



THE RECONSTRUCTION OF THE MODERN ADVERTISING CONCEPT: AN ISLAMIC LAW PERSPECTIVE

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Abstract: Islam as a complete religion needs to offer a modern advertising concept to reconstruct the existing advertising concept which tends to be value-free so that it has the potential to cause negative impact on the consumer society. The purpose of this study is to reconstruct the concept of modern advertising using the perspective of Islamic law to serve as an alternative guidance for more Islamic advertising practices. To achieve this goal, the author uses the methods of normative legal research with the conceptual approach. The results of this research conclude that the Islamic legal concept of advertising requires fulfillment of the elements and requirements of advertising contract (*arkân wa syurûth al-i'lân*) to ensure that the advertiser (*al-mu'lin*), the object advertised (*al-mu'lân*), the advertising media (*wasîlah al-i'lân*) and the recipient of the advertisement (*al-mu'lan lahu*) do not conflict with Sharia principles. A producer/seller can deliver advertising on a product either directly or through advertising media. The use of advertising media can involve the role of humans and/ or other supporting facilities such as writing, posters/ pictures, and musical instruments. The contract that underlies the advertising agreement between the sponsor and the advertising service provider is the agreement to give authority with a wage system (*wakâlah bi al-'ujrah*).

Abstrak: Islam sebagai agama paripurna perlu menawarkan konsep periklanan modern untuk merekonstruksi konsep periklanan yang selama ini cenderung bebas nilai sehingga berpotensi menimbulkan dampak negatif bagi masyarakat konsumen. Tujuan penelitian ini adalah untuk merekonstruksi konsep periklanan modern menggunakan perspektif hukum Islam untuk dijadikan sebagai pedoman alternatif praktik periklanan yang lebih islami. Untuk mencapai tujuan tersebut, penulis menggunakan metode penelitian hukum normatif dengan pendekatan konseptual. Dari hasil penelitian dapat disimpulkan bahwa suatu konsep hukum periklanan yang islami mensyaratkan terpenuhinya rukun dan syarat-syarat iklan untuk memastikan agar pengiklan (*al-mu'lin*), objek yang diiklankan (*al-mu'lân*), media iklan (*wasîlah al-i'lân*) dan penerima iklan (*al-mu'lin lahu*) tidak bertentangan dengan prinsip-prinsip syariah. Seorang produsen/ penjual dapat menyampaikan iklan suatu produk baik secara langsung

atau melalui media periklanan. Penggunaan media iklan dapat melibatkan peran manusia dan/ atau sarana pendukung lainnya seperti tulisan, poster/ gambar, dan instrumen musik. Adapun akad yang mendasari perjanjian periklanan antara sponsor dengan penyedia jasa iklan adalah perjanjian pemberian kuasa dengan sistem upah (*wakālah bi al-'ujrah*).

Keywords: *Reconstruction; Concept, Advertising; Modern, Islamic Law*

INTRODUCTION

It is a fact that mass media reform in Indonesia has brought a stream of broadcasting liberalization. Broadcasting liberalization is understood as a process of liberation through conformity to market mechanism since broadcasting is considered as part of an economic industrial entity. The social media that used to be in an era of authoritarianism is transformed into media in a liberal era which its licensing is only based on the power of capital.¹ Broadcasting liberalization, beside its impact to the development of broadcasting institutions, also impacts on the massive commercialization of broadcasting content to reap profits. Submitting broadcasting content to the market mechanism in the midst of the policy of broadcasting liberalization causes the measure of the success of broadcasting to be its popularity which often sets aside the quality aspect and its impact on consumers.² Included in this case is the low quality of the commercial advertising through various national media.³

Broadcasting commercial advertising through public broadcast media can certainly affect consumer community massively. Besides advertising provides positive benefits, sometimes it can also have a negative influence on consumer community. The benefits of advertising are as a means of realizing consumer rights, especially the right to obtain information about a product. But the problem arises when the ad impressions are in conflict with the general principles of the advertising code of ethics so that it has a negative impact for consumer community.⁴ An example of the negative impact of advertising is when the content of the advertised information does not represent the reality and advertising tends to have no educational message so it is not appropriate to be seen by the audience especially children.⁵

¹ AG. Eka Wenats Wuryanta, "Televisi Jakarta di Atas Indonesia: Diatur atau Diakomodir?," *Jurnal Komunikasi Indonesia* 1, no. 5 (Oktober 2012): 88, <https://doi.org/10.7454/jki.v1i2.7823>.

² Many broadcasting programs have been complained by the public and also received reprimand form Indonesian Broadcasting Commission (KPI). It proves that the appropriateness of broadcast content in Indonesia is actually still relatively low. New problems arise because even if the reprimand is posted. The programs which are broadcasted by media are still relatively the same without significant changes. Khairin Nizomi, "Literasi Media: Analisis Tayangan Televisi Pesbukers," *Jurnal Ilmu Perpustakaan dan Informasi* 3, no. 1 (2018): 6.

³ The fact is that in the advertising business many potential deviations occur so that they can harm the community. Hanafi Amrani, "Perilaku Menyimpang Praktik Bisnis Periklanan dalam Perspektif Hukum Pidana dan Penegakan Hukumnya," *Jurnal Hukum Lus Quia Iustum* 23, no. 4 (2016): 591.

