

**BONUS ON HERBALIFE NETWORK MARKETING COMPANY IN THE
PERSPECTIVE OF *JU'ĀLAH* CONCEPT**

THESIS

by:
Najibullah Mazamy
NIM 09220068



**SHARIA BUSINESS LAW DEPARTMENT
SYARI'AH FACULTY
THE STATE ISLAMIC UNIVERSITY OF MAULANA MALIK IBRAHIM
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2013**

STATEMENT OF THE AUTHENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

BONUS ON HERBALIFE NETWORK MARKETING COMPANY IN THE PERSPECTIVE OF *JU'ĀLAH* CONCEPT

is truly writer's original work. It does not incorporate any materials previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism partly or whole content of this work, this thesis and my degree as a result of this writing will legally be invalid.

Malang, 17th of April 2013

Writer,

Najibullah Mazamy
NIM 09220068

APPROVAL SHEET

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BONUS ON HERBALIFE NETWORK MARKETING COMPANY IN THE PERSPECTIVE OF *JU'ĀLAH* CONCEPT

The supervisor stated that the thesis has met the scientific requirements to be proposed and tested on the Assembly Board of Examiners.

Malang, 17th of April 2013

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No.	Day, Date	Subject of Consultation	Signature
1.	3 rd of January 2013	Proposal	
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3.	31 st of January 2013	Proposal, Chapter I and II	
4.	14 th of February 2013	Review Chapter I and II	
5.	7 th of March 2013	All Chapters	
6.	14 th of March 2013	Review of All Chapters	

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MOTTO

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَافًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ
وَلْيَقُولُوا قَوْلًا سَدِيدًا

And let those [executors and guardians] fear [injustice] as if they [themselves] had left weak offspring behind and feared for them. So let them fear Allah and speak words of appropriate justice.

(QS. An Nisâ: 9)



DEDICATIONS

Along with shalawat and prays,

I dedicate this thesis to:

*Father, mother, brothers, sisters, grandpas, grandmas, and the closest people
who support me more than others.*

The peaceful relation with you all makes my life more beautiful.

May Allah SWT gives the greatest graces and blesses for you all.

My ustadz and ustadzah, teachers and lecturers

Who have devoted the knowledge and taught me good life.

I hope that your science save you in The Last Day.

*My friends in Pesantren Gondang, Sepanjang, Paiton, and Gasek, being with you
in twelve years society has built my mind and my life as Santri.*

*The whole friends in schools and UIN Maulana Malik Ibrahim Malang, you all
are my life teachers.*

*May God place you all as the best actors in this world and as neighbours of
Rasulullah SAW in the Paradise.*

*We always hope that we are the people of shalih and shalihah and ashâbul yamîn
and saved fi Kawnayn. Amîn...*

LEGITIMATION SHEET

The Assembly Board of Thesis Examiners of Najibullah Mazamy (09220068), student of Sharia Business Law Department of Sharia Faculty of The State Islamic University of Maulana Malik Ibrahim of Malang entitled:

BONUS ON HERBALIFE NETWORK MARKETING COMPANY IN THE PERSPECTIVE OF *JU'ÂLAH* CONCEPT

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Alhamdulillah Rabbil 'Alamin. Only with the help and guidance of Allah I can finish writing thesis entitled **Bonus on Herbalife Network Marketing Company in The Perspective of Ju'alah Concept**. Peace be upon the prophet Muhammad SAW who guided us from the darkness towards the lightness. This thesis is intended to fulfill the requirement for achieving the degree of Syari'ah Faculty of State Islamic University of Malang. Finishing this thesis is not a simple thing at all that I have spent my great deal of time and I have got a valuable experience from this. I really realize that it is impossible to make this complete without contributions and supports from some people.

With all the resources and efforts and helps, guidance and discussion of all parties during the process of writing this thesis, the writer wants to express my sincere thanks to:

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3. Dr. Hj. Tutik Hamidah M. Ag. As the Dean of Syariah Faculty The State Islamic University Maulana Malik Ibrahim of Malang.
4. Dr. Suwandi, M.H. as my supervisory lecturer and the Head of Syariah Business Law of The State Islamic University Maulana Malik Ibrahim of Malang.

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bests of you, the sholihah of pesantren, forces me to struggle being better person everytime.

10. Everyone, whoever, any people, who have inspired me in my life.

The writer really hopes that this writing gives a little advantage for the readers. The writer realizes that the writing is still far from perfection. This is because of the limitedness of mind, time, work, and experiences. For that, with happiness and openness, the writer really hope corrections and critics to teach better. Ultimately, May Allah bless us, *Amîn*.

Malang, 15th March 2013

The Writer,
Najibullah Mazamy

TRANSLITERATION GUIDANCE

Transliteration is the conversion of a text from one script to another. The conversion of scripts or writing is a procedure of replacing text written in one script or writing system with the characters of another script or system in order to make the text legible for users of another language or script. Below is the arabic transliteration converted to Indonesian script:

ا = no sign or unwritten	ض = Dl
ب = B	ط = Th
ت = T	ظ = Dh
ث = Ts	ع = ‘ (comma facing up)
ج = J	غ = Gh
ح = H	ف = F
خ = Kh	ق = Q
د = D	ك = K
ذ = Dz	ل = L
ر = R	م = M
ز = Z	ن = N
س = S	و = W
ش = Sy	ه = H
ص = Sh	ي = Y

Every Arabic writing in latin vocal is written "a" in fathah, "i" in kasrah, and "u" in dlommah. These vocals in a long voice will be written as below:

A (long voice) = â ; example: قال is written qâla

I (long voice) = \hat{i} ; example: q nettirw si يَلِ اٰلِ

U (long voice) = \hat{u} ; example: d nettirw si دُوْنِ اٰنَا .

Special for *ya' nisbat*, it is not allowed to be replaced with “i”, but must be written “iy” to describe the existence of *ya' nisbat* in the end. Likewise, diphthong sound, *wawu* and *ya'* after fathah are written with "aw" and "ay". *Ta'* Marbuthah is *ta'* which show the kind of female gender. Ta marbuthah is written with “h” in the end of a word. The article "ال" is written “al”.



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DIAGRAMS

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ABSTRACT

Mazamy, Najibullah. 09220068. 2013. *Bonus on Herbalife Network Marketing Company in The Perspective of Ju'alah Concept*, Sharia Business Law Department, Sharia Faculty, The State Islamic University of Maulana Malik Ibrahim of Malang. Supervisor: Dr. Sudirman, M.A.

Keywords: Bonus, network marketing, *ju'alah*

The activity of giving bonuses awarded by network marketing companies for the success distributors is the main system in network marketing business. Successful distributors are they who have been succeeding in selling products and building networks. The effect of their successes to the company is the expanding sales of the products. Because of this advantage, the company give promises the distributors great rewards.

The last data show that there are about 64 legitimate network marketing businesses in Indonesia and more than 8 millions of the citizens are in this business. They intend to get the most promising income in the business called bonus, a free income. Ironically, thousands even millions of them have suffered because they cannot survive in maintaining and developing the business. A data counted that 60% people who come to this business failed. Only some of the strongest people succeed and get great incomes. Selling products personally, getting people and keeping them to sell products (building networks) are the main marketing system in this business. This is not an easy job and not everyone can do this surely.

To build networks and keep expanding sales is one of the primary goals of a network marketing company. For this, they have a marketing system that says "every member who can reach certain achievements in sales and building network, he will get a free income awarded by the company that is not taken from his directly sales to consumers and other distributors. The member just have to keep great sales and maintaining networks and following the rules." This is such a kind of *shîghah* in a contract of announcing competition which the contract is called *ju'alah* in Islamic jurisprudence (*fiqh*). As it was stated in a fatwa by *Dâr al Iftâ* Egypt, that there are three kinds of contract in a network marketing business. They are. The latest is the contract of awarding free income or bonus.

The research reveals that the contract of awarding bonus especially practiced by a network marketing company Herbalife includes *ju'alah* contract seen from Islamic jurisprudence. The unexistence of agreement in front, the whoever second party who will do it, the unclear kinds of job should be done, they are in accordance with *ju'alah* concept. The only aim of the first party (company) is achievements reached by distributors following the rules. In Islamic jurisprudence perspectives madzhab Hanafi, *ju'alah* contract is not allowed due to the existence of *gharâr* and *juhâlah*. According to Madzhab Maliki, Syafi'y, and Hanbali, *ju'alah* contract is permissible referring to QS. Yûsuf: 72. They gave a *rukshah* for the existence of *gharâr* and *juhâlah* in this contract.

ملخص البحث

مزامي, نجيب الله, ٠٩٢٢٠٠٦٨, ٦٠١٣, مكافأة على شركة التسويق الشبكي هرباليفي في منظور مفهوم جعالة. الشعبة القانون التجاري الشريعة. كلية الشريعة. جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرف: الدكتور سودرمان الماجستير.

الكلمات الرئيسية : مكافأة، التسويق الشبكي، جعالة

الأعمال في الإعطاء المكافآت التي تمنحها شركات التسويق الشبكي للأعضاء النجاح هو النظام الرئيسي في شبكة التسويق التجاري. الأعضاء النجاح هم الذين ينجحون في بيع المنتجات، وبناء الشبكات . وتأثير نجاحهم للشركة هو توسيع المبيعات من المنتجات. فلذلك، الشركة وعدت ان تعطي مكافآت كبيرة لهم. وتظهر البيانات الأخيرة أن هناك حوالي ٦٤ شركات التسويق الشبكي الصحيحة في إندونيسيا وأكثر من ثمانية ملايين من المواطنين في هذا العمل. انهم يعتزمون الحصول على الأجرة الوعيدة في الأعمال التجارية التي تسمى المكافأة، أجرة مجانية. ومهما ذلك، بل الملايين منهم لا يستطيعون البقاء على قيد الحياة في صيانة وتطوير الأعمال. عد البيان أن ٦٠% من الناس الذين جاءوا إلى هذا المكان قد سقطت. فبعض فقط من أقواهم نجحت وحصلت على مكافئة كبيرة. بيع المنتجات شخصيا، ودعاء الناس وابقائها لبيع المنتجات (بناء الشبكي) هي نظام التسويق الرئيسية في هذا العمل. بالحقيقة، هذه ليست من العمل السهيل وليس من كل شخص يستطيع القيام بذلك بطبع. لبناء الشبكات والحفظ على توسيع المبيعات هي من الأهداف الرئيسية لشركة تسويق الشبكي . لهذا، لديهم نظام التسويق التي تقول " كل عضو الذي يمكن أن يصل إلى بعض الإنجازات في مجال المبيعات بناء الشبكات ، انه سيحصل أجرة مجانية التي تمنحها الشركة التي لا تؤخذ من مبيعاته المباشرة للمستهلكين وأعضاء آخر . وظيفته هي للحفاظ على مبيعات كبيرة وصيانة شبكات واتباع القواعد". هذه هي مثل النوع من الصيغة في عقد اعلان الأمر الذي يسمى عقد جعالة في الفقه. كما جاء في فتوى دار الإفتاء من قبل مصر، أن هناك ثلاثة أنواع من العقد الموجودة في التسويق الشبكي هرباليفي هي البيع والسمسرة والجعالة. والعقد الخر هو العقد في منح المكافأة مجاناً. قال الأبحاث التي أجريت أن عقد منح مكافأة الذي تقوم به خاصة شركة التسويق الشبكي هرباليفي يتضمن العقد الجعالة لما في نظر الفقه الإسلامي. عدم الإتفاق في ابتداء العقد، وأيا كان الطرف الثاني الذي سيفعل الأمر، وأنواع غير واضح الأعمال ينبغي القيام به الطرف الثاني، فهم وفقا لمفهوم عقد الجعالة. الهدف الوحيد من الطرف الأول (الشركة) هي الإنجازات التي تحققت من قبل الأعضاء اتباعا للقواعد من الشركة . في نظرية الفقه الإسلامي على المذهب الحنفي، لا يجوز العقد لوجود الغرر والجهالة. وفقا للمذهب المالكي والشافعي و الحنبلي ان هذا العقد جائز استدلالا على النص القران سورة يوسف: ٧٢ وألقى فيها حكم الرخصة وجاز على ذلك بوجود الغرر والجهالة في هذا العقد.

ABSTRAK

Mazamy, Najibullah. 09220068. 2013. *Bonus dalam Perusahaan Network Marketing Herbalife Perspektif Ju'alah*, Hukum Bisnis Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Dosen Pembimbing: Dr. Sudirman, M.A.

Kata Kunci: Bonus, network marketing, *ju'alah*

Aktifitas pemberian bonus yang dilakukan oleh perusahaan-perusahaan network marketing yang diberikan kepada distributor-distributor yang sukses adalah sistem utama dalam bisnis network marketing. Distributor-distributor yang sukses adalah mereka yang telah berhasil menjual produk dan mengembangkan jaringan. Efek dari kesuksesan yang mereka capai bagi perusahaan adalah penjualan produk yang semakin meluas. Oleh karena itu, perusahaan menjanjikan para distributor untuk memberikan penghargaan yang melimpah.

