

Multi-Level Marketing (MLM) in DSN-MUI Fatwa

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Abstract. *The purpose of this study is to explain the fatwa of the DSN-MUI (Dewan Sharia Nasional-Majelis Ulama Indonesia) No. 75/DSN MUI/VII/2009, regarding Guidelines for Direct Selling with Sharia Level (PLBS) or Multi-Level Marketing (MLM). The study analyses the methodology used by the DSN-MUI in giving the fatwa on the MLM. This study is a qualitative research with a content-analysis method by analysing the fatwa on MLM using fiqh and ushul al-fiqh theories. It concludes that the fatwa issued by the DSN MUI is accommodating and applicable for business people in Indonesia. The DSN MUI fatwa provides solutions and guidance for business people to make business activities in accordance with the sharia's principles.*

Keywords: *Fatwa, MLM, DSN, MUI*

Abstrak. *Tujuan penelitian ini adalah untuk menjelaskan fatwa DSN-MUI (Dewan Syariah Nasional-Majelis Ulama Indonesia) No. 75/DSN MUI/VII/2009, tentang Pedoman Penjualan Langsung Bertingkat Syariah (PLBS) atau Multi Level Pemasaran (MLM). Kajian ini menganalisis metodologi yang digunakan DSN-MUI dalam memberikan fatwa tentang MLM. Penelitian ini merupakan penelitian kualitatif dengan metode analisis isi dengan menganalisis fatwa tentang MLM dengan menggunakan teori fiqh dan ushul al-fiqh. Disimpulkan bahwa fatwa yang dikeluarkan DSN MUI sudah akomodatif dan berlaku bagi para pelaku bisnis di Indonesia. Fatwa DSN MUI memberikan solusi dan pedoman bagi para pelaku usaha untuk melakukan kegiatan usaha sesuai dengan prinsip syariah.*

Kata kunci: *Fatwa, MLM, DSN, MUI*

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Introduction

Problems related to *mu'amalah* or Islamic economic issues will always emerge, develop, and change due to creativity and innovations. Many of the contemporary economic issues remain unexplained explicitly by the text of the Qur'an and hadith in detail. This makes people rely on the role of ulama to do *ijtihad* (independent legal reasoning) finding answers to those problems. The result of *ijtihad* by the ulama is called fatwa or legal opinions (Masud, 2009).

In some Muslim countries, fatwa institutions become part of state institutions and issue a binding fatwa. However, in Indonesia, fatwa is issued by Non-Government or civil society organizations such as MUI, DSN-MUI, Nahdlatul Ulama, Muhammadiyah, PERSIS, etc. Because they are not government institutions, their fatwa may not always correspond to the government will and preference. From the number of fatwa institutions in Indonesia, MUI is the most prominent one, as it consists of representatives from various Muslim civil society organizations (Ichwan, 2005). MUI formed a special institution to issue fatwas on *mu'amalah* (Islamic economy), called National Sharia Board (Dewan Syariah Nasional). Until October 2018, DSN-MUI has issued 122 fatwas on *mu'amalah* (Fatwa DSN-MUI, 2018).

Multi-Level Marketing (MLM) has positive and negative sides for society. MLM can be considered a new phenomenon, as it did not exist in the Prophet era. Requests for a fatwa on MLM emerged in many Muslim countries, including in Saudi Arabia and Indonesia. According to The World Federation of Direct Selling Association (WFSA), the Indonesian people involving MLM members reached 16,622,000 in 2017, with the turnover amounting to 18,9 billion Rupiah. This means that research on MLM becomes important because of its significant impact on the economic lives of the Indonesian people (Report of Sales and Independent Representatives, 2017).

