

THE LEGAL CONSTRUCTION OF LICENSING AND SUPERVISION OF SHARIA MULTILEVEL MARKETING IN INDONESIAN TRADE LAW

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Abstract

Trade law in Indonesia has not accommodated Sharia Multilevel Marketing (Sharia MLM). The legitimacy of the Sharia status and supervision by the the National Sharia Council of the Indonesian Ulema Council (DSN MUI) does not have legal implications for the legality of the Sharia MLM company business entity. This article aims to explain the urgency of Sharia MLM regulation in trade law and provide input on the legal construction of licensing and supervision of Sharia MLM to maximize the achievement of trade law in Indonesia. This normative legal research uses statutory and conceptual approaches with a legal construction method. The legal materials were analyzed using content analysis technique and prescriptive methodology. The results show that the legal construction of Sharia MLM in trade law is urgently carried out by the government using an integration-partnership model between DSN MUI and the Indonesian Ministry of Trade in the licensing and supervision system of Sharia MLM. The application of this model can legitimize the legal status of a Sharia MLM company so that it can become a locomotive for accelerating the Islamic economic ecosystem to advance the national economy.

Hukum perdagangan di Indonesia belum mengakomodasi Multilevel Marketing Syariah (MLM Syariah). Legitimasi status Syariah dan pengawasan oleh Dewan Syariah Nasional Majelis Ulama Indonesia (DSN MUI) tidak berimplikasi hukum

terhadap status hukum badan usaha perseroan MLM Syariah. Artikel ini bertujuan menjelaskan urgensi pengaturan MLM Syariah dalam hukum perdagangan dan memberikan masukan konstruksi hukum perizinan dan pengawasan MLM Syariah dalam rangka memaksimalkan tercapainya tujuan hukum perdagangan di Indonesia. Penelitian hukum normatif ini menggunakan pendekatan perundang-undangan dan pendekatan konseptual dengan metode konstruksi hukum. Bahan hukum dianalisis menggunakan teknik content analysis dan metode preskriptif. Hasil penelitian menunjukkan bahwa konstruksi hukum MLM Syariah dalam hukum perdagangan urgen dilakukan pemerintah dengan menggunakan model integrasi-kemitraan antara DSN MUI dan Kementerian Perdagangan dalam sistem perizinan dan pengawasan MLM Syariah. Penerapan model ini dapat melegitimasi status hukum perseroan MLM Syariah sehingga dapat menjadi lokomotif akselerasi ekosistem ekonomi Islam untuk memajukan perekonomian nasional.

Keywords: *Islamic economic ecosystem, legal construction, sharia multi-level marketing, trade law*

Introduction

Indonesia's Multi-Level Marketing Syariah (Sharia MLM) industry has not developed significantly. Since the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN MUI) Number 75/DSN-MUI/VII/2009 concerning The Guidelines of Sharia Tiered Direct Selling (Sharia MLM Fatwa) was issued, there have only been 11 (eleven) Shariah MLM companies on June 2022.¹ The percentage of Sharia MLM companies is very small compared to the total of MLM companies that have direct selling business licenses and are registered as members of the association of direct selling companies in Indonesia. According to the Ministry of Trade's data as of December 31, 2021, there are 371 registered direct-selling companies. Among them are 106 companies which are members of the Indonesian Direct Sales Association (APLI) (update 15 June 2022),² and 178 companies which are members of the Association of Indonesian Direct Sales Companies (AP2LI).³ One of the reasons is that there is no specific regulation in trade law to support Sharia MLM business operations.⁴ Due to its voluntary characteristic, the Sharia MLM

1 "Senarai Perusahaan Bersertifikat – DSN-MUI," accessed July 15, 2022, <https://dsnmu.or.id/sertifikasi/senarai-perusahaan-bersertifikat/>.

2 "APLI - Asosiasi Penjualan Langsung Indonesia," APLI - Asosiasi Penjualan Langsung Indonesia, accessed December 3, 2021, <https://apli.id/>.

3 webhostbali.com, "Daftar Perseroan Anggota AP2LI," *Prensa CDP* (blog), May 11, 2022, <https://www.prensacdp.com/daftar-perseroan-anggota-ap2li/>.

4 Interview with Dr. Moch. Bukhari Muslim, Lc., MA. (Chairman of Industry, Business and Sharia Economics, DSN MUI), WhatsApp, April 12, 2021.

industry develops slowly. The legitimacy of sharia MLM is only through DSN MUI certification, Article 109 of Law Number 40 of 2007 concerning Limited Liability Companies (Limited Company Law),⁵ but the legal entity status is not a Sharia company as applicable in Sharia financial institutions.⁶ The legal vacuum of Sharia MLM in trade law creates uncertainty and results in the weakness of Islamic MLM institutions.

Sharia MLM carries Sharia principles, that it does not contain haram *li dzatibi*, *haram li ghairibi*, and haram because the contract is imperfect.⁷ Maximum profit in Sharia MLM is based on economic rationality of Islamic ethics,⁸ meanwhile conventional MLM refers to general business ethics, not relying on religious ideology. For this reason, it is necessary to have the legitimacy of the Sharia MLM institution specifically to confirm the identity and role of Sharia MLM in the country's economy.

This void of Sharia MLM legal norms shows that the state has not fully recognized the identity of the Sharia economy in Indonesia, which is not in line with the government's seriousness in using the sharia economic system as a pillar of the country's economy alongside the economic principles of Pancasila.⁹ The Indonesian government is focusing on advancing the economy through Islamic economic instruments by establishing KNEKS (National Committee of Islamic Economic and Finance) based on the Presidential Regulation (Perpres) No. 28 of 2020.¹⁰ The aim is to increase the development of the Islamic economic and financial ecosystem to support national economic development.¹¹

5 Interview with Dr. Moch. Bukhari Muslim, L.c., MA. (Chairman of Industry, Business and Sharia Economics, DSN MUI), WhatsApp, April 12, 2021.

6 Article 109 stipulates that a Company that conducts business activities based on sharia principles must have a Sharia Supervisory Board, which is appointed by the GMS on the recommendation of the Indonesian Ulama Council and is tasked with providing advice and suggestions to the Board of Directors and supervising the Company's activities in accordance with sharia principles.

7 Nur Asnawi and Muhammad Asnan Fanani, *Pemasaran Syariah: Teori, Filosofi, Dan Isu-Isu Kontemporer* (Depok: Rajawali Pers, 2017), 285.

8 Rationality in Islamic economics is strongly influenced by externalities that encourage one to do good to others in accordance with human nature. Altruism, humanity-bounded rationality, and social considerations are rationalities developed by Islamic economics that are based on authoritative sources. Ali Amin Isfandiari, "Melacak Teori Rasionalitas Ekonomi Berbasis Islamic Ethics," *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah* 6, no. 2 (December 1, 2015): 23–41, <https://doi.org/10.18326/muqtasid.v6i2.23-41>.

9 Muhammad Ali Akbar and Moh Idil Ghufroon, "Sinkronisasi Ekonomi Pancasila Dan Ekonomi Islam," *Jurnal Masharif Al-Syariah: Jurnal Ekonomi dan Perbankan Syariah* 4, no. 1 (June 13, 2019), <http://dx.doi.org/10.30651/jms.v4i1.2868>.