Data terakhir menunjukkan bahwa ada sekitar 64 perusahaan resmi yang menjalankan bisnis ini di Indonesia dan lebih dari 8 juta penduduk Indonesia ikut serta dalam bisnis ini. Mereka menginginkan pemasukan yang menjanjikan yaitu bonus, pasif income. Ironisnya, ribuan bahkan jutaan dari mereka gagal dalam bisnis ini. Sebuah data menunjukkan bahwa 60% dari mereka yang masuk dalam bisnis ini gagal. Hanya beberapa dari mereka yang kuat bertahan yang berhasil dan mendapatkan pendapatan tersebut. Menjual produk secara personal, mengajak orang-orang masuk didalamnya, dan menjaga agar mereka tetap menjual produk (membangun jaringan) adalah sistem utama dalam bisnis ini. Ini bukan pekerjaan yang mudah dan tidak semua orang dapat melakukan hal ini tentunya.

Untuk membangun jaringan dan menjaga penjualan tinggi adalah salah satu dari tujuan utama dari sebuah perusahaan network marketing. Untuk ini, mereka memiliki sebuah sistem yang berupa, "setiap anggota yang dapat mencapai pencapaian-pencapaian tertentu dalam penjualan dan membangun jaringan, maka dia akan mendapatkan pendapatan bebas yang tidak diambil dari penjualan langsungnya kepada konsumen dan distributor lain. Anggota tersebut hanya harus menjaga penjualan tetap tinggi dan mempertahankan jaringan dan mengikuti aturan". Hal ini semacam *shîghah* pengumuman sembara yang dalam *fiqh* disebut dengan *ju'alah*. seperti yang disebut oleh lembaga fatwa Mesir *Daar al Iftâ* bahwa ada tiga jenis transaksi yang terdapat dalam sebuah bisnis network marketing, yaitu *bay'*, *samsarah*, dan *ju'alah*. Yang disebut terakhir adalah transaksi yang menjanjikan pemberian bonus.

Penelitian yang dilakukan menunjukkan bahwa aktifitas pemberian bonus khususnya yang dilakukan oleh Herbalife termasuk kontrak *ju'alah* dalam Islam. Tidak adanya persetujuan bersama di awal, keumuman pihak kedua yang dapat melakukannya, tidak jelasnya jenis pekerjaan dan durasi pengerjaan yang harus dilakukan, itu semua sesuai dengan konsep *ju'alah*. tujuan yang diinginkan oleh pihak pertama (perusahaan) hanyalah pencapaian-pencapaian yang dilakukan oleh para distributornya sesuai aturan yang ditentukan. Dalam *fiqh* perspektif Imam Hanafi, kontrak *ju'alah* tidak diperbolehkan karena mengandung unsur *gharar* dan *juhâlah*. Menurut imam Maliki, Syafi'y, dan Hanbali, kontrak *ju'alah* diperbolehkan mengacu pada QS. Yusuf: 72. Mereka memberikan hukum *rukhsah* terhadap adanya unsur *gharar* dan *juhâlah* didalamnya.

ABSTRACT

Mazamy, Najibullah. 09220068. 2013. *Bonus on Herbalife Network Marketing Company in The Perspective of Ju'alah Concept*, Sharia Business Law Department, Sharia Faculty, The State Islamic University of Maulana Malik Ibrahim of Malang. Supervisor: Dr. Sudirman, M.A.

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The activity of giving bonuses awarded by network marketing companies for the success distributors is the main system in network marketing business. Successful distributors are they who have been succeeding in selling products and building networks. The effect of their successes to the company is the expanding sales of the products. Because of this advantage, the company give promises the distributors great rewards.

The last data show that there are about 64 legitimate network marketing businesses in Indonesia and more than 8 millions of the citizens are in this business. They intend to get the most promising income in the business called bonus, a free income. Ironically, thousands even millions of them have suffered because they cannot survive in maintaining and developing the business. A data counted that 60% people who come to this business failed. Only some of the strongest people succeed and get great incomes. Selling products personally, getting people and keeping them to sell products (building networks) are the main marketing system in this business. This is not an easy job and not everyone can do this surely.

To build networks and keep expanding sales is one of the primary goals of a network marketing company. For this, they have a marketing system that says "every member who can reach certain achievements in sales and building network, he will get a free income awarded by the company that is not taken from his directly sales to consumers and other distributors. The member just have to keep great sales and maintaining networks and following the rules." This is such a kind of *shîghah* in a contract of announcing competition which the contract is called *ju'alah* in Islamic jurisprudence (*fiqh*). As it was stated in a fatwa by *Dâr al Iftâ* Egypt, that there are three kinds of contract in a network marketing business. They are. The latest is the contract of awarding free income or bonus.

The research reveals that the contract of awarding bonus especially practiced by a network marketing company Herbalife includes *ju'alah* contract seen from Islamic jurisprudence. The unexistence of agreement in front, the whoever second party who will do it, the unclear kinds of job should be done, they are in accordance with *ju'alah* concept. The only aim of the first party (company) is achievements reached by distributors following the rules. In Islamic jurisprudence perspectives madzhab Hanafi, *ju'alah* contract is not allowed due to the existence of *gharâr* and *juhâlah*. According to Madzhab Maliki, Syafi'y, and Hanbali, *ju'alah* contract is permissible referring to QS. Yûsuf: 72. They gave a *rukshah* for the existence of *gharâr* and *juhâlah* in this contract.

ملخص البحث

مزامي, نجيب الله, ٠٩٢٢٠٠٦٨, ٦٠١٣, مكافأة على شركة التسويق الشبكي هرباليفي في منظور مفهوم جعالة. الشعبة القانون التجاري الشريعة. كلية الشريعة. جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرف: الدكتور سودرمان الماجستير.

الكلمات الرئيسية : مكافأة، التسويق الشبكي، جعالة

الأعمال في الإيعاء المكافآت التي تمنحها شركات التسويق الشبكي للأعضاء النجاء هو النظام الرئيسي في شبكة التسويق التجاري. الأعضاء النجاء هم الذين ينحون في بيع المنتجات، وبناء الشبكات . وتأثير نجاءهم للشركة هو توسيع المبيعات من المنتجات. فلذلك، الشركة وعدت ان تعطي مكافآت كبيرة لهم. وتظهر البيانات الأخيرة أن هناك حوالي ٦٤ شركات التسويق الشبكي الصحيحة في إندونيسيا وأكثر من ثمانية ملايين من المواطنين في هذا العمل. أنهم يعتزمون الحصول على الأجرة الوعيدة في الأعمال التجارية التي تسمى المكافأة، أجرة مجانية. ومهما ذلك، بل الملايين منهم لا يستطيعون البقاء على قيد الحياة في صيانة وتطوير الأعمال. عد البيان أن ٦٠% من الناس الذين جاءوا إلى هذا المكان قد سقطت. فبعض فقط من أقواهم نجحت وحصلت على مكافئة كبيرة. بيع المنتجات شخصيا، ودعاء الناس وابقائها لبيع المنتجات (بناء الشبكي) هي نظام التسويق الرئيسية في هذا العمل. بالحقيقة، هذه ليست من العمل السهيل وليس من كل شخص يستطيع القيام بذلك بطبع. لبناء الشبكات والحفظ على توسيع المبيعات هي من الأهداف الرئيسية لشركة تسويق الشبكي . لهذا، لديهم نظام التسويق التي تقول " كل عضو الذي يمكن أن يصل إلى بعض الإنجازات في مجال المبيعات بناء الشبكات ، انه سيحصل أجرة مجانية التي تمنحها الشركة التي لا تؤخذ من مبيعاته المباشرة للمستهلكين وأعضاء آخر . وظيفته هي للحفاظ على مبيعات كبيرة وصيانة شبكات واتباع القواعد". هذه هي مثل النوع من الصيغة في عقد اعلان الأمر الذي يسمى عقد جعالة في الفقه. كما جاء في فتوى دار الإفتاء من قبل مصر، أن هناك ثلاثة أنواع من العقد الموجودة في التسويق الشبكي هرباليفي هي البيع والسمسرة والجعالة. والعقد الخر هو العقد في منح المكافأة مجاناً. قال الأبحاث التي أجريت أن عقد منح مكافأة الذي تقوم به خاصة شركة التسويق الشبكي هرباليفي يتضمن العقد الجعالة لما في نظر الفقه الإسلامي. عدم الإتفاق في ابتداء العقد، وأيا كان الطرف الثاني الذي سيفعل الأمر، وأنواع غير واضح الأعمال ينبغي القيام به الطرف الثاني، فهم وفقا لمفهوم عقد الجعالة. الهدف الوحيد من الطرف الأول (الشركة) هي الإنجازات التي تحققت من قبل الأعضاء اتباعا للقواعد من الشركة . في نظرية الفقه الإسلامي على المذهب الحنفي، لا يجوز العقد لوجود الغرر والجهالة. وفقا للمذهب المالكي والشافعي و الحنبلي ان هذا العقد جائز استدلالا على النص القران سورة يوسف: ٧٢ وألقى فيها حكم الرخصة وجاز على ذلك بوجود الغرر والجهالة في هذا العقد.

ABSTRAK

Mazamy, Najibullah. 09220068. 2013. *Bonus dalam Perusahaan Network Marketing Herbalife Perspektif Ju'alah*, Hukum Bisnis Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Dosen Pembimbing: Dr. Sudirman, M.A.

Kata Kunci: Bonus, network marketing, *ju'alah*

Aktifitas pemberian bonus yang dilakukan oleh perusahaan-perusahaan network marketing yang diberikan kepada distributor-distributor yang sukses adalah sistem utama dalam bisnis network marketing. Distributor-distributor yang sukses adalah mereka yang telah berhasil menjual produk dan mengembangkan jaringan. Efek dari kesuksesan yang mereka capai bagi perusahaan adalah penjualan produk yang semakin meluas. Oleh karena itu, perusahaan menjanjikan para distributor untuk memberikan penghargaan yang melimpah.

Data terakhir menunjukkan bahwa ada sekitar 64 perusahaan resmi yang menjalankan bisnis ini di Indonesia dan lebih dari 8 juta penduduk Indonesia ikut serta dalam bisnis ini. Mereka menginginkan pemasukan yang menjanjikan yaitu bonus, pasif income. Ironisnya, ribuan bahkan jutaan dari mereka gagal dalam bisnis ini. Sebuah data menunjukkan bahwa 60% dari mereka yang masuk dalam bisnis ini gagal. Hanya beberapa dari mereka yang kuat bertahan yang berhasil dan mendapatkan pendapatan tersebut. Menjual produk secara personal, mengajak orang-orang masuk didalamnya, dan menjaga agar mereka tetap menjual produk (membangun jaringan) adalah sistem utama dalam bisnis ini. Ini bukan pekerjaan yang mudah dan tidak semua orang dapat melakukan hal ini tentunya.

Untuk membangun jaringan dan menjaga penjualan tinggi adalah salah satu dari tujuan utama dari sebuah perusahaan network marketing. Untuk ini, mereka memiliki sebuah sistem yang berupa, "setiap anggota yang dapat mencapai pencapaian-pencapaian tertentu dalam penjualan dan membangun jaringan, maka dia akan mendapatkan pendapatan bebas yang tidak diambil dari penjualan langsungnya kepada konsumen dan distributor lain. Anggota tersebut hanya harus menjaga penjualan tetap tinggi dan mempertahankan jaringan dan mengikuti aturan". Hal ini semacam *shîghah* pengumuman sembara yang dalam *fiqh* disebut dengan *ju'alah*. seperti yang disebut oleh lembaga fatwa Mesir *Daar al Iftâ* bahwa ada tiga jenis transaksi yang terdapat dalam sebuah bisnis network marketing, yaitu *bay'*, *samsarah*, dan *ju'alah*. Yang disebut terakhir adalah transaksi yang menjanjikan pemberian bonus.

Penelitian yang dilakukan menunjukkan bahwa aktifitas pemberian bonus khususnya yang dilakukan oleh Herbalife termasuk kontrak *ju'alah* dalam Islam. Tidak adanya persetujuan bersama di awal, keumuman pihak kedua yang dapat melakukannya, tidak jelasnya jenis pekerjaan dan durasi pengerjaan yang harus dilakukan, itu semua sesuai dengan konsep *ju'alah*. tujuan yang diinginkan oleh pihak pertama (perusahaan) hanyalah pencapaian-pencapaian yang dilakukan oleh para distributornya sesuai aturan yang ditentukan. Dalam *fiqh* perspektif Imam Hanafi, kontrak *ju'alah* tidak diperbolehkan karena mengandung unsur *gharar* dan *juhâlah*. Menurut imam Maliki, Syafi'y, dan Hanbali, kontrak *ju'alah* diperbolehkan mengacu pada QS. Yusuf: 72. Mereka memberikan hukum *rukhsah* terhadap adanya unsur *gharar* dan *juhâlah* didalamnya.