⁴ Yusuf Shofie, "Sistem Tanggungjawab dalam Periklanan," *Jurnal Hukum dan Pembangunan* 26, no. 2 (1996): 1.

⁵ Aventura Sihombing, "Dampak dari Iklan di Televisi," accessed April, 20 2020, <http://adventiasihombing.blogspot.com/2011/11/dampak-dari-iklan-di-televisi.html>.

The development of broadcast technology allows advertising content to be delivered massively. The public as users of broadcasting services such as television media are not spared from advertising demonstration that appeared automatically at any time. The appearance of advertising on television and other electronic media can certainly have impacts on society. If the influence of the advertising is positive, of course there is no problem, but if the influence is negative it will cause problems. Therefore, to prevent negative impacts, the public as the recipient of ad impressions needs to get the legal protection both from the aspect of regulation and religious values. The legal basis that sets religion to protect the community is: *"Siaran iklan niaga dilarang melakukan hal-hal yang bertentangan dengan kesusilaan masyarakat dan nilai-nilai agama"* (Commercial advertising broadcasts are prohibited from doing things that are contrary to the decency of society and religious values).⁶

From the article above, it can be understood that religious values must be considered in broadcasting advertisement so that it does not harm the public. The follow-up of the implementation of religious values so far has been realized in the form of advertising objects, namely in the form of goods and / or service products which must not be in conflict with the principles of *halal-haram*. The fact that advertising is labeled as *halal* has been a consideration for consumers to make choices. Therefore the use of *halal* label must be accordance with the substance of the product being advertised. In the consumer protection act of Indonesia stated that: *"Pelaku usaha dilarang memproduksi barang dan/atau jasa yang tidak mengikuti ketentuan berproduksi secara halal sebagaimana pernyataan halal yang dicantumkan pada label."*⁷ The compatibility between *halal* label and product is an effort to realize *halal* product guarantee. According to the law, *halal* product guarantee is legal certainty on the *halal* status of a product which be proven by *halal* certification, namely *halal* recognition of a product issued by a *halal* product guarantee institution based on a written *halal* fatwa issued by the Indonesian Ulema Council (MUI).⁸

The benefits of goods advertised can be enjoyed not only by sponsors but also by the consumer society. Otherwise, the negative impact of bad advertising not only felt by businessmen but also has the potential to harm consumer society. The magnitude of the benefit and the harm of advertising on society depends on the advertising quality, the broadcasting frequency, and the media that used. From the Islamic law perspective, the mean of harming the consumer society is certainly not only seen from the losses of material aspect, but also from the losses of non material aspect.⁹ The example of non-

⁶ Republic of Indonesia Act Number 32/ 2002 Concerning Broadcasting, art. 46, § 3 d.

⁷ Republic of Indonesia Act Number 8/1999 Concerning Consumer Protection, art. 8, § 1 h.

⁸ Republic of Indonesia Act Number 8/1999 Concerning Consumer Protection, art. 1, § 10.

⁹ Burhanudin Susanto and Ros Amira, "Legal Renewing of Consumer Protection (Himayah Al-Mustahlaki) Through Islamic Law Perspective," *Al-'Adalah* 16, no. 2 (2019): 301.

material losses is moral damage of the consumer society due to ad impressions that are not educative which show consumptive behavior, hedonic life style, exploitation of women used as decoys, and others that cause negative effects for the audience. The existence of the non educative advertising practice is still continues because it is considered normal and does not violate regulations even though it actually contradicts with the religious values.

The discussion on the concept of advertising in general is not something new. Among the popular literatures that discuss the concept of advertising, for example: *Manajemen Periklanan: Konsep dan Aplikasinya di Indonesia*;¹⁰ *Strategi Kreatif dalam Periklanan: Konsep Pesan, Media, Branding, Anggaran*;¹¹ *Dasar-Dasar Periklanan: Daya Pikat Pesan Iklan dan Manfaat Ambient Media sebagai Terobosan dalam Beriklan*;¹² and other works. Through this work, the author tries to offer an advertising concept through a business-oriented perspective in order to attract consumers. The advertising concept that the author offers is the integration between business orientation and trascendental values so that it is expected to be more benefecial (*maslahah*). Therefore, as an attempt to criticize the “established” concept of value-free advertising in the midst of trade liberalization, the discussion about this theme needs to be done through the formulation of the question: how is the construction of modern advertising concept from the perspective of Islamic law?

To answer this question, the author uses normative legal research,¹³ namely research that makes legal texts (*law in the texts*) the object of study. The legal text referred to here is Islamic law relating to advertising which is explored directly from the sources of al-Qur’ân and al-Hadith and / or from explanations of the Muslim scholars contained in the books of fiqh or fatwas and other works related to the concept of advertising. Because the object is the advertising concept in the perspective of Islamic law, the approach used is a conceptual approach. The legal material that has been collected will then be reviewed using the integration of knowledge method before being presented in a descriptive qualitative form. The integration of knowledge is a method for developing the concept of science by integrating verses of *qauliyah* originating in the *qur’ân* and *al-hadith* and verses of *kauniyah* sourced from existing facts related to the concept of advertising. Through this method, it is hoped that the writing of the advertising concept from the perspective of Islamic law can be described systematically and comprehensively to serve as a guide of the practice of advertising in Indonesia.

