

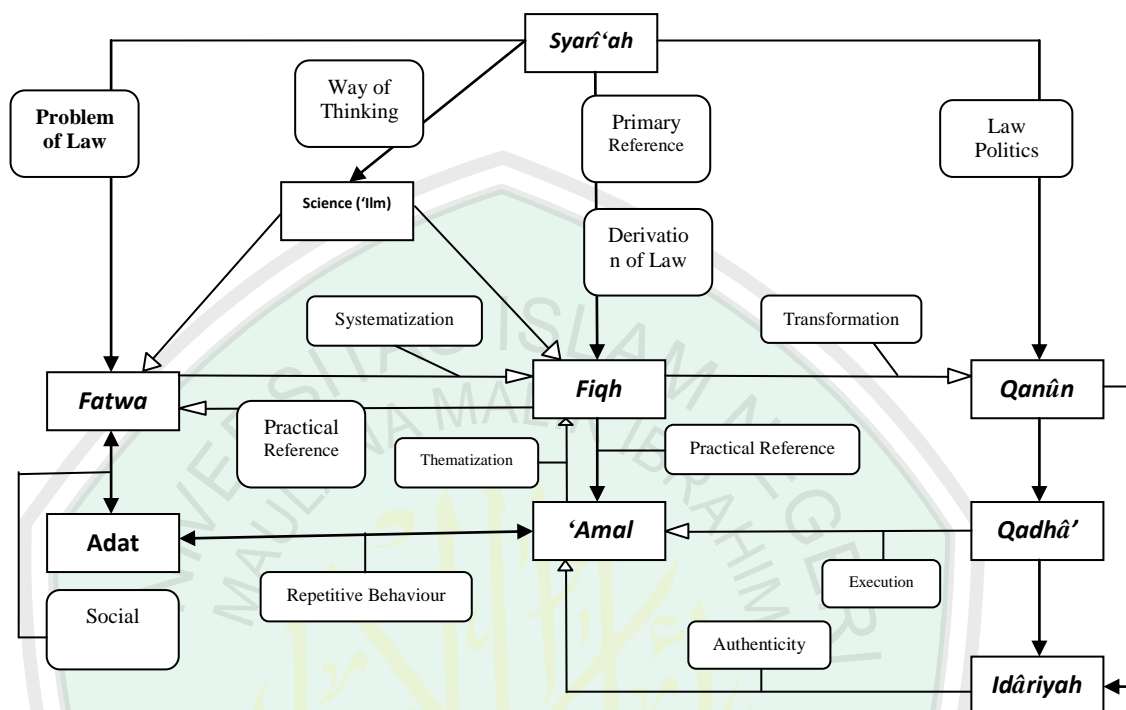


CHAPTER THREE FINDINGS AND DISCUSSION

A. Dimension of *Fiqh* in Islamic Law System

In the discussion of Islamic Studies, Islamic law covers a wide range of dimensions from the abstract to the concrete. *Fiqh* is identified as the dimension of legal concept of Islam. *Fiqh* is reasoning products are deduced by jurists from al Quran and as Sunnah, which is empirically applied by moslems in different regions. The diagram below explains the position of *fiqh* among dimensions under *syari'ah* dimension:

Diagram 1: Relation between Syarī'ah with Fiqh and 'amal in the Unity of Islamic Law System.



Note:

1. Causal Relation (Basic): \longrightarrow
2. Causal Relation (Supporting): \longrightarrow
3. Relation Of Reciprocity: \longleftrightarrow
4. Dimensions Of Islamic Law System: \square
5. Information Of Relation Among Dimensions: \square .¹

The diagram above shows at least four things. First, a unified system of Islamic law, as a normative reference to human life. Therefore, the Islamic law system was built based on the orders and prohibitions of Allah and His prophet (*syarī'ah* dimension). It is identical to *syarī'ah* of Islam that is placed at the top of the structure of Islamic law. Second, Islamic legal structure contains some dimensions: *'ilm* (science), *fiqh* (islamic jurisprudence), *fatwa* (law by mufti),

¹ Cik Hasan Bisri, *Model Penelitian Fiqh* Book 1 (Jakarta: Kencana, 2003), 6.

qanûn (law), *idâriyah* (constitution), *qadhâ'*, and *'âdah* (habbit). Third, the relationship among the various dimensions demonstrates a complex pattern that is difficult to be disaggregated in dichotomy (*syarî'ah* versus *fiqh* or Islamic law versus Islamic jurisprudence). Fourth, the relationship between *syarî'ah* dimension with *fiqh* and *'amal* dimensions is hierarchical. In the diagram, *fiqh* is placed as a central among dimensions. *Fiqh* itself contains two dimensions:

1. *Majmû'atul ahkam*: *fiqh* as part of the normative element in the entity of life as a guide on demands in human behaviour.
2. *Al 'Ilm bil Ahkâm*: a set way of working as a practical form of thinking, primarily taxonomic (classifying) thinking and logical way to understand the content of legal verses and hadith. This dimension of *fiqh* functions as principles, procedures, and ways of working to understand and explain the first dimension (*majmu'atul ahkam*). In this context, the philosophy of Islamic law, *ushûl fiqh*, and *târîkh tasyrî'* (chronicles of law stipulations), can be seen as part of the cluster of *fiqh* science/'ilm.² This second dimension is the dimension of *fiqh* which becomes object of the discussion.

Ethimologically, law (*al hukmu/al man'u*) means to prevent. Terminologically, law according to majority experts of *ushûl* is *khithâb* Allah is related to *mukallaf* activities in forms of *iqtidlâ'*, *takhyîr*, and *wadl'y*. *Khithâb* is communicating something to *mukhâthab* (the listener) to give understanding. *Iqtidlâ'* is *thalab*/demand to do something or leave something. *Takhyîr* is

² Cik Hasan Bisri, *Model Penelitian Fiqh* Jilid 1 (Jakarta: Kencana, 2003), 8-9.

allowance to do or to leave something (as choice). *Wadl'y* is *khithâb* of Allah SWT to make something as a *sabab*/cause, *syarth*/condition, *mâni'* /preventative, *shah*/legal, *fâsid*/vain, *'azîmah*/firmness, or *rukshah*/relief.³

Globally, *syarî'ah* law is divided into *taklîfy* law and *wadl'y* law. *Taklîfy* law is *khithâb* containing demands by the *mukallaf* to be done or to be left or to be chosen to do or to leave. There are five types of *taklîfy* law:

1. *Wujûb*/obligatory: an action if it is done by someone then he will be rewarded. If the action is left, he will get punishment.
2. *Mandûb*/advised: an action if it is done by someone then he will be rewarded. If the action is left, he will not get any punishment.
3. *Harâm*/illicit. an action if it is left by someone then he will be rewarded. If the action is done, he will get punishment.
4. *Makrûh*/resented. an action if it is left by someone then he will be rewarded. If the action is done, he will not get any punishment.
5. *Mubâh*/Optional. an option to act or not to act. There will be no reward or punishment.

Wadl'y law is *khithâb syar'y* containing comprehension that things happen as *sabab*/cause, *syarth*/condition, *mâni'*/preventative, *shah*/legal, *fâsid*/vain, *'azîmah*/firmness, or *rukshah*/relief:

1. *Sabab*/cause: something that is used by *syarî'ah* as a sign of the *musabbab*. The existence of *sabab* evokes the presence of *musabbab* and the absence of *sabab* evokes the absence of *musabbab*.⁴

³ Wahbah Zuhaili, *Ushul Al Fiqh Al Islami* Book 1 (Damascus; Dâr al Fkr, 1996), hal 37-45.