Fatwa needs to be regarded as implementing the notions *rahmatan lil alamin* (blessings for all universe). Fatwa is not a revelation; it is a legal opinion from those who have competence in Islamic law. Differences in fatwa should be seen as the reflection of God's mercy (*Al-Anbiya', al-Qur'an Kemenag*, 2018). Those who uphold the notion of *rahmatan lil alamin* will possibly be leaders (Kaptein & Laffan, 2005). As leaders in Islam, Ulama is expected to contribute to society by giving their legal opinion on various issues.

This study focuses on Fatwa of DSN MUI No. 75/ DSN MUI/ VIII/ 2009. This seeks to explain MLM and money games' definition and the legal reasoning methods used by MUI on the MLM or tier direct selling.

Literature Review

Studies on fatwa have been conducted by scholars in Islamic law and Islamic studies. The first, Atho Mudzhar (1990), examines MUI fatwas from 1975-1988. Mudzhar concludes that most MUI fatwas were issued to support the government's policies, such as IUD and Jeddah as miqat for Indonesian pilgrims (Mudzhar, 1996). Nico JG Kaptein (2004), in his study entitled *The Voice of The Ulama, Fatwas and Religious Authority in Indonesia*, finds that there are three typologies of Fatwa in Indonesia: 1) fatwa issued by the traditionalist Muslim group; 2) fatwa issued by modernist Muslim group; 3) and fatwas issued collectively by those two groups. DSN-MUI fatwa is the third typology (Kaptein, 2004).

Another study is by Ahyar Ari Gayo and Ade Irawan Taufik (2012), entitled *Kedudukan Fatwa DSN-MUI Dalam Mendorong Perkembangan Bisnis Perbankan Syariah (Perspektif Hukum Perbankan Syariah)* (Fatwa of DSN-MUI in Encouraging Sharia Banking Development). This study reveals that Law No. 21 of 2008 on Shari'a Banking has triggered the accommodation of DSN-MUI fatwas in Indonesian law. This implies that DSN-MUI play active roles in the development of shari'a banking businesses (Gayo & Taufik, 2012). Hidayah (2011, 2019) found that DSN-MUI have used *maslahah* (public public) as the main methodology in its *fatwas* on many Islamic financial products as *maslahah* provide rooms for innovations for Islamic economy and finance in this contemporary era while still upholding to the Islamic principles.

Methods

This study is qualitative library research, focusing on the text of DSN-MUI Fatwa No. 75/ DSN/MUI/VII/2009 on Shari'a Tier Direct Selling (PLBS) DSN-MUI Guidelines Fatwa No. 83/DSN MUI/VI/2012. Descriptive analysis is used by describing and examining the fatwa. MUI becomes significant in the study of fatwa because it is the institution with the most fatwa on *mu'amalah* adopted by the government (Ali, 2009).

Tools used in the analysis is *fiqh* (Islamic jurisprudence) and *ushul fiqh* (principles of Islamic jurisprudence). These are to explain methods used by MUI in formulating fatwa, whether it uses *al-thuruqu al-lafzhiyyah* (textual method) or *al-thuruqu al-ma'nawiyah* (contextual method) (Al-Hafnawi, 2002). Another consideration is whether the fatwa refers exclusively to the Qur'an and hadith or uses other *qiyas*, *maslahah* or previous legal opinions from classical ulama. In some cases, the historical approach used to see the background of the fatwa issuance. The fatwas are available at MUI's official website and MUI's official fatwa publication.

Results and Discussions

MUI Fatwa Structure and Its Issuance

The issuance of DSN-MUI Fatwa No. 75/ DSN/MUI/VII/2009 on the Guidelines of Shari'a Tier Direct Selling (PLBS) and DSN-MUI Fatwa No. 83/ DSN MUI/VI/2012 on Shari'a Tier Direct Selling in Umrah Traveling Business were triggered by the request of a fatwa from some MLM companies. Three companies requested the fatwa, such as AhadNet, UFO dan Exxer. From those companies, only UFO remains survived, while the others no longer exist.