¹⁰ Rhenald Kasali, *Manajemen Periklanan: Konsep dan Aplikasinya di Indonesia* (Jakarta: Pustaka Utama Grafiti, 1992).

¹¹ Rama Kertamukti, *Strategi Kreatif Dalam Periklanan* (Jakarta: Raja Grafindo Persada, 2015).

¹² Kanaidi Kanaidi, *Dasar-Dasar Periklanan: Daya Pikat Pesan Iklan dan Manfaat Ambient Media sebagai Terobosan dalam Beriklan* (Bandung: Politeknik Pos Indonesia, 2011).

¹³ Asikin Zainal and Amiruddin. Amiruddin, *Pengantar metode penelitian Hukum* (Jakarta: PT Raja Grafindo Persada, 2004).

BASIC THEORY OF ADVERTISING

The advertising is a concept which illustrates how advertising is effective in influencing the customers' behaviour towards the advertised object. There are various theories on advertising which each of them propagates that the success of advertising is determined by the advertising service provider as a partner business company that engages in the field of production and distribution which wants to market a product successfully so that it reaches the consumers.

A business company is established with the aim for creating a profit from the results of the production or distribution of produced goods and services to the public. People who are interested in using a product will automatically become consumers.¹⁴ The company will have a business prospect if the products produced or marketed are products that are the needs of consumers both basic and complementary. The higher the level of consumer needs for a product, the greater the possibility of the level of marketing volume. The great level of marketing volume will provide greater opportunity for companies to get profits.¹⁵ This magnitude of profit opportunity is then an attraction for businessmen to engage in similar products which are the main needs of the consumers so it creates competition between them.

The marketing success is not only determined by the sale of a product in a certain period, but also determined by the continuity of sales without a certain time limit. To achieve sustainable marketing objectives, two important principles are needed, namely: (1) The existence of consumer loyalty to a product. Loyalty is constancy that arises because of an awareness of a cause that someone thinks is worth to be followed. Consumer loyalty is the consistency in using a certain product which is proven to provide benefits (*masalah*).¹⁶ To set customer loyalty as a goal is because that loyalty shows consumers' satisfaction from using a product as well as sustainable profit that will be received by the company; (2) The interest of potential new customers to the product that offered. Potential new customers are people who have the prospect to become consumers because they are part of the market segment of the products offered.

Publication of the commercial advertising that only prioritizes profit need to be reconstructed to pay more attention on moral education so it can provide positive impact on society. Nicola Lacey agreed that legal norms (regulations) need to be

¹⁴ Consumer is each individual user goods and/or services available in society, for the benefit of them-selves, family members, other people, and other living creatures and which are not for trading. Republic of Indonesia Act Number 8/1999 Concerning Consumer Protection, art. 1, § 2.

¹⁵ In the theory of demand determination, it is stated that if demand rises, the relative price will increase, conversely if demand falls, the price will decrease. Therefore, the greater the level of sales and prices, the greater the benefits obtained. Yopi Nisa Febianti, "Permintaan Dalam Ekonomi Mikro," *Economic Jurnal Pendidikan Ekonomi* 2, no. 1 (2014): 20.

¹⁶ Loyalty shows the tendency of customers to use a particular brand with a high level of consistency. Ahmad Mardalis, "Meraih Loyalitas Pelanggan," *Benefit: Jurnal Manajemen dan Bisnis* 9, no. 2 (2006): 112.

reconstructed through the approach of the sociology of law.¹⁷ The aim is that the law that is enforced matches with the values in society. Based on this theory, Islamic law as a law that lives in society (living law) has the opportunity to contribute for renewing the national law. Advertising regulations as part of national law need to be reconstructed using Islamic values approach to match with the living values in society.

In order to distribute products to consumers, companies need to carry out marketing functions. According to the definition of the American Marketing Association, "Marketing is the process of planning and executing the conception, pricing, promotion, and distribution of ideas, goods, and services to create exchanges that satisfy individual (customer) and organizational objectives."¹⁸ Marketing is the supply of products in the market to be offered by seller to the consumer through a business transaction. The supply of products on the market must be based on the demand in order to create maximum benefits for both parties. To achieve marketing targets, the businessman must certainly introduce his products to the wider community in various ways, including through advertising services in various media.

The term of advertising is defined as advertence, advertisement, or notification.¹⁹ It means the notification of products, goods, and services as well as other information persuasively conveyed to the public through advertising media.²⁰ According to Kasali, advertisement is simply defined as a message offering a product that offered to the public through a media. In addition, F. Arens also defines advertising as the non-personal communication of information usually paid for and usually persuasive in nature about products, services, or ideas by identified sponsors through various media.²¹ Advertising is the process of making and delivering paid messages through mass media that aims to persuade consumers to take action in buying.²² Advertising is the whole process of making and delivering messages from sponsors to the public through certain media.

Advertising services are provided to help sponsors, both individuals and institutions, in delivering information to the public. Before advertising, the sponsors must create criteria for achieving the desired goals or targets in order to be able to determine what advertising model is chosen. The main purpose of advertising is to make announcements to the public regarding certain products or information in order to make decisions in accordance with the intent of the advertiser so that it can give some

¹⁷ Nicola Lacey, "Normative reconstruction in socio-legal theory," *Social & Legal Studies* 5, no. 2 (1996): 131.

