jumhūr fuqahā' agrees that the contribution capital for the contract of *mudārabah* should be in cash or monetary form. Movable and immovable assets are not acceptable as these assets are difficult to be valued accurately. The amount of the capital must be known to the party involved.

Nevertheless, Ibn Abi Laila and Auza'i allow the capital based on business items. The business items must be evaluated by a qualified appraiser and agreed by the parties involved (al-Syirazi, 1959; al-Sarakhsy, 1978; al-Dardir, 1952).

The opinion of these jurist by allowing business items to be considered as capital seems to be more flexible and in accordance with the nature of the franchise business. For example, if a franchisor as *sāhib al-māl* (capital provider) contributes his business items as capital and it is valued correctly, the franchisee as *mudārib* (entrepreneur) will carry out the business activities upon the contract is concluded. Franchisee in this

situation seem to carry out as an agent role, and is entitle to be rewarded with income in the form of a percentage or lower rate than the franchisor. Higher percentage rate of income from the profit given to *sāhib al-māl* (franchisor) as the capital contributer and as to acknowledge himself as the owner of the business trademark, products, systems, and others utilized in the business activities.

On the other hand, the franchisor who act as *mudārib* (entrepreneur) can make an assessment to determine the amount of capital he needs to easier the franchisees as *sāhib al-māl* (capital provider) to provide the exact amount as capital before any business activities are carried out. The profit earned is divided as mutually agreed while the loss will be borne by *sāhib al-māl* (franchisee). Interestingly, the likelihood of failure is slim as the franchisor who serves as *mudārib* (entrepreneur) will not do anything that could destroy his own business as the franchisor indirectly manages the business he has been working on over the years.



5.4.4 Return – Profit Ratio

In regards to profit ratio distribution in the *mudārabah*-based franchise arrangement, RE3 is of the view that the profit distribution is based on the current situation and is not necessarily equal. RE3 gave the view that the service of a valuer is required for the current valuation. Franchisor as the owner of the exclusive rights and the founder of the business, it is reasonable to reward the franchisor with higher earnings compared to the franchisee. It is a deniable fact that the franchisee indirectly enjoys the franchisor's achievement. Hence, the franchisor has a right to be given higher profit ratio in this case. However, if both parties mutually agree to be given an equal amount of revenue, the contract is still valid.

5.4.5 Contract Modification - Controlling and Risk Management

The concept of *mudārabah muqayyadah* (restricted *mudārabah*) indirectly serves as risk mechanism and control management. The franchisor as *sāhib al-māl* (capital provider) has rights to provide certain conditions upon *mudārib* (franchisees) in utilizing the capital, methods of business, and form of business activities allow to be carried out. Indirectly, this restriction in *mudārabah* protect the franchisors' properties (brands, goodwill, trademarks, business know-how) from any misleading or opportunistic behaviour.

On contrary, commitment plays important role in successful of a business. In ensuring the franchisee as *mudārib* committed and carry out his responsibilities in managing the business, *mudārib* (franchisee) is require to contribute certain amount of capital. The contribution of the capital is valid and takes the ruling of *mushārakah*. Therefore, profit and loss sharing should be made in accordance with the principle of *mushārakah* in advance, and followed by the share of profits based on the profit sharing ratio agreed in the *mudārabah* contract (BNM, 2015). In this regard, franchisees as *mudārib* (entrepreneur) considered as partner to franchisors. Hence, the *mudārib* will take better care of their common interests as franchisees also contribute capital in the business. In addition, there is a need on *mudārabah*-based franchise contract to be modified and reviewed to facilitate the said circumstances. Besides, good commitment influence successful long-term relationships between franchisors and franchisees (Victoria Bordonaba-Juste & Yolanda Polo-Redondo, 2002).

In addition, the attitude of an individual who is committed to a job is accordance with *itqān* concept which is emphasized in Islam. *Itqān* refers to a commitment to achieving perfection. An individual who is equipped with *itqān* in him will take on the

responsibility with full trust because he realizes that all his deeds will be accounted and rewarded by Allāh either in this world or in the hereafter. Therefore, once *itqān* is blended as life culture, one will strive of his best in the highest quality (Mohamad, Ab Ghani, & Basir, 2011). The excellence of *itqān* is expressed by the Prophet PBUH through a hadith explained by Aisha RA which means:

“The Prophet PBUH once said, indeed, Allāh loves if a person does an act in *Itqān* or earnestly (perfectly)”.
(Narrated by al-Baihaqi)

Moreover, Islamic management mechanism on controlling is unique as is related to *tawhīdic* aspect. *Itqān*, *falāh*, ‘*amal sāleh*, *sabr*, ‘*adl*, *ikhlāṣ*, *amānah*, and *ihsān* promotes social welfare system rather than modern exploiting approaches. The model emphasized on accountability of both parties, the employer, and the employees, as the interest was to gain Allāh’s blessing. The model creates win-win situation for both parties involved as it relies on the social welfare system. To achieve the success of the system, both parties should collaborate and cooperate in the best manner (Muhammad Mushraq et al., 2014). This concept reflects the Islamic concept of *ta ‘āwun* and *takāful* which is achieved through the concept of *ukhuwwah*.