10 Tria Patrianti et al., "Halal Lifestyle; Expanding the Scope of Government Public Relations in Sharia Economy," *Al-Ilam - Journal of Contemporary Islamic Communication and Media* 1, no. 2 (2021): 178–96, <https://doi.org/10.33102/jcicom.vol1no2.27>.

11 Kusjuniati Kusjuniati, "Strategi Dan Peran Penting Komite Nasional Ekonomi Dan Keuangan Syariah

The existence of sharia economics in Indonesia is not only due to the support of political power, but logically it can also be a model that creates social justice for all Indonesian people. According to Chapra, justice in Islamic economics involves four things: a) the needs fulfillment; b) a respectable source of income; c) distribution of income and wealth; and d) growth and stability.¹² Under the Islamic economic system, entrepreneurs have freedom and can produce whatever they want, as long as the economic activities are still in line with *halal* (permitted) and *haram* (prohibited) regulations. All activities have their own moral and ethical boundaries no one can cross. Islam does not respect immoral acts, such as greed, selfishness, badness, waste, injustice, corruption, and crime. Wealth should not be distributed among the rich only but for the whole society, especially for Muslims according to Allah's command. The priority should be the family members and then society, which eventually gives positive impact for all humanity.

Islam also instructs the believers on how they should manage their income and wealth and what kind of benefits they will receive from Allah. Their benefit is based not only on the rewards in this world but also in the hereafter (Al Baqarah [2]: 261–262).¹³ All transactions must comply with the law given by Allah. Everyone has the same opportunity to get wealth and should not circulate within the groups of rich people. Islamic instruments such as zakat, the interest-free system, and inheritance law have unique implications for upholding social justice under the Islamic system. Furthermore, God rewards those who perform responsibilities towards their fellow Muslims. Especially when they channel aid, provide social security, guarantees, and insurance to beneficiaries in vulnerable environments and unforeseen circumstances. It is believed that if the state and society follow the rules and regulations given by Allah then a healthy and just society can be realized.¹⁴

In this case, Sharia MLM is one of the Islamic economic activities that can realize social justice based on sharia principles according to the DSN MUI fatwa. However, the power of political and legal configuration will definitely strengthen

(KNEKS) Dalam Mendukung Ketahanan Ekonomi Nasional," *Widya Balina* 5, no. 9 (June 29, 2020): 112–122.

12 Quoted by Idri Idri and Rohaizan Baru, "The Principles of Islamic Economics and Their Implementation in Indonesia," *International Journal of Academic Research in Business and Social Sciences* 7, no. 4 (2017): 337.

13 The Islamic concept of social justice is derived from divine foundations (divine knowledge) and from introspection by uncorrupted human nature, which is also a reflection of divine will. Hatem A. El-Karanshawy et al., "Islamic Economics: Theory, Policy and Social Justice," *Doha: Qatar Foundation*, 2015, xiv.

14 Toseef Azid and Lutfi Sunar, *Social Justice and Islamic Economics* (London: Routledge, <https://doi.org/10.4324/9780203713426>, 2019), 5–6.

the existence and function of the sharia economy so that it can be implemented perfectly in the corridor of development and fostering national law. The desired law is undoubtedly one that functions not only as a means to change society (*law as a tool of social engineering*, Roscoe Pound)¹⁵ to be more obedient to Islamic business principles. The law can also function as *social control* for sharia MLM business players through an excellent licensing and supervision system.¹⁶ For this reason, this article intends to outline the urgency of regulating Sharia MLM in trade law and offer legal formulations that can be applied to Sharia MLM that are accommodative to the halal ecosystem.

There are several previous normative studies on sharia multilevel marketing and the application of the DSN MUI Fatwa on Sharia multilevel marketing.¹⁷ Overall, no one has studied the legal void of Sharia MLM licensing and supervision in the trade law in Indonesia, especially with a legal construction approach. This article intends to describe the urgency of regulating Sharia MLM in trade law and offers legal formulations that can be applied in Sharia MLM that are accommodative to the halal ecosystem.

15 Bernard L. Tanya and Yoan N. Simanjuntak, *Teori Hukum, Strategi Tertib Hukum Manusia Lintas Ruang Dan Generasi* (Yogyakarta: Genta Publishing, 2019), 145–148.

16 Ridwan Ridwan, “Hukum dan Perubahan Sosial: (Perdebatan Dua Kutub Antara Hukum Sebagai Social Control dan Hukum Sebagai Social Engineering),” *Jurnal Jurisprudence* 6, no. 1 (January 6, 2017): 32–34, <https://doi.org/10.23917/jurisprudence.v6i1.2993>.

17 Among them are Mohammad Sa’eed Mitwally Alrahawan, “Multilevel Marketing: Inner Workings, Socioeconomic Effects and the Islamic Juridical View,” *المجلة الدولية للعلوم التربوية والنفسية* 65, no. 1 (July 1, 2021): 279–96, <https://doi.org/10.21608/ijeps.2021.242007>; Shofie Amelia Budi Rachmawati and Nur Rizqi Febriandika, “Implementations of Sharia Business Strategy Development through Sharia Multilevel Marketing Schemes In Hajj and Umrah Travel Agencies” (2018 International Conference on Islamic Economics and Business (ICONIES 2018), Atlantis Press, 2019), 303–6, <https://doi.org/10.2991/iconies-18.2019.60>; Budiandru Budiandru et al., “Multilevel Marketing in Sharia Accounting Perspective,” *Al-Urban* 2, no. 1 (June 30, 2018): 13–23, <https://doi.org/10.22236/alurban>; Fazrihan Bin Mohamed Duriat, “Multi-Level Marketing in Islam & Case Study of Young Living in Singapore,” *Unpublished MA Submitted to Singapore Management University On* 4 (2014); Shamsiah Yaakob et al., “A Critical Analysis of Halal Marketing in Malaysia’s Multi-Level Marketing (MLM) Industry,” *JOURNAL OF HALAL INDUSTRY & SERVICES* 3, no. 1 (September 22, 2020), <https://doi.org/10.36877/jhis.a0000119>; Buerah Tunggak and Mohd Fairuz Tamjis, “Konsep Akad Al-Ju’alah Di Dalam Perusahaan Multi-Level Marketing (MLM) Patuh Syariah,” *UMRAN - International Journal of Islamic and Civilizational Studies* 2, no. 1 (March 10, 2015), <https://doi.org/10.11113/umran2015.2n1.11>; Mohd Shahril Ahmad Razimi, Abd Rahim Romle, and Ummu Noor Habibah Yahya, “Multi-Level Marketing from Islamic Perspectives,” *World Journal of Islamic History and Civilization* 7, no. 1 (2017): 12–16; Imam Mas Arum, “Multi Level Marketing (MLM) Syariah: Solusi Praktis Menekan Praktik Bisnis Riba, Money Game,” *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah* 3, no. 1 (2012): 25–45.

