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## **Political Reorientation of Indonesian Sharia Economic Law: Legal Politics of Trade Law on Sharia Multilevel Marketing**

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### **Abstract**

Sharia multilevel marketing is a part of Sharia economic activity that has not been internalized in Indonesian trade law. This article discusses the formation of legal norms for direct selling in Indonesia and analyzes the legal politics of establishing trade law against sharia multilevel marketing. This study is derived from normative legal research using both statutory and historical approaches. The qualitative data on the legal politics of the trade law formation were taken from library research and interviews and then analyzed using the inductive method. The finding of this article indicates that the law of multilevel marketing in Indonesia, through the process of regulation and legislation, aims to provide legal certainty and anticipate the unlawful economic practices of pyramid schemes. The result of this article reveals that the formation of national trade law does not reflect a responsive law. The existence of a Sharia economic system, especially sharia multilevel marketing regulation, is not accompanied by the massive support of Islamic ethical value implementation. Therefore, to sum up, the sharia multilevel marketing needs a state's political recognition of the Islamic economy through the development of law in the existing Islamic finance and philanthropy sector.

**Keywords:** Legal Politics, trade Law, sharia multilevel marketing

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## Introduction

The Islamic economic system has a different philosophical foundation from the conventional economic system (liberal or communist/social). Sharia economic law contains a divine dimension to achieve good fortune in the world and the hereafter (Falah),<sup>1</sup> strung together in Islamic economic values that Muslims must apply. These values are combined in four ethical axioms of Islamic economics: unity, balance (*equilibrium*), free will, and responsibility.<sup>2</sup> The concept of divinity supports this as the constitutional basis of the Indonesian state. Article 29, paragraph 1 of the 1945 Constitution of the Republic of Indonesia states: "The Republic of Indonesia is based on the One Godhead." This article explicitly states that the state recognizes the position of religion in the Indonesian state. Its application can be proven by the portion of Islam in the development of national law.<sup>3</sup>

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<sup>1</sup> Pusat Pengkajian dan Pengembangan Ekonomi Islam (P3EI), *Ekonomi Islam*, Edisi I, Cetakan III (Jakarta: Rajawali Pers, 2011), 17.

<sup>2</sup> Jauhar Faradis, "Merumuskan Kerangka Aksioma Etik Islam," *LITERASI (Jurnal Ilmu Pendidikan)* 2, no. 1 (March 10, 2016): 45–50, [https://doi.org/10.21927/literasi.2009.2\(1\).45-50](https://doi.org/10.21927/literasi.2009.2(1).45-50).

<sup>3</sup> Zaka Firma Aditya, "Romantisme Sistem Hukum Di Indonesia: Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (2019): 37–54; Sahid HM., *Legislasi Hukum Islam Di Indonesia: Studi Formalisasi Syariah Islam* (Surabaya: Pustaka Idea, 2016); Ahmadi Hasan, *Sejarah Legislasi Hukum Ekonomi Syariah Di Indonesia* (Yogyakarta: LKiS, 2017); Agus Triyanta, *Hukum Ekonomi Islam Dari Politik Hukum Ekonomi Islam Sampai Pranata Ekonomi Syariah* (Yogyakarta: FH UII Press, 2012); Muhammad Maksun, "Politik Hukum Ekonomi Islam Di Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 13, no. 02 (2013): 1–14, <https://doi.org/10.30631/al-risalah.v13i02.416>; Fauzan Ali Rasyid, "Konfigurasi politik hukum ekonomi syariah di Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 16, no. 2 (December 1, 2016): 297–315, <https://doi.org/10.18326/ijtihad.v16i2.297-315>.

Islamic law is one of the material sources in the development of law in Indonesia. It has been going on since the colonial period<sup>4</sup> because Muslims are the majority in Indonesia, even though Indonesia is not an Islamic State. In addition, based on Article 1 paragraph (3) of the 1945 Constitution, Indonesia is a legal state (*rechtstaat*) that adheres to legal positivism. Consequently, the law will have binding power for its citizens when it has become a positive law. But factually, legal politics determines the existence of sharia economic law in Indonesia.

The politics of sharia economic law in Indonesia has historically started from the moral-doctrinal-normative level in the form of Quranic texts to the issuance of various sharia economic laws and regulations.<sup>5</sup> Yasin assessed that there had been rapid construction, reconstruction, and interconnectivity of Indonesia's paradigmatic theoretical conception of sharia economic law.<sup>6</sup> As a result, several

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<sup>4</sup> Since the establishment of the VOC, the Dutch government has recognized the existence of Islamic laws such as family law, marriage law, and inheritance law. Family law is recognized and applied in the form of the *Resoluti der Indische Regeering regulation* dated May 25, 1760, which is a collection of Islamic marriage and inheritance rules known as the *Compendium Freijer*. Abdul Hadi and Shofyan Hasan, "Pengaruh Hukum Islam Dalam Pengembangan Hukum Di Indonesia," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 15, no. 2 (2015): 89–100.

<sup>5</sup> Angkat Poenta Pratama, Hari Sutra Disemadi, and Paramita Prananingtyas, "Existence And Position Of Islamic Economic Laws In Indonesia," *Legality: Jurnal Ilmiah Hukum* 27, no. 2 (2019): 222–31.

<sup>6</sup> M. Atha' Mudzhar identified that there are four kinds of products of Islamic legal thought, namely fiqh, fatwas, laws (qanun), and court decisions (qadla). Quoted by M. Nur Yasin dalam Mohamad Nur Yasin, "Rekonstruksi Norma Ekonomi Syariah di Indonesia Perspektif Transisi Hukum HLA. Hart" (UIN Maulana Malik Ibrahim Malang, 2019), <http://repository.uin-malang.ac.id/4646/>; And read: 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

sharia economic law regulations consist of Islamic philanthropy regulations<sup>7</sup> and Islamic business regulations that apply in Indonesia.<sup>8</sup> However, Islamic business regulation concentrates more on the financial institution sector.<sup>9</sup> It does not include aspects of sharia marketing, especially Sharia multilevel marketing.

The multilevel marketing (hereafter written MLM) system is one form of trading activity allowed in Indonesia. The regulations in *Undang-Undang Republik Indonesia Nomor 7 Tahun 2014 tentang Perdagangan* (The Law of the

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(September 6, 2016): 178, <https://doi.org/10.11648/j.ijfbr.20160205.13>; Andrew Shandy Utama, "History and Development of Islamic Banking Regulations in the National Legal System of Indonesia," *Al-'Adalah* 15, no. 1 (2018): 37–50, <https://doi.org/10.24042/adalah.v15i1.2446>; Choirunnisak Choirunnisak and Nopriawan Mahriadi, "The Policy of Islamic Economic Politics in Indonesia in the Reformation Era," *Islamic Banking: Jurnal Pemikiran Dan Pengembangan Perbankan Syariah* 8, no. 1 (2022): 181–96; Suci Ramadhan, "Islamic Law, Politics And Legislation: Development Of Islamic Law Reform In Political Legislation Of Indonesia," *ADHKI: Journal of Islamic Family Law* 2, no. 1 (2020): 63–76.

<sup>7</sup> Islamic Philanthropy regulations, namely UU Nomor 41 Tahun 2004 tentang Wakaf (Law Number 41 of 2004 concerning Waqf) and UU Nomor 23 Tahun 2011 tentang Pengelolaan Zakat (Law Number 23 of 2011 concerning Management of Zakat).

<sup>8</sup> Consists of Law Number 19 of 2008 concerning State Sharia Securities, Law Number 21 of 2008 concerning Sharia Banking, and Law Number 1 of 2013 concerning Microfinance Institutions (Article 1 number 4, Article 12 and 13 regulates Sharia Microfinance Institutions), Law Number 33 of 2014 concerning Halal Product Guarantee, Financial Services Authority Regulation Number 69/POJK.05/2016 concerning Business Operation of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies, Sharia Cooperatives (Article 13-18 Government Regulation Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises), and Law Number 3 of 2006 concerning Religious Courts.

<sup>9</sup> Bambang Iswanto, "Dimensi Politik Hukum Dalam Perkembangan Ekonomi Islam Di Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 14, no. 2 (2014): 271–84.