5.4.6 Business Sector

Mudārabah-based franchise can be utilized in any franchise sectors even in the financial sector. For example, franchisor who acts as *muḍārib* would be happy if he could expand his business, generate profit, and at the same time can guarantee his business from misleading and opportunistic behaviour without to be burden on financial resources. the financial resources is provided by the franchisee as the capital

provider. Hence, high risk sector such as Islamic pawn-broking may look forward on this model.

5.5 *Mushārakah-Based and Mudārabah-Based Franchise Framework*

The discussion of *mushārakah* and *mudārabah* in franchise business in this study suggested the journey of these two contracts starts with the process of *ta 'āruf*, followed by *tafāhūm* to form a relationship between a franchisor and franchisee. Mutual understanding, good communication, sharing the same goal, clear objectives, pure heart, God consciousness in inner self are translated into willingness to help each other (*ta 'āwun*). *Takāful* is the result of *ta 'āwun*. Once all these processes are successfully achieved, it is demonstrated to a cooperative project or activities which is driven by a clear objective, that is to seek for Allāh's pleasure. The process of *ukhuwwah* is on going process till the death of individuals. *Mudārabah* and *mushārakah* are Islamic partnership contracts which was legislated from the Qur'ān, Sunnah, and *Ijmā'*.

The discussion of the *mu 'āmalāt* area is unseparated from faith perspective as it is a part of Islamic teaching. Hence, at any cost, *tawhidic* paradigm in *mushārakah* and *mudārabah* management serves as a fundamental philosophy which is dissimilar to conventional approach. The conventional approach was based on numerous socio-economic philosophies which mainly aimed to maximize the creation of wealth by any means regardless of faith and religion (Yusof Ismail & Suhaimi Mhd Sarif, 2011). *Tawhīdīc*-based management system blends together the spirit of *Tawhīd* (Unity of God) with planning, organization, leadership, and supervisory or controlling. These managerial functions integrate both the other worldly (*al-Ākhirah* or the Hereafter) and the worldly (*al-Dunya*) requirements. The diagram below demonstrates the framework achieved from the findings in this study.