Research Methods

This article is a normative legal study examining legal materials. This research uses two approaches. *First*, the statutory approach reviews all laws and regulations related to the legal issues being handled. *Second*, the conceptual approach is to design a problem or idea that had no legal rule through the method of legal construction. The legal construction or exposition method is finding a law to fill a legal vacuum or due to the ambiguity of statutory regulation.¹⁸ This method is divided into verbal exposition (principal and complement) and non-verbal exposition (representation).¹⁹ The analysis of legal materials in this study uses the content analysis method and the prescriptive method. The content analysis method is a research technique to produce an objective, systematic and qualitative description of the substance of this research.²⁰ Meanwhile, the prescriptive method combines insights from previous analyses to determine which actions should be taken to address the problem of the legal vacuum of Sharia MLM in national trade law.

Discussion

Regulation of MLM in the Trade Law and Its Relevance to Sharia MLM Principles

MLM business is regulated in Law Number 7 of 2014 concerning Trade (Trade Law), and Regulation of the Minister of Trade (Permendag) Number 70 of 2019 concerning Direct Distribution of Goods which was amended to the Government Regulation (PP) Number 29 of 2021 concerning the Implementation of Trade. The practice of MLM is allowed in national commercial law as long as it does not contain a pyramid scheme that leads to money games. To ensure that there are no elements of money games and the practice of pyramid schemes, the government has the authority to check/verify the marketing plan and code of ethics primarily during the licensing process (Articles 8 and 9 of Permendag 70/2019 and Article 43 of PP 29/2021). Direct-selling companies are prohibited from doing several things that can lead to the practice of pyramid schemes or money games (Articles 48 and 51 of PP 29/2021). Hence, the government regulates a

18 Sudikno Mertokusumo and Pitlo, *Bab-Bab Tentang Penemuan Hukum* (Yogyakarta: Citra Aditya Bakti, 1993), 43.

19 Sudikno Mertokusumo, *Penemuan Hukum Sebuah Pengantar* (Yogyakarta: Liberty, 2009), 73–78.

20 Darmiyati Zuchdi, *Content Analysis Research Guide* (Yogyakarta: Yogyakarta IKIP Research Institute, 1993), 1; Cane and Kritzer, *The Oxford Handbook of Empirical Legal Research*, 12–13; Klaus Krippendorff, *Content Analysis: An Introduction on Its Methodology* (London: SAGE Publications, 1991); Jumal Ahmad, *Content Analysis Research Design*, 2018, <https://doi.org/10.13140/RG.2.2.12201.08804>; Or Brook, “Politics of Coding: On Systematic Content Analysis of Legal Text,” in *The Politics of European Legal Research* (Edward Elgar Publishing, 2022).

licensing system and strictly supervise MLM companies in Indonesia. In applying for a business license, the Ministry of Trade can involve direct sales associations to verify the marketing plan and code of ethics for direct selling companies, and field inspections (Article 8 paragraph (3), 9 paragraph (4), and 23 paragraph (4) of Permendag 70/2019).²¹ The elements of anti-pyramid schemes and money games are considered by the DSN MUI in determining the Sharia MLM Fatwa.

Furthermore, there are substantive differences between Sharia and Conventional MLM that made Sharia MLM Fatwa is issued. Jauhari²² explained the essential difference between Sharia MLM and conventional MLM by referring to the 12 (twelve) requirements in the Sharia MLM Fatwa.²³ The difference concerns the organization, products, bonuses, and *marketing plans*.²⁴ *First*, the sharia MLM company must have a Sharia Supervisory Board (DPS) to oversee the company's business activities, including the products, promotion methods, *marketing plans*, and ceremonial activities carried out by the company. DPS also guides all company activities so it stays in line with Islamic teachings. *Second*, according to Islamic law, the products sold must be halal and good (*thoyyib*) to consume. For products in the form of food and beverages, they must obtain a halal certificate or label. Other than food and beverage products, it is sufficient to consult verbally or written with the DPS. While in conventional MLM, there is no affirmation of the prohibition on using/selling halal products. *Third*, the company must be free from forbidden things, especially the elements of gambling (*maysir*), fraud and obscurity (*ghharar*), and usury (*riba*) in obtaining or distributing bonuses and the company's business marketing plan. Gambling and fraud are actually also prohibited in the conventional MLM, ruled in direct sales regulations, such as *money game practices* or pyramid schemes. However, they do not emphasize the prohibition of usury and immorality.

21 This provision is no longer valid in PP 29/2021. Direct sales associations are only involved in coaching and evaluation (supervision) (Article 53 paragraph (3) PP 29/2021).

22 Muhammad Sofwan Jauhari is one of the sharia supervisory boards of PT K-Link (Sharia MLM company) and an expert in the field of Sharia MLM in Indonesia (researcher or author of books and articles on Sharia MLM).

23 Muhammad Sofwan Jauhari, *Fatwa Ulama Indonesia & Timur Tengah Mengenai Multi Level Marketing (MLM)* (Cirebon: Nusa Lintera Inspirasi, 2019), 145–69; Muhammad Sofwan Jauhari, Moch Bukhori Muslim, and Saepullah Saepullah, “Multi Level Marketing (MLM) in Fatwa DSN MUI,” *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah* 13, no. 1 (2021): 116–117.

24 Muhammad Sofwan Jauhari, “MLM Syariah Dan MLM Konvensional? Beda!,” *K-Link Indonesia* (blog), September 15, 2014, <https://k-link.co.id/id/mlm-syariah-dan-mlm-konvensional-beda/>.

From the preceding explanation, three substantive things are not in the MLM regulation: the prohibition of usury, immorality, and the mandatory of halal products. This difference needs to be emphasized in the licensing and supervision system of Sharia MLM. When examined from the procedures for establishing and operating business licenses and MLM supervision as regulated in Permendag 70/1019 and PP 29/2021, it can be explained that, *first*, based on legal norms, requirements, and procedures for MLM licensing, organizationally there are no specific requirements and procedures for Limited Liability Company that runs a business with sharia principles. Likewise, in the verification process of the marketing plan, code of ethics, and cooperation contracts with supplier partners, products sold by MLM companies are not categorized between sharia and conventional. *Second*, structurally, DSN MUI is not involved in the national trade supervision system. The certification process by the DSN MUI and the supervision by the DPS are only voluntary but have no legal implications for the legal status of the Sharia MLM company under the Ministry of Trade. Therefore, it shows that there is a substantive legal vacuum related to the principle of prohibiting usury and immorality, and halal products in the licensing and supervision system of Sharia MLM, and the absence of legal force by the Shariah authority of the DSN MUI in the MLM regulation.

The Urgency of Sharia MLM Regulation in Trade Law

The existence of MLM Syariah shows a better change in the ideological order in the community's economic activities in accordance with Sharia guidelines. The DSN MUI fatwa regarding MLM Syariah which was issued in 2009, was the result of the fatwa request (*istifta'*) from companies that run MLM-patterned businesses, namely AhadNet, UFO, and Exxer.²⁵ According to Jauhari's investigation, the Sharia MLM Fatwa is a solution for the legal certainty of MLM businesses which are considered illegal according to the fatwas of scholars in the Middle East and other countries.²⁶ The fatwa stating that MLM is haram retards the development of the said industry in Indonesia.²⁷ DSN MUI believes that any muamalah activity, including MLM, is basically

25 Later, AhadNet and Exxer ceased to operate. Jauhari, *Fatwa Ulama Indonesia & Timur Tengah Mengenai Multi Level Marketing (MLM)*, 104.