The fatwas issued by the MUI do not directly answer the question or respond to the problem. The fatwa is begun with the consideration causing the issuance of the fatwa, propositions that support the fatwa, previous ulama's opinions, and the existing regulations in Indonesia. After that, MUI stipulates its fatwa regarding the issue. MUI fatwas do not mention the questions of mustafti (fatwa requesters). This makes the background tracing of MUI fatwas uneasy. MUI uses this approach to protect the privacy of the fatwa requesters by maintaining the principles. *li 'ibroti bi 'umûmi al lafzhi lâ bikhushûshi al sababi* (the consideration is in the general texts, not in the specificity of the cause). With this principle (Al-ghazziy, 2003), the reason behind the fatwa becomes unimportant because every fatwa universally applicable, not only for the requesters (Qudamah, t.t.).

The structure of MUI fatwas on MLM and PLBS consists of several parts (Fatwa DSN-MUI, 2018). The first part is the fatwa serial number and the title. The serial number of fatwa is sorted based on MUI's number of fatwa since its establishment. The second part is the month and year of the issuance. The serial number is always followed by a DSN-MUI code, a slash, and a roman numbering, showing the month of the issuance. It is, then, followed by the year of issuance. The Fatwa on Shari'a Tier Direct Selling Guidelines has a complete code of 75/ DSN/MUI/VII/2009. This means that this is the fatwa number 75 issued in June 2009 (Fatwa DSN-MUI, 2018).

The third part is the title of the fatwa. This is to enable readers to identify the fatwa. Fatwa No 75/ DSN/MUI/VII/2009 is entitled Shari'a Tier Direct Selling Guidelines. The fourth part is the consideration part. This includes factors leading to the issuance of a fatwa. It can be said that this part is similar to *asbâb al-nuzûl* (revelation causes) in Islamic exegesis and *asbâb al-wurûd* (causes of the emergence of hadith) in hadith science. As mentioned, the fatwa requester questions are not included for several reasons: 1) to protect the fatwa requesters' privacy; 2) to minimize the risks possibly gotten by the fatwa requesters, and 3) to minimize the legal consequences possibly gotten by the fatwa requesters (Interview with J Mubarak, 30 June 2017).

The fifth part is the arguments of the fatwa. This part begins with the word “take into account”. The arguments are based on Qur'anic verses and hadith that become the consideration in legal reasoning and stipulation. This becomes a part of using naqli (text-based) arguments in responding to contemporary issues in society (Jaghim, 2014). Fatwas of DSN-MUI always mention additional arguments based on principles and rules in Islamic jurisprudence. In fatwa No. 75, two fiqh principles used as the basic foundation of the fatwa. Additionally, the Indonesian government regulations used in the fatwa consideration include the Ministry of Industry and Trade regulations.

The sixth part is the stipulation and legal decision consisting of several provisions. These are 1) general provision of MLM; 2) legal provisions containing twelve aspects that should be fulfilled by the shari'a MLM or PLBS; 3) provisions on types of contract used in MLM or PLBS; 4) closing provision.

The seventh or last part is the date of the fatwa issuance and the signature of the Mufti (fatwa makers). The mufti is represented by the head and secretary of MUI. The fatwa No. 75 is signed by the head of MUI, Dr K.H. M.A. Sahal Mahfudz, and its secretary, Drs. H.M. Ichwan Sam (Governing Board of DSN-MUI, 2018).

Fatwa Issuance Sequence

DSN-MUI has determined the sequence of a fatwa issuance. First, there should be a request of fatwa or *istifta* by *mustafti*. The *mustafti* can be from Shari'a Financial Institution (Lembaga Keuangan Syari'ah/ LKS), Shari'a Business Institution (Lembaga Bisnis Syari'ah, LBS), or other shari'a economic institutions. The *mustafti* can also from the Financial Services Authority (Otoritas Jasa Keuangan/ OJK), the Indonesian Stock Exchange, Bank of Indonesia, or other ministries. To date, most fatwa requesters come from business institutions or the authorities and not individuals. The request is delivered in a written application to the DSN-MUI office. Masud argues that *istifta* and fatwa have a strong correlation, as the first determines the second. However, up to now, little attention paid to the *istifta* and *mustafti*'. The administration of *istifta* and *mustafti* has not yet become a priority (Masud, 2009).