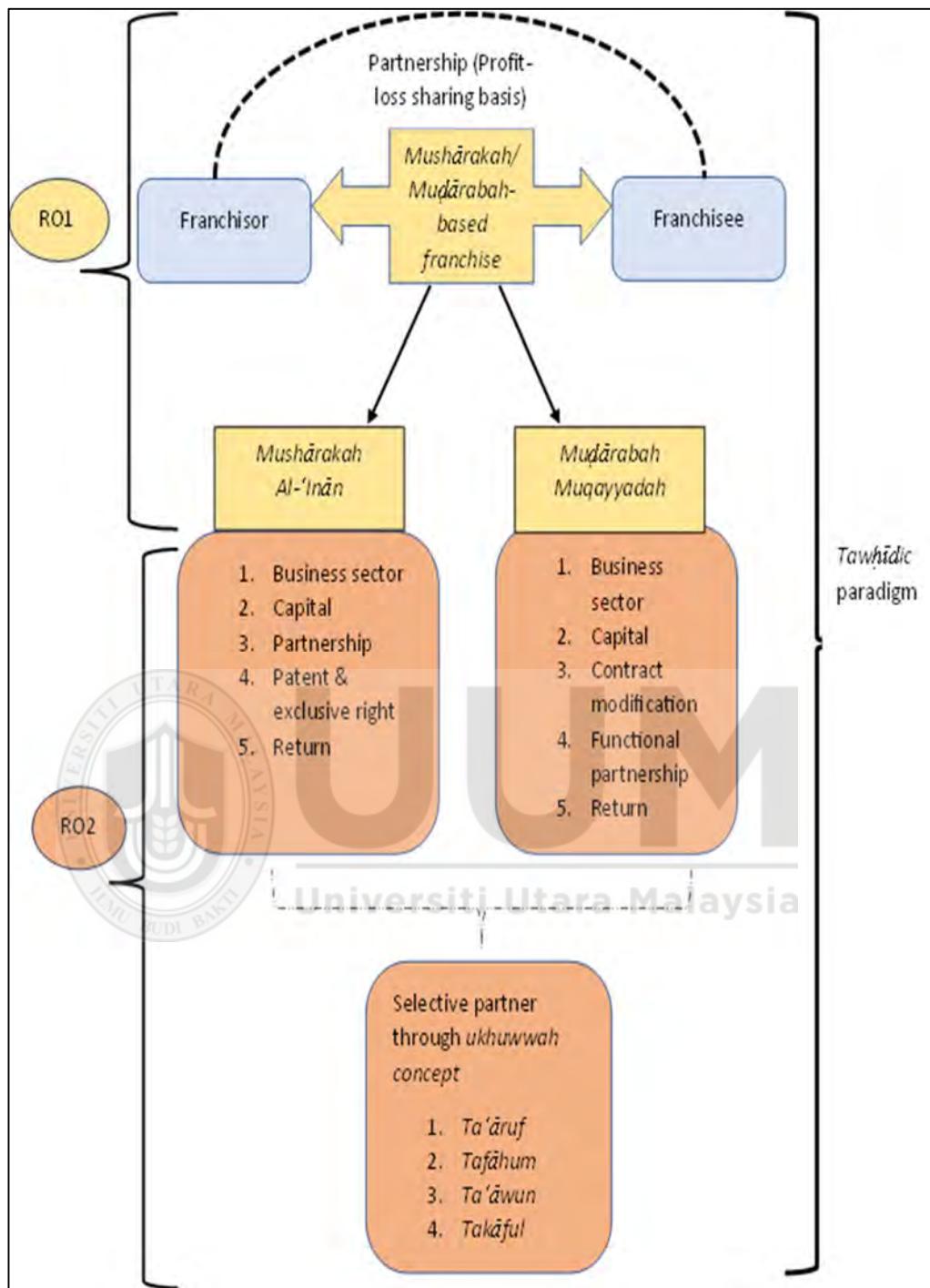


Figure 5.1
Musharakah-Based and Mudarabah-Based Franchise Framework Governed by Tawhidic Paradigm and Ukuwwah Concept

The above diagram can be explained in brief that the feasibility study of *musharakah* and *muḍarabah* in franchise industry is a qualitative exploratory study. The study aims

to examine the concept of *mushārakah* and *mudārabah* in *mu‘āmalāt* which governed the franchisor and franchisee. The findings of research objective One is achieved through documentary review, particularly from Chapter Two; the literature review.

Research objective Two intend to analyse the feasibility of the *mushārakah* and *mudārabah* to be applied in the Malaysian franchise industry was achieved through semi-structured interviews designed to gain an in-depth understanding of respondents' perspectives on franchise business and *mu‘āmalāt* contracts particularly *mushārakah* and *mudārabah*. The researcher prepared questions based on these concepts to guide the interview process. However, during the interviews, the questions could be reordered, redundant questions skipped, or new ones created based on the circumstances, while maintaining consistency and comparability across respondents. This approach facilitated nuanced data collection and analysis. The interview followed a case study method, dividing respondents into two groups: experts (academicians or experts in *Mu‘āmalāt* and franchise officer) and franchisors as the industry players. Content and thematic analysis was employed. The analysis of the interview was presented in Chapter Four.

Following this, Chapter Five discussed the analysis, addressing research objective three; to propose new Islamic franchise framework based on *mushārakah* and *mudārabah*. Document reviews and transcribed interviews were analyzed using thematic analysis. A research conceptual framework was developed based on the findings and discussion.

5.6 Conclusion

Franchising is a way to grow and expand business systematically without the franchisors need to contribute for financial resources. *Mushārakah* and *mudārabah* promotes options to franchisors and franchisees to expand their franchise business according to their needs and circumstances. The application of franchise in *mushārakah* is suitable to parties who are new in starting the business as franchisor can provide the systematic business system while the franchisee may contribute on the financial part. A business with well-known name helps to boost for the sustainability of the business. Apart from that, the parties involved can intervene in the management as *mushārakah* carries the concept of agency as well. The agency concept in *mushārakah* also serves as controlling mechanism in franchising. In relating to capital, *mushārakah* offers various form either in the form of tangible or intangible provided the intangible capital is applicable to be valued by a trusted appraiser. Besides, the uniqueness in *mushārakah* especially in *mushārakah al-‘inān*, the inequivalent profit ratio among the members is permissible regardless of their capital contribution. However, in relating to loss, it is accordance with the capital contribution ratio.

The application of *mudārabah* in franchise is unique functional partnership where franchisors can function as *mudārib* (entrepreneur) and *sāhib al-māl* (capital provider), same goes to franchisees. This depends on the circumstances occur between the franchisor and the franchisee. Trustworthiness in *mudārabah* is the main element in the contract as generally, *mudārib* (entrepreneur) is the trusted person given *amāah* (responsibility) to invest in such activities to gain profit, while *sāhib al-māl* who fully fund the business. However, in the context of franchise, if the franchisor act as *mudārib*, the risk of misleading is slim. On contrary, if the franchisee act as *mudārib*,

it is permissible to ask for capital contribution from franchisee to create commitment-responsibility based in managing the business from any negligence.

Both *mushārakah* and *mudārabah* share similarity in the selection of partner. The selection of qualified partner should be made through the concept of *ukhuwwah*, starting from *ta 'āruf* (get to know), then *tafāhūm* (to mutually understand each other). When one pass these stages, the concept of *ta 'āwun* (cooperation) and *takāful* (protection) will emerge. Besides, no fees and royalty payment imposed in *mushārakah* and *mudārabah* as these join-venture contracts are based on profit and loss sharing basis.

In a nutshell, the application of *mushārakah* is more comprehensive compared to *mudārabah* as it provides an opportunity to both parties to contribute business capital in various forms, unlike *mudārabah* because only one party provide capital whereas the other party only contributes energy and skills. The application of *mushārakah* will lead to a fairer relationship to both parties as both contribute capital collectively which will lead to joint risk-bearing responsibilities. Further, to ensure the smoothness application of these two contracts in the franchise industry, two different law should be constructed accordingly.

Moreover, the findings of the study proposed a framework on *mushārakah*-based and *mudārabah*-based franchise which is based on *tawhīdic* and *ukhuwwah* approach. These approaches serve as main philosophy not only in the managerial aspect of the contracts but also effect the entire life of a Muslim as a servant of Allah.