¹⁸ John Burnett, *Core Concept of Marketing* (Switzerland: Licensed by Creative Commons Attribution, 2008), 4.

¹⁹ Tim Penyusun, *Kamus Bahasa Indonesia* (Jakarta: Penerbit Pusat Bahasa, 2008), 542.

²⁰ Kasali, *Manajemen Periklanan: Konsep dan Aplikasinya di Indonesia*, 1.

²¹ William F. Arens, *Contemporary Advertising* (Illion: Homewood, 1986), 4-7. Advertising media that are currently being developed are through websites. The website is even the fastest advertising medium for now. Louisa Ha, "Online Advertising Research in Advertising Journals: A Review," *Journal of Current Issues & Research in Advertising* 30, no. 1 (2008): 31-48.

²² Muhammad Jaiz, *Dasar-Dasar Periklanan* (Yogyakarta: Graha Ilmu, 2014), 2.

advantages to all parties both material and non material. For commercial companies, the purpose of advertising is to increase the sale volume of products, goods, and services so it can increase material profits. For non-profit organizations, the purpose of advertising is only to make announcements to the public so that the benefits of information can be well socialized.²³

In the broadcasting law, The meaning of advertising is broadcast of commercial information and public services about the availability of goods, services, and ideas that can be utilized by the public with or without reward to the relevant broadcasting institution.²⁴ From this definition the law divides adimpressions into two: (1) Commercial advertising broadcasts, namely commercial advertising broadcast that is delivered via radio or television channel with the aim for introducing, socializing, and promoting goods or services to influence consumers community to use products that offered.²⁵ The broadcasts of the public service advertising are non-commercial advertisement which are delivered through radio or television channel with the aim of introducing, socializing and promoting notion, ideals, suggestions, or other messages to influence the public to act and behave according to the message of advertising.²⁶

From the aspect of appearance, the trends of the forms of advertising can be categorized into: (a) Quality advertising, namely advertisements that emphasize the introduction of quality of products, goods, and / or services offered; (b) Price advertising, namely advertisements that emphasize the introduction of a competitive price aspect of the product offered; (c) Brand advertising, namely advertisements that emphasize the introduction of brand or logo aspects of the products offered; and (d) Prestige advertising, namely advertisements that emphasize aspects of prestige for people who use the products offered.²⁷ These four elements are specifically applied to commercial advertising, while public service advertising emphasizes public awareness aspects so that they are influenced to act as advertisers want.

Effective advertising is advertising broadcasting that can attracts the attention from the public massively so that they become interested and have intention to act according to what the advertiser recommend. To get massive attention, the role of public broadcast media is crucial to achieve success. Moreover, since the rise of the mass communications in the early 20th century, marketers/advertisers have based much of their campaign strategies on a central assumption: the premise that advertising convinces and persuades consumers of the products that they should buy. A dominant

²³ For the comparison see Ma'rif Abdullah, *Manajemen Komunikasi Periklanan* (Yogyakarta: Aswaja Pressindo, 2016), 108..

²⁴ Republic of Indonesia Act Number 32/ 2002 Concerning Broadcasting, art. 1, § 5.

²⁵ *Ibid.*, art. 1, § 6.

²⁶ *Ibid.*, art. 1, § 7.

²⁷ Kustadi Suhandang, *Manajemen, Kiat dan Strategi Periklanan* (Bandung: Penerbit Nuansa, 2010), 50-51..

model of this strategy for the past century has been the AIDA model, outlined formally by Timothy Joyce:²⁸

Attention (A) → Interest (I) → Desire (D) → Action (A)

The AIDA model assumes that consumers are rational so that they recognize a product that they need. If they already recognize the advantages of a product offered there is a possibility that they are interested and take action to buy. To attract the attention, advertising service providers often utilize controversial visual aids. It is said controversial because one-sided advertising shows attractive exhibition, but on the other hand it seems unethical. Kate said that despite its widespread acceptance in the market, the AIDA model has received some criticism for not accurately reflecting actual purchase behavior and for neglecting the steps that happen after a purchase.²⁹ According to the behaviorist perspective, advertising is therefore powerful because of its ability to affect the awareness of consumers about the salience of the product. How much the advertising can affect awareness after all depends on familiarity of the product brand has in the market and it is influenced by the factor of repetition.³⁰

To do repetition of the content of advertising, the advertiser needs to have a public broadcast media that has official permission from the government. According to *The Mediation of Reality*, advertisements are successful when they are integrated with other media and environments in which they are completely submerged. It is advocated that it is not the content of the advertising that makes it persuasive, but the incorporation of media to amalgamate desire and action of consumer society.³¹ But the most of theories of advertising generally propose that the effectiveness of advertising is dependent on the type of product quality being advertised, the type of advertising media, and the frequency of advertising broadcasting.

THE CONCEPT OF MODERN ADVERTISING IN ISLAMIC LAW PERSPECTIVE

The term of advertising (*i'lân*) has many definitions including display (*al-idhâru*). To advertise something means to display or show something.³² Beside that, the term of advertising also means a declaration (*al-jahru*). To advertise something means to declare it.³³ The term *i'lân* has the same root word in several verses of the Qur'an namely:

²⁸ T. Joyce, *What Do We Know About How Advertising Works?*, vol. 2 (London: Thompson Corporation, 1967), in Kate Krosschell, "Persuasion or Repetition? Advertising Theories in Media and Product Testing," accessed July, 8 2019, <https://imotions.com/blog/advertising-theories-in-media-and-product-testing/>.