26 Among the fatwas that forbid MLM business are *Lajnah Da'ima* KSA (Kingdom of Saudi Arabia), *Daar al-ifta'* Egypt, *Markaz al-Fatwa* Qatar, *Daar al-ifta'* Jordan, and *Mujamma' al-Fiqh al-Islami* Sudan. Jauhari, *Fatwa Ulama Indonesia & Timur Tengah Mengenai Multi Level Marketing (MLM)*; Mohammad Sa'eed Mitwally Alrahawan, "Multilevel Marketing."

27 Erwandi Tarmizi, *Harta Haram Muamalat Kontemporer*, Cetakan ke-23 (Bogor: BMI Publishing, 2020), 368–371; Jauhari, *Fatwa Ulama Indonesia & Timur Tengah Mengenai Multi Level Marketing (MLM)*, 104.

permissible as long as it does not contain elements of *maysir*, *gharar*, and usury, which lead to tyranny, and other immoralities. According to Jauhari, the fatwa of DSN MUI and the Middle Eastern scholars have similarities in arguing that the haram MLM business violates *syara's* provisions. By issuing fatwa of DSN MUI, there will be guidelines for the MLM businessmen so the industry is not unlawful, moreover, DSN MUI will have the rights to provide Sharia conformity certification for MLM companies.²⁸

The existence of the DSN MUI fatwa regarding Sharia MLM and Sharia MLM company certification shows that it is a new thing in the trading system. However, it has not been regulated in Indonesian Trade Law. The change in order should be followed by changes in the law that are accommodative and guarantee legal certainty for the Sharia MLM institution. The growth and development of the Sharia MLM industry require a new legal order within the national legal framework. According to Nonet-Selznick, the law is a means of responding to social provisions and public aspirations openly to achieve justice and public emancipation. Rahardjo explained that laws (systems and regulations) need to change so that they do not just become historical monuments that eventually fail to regulate effectively. The sharia MLM industry is not only able to be a practical solution in suppressing the practice of money games or pyramid schemes in national trading activities²⁹ but also has the potential to advance the halal industry promoted by the government through the sharia economic ecosystem. Sharia MLM can be an instrument and media to encourage the acceleration of the sharia economic ecosystem, which is also a government program, because its operations must use sharia financial institutions, halal products, sharia tourism (as a reward), and manage *zakat*, *infuq*, and *alms*.³⁰ For this reason, it is crucial to construct Sharia MLM law in the trade law as has been done in previous Islamic financial institutions. This idea takes into account the following philosophical, sociological, juridical, economic, and political considerations:

First, the philosophical foundation. The philosophy of national law development stems from the values embodied in the Pancasila and the 1945 Constitution, which contain the concept of the relationship between religion and the state with a *tamyiz* (segregation) pattern.³¹ This concept is the first

28 Jauhari, *Fatwa Ulama Indonesia & Timur Tengah Mengenai Multi Level Marketing (MLM)*, 106.

29 Arum, "Multi Level Marketing (MLM) Syariah."

30 Interview with Bayu Bandonno (Accounting Manager PT. HPAI), Zoom Meeting, January 14, 2022; Dr. dr. H. Endy M. Astiawara, MA., AAAIJ, FIIIS, (DPS PT. HPAI), Interview via zoom meeting, January 2, 2022; Dr. Mohammad Sofwan Jauhari (DPS PT. K-Link), Interview via zoom meeting, January 14, 2022.

31 The *Tamyiz* concept comes from Muhammad Imarah, Saadeddine Othmani, and Rachid Gannouchi.

principle of Pancasila and is reaffirmed in Article 29 of the 1945 Constitution that “the state is based on God the Almighty”. This shows that Indonesia is not an Islamic state, and Islam is not the official religion in the country.³² However, the relationship pattern between Islam and Indonesia as a state has been practiced in the positivization of Islamic law, especially Sharia economic law, through legislation and regulation approaches. Sharia economic law aims to achieve *falāh* (luck of the world and the hereafter) through consideration of the benefit of human life.³³ In its axiology, sharia economics is attached to an ethical dimension that comes from the Quran and the Sunnah, both in terms of consumption, production, and distribution; everything must be done perfectly (*kaffah*) with the dimension of worship.³⁴ Darmalaksana expresses that the Islamic ethical dimension in sharia economics contains the concept of *tauhidullah* which is ontologically built based on theological and philosophical arguments that underlie the politics of Islamic law in the regulation of the economic field.³⁵ This Islamic ethical dimension is emphasized in the Sharia MLM Fatwa that the Sharia MLM requirements do not contain elements of *gharar*, *maysir*, *usury*, *dharar*, or *dzulm* and immorality.

The need for Sharia MLM regulation is basically to maintain the objectives of Islamic law (*maqashid al-Shari'ah*) which contains the value of *maslahah*, that the law must be oriented to the benefits of others.³⁶ The value of *maslahah* in the context of institutionalizing sharia MLM in national law considers the primary rank in *maqashid al-Shari'ah*, namely maintaining religion (*hifz al-dîn*), soul (*hifz an-Nafs*), and property (*hifz al-mâl*).³⁷ First, religion contains teachings related to creed, worship, and *muamalah* as commanded by Allah SWT to humans. Everything is summarized in the pillars of faith and the pillars of Islam. So, any

They say that the relationship between religion and the state is not secularism or theocracy, but *tamyiz*, namely the distinction or separation between religion and state affairs. Ahmad Sadzali, *Relasi Agama Dan Negara: Teokrasi - Sekuler - Tamyiz* (Yogyakarta: Pusat Studi Hukum Islam (PSHI) Fakultas Hukum Universitas Islam Indonesia, 2018), 45–50.

32 Jan Michiel Otto et al., *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010), 456.

33 Pusat Pengkajian dan Pengembangan Ekonomi Islam (P3EI), *Ekonomi Islam*, Edisi I, Cetakan III (Jakarta: Rajawali Pers, 2011), 17.

34 Pusat Pengkajian dan Pengembangan Ekonomi Islam (P3EI), 20.

35 Wahyudin Darmalaksana, “Filsafat dan Politik Hukum Islam tentang Perbankan Syariah: Kajian Filsafat dan Politik Hukum Islam bagi Perkembangan Perbankan Syariah di Indonesia” (doctoral, UIN Sunan Gunung Djati Bandung, 2015), 25, <http://digilib.uinsgd.ac.id/5230/>.