CHAPTER SIX

CONCLUSION AND RECOMMENDATION

6.1 Introduction

Franchising is a duplicating method of business which aim to expand the business inclusively. The owner of the business known as franchisor own the business trade mark, the business manual or operating system. While the franchisee is given permission to use the trademark, the business manual and been assist in promotion and training by the franchisor to develop the franchise business. In return, franchisee is obliged to pay royalty fee or any kind of similar consideration to franchisor for the right to run the business using franchisor's name and system. The relationship occurs between franchisor and the franchisee resembles to joint venture concept. However, it is against the definition of the Franchise Act as it forbids the franchise to be considered as partnership or agency.

The feasibility study of *mushārakah* and *muḍārabah* in franchise industry is a qualitative exploratory study. Chapter One presented background of the study by presenting the current application of *mushārakah* and *muḍārabah* was dominated by the Islamic banking and finance sector. *Mushārakah* is applied in debt-based financing such as *mushārakah mutanāqisah* home financing, working capital financing, securities-based products such as *mushārakah ḥukūk*. *Muḍārabah* on the other hand is applied in limited investment account products, unlimited *muḍārabah* investment accounts, corporate financing, working capital financing and securities-based products such as *muḍārabah ḥukūk*. *Muḍārabah* is also applied in money market products. Some takaful companies chose *muḍārabah* principle in managing their investment funds. The chapter has also introduced the research questions and objectives that guide this

study, emphasizing the need for a systematic review of franchise survival literature and an in-depth analysis of *mushārakah* and *muḍārabah* contracts.

Chapter Two has provided a detailed literature review, exploring the nature of franchising and its historical evolution. The chapter has examined four key characteristics of franchises that is within the Islamic partnership framework namely; the structures of royalty, fees, and profits; the dynamics of the franchisor-franchisee relationship; the intricacies of franchise contracts; and the management, power, and control mechanisms within franchise systems. Additionally, the chapter has delved into the concepts of *mushārakah* and *muḍārabah*, highlighting their relevance and application in the context of franchise business. By integrating these diverse yet interconnected topics, the chapter has established a conceptual framework for this study. This framework will guide the subsequent analysis and discussion, providing a coherent basis for understanding the critical factors influencing franchise survival and the feasibility of *mushārakah* and *muḍārabah* in the franchise industry.

Further, chapter Three has outlined the research methodology employed in this study, emphasizing the qualitative exploratory approach and case study design. The chapter detailed the use of in-depth interviews with two distinct groups; the experts which comprising of four academicians and one franchise officer; and six franchisors. This methodological framework was chosen to gain comprehensive insights into the feasibility of *mushārakah* and *muḍārabah* in the franchise industry. The chapter also described the use of content and thematic analysis to systematically examine the data collected from the interviews. This approach ensures a thorough and nuanced understanding of the research questions, laying a solid foundation for the subsequent analysis and discussion of findings in the following chapters.

The findings of the study was reported in Chapter Four. This chapter narratively reports the analysis derived from the respondents' transcripts to address the study's research questions. The findings effectively answer what *mushārakah* and *mudārabah* are and assess the feasibility of implementing these contracts in the franchise industry. The feasibility of implementing *mushārakah* in the franchise industry is viewed positively, with both experts and franchisors agreeing on its potential. Key elements of concern in the *mushārakah* concept include capital and profit-loss sharing ratios. Conversely, *mudārabah* is unique in that the franchisor may act as the *mudārib* (entrepreneur) or *sāhib al-māl* (capital provider), depending on their needs and circumstances, a flexibility that also applies to the franchisee. However, regarding risk management, most franchisors prefer to act as *mudārib*, with the franchisee as *sāhib al-māl*.

The discussion obtained in Chapter Five described that *mushārakah* and *mudārabah* are partnership contracts recognized in Islamic *mu'āmalāt*. The subject matter of partnership encompasses of mutual alliance on cooperation (effort) and financial resources. *Mushārakah* and *mudārabah* are solely based on profit and loss sharing basis. In the context of franchising, the fees and royalty payment are replaced by the sharing concept of profit and loss arrangement. Selective partners in this venturing business are preliminary to both *mushārakah* and *mudārabah*. A qualified partner usually comes with complete package including decent manners, trusted, sincere, helpful, and other good characters. The concept of *ukhuwwah* through *ta'āruf*, *tafāhūm*, *ta'āwun*, and *takāful* plays important role in selecting the qualified partner.

Mushārakah al-'inan has been identified as harmonize with the nature of franchise which accommodate the circumstances of the franchisor and the franchisee. It offers

flexibility in term of capital form where it can be either tangible or intangible. Expertise, goodwill, brands, trademark, skills, and patent are example of intangible property which has value. These properties are acceptable as capital in *mushārakah* and recognized in the Shariah law.

On contrary, *mudārabah muqayyadah* is recognized as feasible to applied in the franchise business. *Mudārabah*-based franchise is exclusive where franchisors can play dual roles either as *mudārib* (entrepreneur) or *sāhib al-māl* (capital provider), and same goes to franchisees. This depends on the circumstances of the situation between the franchisor and the franchisee when the contract is about to be concluded.

