

Between Transaction and Partnership: The Juridical Discrepancy in MLM Member Onboarding Based on DSN-MUI Fatwas in Makassar

Misbahuddin^{1*}, Ahmad Faizal Rifai R², Muhammad Nasir Thahir

¹Ikatan Cendekiawan Alumni Timur Tengah. E-mail: misbahuddin891@gmail.com

²Universitas Islam Negeri Syarif Hidayatullah Jakarta. E-mail: ahmadfaizalrifai14@gmail.com

³Al-Azhar University, Cairo, Egypt. E-mail: nasir.thahir@gmail.com

*Corresponding Author

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Abstract: This research aims to analyze the recruitment methods used by Multi-Level Marketing (MLM) practitioners and to assess the relevance and compliance of these practices with the contractual provisions outlined in DSN-MUI fatwas. Employing a qualitative research approach, data were collected through observation, interviews, and documentation involving MLM companies in Makassar. The findings reveal that recruitment strategies commonly involve personal selling, Hypnos Elling techniques, promises of success, and flexing or marketing signaling. Notably, at the closing stage, companies apply the al-Ba'i Murabahah contract with prospective members, framing it as a business partnership within the same company. However, al-Ba'i Murabahah is inherently a transactional contract and not suited for intermediation purposes. The study demonstrates that the application of DSN-MUI fatwa-based contracts in MLM recruitment has not yet fully aligned with Sharia principles, particularly in terms of intermediation contracts. The appropriate model for member recruitment should be based on Mudharabah, where prospective members contribute effort, time, and skills to product distribution without initial capital investment. This study offers a novel critique of fatwa implementation in the context of MLM operations, highlighting the juridical disconnect between theoretical contract types and actual recruitment practices. The findings have practical implications for Sharia supervisory bodies and MLM operators to realign recruitment mechanisms with valid intermediation contracts, ensuring greater compliance with Islamic commercial ethics.



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Introduction

The core issue with Multi-Level Marketing (MLM) lies in its pyramidal structure, wherein each member is obligated to recruit new participants as a fundamental process. In exchange for bonuses, each member is required to contribute a certain amount of money to the company. The greater the number of recruits and the more time spent promoting the products, the higher the bonuses offered. This illustrates that individuals often join MLM networks not because they need the products, but because they are enticed by the promise of bonuses, the allure of success, and the aspiration to become wealthy as quickly as possible.

Many businesses—local, national, regional, and even global—such as Imogen, adopt a trade model integrated with MLM systems (Damayanti et al., 2022).

Empirical observations suggest that a significant segment of society holds negative perceptions toward MLM companies. This stems from the proliferation of MLM businesses over the past decades, many of which have caused considerable public concern. Although such companies often claim to offer pathways to success, they operate within frameworks and contracts (*aqad*) that are ambiguous and overly complex, making it difficult to predict whether targeted outcomes will be achieved. Consequently, many individuals feel burdened by the operational demands. Business participants often struggle to manage the expectations and goals set by MLM companies due to unclear contracts and convoluted structures. Furthermore, the implementation of hierarchical ranks or star levels fosters a sense of injustice, especially among newcomers, as only those at the top enjoy substantial benefits while those at the bottom bear the brunt of the workload. Adding to this pressure, members are frequently subjected to strict deadlines to achieve turnover targets, placing them under continuous stress to meet company goals. These factors contribute to widespread trauma and psychological distress among MLM participants, as the system is inherently challenging and often fails to deliver on its promises (M. Ziyad Mubarak, 2019). The absence of limits on the number of distributors in a particular region, coupled with the lack of market potential evaluation, further reflects the instability embedded within the MLM system itself (Amiruddin, 2021).

The author has examined previous studies conducted by various scholars, including Ahmad Sahlan (2016), "*Bisnis Multi Level Marketing (MLM)*", (Sahlan, 2016). Suwitho Suwitho, Ikhsan Budi Riharjo, and Danang Ary Dewangga (2023), "*The Nexus Between Ponzi Scheme and Multi-Level Marketing Systems: Evidence in Indonesia*" (Suwitho et al., 2023), Amiruddin K. (2021), "*Multi Level Marketing dalam Perspektif Ekonomi Syariah*" (Amiruddin, 2021). Nurjannah et al. (2022), "*Telaah Komparatif Bisnis Multi Level Marketing Konvensional dan Multi Level Marketing Syariah*" (Nurjannah et al., 2022). Safwan (2019), "*Multi Level Marketing dalam Perspektif Etika Bisnis Islam*" (Safwan, 2019). Widadatur Rahmah and Lukmanul Hakim (2022), "*Penerapan Etika Bisnis Islam Terhadap Bisnis Multi Level Marketing (MLM) Stokis Herba Penawar Al Wahida Indonesia (HPAI) di Keppo Polagan Galis Pamekasan*" (Rahmah & Hakim, 2022).