CHAPTER ONE INTRODUCTION

A. Background of Study

To face the establishment of ASEAN Community in 2015, learning to compete in terms of creativity to develop quality of products in Indonesia business becomes very important.¹ Although Indonesia could not fully liberalize its market, foreign market will easily come into Indonesia and give bigger threat to Indonesian marketers. Fortunately, Indonesian young entrepreneurs have been flourishing like grass in spring in recent years.

Business is identical to efforts to build assets and own assets. Those assets can produce passive income. Asset is the important thing that differs an

¹*RI Gets Ready For ASEAN Economic Zone*, <http://www.thejakartapost.com/news/2012/11/18/ri-gets-ready-asean-economic-zone.html>. accessed Nopember, 18th 2012.

entrepreneur and an employee. Assets can be obtained in various ways such as by building shops, factories, boarding houses, apartments, hotels, franchises, and networks.

In Network Marketing business, Network is an asset that is built up by persuading people to buy products and getting them into the business. The more networks built, the more assets can produce passive income. The passive income is mainly derived from those sales that were successfully performed by downlines generally termed as a bonus.

Herbalife is a Global Nutrition and Weight Management Company where the central office lies in Los Angeles USA. Until 2012, it operates in 83 states in the world including Indonesia. Herbalife uses network marketing or multi-level marketing in its marketing system that has been running since 1980 CE. Lionel Messi and David Beckham are two of many athletes who have been contracted to sponsor Herbalife.

For the distributors or marketers who are members of this company, there are several types of income that they can get. Those are:

- a. Direct Retailing Advantage.
- b. Wholesale Advantage.
- c. Overriding Royalty Revenue.
- d. Monthly Production Bonus.
- e. Annual Bonus.
- f. Bonus for free holidays and trainings.

g. Awards and recognition of presidential plus.²

Retail and wholesale transactions use '*aqd al bay'* as implemented in normal sale and other purchase transactions. Points number 3-7 are bonuses given by the company to the leaders who have succeeded in building network. These bonuses are assets that can provide the leaders a free income. This is because the bonuses are not included from direct selling products to consumers or other distributors.

In Islam, those bonuses are awarded by '*aqd al ju'alah* as it is stated by *Dâr Al iftâ'* in a fatwa which responds a network marketing system Q-Net.³ *Ju'alah* is a certain agreement with benefits between the first party and the second party for the implementation of a task or a service performed by second party for the first party.⁴

In fact, awarding bonuses is the main system in network marketing company in its relationship among the distributors. Therefore, most people who come to this business terribly intend to get passive income (bonuses) as much as they can. The writer attempts to do research on the bonuses implemented by a network marketing company Herbalife by a descriptive analysis seen from the essence of *ju'alah* concept in Islamic Jurisprudence. A contract of announcing competition such as a system of promising bonuses by reaching certain achievements is called *ju'alah* in Islamic jurisprudence (*fiqh*).

² *Herbalife Handbook 4*, Sales And Marketing Plans And Business Rules, 9 and 12.

³ The opinions about contract between 2 parties in this system are divided into two opinions: first opinion said that the contract is *syira'* (sale) and *ju'alah*. The second opinion said that the contract is *syirâ'* (sale) and *samsarah* (broker). <http://www.dar-alifta.org/ViewFatwa.aspx?ID=3861>, accessed 4 Nopember 2012.

⁴ The Compilation of Islamic Finance Law (Kompilasi Hukum Ekonomi Syariah/KHES).

The additional discussion concerning *ju'alah* concept presents the perspectives of Madzhab Hanafi, Maliki, Syafi'y, and Hanbali basically on how schools of law in islamic jurisprudence (*fiqh*)⁵ stipulated the law about *ju'alah* contract in general as *fiqh muqâran*. Mostly, different methodology of *ijtihad* will bear different legal product of law (*fiqh*). As a result, the presence of diversity of the methods of deriving Islamic jurisprudence among schools impacts on wide variety of implications inside the products of Islamic law itself.⁶

B. Statement of Problem

1. What are the bonuses and the rules concept in Herbalife Network Marketing Company?
2. How is the concept of giving bonus in the perspective of *ju'alah* in Islamic Jurisprudence?

C. Scope and Limitation

Generally, bonuses applied in network marketing companies use *ju'alah* contract as it was determined by Egyptian Fatwa Institute (*Dâr al Iftâ*).⁷ The discussion studies the concept of awarding bonus applied in the business of Network Marketing, especially, the concept of awarding bonuses applied by

⁵ Fiqh: معرفة الأحكام الشرعية التي طريقها الإجتهد (Knowledge of legal jurisprudence extracted from detailed Islamic sources), ushul fiqh: العلم بالأحكام الشرعية العملية من أدلتها التفصيلية (the study of the origins, sources, and principles upon which Islamic jurisprudence (or Fiqh) is based), *qawâid fiqh* (principles): مجموعة الأحكام المتشبهات التي ترجع الى قياس واحد يجمعها (Principles derived from consolidated reading on various rules of fiqh regarding various themes).

⁶ Romli, *Muqâranah Madzahib Fil Ushul* (Jakarta: Gaya Media Pratama, 1999), 5.

⁷ <http://www.dar-alifta.org/ViewFatwa>.

Herbalife. The writer tests essences in the contract seen by Islamic jurisprudence study which the theory chosen is the *fiqh* of *ju'alah*.

D. Objective of Research

The main question in network marketing in many discussions about network marketing business by Islamic law insight is the point of relation. Relation between company and members, among the members itself, as law consequence of the contract. The relation between *jâ'il* and *maj'ûl lah* is the identical view found in network marketing business. By determining *ju'alah* contract as the object of the theory in this research, the writer attempts to present deeper materials about bonus concept applied in network marketing business. This will give wider information about how Islamic law see the concept of awarding bonuses applied in a network marketing businesses as *ju'alah*.

E. Research Method

Method is a framework to perform action, or a framework of thinking to formulate idea, the regular, directional and contextual one, which is relevant with the intent and the purpose. Simply, method is a system of doing. Because it is a form of system, then method is a set of elements that form as unity.⁸

Research is an activity of study that is done carefully and regularly in a field of science by certain rules. The rules is the method adopted. Study is an

⁸ Tejoyuwono Notohadiprawiro, *Metode Penelitian dan Penulisan Ilmiah*, Journal, 1.

attempt to obtain or increase knowledge. Thus, research is done to enrich and enhance understanding about something.⁹

Research conducted in this research is normative fiqh or Islamic jurisprudence research. This study conducts a research of the text of Islamic jurisprudence which covers the history of ideas, development of ideas, deviation among scholars, etc. The standard that a research includes a normative study is that the source of data or information is derived from the text or book.¹⁰

1. Type of Research

In terms of its analysis approach, research can be divided into two: quantitative research and qualitative research. Quantitative research emphasizes its analysis on numeric data which is processed with statistical methods. research by qualitative approach emphasizes its analysis on the process of deductive and inductive inference and analysis of the dynamics of the relationship among the observed phenomena using scientific logic. This does not mean that a qualitative approach does not use any quantitative data support, but the emphasis is on the attempt to answer research question through formal and argumentative ways of thinking. This research uses a qualitative approach, giving argumentations from the four madzhab literature discussing the Ju'alah contract used by network marketing system specially Herbalife Company in the bonus analysis.

In terms of the depth of the analysis, this type of research is divided into the study of inferential and descriptive research. Inferential research does analysis

⁹ Tejoyuwono Notohadiprawiro, *Metode Penelitian*, 1.

¹⁰ Tim Penyusun, *Pedoman Penulisan Karya Ilmiah Fakultas Syariah UIN Maliki Malang*, 15.

on the relationship among variables by testing the hypothesis. Descriptive study analyses the description and presents the facts in a systematic way so that it can be easier to be understood and inferred. This study aims to get a true image of the subject under the research.

Complementary analysis presented in the analysis will be fiqh Muqâran.

The steps will be done as below:

1. Defining a case to be studied
2. Collecting all fuqohâ opinions regarding the issue
3. Grouping the opinion
4. Collecting all the arguments and the way of *dilâlah*/derivation
5. Identifying all the arguments
6. Analysing the dalil dan discussing the way of *dilâlah*/derivation
7. Determining the argument elected
8. To evaluate the chosen argument, it is important to study the causes of the argument
9. Investigating the wisdoms contained behind the differences.

2. Data Sources

Data sources spilt into two main sources, primary sources and secondary sources.¹¹ Data sources the writer uses are from the literature in the form of modern books concerning network marketing and classic books under the four madzhab thoughts of islamic jurisprudence as the primary literature. Some of the

¹¹ Suharismi Arikunto, *Prosedur Penelitian Suatu Pendekatan dan Praktek* (Jakarta: Rineka Cipta, 2002), 107.

books as literature of doing research especially on *ju'alah* are *Badâi' ash Shâni' fî Tartîb asy Syarâi'* by a hanafite Alauddin al Kasani (d. 587 H), *Al Mudâwanah* by Imam Malik bin Anas (d. 179 H), *Al Umm* by Imam Muhammad bin Idris Asy Syafi'y (d. 204 H), and *Masâil al Imam Ahmad* by Abdullah bin Ahmad bin Hanbal. Besides, the writer also use other books, some articles and papers, etc. as supporting literature. if needed, the writer may conduct some interviews with certain related parties.

Futhermore, the writer also uses some tertiary sources to support the writing of research. Tertiary sources are encyclopedia, dictionaries, and other supporting sources that help manage primary sources and secondary sources.¹²

3. Data Processing

Data processing by qualitative approach describes the data in the form of regular, orderly, logical, non-overlapping, and effective sentences to get clear and easier understanding and interpretation of the data.¹³ Data processing is done by some stages as below:

- a. Editing (reexamining data): The first step in processing data after it has been collected is to 'clean' the data. This process of 'cleaning' is called editing and the focus to ensure that the data is free from inconsistencies and incompleteness. Editing refers to the process of checking and adjusting responses in the completed questionnaires for omissions, legibility and consistency.

¹² Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: PT Raja Grafindo Persada, 2003), 114.

¹³ Tim Penyusun, *Pedoman Penulisan Karya Ilmiah* (Fakultas Syariah Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2011), 30.

- b. **Classifying (grouping data):** in this stage, the writer classify data into primary data to be analysed and supporting data to give additional explanation in the research.
- c. **Verifying (confirming data):** after the data are classified, then it will be verified to make sure that the problem issued is important to be analysed and has significant relationships each other.
- d. **Analysing (analysing data by descriptive analysis):** analysing is the main part of processing data. In this stage, the writer analyses the data descriptively and gives analytical connections between the data and the theories.
- e. **Concluding (withdrawing conclusion):** the last stage of the data processing is concluding. All analyses presented in analysing stage will be withdrawn in the conclusion simply and separatedly.

F. Previous Research

There are many researches on network marketing that have been done by scholars. That is because network marketing has become a worldwide business since the first formation in 1940s. One of the researches about network marketing has been done by Ayyudiana Niyati Mufidah with thesis “Bisnis Multi Level Marketing (Mlm) K-Link Menurut Hukum Islam”. This research aims to determine the mechanism of Multi Level Marketing (MLM) business and to investigate Multi Level Marketing (MLM) business according to Islamic Law.

The research method of the thesis is field research studying multi-level marketing of PT. K-Link, by mean, the type of this research uses empirical study. The analysis approach used in this study is a qualitative approach that presents descriptive data, from the script, expressions and behaviour.

The result of the study in K-Link stockist Kepanjen Malang shows that the mechanism of the MLM business in the K-Link branches into giving bonuses to distributors by two parts, they are Plan A and Plan B. Those who do Plan B automatically earn bonuses from Plan A. Bonus 74% on Plan A is given to the distributor while the remaining 26% is taken by the company. Besides bonuses Plan A and Plan B, the distributors will also get directly 20% profit of the products sold.

Research conducted by Ayudiana is the study of Islamic law in general about the Network Marketing business practiced by a K-Link Stockist. Whereas the writer does research in the study of bonus concept in Islam which is termed the *Ju'alah* contract in Network Marketing business.

Another research concerning network marketing system was done by Nurudin with the title “Analisa Bisnis Jaringan Multi Level Marketing (MLM) Syariah Terhadap Kebebasan Finansial Distributor pada PT. Ahad Net Internasional (Ahad-Net) Malang (Perspektif The Cashflow Quadrant Robert T. Kiyosaki)”. An analysis on *Syari'ah* Multi Level Marketing onto Distributor's Financial Freedom on PT. Ahad Net Internasional (Ahad-Net) Malang (in The Perspective of The Cashflow Quadrant Robert T. Kiyosaki).