Further, the framework developed in this study, as detailed in Chapters 4 and 5, is derived from an initial exploratory analysis aimed at identifying key themes and constructs related to the research topic. Given that this phase of the research is exploratory in nature, the inclusion of franchisees as respondents is planned for future stages. As such, the framework represents a preliminary conceptual model that sets the stage for more extensive validation efforts in subsequent research phases. According to Maxwell (2013), exploratory research is often used to gain insights and understand the underlying phenomena before moving on to hypothesis testing and validation. The purpose of this phase is to develop a robust theoretical framework based on the initial data gathered, which can then be refined and validated through further empirical research involving a broader range of respondents, including franchisees. Additionally, Eisenhardt (1989) suggests that theory-building research often involves iterative cycles of data collection and analysis. This process allows for the development of a framework that can be iteratively tested and refined. At this stage, the focus is on establishing a foundational understanding, which will later inform the

inclusion of franchisees and the subsequent validation of the framework. Besides, exploratory research is characterized by its open-ended approach, seeking to uncover patterns, hypotheses, or insights rather than test them. Saunders, Lewis and Thornhill (2019) describe exploratory research as a valuable means for gaining a deeper understanding of a phenomenon when existing knowledge is limited or fragmented. In this context, the framework represents a preliminary theoretical model that requires further refinement and development.

Given these methodological considerations, it is appropriate to defer the validation of the framework until the next phase of research. This phased approach ensures that the framework is sufficiently grounded in the initial findings before being subjected to rigorous empirical testing with a more diverse respondent pool.

Hence, there is room for *mushārakah* and *muḍārabah* to be promoted as alternative Islamic contracts to be utilized in the franchise industry in Malaysia. It will enhance the business sector as these contracts serve the purpose of wealth creation in the society especially in the real business setting.

6.2 Research Contribution

The feasibility study of *mushārakah* and *muḍārabah* in the franchise industry contributes to literature review, theoretical aspect, conceptual framework, and managerial implication.

The study contributes to the integration of *mushārakah* and *muḍārabah* into the franchise industry. This offers an alternative partnership-based franchise which aligns with the Shariah law, catering to the growing demand for ethical and religiously

compliant business practices. The *mushārakah* and *muḍārabah*-based franchise emphasize on profit and loss sharing. This can lead to more equitable and sustainable business models within the franchise industry, potentially attracting a broader range of investors and franchisees. This study will contribute on the literature review and theoretical aspect of *mushārakah* and *muḍārabah* within the franchise setting.

The study proposed a conceptual framework on the feasibility of *mushārakah* and *muḍārabah* in the franchise industry. The conceptual framework may serve as guidance and new insight for future study in the area. It will benefit the policy maker, franchisors, and franchisees. The themes developed in the conceptual framework can be a guidance on the elements need to be considered for *mushārakah* and *muḍārabah*-based franchise contract. In Chapter 5, the discussion highlights how *mushārakah al-inān* and *muḍārabah muqayyadah* can be adapted to fit the franchise context in Malaysia, offering flexibility in capital contributions and roles of the franchisor and franchisee. This conceptual groundwork is critical for establishing a robust theoretical framework before proceeding to empirical validation. The iterative process of theory development, as suggested by Eisenhardt and Graebner (2007), involves refining theoretical constructs based on initial findings before subjecting them to broader validation.

Further, from managerial perspective, the study highlights how *mushārakah* and *muḍārabah* can improve risk management and controlling mechanism. For *mushārakah*-based franchise, it can be done through intervening by the parties involved in the business management. While for *muḍārabah*-based franchise, it is carried out through the contract itself, which is known as *muḍārabah muqayyadah* (restricted *muḍārabah*).

6.3 Recommendation

Mushārakah and *muḍārabah* has not been thoroughly scrutinized yet especially in real business setting such as in the franchise industry. Muslim scholars need to examine and evaluate carefully these concepts and other related issues to ensure that it is in accordance with the Islamic legal requirements. Before structuring such contracts for franchising purpose, the following points must be considered:

1. Future research should consider the franchisees' perspective on the matter as the current research only involved the experts and the franchisors.
2. Future research should try to validate the proposed conceptual framework in the franchise setting for ensuring its theoretical integrity, practical relevance, and generalizability. It supports effective decision-making, continuous improvement, and policy development, while also contributing to academic knowledge and building stakeholder confidence. These benefits collectively enhance the framework's value and utility in guiding successful franchise operations.⁴⁰

This researcher believes that the *mu‘āmalah* contracts can be introduced effectively in the future especially in the franchise industry. The awareness on the benefits and uniqueness of *mu‘āmalāt* contracts should be spread especially to the business community regardless of non-Muslim entrepreneurs to enhance the business activity in Malaysia particularly in the real sector business. Economic stability in a country will benefit the people as whole. Experts in *mu‘āmalāt* contacts and law should cooperatively construct *mushārakah* and *muḍārabah* act accordingly which suits the nature of franchise in promoting entrepreneurs in growing their business, and encouraging young people to become entrepreneurs.