As MLM businesses continue to evolve, the Indonesian Council of Ulama (Majelis Ulama Indonesia) issued a legal opinion (fatwa) through DSN-MUI Fatwa No. 75/DSN-MUI/VII/2009 concerning Sharia-Based Direct Selling (Penjualan Langsung Berjenjang Syariah/PLBS) (Anantor, 2021). However, the issuance of this fatwa has led to numerous issues related to marketing plans and their compatibility with Islamic contractual principles, particularly in the context of member recruitment by MLM practitioners. Therefore, in-depth research is necessary to assess the extent to which the contractual agreements stipulated in DSN-MUI Fatwa No. 75/DSN-MUI/VII/2009 align with actual MLM recruitment practices.

Accordingly, the aim of this study is to analyze how MLM practitioners recruit new members and to evaluate the relevance and compatibility of the fatwa's contractual framework with real-world MLM operations.

Research Methods

The type of research conducted in this study is qualitative in nature. This approach involves presenting detailed perspectives obtained from various sources of information, typically within natural contexts or environments (Fadli, 2021). In qualitative research, the researcher is directly engaged with the context, situation, and setting of the phenomenon under investigation. Each phenomenon is regarded as unique and distinct due to the specific characteristics of its contextual background (Nugrahani, 2014). This study employs data triangulation, which entails the integration of data from three primary methods: interviews, participant observation, and document analysis.(Fadli, 2021) The data were collected from various sources and literature relevant to the research object located in Makassar City. The collected data, supported by relevant literature, were analyzed and interpreted to address and resolve the predetermined research problem,(Suryana, 2007) To facilitate the analysis process, the data were processed using a qualitative descriptive analysis approach,(Suryana, 2007) This involves several stages, including data reduction, data display, data verification (conclusion drawing), and the formulation of final conclusions(Ahmad & Muslimah, 2021).

Discussion

The Origin of Multi-Level Marketing

Multi-Level Marketing (MLM) is a business model that employs commonly accepted techniques to establish a tiered sales structure (Amiruddin, 2021). It is a marketing strategy that transforms consumers into marketing agents who also serve as direct and permanent consumers (members). This model often utilizes the promise of success, the recruitment of additional marketers, and the provision of bonuses and ranks (such as bronze, silver, gold, and platinum) based on points. Once an individual becomes a member, their subsequent task is to recruit and prospect new members (downlines) using similar strategies—offering the lure of success in the form of passive income, the "Cashflow Quadrant," general and specific paradigms, and strategies for building network assets in a pyramid structure (Sahlan, 2016). These may involve systems such as the breakaway system or binary system in conducting business operations.

New members typically join by paying a registration fee, filling out membership forms, purchasing products, and receiving purchasing bonuses and level ranks. They are also responsible for recruiting further potential members using the same approach, reinforcing belief through motivational success narratives to encourage participation in the business. If a member is able to recruit many new members, the upline will receive a greater bonus from the company. The larger the network of members, the higher the bonus earned, since the

company benefits from a growing number of individuals who are simultaneously product consumers.

Thus, Multi-Level Marketing is a business strategy wherein the company utilizes consumers as marketing agents, effectively turning them into permanent customers (members). This is achieved through enticing promises of success to prospective members, optional payment of registration fees, product purchases, recruitment of new members, and the construction of a tiered network. Members earn income based on bonuses from monthly purchases or meeting sales point targets set by the company, within systems such as breakaway, binary, or matrix structures (Amiruddin, 2021).

Several unique features distinguish MLM from other marketing systems. These features include the recruitment of new members, product sales, multiple hierarchical levels, training systems focused on building business network assets, and commission or point-based bonus structures for each level. A hallmark of MLM is its tiering system, which evaluates the achievements of each new distributor. This mirrors a career path progression from the lowest rung, with careful, step-by-step advancement toward the desired rank. A distributor's rank increases in proportion to their ability to attract downlines and expand the network, especially if they succeed in training their downlines to replicate their efforts. This illustrates what is known as exponential growth.