Republic of Indonesia Number 7 of 2014 concerning Trade, (Trade Act)) were partially amended by the provisions of the Articles with the enactment of *Undang-Undang Republik Indonesia Nomor 11 Tahun 2020 tentang Cipta Kerja* (The Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation (Job Creation Act)). Although multilevel marketing is allowed in Indonesia, in Islam its application must be in accordance with sharia principles. For this reason, the National Sharia Council of the Indonesian Ulema Council established 12 guidelines in Fatwa Number 75/DSN MUI/VII/2009 concerning Guidelines for Direct Selling Tiered Sharia (Sharia MLM Fatwa).

Juridically formally, The trade law does not accommodate the existence of sharia multilevel marketing. Through the Sharia conformity certification process, its presence is only legitimized by the National Sharia Council of the Indonesian Ulema Council (DSN MUI). This process is guided by Sharia Multilevel Marketing fatwa and Article 109 of Law Number 40 of 2007 concerning Limited Liability Companies (Limited Company Act).<sup>10</sup> The problem is that the DSN MUI Fatwa is only a legal opinion, so it is not legally binding and is voluntary for multilevel marketing business actors. In addition, the Sharia multilevel marketing company is still registered as a conventional multilevel marketing company at the Ministry of Trade. Article 109 of the Limited Liability Company Law does not regulate the mechanism for establishing a new Sharia

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<sup>10</sup> Article 109 of the Limited Liability Company Act requires companies that carry out business activities based on sharia principles to have a Sharia Supervisory Board, which is appointed by the General Meeting of Shareholders (GMS) on the recommendation of the Indonesian Ulema Council. The sharia supervisory board is tasked with providing advice and suggestions to the Board of Directors and supervising the Company's activities following sharia principles.

company or transforming an established company into a Sharia company.

The legal vacuum of Shariah MLM licensing in Indonesian trade law causes this business to become undeveloped. Currently (2022), Only 11 Sharia multilevel marketing companies have applied for and received a Sharia conformity certificate from the MUI DSN.<sup>11</sup> The number is still tiny compared to the total number of conventional multilevel marketing companies registered with the Ministry of Trade, which amounts to 371 direct-selling companies as of December 31, 2021.<sup>12</sup> Whereas the Trade Law was enacted amid the strengthening of the Sharia economic legal system in Indonesia, namely in the reform era (1998 until now)<sup>13</sup> with a democratic style. Iswanto and Halim consider that this reform era shows a responsive legal character marked by strengthening the legality of Sharia economic law in Indonesia.<sup>14</sup>

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<sup>11</sup> “Senarai Perusahaan Bersertifikat – DSN-MUI,” accessed July 15, 2022, <https://dsnmui.or.id/sertifikasi/senarai-perusahaan-bersertifikat/>.

<sup>12</sup> Ronny Solomon Maresa (Intermediate Expert Trade Analyst at the Directorate of Business Development and Industry Players, Ministry of Trade), Interview about Multilevel Marketing, Email correspondence, January 13, 2021.

<sup>13</sup> Ridwan classifies 2014 as including the post-reformation era in Sharia Economic law legislation in Indonesia. Ridwan and Muhammad Fuad Zain, “Indonesia Sharia Economic Legislation as a Legal Frame Post Reformation,” *Journal of Legal, Ethical and Regulatory Issues*, April 13, 2021, <https://www.abacademies.org/abstract/indonesia-sharia-economic-legislation-as-a-legal-frame-post-reformation-10502.html>.

<sup>14</sup> Bambang Iswanto, “Political Configuration and The Development of Islamic Economic Law in Indonesia During The New Order and Reformation Era,” *Al-A’raf: Jurnal Pemikiran Islam Dan Filsafat* 18, no. 1 (June 30, 2021): 160–61, <https://doi.org/10.22515/ajpif.v18i1.3674>; Abdul Halim, “Membangun Teori Politik Hukum Islam di Indonesia,” *AHKAM*:

The Sharia MLM legal vacuum in trade law is the reason for the importance of tracing the politics of trade law in Indonesia to the sharia economic system. Legal politics is a legal policy that will be or has been implemented nationally by the government. The study of legal politics examines the configuration of political power behind making laws and regulations.<sup>15</sup> Previous studies on the politics of sharia economic law have been numerous but discuss institutionalizing the Islamic financial system, zakat, waqf, and guarantees of halal products.<sup>16</sup> Likewise,

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*Jurnal Ilmu Syariah* 13, no. 2 (August 7, 2013), <https://doi.org/10.15408/ajis.v13i2.938>.

<sup>15</sup> Moh. Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: Rajawali Press, 2011), 9.

<sup>16</sup> Diantaranya adalah Iswanto, "Political Configuration and The Development of Islamic Economic Law in Indonesia During The New Order and Reformation Era"; Triyanta, *Hukum Ekonomi Islam Dari Politik Hukum Ekonomi Islam Sampai Pranata Ekonomi Syariah*; Mu'adil Faizin, "Politik Hukum Ekonomi Syariah Di Indonesia Tahun 2008-2017," OSF Preprints (Center for Open Science, August 31, 2017), <https://ideas.repec.org/p/osf/osfxxx/j86sz.html>; A Triyanta, Ni'matul Huda, and R Nazriyah, "Hukum Ekonomi Islam: Dari Politik Hukum Ekonomi Islam Sampai Pranata Ekonomi Syariah," August 23, 2021, [https://scholar.google.co.id/citations?view\\_op=view\\_citation&hl=en&user=88aHGu0AAAAJ&citation\\_for\\_view=88aHGu0AAAAJ:u-x6o8ySG0sC](https://scholar.google.co.id/citations?view_op=view_citation&hl=en&user=88aHGu0AAAAJ&citation_for_view=88aHGu0AAAAJ:u-x6o8ySG0sC); 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), <http://digilib.uinsgd.ac.id/5230/>; Djawahir Hejaziey, "Konfigurasi Politik Hukum Perbankan Syariah Di Indonesia," *AHKAM: Jurnal Ilmu Syariah* 12, no. 1 (February 1, 2012), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/986>; Asep Saepudin Jahar and Thalhah Thalhah, "Dinamika Sosial Politik Pembentukan Undang-Undang Jaminan Produk Halal," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 12, no. 2 (2017): 385–404; Hamzan Wahyudi et al., "Construction of the Legal Framework for Strengthening the Halal Industry in Indonesia," *International Journal of Multicultural and Multireligious Understanding* 7, no. 1 (January 26, 2020): 429–38, <https://doi.org/10.18415/ijmmu.v7i1.1321>; Andi Putra Sitorus,

there are many normative studies on sharia multilevel marketing and the application of the MUI DSN Fatwa on Sharia multilevel marketing.<sup>17</sup> Overall, there has been no discussion of the legal politics of trading on sharia MLM. The study of legal politics is significant to ensure the position and existence of Sharia economic law in trade law

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“Politik Hukum Perlindungan Usaha Mikro Kecil Menengah (Umkm) Dalam Masyarakat Ekonomi Asean,” *DOKTRINA: JOURNAL OF LAW* 1, no. 2 (October 22, 2018): 125–44, <https://doi.org/10.31289/doktrina.v1i2.1920>; Ali Murtadho Emzaed, Kamsi Kamsi, and Ali Akhbar Abaib Mas Rabbani Lubis, “A Politics of Recognition: The Legislation of Zakat Law in a Transition of New Order and Reform Era,” *Ulumuna* 24, no. 2 (2020): 320–47.

- <sup>17</sup> Some of studies are Sa’eed Mitwally Alarahawan, “Multilevel Marketing: Inner Workings, Socioeconomic Effects and the Islamic Juridical View,” *المجلة الدولية للعلوم التربوية والنفسية* ٦٥, no. 1 (July 1, 2021): 279–96, <https://doi.org/10.21608/ijeps.2021.242007>; Shofie Amilia 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, “MultilevelMarketing 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 MultilevelMarketing (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 MultilevelMarketing (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, “MultilevelMarketing 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.



in Indonesia. Legal politics has a crucial role in forming Indonesian national laws and regulations. Legal politics is a basic guideline for determining values and establishing, constructing, and developing laws in Indonesia. Legislation is a very effective instrument in law reform because of its binding and coercive legal force. There for, this research focuses on legal politics in forming trade law in Indonesia against Sharia multilevel marketing. The study utilizes a normative juridical method with statutory and historical approaches.