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APPENDIX A

INTERVIEW PROTOCOL

To the respondent,

I as a researcher from Universiti Utara Malaysia is conducting research titled “The Possibility of *Musharakah* and *Mudarabah* to be Implemented in Franchise Industry”.

I am very pleased to inform you that you have been selected to participate in this research. You have been selected based on the position held and understanding based on experience, you will be able to help us realize the objectives of this study. The objective of the study is to identify the form of franchise contracts in a business practiced by a business operated by Muslims in Malaysia and to study alternatives to Islamic franchise contracts in Malaysia that are in line with Islamic principles to be applied in the future in business.

Your views and feedback are very important in achieving the objectives of this study. These information and views are confidential and will only be used for the purpose of this study. With your permission, I also intend to record this interview process with the aim of obtaining complete and comprehensive feedback to enable this data to be successfully analyzed. The interview is expected to take about an hour.

I can be reached at Islamic Business School, College of Business, Universiti Utara Malaysia, 06010 Sintok, Kedah. Phone: 017-2846070 or munirahkasim@gmail.com

PhD Candidate

Munirah Kasim

Section A: Respondent Profile

Employee Name:

Position:

Educational Background:

Work/Business Address:

Service/Business Duration:

Business Type (for franchisor only):

Phone Number:

Part B: Alternative Forms of Islamic Franchise Business in the Future

(Note: This section is more specific to Islamic scholars and Muslim franchisors)

Musharakah

1. Do you agree that the future franchise system can be founded on a percentage of income from the physical capital contributed by both parties?
2. Is it legal that the capital in the form of intangible property is valued in financial form to be used as the contributing capital?
3. Are you of the opinion that a new franchise system based on the concept of *musharakah* can be practiced in the future?

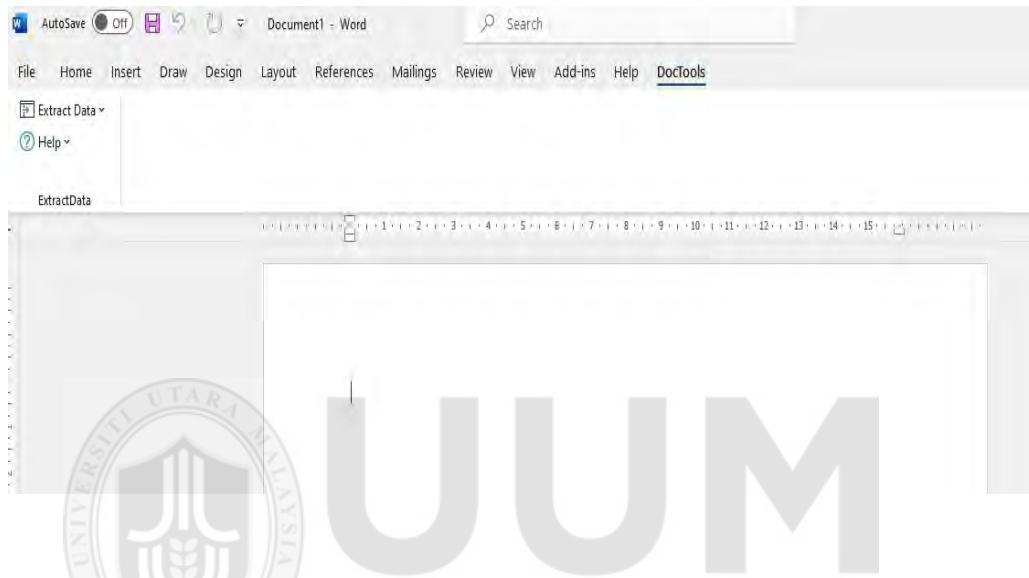
Mudarabah

1. Is it possible that there will be a franchise system in the future where the franchisor provides capital, while the franchisee manages the affairs of the business and then the profit is divided by mutual agreement?
2. How can commitment and sincerity be applied in a franchise system with a capital sharing pattern on the one hand and efforts on the other.
3. Do you feel fair in the concept of profit distribution in this franchise system to be implemented equally in terms of its quantity?
4. Are you of the opinion that the new franchise system with the concept of *mudarabah* can be practiced in the future?