36 Bahrul Hamdi, “Konsep Implementasi Mashlahat Menurut Al-Ghazali, Asy-Syatibi Dan Najmuddin At-Thufi (Studi Komparatif Analitis Pemikiran Hukum Islam),” *Al-Hurriyah: Jurnal Hukum Islam* 2, no. 2 (March 5, 2018): 220, <https://doi.org/10.30983/alhurriyah.v2i2.402>

37 Jasser Auda, *Membumikan Hukum Islam Melalui Maqashid Syariah: Pendekatan Sistem*, Diterjemahkan dari *Maqashid Shariah as Philosophy of Islamic Law: A Systems Approach*, Cet. I (Bandung: PT. Mizan Pustaka, 2015), 34–35.

muamalah practice, as long as it is under sharia guidance, is the embodiment of *hifz al-din*. With the constitutional guarantee of freedom to practice the religion, instituting Sharia MLM is an effort so that what business actors and consumers do will benefit their souls. *Second*, *hifz an-nafs* are closely related to the obligation of Muslims to consume and carry out *muamalah* activities that are not harmful both physically and mentally, avoiding non-halal sources. Sharia MLM regulation is an effort so that what is done by business actors and consumers provides benefits for their souls. *Third*, *hifz al-mâl* that for survive, humans need assets, one of which can be obtained through the Sharia MLM business. Through precise arrangements and holding sharia principles in this business, there will be no elements of *zhalim*, *gharar*, *maysir*, usury, and *tadlis*. Parties involved in *muamalah* transactions will get a fair profit. The moral values of Sharia MLM which are formalized in positive law will bind the community. If people are submissive and obedient to the law, do business without harm and create an economically independent society, the economy will run well under the objectives of establishing a national trade law.

The state must accompany religion in the same space, providing adequate legal political support for developing sharia economic law in Indonesia, especially for the Sharia MLM business. What is meant by a good political support is by formulating more straightforward and definite arrangements in national trade regulations, one of which is for legal certainty for Sharia MLM business entities in the form of regulating the statute of Sharia companies. There are some positive implications (*mashlalah 'ammah*) from this legal support: (a) strengthening the company's commitment to implement sharia MLM principles because they are legally bound by the statute they have agreed upon; and (b) the formation of a halal ecosystem that is expected in the KNEKS program through four subsystems: halal product guarantees, sharia finance industry, halal tourism, and zakat, infaq, alms, and waqf institutions. These four subsystems have been practiced in Sharia MLM but have not been integrated due to the absence of regulations.³⁸ The opinion of al-Mawardi quoted by Abdul Qadim Zallum is that the state is a tool or means to create and maintain benefits. Islam has become a political ideology for society in a more concrete framework and Islam commands Muslims to uphold

38 PT HPAI and PT K-LIK use Islamic bank accounts, provide rewards/bonuses in the form of sharia travel, manage zakat, infaq, alms from members and the company's managerial team, and only trade halal products. Interview with Bayu Bandono (Accounting Manager PT. HPAI), Zoom Meeting, January 14, 2022; Dr. dr. H. Endy M. Astiawara, MA., AAAIJ, FIIIS, (DPS PT. HPAI), Interview via zoom meeting, January 2, 2022; Dr. Mohammad Sofwan Jauhari (DPS PT. K-Link), Interview via zoom meeting, January 14, 2022.

the state and implement rules based on Islamic laws.³⁹ So, to achieve the objective of the *falalah*, the DSN MUI fatwa on Sharia MLM is not sufficient as a basis for ethical norms, but must be transformed into a binding legal norm on all elements of society through state authorities.

Second, the sociological basis. Halal lifestyle has become a growing social reality globally.⁴⁰ Various countries are trying to create an Islamic economic ecosystem. According to the *Global Islamic Economy Indicator* (GIEI) data in 2020-2021, Indonesia is in the fourth place in terms of the development of an Islamic economic ecosystem.⁴¹ The halal lifestyle is manifested through halal food, Islamic financial services, halal tourism, halal fashion, halal media, halal cosmetics and pharmacy, and sharia hospitals.⁴² For consumers/members, the legitimacy of sharia and halal label has become an urgent need of the Muslim community, along with the increasing awareness of inclusive benefit in sharia economic law. Consumers/members believe that Sharia MLM can guarantee a sharia-compliant marketing system, and the products traded must be halal because of the guidance and supervision of DPS.⁴³ For Sharia MLM business actors, doing business through Sharia MLM is motivated by several reasons, including those relating to sociological factors:⁴⁴ (a) as Muslim, they must comply with Islamic guidance; (b) they have social responsibility to restore public trust of MLM business image which was previously considered to be contrary with the principles of *mu'amalah maliyah*, laws, and regulations; and (c) alternative media in doing business according to sharia and getting halal products for Muslims who are the majority compared to other religions. For these reasons, Sharia MLM businessmen expect regulatory

39 Abdul Qadim Zallum, *Pemikiran Politik Islam* (Bangil: al-Izzah, 2001), 155.

40 Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori Ke Praktik*, Cetakan I (Jakarta: Gema Insani, 2001), 18.

41 Liputan6.com, "Membanggakan, Indonesia Peringkat 4 di Global Islamic Economy Indicator Score," liputan6.com, February 25, 2021, <https://www.liputan6.com/bisnis/read/4492135/membanggakan-indonesia-peringkat-4-di-global-islamic-economy-indicator-score>.

42 Ativa Hesti Agustina et al., "Platform Halal Lifestyle Dengan Aplikasi Konsep One Stop Solution," *Falab: Jurnal Ekonomi Syariah* 4, no. 1 (June 24, 2019): 56–68, <https://doi.org/10.22219/jes.v4i1.8699>; Hendri Hermawan Adinugraha and Mila Sartika, "Halal Lifestyle Di Indonesia," *An-Nisbah: Jurnal Ekonomi Syariah* Vol. 6 No. 1 (2019), accessed November 5, 2021, <http://ejournal.iain-tulungagung.ac.id/index.php/nisbah/article/view/1406>.

43 Interview with Dr. Moch. Bukhori Muslim, Lc., MA (Chairman of Industry, Business, and Sharia Economics DSN MUI), Zoom Meeting, December 25, 2021.; Interview with Bayu Bandono (Accounting Manager PT. HPAI), Zoom Meeting, January 14, 2022. Relevant to research results: Anna Che Azmi et al., "Sharia Disclosures: An Exploratory Study from the Perspective of Sharia-Compliant Companies and Professional Users," *Journal of Islamic Accounting and Business Research* 7, no. 3 (January 1, 2016): 237–252, <https://doi.org/10.1108/JIABR-03-2016-0029>.

44 Interview with Bayu Bandono (Accounting Manager PT. HPAI), Zoom Meeting, January 14, 2022

support from the government so that the standardized tools are available, especially for internal Sharia MLM companies. Additionally, they want the government to accommodate and encourage and develop more Sharia MLM businesses in Indonesia.⁴⁵

In this case, it is crucial to have a law that responds to the socio-economic changes that occur dynamically and rapidly. According to Nonet-Selznick, the law is dedicated to overcoming tension and adapting selectively, responsibly, and not haphazardly. Law is a means of responding to social provisions and public aspirations openly to achieve justice and general emancipation.⁴⁶ For this reason, special legal formulation is needed as a form of state recognition toward Sharia economic law and the government's responsiveness to the halal *lifestyle* for social change. Sharia MLM businessmen hope that there will be government support through legal construction to build a paradigm that sharia MLM is allowed and different from the conventional one.⁴⁷ The desired law is certainly a dual function, *first*, as a means to change society to be more obedient to Islamic business principles which was stated in the theory of "*law as a tool of social engineering*" by Roscoe Pound;⁴⁸ *second*, as *social control* for sharia MLM businessmen if it has been enforced in the form of legislation.⁴⁹

Third, the juridical basis. Based on the amendments to Article 1 paragraph (3) of the 1945 Constitution, Indonesia is a legal state (*rechtsstaat*) that adheres to legal positivism.⁵⁰ According to Jimly Ashshiddiqie, Article 1 paragraph (3) of the 1945 Constitution contains the consequence that all problems in this country must be resolved by law as the highest guideline.⁵¹ The law will have binding power for its citizens when it has become a written legal product determined by state authorities which are internally authorized to issue and enforce what is called positive law. Legal positivization aims to realize one of the requirements of one of the legal principles/objectives, namely legal

45 Dr. dr. H. Endy M. Astiawara, MA., AAAIJ, FIIIS, (DPS PT. HPAI), Interview via zoom meeting, January 2, 2022.

46 AC Hutchinson, "Law and Society in Transition: Toward Responsive Law. By Philippe Nonet and Philip Selznick. New York: Harper and Row, 1978.," *The American Journal of Jurisprudence* 24, no. 1 (January 1, 1979): 29ff, <https://doi.org/10.1093/ajj/24.1.207>.