### **Sharia Multilevel Marketing and Its Development in Indonesia**

Multilevel Marketing (MLM), or network marketing, is a form of a network built in stages in product marketing by positioning customers/consumers as well as company workers or independent agents (contractors, distributors, etc.). Agents receive commissions, bonuses, discounts, dividends, or other rewards for selling products and recruiting other agents.<sup>18</sup>

MLM-patterned businesses require careful attention. They can encourage the birth of Ponzi or pyramid schemes<sup>19</sup> that are forbidden because they practice money

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<sup>18</sup> Daryl Koehn, "Ethical Issues Connected with MultilevelMarketing Schemes," *Journal of Business Ethics* 29, no. 1 (January 1, 2001): 153–60, <https://doi.org/10.1023/A:1006463430130>.

<sup>19</sup> Ponzi schemes are investment scams that promise high returns with little risk to previous investors, with money taken from later investors. Pyramid schemes are activities of recruiting people to make investments and granting licenses to recruit others. Investors pay for the opportunity to receive compensation when able to recruit others into the scheme. Recruitment opportunities are a product of a pyramid scheme. Ponzi schemes are similar to pyramid schemes because both are based on using new investors' funds to pay off previous investors. Koehn, 153; Psychologically, optimism (emotional bias) has been shown to influence people to invest in Ponzi schemes and pyramid schemes. Taofik Hidajat et al., "Why

games that contain elements of fraud detrimental to society and the state.<sup>20</sup> Sometimes it is difficult to distinguish between MLM and Pyramid Schemes because pyramid schemes can be camouflaged as MLM in practice.<sup>21</sup> There are similarities between the two in several respects, including the obligation to register as a member, member recruitment activities, and the provision of bonuses to members. The MLM industry players call themselves “True MLM” to ensure the difference and reject the notion that MLM practices money games.<sup>22</sup>

MLM has developed in such a way with various innovations and patterns, but it is not yet sure whether it is compatible with sharia principles. There are differences in the fatwas of scholars against the MLM business: *first*, groups forbid MLM because MLM is the same as a pyramid scheme and money game.<sup>23</sup> *Second*, the group allows it because they think MLM is a legitimate *samsarah*

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Are People Trapped in Ponzi and Pyramid Schemes?,” *Journal of Financial Crime* 28, no. 1 (August 24, 2020): 187–203, <https://doi.org/10.1108/JFC-05-2020-0093>.

<sup>20</sup> Peter J. Vander Nat and William W. Keep, “Marketing Fraud: An Approach for Differentiating Multilevel Marketing from Pyramid Schemes,” *Journal of Public Policy & Marketing* 21, no. 1 (April 1, 2002): 139–151, <https://doi.org/10.1509/jppm.21.1.139.17603>.

<sup>21</sup> Robert L. Firzpatrick and Joyce K. Reynolds, *False Profits: Seeking Financial and Spiritual Deliverance in Multilevel Marketing and Pyramid Schemes* (Herald Press, 1997).

<sup>22</sup> Sofwan Jauhari, *Fatwa Ulama Indonesia & Timur Tengah Mengenai Multi Level Marketing (MLM)* (Cirebon: Nusa Lintera Inspirasi, 2019), 68; Muhammad Sofwan Jauhari, Moch Bukhori Muslim, and Saepullah Saepullah, “Multi Level Marketing (MLM) in Fatwa DSN MUI,” 2021.

<sup>23</sup> Among the fatwas that forbid MLM business are *Lajnah Da’ima* KSA (Kerajaan Saudi Arabia), *Dār al-ifta’ Mesir*, *Markaz al-Fatwa* Qatar, *Dār al-ifta’ Yordania*, dan *Mujamma’ al-Fiqh al-Islami* Sudan. Jauhari, *Fatwa Ulama Indonesia & Timur Tengah Mengenai Multi Level Marketing (MLM)*, 104; Mohammad Sa’eed Mitwally Alrahawan, “Multilevel Marketing,” 287.

(intermediary) practice in Islam.<sup>24</sup> The three groups allow it on condition that it must comply with Sharia principles. Thus, the term Sharia MLM or Sharia Tiered Direct Selling appears. This third opinion includes the Fatwa of DSN MUI Number 75/DSN MUI/VII/2009 concerning Guidelines for Sharia Tiered Direct Selling; Guidelines for JAKIM (Malaysian Islamic Progress Department or Department of Islamic Development Malaysia) Numbers 1 of 2013 concerning Direct Selling Trading by Marketing Numbers Level According to Sharia (Direct Selling Trading Multilevel Marketing According to Sharia)<sup>25</sup>; and The Majlis Ugama Islam (MUIS) or The Islamic Religious Council of Singapore.<sup>26</sup> DSN MUI provides guidelines for Sharia MLM. Sharia MLM should not practice money games and does not contain several elements: *haram*, *gharar* (unclear material), *dharar* (danger), *ribā* (usury), *maysir* (gambling), *zhulm* (cruel), immorality, and *ighrā'* (cradle/lure) in the marketing management system, products, and transactions.

In general, there are differences between Islamic MLM and conventional MLM. Jauhari explained the essential difference between Sharia MLM and conventional MLM by referring to the 12 (twelve) Sharia MLM requirements specified in the DSN MUI Fatwa regarding Sharia MLM. The difference concerns the organization, products, bonuses,

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<sup>24</sup> This contemporary group of Fiqh Experts are the Fatwa Committee in Al-Azhar, Egypt, Libya, Algeria, and Tunisia. Mohammad Sa'eed Mitwally Alrahawan, "Multilevel Marketing," 287.

<sup>25</sup> "Garis Panduan Permohonan Lesen Jualan Langsung," e-Muamalat, accessed October 8, 2022, <https://e-muamalat.islam.gov.my/en/bahan-ilmiah/garis-panduan/72-garis-panduan-permohonan-lesen-jualan-langsung>.

<sup>26</sup> "Muis | Muis: Office of the Mufti," accessed October 10, 2022, <https://www.muis.gov.sg/officeofthemufti/Irsyad/Advisory-on-Multi-Level-Marketing>.

and marketing plans.<sup>27</sup> *First*, organizationally, Sharia MLM companies must have a Sharia Supervisory Board (Dewan Pengawas Syariah (DPS)) to oversee business activities and provide guidance so that all company activities do not conflict with Islamic teachings. Second, the products sold in Sharia MLM must be *halāl* and *thoyyib* (suitable) to be consumed according to Islamic law. While in conventional MLM, there is no affirmation of having to use/sell halal products. *Third*, involving company must be free from things forbidden in the marketing plan and bonuses, such as gambling (*maysir*), fraud and obscurity (*gharar*), usury, and immorality. Legal Conventional MLM also prohibits elements of gambling and fraud in the form of money game practices or pyramid schemes but does not emphasize the prohibition of usury and immorality. Ethically, maximum profit in Sharia MLM is based on economic rationality based on Islamic ethics, while conventional MLM refers to business ethics in general, not relying on religious ideology.<sup>28</sup>

This Sharia MLM fatwa was stipulated in the reform era or the *qanun* phase. During the reformation period, the political configuration of Sharia economic law legislation was democratic and responsive. However, since the issuance of the Sharia MLM fatwa in 2009 to 2022, only 11

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<sup>27</sup> "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/>.

<sup>28</sup> Rationality in Islamic economics is strongly influenced by externalities that encourage one to do good to others under human nature. Altruism, humanity-bound rationality, and social considerations are rationalities developed by Islamic economics, which are based on authoritative sources (the Qur'an and Sunnah). 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>.