2. *Syarth*/condition: A circumstance required that make the law exists. *Syarth* is placed outside the essence of something, when it is not there then *masyrût* no will not exist. But the existence of *syarth* does not always mean the existence of *masyrût*.
3. *Mâni* /barrier: something that because of its presence, there will be no law applied or make the *sabab* vain. For instance, someone who kills does not deserve heritage from whom he killed..⁵
4. *Shah*/legal: a condition that fulfills *rukns* and *syarths* according to *Syari'ah*.
5. *fâsid*/vain: a condition that does not fulfill *rukns* and *syarths* according to *Syari'ah*.⁶
6. *'azîmah*/firmness: something demanded by islamic law and applied in general personality, not determined to a special category, or some with an excluded condition.⁷
7. *rukshah*/relief: a stipulated law to give eases for mukallaf with certain conditions.⁸

Discussion about bonus on Herbalife Network Marketing Company in law discussion concerns with some kinds of law such as *mubâh*, *harâm*, and *rukshah*.

⁴ *Illat* is a part of *sabab* which has logical analogy to human thoughts. The other kind of *sabab* is a cause that is not in accordance with logical thought of human beings. People just have to obey the rule of the latter such as sunset as a sign of the obligation of *maghrib* prayer.

⁵ Muhakbarilyas.blogspot.com/2012/4/Mengenal-Hukum-wadh'i-dalam-Ushul-Fiqh.htm, accessed 19 Februari 2013.

⁶ Wahbah zuhaili, *Ushul Al Fiqh Al Islami* Book 1 (Damascus: Dâr al Fikr, 1996), 104-105.

⁷ Totok Jumantoro and Samsul Munir Amin, *Kamus Ilmu Ushul Fikih* (Jakarta: Amzah), 32.

⁸ Totok Jumantoro, *Kamus Ilmu Ushul Fikih*, 289.

B. The Concept of Bonus on Herbalife Marketing System in Islam

In general, there are seven kinds of contract in its relationship between the company and the distributors or between distributors and consumers. In these agreements, there are three kinds of *'aqd* agreed by the distributors to have the job and to get incomes. They are *bay'*, *samsarah*, and *ju'alah* as the contracts of jobs. While direct profit, commission, and bonus are the types of advantages got by doing this network marketing business.

The first is direct retailing advantage. Direct retailing advantage profit from direct sales to consumers. This transaction uses *'aqd bay'* with retail profit. The picture below shows the process of getting profit from *bay'* transaction.

Table 5: Example of Direct Retail Profit

Retailing Advantage		
Full Retail	Cost	Profit
\$ 100	\$ 75	\$ 25

Besides the transaction above, *'aqd bay'* also occurs in the enrolment to be a Herbalife distributor. Someone has to buy a package of IBP's (International Business Packs) at first to register as an agent of Herbalife. IBP's package contains two main products, guidebooks, ID cards and some other supplies.

Another advantage is wholesale profit (commission). Wholesale profit (commission) is the profit gap between an upline's purchase for the products and a downline's purchase for the product in the organization up to 25%.

In the wholesale transaction among distributors, there is split commission in Herbalife marketing system. Split commission is a profit earned from a downline distributor below a qualified producer who purchases at less than 42%

discount. A commission of 7% or 17% is first paid to the first upline of qualified producer and the remaining 8% is paid to the first upline fully of qualified supervisor.

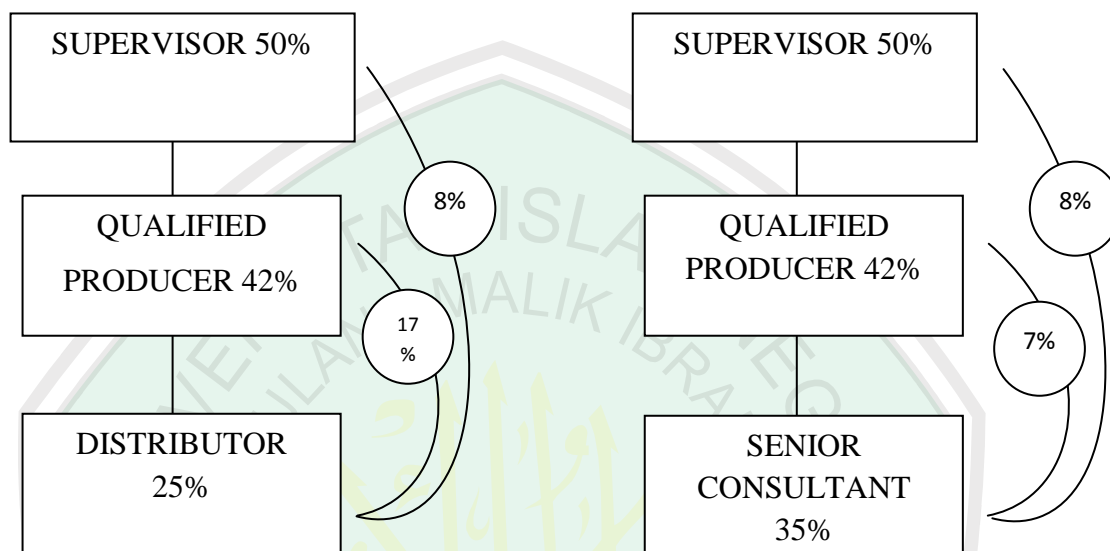


Diagram 2: Process of Split Commission

Retail	Discount Scale	Distributor Cost	Commission Split	
			For Qualified Producers	For Supervisor
\$ 100	25%	\$ 75	\$ 17	\$ 8
\$ 100	25%	\$ 75	Without QP	\$ 25
\$ 100	35%	\$ 65	\$ 7	\$ 8
\$ 100	35%	\$ 65	Without QP	\$ 15%

Table 6: Commission Profit got from *samsarah* Transaction⁹

The conclusion of the three kinds of transaction above is:

1. Transaction of buying IBP's in the enrolment.
2. Transaction of buying the products to sell to consumers.

⁹ *Herbalife Handbook 4, Sales And Marketing Plans And Business Rules, 2011, 9.*

3. Transaction of buying the products to sell to distributors downlines.

These three transactions are transactions with *bay'* contract. In the first transaction, the person who buys the package IBP's, he also enrolls himself to conduct products distribution. Commonly, in the discussion of Islamic law regarding network marketing, someone who follows a network marketing company does two kinds of contracts: transaction of buying products (to consume or sell to others) and transaction of membership containing *samsarah* contract. In common discussion, the existence of two transactions in a transaction is in contradiction with Rasulullah SAW statement:

حَدَّثَنِي يَحْيَى، عَنْ مَالِكٍ أَنَّهُ بَلَغَهُ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «نَهَى عَنِ بَيْعَتَيْنِ فِي بَيْعَةٍ»

“Narrated from Yahya from Malik, that Rasulullah SAW forbids two kinds of transaction in a transaction”.¹⁰

Furthermore, Imam Syafi'y's interpretation about the aim of *bay'atani* in the hadith above is stated in the following opinion:

فقال الشافعي: «له تأويلان: أحدهما. أن يقول: بعتك بألفين نسيئة، وبألف نقداً، فأيهما شئت

أخذت به، على أن البيع قد لزم في أحدهما وهذا بيع فاسد (أي باطل) لأنه إبهام وتعليق. والثاني.

أن يقول: (بعتك منزلي على أن تبيعني فرسك).

Imam Syafi'i said: there are two interpretations:

1. First: an expression “ I sell to you two thousands with credit, and a thousand with cash, which one do you want to take?. Such a kind of transaction is damaged and prohibited due to the existence of *ta'liq* (note or giving choice).
2. Second: an expression “ I will sell my house if you give me your horse”.¹¹

¹⁰ Malik bin Anas, al Muwatha Book 2 (Beirut: Dâr Ihya' at Turats al 'Araby, 1985), 663.