²⁹ Joyce, *What do we know about how advertising works?*

³⁰ Stephen Miller dan Lisette Berry, "Brand Salience Versus Brand Image: Two Theories of Advertising Effectiveness," *Journal of Advertising Research* 38, no. 5 (1998): 84.

³¹ Hitesh Bhasin, "Advertising theory," accessed March 2, 2020, <https://www.marketing91.com/advertising-theory/>.

³² Ibnu Mandhūr, *Lisân al-'Arabi*, Juz XIII (Beirut: Dâr Shâdir, t.t.), 288. See also Ibnu Farus, *Mu'jam Maqâ'yis al-Lughah*, juz IV (Mesir: Musthafa al-Halabî, 1971), 111.

³³ Mandhūr, *Lisân al-'Arabi*, Juz XIII, 288-89.

- وَاللَّهُ يَعْلَمُ مَا تُسْرُونَ وَمَا تُعْلِنُونَ (God knows what you are keeping secret and what you are revealing) (QS. An-Nahl[16]: 19).
- رَبَّنَا إِنَّكَ تَعْلَمُ مَا نُخْفِي وَمَا نُعْلِنُ (O our Lord, verily you know what we hide and what we deliver) (QS. Ibrahim[14]: 38).
- ثُمَّ إِنِّي أَعْلَنْتُ لَهُمْ وَأَسْرَرْتُ لَهُمْ إِسْرَارًا (Then in fact I called out openly and quietly) (QS. Nuh[71]: 9).

The term *i'lân* is also found in several Hadiths, namely:

- أعلنوا هذا النكاح واضربوا عليه بالغريال (Announce the marriage and perform it in the mosque and enliven it with a tambourine).³⁴
- اللهم اغفر لي ما قدّمت وما أخّرت وما أسررت وما أعلنت (O Allah, forgive me for all that I have done and will come, all that I have done secretly or openly).³⁵

There is variety of opinions among scholars regarding the definition of advertising. Among them, advertising is a clear description of goods or benefits that delivered through the public broadcast media by advertisers (*al-mu'lin*).³⁶ Advertising is a science of offering in accordance with the principles of sharia (*al-masyrū'*) from advertisers (*al-mu'lin*) related to goods, services, facilities to bring good pleasure to the public through the instrument of the media.³⁷ Lafadz *al-masyrū'* is a requirement to limit all prohibited forms such as fraud or misdirection. The object being advertised is in the form of goods / services / facilities that can be utilized when the acquisition is done both by commercial transaction and gift. The purpose of realizing pleasure (*li khalqi hâlati min ridhâ*) is that the intended advertising is not to harm consumers but to explain in order they can accept it with pleasure.³⁸

The purpose of advertising in general is to provide information to the public to act in accordance with the expectation of advertisers. Meanwhile, the purpose of advertising is specifically depends on the form of advertising. If the advertising is commercial (*al-i'lân al-tijârî*), it is intended for distribution (*al-taūzî'*) or marketing (*al-taswîq*), namely the activity of distributing/marketing to offer goods or services from producers to consumers or users. If the advertising is non-commercial (*al-i'lân ghair al-tijârî*), it is aimed at the public services. Public service announcements are advertisements that are used to socialize certain programs related to public services that affect the level of public knowledge. Beside this objective, there are several benefits of advertising,

³⁴ Ibnu Mâjah, *Sunan Ibnu Mâjah* (Damaskus: Maktabah Ibnu Hajr, 2003), 429.

³⁵ Ibnu Hajar 'Asqalâni, *Fathu al-Bârî Syarah Shahîh al-Bukhârî* (Dâr al-Rayân, 1407H), 6036.

³⁶ Muhammad Jamil Thahân, *Dirâsat Iqtishâdiyyah li al-I'lâni fi al-Iqtishâdi al-Islâmî* (Makkah: Jâmi'ah Ummul Qurâ, 1995, 1995), 28.

³⁷ Ahmad 'Isâwî, *Al-I'lân min Mandhûr Islâmî* (Qatar: Silsilah Kitâb al-Ummah, 1420H), 72.

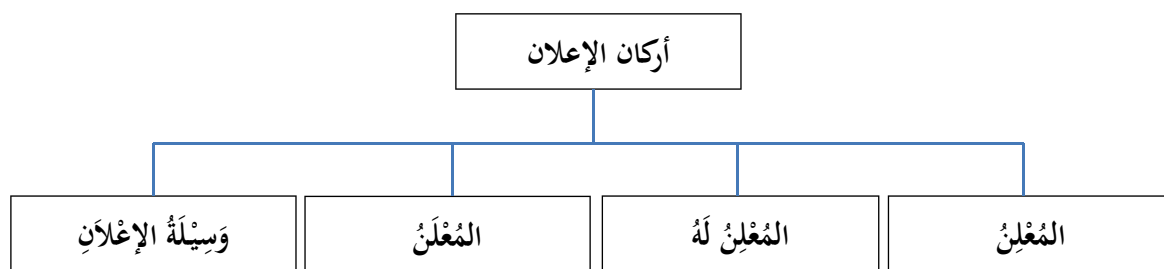
³⁸ Muhammad al-Munâsir, *Al-I'lânât al-Tijâriyah Mafhûmahâ wa Ahkâmuhâ fi al-Fiqh al-Islâmî* (Amman: al-Jâmi'ah al-Urduniyah, 2007), 33-34.