In an academic journal, Ahmad Sahlan identifies the positive impact of Multi-Level Marketing as its ability to help business owners reduce expenditures on advertising and promotion. Additionally, it offers opportunities for distributors who wish to work independently as brokers, agents, or partners. However, the negative impacts, according to the Sharia Council of the Justice Party through its fatwa No. 02/K/DS-P/VI/11419, include excessive obsession with meeting sales targets driven by the structure of the MLM system (Sahlan, 2016). During meetings and business gatherings, the environment may become incompatible with ethical norms, sometimes leading to a hedonistic lifestyle. Many individuals abandon their routine responsibilities and occupations due to an obsession with rapid wealth accumulation and success. This approach treats individuals (partners) based solely on material sales targets, which can ultimately shift their mindset toward materialism and divert them from their primary purpose in life—worship and drawing closer to Allah, both in this world and the hereafter.

Model Akad MLM atau PLBS

In Arabic, the term '*akad*' carries multiple meanings, all of which converge on a central notion: *al-rabṭu*, meaning "to bind." This is the original meaning of the word *al-'aqd*, as explained by linguistic scholars (*al-lughawiyūn*):

This means: "*It is said: I tied the rope with a firm knot, that is, I tightened and reinforced it, and joined both ends together.*"

In contrast, jurists (*al-fuqahā'*) define *al-'aqd* as:

This can be rendered as: “A legal agreement between two parties that results from the mutual consent of both and establishes a binding commitment is called a contract (*‘aqd**), such as a sales contract (*‘aqd al-bay’*), an agency contract (*‘aqd al-wakālah*), and others” (Ali Ahmad Mar’iy, 2020).

Meanwhile, the National Sharia Board of the Indonesian Council of Ulama (DSN-MUI) has established a set of conditions that must be fulfilled for an MLM company to obtain certification under the Sharia-Based Tiered Direct Selling Program (PLBS). The DSN-MUI asserts that the contracts (*‘uqūd*) employed in the PLBS must comply with Islamic law (sharia). These include:

- a. The *Bai’/Murābahah* contract, based on Fatwa No. 4/DSN-MUI/IV/2000 on *Murābahah* and Fatwa No. 16/DSN-MUI/IX/2000 on Discounts in *Murābahah*;
- b. The *Wakālah bi al-‘Ujrah* contract, referring to Fatwa No. 52/DSN-MUI/III/2006 concerning agency with fee (*wakālah bi al-‘ujrah*) in Islamic insurance and reinsurance;
- c. The *Ju’ālah* contract, based on Fatwa No. 62/DSN-MUI/XII/2007 on *Ju’ālah* contracts;
- d. The *Ijārah* contract, as stipulated in Fatwa No. 9/DSN-MUI/IV/2000 concerning *Ijārah* financing;
- e. Other contracts that comply with sharia principles upon the issuance of a relevant fatwa by the DSN-MUI.

In the execution of a contract, clear mutual agreement is essential. If a *Muḍārabah* contract is used, the type of business, the identity of the capital provider (*Rabb al-Māl*), the manager (*Muḍārib*), and the profit-sharing ratio must be explicitly stated. For a *Mushārahah* contract, it is necessary to clarify the nature of the business, each party’s contribution, the sharing of profit and loss, and the role each plays in management. Under an *Ijārah* contract, the leased item, duration of the lease, rental cost, and detailed terms must be specified. In a *Wadī’ah* (safekeeping) arrangement, it is impermissible for the custodian to derive any profit. If the business involves cooperative efforts based on charitable giving (*infāq* and *ṣadaqah*), then royalties must be avoided. Numerous similar examples exist. Any MLM business that operates without a clearly defined contract and solely relies on recruitment networks can be classified as a *money game*, which is prohibited in Islam (Suaidi, 2020).

To avoid *tarkīb al-‘uqūd* (contractual overlap or hybridization), this study focuses on aligning and adapting MLM or PLBS contracts based on two relationships: (1) between the company and the marketer (intermediary contract), and (2) between the company or marketer and the consumer (transactional contract), as follows:

- a. Between the company and the marketer:
 - 1) The primary contract used is *Muḍārabah*, which serves as the foundational agreement between the company (*Ṣāhib al-Māl*) and the marketers (*Muḍārib*). The Prophet Muhammad (peace be upon him) himself engaged in a *Muḍārabah* partnership with Khadijah, wherein he marketed and sold her goods without purchasing them himself. A major concern in conventional MLM models is the

requirement for marketers to purchase products, pay registration fees, and use company products to qualify for bonuses and participation, which distorts the role of marketers into that of consumers and leads to unethical behavior. In contrast, under a proper *Muḍārabah* system, marketers are not obligated to make purchases but instead focus on marketing products. Profits are shared based on a pre-agreed profit-and-loss ratio, forming a genuine business partnership. The marketers' efforts are thus directed toward maximizing sales, and the resulting profits are distributed proportionally.