Two kinds of contract in one transaction, known with term *shafqatayn fi shafqatin* or *bay'atayn fi bay'atin* in the business of network marketing are 'aqd bay' (selling) 'aqd *samsarah* (intermediary in sale).¹²

In Network Marketing System, when someone initially buys the company's product, the price has been decided before the contract, prices will not change. In contract between the company and prospective members, the agreement may be happening is that the member will receive additional income (besides income from *bay'* and *samsarah* transaction) in the form of contract for salary or *ujrah* of *wakâlah* or *ju'âlah* (competition).¹³

In case *bay'atayn fi bay'atin* that occurs in the purchase of IBP's in Herbalife, two contracts agreed are contract of payment for membership registration (which means binding oneself (who enrolls) to become doer of *samsarah*) and payment for products (some network marketing companies do not sell products in registration. Herbalife does).

In the fatwa of *Dâr al Iftâ'* about network marketing system, there are two possible types of contract. They are *bay'* and *samsarah* or *bay'* and *ju'âlah*.¹⁴ But actually both contract *bay'* and *samsarah* or *bay'* and *ju'âlah* happen in the network marketing system. That is because of the existence of direct profit, commission, and bonus that can be earned in many network marketing businesses. Term direct profit is used to express earnings in direct sale (*bay'*) transactions.

¹¹ Wahbah Zuhaili, *Al Fiqh al Islami wa Adillatuh Book 5* (Damascus: Dâr al Fikr), 3458.

¹² <http://www.akhirzaman.info/islam/ekonomi-syariah/874-hukum-syara-mlm-.html>, accessed 14 February 2013.

¹³ <http://nasyanotes.blogspot.com/2012/04/menjawab-keraguan-tentang-mlm.html> accessed 14 February 2013.

¹⁴ <http://www.dar-alifta.org/ViewFatwa.aspx?ID=3861>, accessed 4 Nopember 2012.

Term commission is used to express earnings in the contract of *samsarah*. While term bonus is used to express earnings in the contract of *ju'alah*.

The three transactions explained before (IBP's purchase transactions, purchase transactions of products for sale to consumers, the purchase transaction for the sale to distributors downline) are included in the contract *bay'* and *samsarah* detailing as:

1. IBP's purchase transaction (*bay'* in purchasing products and enrolment)
2. Purchase transaction for products to sell to consumers (*bay'* and *samsarah*)
3. Purchase transaction for products to sell to distributors downlines (*bay'* and *samsarah*).

Both *bay'* and *samsarah* transactions are legal transactions as contract. According to hanafites, terms buying and selling are exchanging *maal* (goods or property) with *maal* performed in a certain way. Or, bartering valued things in a legal and certain way, with *ijâb qabûl* or *mu'âthah* (without *ijâb qabûl*). Buying and selling transactions are legitimate in Islamic law as stated in al Quran:

...وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا...

“Allah SWT allowed selling transaction and prohibited usury”¹⁵

Buying and selling are halal/allowed to be conducted as long as they do not contain any elements of *ribâ*, *gharar*, *ghurûr*, *dharar*, *maysir*.

¹⁵ QS: Al Baqarah: 275

Samsarah or intermediary selling is that someone orders the other to sell as a liaison between the two parties or between producer and consumer. *Samsarah* is a legal transaction as stated in the opinion in the literature below:

وَلَمْ يَرِ ابْنُ سِيرِينَ، وَعَطَاءٌ، وَإِبْرَاهِيمُ، وَالْحَسَنُ بِأَجْرِ السَّمْسَارِ بَأْسًا وَقَالَ ابْنُ عَبَّاسٍ: " لَا بَأْسَ أَنْ يَقُولَ: بَعِ هَذَا الثَّوْبَ، فَمَا زَادَ عَلَى كَذَا وَكَذَا، فَهُوَ لَكَ " وَقَالَ ابْنُ سِيرِينَ: " إِذَا قَالَ: بَعُهُ بِكَذَا، فَمَا كَانَ مِنْ رِنْحٍ فَهُوَ لَكَ، أَوْ بَيْنِي وَبَيْنَكَ، فَلَا بَأْسَ بِهِ " وَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «المُسْلِمُونَ عِنْدَ شُرُوطِهِمْ»

"Ibn Sirin, 'Athâ', Ibrahim, and Hasan do not see any wrongness in giving commission with samsarah transaction. Ibn 'Abbas said that it is allowed to say, "sell this shirt, any additional profit from this selling, it will be yours". Ibn Sirin said that someone will say, "sell this thing, then the profit will be shared between me and you". So, it is allowed. Rasulullah SAW said: people are with their requirements".¹⁶

Besides the transaction of *bay'* and *samsarah* which the income is derived from direct sales, *ju'alah* transaction also applies in Herbalife marketing system to those who achieve certain accomplishments in building network and succeeding great sales. They will get more incomes that have been promised by the company in the contract because of their great achievements in expanding sales and building network. If the direct profit is the kind of benefit got in *bay'* contract and commission split is the kind of benefit got in *samsarah* contract, then bonus is the kind of benefit got in *ju'alah* contract.

'Aqd of *ju'alah* and *samsarah* are indeed barely different on the application. The identical difference from these two *'aqd* is the part of contract.

¹⁶ Muhammad bin Isma'il al Bukhari, *Shahih Bukhari* Book 3 (Dâr Thuq an Najah, 2001), 92.

We can see expressions used by the scholars to give examples of *samsarah* and *ju'alah* contract.

a. *Samsarah*:

وَقَالَ ابْنُ عَبَّاسٍ: " لَا بَأْسَ أَنْ يَقُولَ: بَعِ هَذَا الثَّوْبَ، فَمَا زَادَ عَلَى كَذَا وَكَذَا، فَهُوَ لَكَ "

Ibn 'Abbās said: It is permissible to say, "sell this shirt, then the additional profit from the sale will be yours".

b. *Ju'alah*:

وَلِمَنْ جَاءَ بِهِ جَمَلٌ بَعِيرٌ وَأَنَا بِهِ زَعِيمٌ

"for him who comes bringing a camel load, I will be bound (for reward) by it"

Distinct difference between the two expression above are: first, in *samsarah*, the *khitâb* (actor of the job in the contract) is second pronoun (you), so it is certain. In *'aqd ju'alah*, the *khitab* (actor of the job in the contract) is third pronoun and anyone, so it is not certain and applies general for any person who wants to do the contract. The word *man* above (surah Yusuf: 72) shows the third pronoun. So any people (anyone of Herbalife distributor) who perform the command agreed in the contract. In Herbalife, the action of *samsarah* contract is done among the distributors in a team (uplines-downlines). Meanwhile, *ju'alah* contract is agreed between the company and any distributor of succeeding in doing some achievements required by the company.