(eleven) Sharia MLM companies (new and extended) have obtained the MUI DSN license, out of 371 direct selling companies registered with the Ministry of Trade until December 31, 2021.<sup>29</sup> Quantitatively, this data shows that Indonesia's Sharia MLM business has not developed well. The DSN MUI fatwa is only a non-binding legal opinion for MLM companies in Indonesia. Sharia MLM certification is not integrated into the direct sales licensing system at the Ministry of Trade. The Ministry of Trade does not provide a special licensing mechanism for Sharia MLM so that the Direct Sales Business Licenses (*Surat Izin Usaha Penjualan Langsung, SIUPL*) of Sharia MLM Companies remain with Conventional MLM status.<sup>30</sup>

### **Multilevel Marketing Law Making in Indonesia**

Multilevel marketing is one of the models of trading activities whose arrangements are in the Trade Law. Trade Law in Indonesia underwent a long and dynamic historical journey until the enactment of the Trade Act, which was then partially amended by the provisions of the Articles with the legislation of The Job Creation Act

The Trade Act is the first national law product in the trade sector after about 30 years of inheriting the Dutch Colonial law product. Previously, trade law in Indonesia refer to the *Kitab Undang-Undang Hukum Perdata* (Civil Code) or *Burgerlijk Wetboek voor Indonesie* (BW) *Staatsblaad* Number 23 of 1847, *Kitab Undang-Undang Hukum Dagang* (the Commercial Code ) or *Wetboek van*

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<sup>29</sup> Interview with Ronny Solomon Maresa (Intermediate Expert Trade Analyst at the Directorate of Business Development and Industry, Ministry of Trade), Email correspondence, January 13, 2021.

<sup>30</sup> Interview with Ronny Solomon Maresa (Intermediate Expert Trade Analyst at the Directorate of Business Development and Industry, Ministry of Trade); Interview with Bayu Bando (Accounting Manager of The Herba Penawar Alwahida Indonesia Limited Company (PT. HPAI)), Zoom Meeting, January 14, 2022.

*Koophandel* (WvK) *Staadblad* 1847 Number 23, and *Bedrijfsreglementerings Ordonnantie* 1934 (*Staatblaad* 1938 Number 86) or the 1934 Company Regulation Act, commonly known as BRO 1934.<sup>31</sup> These BW, WvK, and BRO of 1934 were valid during the Dutch Colonial period based on the principle of concordance and continued to be used after the independence of the Republic of Indonesia to overcome the legal vacuum based on the provisions of Article II Transitional Rules of the Indonesia Constitution.<sup>32</sup> These three laws are still valid even though some of the articles are no longer valid because there are more specific laws, such as regulations on warehousing, goods, and trade.<sup>33</sup> However, the multilevel marketing business has been growing in Indonesia since the 1980s, but these regulations have not expressly contained legal norms for multilevel marketing.<sup>34</sup>

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<sup>31</sup> BRO 1934 is a legal product equivalent to the law in the field of trade which regulates business licensing more. Read the General explanation of the Trade Act.

<sup>32</sup> Ramlan, *Intisari Pengantar Hukum Dagang I* (Medan: Ratu Jaya, 2009), 9.

<sup>33</sup> Evelyb Hutami Gunawarman, "Analisa Undang-Undang Perdagangan Dan Permendag No. 32/2008 Terhadap Praktek Usaha MultilevelMarketing Di Indonesia" Volume XV, No. 3-March 2016 (2016): 299, <https://ojs.uph.edu/index.php/LR/issue/view/134>.

<sup>34</sup> According to Wuryando (2012), the first multilevel marketing company in Indonesia in 1986 was PT. Nusantara Sun Chlorella Tama, which later changed to PT. Centra Nusa Insan Cemerlang, which is now better known as CNI. The company was founded in Bandung and expanded to neighboring countries such as Malaysia, Hong Kong, and America. At that time, there was no law governing multilevel marketing. The existing multilevel marketing developed only using a code of ethics organized by the Indonesian Direct Seller Association, which was formed in 1984. Quoted by Iwan Fahri Cahyadi, "Strategi Repositioning Bisnis Multi Level Marketing Dan Tinjauan Dari Prespektif Syariah," *BISNIS: Jurnal Bisnis Dan Manajemen Islam* 7, no. 1 (2019): 116; "APLI - Asosiasi Penjualan Langsung Indonesia," APLI - Asosiasi Penjualan Langsung Indonesia, accessed December 3, 2021, <https://apli.id/>.

The government's attention to the development of the tiered direct selling business as a marketing system for goods or services began to be serious with the enactment of the Decree of *Keputusan Menteri Perindustrian dan Perdagangan Nomor 73/MPP/Kep/3/2000 tentang Ketentuan Kegiatan Usaha Penjualan Langsung Berjenjang* (The Minister of Industry and Trade concerning Provisions for Tiered Direct Selling Business Activities (Kepmenperindag 73/2000)). This Ministerial Decree was enacted and entered into force on March 20, 2000, to create business order and legal certainty for consumer protection in Indonesia's multilevel marketing business. This Decree of the Minister of Industry and Trade consists of 10 chapters and 23 articles, the content of which is still limited to licensing multilevel marketing, legal aspects of agreements between companies and partners/members, and administrative sanctions for violations of direct selling license. This regulation is still considered weak in providing protection to consumers who are disadvantaged by the practices of pyramid schemes and money games which are increasingly widespread, sophisticated, and diverse, reaching remote areas.<sup>35</sup> The weakness of this regulation is that there are no provisions regarding criminal sanctions that can create a deterrent effect for business actors who practice pyramid schemes or money games under the guise of multilevel marketing.

Furthermore, the government updated the direct selling business licensing provisions in the form of *Peraturan Menteri Perdagangan No. 13/M-DAG/PER/3/2006 tentang Ketentuan dan Tata Cara*

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<sup>35</sup> Anisa Anisa, "Perlindungan Hukum Terhadap Anggota Multi Level Marketing (MLM) Dalam Investasi Melalui Sistem MLM," *Legal Opinion* (Journal:eArticle, Tadulako University, 2017), <https://www.neliti.com/publications/190452/>.

*Penerbitan Surat Izin Usaha Penjualan Langsung* (Minister of Trade Regulation concerning Provisions and Procedures for Issuing Direct Selling Business Permits (*Permendag 13/2006*)). It was amended again into *Peraturan Menteri Perdagangan No. 32/M-DAG/PER/8/2008 tentang Penyelenggaraan Kegiatan Usaha Perdagangan dengan Sistem Penjualan Langsung* (Regulation of the Minister of Trade concerning the Implementation of Trading Business Activities with a Direct Selling System (*Permendag 32/2008*)). It expands the scope of direct selling business licenses for multilevel marketing, and its service products become SIUPL for national companies. *Permendag 32/2008* regulates efforts to prevent money games by controlling the amount of direct selling company capital from a minimum of Five hundred million rupiahs<sup>36</sup> to a minimum of 2 billion rupiahs (domestic companies) and five billion rupiahs (foreign companies).<sup>37</sup> These two regulations stipulate that the bonus or commission from the sale value of goods and/or services is not more than 40%. The goal is that companies do not practice pyramid schemes or money games.<sup>38</sup> *Kepmenperindag 73/2000* and *Permendag 32/2008* have not been able to provide solid legal protection for consumers and legal multilevel marketing business actors because of the widespread practice of money games under the guise of multilevel marketing.

In 2009 the Minister of Trade changed the *Permendag 32/2008* into *Peraturan Menteri Perdagangan Nomor 47/M-DAG/PER/9/2009 tentang Penyelenggaraan Kegiatan Usaha Perdagangan dengan Sistem Penjualan Langsung* (Regulation of the Minister of Trade concerning the

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<sup>36</sup> Article 2 letter b of *Permendag 13/2006*

<sup>37</sup> Article 7 *Permendag 32/2008*

<sup>38</sup> Article 3 *Permendag 32/2008*



Implementation of Trading Business Activities with a Direct Selling System (Permendag 47/2009)). The amendment is foreign capital ownership in direct selling companies in Indonesia (Article 7), with a maximum limit of 60%<sup>39</sup> to 95%<sup>40</sup>. Apart from being related to capital, the legal norm of tiered direct sales currently still refers to the Minister of Trade Regulation 32/2008.

Efforts to gradually strengthen regulations in the trade sector are carried out by the government (executives) by making an Academic Paper on the Draft Law on Trade by the Ministry of Trade at the instigation of Commission VI of the Indonesian House of Representatives. The process started in 1996 and was only completed in July 2012. Then it was proposed to the House of Representatives of the Republic of Indonesia (DPR RI) in 2013. The Working Committee of Commission VI DPR RI discussed it in a minifaction meeting on February 5, 2014. On February 11, 2014, DPR RI held its 18th plenary session during the third session of 2014 and agreed to ratify the Trade Law Draft into the Trade Act. This Act is the first national law product in the trade sector after a long time using the Dutch Colonial law product and harmonizes several other rules that are related to trade. The Trade Act revokes several previous regulations, namely:<sup>41</sup>

1. BRO 1934.

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<sup>39</sup> Presidential Regulation No. 77 of 2007 concerning List of Business Fields Closed and Business Fields Open with Requirements in the Investment Sector.