APPENDIX B

THEMATIC ANALYSIS EMPLOYED IN THE STUDY USING DOCTOOLS IN WORD

1. Install DocTools in Word



2. Coding process using comments in Review Tab

SEDUTAN DIALOG TEMUBUAL YANG BERKAITAN DENGAN MATLAMAT KAJIAN:
BAHAGIAN C

Musyarakah

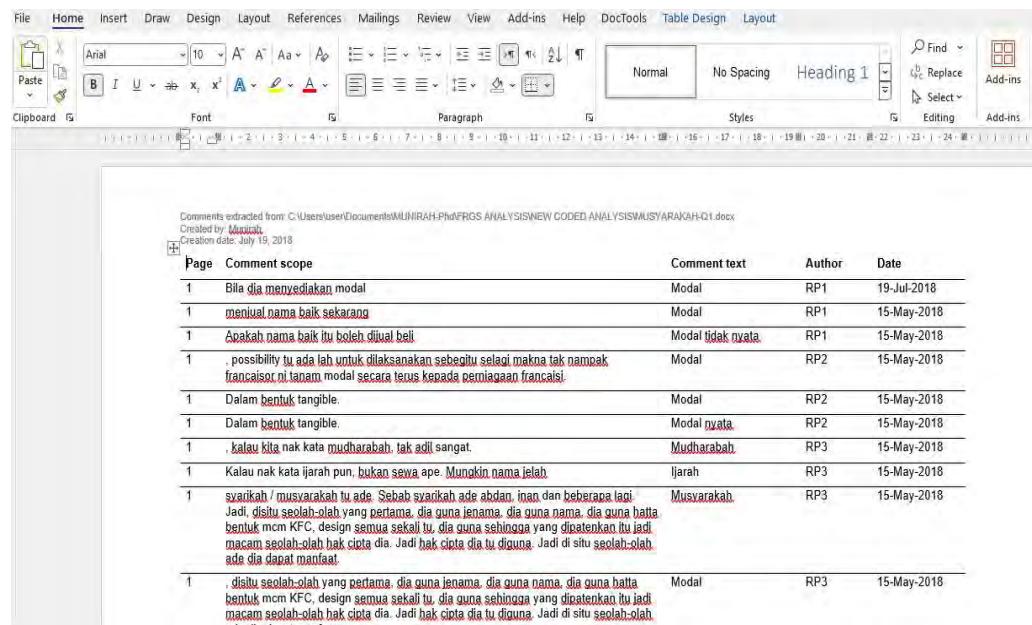
1. Adakah tuan bersetuju bahawa sistem francais akan datang boleh diasaskan di atas peratusan pendapatan daripada modal fizikal yang disumbangkan oleh kedua-dua pihak?

Responden	Pernyataan
R1: Dr. Ab Rashid Dail Akademik	Responden: Ha itu la masalahnya. Bila dia menyediakan modal. Itu yang saya rasa ni ada menimbulkan satu lagi masalah. Dan saya pun tak boleh menjawab secara individu. Maksudnya, dia menjual nama baik sekarang. Ini yang harus dipecahkan, kena tanya kepada banyak orang juga ni. Apakah nama baik itu boleh dijual beli? Dr Nasri: Macam mana pandangan ustaz dalam Islam tu? Responden: Ha itu saya pun tak berani nak menjawab. Sebab saya pun tak pernah terlibat.
R2: Afkhar Razi KPDNKK	Responden: Secara teori, <i>possibility</i> tu ada lah untuk dilaksanakan sebegitu selagi makna tak nampak francais ni tanam modal secara terus kepada perniagaan francais. Dr Nasri: Dalam bentuk <i>tangible</i> lah? Responden: Dalam bentuk <i>tangible</i> , itu yang bentuk sekarang. Tapi kalau bentuk, kalau kata model Islamik, nak buat satu model baru, mungkin boleh tengok dari sisi tu lah. Sama ada perlu bentuk <i>tangible</i> ... Modal dari segi...

Annotations on the right side of the table:

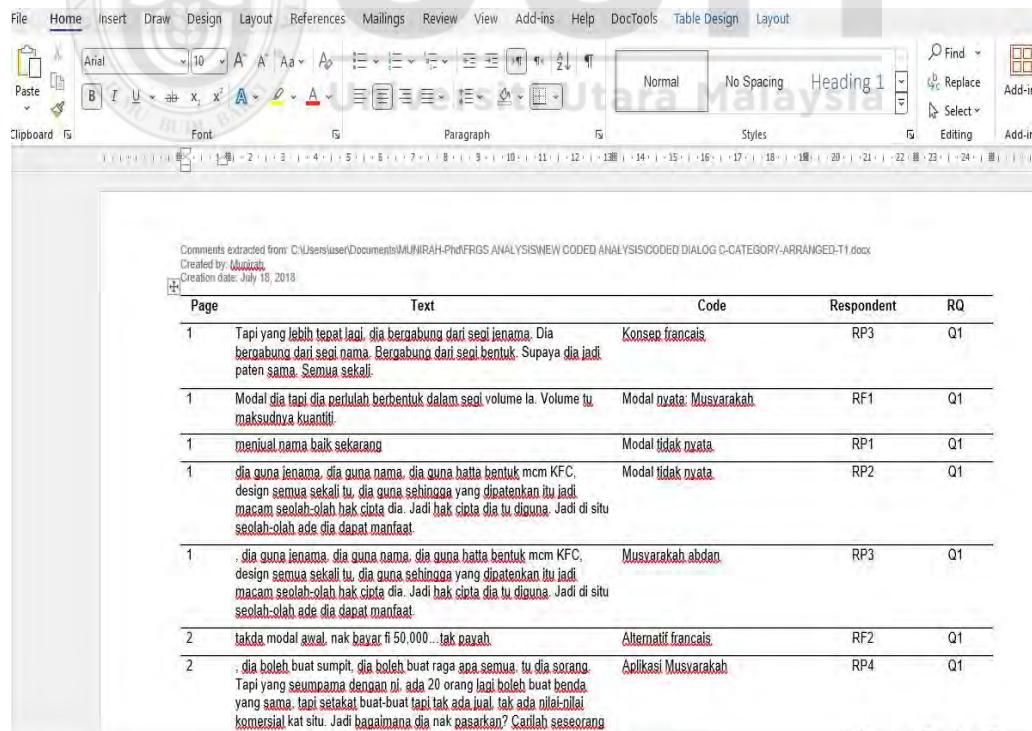
- USER Modal
- USER Modal tidak nyata
- USER Modal
- USER Modal
- USER Modal nyata
- USER Mudharabah