1. Overriding Royalty Revenue

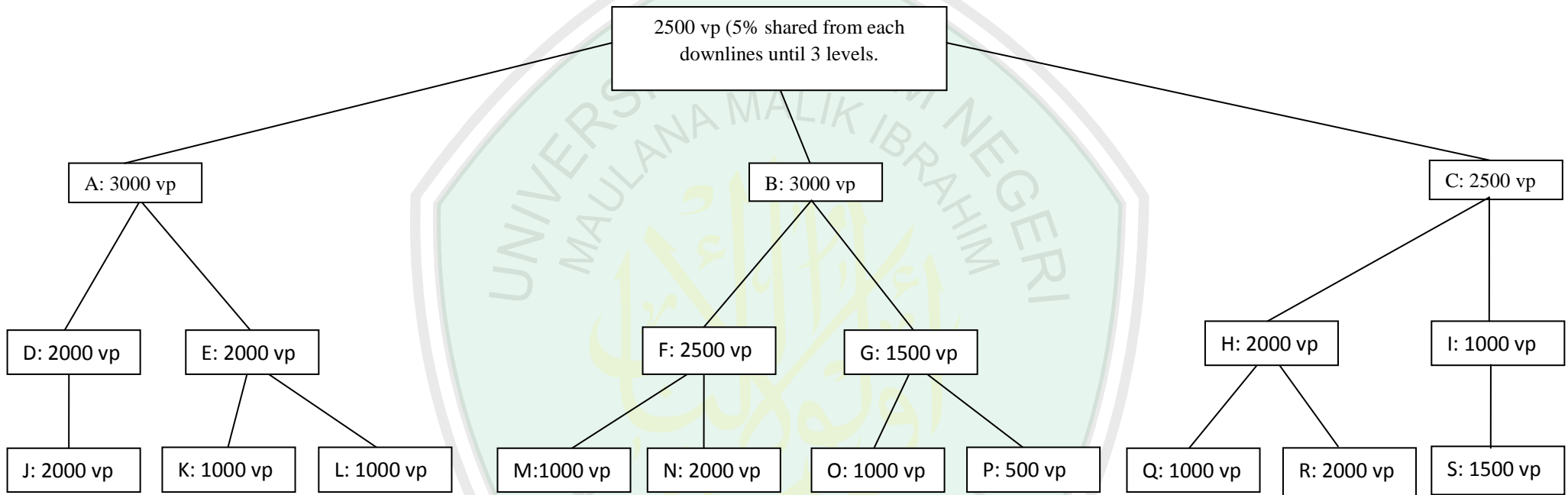
The first bonus got by any distributor in Herbalife in *ju'alah* contract between the company and the distributor is Overriding Royalty Revenue (Royalty

Payment for Referrals). This kind of bonus is given monthly up to 5% for the three levels of downline. Royalty overrides are paid as follows:

- 1) The 1% - 5% Royalty Override is paid on the Total Volume of personally sponsored first-level qualified Supervisors.
- 2) The 1% - 5% Royalty Override is paid on the Total Volume of second-level qualified Supervisors; e.g., a Supervisor who has been sponsored in turn by your personally sponsored Supervisor.
- 3) The 1% - 5% Royalty Override is paid on the Personal Volume of third-level Supervisors; e.g., a Supervisor who has been sponsored in turn by a second-level Supervisor.

For Instance, at a full 5%, your Royalty Override is calculated on 30,000 Organization Volume which gives you 1,500 Royalty Override Points. Royalty Override Points are used for qualification purposes. Royalty Overrides are calculated on the retail price of the products in the country from which the product is ordered. In certain countries, these Royalty Override payments are converted to the local currency.

Diagram 3: Example for calculation of Overriding Royalty Revenue



Note:

- First Line Downlines : $A (3000) + B (3000) + C (2500) = 8500$ vp
- Second Line Downlines: $D (2000) + E (2000) + F (2500) + G (1500) + H (2000) + I (1000) = 11000$ vp
- Third Line Downlines: $J (2000) + K (1000) + L (1000) + M (1000) + N (2000) + O (1000) + P (500) + Q (1000) + R (2000) + S (1500) = 13000$ Volume Points
- Total Volume Points = $8500 + 11000 + 13000 = 32500$ vp
- Overriding Royalty Revenue given = $32500 \times 5\% = 1625$ vp.

Supervisors who meet the specified requirements to earn Royalty Overrides must also comply with Herbalife's Ten Retail Customers Rule¹⁷ and the 70% Rule¹⁸, to earn and receive both Royalty Overrides and Production Bonus. The Supervisor must confirm their adherence to these requirements by submitting the Earnings Certification Form each month. If the Supervisor fails to comply with either of these rules, the Royalty Overrides and Production Bonus will not be paid to the him. The amount of Royalty override revenue is measured from the total volume achieved.

Table 7: The calculation of distributor downlines sales that decide the percentages counted to be Overriding Royalty Revenue.

Royalty Override Scale	
Total Volume Poin	Royalty Override Income
0 – 499	0%
500 – 999	1%
1000 – 1499	2%
1500 – 1999	3%
2000 – 2499	4%
2500 and up	5%

Bonus of Overriding Royalty Revenue is given by Herbalife to distributors who have succeeded in building a network so that he and his distributors downlines has achieved expanding sales. This Income is both derived from the

¹⁷ **Ten Retail Customers Rule:** A Distributor must make sales to at least ten (10) separate retail customers each month to qualify and receive Royalty Overrides and Production Bonus.

¹⁸ **The 70% Rule:** In any given month, a Distributor must sell to retail customers and/or sell at wholesale to downline Distributors, at least 70% of the total value of Herbalife products they hold for resale, in order to qualify for TAB Team and to earn and receive Royalty Overrides and Production Bonus for that month's business.

sale he made, but is calculated from the number of successful sales made by his downlines with Fully Qualified Supervisors or Qualifying Supervisors in the first three levels,. The achievement of private sales determines whether he will get a bonus or not. The number of sales made determines the percentage of the bonus that will be obtained (see table above).

The relationships within these bonuses are between the company and the distributors. Through sponsor¹⁹ or business rules book of Herbalife, the company announced through them the agreement of awarding bonuses to any distributors who has reached certain sales and built certain network. Below are the main pillars that should be exist in *ju'alah* contract in giving bonus of Overriding Royalty Revenue by Herbalife to the distributors:

- a. *Ju'alah*: promise by the company to give bonus to any distributor who has achieved certain sales and built certain network in certain month.
- b. *Jâ'il*: The Company (Herbalife)
- c. *Ju'l*: Overriding Royalty Revenue
- d. *Ma'jûl lah*: Distributor
- e. *Shîghah*: “Any distributor who has achieved a number of private sales and sales by downlines as appropriate as the terms, then he will get a bonus by fulfilling the provisions listed.”

Some pillars above are basic matters that must be exist in every *ju'alah* contract. In Islam, these basic matters are called *rukun* (*arkan* in plural arabic word). There are four pillars that must be exist in *ju'alah* contract:

¹⁹ **Sponsor**: A Distributor who brings another individual into Herbalife as a Distributor.

- a. *Shîghah*: expression that must be pronounced by the two parties when doing contract. In Islam, these expressions are a consent called *ijâb* (statement) and *qabûl* (answer of the statement). *Ju'âlah* contract does not require the existence of *qabul* because the *ijâb* is done with such announcement referred to anyone who hear and know the content of the announcement. *Shîghah* contains license/permission to do a clear order with a precise calculation of reward/*ju'l* and in accordance with the commitment of giving the reward for the achiever. In Herbalife, *shîghah* is announced in the form of rules written on a business rules book that is got by the distributors when purchasing IBPs.
- b. *'Âqidain* (two parties doing contract): they are *jâ'il* and *maj'ûl lah*. The *jâ'il* (first party) is the company. The *maj'ûl lah* (second party) is everyone listed as distributor of Herbalife. *'Âqidain* must be *ahliyyatut ta'âqud* (competent to do the contract). Imam Syafi'i and Imam Ahmad referred *ahliyyatut ta'âqud* to *bâligh*/mature, ingenious, and thoughtful. Malikite and Hanafite mentioned that an able child who can differ a right and a wrong (*mumayyiz*) is allowed to do this contract. In Herbalife rule, someone who wants to enrol as distributor should attach a KTP (residential card) that means no people under 17 years are allowed to become a Herbalife agent. This requirement is congenial with conditions required by the four madzhabs in *ju'âlah* contract.
- c. *'Amal/job*: in *Ju'âlah* contract, a *jâ'il* does not give an obvious job to be done by the second party (*ma'jûl lah*). *Jâ'il* also does not decide duration

of doing the job, just if the job is done the *maj'ûlah* will get the reward. This is what scholars call *gharar* and *jahâlah* in *ju'âlah* contract. The obscurity of type and duration of job is one thing that differ *ju'âlah* to *ijârah*. The three imams (Syafi'i, Maliki, dan Hambali) provide law *rukhsah* to this contract because referring to al Qur'an verse QS. Yusuf: 72 which indicates that Allah SWT allowed people to practice this contract.