<sup>40</sup> Presidential Regulation No. 36 of 2010 concerning the List of Business Fields Closed and Business Fields Open with Requirements in the Investment Sector which is a revision of Presidential Regulation No. 77 of 2007.

<sup>41</sup> See Articles 117 and 118 of the Trade Law

2. *Undang-Undang Nomor 2 Prp Tahun 1960 tentang Pergudangan* (Act Number 2 Prp of 1960 concerning Warehousing) and Amendments thereto;
3. *Undang-Undang Nomor 10 Tahun 1961 tentang Barang* (Act Number 10 of 1961 concerning Goods); and
4. *Undang-Undang Nomor 8 Prp Tahun 1962 tentang Perdagangan Barang-Barang dalam Pengawasan* (Act Number 8 Prp of 1962 concerning Trade in Goods under Supervision).

This Trade Act contains many aspects, from conventional trade to electronic-based trade. Multilevel marketing is part of the goods distribution system regulated in the Trade Law (Article 7 paragraph (3), 8, 9, 10, 11, and 105).<sup>42</sup> This Trade Law uses the word "distribution" and limits its object to the form of "goods" only (Article 1 point 11). Linguistically, the word distribution has a broader meaning than sales, where sales is a form of distributing goods. Likewise, the derivative regulations use the term distribution of goods, namely *Peraturan Menteri Perdagangan Nomor 22/M-DAG/PER/3/2016 tentang Ketentuan Umum Distribusi Barang* (the Regulation of the Minister of Trade concerning General Provisions for the Distribution of Goods (Permendag 22/2016) as amended to *Peraturan Menteri Perdagangan Nomor 66 Tahun 2019* (Regulation of the Minister of Trade Number 66 of 2019 (Permendag 66/2019)). Finally, *Permendag 66/2019* was added to

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<sup>42</sup> Some of the editorials/contents of these articles come from the proposal of the Indonesian Direct Selling Association (APLI), which long before 2006 had fought for Indonesia to have its law to combat money game practices. "Rekam Jejak Menuju Lahirnya Pasal Anti Piramida," *Rekam Jejak Menuju Lahirnya Pasal Anti Piramida*, accessed February 11, 2022, <https://www.apli.or.id/detail/14/rekam-jejak-menuju-lahirnya-pasal-anti-piramida>.

*Peraturan Menteri Perdagangan Nomor 70 Tahun 2019 tentang Distribusi Barang Secara Langsung* (the Regulation of the Minister of Trade concerning the Direct Distribution of Goods (Permendag 70/2019).

*Permendag 70/2019* contains several new rules. Among those rules are, firstly, the licensing system in the field of direct selling, which is carried out electronically through the *Online Single Submission* (OSS), which is integrated through the Investment Coordinating Board.<sup>43</sup> Secondly, changing SIUPL into Company Business License (Surat Izin Usaha Perdagangan, SIUP) with the Standard Classification of Business Fields is Kode Baku Lapangan Usaha Indonesia (KBLI) 47999 (Article 1, number 14). The validity period of the SIUP is determined as long as the company carries out direct selling business activities (Article 19). In addition, the Permendag 70/2019 adds a ban on direct sales through marketplaces (Article 21 letter l) and clarifies the criteria for pyramid schemes (Article 30 and Article 21 letter k). The threat of punishment for the perpetrators of the pyramid scheme is regulated in Article 105 of the Trade Law, namely imprisonment for a maximum of 10 (ten) years and/or a maximum fine of 10 billion rupiahs.

In 2020, the government carried out a multi-sectoral legal reform in the form of The Job Creation Act. The aim is to encourage investment, accelerate economic transformation, harmonize central-regional policies, provide ease of business, overcome overlapping regulatory issues, and eliminate sectoral egos.<sup>44</sup> The Trade Act is one

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<sup>43</sup> Under the provisions of Government Regulation No. 24 of 2018 concerning Electronically Integrated Business Licensing (PP 24/2018)

<sup>44</sup> "UU Cipta Kerja Permudah Investasi Di Indonesia," BKPM, accessed February 16, 2022,

of the sectors whose legal norms are corrected in the Job Creation Act.

In Paragraph 8 of Article 46 of the Job Creation Act, the revisions consist of editorial changes (34 Articles), deletion of Article 49, and addition of Article 77A. One of the revisions related to the distribution of goods is the authority of the institution that stipulates the regulations. Article 11 of the Trade Law states that provisions on the distribution of goods are regulated in a Ministerial Regulation, which then changed to be regulated in a Government Regulation (Article 46 number 2 of the Job Creation Act, which amends Article 11 in conjunction with Article 24 of the Trade Act). Government Regulation 29 of 2021 concerning the Implementation of Trade (PP 29/2021) applies.<sup>45</sup> Regulation of a tiered direct sales system in PP 29/2021 is contained in Article 1 (numbers

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<https://www.bkpm.go.id/id/publikasi/detail/berita/uu-cipta-kerja-berikan-jalan-mudah-untuk-berinvestasi-di-indonesia>.

<sup>45</sup> This regulation revokes two previous regulations, namely Presidential Regulation No. 63 of 2018 concerning Stipulation and Registration of Goods Related to Security, Safety, Health, and Environment and Presidential Decree No. 112 of 2007 concerning Structuring and Fostering Traditional Markets, Shopping Centers, and Modern Stores, as well as amending PP No. 33 of 2019 concerning the Imposition of Administrative Sanctions to Warehouse Owners Who Do Not Register Warehouses. "PP No. 29 Tahun 2021 Tentang Penyelenggaraan Bidang Perdagangan [JDIH BPK RI]," accessed February 10, 2022, <https://peraturan.bpk.go.id/Home/Details/161870/pp-no-29-tahun-2021>; PP 29/2021 is still valid even though the Job Creation Act is in a grace period of 2 (two) years of improvement after the Constitutional Court Decision Number 91/PUU-XVIII/2020 states that the Job Creation Law is unconstitutional. It is under the fourth dictum in the judgment on the subject matter of the application stating that the Job Creation Law remains in force until improvements are made to the formation under the grace period as specified in the judgment "Putusan | Mahkamah Konstitusi Republik Indonesia," accessed February 10, 2022, <https://www.mkri.id/index.php?page=web.Putusan&id=1&kat=1&cari=91%2FPUU-XVIII%2F2020>.

20, 21, 22, 24, 29, 30, 31, and 32), and Articles 42 to 55. Matters related to criminal sanctions for the practice of pyramid schemes are still referred to in Article 105 of the Trade Law.

Significant changes in PP 29/2021 include limits on the number of commissions and/or bonuses and the removal of direct selling associations' involvement in verifying direct selling business licenses. These two things can be explained as follows:

*First*, Article 48 letter e *junto* Article 49 PP 29/2021 stipulates the provision of commissions and/or bonuses is based on the results of goods sales activities carried out by direct sellers. Their networks, as agreed, are a maximum of 60% (sixty percent) of the company's turnover. This provision allows tiered direct-selling companies to set higher prices for consumers. In contrast, the previous regulation was limited to no more than 40% (forty percent) of the selling value of goods.

*Second*, in the direct selling business licensing process, direct selling associations such as *Asosiasi Penjualan Langsung Indonesia* (APLI) and *Asosiasi Perusahaan Penjualan Langsungn Indonesia* (AP2LI) are usually involved in verifying the *marketing plan* and code of ethics of direct selling companies (Article 8 paragraph (3) and Article 9 paragraph (4) of the Minister of Trade Regulation 70/2019). The PP 29/2021 is no longer included by the provisions of Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing (PP 5/2021). This change in norms aims to make the licensing process run faster by the objectives of the Job Creation Act to provide convenience for business actors, increase investment, and open up wider employment opportunities for the community, especially in this *multilevel marketing business sector*.