3. Extract the codes using DocTools. The result is displayed in a table form as shown below.



Page	Comment scope	Comment text	Author	Date
1	Bila dia menyediakan modal	Modal	RP1	19-Jul-2018
1	menjual nama baik sekarang	Modal	RP1	15-May-2018
1	Apakah nama baik itu boleh diulang?	Modal <u>tidak nyata</u>	RP1	15-May-2018
1	, possibility tu ada lah untuk dilaksanakan sebagai makna tak nampak	Modal	RP2	15-May-2018
	francisor ni tanam modal secara terus kepada pemilagaan francisj			
1	Dalam bentuk tangible	Modal	RP2	15-May-2018
1	Dalam bentuk tangible. Sebab syarikah ade abdan, inan dan beberapa lagi	Modal <u>nyata</u>	RP2	15-May-2018
1	, kalau kita nak kata mudharabah, tak adil sangat.	Mudharabah	RP3	15-May-2018
1	Kalau nak kata jarah pun, bukan sewa ape. Mungkin nama jalah	Jalah	RP3	15-May-2018
1	syarikah / musyarakah tu ade. Sebab syarikah ade abdan, inan dan beberapa lagi	Musyarakah	RP3	15-May-2018
	Jadi, disitu seolah-olah yang pertama, dia guna jenama, dia guna nama, dia guna hatta			
	bentuk mcm KFC, design semua sekali tu, dia guna sehingga yang dipatenkan itu jadi			
	macam seolah-olah hak cipta dia. Jadi hak cipta dia tu diguna. Jadi di situ seolah-olah			
	ade dia dapat manfaat.			
1	disitu seolah-olah yang pertama, dia guna jenama, dia guna nama, dia guna hatta	Modal	RP3	15-May-2018
	bentuk mcm KFC, design semua sekali tu, dia guna sehingga yang dipatenkan itu jadi			
	macam seolah-olah hak cipta dia. Jadi hak cipta dia tu diguna. Jadi di situ seolah-olah			
	ade dia dapat manfaat.			

4. Arrange the result as desired and according to the needs of the researcher.



Page	Text	Code	Respondent	RQ
1	Tapi yang lebih tepat lagi, dia bergabung dari segi jenama. Dia bergabung dari segi nama. Bergabung dari segi bentuk. Supaya dia jadi paten sama. Semua sekali	Konsep francis	RP3	Q1
1	Modal dia tapi dia perluah berbentuk dalam segi volume la. Volume tu	Modal <u>nyata</u> : Musyarakah	RF1	Q1
	maksudnya kuantiti			
1	menjual nama baik sekarang	Modal <u>tidak nyata</u>	RP1	Q1
1	dia guna jenama, dia guna nama, dia guna hatta bentuk mcm KFC, design semua sekali tu, dia guna sehingga yang dipatenkan itu jadi	Modal <u>tidak nyata</u>	RP2	Q1
	macam seolah-olah hak cipta dia. Jadi hak cipta dia tu diguna. Jadi di situ seolah-olah ade dia dapat manfaat			
1	, dia guna jenama, dia guna nama, dia guna hatta bentuk mcm KFC, design semua sekali tu, dia guna sehingga yang dipatenkan itu jadi	Musyarakah abdan	RP3	Q1
	macam seolah-olah hak cipta dia. Jadi hak cipta dia tu diguna. Jadi di situ seolah-olah ade dia dapat manfaat			
2	takda modal awal, nak bayar f 50.000... tak payah	Alternatif francis	RF2	Q1
2	dia boleh buat sumpit, dia boleh buat raga apa semua, tu dia sorang. Tapi yang seumpama dengan ni, ada 20 orang lagi boleh buat benda yang sama, tapi setakat buat-buat tapi tak ada jual, tak ada nilai-nilai komersial kat situ. Jadi bagaimana dia nak pasarkan? Cari lah seseorang	Aplikasi Musyarakah	RP4	Q1

5. Create categories and themes by using DocTools.

Responden	Mudharabah
RF1	<ul style="list-style-type: none"> - Pemodal terdiri dari kerajaan atau korporat. - Modal berbentuk nyata. - Satu pihak menyumbangkan pengetahuan, keupayaan atau pengetahuan yang boleh dijadikan modal manakala pihak sawal lagi menyumbangkan fasiliti sebagai modalnya.
RF2	<ul style="list-style-type: none"> - Boleh berlaku jika francaisor menjadi mudharib dan francaisi menjadi rabbul mal.
RF3	<ul style="list-style-type: none"> - Sudah mempraktikkan seperti ciri-ciri seperti mudharabah. - Francaisor sebagai rabbul mal dan francaisi sebagai mudharib. - Gagal dilaksanakan segerulnya atas kegagalan mudharib. - Aspek kawalan perlu dititikberatkan oleh francaisor terhadan mudharib.