namely: (1) To introduce and to inform consumers about the goods or services. By these advertisements, consumers are expected to be able to recognize the conditions and benefits of the product transparently so that these can support the fulfillment of consumer needs; (2) To add consumer knowledge about the innovation in the quality of the products or services that offered; (3) To increase the desire of consumers to remember the advertised product brand; (4) Advertising can be used as a media of education and teaching in economic science.³⁹

Advertising that contains the benefit is permitted. In order to provide benefits, it must be built on the right thoughts and be clearly understood by the public through hearing and sight. Through the clarity of this advertising, it is hoped that the truth of a message can reach the public.⁴⁰ In a successful advertising concept, it is required that Islamic advertising must not be in conflict with the principal (*ushūl*) as well as the branch (*furū'*) of the Islamic religion.⁴¹ The principle of Islamic religion (*ushul al-din al-Islami*) is *aqidah* and *sharia*, while the branch of Islamic religion (*furū' al-din al-Islami*) is *fiqh* as results of the scholars understanding. In an Islamic advertising, it is required to pay attention to three aspects, namely: (1) The advertising must consider the spiritual nature of Muslim consumers; (2) understand the nature of Islamic advertising; (3) and contain educative content for the public.⁴²

In the Islamic law perspective, the provisions of *halâl harâm* are the right of Allah which is manifested through the practice of His Shari'a (*al-qur'ân* and *al-sunnah*).⁴³ The sources of Islamic law contain legal principles that govern all aspects of human life. Through the source of the Shari'a, the sciences are developed, including -among others- about advertising concept. In order to develop advertising concept Islamically, there are several pillars and conditions that must be approved, namely:⁴⁴

Figure 1: Pillars and Conditions of Advertising



Source: Fiqh of Advertising

³⁹ 'Isâwî, *Al-I'ân min Mandhûr Islâmî*, 39-40.

⁴⁰ 'Isâwî, *Al-I'ân min Mandhûr Islâmî*, 170-172.

⁴¹ 'Isâwî, 171.

⁴² 'Isâwî, 167.

⁴³ Susanto dan Amira, "Legal Renewing of Consumer Protection (Himâyah Al-Mustahlaki) Through Islamic Law Perspective," 298.

⁴⁴ al-Munâsir, *Al-I'ânât al-Tijâriyah Ma'fûmahâ wa Ahkâmuhâ fî al-Fiqh al-Islâmî*, 59.

1. The advertiser (*al-mu'lin*) is an individual or institution that will convey a specific purpose to the public through an advertising medium in some minutes. Advertisers are parties who make announcements relating to products, goods, or services through advertising media aimed at consumers (*mustahlikîn*) or service users (*mustahdimîn*) with certain wage payments.⁴⁵ The parties who advertise are usually from the producers, distributors, sellers of a product, or certain institutions that are interested in delivering public service information. Advertiser requirement is the ability to hold contracts, such as intelligent (*âqilan*), adult (*bâlighan*), and able to distinguish right from wrong (*mumayyizan*).
2. The advertised object (*al-mu'lân*) is the product of goods or services as well as other information for community service. All products or information needed by consumers can become advertising objects as long as they do not conflict with the sharia principles such as object which is substantially illegal (*haram li dzâtihi*) and object which are non substantially illegal (*haram li ghairihi*). The examples of advertising for illegal products in substance such as dangerous foods and alcoholic drinks. While examples of advertising for non substantial illegal products such as advertisements of banking service based usury (*ribâ*).
3. Media (*wasîlah al-i'lân*) is the media used to convey advertising information to the public. Advertising activities will not be perfect unless it is delivered using advertising media. The forms of advertising media are as follows: (a) Electronic media such as television, radio, internet, mobile applications, and others; (b) Printed media such as newspapers, magazines, brochures, pamphlets, and others.
4. Recipient of advertising (*al-mu'lin lahu*) is a community of potential consumers who receive information from advertisers. Advertising messages will be received by someone through the sense of hearing, vision, or a combination of hearing with vision. Recipients when receive information are required to clarify (*tabayyun*) as instructed in the word of God (QS. Al-Hujurat [49]: 6).

In delivering advertising through the media, advertising service provider often use advertising instruments (*mustahdam al-i'lân*) to make it appear attractive and communicative so that it can invite more attentions of the public. The use of advertising instruments in general can be grouped into three:

1. Advertising by human roles through both sound recordings and impressions on audio visual media. Delivering advertising through human role must always consider the aspects of public education (*tarbiyah al-mujtama'*) so that its appearance must reflect the moral behavior (*akhlâq al-karîmah*) that built based on an understanding of religious values. To be able to fulfill the moral

⁴⁵ al-Munâsir, 60.

requirements, there are several criteria that must be considered, namely: (a) *Advertisers must wear Moslem clothes to cover body (aurat) politely. Aurat is a limb that must not be shown by men or women to others legally;* (b) *The behavior and language used must be polite and communicative;* (c) *The advertising that delivered must be in accordance with the reality of the products.*

2. Advertising through other supporting instruments such as writings, posters or pictures, musical instruments and others. The delivery of advertising not only can be done directly by humans, but also can be delivered through the supporting instruments as follows:

- a. If the advertising supporting instruments are in the form of writing, then the writing must use educative sentences.
- b. If the advertising supporting instruments are pictures or posters, the appearance must be *shar'i*. Regarding the picture or poster there are two possibilities:
 - If the picture is in the form of thing or dead creature, the law is permissible.
 - If the picture is in the form of a life creature, then the provisions are: (i) It is possible if the image of the living thing is not perfect as the original; (ii) and unlawful if the image is perfect as the original. Therefore, as a form of caution, avoiding advertising through the display of the living creatures is preferred.