Based on the explanation above, the history of the formation of direct sales legal norms in national law occurs in two phases: the regulatory and legislative phases. The regulatory phase began with the enactment of *Kepmenperindag* 73/2000, which was changed to Minister of Trade Regulation 13/2006, later changed to Minister of Trade Regulation 32/2008, and again changed to *Permendag* 47/2009. These regulatory changes show the government's efforts to prevent and overcome the practice of *money games* or pyramid schemes. Several articles lead to preventive steps in controlling the rise of pyramid schemes, including the definition of prohibited marketing networks, requirements for granting business licenses, and prohibitions for companies that already have SIUPL. , although the affirmation of the anti-pyramid scheme explicitly has not been seen in the four regulations. However, it is implicitly substantive. In addition, the four regulations still contain weak force in the aspect of legal entanglement for the crime of money games under the guise of multilevel marketing, which was still rife at that time. Meanwhile, according to Article 15 of Law Number 11 of 2012 concerning the Establishment of Legislations, provisions for criminal sanctions can only be regulated in laws and regional or district/city regulations. Finally, in this legislative phase, the Trade Law was issued, which contains provisions for criminal sanctions for *money game actors in the form of ordinary offenses*, namely Article 105, which remains valid and has not been changed in the Job Creation Act.

### **National Trade Law Politics towards Sharia Multilevel Marketing**

Understanding national legal politics is essential to lay the foundation and strategy of Islamic legal politics in

Indonesia so that it can be accepted and accommodated by national legal politics. Because if not, Islamic Law will experience juridical and political obstacles in the legislative process of aspired legal ideas, as has happened in the Marriage Bill, Religious Court Bill, Pornography Bill, and regulations that are considered to be sharia in nature.<sup>46</sup>

For this reason, in the context of the national economy, the historical journey of establishing tiered direct sales regulations contains elements of legal politics that need to be explored more deeply. The aim is to understand the direction of national legal policy in the field of trade and its relevance to Sharia economic law politics in Indonesia.

Legal politics includes several scopes or types. Padma Wahjono divides it into three kinds: the law's formation, implementation, and enforcement.<sup>47</sup> Mahfud MD diverges the scope of legal politics in two aspects: *first*, the development of the law with the core of making and updating legal materials to suit the needs, and *second*, the implementation of existing legal provisions, including affirmation of the function of institutions and the development of law enforcers.<sup>48</sup> This discussion of the politics of trade law is limited to only the aspects of its laws' formation (making and changing) in Indonesia.

Trading with the Shariah multilevel marketing pattern in Indonesia was formally started in 2012,<sup>49</sup> approximately

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<sup>46</sup> Amran Suadi and Mardi Candra, *Politik Hukum Perspektif Hukum Perdata Dan Pidana Islam Serta Ekonomi Syariah* (Jakarta: Kencana, 2016), 2.

<sup>47</sup> Padmo Wahjono in Mohammad Nur Yasin, *Politik Hukum Ekonomi Syariah di Indonesia* (Malang: UIN Maliki Press, 2018), 113.

<sup>48</sup> Mahfud MD, *Politik Hukum Di Indonesia*, 17.

<sup>49</sup> Started by PT. Herba Penawar Alwahida Indonesia (HPAI), which was officially established on March 19, 2012, is also the first sharia multilevel marketing company to receive a sharia certificate from DSN MUI. HPAI, "Company Profile," *PT HPAI - Herba Penawar Alwahida Indonesia* (blog), accessed June 1, 2022,

three years after the issuance of the MUI DSN Fatwa on Sharia multilevel marketing and two years before the Trade Law was enacted. It shows that a sharia multilevelmarketing patterned trading industry has become a part of the national economy. At that time, there was already a regulation on multilevelmarketing by Trade Ministry. These regulations do not regulate direct sales with sharia tiers, even though it is a phase of the *qanun* for the sharia financial sector at this time. Several sharia economic regulations apply at this phase, including *Undang-Undang Nomor 18 Tahun 2008 tentang Surat Berharga Syariah Nasional* (Law Number 18 of 2008 concerning National Sharia Securities), *Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah* (Law Number 21 of 2008 concerning Sharia Banking), *Undang-Undang Nomor 3 Tahun 2006 tentang Perubahan atas UU Nomor 7 Tahun 1989 tentang Peradilan Agama* (Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 regarding Religious Courts), and *Undang-Undang Nomor 44 Tahun 2007 tentang Perseroan Terbatas* (Law Number 44 of 2007 regarding Limited Liability Companies). However, the development of the Islamic economic sector does not affect the establishment of national trade laws. Politically, that can be reviewed through academic manuscripts and the legislative process below.

#### *Academic Text of the Draft Law on Trade*

The government is gradually carrying out efforts to strengthen regulations in the trade sector by drafting a Trade Law by the Ministry of Trade at the instigation of Commission VI of the House of representatives of the

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<http://hpaindonesia.net/v3/profil-company/>; Bayu Bando, Interview on zoom meeting with PT HPAI Accounting Manager, January 14, 2022.



Republic of Indonesia.<sup>50</sup> Ministry of Trade started preparing the academic text of the Draft Law on Trade in 1996 and completed it in July 2012.<sup>51</sup>

Philosophically, the Draft Law on Trade aims to create prosperity, security, and justice *through* the trade sector, thus requiring government intervention in trade to avoid market distortions. To achieve the objectives of the law, based on sociological considerations, the government views the need for social relations between stakeholders (producers, consumers, governments) in the trade sector based on norms<sup>52</sup> prevailing in society at both domestic and international levels.

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<sup>50</sup> Brief report of Commission VI for the 2009-2010 session for the second session in the Working Meeting with the Minister of Trade on January 25, 2010. Setjen DPR RI, "Alat Kelengkapan Dewan - Dewan Perwakilan Rakyat," accessed June 14, 2022, <https://www.dpr.go.id/akd/index/id/Laporan-Singkat-Komisi-VI>.

<sup>51</sup> According to Erlangga Hartanto, Chairman of Commission VI of the Indonesian House of Representatives at that time, the discussion of Law on the Indonesian Trade sector had been discussed for 30 years, going through 6 changes to the president and several changes to the Minister of Trade. Finally, DPR RI can realize it into Trade Law. Read: "Belum Punya UU Perdagangan, RI Masih Pakai Warisan Belanda," *merdeka.com*, January 29, 2014, <https://www.merdeka.com/uang/belum-punya-uu-perdagangan-ri-masih-pakai-warisan-belanda.html>; Kementerian Perdagangan Republik, "Indonesia Trade Insight, Publikasi Internal Kementerian Perdagangan," Edisi Perdana 2014, 16-17, <http://www1.kemendag.go.id/id/publikasi-perdagangan>.

<sup>52</sup> Community life adheres to several norms that live and are obeyed, as a rule, consisting of religious, legal, moral, and decency norms. Kelsen explains that norms are special meanings, meanings that something should be or should be done, even though it may not be. Kelsen divides norms into thinking/logic norms and acting norms which consist of moral and legal norms. According to legal norms, a person must behave under certain conditions in a certain way, indicating that this behavior is prescribed, permitted, or authorized. In this sense, Kelsen defines legal norms as prescriptions, permits, or authorizations. Such a norm may mean an act of will from one individual. The intention is deliberately directed at the behavior of

One of the religious norms that should be the basis is religious norms. This Academic Paper does not affirm religious norms on its sociological basis. Meanwhile, religious norms have become one of the sources in the development of law in Indonesia. Indonesia is a Pancasila State that fosters and recognizes the existence of religions adhered to by its people as long as they are by the norms of civilization and justice.<sup>53</sup>

State law must reflect the essence of justice based on the One Godhead. The Source of norms from anywhere, including the Islamic sharia system. That state law must remember the sense of justice based on the almighty divinity is supposed on the principle of the hierarchy of norms and the elaboration of norms. Logically of the scale of norms, the law of a country contains the norms contained in the Shari'a of the religions adopted by the community's citizens. Meanwhile, state formulation reflects the elaboration norm of the religious law that citizens believe. Constitutionally, religious norms have been institutionalized in the national legal system as regulated in articles 24, 25, and 29 of the Indonesia Constitution.

Islamic economics contains moral values regarding consumption, production, and distribution. Everything must run in a balanced, continuous, and comprehensive (*kāffah*) dimension of religious services.<sup>54</sup> Sharia economic law emphasizes the necessity of implementing the economic behavior of a society or country by the

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another individual. Hans Kelsen, "On the Basic Norm," *California Law Review* 47 (1959): 107.