47 Interview with Bayu Bando (Accounting Manager PT. HPAI), Zoom Meeting, January 14, 2022.

48 Tanya and Simanjuntak, *Teori Hukum, Strategi Tertib Hukum Manusia Lintas Ruang Dan Generasi*, 145–148.

49 Ridwan, "Hukum dan Perubahan Sosial," 32–34.

50 Asep Bambang Hermanto, "Ajaran Positivisme Hukum di Indonesia: Kritik dan Alternatif Solusinya," *Jurnal Hukum dan Bisnis (Selisik)* 2, no. 2 (2016): 111.

51 M. Muslih, "Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum)," *Legalitas: Jurnal Hukum* 4, no. 1 (May 12, 2017): 138, <https://doi.org/10.33087/legalitas.v4i1.117>.

certainty. According to Mahfud MD, legal certainty is to ensure the existence of justice.⁵² Sudikno Mertokusumo argues that legal certainty exists because of the coercive power from the state authorities. Hence, he emphasized that it does not refer to sanctions, but legal certainty is defined as orientation certainty. Orientation here means the clarity of the formulation of norms so that it can be used as a guide for the people affected by the regulation.⁵³ Based on the said opinions, sharia MLM institutions are in need of regulations so they have legal certainty. A legal certainty is a form of clarity in legal norms that determine the boundaries of the rights and obligations of each individual or group in social life; there is also consistency in implementing these rules. In the theory of law development, Mochtar Kusumaatmadja stated that law, as a rule, has a function to direct human activity in the way expected by such development or renewal. Therefore, we need facilities in the form of written legal and regulations within society.⁵⁴ The conception of law as a means of renewal emphasizes that adequate law should not be seen as a set of rules and principles governing human life in society, but must also include the needed institutions and processes to actualize the law.⁵⁵

The formation of laws and regulations must be based on the constitution's mandate. As explained in the sociological basis above, the construction of the existing national trade law has yet to be responsive to the Sharia MLM industry. Legally, the trade law is not in line with the mandate of the 1945 Constitution, especially Article 28D paragraph (1), Article 29 paragraphs (1) and (2), and Article 33 paragraphs (4).⁵⁶ Islamic economic development needs to be supported by public laws, which are generally procedural, namely the procedures for establishing business entities, licensing, converting taxes to zakat, and monitoring them. The substantive legal differences between Sharia MLM and Conventional MLM (related to the prohibition of usury, immorality,

52 Muslih, "Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum)"; Muntaha, *Negara Hukum Indonesia Pasca Perubahan UUD 1945* (Bantul: Kaukaba Dipantara, 2013).

53 Mertokusumo, *Penemuan Hukum Sebuah Pengantar*, 160.

54 Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan* (Bandung: Alumni, 2002), 12; Asep Bambang Hermanto, "Ajaran Positivisme Hukum Di Indonesia: Kritik Dan Alternatif Solusinya," *Jurnal Hukum Dan Bisnis (Selisik)* 2, no. 2 (2016): 118.

55 Mochtar Kusumaatmadja, *Pembinaan Hukum Dalam Rangka Pembangunan Nasional* (Bandung: Binacipta, 1986), 11.

56 Syaufi explained that the existence of the Islamic economy has a strong foundation, both formal *syar'i* and constitutional. Syaufi Syaufi, "Konstitusi Ekonomi Syariah Di Indonesia (Melacak Argumen Konstitusi Terhadap Penerapan Ekonomi Syariah)," *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 2 (2017): 161–74.

and must be halal products) must be distinguished from the beginning when a Sharia business institution starts its business legally through a licensing system. For this reason, the state's recognition, existence, and role are very decisive as holders of public authority, especially in the field of trade.

Fourth. The economic foundation. The presence of the Sharia MLM business is an alternative, as well as the rights of citizens to run a business and to consume products that comply with Sharia principles. With the halal lifestyle promotion and the government's *political will* in accelerating the Islamic economic ecosystem through KNEKS, it is necessary to pay close attention to the potential contribution of Sharia MLM to the program, namely: first, the Sharia MLM Fatwa prohibits usury transactions. Therefore, companies must use sharia bank accounts, and the same applies to Islamic banking and all the members. For this reason, the Sharia MLM business can potentially strengthen the Islamic finance industry in Indonesia. *Second*, accelerating the halal product guarantee system because Sharia MLMs can only sell halal-certified products. *Third*, accelerating the improvement of the halal tourism industry by providing rewards/bonuses to leaders/members who have achieved the sales targets expected by the company.⁵⁷ *Fourth*, the integration of sharia social fund management, as has been done by PT. Herba Penawar Alwahida Indonesia (PT. HPAI).⁵⁸

For the macroeconomy scale, the existence of Sharia MLM also effectively empowers the people's economy in the form of (a) business opportunities for anyone and the chance to earn margins; (b) reviving MSME entrepreneurs from small to large scale. For example, at PT. HPAI, the products are *supplied* by MSMEs, so with more members (because they are *customer based*), there will be more opportunities to market products through this network.⁵⁹ The Sharia MLM business can also strengthen resilience to the national economic crisis because it runs an anti-usury management system as has been practiced by Islamic banking. Islamic banking has survived the economic crisis that hit Indonesia in 1998, which caused several national banks to collapse, except for Islamic banks. Externally, the support for sharia banking regulations contributed to strengthening Islamic banks to survive during the national economic crisis at that time.⁶⁰

57 Interview with Bayu Bandonu (Accounting Manager PT. HPAI), Zoom Meeting, January 14, 2022; Dr. Mohammad Sofwan Jauhari (DPS PT. K-Link), Interview via zoom meeting, January 14, 2022.

58 PT. HPAI collects zakat, infaq, and alms from members and manages them productively through the foundation they established for the benefit of members. Interview with Bayu Bandonu (Accounting Manager PT. HPAI), Zoom Meeting, January 14, 2022.