Second, DSN-MUI arranges an in-depth discussion between the *mustafti* and the fatwa team. This discussion is intended to obtain *tasawwur* or a clear explanation of the problem. Apart from the fatwa team and the *mustafti*, the DSN-MUI also invites practitioners to obtain a concrete and objective explanation of the problems in *istifta*'. This step is important as the principle of *tasawwur* is crucial in a legal determination (Al-Hanbali, 1997).

Third, the organization of the Problem List (Daftar Isian Masalah/ DIM) by the DSN-MUI team. DIM is made to ensure that the fatwa is complete and comprehensive. This should be sufficient, understandable, and applicable without possible frictions between the fatwa and state's law. The mustafti does not need to request the fatwa repeatedly because the issued fatwa will be a comprehensive answer and guidelines to the inquired issues.

Fourth, DSN-MUI conducts a literature study using classical and contemporary fiqh books published locally and internationally. Fifth, the fatwa team formulate the draft of the fatwa. The draft is made into an academic script of the fatwa to be taken to the drafting. Sixth, the team proposes the draft to the governing body (Badan Pengurus Harian/ BPH) of DSN-MUI. In this step, the team requests suggestions and inputs from the BPH in written or oral in a regular meeting, conducted once a week. This is to enrich the use of the references and minimize possible mistakes in *ijtihad*. This draft is also discussed with the relevant authorities, primarily to address the fatwa substance.

Seventh, the team revises the draft of the fatwa. All suggestions are documented and discussed by the team to be considered in the revision of the draft. This is to avoid the frictions between the fatwa and any state's regulations. This step is also to ensure that the fatwa complies with the code of conduct in fatwa making. Al-Nawawi argued that the code of conduct in fatwa making should be clear and does not raise further questions (Al-Nawawi, 1408).

Eighth, the fatwa is submitted for BPH's approval. If the fatwa is considered satisfactory, BPH conducts a plenary meeting to approve the fatwa. If revisions are still needed, the team will revise the fatwa based on the suggestion in the plenary meeting. Ninth, DSN-MUI conduct a plenary meeting to approve the fatwa. The fatwa is taken to the plenary to obtain suggestions from ulama from the representatives of the Indonesian Islamic civil society organizations, shari'a economic experts, the representatives of financial, business, monetary authorities, and the members of BPH of DSN-MUI.

Tenth, the team makes necessary revisions as suggested by the last plenary meeting and publish the fatwa. After the revision, the draft is signed by the head and secretary of DSN-MUI. After that, the fatwa is printed and delivered to the related parties.

***Makharij Fiqhiyyah* as a Fatwa Method**

DSN-MUI uses a special method in formulating a fatwa, called *makharij fiqhiyyah* or a solution for fiqh related problem. This means that in the field of

mu'amalah, the DSN-MUI will never decide *haram* (prohibited) for any *mu'amalah* issue; instead, it provides solutions. DSN-MUI attempts to make particular *mu'amalah* issues *halal* (permissible) by avoiding aspects prohibited by shari'a such as *maysir*, *gharar*, and *riba*. This is in line with the principle: *al-ashlu fi al-mu'amalati al-ibahah* (the basic principle in transaction is permissibility (Al-Qahtāni, 1420).

Makharij Fiqhiyyah implemented by DSN-MUI consists of four kinds of solutions (Amin, 2017). First, *al-Taysir al-Manhaji* or systematic leniency means that a fatwa chooses a favorable opinion as long as it is based on justifiable arguments, and avoiding *tatabbu'u al-rukhas* or *tasābul* and *talfiq* (Al-Sulami, 2005).