- d. *Ju'l/* reward: it should be clear and a calculated amount. In herbalife, the amount of reward is calculated from the percentages of sales (between 1-5% in bonus of Overriding Royalty Revenue) that have been done by distributors downlines. (see diagram 3.3. dan table 3.3.).

Table 8: Rukn/main pillars in ju'âlah contract according to the four madzhab.²⁰

<i>Arkân</i>	Hanafi	Maliki	Syafi'i	Hanbali	Herbalife
<i>Shîghah</i>	<i>Ijâb Qabûl</i> (<i>Qabûl</i> is not required)	<i>Ijâb Qabûl</i> (<i>Qabûl</i> is not required)	<i>Ijâb Qabûl</i> (<i>Qabûl</i> is not required)	<i>Ijâb Qabûl</i> (<i>Qabûl</i> is not required)	By announcement written in a rule business book or informed by sponsor
<i>Aqid must be ahl at ta'aqud</i>	A child who is <i>mumayyiz</i> is allowed	A child who is <i>mumayyiz</i> is allowed	Must be <i>bâligh</i> , clever, and wise	Must be <i>bâligh</i> , clever, and wise	A distributor must attach KTP in enrollment
<i>'Amal</i>	Gharar dan Jahalah	Give <i>rukhsah</i> to <i>gharar & jahalah</i>	Give <i>rukhsah</i> to <i>gharar & jahalah</i>	Give <i>rukhsah</i> to <i>gharar & jahalah</i>	Contains <i>gharar</i> dan <i>jahalah</i>
<i>Ju'l/ujrah</i>	Must be clear	Must be clear	Must be clear	Must be clear	Using a sale percentage calculation

²⁰ Wahbah Zuhaili, *Al Fiqh Al Islamy Waadillatuh* Book 5 (Damascus: Dâr al Fikr), 3866.

Ju'alah is a promise or commitment (*iltizâm*) to reward upon the achievement of certain results (*natîjah*) were determined from a job. Other terms to describe *ju'alah* contract is *jâizah* and *mukâfa'ah*.

وتسمى عند القانونيين: الوعد بالجائزة (أي المكافأة أو الجُعْل أو الأجر المعين).

“The jurists said that it (*ju'alah*) is a promise with reward (a certain fulfillment or *ju'l* (reward) or fee).”²¹

Jâizah or *mukâfa'ah* as listed in the dictionary al Munawwir means: gift, percentage, reward.²² Thus, bonus by percentage calculation implemented in network marketing means *jâizah* or *mukâfa'ah* in the Arabic terms. The system of giving reward in the form of calculation implemented in Herbalife included types of giving reward by *ju'alah* contract defined by Islamic jurists.

Ju'alah transaction is allowed by Imam Malik, Imam Syafi'y, and Imam Hanbali referring the Quran:

قَالُوا نَفَقْدُ صَوَاعَ الْمَلِكِ وَلِمَنْ جَاءَ بِهِ حِمْلُ بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ.

“They said: We are missing the measure of the king. And for he who produces it is [the reward of] a load camel, and I am responsible for it”.²³

Although they assumed that the *ju'alah* transaction contains *gharar* in the type of work and the duration of work, they say that there is an element *rukhsah*

²¹ Wahbah Zuhaili, *Al Fiqh Al Islami Wa Adillatuh* Book 5 (Damascus: Dâr al Fikr, 1996), 3864.

²² Ahmad Warson Munawwir, *Kamus Al Munawwir Arab-Indonesia Terlengkap* (Surabaya: Pustaka Progressif, 1997), 223.

²³ QS. Yusuf: 72.

as a result of their belief in permission doing the transaction from Allah through the interpretation of the verse above.²⁴

One of the 12 points of terms and conditions issued in *Syari'ah* National Council Fatwa No: 75/DSN/MUI/VII year 2009 about PLBS (Penjualan Langsung Berjenjang *Syari'ah*) is: There should be no commissions or bonuses acquired passively regularly without any guidance job and or sale of goods or services. In Herbalife, the upline has responsibility to control the team/the downlines and to keep spirit in selling the products and building network and this describes one of the job/'amal of the second party inside *ju'alah* contract in Herbalife. Every Nutrition Club (a club where an organization of network placed, it belongs to certain TAB Team distributor) has certain agendas to build together (means to ease the team to get new recruitees). Those agendas keep the team's spirit. The clubs in a one district (malang for example) conduct routine seminars inviting speakers from successful builder from places every month in Hotel as well. This agenda is intended to keep the network run and develop.

2. Production Bonus

The second bonus got by success distributors (Tob Achiever Builders) is monthly Production Bonus: TAB Team member are eligible to receive a 2% to 7% Production Bonus on the entire downlines organization's volume. Production Bonus earnings are paid monthly to all qualified TAB Team members. To get a

²⁴ Wahbah az Zuhaili, *Fiqih Islam wa Adillatuhu* Book 5 translation by Abdul Hayyie al Kattani cs. (Jakarta: Darul Fikir, 2007), 434.

production bonus, a distributor must fulfill certain qualification. These terms are important to understand before the discussion.

- a. **Royalty Points:** Used for qualification purposes, this is the sum of a Supervisor's Organization Volume times their royalty earnings percentage.
- b. **Organizational volume:** The volume points that you are paid the 5% Royalty Override bonus on. (This is also sometimes referred to as **Royalty volume**).

Table 9: Requirements should be fulfilled before a TAB Team member deserves a production bonus TAB Team.

Qualification		Waiting Period and Revenue	
Team	Royalti poin to be earned every month for 3 full months	Waiting Period	Revenue Period
Global Expansion Team (GET Team)	1000	No waiting period	12 months since fully qualifying or date of requalifying
Millionaire Team	4000	2 months	12 months after a fulfilled waiting period
President's Team	10000	3 months	12 months after a fulfilled waiting period
President's Team 20k	20000	3 months	12 months after a fulfilled waiting period
President's Team 30k	30000	3 months	12 months after a fulfilled waiting period
President's Team 50k	50000	3 months	12 months after a fulfilled waiting period

Additional requirement for percentages of revenue production bonus is that once a distributor meets the qualifications or meets the requalification for income of TAB Team, the following things must be achieved in every few months to receive a production bonus income TAB Team during the period of the income.

Table 10: Requirements of own income amount in every month to get a percentage of TAB Team production bonus.

Percentage of Maximum Income	Total Volume Points Needed	Royalty Points for Max 2%	Royalty Points for Max 4%	Royalty Points for Max 6%	Royalty Points for Max 6,5%	Royalty Points for Max 6,75%	Royalty Points for Max 7%
2%	5000	1000					
4%	3000	1000	4000				
6%	2500	1000	4000	10.000			
6,5%	2500	1000	4000	10.000	20.000		
6,75%	2500	1000	4000	10.000	20.000	30.000	
7%	2500	1000	4000	10.000	20.000	30.000	50.000

Here is the rules that must be followed by a distributor TAB Team to get a production bonus:

1. When a TAB Team member in your downline gets bonus production TAB Team in a lower % (percentage) than yours, you will get a % gap in their downline. For example, if you get a bonus production TAB Team in 6% and your TAB Team downline get bonus production TAB Team in 2%, you will get 6% from this TAB Team member and additional remaining 4% from his bonus production TAB Team in his organization and so on. Revenue of bonus production TAB Team got from your TAB Team downlines depends on % of your income from every member of your TAB Team downlines.