59 Interview with Bayu Bandonu (Accounting Manager PT. HPAI), Zoom Meeting, January 14, 2022

60 Andrew Shandy Utama, "History and Development of Islamic Banking Regulations in the National Legal System of Indonesia," *Al'Ada* 15, no. 1 (2018): 37–50, <https://doi.org/10.24042/is.v15i1.2446>;

Fifth. The political foundation. The rapid development of the Islamic finance industry and philanthropy cannot be separated from the contribution of Sharia economic law politics so far. Satjipto Rahardjo stated that law is an instrumentation of political decisions or wills to make laws with specific interests. Thus, the making of laws becomes a field of clashes and struggles of interests.⁶¹ According to Mahfud MD, the law cannot only be seen as imperative articles or *das sollen* requirements. It must be seen as a subsystem which in a statement (*das sein*) is not impossible to be determined by politics both in the formulation of material and its articles as well as in the implementation of its enforcement.⁶² The legal vacuum of sharia MLM in the national trade law requires the government's attention as the policyholder through legal political instruments. The government basically has the political will to promote the halal industry through the landscape of the Indonesian halal market.⁶³ It includes: *first*, industry players consisting of value-added producers (food, pharmaceuticals and cosmetics, modest clothing), retailers, and distributors; and *second*, ecosystem actors comprised of service providers (logistics industry, Islamic finance, travel, and halal media), as well as governments and regulators.⁶⁴ However, the Sharia MLM Industry has not been included in the halal market landscape. For this reason, with the above philosophical, sociological, juridical, and economic considerations, the legal construction of Sharia MLM will be easier to carry out with the support of the existing legal politics. The DSN MUI fatwa on Sharia MLM can be used as legal material and adopted in formulating Sharia MLM regulations so that the fatwa has binding legal force.⁶⁵ Sharia MLM

Mutiara Dwi Sari, Zakaria Bahari, and Zahri Hamat, "History of Islamic Bank in Indonesia: Issues Behind Its Establishment," *International Journal of Finance and Banking Research* 2, no. 5 (September 6, 2016): 178, <https://doi.org/10.11648/j.ijfbr.20160205.13>.

61 Satjipto Rahardjo, *Sosiologi Hukum, Perkembangan, Metode Dan Pilihan Masalah* (Surakarta: Muhammadiyah University Press, 2002), 126.

62 Moh. Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: Rajawali Press, 2011), 16.

63 "Indonesia Halal Market Report," *Indonesia Sharia Economic Festival* (blog), accessed December 1, 2022, <https://isef.co.id/indonesia-halal-market-report/>.

64 Based on data from the Indonesia Halal Market Report for 2021/2022, Indonesia is the largest halal consumer market in the world with a consumption value of halal products reaching US\$184 billion in 2020. Meanwhile, the export value of Indonesian halal products reaches US\$8 billion. Sri Niken Handayani, "Potensi Industri Halal Di Indonesia," *SWA.Co.Id* (blog), April 12, 2022, <https://swa.co.id/swa/trends/potensi-industri-halal-di-indonesia>.

65 Fatwa institutions in the Middle East such as Saudi Arabia, Egypt, Yemen, Qatar, and other countries that officially declare as Islamic countries such as Malaysia and Brunei Darussalam, are generally institutions within the government system so that the decisions of the fatwa institutions have legal force or binding on its citizens. Unlike the case in Indonesia, the authority to determine fatwas can be held by Islamic organizations such as Muhammadiyah, Nahdhatul Ulama, and MUI. The fatwa issued by the DSN MUI is not binding on every Muslim in Indonesia because of the position of the

regulation can also strengthen the position of the DSN MUI as the provider of Sharia conformity certification and the supervisor of the Sharia MLM business in the licensing process and formal juridical supervision of MLM in national trade regulations. With the state authority carrying out public functions, it will encourage individual compliance with the institutional structure of the Sharia MLM business as a form of public benefit. It is in accordance with the rules of fiqhyyah, namely *tasharrufu al-imâm 'alâ al-ra'yyatibi manûthun bi al-mashlahab* (the leader's policy towards his people depends on the benefit).⁶⁶ Based on the substantive differences between Sharia and conventional MLM, it is necessary to formulate licensing norms (including the conditions for the establishment of the company) and special supervision for Sharia MLM as a manifestation of state recognition of the citizens' rights to carry out their religious obligations perfectly (*kaffah*). This is following the rules of fiqhyyah, *Mâ lâ yatimmu al-wâjib illâ bihî fahuwa wâjib* (A case that completes an obligatory case is an obligation). Providing clear and definite legal instruments is the government's responsibility as state administrators to facilitate business actors and the Muslim community to complete the obligation to maintain Sharia principles in Sharia MLM business.

The five foundations above are expected to be able to realize the idea of this Sharia MLM legal construction well. In Bagir Manan's opinion as quoted by Yuliandri, a law must contain good legal norms that form the basis for the validity of the law, which contains at least three foundations: philosophical, sociological, and juridical.⁶⁷ So, departing from the five foundations for the legal construction of Sharia MLM above, in its formation, it is necessary to pay attention to the effectiveness of a legal system that can study the interaction of three factors, namely the legal structure (institutional: Ministry of Trade and DSN MUI), legal substance with Sharia principles (appropriate legal principles and norms), and legal

MUI as a mass organization and not part of a state institution. The DSN MUI fatwa will only be binding if it has been positivized in the form of a law or regulation under it. Ahyar Ari Gayo and Ade Irawan Taufik, "Kedudukan Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Dalam Mendorong Perkembangan Bisnis Perbankan Syariah (Perspektif Hukum Perbankan Syariah)," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 2 (2012): 257–275; Faozan Akhmad, "Pola Dan Urgensi Positivikasi Fatwa-Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Tentang Perbankan Syariah Di Indonesia," *Al-Manabij: Jurnal Kajian Hukum Islam (Journal of Islamic Law Studies)* 10, no. 2 (December 2016): 309–321; Jauhari, *Fatwa Ulama Indonesia & Timur Tengah Mengenai Multi Level Marketing (MLM)*, 92.

66 A. Djazuli, *Kaidab-Kaidab Fikih: Kaidab-Kaidab Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis* (Jakarta: Kencana, 2021), 147.

67 Yuliandri, *Asas-Asas Pembentukan Peraturan Perundang-Undangan Yang Baik* (Jakarta: RajaGrafindo Persada, 2010), 29.

culture (Sharia MLM business actors, consumer society, and policy authorities: DPS-DSN MUI and the Ministry of Trade).

Integration-Partnership Pattern of Sharia MLM Licensing and Supervision Authority to Support the Islamic Economic Ecosystem

The legal vacuum in licensing and supervision of Sharia MLM in national trade law and the existence of legal problems demand the need to explore legal models and formulations that can provide legal certainty regarding the authority of the DSN MUI. In line with Karni's opinion, for the long-term progress of the Sharia economy in Indonesia, there is a need for a model of Sharia authority. That is not only independent of legal politics but also *legitimate* in the legality and binding power of legal products, as well as credible from the competence aspect. The Sharia Authority includes (a) the authority for fatwa products; (b) the fatwa transformation process in positive law; and (c) the Sharia compliance mechanism. Karni views the model of Sharia authority in Indonesia, especially in the transition period, as a form of compromise that puts forward the principle of independence from the state and strengthens the practice of *living law*. So, the sharia compliance monitoring mechanism does not run as effectively and efficiently as sharia banking.⁶⁸ Efforts to formulate the ideal model have been carried out in the Islamic finance sector, including Islamic Banking and Sharia Insurance. There has been a political dynamic of the DSN MUI institution in the legislative and regulatory process until the formation of a clear and strong Sharia authority in Islamic banking,⁶⁹ as well as in the field of Sharia insurance until the government formed a particular regulation regarding the licensing and supervision of the two Islamic financial institutions.⁷⁰