The problem issued in the research is the question how far Syariah Network Marketing businesses which include, recruitment of new members (level or level) (X1), system of education and training (X2), the sale of products (X3), as well as commissions and bonuses (X4) can affect the financial freedom (Y) of distributor of Ahad-Net Network Marketing Company.

This research is included in survey research, which took samples from a population and used questionnaires as the main data collection tool. Based on the problems issued and the objectives to be achieved in this study, the research aimed to examine the relationship between syari'ah MLM networking business and perspective on financial freedom according to Robert T. Kiyosaki. The study is categorized explanation or explanatory research, which made an inquiry to relationship through hypothesis testing.

The analysis tools are validity and reliability tests to determine the accuracy and stability of a measuring instrument. Multiple linear regression used in the research aims to determine the relationship and influence between the independent variables and the dependent variable. F test and t test are used to determine the proposed hypothesis.

From the regression analysis, the study showed that there were influences between free variables: recruitment of new members (level or level) (X1), system of education and training (X2), the sale of products (X3), as well as commissions and bonuses (X4); towards banded variable financial freedom when it was tested simultaneously (test F). But when tested partially, there found only variable recruitment of new members (X1) and commissions and bonuses (X4) that gave

significancy into financial freedom. The relationship between test research done by Nuruddin and the writer's research is a conclusion that the recruitment as well as bonuses and commission is very important variable in the system of network marketing business. Besides, there is a significant relationship between financial freedom and bonuses.

G. The Structure of Writing

This thesis will be written into four main chapters detailing as: Chapter one contains introduction covers the background, problem formulation, objectives problems, limitations of the study, the benefits of research, research method. Research method contains explanations about the type of research that is used to analyse problems related, the data sources, and and the process of managing data

Chapter Two contains review of literature. It discusses the theory and the concept of basic legal of mu'amalah in Islam, network marketing in Islam, the contract and 'aqd , and some literature of the four madzhabs thoughts concerning contract related to network marketing especially on bonus namely Ju'alah in islamic jurisprudence.

Chapter Three specially presents data analysis management specifically performed in the research. This chapter will presents some analysis about the concept of bonus applied in network marketing company of Herbalife particulary. The discussion about muqâranah of the four madzhab will also be complements of the analysis.

Chapter Four covers conclusions and suggestions. This part explains some conclusions from overall discussion and pull some important things into points to make the conclusions clear. Finally, suggestions will be showed after the conclusions. The suggestions explain some solutions and additional advices concerning the research. The values might be showed to give some important benefits caught in the discussion.





CHAPTER II THEORY AND CONCEPT

A. The Principles of Bay' and Network Marketing Business in Islam

1. The Principles of *Bay'* in Islam

Every business transaction can not be separated from *bay'*. *Bay'* is an activity of selling between objects with objects, or objects with money. Sale or *bay'* means an agreement between two parties (the seller and the buyer) to the effect that the ownership of the sale item is transferred from the seller to the buyer in exchange for a price.¹ Meanwhile, business is the exchange of goods, services, or money that gives mutual benefit and profit.² Thus, *bay'* transaction and business transaction can be considered as the same subject. Both *bay'* and

¹ www.isfin.net/node/31/ Islamic finance from A to Z _ iSfin.htm, accessed 22 February 2013.

² Pandji Anoraga, S.E., M.M, *Pengantar Bisnis Pengelolaan Bisnis Dalam Era Globalisasi*, (Jakarta: PT Rineka Cipta, 2007), 6.

business transaction are parts of *mu'âmalah* in Islam. The original legacy of the *mu'âmalah* is permissible as stated in the fiqh principle:

الأصل في المعاملات الإباحة إلا أن يدل دليل على تحريمها

“Originally, a transaction is permissible until a dalîl stated the prohibition”.³

The sources from which the law is derived, al qurân , as Sunnah, Ijmâ' , Qiyâs, etc stipulate limitations on any transactions conducted by people. The sources show distinct determinations to which transactions are lawful and which ones are unlawful. These are some sources (dalîl) that show some limitations in any business transactions.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ.

“O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful”.⁴

The verse above indicates that someone should not make any selling in the wrong way. Then, the verse indicates that any person who makes a transaction must trust and accept each other about the contract. Rasulullah SAW asserted the point through sunnah: “Originally, selling should be accepted by each other”.

Besides, there are some rules required when someone has a transaction and contract. Allah SWT mentioned it in surah Al Baqarah verse 282:

³ A. Jazuli, *Kaidah-kaidah Fikih*, (Jakarta: Kencana. 2006), 130.

⁴ QS. An Nisa: 29.

... وَلِيَكْتُبَ بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ ...

وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ ...

إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا ...

“...when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him... And bring to witness two witnesses from among your men. And if there are not two men [available], then a man and two women from those whom you accept as witnesses ... except when it is an immediate transaction which you conduct among yourselves. For [then] there is no blame upon you if you do not write it...”.⁵

The message conveyed in the verse is that any purchase agreement or other muamalah transactions must be written and must bring witnesses two men when signing the contract. It aims to make the contract safe between two parties. In case of witness, two women represent one man. Some simple transactions do not require any writing if such people trust each other to do transaction.

Next, The Prophet Muhammad SAW on his sunnah stipulated restrictions about the things that can be included in any mu‘âmalah enterprises and selling transactions. It was narrated from Jabir bin Abdillah RA. :

«إِنَّ اللَّهَ وَرَسُولَهُ حَرَّمَ بَيْعَ الْحَمْرِ، وَالْمَيْتَةِ، وَالْخِنْزِيرِ، وَالْأَصْنَامِ»⁶

“God and His Messenger have forbidden the sale of alcohol, carcass, and pork, and sculptures”.

Islamic law prohibits sale of intoxicating things, unclean items, and unlawful purposed ones such as beer, carcass, pork, and sculptures. Beer

⁵ QS. Al Baqarah: 282.

⁶ Ibn Majah Abi Abdillah Muhammad bin Yazid al Qazwaini, *Sunan Ibn Majah* Book 2, (Saudi Arabia: Dâr Ihyaa al Kutub al ‘Arabiyyah), 732.

represents sample showing that any sales of intoxicating things such as drugs, shabu-shabu, marijuana, etc is illicit. Carcass (*Maytah*) and pig (*khinzîr*) are unholy (*najis*)⁷ and unusable things to buy. On the other hand, some scholars added that dogs are allowed to sell due to urgency conditions such as for keeping the house from thieves or others.⁸

Prohibition of selling sculptures (*ashnâm*) suggests not to do sale and purchase transactions with the aims of activities is prohibited in Islam. The hadith indicates prohibition of buying sculptures to be worshiped. At that time, worshiping sculptures was still commonly done by Arabians. Thus, Rasulullah SAW banned people especially the moslems to buy sculptures.

One common problem in the activities of buying and selling is a problem of pricing. In this case, Some sellers will sell things in very high prices and far from normal price. Although it is not commonly practiced in current business activities specially in traditional retail due to marketing management consideration, high pricing still occurs in some other kinds of business such as antique things business. In Islam, deciding prices far above normal is called the *ghibn*. *Ghibn* is divided into *ghibn yasîr* (middle-high pricing) and *ghibn fâhisy* (very-high pricing). Actually, discussion about the *ghibn* is specified at the sale of valuable and antique good. Futhermore, it depends on two parties agreement. If

⁷ *Najis*: everything that is originally unholy such as dirt, dog, pig, etc.. The sale or purchase of unholy things is not allowed. *Mutanajjis*: any things holy initially but later unholy things hit the holy things. Then the holy things become unclean (mutanajjis). For example, shirts is originally, but then it gets touched by a wet dog. Then the shirt become mutanajjis shirts. Mutanajjis things are not prohibited for sale.

⁸ Abu Ishaq Ibrahim Asy Syairozi, *Al Muhadzab Fi Fiqh Al Imam Asy Syafi'y* Book II, (Beirut: Dâr Al Kutb Ilmiyyah), 10.

both trust and accept each other, the transaction becomes considered lawful. Hanafites explained that the actual problem in this model is the problem of selling unclear things (*taghrîr*). In some case of when the purchased items do not match consumers' consideration, then the buyer may cancel the transaction. For example, someone buys a legendary portrait in an auction for billions. But after a few days it was discovered that the potrait is not the original copy. The potrait was duplicated. When this problem happens, Islam allows the buyer to cancel the transaction and ask back his money. Ghibn with gharar is similar to *khiyâr 'ayb*.⁹

Overall, there are many limitations that must be considered to make buying and selling transactions. In Islam, there are various terms defining types of unlawful transactions practiced by people. In general, trading is justified legal if it contains no element of *ribâ*, *gharar*, *ghurûr*, *dharar*, and *maysir*:

1. *Ribâ* (Usury): etymologically means grow and develop. Terminologically, usury is a practice of lending money to others by return with a larger amount. There are three kinds of usury in Islam: Usury from exchange transaction (*Riba fadhl*), usury from credit transaction (*riba jahiliyyah*), dan usury due to fixed predetermined return (*riba nasi'ah*).¹⁰
2. *Gharar*: Selling something with uncertain type and size of the goods in the transaction. For example, selling mangos on the tree that are not ripen. Some scholars do not prohibit selling things with only a little kind of uncertainty.

⁹ Wahbah Zuhaili, *Al Fiqh Al Islamy Waadillatuh* Book 4 (Damascus: Dâr al Fikr), 3073.

¹⁰ *Kamus Istilah Keuangan Dan Perbankan Syariah*, Direktorat Bank Indonesia, 2006.

3. *Ghurûr*: selling something by showing the good side and hiding the bad side to get sold with the current condition. For example, Selling bread by showing good part outside while the bread is rotten inside.
4. *Dharar*: selling and purchasing something prohibited due to the hazards, the dangers, and the risks to body, soul, and religion. For example: narcotics, drugs, marijuana, morphine, heroin, and beers.¹¹
5. *Maisir*: any gambling and speculative transactions including maysir.

2. The Principles of Network Marketing Business in Islam

Currently, there are about 200 network marketing companies operating in Indonesia. 62 of them are legal and already a member of DSA/Direct Selling Association of Indonesia (APLI/Asosiasi Penjualan Langsung Indonesia). There are around 8 millions of Indonesian citizens engaged in the business of network marketing. This business is quite obsessing because of the promises of passive income through bonuses given by the company for people who can survive perennially and are persistent to expand the network.¹²

Network marketing is a direct selling and marketing using people to expand the sales by recruiting the people to join the network. The marketing is done by the members of the network individually by talking to people, coming door to door, or spreading brochures. Marketing products with this system, the company can reduce the cost of advertising and sponsorships in the budget.

¹¹ Abdul Qadir Mahmud Bakr, *Nadhriyyatul Gharar fil Buyu*, (Egypt: Dârus Salam, 2005), 11-12.

¹² Telaah Kritis Analitis terhadap Fatwa DSN No 75_DSN MUI_VII 2009 Tentang PLBS (Penjualan Langsung Berjenjang Syariah) « Program Solusi untuk Umroh dan Haji Plus.htm

Mostly, the budgete is used to give bonuses for people who have built large networks of the company to expand sales.

Two important points to notice in term of network marketing are selling and recruiting. Everyone working in a network marketing business will do selling and recruiting. Selling is a major part of marketing, while recruiting is a major part of building a network. In term network marketing, the primary word is marketing, not network. Network is an adjective, modifying marketing. Primary purpose of network marketing is to market a product, and ultimately, to sell a product. Secondary purpose of network marketing is to establish a network of people recruited to form a team in order to expand sales.¹³

The network marketing industry traces its roots to the 1940s when Nutrilite Products, Inc., launched the sale of food supplement products and, ten years later, Amway introduced the sale of household products. Over the past fifty years, the industry has matured into legitimate and efficient channel of distribution ideally suited for the next wave about to break in the world of business.¹⁴

In fact, many network marketing companies doing the business illegal and unfair affect many scams that ultimately lose members' money as victims. This realites get scholars in Islam to decide limitations of Islamic jurisprudence for systems run by network marketing companies. As a result, there are many law products and fatwa issued by scholars and fatwa institutes such as Syariah

¹³ www.about.com/Network-Marketing-What-You-Need-to-Know-Before-You-Join.htm.

¹⁴ Yarnell, *Tahun Pertama Anda dalam Network Marketing*, Translated by Tri Budhi Sastrio (Jakarta: Erlangga, 1999), Introduction page.

National Council (Indonesia) and Dâr al Iftâ' (Egypt). Like other mu‘âmalah transactions, the legal origin of organizing business with a network marketing system is allowed until the system shows matters that are prohibited by syariah. These are some sources (*dalil*) which is used in determining network marketing as legal:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

“O you who have believed, fulfill [all] contracts”.¹⁵

The verse above shows that the system in network marketing business is allowed as long as those who do business with each other fulfill their contract properly.