Second, *tafriq al-halāl 'an al-harām* means that it is permissible to separate the *halal* matters from the *haram* one, such as money. If the *halal* and *haram* are mixed, then, the principle *idzā ijṭama'a al-halālu wa al-harāmu gholaba al-harāmu* (if the *haram* and *halal* are mixed, then it is *haram*) does not always applicable (Al-Subkī, 1990).

Third, *i'adatu an-nazhar* means that DSN-MUI can review a previous *ulama's* legal opinion it is difficult to be implemented. This can be done by re-examining the basis of the arguments. It is possible that the *illat* (legal cause) or the situation around the previous fatwa was different from now. This principle indicates that DSN-MUI is a moderate fatwa institution and believes that the "door of *ijtihād* remains open". In this case, there is a need to deliver a massive, continuous, and structured education about the importance of *ijtihād*. This is expected to encourage the emergence of new *mujtahid* to answer contemporary issues in *mu'amalah* related legal issues (Rasyid, 2012). As Ibnu Qayyim dan Al-Shaukāni argued, *ijtihād's* door remains open as long as its conditions are fulfilled (Al-Shaukāni, 1396; Bakar, 1423).

Fourth, *tahqiq al manat* means that the *mujtahid* needs to examine the reasons behind particular legal determination. For example, it is prohibited to sell gold in debt. DSN-MUI argues that this prohibition is when gold becomes the medium of exchange. If the gold is sold as a commodity, it is allowed to pay with an instalment payment system. The example of the fatwa using this principle is DSN-MUI Fatwa No. No.77/DSN MUI/V/2000 on Gold Murabahah (Amin, 2017; Hasanudin, 2008).

***Intiqā'i* and *Insha'i* Methods in DSN-MUI Fatwas**

There are two kinds of *ijtihād* objects. These are the object that has been put into *ijtihād*, and the object has not yet been discussed in *ijtihād* (Saiban,

2010). Ulama uses three approaches in responding to that issue, namely *intiqā'i*, *inshā'i*, and *indimajiy* (Maulidi, 2014). The latest is the combination of the first two approaches. As for the *ijtihād* methods, there are three of them: *bayani*, *qiyasi*, and *istislahi* (Mubarok, 2002).

The *intiqā'i* method is the *ijtihād* started with a study of previous ulama' *ijtihād* and fatwas. After that, one of them is chosen and summarized. This can be done through *tarjih* or clarifying one of the *ijtihād* from several existing *ijtihād*. The *inshā'i* method is for issues that have been taken into *ijtihād* before. This means no stipulation of the issues yet. According to Hasounah, the *inshā'i* method is also applicable to the *ijtihād* of the previous ulama that are considered unsuitable to address the problem (Hasounah & Hamid, 2005). In this case, new *ijtihād* is taken place to generate a new legal opinion. This will add to the variety of existing legal opinions (Afifi, 2015).

The DSN-MUI Fatwa regarding MLM uses the method of *ibda'i inshā'i*. The fatwa institution, in this case, formulates a newly legal product (*ibda' and inshā'*) in the form of an explanation about the legal status of MLM according to Islamic law. This is based on the DSN-MUI's analysis of the implementation of MLM businesses in its era and territory. DSN-MUI also refers to the existing cases related to the MLM businesses.

During the formulation of the fatwa on MLM, DSN-MUI read previous fatwas on MLM from other countries (E. Astiwara, Interview on April 2017), including those that decided on haram or halal. The fatwa institutions that have stipulated the halal status for MLM include the Fatwa Institution of Libya, Tunisia, Al-Azhar of Egypt, Fatwa Institution of the University of Jordan, and ulama of Malaysia. The ulama that has decided the haram status for MLM are Jordanian Fatwa Directorate (Mashuqah & Husain, t.t.), Saudi Arabia, and Markaz al-Fatwa (Center of Fatwa) Qatar. They considered that MLM contains *maysir*, *gharar* and *riba*.