<sup>53</sup> SirajuddinM, "Norma Agama Sebagai Sumber Hukum Materil Dalam Pembentukan Peraturan Daerah Di Indonesia." (Doctor, Universitas Brawijaya, 2014), <http://repository.ub.ac.id/id/eprint/160845/>.

<sup>54</sup> *Ekonomi Islam*, 20.

views, analysis, and settlements in Islamic ways. The Islamic way is the economic activity that must correspond to the Qur'an and the Sunnah of the Prophet SAW to achieve *Falāh* (luck of the world and the hereafter) through the scales of *mashlahat* (Public interest) for human life.<sup>55</sup> In this case, the Islamic economic system has different characteristics and *guidance* than other economic systems, one of which is applying the principle of justice through anti-usury, *maysir*, *gharar*, and *zhalim* behavior. Given the clear difference between the Islamic and conventional economic systems, the government should accommodate these differences with separate arrangements.

In addition, it was drafting the Trade law through a process of legal harmonization with 30 (thirty) other laws related to the trade sector.<sup>56</sup> One of the laws was the Limited Liability Company Law. This law is the legal basis for forming a legal entity for business actors in running a business as a limited liability company legal entity; of course, it also applies to the sharia multilevel marketing business sector. Article 109 of the Limited Liability Company Law requires companies that carry out business activities based on sharia principles to have a Sharia Supervisory Board in charge of providing advice and suggestions to the Board of Directors and supervising the Company's activities by sharia principles. However, the Academic Paper, until the stipulation of the Trade Law, did not address the provisions of Article 109. So the derivative regulations of

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<sup>55</sup> 17.

<sup>56</sup> Biro Hukum Kementerian Perdagangan, "Naskah Akademik Rancangan Undang-Undang Tentang Perdagangan," July 2012, 12–18.

the Trade Law do not regulate the licensing system for Sharia multilevel marketing companies but follow the licensing requirements of business entities in general. There is no distinction between established companies and companies with sharia principles as has been applied to companies in the sharia banking business and other sharia financial institutions.

*Legislation Process in the House of Representatives of The Republic of Indonesia*

The Trade Law Draft went through a strict deliberation process during the Indonesian House of Representatives legislative process through the Trade Law Draft Working Committee led by Aria Bima as the Chair. The factions propose 438 Problem Inventory Lists (*Daftar Inventarisir Masalah, DIM*), and 125 of them have been completed. The remaining 313 DIM were discussed at the level of the Working Committee chaired by Aria Bima (from Partai Demokrasi Indonesia Perjuangan Fraction) and which consisted of 28 members of the DPR.<sup>57</sup> Throughout 2013, the government and the DPR discussed the Trade Law Draft five times and in two intensive meetings.<sup>58</sup>

On February 10, 2014, the Working Committee held a meeting to hear the factions' views on the final draft of the Trade Law Draft. The Chairman of Commission VI of the House of Representatives, Airlangga Hartarto, attended the meeting. The meeting was accompanied by

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<sup>57</sup> Beritasatu.com, "DPR Committee Quickly Discusses Trade Bill," beritasatu.com, November 28, 2013, <https://www.beritasatu.com/Ekonomi/152510/panja-dpr-kebut-pembahasan-ruu-perdagangan>.

<sup>58</sup> "Peeking the Contents of the Draft Trade Law," detikfinance, accessed June 13, 2022, <https://finance.detik.com/berita-ekonomi-bisnis/d-2492424/intip-isi-ranancang-undang-perdagangan>.

his three deputies, Aria Bima as chairman of the Working Committee, Erik Satria Wardana (Hanura Fraction), Azam Azman (Democratic Party Fraction), also attended by the Minister of Law and Human Rights Amir Syamsuddin, Deputy Minister of Trade Bayu Krisnamukthi, and representatives from the Ministry of Finance.<sup>59</sup> All representatives of these factions assessed that the trade bill was in the direction of the state's ideals of realizing a just and prosperous country, resolving trade problems, and welcoming the establishment of the National Trade Commission.<sup>60</sup>

Finally, the DPR RI held a Plenary Meeting on Tuesday, February 11, 2014, chaired by Dr. Ir.H. Pramono Anung Wibowo, MH, as Deputy Chairman of the meeting. The participants of this meeting were 283 members of the DPR RI and were considered to meet the quorum. Also present at the meeting were the Minister of Law and Human Rights, the Deputy Minister of Trade, and other government officials. One of the agendas of the meeting was regarding level II discussions or decision-making on the Bill on Trade.<sup>61</sup> In the Minutes, it is shown that all factions are unanimous in welcoming the improvement of the national trade system and assessing that the Trade Bill contains and emphasizes the spirit of

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<sup>59</sup> Setjen DPR RI, "Panja Komisi VI Setujui RUU Perdagangan," accessed June 9, 2022, <http://www.dpr.go.id/berita/detail/id/7580>.

<sup>60</sup> RI.

<sup>61</sup> Setjen DPR RI, "Sekretariat Jenderal DPR RI - Dewan Perwakilan Rakyat," accessed June 9, 2022, <https://www.dpr.go.id/setjen/index/id/Risalah-Rapat-BAGIAN-PERSIDANGAN-PARIPURNA>.

nationalism, considered initially liberal.<sup>62</sup> Some of the meeting participants who made comments included: <sup>63</sup>

1. Ir. M. Lukman Edy, M.Si (Kebangkitan Bangsa Faction) rejected Article 87 regarding granting unilateral trade preferences to less developed countries. According to the chairman of the meeting, he said: "...the point is to provide a note or a *minder head note* on one article and provide an opportunity for this law to be ratified".
2. H. Sutan Sukarnotomo (Partai Demokrat Faction) questioned Chapter 2, Article 2 regarding legal certainty, Article 4 regarding standardization, and Article 24, paragraph (11) regarding licensing trading businesses involving districts. The chairman of the meeting replied: "Later, the leadership of the Democratic faction will explain to its members."
3. Hj. Sadarestuwati, SP., M.MA (PDI-P Faction) provided input so that the trade bill should be synchronized with the law on the Protection of Agricultural Products to limit imports of agricultural products. The chairman of the meeting responded: "OK, we also submitted the notes. We will see the synchronization later".

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<sup>62</sup>This criticism was conveyed by the Indonesian non-governmental organization for Global Justice (IGJ), the Indonesian Market Traders Association (IKAPPI), and Jalan Gerak, who rejected the Trade Bill on Tuesday 04/02/2014. They considered that the draft material accommodated the clauses of the World Trade Organization (WTO) and the AFTA agreement rather than the national interest. FNH, "Belum Disahkan, RUU Perdagangan Mulai Ditolak," hukumonline.com, accessed June 9, 2022, <https://www.hukumonline.com/berita/a/belum-disahkan--ruu-perdagangan-mulai-ditolak-lt52f1b0e385a68/>.

<sup>63</sup>"Risalah Resmi Rapat Paripurna Ke-18 11 Februari 2014," n.d., <https://www.dpr.go.id/setjen/index/id/Risalah-Rapat-BAGIAN-PERSIDANGAN-PARIPURNA>.

4. H. Sarifuddin Sudden, SH., MH. (Hanura Faction) criticized Chapter 15 of Article 97 concerning the formation of a national trade committee which he considered inefficient, and paragraph (3) of Article 97 concerning the authority to investigate anti-dumping *actions* and remuneration actions which, according to him, need to be clarified because they are contrary to the *due process of law*.