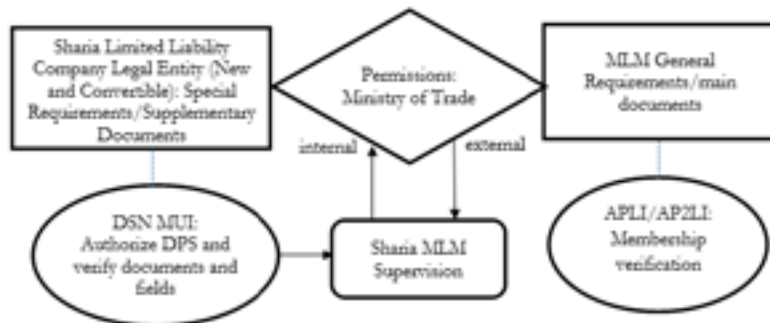
68 Asrori S. Karni, "Rekonstruksi Asas Otoritas Syariah Dalam Hukum Perbankan: Studi Komparasi Beberapa Negara Muslim," *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam* 4, no. 2 (December 23, 2019): 137–162, <https://doi.org/10.25217/jm.v4i2.640>.

69 Karni; Sija Putra Rulanda, Zulfi Diane Zaini, and Melisa Safitri, "Kedudukan Hukum Pengawas Bank Syariah yang Dilakukan oleh Otoritas Jasa Keuangan (OJK) dan Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI)," *Jurnal Supremasi*, September 21, 2020, 36–51, <https://doi.org/10.35457/supremasi.v10i2.1148>.

70 Irwan Mischbach, "Kedudukan dan Fungsi Dewan Pengawas Syariah dalam Mengawasi Transaksi Lembaga Keuangan Syariah di Indonesia," *Jurnal Minds: Manajemen Ide dan Inspirasi* 2, no. 1 (March 16, 2015): 79–93, <https://doi.org/10.24252/minds.v2i1.4634>; Nicholas Tjenggana, "Efektifitas Organ Dewan Pengawas Syariah Dalam Praktik Perbankan Syariah Berdasarkan Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas Dan Undang-Undang Nomor 21 Tahun 2008 Tentang Perbankan Syariah Di BPRS Vitka Central" (PhD Thesis, Universitas Internasional Batam, 2019); Khotibul Umam, "Implikasi Yuridis Transformasi Unit Syariah Perusahaan Asuransi/Reasuransi Ke Dalam Perusahaan Asuransi/Reasuransi Syariah," *Veritas et Justitia* 7, no. 2 (2021): 380–405, <https://doi.org/10.25123/vej.v7i2.4336>; Cahaya Permata, "Tanggungjawab Dewan Pengawas Syariah Terkait

Sharia Banking and Sharia Insurance apply an integration-partnership pattern between DSN MUI and the Financial Services Authority (OJK). The DSN MUI has the authority to provide DPS ratification as one of the requirements for a business license. The DSN MUI requires internal supervision through DPS to be reported to the OJK. This integration-partnership pattern is clearly regulated in Sharia banking regulations and Sharia Insurance, so DSN MUI is the holder of Sharia authority with legal force. Even in Sharia Insurance, OJK can provide administrative and criminal sanctions to DPS who violate their obligations as supervisors (Article 74 paragraphs (1 and 2) of the Insurance Law). With this, Sharia Compliance supervision can run more optimally.⁷¹ This integration-partnership pattern can be applied in the licensing and supervision system of Sharia MLM while still functioning DSN MUI as an independent institution.

Figure 1
Integration-Partnership Pattern in Sharia MLM Licensing and Supervision System



Source: Creativity of the Authors

Figure 1 shows that there are two licensing procedures for Sharia MLM business institutions, which are incorporated as Sharia Limited Liability Companies, and conventional MLM Companies that are transformed into Sharia MLM Companies. In terms of institutional legality, it is necessary to distinguish the words of the establishment of a Limited Liability Company, namely: *first*, for a new company that wants to engage in the Sharia MLM business, it is required to have Articles of

Pelanggaran Hukum Pada Asuransi Syariah (Analisis Yuridis Terhadap Undang-Undang Nomor 40 Tahun 2014 Tentang Perasuransian),” *TAQNIN: Jurnal Syariah Dan Hukum* 1, no. 1 (2019).

71 Misbach, “Kedudukan dan Fungsi Dewan Pengawas Syariah dalam Mengawasi Transaksi Lembaga Keuangan Syariah di Indonesia”; Rulanda, Zaini, and Safitri, “Kedudukan Hukum Pengawas Bank Syariah yang Dilakukan oleh Otoritas Jasa Keuangan (OJK) dan Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI).”.

Association and Bylaws which contain provisions with sharia nuances, including aims and objectives, business activities, capital, DPS, management and financial reports. *Second*, companies that are already engaged in conventional MLM business and want to transform into Sharia MLM must make changes to the Articles of Association by containing provisions under Sharia principles. These two things are mandatory requirements in applying for a direct selling business license (SIUP) at the Ministry of Trade. Furthermore, Sharia compliance supervision is carried out internally (Sharia compliance) by DSN MUI through DPS, and the Ministry of Trade carries out external control. DSN MUI is tasked with submitting the results of internal supervision to the Ministry of Trade. For example, if some companies violate Sharia compliance which also means violating the provisions of the law, DSN MUI submits a recommendation to the Ministry of Trade to review and even revoke the business license of the Sharia MLM company.

In the theory of development law, Mochtar Kusumaatmadja states that law, as a rule, has a function as a means to direct human activities in the direction expected by development or renewal. For this reason, facilities are needed in the form of written legal regulations by the laws that live in society.⁷² The conception of law as a means of renewal emphasizes that adequate law should not be seen as a set of rules and principles governing human life in society, but must also include the needed institutions and processes to actualize the law.⁷³ The construction of Sharia MLM regulations not only adopts the provisions of the MUI DSN fatwa but also regulates the authorized institutional system to regulate and supervise the movement of Sharia MLM. The completeness of regulations and legal certainty for Sharia MLM can be one of the critical factors in realizing the vision of making Indonesia a global Islamic finance and economic center. With the regulation, Sharia MLM companies will gain legitimacy so that all their activities will become one of the locomotives of the real sector in the Islamic economic ecosystem in Indonesia.

Conclusion

The construction of Sharia MLM legal norms in national trade law is necessary to provide legal certainty for the legitimacy of Sharia MLM institutions. Legal construction is carried out by formulating legal norms for licensing and supervision of Sharia MLM with a partnership pattern between DSN-MUI and the Ministry of Trade based on philosophical, sociological, juridical, economic,

⁷² Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan* (Bandung: PT. Alumni, 2013).

⁷³ Mochtar Kusumaatmadja, *Pembinaan Hukum Dalam Rangka Pembangunan Nasional* (Bandung: Binacipta, 1986), 11.

and political arguments. With the trade regulations that accommodate Sharia MLM, the industry will grow and develop rapidly and will support the Islamic economic ecosystem to maximally achieve the goals of national trade law.

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