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ

“And cooperate in righteousness and piety, but do not cooperate in sin and aggression”.¹⁶

The verse above shows that in this business, every member in the organization should encourage and support others for a successful sale. The direct sales gives unlimited job opportunities as possible for people, educated or non-educated. Although it does not guarantee that everyone who join this business to be successful because the difficulty level is high enough. Based on some statistics, only less than 40% of people who have come into network marketing business survive and succeed.

¹⁵ QS. Al Maidah: 1.

¹⁶ QS. Al Maidah: 2.

Syariah National Council issued Fatwa No : 75/DSN MUI/VII 2009 about PLBS (Penjualan Langsung Berjenjang Syariah/ Syariah Multi Level Marketing) which contains 12 points of terms and conditions that have to be included in every system of network marketing business. The system of a network marketing company is considered lawful and legal if it fulfill these 12 requirements as below:

1. The existence of real object in the trade transaction of good or service products.
2. Goods or services traded is not something forbidden and not used for something unlawful.
3. Transactions in trade do not include elements of gharar, maysir, usury, dharar, dzulm, and immorality.
4. There is no excessive pricing (excessive mark-up), to the detriment for buyers because the product is not commensurate with the quality/benefit got by the consumers.
5. Commission given by the company to members of both the amount and the form should be based on actual job performance that is related to the volume or value of sales of goods or services product, and should be a major revenue of the business.
6. The amount or percentages of bonus given by the company to members (business partners) must be counted clearly and in accordance with target sales of goods and services been set by the company;

7. There should be no commissions or bonuses acquired passively regularly without any guidance job and or sale of goods or services.
8. Commissions or bonuses by the company to members (business partner) did not result in *ighra*. *Ighra* is to persuade people by giving sweet or exaggerated promises.
9. There is no exploitation and injustice in the distribution of bonuses among the first members (uplines) and the next members (downlines).
10. Membership recruitment system, a form of respect and ceremonial events do not contain elements that are contrary to faith, Islamic and moral values, such as polytheism, abused cults and violations.
11. Each business partner doing recruitments (uplines) is obligated to provide guidance and supervision to members recruited (downlines).
12. There is no money game.¹⁷

B. Herbalife and The System of Bonus

Herbalife is a Global Nutrition and Weight Management Company. It was founded by Mark Hughes (1956-2000 CE) in 1980 CE. The central office lies in Los Angeles USA. The company uses network marketing or multi-level marketing in the marketing system. Lionel Messi and David Beckham are two of many athletes who have been contracted to sponsor Herbalife.

The Center of Science and sophisticated products of Herbalife recently opened in The Plaza Herbalife in South Bay Area, Los Angeles under the

¹⁷ Fatwa of Syariah National Council No : 75/DSN MUI/VII 2009 about PLBS (Penjualan Langsung Berjenjang Syariah).

leadership of scientific dr. Steve Henig and a team of developers with a high-tech laboratory. In the study of nutrition, Herbalife has a cooperation with nutritional laboratory in UCLA (University of California Los Angeles).¹⁸

Herbalife makes significant expenditures across multiple scientific areas that support high-quality and innovative product development. It maintains its own design and testing laboratory and manufacturing facilities for its products. It has 180 scientists on staff, 19 of whom have Ph.D.s. Thirty consulting scientists supplement this internal staff, all with Ph.D.s. In 2011, Herbalife spent about \$25 million combined on research and development, technical operations, scientific affairs, quality assurance and quality control, product safety, and compliance efforts. Beyond this, an additional \$11 million was spent on nutrition affairs, product licensing, and strategic sourcing. Herbalife continues to support outside scientific research, with 12 clinical studies initiated between January 2011 and March 2012, five on the Formula 1 product.¹⁹

Nutritional products produced by herbalife use cellular nutrition principles that provide optimal nutrition to the cells of the body, so the body's cells get optimal levels of health and be able to heal itself (self-healing). Some nutritional products primarily produced include: nutritional shake mix, multivitamin complex, fiber & herbs, NRG instant tea, etc.. Besides, Herbalife also produces outside care products.

¹⁸ *Herbalife Handbook for Distributors*, 2011, 4.

¹⁹ Anne T. Coughlan, *Assessing an MLM Business: Herbalife as a Legitimate MLM*, July 2012, Journal.

Someone who wants to be a Herbalife distributor must purchase mini IBPs (International Business Pack) that contains two main products, guide books, ID cards so distributors and some other supplies. After completing application properly and the process, then he can officially become a Herbalife Distributor. An official distributor will undergo some enhancements by qualifying his position towards higher levels through measuring the amount of volume points he purchased from Herbalife. The following is distributor discount scale and the distributor enhancements preview:

Table 1: Distributor discount scale and the distributor enhancements preview.

Distributor Level	Monthly Volume	Discount	Eligibility
Distributor	0 – 499 volume points	25%	Until becomes eligible for a higher discount
Senior Consultant	achieve 500 volume points or more	35%	accumulate 500 vp during the month and then the next order is at 35% or purchase a 500 vp order @ 35%. all order will be placed at 35% until eligible for a higher discount
	accumulate 2000 volume points or more	42%	once a distributor accumulated 2000 vp, he is eligible to place this order and all orders for the remainder of the volume month at a 42% discount
Success Builder	minimum 1000 volume points (one order)	42%	this order is entitled to a 42% discount on this order and all order for the remainder of the volume month
Qualified Producer	2500 personally purchased Volume points in 1-3 months	42%	Qualified producer is entitled to a 42% discount on every order. Must requalify annually.

Qualifying Supervisor	Accumulate 4000 volume points or more	Temporary 50%	Once 4000 volume points are achieved in one volume month, additional orders are purchased at a temporary 50% discount.
Supervisor	<ol style="list-style-type: none"> 1. 4000 volume points in 1 month 2. 2500 volume points in 2 consecutive months or 3. accumulate 5000 personally purchased volume points within 12 months (with a 3 months minimum required) 	50%	Supervisor is entitled to a 50% discount on every order. Must requalify annually.

Note: Once a distributor has qualified for senior consultant the following monthly discount scale will apply:

1. 35% = 0 – 1999 Vp (volume points)
2. 42% = 2000 – 4000 Vp (volume points)
3. 42% = 1000 in one order = Success Builder.

After acknowledged as full qualified supervisor, a distributor start to get eligible for royalties or bonuses. The next higher qualification is the World Team.

A distributor will qualify as a World Team with the following provisions:

1. Achieving a total volume of 10.000 points in one volume month or
2. Achieving a total of 2500 points each month for four consecutive months
or
3. Achieving 500 points of royalty points in one volume month.

Successful Supervisors have the opportunity to proceed to the higher echelon of the Herbalife Marketing Plan, which is the Top Achievers Business (TAB) Team. The Tab. Team is the distributors who have built an organization of their own and are qualified to receive the 2% leadership bonuses. 2% bonuses are paid out at each of the leadership levels. There are three steps within the TAB Team: Global Expansion Team (GET), Millionaire Team and President's Team:

- a. Global Expansion Team (GET): by achieving 1000 Royalty Points for three consecutive months. On the first of the following month, a distributor will be promoted to Global Expansion Team (GET) member.
- b. Millionaire Team: by Achieve 4,000 Royalty Points for three consecutive months. On the first of the following month, a distributor will be promoted to Millionaire Team member.
- c. President's Team: Achieve 10,000 Royalty Points in three consecutive months. After a waiting period of three months, earn a 2% to 6% Production Bonus.
- d. 20K President: Achieve 20,000 Royalty Points in three consecutive months. After a waiting period of three months, earn a 2% to 6,5% Production Bonus.
- e. 30K President: Achieve 30,000 Royalty Points in three consecutive months. After a waiting period of three months, earn a 2% to 6,75% Production Bonus.
- f. 50K President: Achieve 50,000 Royalty Points in three consecutive months. After a waiting period of three months, earn a 2% to 7%

Production Bonus. The levels continue to 90K President but the maximum percentage bonus production is achieved in this level.

- g. Executive President's Team: achieving 10,000 Royalty Points in at least six months between January 1 and December 31 in any given year and have one (1) first line President's Team member who has fulfilled all qualification requirements.
- h. Senior executive president's Team: achieve 10,000 Royalty Points in at least six months between January 1 and December 31 in any given year and have two (2) first line President's Team members who have fulfilled all qualification requirements.
- i. International Executive President's Team: achieve 10,000 Royalty Points in at least six months between January 1 and December 31 in any given year and have three (3) first line President's Team members who have fulfilled all qualification requirements.
- j. Chief Executive President's Team: achieve 10,000 Royalty Points in at least six months between January 1 and December 31 in any given year and have four (4) first line President's Team members who have fulfilled all qualification requirements.
- k. Chairman's Club: achieve 10,000 Royalty Points in at least six months between January 1 and December 31 in any given year and have five (5) or more first line President's Team members who have fulfilled all qualification requirements.

1. Founder's Circle: achieve 10,000 Royalty Points in at least six months between January 1 and December 31 in any given year and have ten (10) or more first line President's Team members who have fulfilled all qualification requirements.

Volume points are point values of any Herbalife product that applies worldwide and is equal in all countries. In the bonus system, volume is the main reference point to calculate and qualify distributors' achievement which ultimately determine the amount of bonuses given to them. There are a number of ways volume is credited in the Herbalife Marketing Plan:

- a. Personally Purchased Volume: the volume of purchases made directly to Herbalife using identification numbers.
- b. Personal Volume: as a full qualified supervisor, purchases made at a discount of 50% and purchases by downline distributors of 25%, 35% and 42% calculated as a private volume (excluding any orders placed at 50% discount).
- c. Group Volume: the volume on orders purchased at a Temporary 50% discount, by Qualifying Supervisor(s) in their qualifying month. This Temporary 50% Volume is accumulated as Personal Volume for the Qualifying Supervisor who purchased it, but is Group Volume for the Fully Qualified Supervisor. The Fully Qualified Supervisor may earn Royalty Overrides on their Group Volume if all other Royalty Override requirements are met. See "Qualifying as a Supervisor" and "Temporary 50%" sections for complete details.

- d. **Total Volume:** the combined total of a Supervisor's Personal Volume plus Group Volume.
- e. **Organization Volume:** the accumulated volume amount on which a Supervisor earns Royalty Overrides. For instance, volume of purchases under the supervisor within a supervisor's organization is 10.000. So the overriding royalty that is obtained is $10000 \times 5\% = 500$ points overriding royalty.
- f. **Encumbered Volume:** all volume produced by any Distributor qualifying for Supervisor in your personal organization, down to the first qualified Supervisor, who has achieved 2,500 Volume Points or more at 25% - 42% discount, in one Volume Month.
- g. **Unencumbered Volume:** all volume produced by anyone in your personal organization, down to the first qualified Supervisor, who achieves less than 2,500 Volume Points in one Volume Month, plus all your own Personal Volume. Therefore, this is volume that is not used by anyone for Supervisor qualification purposes.
- h. **Matching Volume** is the volume a sponsoring Supervisor must have through personal orders or by Distributors in their personal organization in a given month to equal or exceed the volume achieved by their downline Distributor(s) who are qualifying for Supervisor. Without adequate Matching Volume, the new Supervisor will go to the next upline Supervisor.²⁰

²⁰ Herbalife Guide Book 4, page 4-5.

For the distributors or marketers who are members of this company, there are several types of income that they can get. Those are:

- a. Direct Retailing Profit: profit from directly sales to consumers.
- b. Wholesale Profit (Commission): profit gap between an upline's purchase for the products and a downline's purchase for the product in the organization up to 25%. This is he chart of split commission from a wholesale advantage.

Table 2: Example for Split Commission in wholesale transaction.

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%

- c. Overriding Royalty Revenue (Royalty Payment for Referrals) 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.

Supervisors who meet the specified requirements to earn Royalty Overrides must also comply with Herbalife's Ten Retail Customers Rule²¹ and the 70% Rule²², 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 Distributor. The amount of Royalty override revenue is measured from the total volume achieved.

Table 3: 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%

- d. Monthly Production Bonus: TAB Team member you are eligible to receive from a 2% to 7% Production Bonus on your entire downline organization's volume. Production Bonus earnings are paid monthly to all

²¹ **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.

²² **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.

qualified TAB Team members. The more details about the system of production will be presented in chapter discussion and analysis.

- e. Annual Bonus: A bonus payment representing a percentage of Herbalife's worldwide sales is distributed annually among Herbalife's top achievers in recognition of their outstanding performance in advancing sales of Herbalife products.
- f. Eligibility for Vacation and Training Events: 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 the home.
- g. Awards and recognition of presidential plus for 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).²³

²³ *Herbalife Handbook 4, Sales And Marketing Plans And Business Rules, 9 and 12.*

C. *Ju'alah* Contract

Discussion about *Ju'alah* contract is listed almost in every books of fiqh such as *At Tahdhîb*, *Minhâjut Thullâb*, *Fath al Qarîb*, *Al Iqnâ'*, *Mughny al Muhtâj*, *al Muhadzab*, *Al Fiqh al Islamy Waadillatuh*, etc. Nevertheless, the discussion of *ju'alah* is not as complete as the discussion of *ijârah*. This is because some scholars see similarities between *ju'alah* and *ijârah*. As a matter of fact, some argue that *ju'alah* contract is a part of the *ijârah* contract.