This concept is supported by an incident mentioned in *Mawsū'ah al-Iqtisād al-Islāmī* by Sheikh Dr. 'Alī Jum'ah Muḥammad (Muhammad, 2012)

*Malik narrated: 'Abdullāh and 'Ubaydullāh, the sons of 'Umar ibn al-Khaṭṭāb, once joined an expedition to Iraq. On their return, they stopped by Abū Mūsā al-Ash'arī, the governor of Basra. He welcomed them warmly and said: "If I could do something to benefit you, I would." Then he added: "Indeed, there is wealth here that belongs to Allah, which I intend to send to the Commander of the Faithful. I shall lend it to you so you may use it to buy merchandise from Iraq and sell it in Medina. Return the capital to the Caliph, and the profit shall be yours." They agreed. Abū Mūsā then informed 'Umar, who upon their arrival in Medina questioned: "Did every soldier receive a loan like you two?" They replied, "No." So 'Umar said: "Because you are the sons of the Caliph, he lent it to you? Return both the capital and the profit." 'Abdullāh remained silent, but 'Ubaydullāh objected: "Had we suffered a loss, we would have borne it." A man in the assembly then said: "O Commander of the Faithful, why not treat it as a qarāḍ (Muḍārabah)?" So 'Umar agreed, stating: "Then it is a qarāḍ." He took back the capital and half of the profit, leaving the other half to 'Abdullāh and 'Ubaydullāh. (Al-Albānī in *Irwā' al-Ghalīl* authenticated the chain as ṣaḥīḥ according to the criteria of al-Bukhārī and Muslim).*

- 2) Additional contracts such as *Ju'ālah*, *Wakālah*, and *Ijārah* may supplement the primary agreement. These are regulated under DSN-MUI Fatwa No. 62/DSN-MUI/XII/2007 on *Ju'ālah*, Fatwa No. 10/DSN-MUI/IV/2000 on *Wakālah*, and Fatwa No. 9/DSN-MUI/IV/2000 on *Ijārah* financing.
- b. Between the company or marketer and the consumer:
- 1) The *Bai'/Murābaḥah* contract serves as the basic financing mechanism, in line with DSN-MUI Fatwa No. 4/DSN-MUI/IV/2000 on *Murābaḥah*.
 - 2) Discount provisions in *Murābaḥah* transactions refer to DSN-MUI Fatwa No. 16/DSN-MUI/IX/2000 on Discounts in *Murābaḥah*.

Relevance and Compatibility of Contractual Agreements in DSN-MUI Fatwas with Membership Recruitment Practices in Multi-Level Marketing (MLM)

a. Al-Ba'i Murabahah (Sale Contract)

In the contractual practices of MLM companies in Makassar City, a sale contract (al-Ba'i Murabahah) typically occurs between the company and its partners or members, particularly when members purchase the company's products directly for personal consumption. Fundamentally, since a sale contract is classified as permissible (mubah), the researcher asserts that this does not pose an issue for MLM companies in Makassar, as there is alignment between the consumer's intention and purpose in acquiring the product.

However, after conducting observations of MLM companies in Makassar, the researcher found that these companies tend to utilize the transactional contract of al-Ba'i Murabahah as an intermediary contract between the company, members, and prospective members. In practice, members sell products by recruiting new members, who are required to make an initial purchase (First Order) as a condition for enrollment. The recruiter (member) benefits financially from this recruitment process. The prospective member purchases products solely to meet registration requirements and secure a business license from the MLM company. However, the underlying intention of the prospective member is to establish a business partnership and engage in marketing within the same company, aiming to earn commissions and rewards. This indicates that the prospective member is not purchasing the product out of genuine necessity but to participate in business activities.

While DSN-MUI recognizes al-Ba'i Murabahah as a valid contract, the researcher argues that its application in the context of recruiting new members for the purpose of obtaining rewards or bonuses is not appropriate. This is because al-Ba'i Murabahah is inherently a transactional contract. A more suitable contract that aligns with the objectives of prospective members joining an MLM company—namely, to receive a business license—would be an intermediary contract such as *Mudharabah*.

According to the researcher, prospective members are not actually required to provide capital. In many MLM companies, resellers only contribute their time, effort, and skills for product marketing and sales, while the MLM company provides the capital in the form of products. The distinction between transactional and intermediary contracts can be outlined as follows:

1. **Transactional Contracts:** These contracts pertain to the real economic sector, facilitating transactions, sales, and the exchange of goods and services. Essentially, they involve buying and selling activities, which can be immediate or deferred, involving bartering, fixed-price sales, or credit-based transactions. These contracts generate assets that form the foundation for financing and investment opportunities, serving as the core of broader economic and financial systems.
2. **Intermediary Contracts:** These are agreements that support the efficient and transparent execution of both transactional and financial contracts. They provide

economic agents with tools for financial intermediation and offer professional services (fee-based) for economic activities. Intermediary contracts include a variety of types, such as *Mudharabah* (trust-based partnerships), *Musarakah* (equity partnerships), *Kafalah* (guarantees), *Amanah* (trust), *Takaful* (insurance), *Wakalah* (agency), and *Ju'alah* (performance-based rewards) (Prasetyo et al., 2016).