2. When a TAB Team member in your downline gets bonus production TAB Team in the same % (percentage) with yours, you will get a % bonus production TAB Team from this downline, but you do not get bonus production TAB Team from his organization (because there is no remaining percentage due to the same percentage between yours and your TAB Team downline's).
3. When a TAB Team member in your downline gets bonus production TAB Team in a higher % (percentage) than yours, you will not get either a % bonus production TAB Team from this downline and bonus production TAB Team from his organization.
4. To get a bonus production TAB Team, you have to fulfill application of bonus production TAB Team agreement to receive approval from Herbalife. All terms and conditions must also be fulfilled.

Table 11: Example of period to fulfill qualification requirement to earn production bonus.

Qualification Perod			GET Team														
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nop	Dec	Jan	Feb	Mar	Apr	May	Jun
4000	1000	1000	Eligible to earn 2% TAB Team Production Bonus from April to March														
royalty points	royalty points	royalty points	Requalification period from April to March														

Qualification Perod			Millionare Team														
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nop	Dec	Jan	Feb	Mar	Apr	May	Jun
4000	4000	4000	Waiting Period	Eligible to earn 4% TAB Team Production Bonus from June to May													
royalty points	royalty points	royalty points	Requalification period from April to March														

Qualification Perod			President's Team														
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nop	Dec	Jan	Feb	Mar	Apr	May	Jun
10k, 20k, 30k royalty points x 3 months			Waiting Period			Eligible to earn 6% TAB Team Production Bonus from July to June											
			Requalification period from April to March														

In order that a distributor can continue to get production bonus TAB Team, he must perform requalification at any team level higher by:

1. Requalification: to stay at the same percentage level of income, you need to meet the required royalties point (see table) for three consecutive months each year during the requalification. When you follow the process of requalification for the status of any team, you have to maintain that status instead of considering % of production bonus TAB Team in your downlines (unless you get higher status of TAB Team or demoted as a higher supervisor). If you do not follow requalification for % to the level of income of production bonus TAB Team in your downlines requalification in previous period (year), and then they qualify for the same rate, you must wait a period before you start earning at your level.
2. Requalification period: in order that you have enough time to do requalification and continue earning bonus TAB production team, you have a time period of 12 months from the date of qualification/requalification last TAB Team.

The pillars/*rukn* of *ju'alah* contract done by Herbalife and the distributors that should be exist in Bonus Production TAB Team is not quite different with pillars/*rukn* in Overriding Royalty Revenue. The difference is only in the *shîghah*. *Shîghah* here means the rules, terms, and conditions that must be achieved by the listed distributors. Below is the pillars/*rukn* of Bonus Production TAB Team as *ju'alah* transaction:

- a. *Ju'âlah*: promise by the company to give bonus to any distributor who has achieved certain sales and built certain network in certain month.
- b. *Jâ'il*: The Company (Herbalife)
- c. *Ju'l*: Production Bonus
- d. *Maj'ûl lah*: Distributor
- e. *Shîghah*: “Any distributor who has achieved a number of private sales and sales by downlines as appropriate as the terms and does qualification and requalification as stated in the rules of business, then he will get a bonus by fulfilling the provisions listed.”

The main purpose of giving these bonuses by Herbalife is to expand sales and expand the network built by the distributors. Actually, this is the desire *irâdah* of conducting *ju'âlah* by *jâ'il* to give rewards to the distributors/*maj'ûl lah*. In fact, this is the main system applied by every network marketing system. If a company does not have this kind of marketing system by expanding network of people, then it cannot be said as a network marketing company.

Promise of giving bonuses for great network builders are the things wanted by millions of people joining network marketing businesses. And these rewards are equal consequences for hard works building network at first efforts and keeping looking after the sales and expansions of sales and network.

3. Annual Bonus

Annual Bonus is a bonus payment representing a percentage (1%) of Herbalife's worldwide sales in one year and is distributed annually among Herbalife's top achievers in recognition of their outstanding performance in

advancing sales of Herbalife products. The system of calculation is taken from a percentage of all sales income in one year and given for top achievers. In 2011, Distributors from over 50 countries at Herbalife's annual bonus award night announced \$41 million was distributed to independent business people for annual bonus. Top ten achiever was given annual bonus more than a million dollars award detailing:

- a. Raquel Cortez & Abraham Benitez (Mexico): \$ 2,100,000
- b. John & Susan Peterson (USA): \$ 2,000,000
- c. Enrique Varela & Graciela Mier (Mexico): \$ 1,800,000
- d. Tae Ho Kim & Hyun Mo Koo (Korea): \$ 1,400,000
- e. Leon & Irina Waisbein (Israel): \$ 1,200,000
- f. Seung Ja Park & Young Ho Kang (Korea): \$ 1,150,000
- g. Carol & Alan Lorenz (UK): \$ 1,100,000
- h. John & Lori Tartol (USA): \$ 1,050,000
- i. Lesley Stanford (USA): \$ 1,025,000
- j. Chen Ming-Chieh & Yang Mo-Li (Taiwan): \$ 1,000,000

The pillars below are the main *arkan* of Annual Bonus as *ju'alah* transaction:

- a. *Ju'alah*: promise by the company to give bonus to any distributor who has achieved certain sales and built great sales and network.
- b. *Jâ'il*: The Company (Herbalife)
- c. *Ju'l*: Annual Bonus
- d. *Maj'ul lah*: Distributor.

- *Shîghah*: “The top achievers in sales and building networks will be given annual bonus that is taken directly from the whole annual income from the company .”

4. Vacation and Training

Another bonus given by Herbalife for great achievers is eligibility to join vacation and training. Vacation and Training Events are held in exciting locations around the world. The Vacation and Training Events will teach successful distributors how to meet goals, increase earning power and build an international business without leaving home.

Below is the pillars/*rukun* of Annual Bonus as *ju‘âlah* transaction:

- a. *Ju‘âlah*: promise by the company to give bonus to any distributor who has achieved certain sales and built great sales and network.
- b. *Jâ‘il*: The Company (Herbalife)
- c. *Ju‘l*: Trainings and Vacations
- d. *Ma‘jûl lah*: Distributor
- e. *Shîghah*: “The top achievers in sales and building networks will be given this bonus (invitation for vacation and training) directly from the company.

5. Awards And Recognition of Presidential Plus

This bonus is given for the highest achievers: Gold and Diamond Cufflinks and Earrings, one diamond for Executive President’s Team, two diamonds for Senior Executive President’s Team, three diamonds for International

Executive President's Team, four diamonds for Chief Executive President's Team, five diamonds Chairman's Club, ten diamonds Founder's Circle, and luxury watches for the achievers highest royalty override points (250.000, 500.000, 750.000, and 1000.000 royalty override points).²⁵

Below is the pillars/*rukun* of Annual Bonus as *ju'alah* transaction:

- a. *Ju'alah*: promise by the company to give bonus to any distributor who has achieved certain sales and built great sales and network.
- b. *Jâ'il*: The Company (Herbalife)
- c. *Ju'l*: Awards And Recognition of Presidential Plus
- d. *Ma'jûl lah*: Distributor
- e. *Shîghah*: "The top achievers in sales and building networks will be given bonus Gold and Diamond Cufflinks and Earrings directly from the company."

C. *Ju'alah* Contract as Fiqh under *Syarî'ah* Dimension

The relation between *fiqh* dimension and *syarî'ah* dimension in Islamic law is hierarchical. Which the relationship between things is in a unity, one part is a higher position of the other. All kinds of transactions that are legal in *ijârah* contract are legal in *ju'alah* contract. All kinds of sales transaction that are halal in Islam are halal in *ju'alah*. Besides the basic law of *ju'alah* law stipulation stated by scholars as well as the four madzhab, there are several certain factor that make a *ju'alah* contract halal or not. The factors come from *syarî'ah* aspect.