However, *ju'alah* contract is not the same as *ijârah* contract. In *ju'alah* transaction, the order demanded by *jâ'il* is a specified target that must be achieved. Curing diseases for example. In this case, the *'âmil* will not get any reward if the patient does not recover. While the *ijârah* contract, when *'âmil* has work on something that was ordered by the tenant, the *'âmil* get the agreed payment although the whole target is not met.²⁴ For example, we hire someone to paint our house with wage of 50,000, - per day. Then the overall target of house painting is not finished in a day work, *'âmil* still get the 50,000, - wages because the contract is to paint for 1 day. By using *ju'alah* contract, then the contract would be like this, “paint the whole interior wall of my house in a week. If you can reach the target, then I will give you 1 million rupiahs reward”.

Thus, the most identical matter in *ju'alah* contract is the relationship between the target achieved and the reward given. The payment term commonly uses reward, not wage or fee. Wage or fee are both used in a concern of *ijârah* contract. *Ju'alah* contract do not notice how and how long *'âmil* does the job, but

²⁴ Wahbah Zuhaili, *Al Fiqh al Islamy wa Adillatuh*, book 5 (Damascus: Dâr al Fikr), 3867.

notice the target reached. While *ijârah* contract concerned on type of job and duration of job.

Table 4: Differences between *ju`alah* and *ijârah* contract.²⁵

	<i>Ju`alah</i> Contract	<i>Ijârah</i> Contract
Acceptance (<i>qabûl</i>)	Not required	Required
Uncertainty of task	The nature of the task to be done can be in the form of known or unknown.	The task and period of employment must be determined.
Entitlement of reward or <i>ujrah</i>	Can not be given upfront	It is permissible to pay the wages/ <i>ujrah</i> upfront
Nature of contract	The nature of the contract is permissible (<i>jâiz</i>) and not binding, which can be revoked by one of the contracting parties.	The contract is binding and it cannot be revoked without the consent of the other party.
General/specific <i>'âmil</i>	May be made generally without specifying any party who will do it.	The person who will undertake the task must be determined.
Control over worker	No	Yes

والجعالة جائزة من الطرفين : طرف الجاعل و طرف المجرول له ... وهي التزام مطلق التصرف عوضا معلوما على عمل معين او مجهول لمعين او غيره.

"*Ju`alah* is conducted by two parties, the *jâ'il* (the first party who has willingness to compensate someone for a job) and *maj'ul lah* party (the second party who will do an order from the first party) ..., (*Ju`alah*) is the competent legal commitment to provide a certain return on a particular job or not particular to certain or uncertain people."²⁶

²⁵ *Malaysian Islamic Capital Market Magazine*, Volume 7 January-June 2012. 14.

²⁶ Syeikh Ibrahim Al Bajuri, *Hasyiyah Al Bajuri*, Book 2 (Mecca: Haramain), 33.

1. Definition of *Ju'âlah* Contract

Terms *'aqd* , agreement, and contract represent activities of two or more parties in the context of mu'âmalah and business. In The Compilation of Islamic Finance Law (Kompilasi Hukum Ekonomi Syariah/KHES), it is stated that *'aqd* is a treaty in a contract between two or more parties to do or not do certain legal acts. Burgerlijk wetboek (B.W). article 1313 determines an agreement or consent as an act by which one or more attach himself to one or more other people. Contract is an act committed by two or more parties in which each party is required to perform one or more achievements. In this terms, such a contract is an agreement as well. However, the contract is in the form of a written agreement.

In The Compilation of Islamic Finance Law (Kompilasi Hukum Ekonomi Syariah/KHES), there are many words about economic transactions. Some of them have similarities in definition as well as practice. *'Aqd* is an agreement in a contract between two or more parties to do or not to do certain legal acts. *Kafalah* is a guarantee given by the guarantor to the third party/lender to afford the obligation of the second party/borrower. *Ijârah* is a lease of goods or services within a specified time with certain payment. *Ju'âlah* is a certain agreement with benefits between the first party and the second party for the implementation of a task or a service performed by a second party for the first party.²⁷

Letter *jîm* in lafadz *ju'âlah* can be read by three vowels: *ju'âlah* , *ja'âlah*, and *Ji'âlah* (جُعَالَةٌ, جَعَالَةٌ, وَجَعَالَةٌ). *Ju'âlah* is an agreement of using someone to reach certain target which the result is still uncertain. For instance, providing

²⁷ *Kompilasi Hukum Ekonomi Syariah*, (Bandung: Fokus Media, 2009).

some rewards for those who finds lost treasure, digs a well until reaching the water, and heal a sick man until recovery.²⁸

National Syariah Council (Dewan Syariah Nasional/DSN) in its fatwa about *Ju'alah*, gives some limitations concerning *Ju'alah* :

- a. *Ju'alah* is a promise or commitment (*iltizâm*) to reward (*'iwadh/ju'l*) upon the achievement of certain results (*natîjah*) were determined from a job.
- b. *Jâ'il* is the party who promises to deliver certain benefits upon attainment of the work (*natîjah*) were determined.
- c. *Maj'ûl lah* is the party who implements *Ju'alah* /the work.²⁹. in this research, *maj'ûl lah* also means *'âmil* or worker.

One important point we need to note in *ju'alah* contract is the job performed by *ma'jûl lah/'âmil*. Although target becomes priority of the contract, but some scholars argue that the type of job should be determined as well. It is important to consider the way to target. As stated in a fiqh principle, "lil wasail hukmul maqashid". In every way, there is law of the purpose.

There are four essential principles (*rukun/p. arkân*) of *ju'alah* contract as stated in book *Al Wasîth Fil Muhadzab*. Those are:

- a. *Shîghah*: some words spoken by *jâ'il* to give clear order as well as the reward will be given (*ijâb*). In this contract, there is no special *qabûl* required. The *qabûl* refers to everyone who knows this information.

²⁸ Sayyid Sabiq, *Fiqh As Sunnah* Book 3(Beirut: Dâr al Kutb al Ilmiyyah), 351.

²⁹ *Fatwa Dewan Syari'ah Nasional* No: 62/Dsn-Mui/Xii/2007 About *'aqd ju'alah*.

- b. *‘Āqidayn* (parties of the contract): capability of *jâ‘il* to conduct this kind of contract is required. *Jâ‘il* doesn't have to choose whom of certain people he orders.
- c. *‘Amal* (job): deciding kinds of job should prioritize to reduce the *gharar* entity. But the existence of deciding jobs by *‘âmil* is not an obligation.
- d. *Ja‘l* (reward): there must be certain clear amount of rewards to give.³⁰

2. Terms and Conditions

Islamic jurisprudence determine terms and conditions of the *Ju‘âlah* contract:

- a. for those who conduct the contract, Syafi'ite and Hanbalite explained that they should be *bâligh*, intelligent, and clever. Then Malikiyyah just required cleverness of both. The worker/*‘âmil* should be person who is believed capable of doing the job.
- b. compensation or reward provided should be clear.
- c. the benefits achieved should be clear and the job must be allowed by *syari‘ah* principles. In case of work purposed for worshiping and having *taqarrub* to Allah SWT, it can not be done with the *ju‘âlah* contract.³¹

³⁰ Abu Hamid Muhammad bin Muhammad Al Ghazali, *Al Wasith fil Muhadzab* book 4 (Kairo: Dâr al Islam, 1995), 211.

³¹ For instance, a case where first party hires someone to make a pilgrimage for the first party uses *ijarah* contract. In this context, *ijarah* contract is almost used by the heirs, judges, and other parties. As stated in Syamsul Munirah, there are 14 terms and conditions required when someone wants to conduct an *ijarah* contract to make a pilgrimage. One of them is that the hired man should have made a pilgrimage before. Furthermore, it is stated that someone can conduct a *ju‘alah* contract to get someone to make a pilgrimage. It is stated an expression "*jâ‘altuka litahujja*" (make me a pilgrimage then I will give you reward). Ali bin Hasan Baharun, *Asy Syams al Munirah* book 2, (Pasuruan: Dâr al Lughah wad Da‘wah, 2008), 263-266.

- d. there is no time or duration limitation. In case where determining time and duration is required, then it is *ijârah* contract. Determining time limitation is sometimes found in *ju'âlah* contract. But it includes the target. For example, “whoever can fix my car in one day, then I'll give him 5 millions for reward.”³²

National Syariah Council (DSN/Dewan Syari'ah Nasional) determines terms and conditions about *ju'âlah* contract:

- a. *Jâ'il* parties must have legal capacity and writerity (*al-tasharruf al muthlaq*) to perform the contract;
- b. Enterprises in this contract (*maj'ûl 'alayh/'amal*) must not be prohibited by the Islamic law;
- c. The achievement (*natîjah*) referred must be clear and known by both parties in the first offer.
- d. The amount of reward (*'iwadl/ja'l*) should be determined by the *jâ'il* and informed between two parties in the first offer.
- e. There should be no reward conditions given in advance/ upfront (before doing the job).³³

3. Legal Concept

Ju'âlah is justified right, legal, and *mubâh* (permissible) in Islamic law.

Most scholars depend their law concept of *ju'âlah* transaction on Al Quran *sûrah*

Yusuf verse 72:

³² Wahbah zuhaili, *Al Fiqh Al Islami Waadillatuh* Book 5 (Damascus: Dâr al Fikr), 3868.

³³ Fatwa DSN No: 62/DSN-MUI/XII/2007 About Ju'alah Contract.

قَالُوا نَفَقْدُ صُوعَ 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.”³⁴

Interpreting the verse, Sheykh Ahmad Bin Ali Abu Bakr Al Rozi explained that this is the basic legal source for scholars to define that transactions of *ju‘alah* permissible. That is transaction with *Shîghah* like, "Whoever brought these goods to a particular place, then I will give you certain benefits".³⁵

Another source (*nash*) of law regarding *Ju‘alah* contract is referred to the following hadith:

حَدَّثَنَا أَبُو النُّعْمَانِ، حَدَّثَنَا أَبُو عَوَانَةَ، عَنْ أَبِي بَشِيرٍ، عَنْ أَبِي الْمَوَكَّلِ، عَنْ أَبِي سَعِيدٍ رَضِيَ اللَّهُ عَنْهُ، قَالَ: انْطَلَقَ نَفَرٌ مِنْ أَصْحَابِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي سَفَرَةٍ سَافَرُوهَا، حَتَّى نَزَلُوا عَلَى حَيٍّ مِنْ أَحْيَاءِ الْعَرَبِ، فَاسْتَضَافُوهُمْ فَأَبَوْا أَنْ يُضَيِّقُوهُمْ، فَلَدِعَ سَيِّدُ ذَلِكَ الْحَيِّ، فَسَعَوْا لَهُ بِكُلِّ شَيْءٍ لَا يَنْفَعُهُ شَيْءٌ، فَقَالَ بَعْضُهُمْ: لَوْ أَتَيْتُمْ هَؤُلَاءِ الرَّهْطَ الَّذِينَ نَزَلُوا، لَعَلَّهُ أَنْ يَكُونَ عِنْدَ بَعْضِهِمْ شَيْءٌ، فَأَتَوْهُمْ، فَقَالُوا: يَا أَيُّهَا الرَّهْطُ إِنَّ سَيِّدَنَا لَدِعَ، وَسَعَيْنَا لَهُ بِكُلِّ شَيْءٍ لَا يَنْفَعُهُ، فَهَلْ عِنْدَ أَحَدٍ [ص:93] مِنْكُمْ مِنْ شَيْءٍ؟ فَقَالَ بَعْضُهُمْ: نَعَمْ، وَاللَّهِ إِنِّي لَأَرْقِي، وَلَكِنْ وَاللَّهِ لَقَدِ اسْتَضَفْنَاكُمْ فَلَمْ تُضَيِّقُونَا، فَمَا أَنَا بِرَاقٍ لَكُمْ حَتَّى تَجْعَلُوا لَنَا جُعْلًا، فَصَاحُوهُمْ عَلَى قَطِيعٍ مِنَ الْعَنَمِ، فَانْطَلَقَ يَتَنَفَّلُ عَلَيْهِ، وَيَقْرَأُ: الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ فَكَأَنَّمَا نُشِطَ مِنْ عِقَالٍ، فَانْطَلَقَ بِمَشْيِ وَمَا بِهِ قَلْبَةٌ، قَالَ: فَأَوْفَوْهُمْ جُعْلَهُمُ الَّذِي صَاحُوهُمْ عَلَيْهِ، فَقَالَ بَعْضُهُمْ: ااقْسِمُوا، فَقَالَ الَّذِي رَقِيَ: لَا تَفْعَلُوا حَتَّى

³⁴ QS. Yusuf: 72.