In a *Mudharabah* contract, an economic agent (member or partner) and a capital owner (the company) may form a partnership with another agent (a prospective member) who possesses skills, based on a profit-sharing agreement. While the capital owner bears the financial risk, the *mudharib* (partner) may be held liable if the loss results from negligence or misconduct. The *Mudharabah* contract plays a significant role in agency-based distribution systems.

The researcher emphasizes the critical importance of implementing the *Mudharabah* contract in MLM companies, particularly for prospective members who lack capital. Observations reveal that many marketers or members in Makassar-based MLM companies still use conventional MLM techniques, where those without capital are encouraged—often through hypnoselling techniques—to sell personal assets such as gold or motorcycles, or even borrow money from relatives, just to afford enrollment fees. This leaves prospective members feeling misled once they attend seminars. The researcher considers such practices unethical and misaligned with Islamic business ethics. When prospective members liquidate assets to join an MLM company but later fail to sell or market products or recruit others, they may experience financial loss and regret their purchasing decisions.

This situation persists partly because many marketers are unaware of Islamic contracts. In an interview conducted by the researcher with an MLM practitioner regarding whether MLM partners in Makassar are familiar with Islamic contracts such as *Murabahah*, *Mudharabah*, *Ju'alah*, etc., the practitioner responded:

“Ordinary people surely wouldn’t understand that, unless they have some religious education. Not everyone knows that—only certain people do.”¹

Based on these observations and interviews, the researcher concludes that MLM companies have not fully implemented sharia-compliant contracts, particularly intermediary contracts.

b. *Ju'alah* (Rewards and Bonuses)

The *Ju'alah* contract has been implemented in MLM companies in Makassar. This is evidenced through the researcher’s observations, which show that once a prospective member joins and becomes part of the company’s partnership program, they are granted business rights and assigned tasks by the company. These tasks include selling or marketing products and recruiting new members using a Hybrid Uni-Level model. They are also expected to build a network based on a binary system with unlimited depth to qualify for rewards such

¹Wawancara dengan praktisi MLM: 23 Juni 2024.

as motorcycles, Mobilio, Pajero, or luxury items. If the partner fulfills these tasks in accordance with the company's rules and code of ethics, they receive various bonuses and rewards, in line with the *Ju'alah* contract outlined in the company's marketing plan.

However, the researcher found that MLM companies in Makassar combine the *Ju'alah* contract with binary and hybrid uni-level models, wherein product sales are driven by recruiting new partners. Consequently, members tend to build turnover primarily through recruitment rather than genuine product sales to consumers. Upline (top leaders) motivate their downlines, while the downlines exert significant effort to recruit external individuals using the lure of success. The primary goal of these sales is to boost points and sponsor commissions, not to fulfill actual market demand.

Thus, in the context of MLM companies in Makassar, the *Ju'alah* contract is not based on the pure quantity of product sales but rather on the balance of turnover between left and right groups through recruitment. In effect, rewards are tied to the number of new recruits and their financial contributions, rather than to sales performance or customer satisfaction.

Conclusion

Based on the results of observation, interviews, and documentation conducted by the researcher on MLM companies in Makassar City, it was found that the recruitment and member acquisition techniques employed by these companies primarily rely on a personal selling approach. These companies continue to adopt conventional MLM methods such as hypnoselling, promises of success, and flexing marketing or marketing signaling. However, at the point of transaction closure (closing), they apply a transactional contract in the form of al-Ba'i Murabahah with prospective members, whose actual intention is to establish business relationships within the same company. In reality, al-Ba'i Murabahah is a transactional contract, not an intermediation contract.

The relevance and conformity of the contract models referred to in the DSN-MUI fatwas with the actual practices of member recruitment in MLM companies in Makassar City have not been fully aligned with the principles of sharia contracts, particularly intermediation contracts. The contract that most appropriately reflects the prospective member's intention to join—namely, to obtain business rights for product distribution and collaborative enterprise within the same company—is an intermediation contract (akad Mudharabah). Under this arrangement, the prospective member or partner contributes only their time, effort, and marketing skills to promote and sell the company's products, without having to provide capital or make an initial purchase.

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