²⁵ *Herbalife Handbook 4, Sales And Marketing Plans And Business Rules*, 9 and 12.

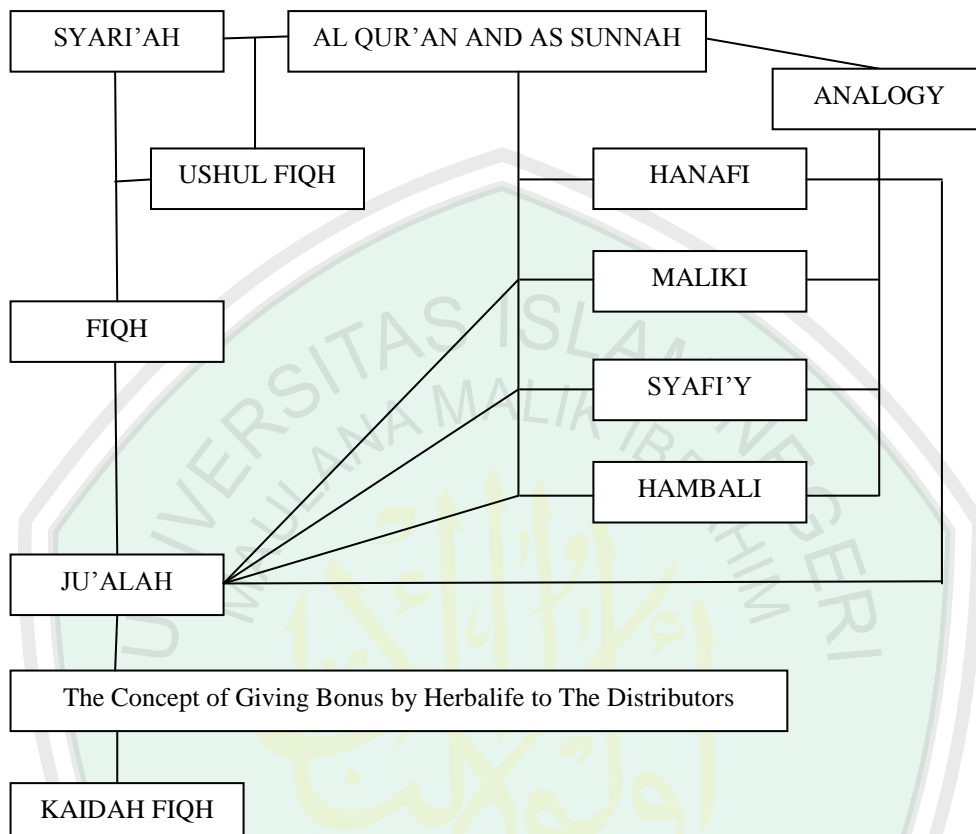
However, practices of fiqh will be considered unlawful if they are not in accordance with *syarī'ah*. *Syarī'ah* is basic of all because it comes from Allah and The Messenger SAW. *Bay'* transaction done inside *ju'alah* contract as practiced in Herbalife that (if any) consists *gharar*, *ghurur*, *dharar*, and *maisir* makes the transaction unlawful. For example, a transaction of *ju'alah* contract which a *bay'* transaction includes will be unlawful if the *bay'* contract consists a lie/*ghurur* and does not have any agreement from the consumer. Agreement between two transactors is a way ordered by *syarī'ah* as stated in al Quran:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا
 أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا.

“O ye who believe, do not consume each treasure of neighbors by way of vanity, except by way of trade policies with the same love among you. And do not kill yourselves; verily Allah is Most Merciful to you”.²⁶

²⁶ QS. AN Nisa:29.

Diagram 4: Pattern of relation among *Ju'âlah*, *Fiqh*, and *Syarî'ah* in Islamic Law formula.²⁷



In case of *maj'ûl lah* (second party/*âqid*. See *ju'âlah rukns/pillars*), joining the business of network marketing is proved to be difficult because not everyone can succeed in this business. Because they have to sell the goods by way of coming door to door, spreading brochures and talking to people are jobs which not everyone can survive in these conditions in their first months or years. Some statistics say that only 40% people were successful in this business. Other source even claimed that only about 10% are successful in this business.²⁸ Thus, majority people who had joined this business would not survive and suffered in the middle

²⁷ The Diagram above refers on the relationship form of *qawa'id fiqh* that was modified by Ahmad Nuryani Asmawi. See Cik Hasan Bisri, *Model Penelitian Fiqh* (Jakarta: Kemcana, 2003), 101.

²⁸ *Network-Marketing-What-You-Need-to-Know-Before-You-Join.htm*, accessed 22 February 2013.

of their efforts. To give difficult job to anyone without considering choosing able people to do the job is not in accordance with *syarî'ah* value. It was stated in Al Qur'an that we are ordered to rent people who have ability to do the job we want them to do:

قَالَتْ إِحْدَاهُمَا يَا أَبَتِ اسْتَأْجِرْهُ إِنَّ خَيْرَ مَنِ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ.

"One of the two women said:" O my father take it as the people who work (on us), because actually the best guy you take to work (for us) was a strong man again be trusted".²⁹

D. *Ju'alah* Contract among The Four Madzhabs under *Fiqh Muqâran*

Imam Malik, Imam Syafi'i and Imam Ahmad allowed the practice of *ju'alah* contract, while Imam Abu Hanifah prohibited the practice of *ju'alah* contract. This difference of argumentations among madzhabs occurred not only in this concept of *fiqh*, but also other law concepts concerning islamic jurisprudences. These different concepts of thinking causes a variety of thoughts called madzhab. Madzhab is a way of thinking or method (*manhaj*) used a bymujtahid in a legal setting an event. Madzhab can also be termed as an opinion or *fatwa* of a mujtahid or mufti in stipulating a legal case. A madzhab is based on an imam *mujtahid* then carried on and developed by his disciples.³⁰ The existence of different *madzhabs*/schools of law is due to variety of thinking patterns and the methods.

²⁹ QS. Al Qashas: 26.

³⁰ Totok Jumantoro Dan Samsul Munir Amin, *Kamus Ilmu Ushul Fikih* (Jakarta: Amzah), 175.

Table 12: Varieties of Fiqh Madzhab dan The Imams.³¹

No.	Madzhab	Imam Madzhab	Status
1.	Hanafi	Abu Hanifah al Numan (w. 150/767)	Develops
2.	Maliki	Malik bin Anas al Asbahi (w. 179/795)	Develops
3.	Syafi'i	Muhammad bin Idris asy Syafi'i (w. 204/820)	Develops
4.	Hanbali	Ahmad bin Hanbal (w. 241/855)	Develops
5.	Laisi	Al Lais bin Sa'ad (w. 175/791)	Extinct
6.	Auza'i	Abu Amir al Auza'i (w. 157/774)	Extinct
7.	Tsauri	Sufyan ats Tsauri (w. 161/778)	Extinct
8.	Sufyani	Sufyan bin Uyainah (w. 198/814)	Extinct
9.	Ishaqi	Ishaq bin Rahwabah (w. 238/859)	Extinct
10.	Zhahiri	Daud bin Ali al Asfahani (w. 270/883)	Extinct
11.	Thabari	Ibn Jarir ath Thabari (w. 310/924)	Extinct
12.	Abu Tsaur	Ibrahim bin Khalid al Baghdadi (w. 246/860)	Extinct
13.	Nakha'i	Syarik bin Abdillah an Nakha'i (w. 177/794)	Extinct
14.	Ja'fari	Ja'far bin Muhammad al Baqir (w. 148/765)	Develops
15.	Zaidi	Zid bin Ali Zainal Abidin (w. 122/740)	Develops
16.	Ismaili	Ismail bin Ja;far ash Shadiq	Develops
17.	Fathimi	Abdullah al Mahdi	Extinct
18.	'Ibadi	Muhammad bin 'ibad (93/712?)	Develops