عن ابن عباس رضي الله عنهما قال: سمعت رسول الله صلى الله عليه وسلم يقول من صور صورة في الدنيا كلف أن ينفخ فيها الروح يوم القيامة وليس بنافع.⁴⁶

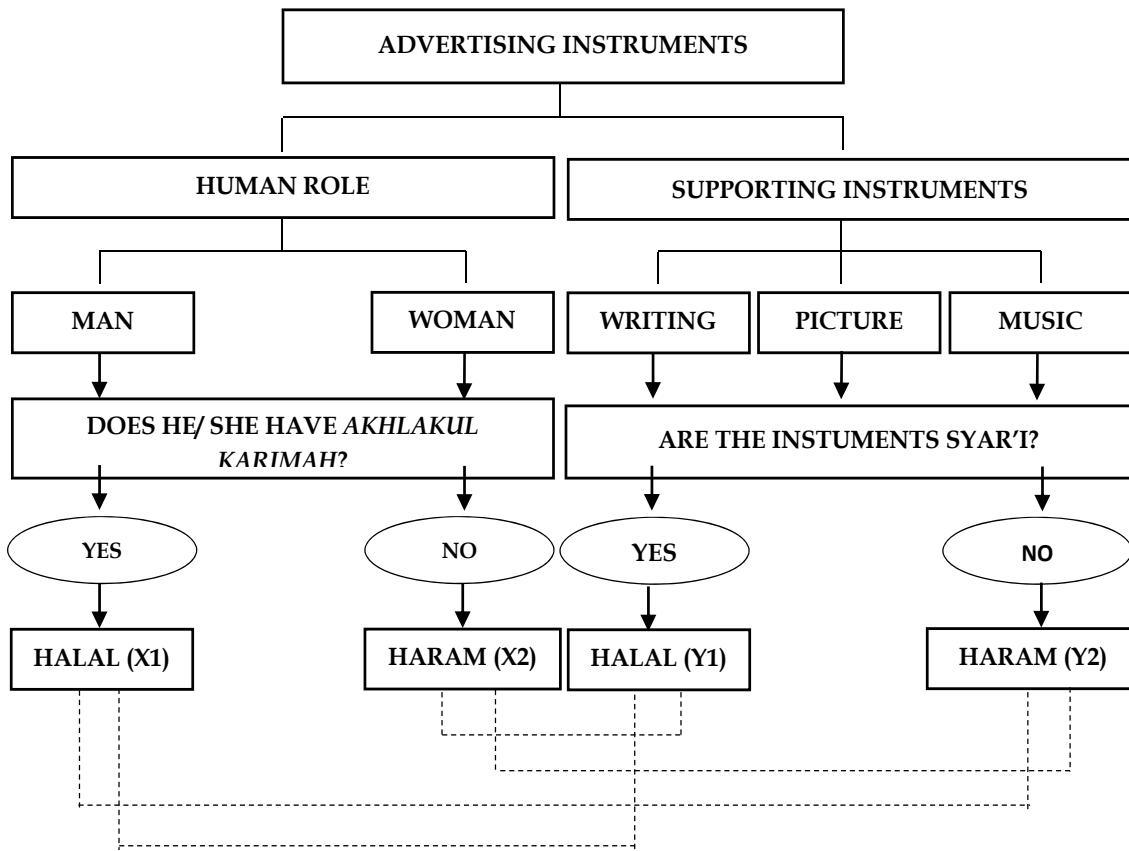
Whoever has ever drawn a living picture in the world, he will be required to blow the spirit on the picture on the Day of Resurrection, and he will not be able to do it.

- c. If the supporting means in the form of musical instruments, it is necessary to ensure that the music does not distance the heart away from obedience to God. If the music can make closer to Allah then it is permissible, but if in fact that music can reduce the obedience to God, then it is *haram*. In the Qur'an it is stated: *"And among men there are those who use useless words to lead astray from the way of Allah without knowledge and make the way of Allah ridicule. They will obtain a disgraceful punishment."* (QS. Lukman [31]: 6). In Ibnu Kathir's interpretation, the context of the explanation of the verse is related to the music.⁴⁷

⁴⁶ Imam Muslim, *Shahîh Muslim, Jilid II* (Beirut: Dâr al-Kitab al-Ilmiyah, 2006), 2110.

⁴⁷ Ibnu Katsir, *Tafsîr al-Qur'ân al-'Adhîm, Jilid III* (Riyadh: Dar Thayyibah, 1997), 556.