³⁵ Ahmad bin Ali Abu Bakr ar Razi al Jashash, *Ahkamul Quran Lil Jashash* Book 4, (Beirut: Dâr al Kutb al Ilmiyyah, 1994), 390.

نَأْيِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَتَذَكَّرَ لَهُ الَّذِي كَانَ، فَتَنظَّرَ مَا يَأْمُرُنَا، فَقَدِمُوا عَلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَذَكَرُوا لَهُ، فَقَالَ: «وَمَا يُدْرِيكَ أَنَّهَا رُقِيَةٌ»، ثُمَّ قَالَ: «قَدْ أَصَبْتُمْ، أَقْسِمُوا، وَاضْرِبُوا لِي مَعَكُمْ سَهْمًا» فَضَحِكَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ.

“Narrated from Abu Numan, Abu Awana told, from Abu Al Moutawakkil, from Abu Said R.A. said: a group of Prophet Muhammad SAW companions make a trip, until they reach an Arabian area. The group wanted the residents to give treat. Then the leader of the residents got sick. No one from the residents could heal the leader. Then they asked one of the group, “is there one of you can do something to heal our leader?”. One of the group said, “I can do something to heal your leader with a ruqyah (certain prays used to heal). But you didn’t treat us so will we treat you?. Well, we will heal your leader but you have to pay us something”. Then, the resident agreed to give the group a kind of goat. The man pray “Alhamdu lillahi rabbil alamin”, futhermore the leader recovered. Then the resident fulfill the promise. Then, one of the group said, “lets share this goat to eat!”. Another man said, “no, until we ask this case to prophet SAW”. As they meet prophet SAW, they tell the whole story. Then Rasululllah SAW laughed and said, “share this goat. This is yours.”³⁶

In term *ijmâ’*³⁷, majority of scholars said that the law of Ju’alah transaction is legitimate and permissible. They based their opinions to the verse and the hadith above.

وقد أجازها جمهور الفقهاء من المالكية والشافعية والحنابلة عملاً بقصة يوسف عليه السلام مع إخوته: { قالوا: نفقد صُواع الملك، ولمن جاء به حمل بعير، وأنا به زعيم } [يوسف: 12/72]،

ويؤيده قوله عليه الصلاة والسلام يوم حُنين: «من قتل قتيلاً فله سلبه».³⁸

“The majority scholars of Maliki and Shafi’i and Hanbali referring to story of Yusuf peace be upon him with his brothers: { 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. [Yusuf: 12/72], and supported by saying peace be upon him on Hunain Day: «Whoever killed people deserve that (reward).”

³⁶ Muhammad bin Ismail Al Bukhari, *Shahih Bukhari*, Book 3 (Dâr Thuuq an Najah), 92.

³⁷ *Ijma’* (Consensus): consensus on Islamic law clearly stated both in the form of an agreement or silence all / majority clerical authority. Totok Jumantoro AND Samsul Munir Amin, *Kamus Ilmu Ushul Fiqh*, (Jakarta: AMZAH, 2009), 103.

³⁸ Wahbah az Zuhaili, *Al Fiqh Al Islamy wa Adillatuh* Book 4, (Damascus: Dâr al Fikr), 2922.

Conversely, Imam Abu Hanîfah and some other scholars prohibited the practice of *ju'alah* contract. The scholars who prohibit the transaction of *ju'alah* based the idea to its essential of *gharar* (ambiguity) transaction or *khathr* (danger):

وَعُمْدَةٌ مَنْ مَنَعَهُ: الْغَرَرُ الَّذِي فِيهِ قِيَاسًا عَلَى سَائِرِ الْإِجَارَاتِ.³⁹

The basic logic of prevention: *gharar* (ambiguity) as compared to the other kinds of lease. Furthermore, Wahbah Zuhaili explained that the meaning of *gharar* here is the type and duration of work.

The other source of *ijtihâd* regarding *ju'alah* contract discussed in this chapter is by *qiyâs* (analogy).⁴⁰ Scholars make an analogy to similar other activities to the Qur'an, the hadith the Prophet, and the consensus of the *ju'alah* contract. For instance, legal provisions issued by the Dâr al iftâ' (Egypt) that one of the transactions (besides contract *bay'*) applied in the network marketing system is *ju'alah* transaction.⁴¹ There are three main terms in the way of deriving law (*ijtihâd*) by *qiyâs* :

1. *Ashl*: the origin law that has been ruled by nash and there found similarity of illat with furu'. In *ju'alah* contract, The *ashl* is taken from al Qurân Surah Yusuf Verse 72 and The Hadith above narrated by Bukhari and *ijmâ'* by scholars of Islamic law.

³⁹ Abul Walid Muhammad al Qurthuby, *Bidayatul Mujtahid* Book 4 (Kairo: Dâr al Hadits, 2004), 20.

⁴⁰ Qiyâs: prevailing laws to laws *ashl furu'* similarity illat that can not be achieved through a language approach. Totok Jumantoro dan Samsul Munir Amin, *Kamus Ilmu ushul fiqh*, (Jakarta: AMZAH, 2009), Hal 270.

⁴¹ <http://www.dar-alifta.org/ViewFatwa.aspx?ID=3861>, accessed 4 Nopember 2012.

2. *Furû'*: The new problem has not been determined because there is no legal texts as the basis yet. For example the bonus and the contract system conducted. It is new because this system was appeared and implemented about 60 years ago.
3. *'Illah*: the essential characteristic of *ashl* which is the same as the *furû'*, noted by scholars to derive the law. For example, the similar meanings Shîghah and problems of the reward, award, revenue between Ju'âlah contract and system of bonus in network marketing enterprises.

The literature below are taken from on of the books of Madzhab Hanafi, Maliki, Syafi'y, and Hanbali that shows their perspectives about *ju'âlah*:

وَقَالَ أَبُو حَنِيفَةَ رَضِيَ اللَّهُ عَنْهُ فِي الرَّجُلِ يُعْطَى السَّلْعَةَ يَبِيعُهَا لَهُ وَقَدْ قَوْمَهَا صَاحِبَهَا قِيمَةً فَقَالَ إِنْ بَعَثَهَا بِهَذَا الثَّمَنِ الَّذِي أَمَرْتَك بِهِ فَلِك دِينَارٌ أَوْ شَيْءٌ يُسَمِّيهِ لَهُ يَتْرَاضِيَانِ عَلَيْهِ وَإِنْ لَمْ تَبِعْهَا فَلَيْسَ لَكَ شَيْءٌ إِنْ هَذَا فَاسِدٌ فَإِنْ بَاعَهَا بِذَلِكَ فَالْبَيْعُ جَائِزٌ وَلَهُ أَجْرٌ مِثْلَهُ فِيمَا بَاعَ وَلَا يُجَاوِزُ بِهِ مَا سَمِيَ لَهُ مِنَ الْأَجْرِ وَإِنْ لَمْ يَبِعْهَا فَلَهُ أَجْرٌ مِثْلَهُ.

“Imam Abu Hanifah R.A. gave his opinion on the problem of a man who was ordered to sell the goods. If the goods are sold at a price that has been determined, then he got the dinar. However, if he is not able to sell the goods, then he does not get any reward/wage. Actually, this ‘aqd is broken. whether he succeed selling the goods or not, he should still get paid for the work.”⁴²

قَالَ: سَأَلْنَا مَالِكًا عَنْ هَذَا فَقَالَ لَا بَأْسَ بِهِ، لَمْ يَزَلِ النَّاسُ يَتَجَاعَلُونَ بِالْمَدِينَةِ عِنْدَنَا يُجْعَلُ الْقَاعِدُ لِلخَارِجِ، قَالَ: فَمُلْنَا لِمَالِكٍ: وَيَخْرُجُ لَهُمُ الْعَطَاءُ؟ قَالَ مَالِكٌ: رُبَّمَا خَرَجَ لَهُمْ وَرُبَّمَا لَمْ يَخْرُجْ لَهُمْ، قُلْتُ: فَهَذَا الَّذِي ذَكَرَ مَالِكٌ أَنَّهُ لَا بَأْسَ بِهِ.

⁴² Muḥammad ibn al-Ḥasan al-Shaybānī, *Al Hujjah ala Ahlil Madinah Book 2* (Beirut: Alam al Kutb, 1980), 732-735.

We asked Malik about this (Ju'alah) and he said no problem, the Medina is still practicing the Ju'alah with the other (or people outside the Medina). Then we asked, Are they rewarded? Then he said, they may or may not be rewarded. This is what Imam Malik meant concerning the permission of practicing Ju'alah.⁴³

وَلَا جَعَلَ لِأَحَدٍ جَاءَ بِأَبِيٍّ، وَلَا ضَالَّةٍ إِلَّا أَنْ يَكُونَ جَعَلَ لَهُ فِيهِ فَيَكُونُ لَهُ مَا جَعَلَ لَهُ وَسَوَاءٌ فِي ذَلِكَ مَنْ يُعْرِفُ بِطَلَبِ الضَّوَالِّ وَمَنْ لَا يُعْرِفُ بِهِ وَمَنْ قَالَ لِأَجْنَبِيٍّ: إِنَّ جِئْتَنِي بِعَبْدِي الْأَبِيِّ فَلَكَ عَشْرَةُ دِينَارٍ

“There is no contest/competition to restore the lost slave unless he made a ju'alah contract inside, So is to look for something or someone is missing and unknown whereabouts. As someone said to someone else, “if you can restore my escaped slave, then you will get 10 dinars”.⁴⁴

حَدَّثَنَا قَالَ سَأَلْتُ أَبِي عَنِ جَعْلِ الْأَبِيِّ إِذَا وَجِدَ خَارِجًا مِنَ الْمِصْرِ. قَالَ أَذْهَبَ إِلَى قَوْلِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَقَوْلِ عُمَرَ وَعَلِيٍّ دِينَارًا إِنْ أَتَيْتَنِي عَشْرَ دَرَاهِمًا إِذَا أَخَذَ خَارِجًا مِنَ الْمِصْرِ.

I asked about the competition for the return of escaping slaves from Egypt. Then he (Ahmad bin Hanbal) said, refer to the words of the Prophet Muhammad SAW, Umar RA and Ali RA regarding the dinar reward for whoever can restore the slave outside Egypt.⁴⁵

⁴³ Malik ibn Anas, *Al Mudawanah Book 1* (Beirut: Dâr al Kutb al Islamy, 1994), 527.

⁴⁴ Muhammad bin Idris Asy Syafi'y, *Al Umm Book 4* (Beirut: Dâr al Ma'rifah, 1990), 75.

⁴⁵ Abdullah bin Ahmad ibn Hanbal, *Masail al Imam Ahmad* (Beirut: Al Maktab al Islamy, 1981), 310.

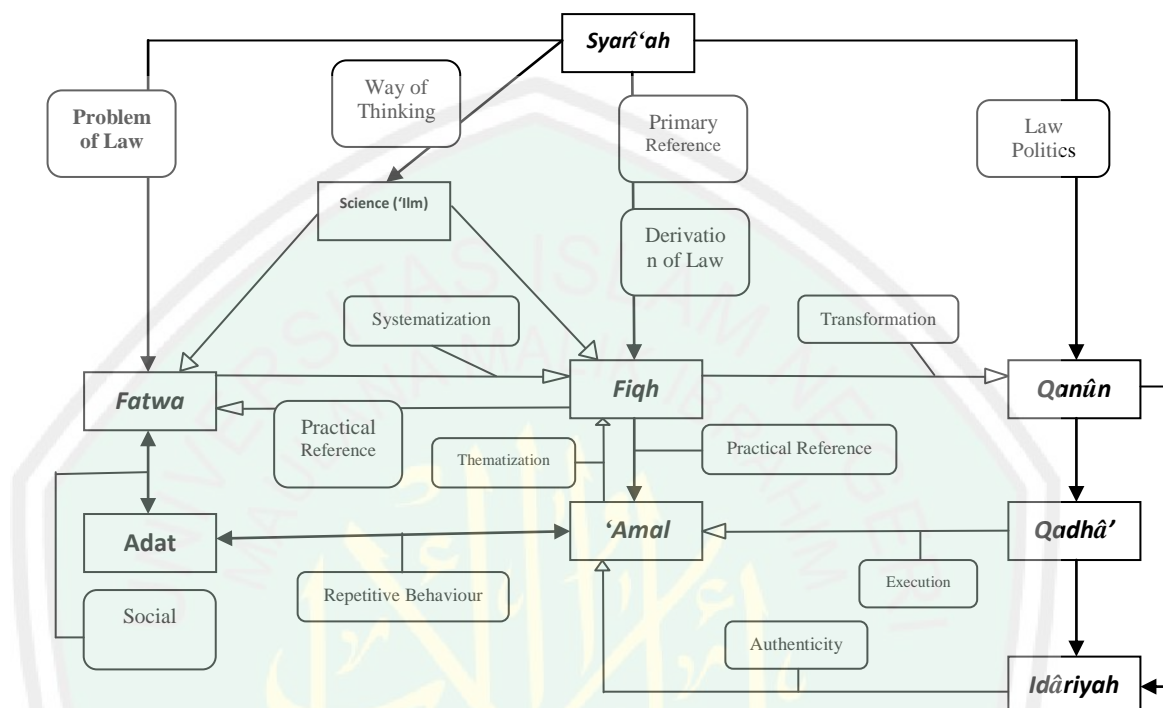


CHAPTER THREE FINDINGS AND DISCUSSION

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 *Syarî'ah*.
5. *fâsid*/vain: a condition that does not fulfill *rukns* and *syarths* according to *Syarî'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.