From these various kinds of difference, then the Khalaf/after scholars acknowledged the concept of *Muqâranah* or *Muqâranah al Madzâhib*. In the development of the science, *Muqâranah al Madzahib* is also known as *fiqh*

³¹ Cik Hasan Bisri, Model Penelitian Fiqh Jilid 1 (Jakarta: Kencana, 2003), 240.

muqâran. These are some definitions of *muqâranah al madzahib* or *fiqh muqâran* by experts:

- a. Wahab Afif means that the comparison of madzhabs or *muqâranah al madzahib* is "the science which discusses the opinions of jurists with their arguments/*dalil* on issues, both agreed and disputed arguments by comparing which of the arguments is the most powerful one".
- b. Abdurrahman said that the comparison of madzhabs or *muqâranah al madzahib* is "a science to compare one school/*madzhab* with the others. Because there are differences among the schools in Islam. "
- c. Huzaemah Tahido Yanggo defines the comparison of schools as a science that discusses the opinions of jurists (*mujtahidin*) along with their arguments/*dalils* on various issues, both agreed (*ijma'*), as well as the disputed one (*ikhtilaf*) by comparing the arguments of each, by way of discussing the arguments of the *mujtahidîn* to find the most powerful opinion of law.³²

In islamic law, to do *muqâranah*/comparison of fiqh to find the strongest opinion/*dalil* and practice the product is an obligation (*wâjib*). Some later scholars (*muta'akhirîn*) argue and say that presenting opinions as *muqâranah* is illegal because it causes *talfiq* (mingling/mixing opinions among madzhabs just to choose the easier ones) but this opinion (to prohibit *muqâranah*) is considered weak. Al Quran and as Sunnah do not prohibit changing madzhab or *talfiq*.³³

³² Hasbiyallah, *Perbandingan Madzhab* (Direktorat Jenderal Pendidikan Islam Kementerian Agama, 2012), 6.

³³ Huzaemah Tahido Yanggo, *Pengantar Perbandingan Madzhab* (Ciputat: Logos Wacana Ilmu, 1997), 90.

In the discussion of *ju'alah* in *fiqh muqâran*, the purpose of defining the four schools/*madzhabs* is doing comparison of laws stipulated by the four madzhabs. Particularly on *Muqâranah* of the *ushûl* or way of *istinbâth* (derivation of laws) that completely can not be ignored in the discussion of Islamic law. The points difference in method among imams is not rarely bear different legal products of *fiqh*. In the end, with the presence of the diversity of methods used in deriving law, it bring out a wide variety of implications towards Islamic law itself. By doing *muqâranah* towards the methods and the law products of four schools (or the other schools), it will provide wider possibilities to find solutions of legal cases and will test the accuracy of the theoretical basis of the legal reasoning adopted by the existing schools.

An example of *fiqh muqâran* is the matter of seeing *illat*. The Hanafites saw a sin towards someone who drinks *nâbiz* (wine/beer) when he becomes drunken. It means that the measure here is that he becomes drunken, not the *nâbiz*. If the drinker *nâbiz* is not drunken, it is not haram/illicit. Syafi'ites said that *illat* of *nâbiz* is drinking *nâbiz* itself, not a drunken condition. According to syafi'ites, just to drink *nâbiz* is illicit although the drinker is not drunken.

Anorher example of *fiqh muqâran* is the case of reciting Basmalah in pray/shalat. The first group said that reciting Basmalah is *fardl*/obligation in every pray. The second group said that reciting Basmalah in pray is not an obligation. The two main causes in this difference are considering whether Basmalah is a part of verses in surah *al fâtiyah* or not and the existence of many hadith, some said that basmalah is part of surah *al fâtiyah*, some said that it is not. Every scholar had

different view in choosing which hadith they took. They had different view in seeing that a hadith is *shahîh* or *dla'if* or *maqthû'* or *mawdlû'* or others. Ultimately, the chosen opinion is that Basmalah is part of surah *al fâtiyah* and it is an obligation/fardhu to recite Basmalah in prays/shalat.³⁴

Discussion about *Muqâranah* among schools is very important especially on four schools comparisons where these schools are used by the majority of sunni moslems in the World. The purposes of conducting *Muqâranah* are:

1. To eliminate narrow thoughts in the practice of Islamic law.
2. To break *taqlîd* behaviour³⁵ because *taqlîd* brings rigidity in religion.
3. To look for truth (the suitable one).

The following is a summary of the law regarding *ju'âlah* contract as *fiqh Muqâran* to which the legal products among four schools will be compared:

Table 13: Perspectives of four madzhab in stipulating law of *ju'âlah*.

Madzhab	Hanafi	Maliki	Syafi'i	Hambali
<i>Hukm</i>	Unlawful	Lawful	Lawful	lawful
<i>Illah</i>	<i>Gharar</i> and <i>juhalah</i>	Give <i>rukshah</i> for <i>gharar</i> and <i>juhalah</i>	Give <i>rukshah</i> for <i>gharar</i> and <i>juhalah</i>	Give <i>rukshah</i> for <i>gharar</i> and <i>juhalah</i>

Imam Abu Hanifah said that *ju'âlah* contract can not be practiced because it contains *gharar* and *jahalah*. This opinion can read in the book of one of his disciple Asy Syaibani: *Imam Abu Hanifah R.A. gave his opinion about a case of someone who is ordered to sell a good. If the good is sold at a price that has been*

³⁴ Muslim Ibrahim, *Pengantar Fiqh Muqâran* (Jakarta: Erlangga, 1989), 54-61.

³⁵*Taqlîd* is somemone's fully acception of words/thoughts although he does not know the source of the words/ thoughts.

*determined, then he got the dinar. But if he is not able to sell the goods, then he does not get any reward. Indeed, the contract is broken. He still have to get paid for his work whether he is able to sell the good or not.*³⁶

As it was stated in *Al Fiqh al Islâmy wa Adillatuh* that Imam Syafi'y, Maliki, Hambali dan majority scholars agree the existence of *gharar* and *jahâlah* in *ju'âlah* practice. However, when they looked at *nash* and hadith indicating the permissibility of this transaction (surah Yusuf verse 72 and a hadith narrated from Abi Sa'id or others), They preferred to just believe in the rather than to use their human ratio (of considering the substance of *gharar* and *jahalah*).

In classic books of fiqh, it is not explained how the Imam Abu Hanîfah did *istinbâth* about how he did not allow the transaction of *ju'âlah*. It was just said that *ju'âlah* practice is not allowed because of its substance of *gharar* and *jahalah* (such as *illat* appeared by other scholars allowing *ju'âlah* practice). From this, a point shown is that the Imam Abu Hanîfah and his students preferred using their opinions of *illat* to just hold on to the *nash*. While majority scholars (*jumhûr 'ulamâ'*) tended to hold on to the *nash* and for that reason, they chose to give *rukshah* to *gharar* and *jahâlah* in *ju'âlah* transactions.

At the end of the discussion of *fiqh muqâran* in *ju'âlah* contract, the more reinforced opinion belongs to majority scholars (*jumhûr al 'ulama*) who said that *ju'âlah* practice is allowed. Ultimately, the chosen opinion about *ju'âlah* with its practices described in classic literature and contemporary ones is an allowed transaction.

³⁶Muḥammad ibn al-Ḥasan al-Shaybānī, *Al Hujjah ala Ahlil Madinah Book 2* (Beirut: Alam al Kutb, 1980), 732-735.