Figure 2: Screening of Advertising Exhibition



Source: Fiqh of Advertising

Someone can advertise the product directly or through the use of supporting instruments. If the delivery of advertising is direct, the condition is that advertisers must have a moral behavior (X1). Therefore, if an advertiser violates the principle of moral conduct, the law is *haram* (X2). On the contrary, the delivery of advertising can also be done only through supporting instruments as long as each of the display tools (writing, pictures / posters, music) does not conflict with the sharia principles (Y1). If there is one tool that is contrary to the sharia principles, it is *haram* (Y2). Whereas if the advertising is delivered through a combination between the humas role and supporting instruments, the requirement is that both must be *halal* (X1 + Y1). Although advertisers have a moral behavior, but the supporting instruments used are contrary to sharia principles (X1 + Y2), the law is *haram*. On the contrary, if the advertiser does not meet the requirements of moral behavior even though uses shar'i supporting instruments (X2 + Y1), the law is still *haram*.

Figure 3: Halal Haram of Advertising Exhibition

HUMAN ROLE		SUPPORTING INSTRUMENT	
		HALAL (Y1)	HARAM (Y2)
		√	X
HALAL (X1)	√	√	X
HARAM (X2)	X	X	X

Source : Fiqh of Halal-Haram

Producers and distributors can advertise their products directly without cooperating with the advertising service company. If producers or distributors promote their product through advertising services, they must make collaboration with advertising companies which bound by an agreement. A contract that can be used as the basis for an approved advertising agreement is an authority empowerment agreement with a wage system (*wakâlah bi al-'ujrah*). In this agreement, producers / distributors can act as mandates (*muwakkil*), while advertising service companies act as recipients of mandates (*wakîl*). The objects of the agreement are advertising (*muwakkal fih*) and wages (*'ujrah*). Then in order for the advertising agreement to be valid, the agreement elements must fulfill the requirements in accordance with the contract of *wakîl*, namely: (1) Both parties must fulfill the requirements as legal subjects; (2) The objects of *wakalah* in the advertising agreement must meet the following requirements, namely; (a) Advertising requirements must not be in contradiction with the sharia principles both in products advertised and media of advertising; (b) The terms related to the amount of wages (*'ujrah*) must be clear at the beginning of the agreement; (3) There is an agreement (*ijâb qabûl*) between advertisers as *wâkil* and the product owner as *muwakkil*.

The explanation above is an attempt toward reconstructing the concept and practice of advertising to be better. The concept of Islamic advertising must be built through the paradigm of the Qur'an which states that the best statement is an invitation to return to Allah (QS. Al-Fusilat [41]: 33). Therefore, if the advertising broadcast can provide kindness and benefit (*maslahah*) for consumers, of course the result is reward from Allah for advertisers. Vice versa, if the advertising broadcast potentially introduce badness and damage (*mudharat*) then the result is a sin for the advertisers. The *syara'* evidence of the importance of inviting to goodness and preventing ignorance through advertising is the hadith:

عن أبي هريرة رضي الله عنه أن رسول الله صلى الله عليه وسلم قال: من دعا إلى هدى كان له من الأجر مثل أجر من تبعه لا ينقص ذلك من أجورهم شيئاً، ومن دعا إلى ضلالة كان عليه من الإثم مثل آثام من تبعه لا ينقص ذلك من آثامهم شيئاً.⁴⁸

It was from Abu Hurairah r.a that the Messenger of Allah said: "Whoever invites Allah's guidance, for him there is a reward as the reward of those who follow the instructions without any reduction. Anyone who leads to perverted, for him there is sin as the sins of those who follow that perverted without any reduction. "

The explanation above is related to the implications of advertising broadcast from the perspective of religious values. But in the perspective of state law, deviations of the advertising code of conduct can be sanctioned by the government. The purpose of legal sanctions is to create a deterrent effect. In the perspective of Islamic law, sanctions related to violations of the code of ethics in advertising is in the form of *ta'zir*, namely the determination of punishment by the government through the enforcement of regulations. In the consumer protection law stated that: "*Pelaku usaha periklanan bertanggungjawab atas iklan yang diproduksi dan segala akibat yang di timbulkan oleh iklan tersebut*" (The agent of advertising is responsible to the advertisement produced and also all of the consequences that might be arose by it).⁴⁹ Part of the advertiser's liability is the imposition of legal sanctions either administrative punishment, civil punishment, or even criminal punishment for those who violate the advertising code of ethics. The advertising concept mentioned above is the result of the development of science through the Islamic law perspective in order to reconstruct concepts in order to reach the aspects of the divine values.

CONCLUSION

The concept of value-free advertising that is only business oriented needs to be reconstructed through the intervention of transcendental values to open the door to benefit (*maslahah*) from God both for businessmen and the consumer. The construction of the modern advertising concept of Islamic law perspective is built on the principles of Sharia, so it has the high ethical values. Advertising broadcast which with quality and educative both in terms of the products and the delivery of ads is like a person who invite the truth to the consumer society. On the contrary, broadcasting of ads that have no quality and no educational message is like a person who invite the digression of the consumer. In addition, the consequences (+) or (-) of advertising broadcast will influence the consumer massively. Also, the impact will return to the advertisers themselves both

⁴⁸ Muslim, *Shahih Muslim*, Jilid II, 2674.

⁴⁹ Republic of Indonesia Act Number 8/1999 Concerning Consumer Protection, art. 20.

in the world and the hereafter. Therefore, through the publication of this article, the author recommends that business actors and advertising service providers to follow up the results of the reconstruction of advertising concept at the level of implementation.

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