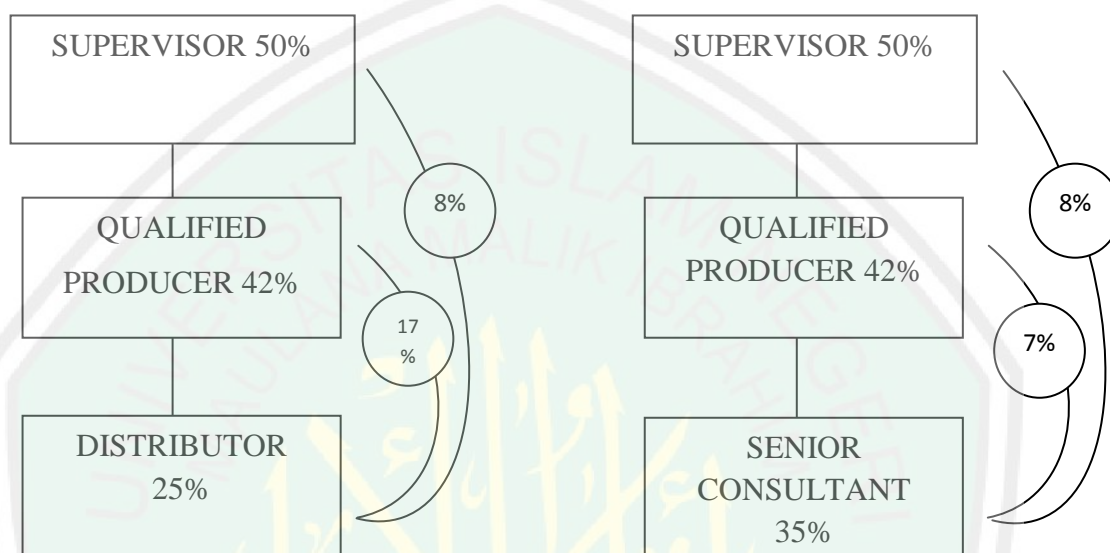


Diagram 2: Process of Split Commission

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 عَنْ 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 November 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'âlah*.

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 عَلَيَّ كَذَا وَكَذَا، فَهُوَ لَكَ "

Ibn 'Abbâs 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 بَعِيرٍ 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

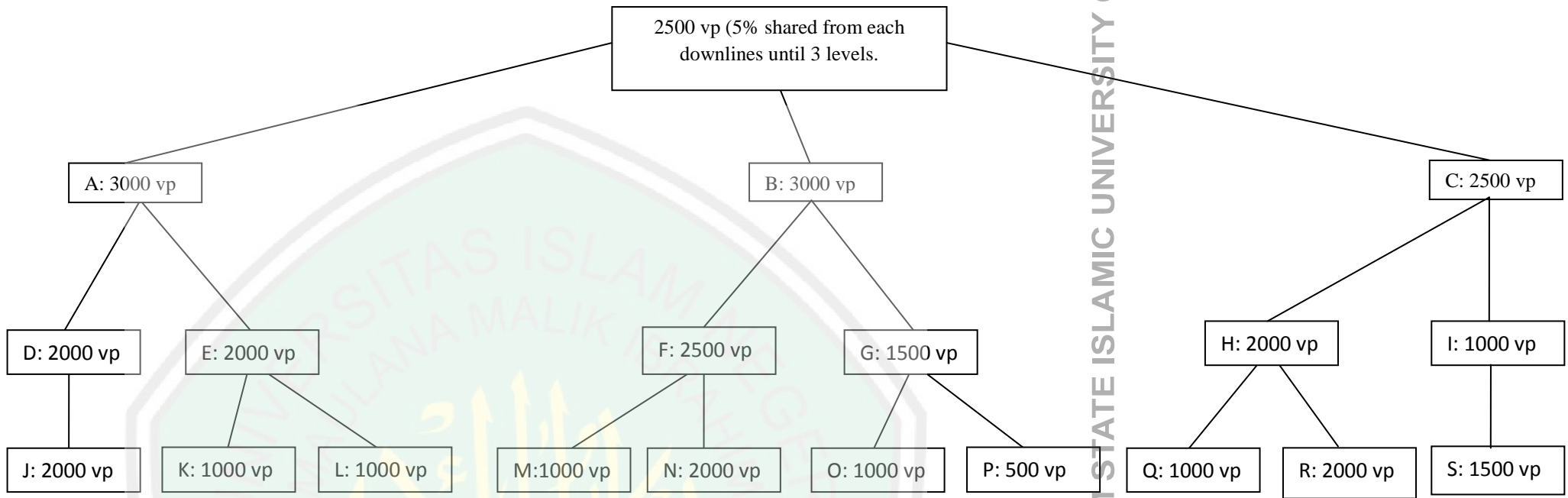
The first bonus got by any distributor in Herbalife in *ju'alah* contract between the company and the distributor is Overriding Royalty Revenue (Royalty

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 madzhab 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</i> & <i>jahalah</i>	Give <i>rukhsah</i> to <i>gharar</i> & <i>jahalah</i>	Give <i>rukhsah</i> to <i>gharar</i> & <i>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 Islami 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 Period			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	royalty	royalty	Requalification period from April to March														
points	points	points															

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

Qualification Period			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/*rukun* 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/*rukun* 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/*rukun* 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.

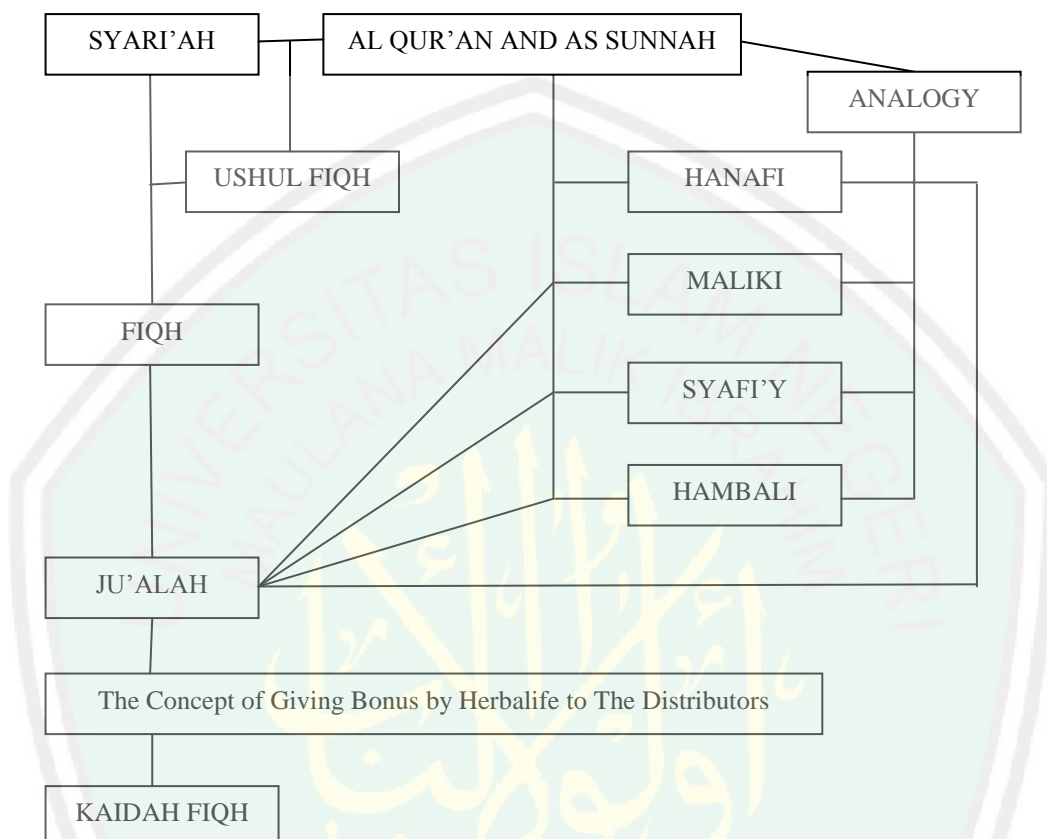
However, practices of fiqh will be considered unlawful if they are not in accordance with *syarī'ah*. *Syarī'ah* is basic of all because it comes from Allah and The Messenger SAW. *Bay'* transaction done inside *ju'alah* contract as practiced in Herbalife that (if any) consists *gharar*, *ghurur*, *dharar*, 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 *syari'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 Jumentoro 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/later 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.

Another 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.





CHAPTER FOUR CONCLUSION AND SUGGESTION

A. Conclusions

1. There are five kinds of transaction of awarding bonuses and rules Implemented in Herbalife Network Marketing Company, as follows:
 - a. Overriding Royalty Revenue: This kind of bonus is given monthly up to 5% for the three levels of downline.
 - b. Monthly Production Bonus: TAB Team members can get production bonus of the organization an extra 2% - 7%.
 - c. Annual Bonus: 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 percentage of all sales income in one year and given for top achievers.

- d. Eligibility for special vacations and trainings. Vacation and Training Events are held in exciting locations around the world.
 - e. Awards and recognition of presidential plus for watches and rings that are given every year in the extravaganza event. They are given for the highest achievers of building the network.
2. The concept of giving bonus in the perspective of *ju'alah* can be observed from the different ideas of four schools (*madhab*). *Ju'alah* transaction is allowed by Malikites, Syafi'ites, Hambalites and many scholars referring Al Quran Surah Yusuf verse 72. They also refer to hadiths such as a hadith narrated from Abi Sa'id and some other hadiths in their *ijtihad*.
- Buying, selling, and *samsarah* which are conducted in transaction of *ju'alah* applied in network marketing business are halal/allowed as long as they do not contain any elements of *riba*, *gharar*, *ghurur*, *dharar*, *maysir*. *Ju'alah* transaction contains elements of *gharar* and *juhalah* in the type of work and the duration of work. This is the reason why hanafites and some minority scholars consider *ju'alah* transaction unlawful. Majority scholars who allowed this transaction give *hukm/law rukhsah* to the element as a result of their belief in permission doing the transaction from Allah through the interpretation of the verse above.
- At the end of the discussion of *fiqh muqâran* in *ju'alah* contract, the more empowered opinion belongs to majority scholars (*jumhûr 'ulamâ'*) who said that *ju'alah* practice is allowed. Ultimately, the chosen opinion about *ju'alah* with its practices described in classic literature and contemporary ones is an allowed

transaction using Qiyas. Hence, the concept of giving bonuses by Herbalife is in accordance with the concept of *ju'alah* in Islamic jurisprudence.

B. Suggestions

Ultimately, there should be nothing to wonder in transactions of awarding bonuses applied in almost every network marketing business. After considering the transaction as *ju'alah* contract with the *illat* announcement to finish order/*sayembara*, this system of awarding bonuses in network marketing business is lawful according to Islamic law. *Ju'alah* with its practices described in classic literature and contemporary ones is an allowed transaction.

Besides, there are still many things should be considered in network marketing business. So many cases such as 12 requirements issued by Syariah National Council in Fatwa No : 75/DSN MUI/VII 2009 about PLBS (Penjualan Langsung Berjenjang Syariah). A case of agreement between two transactors is also way ordered by syari'ah as stated in al Quran.

As a distributor, getting much bonuses is only reached if he or she has been able to build great network by way of getting them into the business. It was a difficult job and not everyone can do this. According to a data, there are only less than 40% people who comes to this business (where they have to sell products and build network) are success.

In building network, a distributor will invite any people to come to the business without considering that the people is competent enough or not to survive and develop. But the facts said that majority people failed after coming to

this business. This is because of the difficulty of the job and not everyone can do this. So that, a distributor should consider which of the people are competent to get them into this business or if not, there will be more people suffer. Giving difficult job to anyone without considering choosing able people to do job is not in accordance with syari'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.



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