During the meeting, all discussions never mentioned the sharia-based trade sector. During the report of the Chairman of Commission IV (Ir. Airlangga Hartarto, MMt., MBA/Golkar Party faction) as well as from the Plenary Meeting participants who were present. Among the participants at the meeting were Islamic Political Parties, namely the *Partai Keadilan Sejahtera* (Prosperous and Justice Party, PKS Faction), the *Partai Kebangkitan Bangsa* (Nation Awakening Party, PKB Faction), the *Partai Amanat Nasional* (National Mandate Party, PAN Faction), and the *Partai Persatuan Pembangunan* (United Development Party, PPP Faction) faction. All of them did not appear to have provided input or comments regarding the accommodation of the Islamic economic system in the Trade Bill during the legislative process.<sup>64</sup>

When examined further, several factors can be identified that caused the Islamic economic sector to not become a legal material and discussion during the process of drafting the Academic Draft of the Trade Bill to the legislative process, namely:

- 1 The content of the trade law material is complex, so the government and the DPR RI concentrate more on macro trade sectors. One of them is the legal certainty

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<sup>64</sup> “Risalah Resmi Rapat Paripurma Ke-18 11 Februari 2014.”

of the distribution of domestic goods that is safe from the practice of pyramid schemes. In this regard, the Ministry of Trade of the Republic of Indonesia also said:

"...DSN MUI and the Ministry of Trade share the same view that direct selling business activities without a business license and the practice of pyramid schemes in direct selling companies are illegal..."<sup>65</sup>

Based on the interview results above, the government considers the national trade law and Islamic economic law to have the same goal: to prohibit the practice of pyramid schemes in multilevelmarketing. The normalization of the anti-pyramid plan in the Trade Law results from a proposal from APLI during the legislative process. Some of the inputs from APLI are accommodated into Article 7 (types of direct distribution of goods), Article 8 (exclusive distribution rights), Article 9 (prohibition of pyramid scheme practices), Article 105 (criminal sanctions for perpetrators of pyramid schemes), and Article 106 (sanctions on pyramid schemes).<sup>66</sup> It shows that solid initiatives to regulate multilevel marketing are not sourced from the top down (government or DPR RI). Still, from the bottom up (direct selling business actors), there seems to be no particular attention to multilevel marketing, especially sharia multilevel marketing.

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<sup>65</sup> Ronny Solomon Maresa (Intermediate Expert Trade Analyst, Sub-Directorate of Direct Distribution and Franchising at the Directorate of Business Development and Industry, Ministry of Trade, RI), Interview via email correspondence, January 13, 2022.

<sup>66</sup> "Track Record Towards the Birth of the Anti-Pyramid Article."



- 2 The Trade Law is the result of the renewal of the Dutch Colonial trade law, especially the 1934 BRO, which regulates the trading business licensing system.<sup>67</sup> For this reason, it is undeniable that the influence of the western civil law system is still embedded in Trade Law. It relates to the division of groups in applying Dutch Colonial legal products in the form of concordance and ordinance, including BRO 1934 (Articles 163 and 131 of the *Indische Staatsregeling* (IS)). Article 163 IS regulates the division of the population into 3 (three) groups: Europeans, Foreign Easterners, and Natives. These two articles provide legal certainty for the Netherlands in conducting trade transactions with other groups, so the Netherlands applies their laws, including BW and WvK. Consequently, other groups submit voluntarily to the Dutch civil law rules. The two Articles lead to such a sizeable legal pluralism in Indonesia.<sup>68</sup> In the context of this trade law, the influence of legal pluralism is still attached so that the affairs of Sharia-based trade transactions become a separate domain from national trade law.
- 3 There is no aspiration among Muslims. While making academic texts for the legislative process, there was no involvement of Islamic community organizations, especially the Sharia Council of Nasional Indonesian ulema council, as the institution in charge of providing legitimacy for Sharia multilevel marketing status. Bukhori explained that so far, a meeting has

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<sup>67</sup> Suparji, *Indonesian Trade Regulation* (South Jakarta: UAI Press, 2014), 5.

<sup>68</sup> Muhammad Noor, "Unifikasi Hukum Perdata Dalam Pluralitas Sistem Hukum Indonesia" 13, no. 2 (Desember 2014): 4–5, <http://journal.uinsi.ac.id/index.php/mazahib/article/view/385>.

been held with the ministry of trade to support the government for the role of the MUI DSN in anticipating the practice of pyramid schemes through certification and supervision of Sharia multilevelmarketing. However, the meeting did not discuss whether or not it was necessary to standardize Sharia multilevelmarketing in the licensing system and direct sales supervision at the Ministry of Trade.<sup>69</sup> Likewise, Islamic Political Parties did not provide input or comments to accommodate the sharia economic system in the Trade Bill during the legislative process. At that time (in 2014), only 6 Sharia multilevelmarketing companies escaped attention.<sup>70</sup>

The legislation consists of two dimensions, namely the political process and the legal process.<sup>71</sup> Legislation is the main door to carry out national legal politics that involves the activities of political institutions. The legislation does not merely formulate norms into legal texts by members of the legislature. Still, it extends to the struggles and interactions of socio-political forces that surround and surround them. According to Mahfud MD, legal development cannot be separated from political influence as one of the variables. Politics gives a very significant nuance

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<sup>69</sup> Bukhari Muslim (Chairman of Industry, Business, and Sharia Economics DSN MUI).

<sup>70</sup> One of them is PT K-Link which transformed into a Sharia multilevel marketing in 2010. Dr. Sowan Jauhari (DPS PT K-Link), Interview via zoom meeting, Zoom Meeting, January 14, 2022; Bukhori Muslim (Chairman of Sharia Industry, Business and Economics, DSN MUI), Interview about Sharia MLM regulations.

<sup>71</sup> "Politics of Legislation in an Effort to Improve the Quality of Legislative Products | F. Putuhena | Rechts Vinding Journal: National Law Development Media," accessed September 4, 2022, <https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/89/111>.

to the law, but the power of legal action is often hampered by the path to what the law aspires. Therefore, the law is colored by politics and the legal position is weak compared to politics.<sup>72</sup> The political configuration of a country will give birth to the character of certain legal products in that country. Democratic politics will produce legal products that are responsive/populist in character, while authoritarian politics will produce legal products that are conservative/orthodox/elitist.<sup>73</sup>

The legislation consists of two dimensions, namely, the political process and the legal process.<sup>74</sup> Legislation is the main door to national legal politics involving political institutions' activities. The legislation does not merely formulate norms into legal texts by members of the legislature. Still, it extends to the struggles and interactions of socio-political forces surrounding them. According to Mahfud MD, legal development cannot be separated from political influence as one of the variables. Politics gives a very significant nuance to the law, but the power of legal action is often hampered by the path to what the law aspires to. Therefore, the law is colored by politics, and the legal position is weak compared to politics.<sup>75</sup> The political configuration of a country will give birth to the character of certain legal products in that country. Democratic politics will produce legal products that are responsive/populist, while authoritarian politics will

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<sup>72</sup> Mahfud MD, *Politik Hukum Di Indonesia*, 20.

<sup>73</sup> Mahfud MD, 22.

<sup>74</sup> M. Ilham F. Putuhena, "Politik Hukum Perundang-Undangan Dalam Upaya Meningkatkan Kualitas Produk Legislasi," *Jurnal RechtsVinding* 1, no. 3 (2012): 11.

<sup>75</sup> Mahfud MD, *Political Law in Indonesia*, 20.

produce legal products that are conservative/orthodox/elitist.<sup>76</sup>

Based on the findings and analysis above, the national trade law politics is not responsive to the development of Sharia economic law. It is not symmetrical compared to the state's political recognition of the Islamic economy through the development of law in the existing Islamic finance and Islamic philanthropy sector.

### **Conclusion**

Trade law in Indonesia regulates multilevel marketing as one of the direct sales patterns in the distribution of domestic goods. The formation of multilevel marketing law occurs in the regulatory and legislation phases. Both show the government's efforts to provide legal certainty for multilevel marketing businesses that are anti-pyramid schemes. From the perspective of legal politics, trade law in Indonesia is unresponsive and not symmetrical with the politics of sharia economic law in sharia finance and Islamic philanthropy, which took place during the *qanun* phase in the reform era. The Islamic political elite and the government still prioritize the Islamic finance sector over the Sharia-based real industry.

For this reason, it is necessary to not only focus on the sharia financial sector but also to reorient the politics of sharia economic law in Indonesia by strengthening Sharia-based real sector regulations, including Shariah MLM. Islamic ethical values in the Sharia MLM system that are different from conventional MLM can be a solution to suppress the practice of pyramid schemes or money games in the trade sector. Sharia MLM can also be an instrument and media to encourage the acceleration of the sharia

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<sup>76</sup> Mahfud MD, 22.

economic ecosystem, which has become a government program. Because its operations must use sharia financial institutions, halal products, sharia tourism (as a reward), and to manage *zakat*, *infaq*, and religious alms. The concrete step is to conduct legal construction or reconstruction in the field of trade to provide legal certainty in implementing a trading system with a Sharia multilevel marketing pattern.

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## **Interviews**

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