Bayani, Qiyasi, and Istislahi Method in DSN-MUI Fatwas

In conducting *ijtihād* until finally produce a fatwa, ulama uses several *ijtihād* methods. There are two primary *ijtihād* method: *Ijtihad bayani* and *ijtihād bi al'ra'yi*. *Ijtihad bi al'ra'yi* is divided into two methods: *Qiyasi* and *istislahi* methods. In short, three methods can be used in *ijtihād* to answer matters that is not explained by the Qur'anic verses or hadith. These are the bayani method, the *qiyasi* method, and the *istislahi* method (Yulianti, 2007).

From the examination of MUI fatwas, including Fatwa No. 75/DSN MUI/VII/2009, it can be concluded that DSN-MUI has used those three *ijtihād* methods. However, the *istislahi* method is the dominant one. This method becomes

an alternative method in *ijtihad* for contemporary issues that are not explicitly explained in the Qur'an or hadith. The *istislahi* method is used in Fatwa No. 75/DSN MUI/VII/2009 by considering *maslahah*, and the dominant *maslahah* consideration is related to the protection of wealth (*hifz māl*).

The dominant use of the *istislahi* method can be seen in several stipulations. First, DSN-MUI prohibits the practice of excessive markup. In Islam, price is determined depending on the market mechanism. The government is not obliged to determine the price of commodities. Sellers and buyers can determine price according to the agreement of both parties, based on the principle of 'an taradin (based on the agreement) (An-Nisa' al-Qur'an Kemenag, t.t.).

Istislahi method in the DSN-MUI Fatwa on MLM can also be found in the prohibition of giving recruitment rewards or bonuses to its business partners or members. This prohibition, however, is not explicitly mentioned in the fatwa. The second stipulation, point 5, mentions that the commission awarded by the company to its members or partners should be based on the selling volume. Point 6 states that the bonus should be clear and directly related to the product selling.

Another indication for the *istislahi* method application is in the Second Stipulation point 7 on the prohibition of passive income. It means incomes or bonuses received by the members regularly without any effort. These can be in the form of supervision to other members or product selling. Passive income, according to DSN-MUI, should be avoided by sharia-based MLM business people. The practice is incompatible with Islamic law. The fatwa does not mention an explicit argument from the Qur'an or Hadith. However, there are Qur'anic verses interpreted as the prohibition of the passive income, which is the Qur'an, Surah An Nisa (4): 29.

Conclusions

This research concludes that DSN-MUI argues that MLM and money games are two different matters. The notion of money game is not compatible with shari'a because of the involvement of excessive markup, passive income, *maysir*, *riba*, and *nasi'ah* in the money game. Products sold by MLM are merely a camouflage of the business for the business that relies upon the income from member recruitments and bonuses. DSN-MUI argues that MLM is different from the pyramid scheme. Even so, DSN-MUI does not determine the status of haram or halal for MLM businesses. Instead, the DSN-MUI provides solutions and guidance for the MLM business people to operate their business with shari'a compliance by determining twelve conditions to be obeyed in the MLM businesses.

The *ijtihad* of DSN-MUI has mostly used the method of *istislahi*. This is reflected in the several points of the fatwa. These are the prohibition of excessive markup and passive income. Even though no text-based argument used, DSN-MUI strongly prohibits those practices. This is a preventive action to avoid the MLM industries dragged into money game practice. Considering the availability or unavailability of the previous *ijtihad*, the DSN-MUI used the method of *insba'i* or *ibda'i insba'i* and not *intiqa'i*.

Recommendation

This study proposes several recommendations. First, DSN-MUI needs to maintain its positive attitude in the fatwa issuance by strictly maintaining the determined sequences and solutive and accommodative fatwa. At the same time, DSN-MUI needs to maintain its independence in issuing fatwas. Second, DSN-MUI needs to conduct various activities such as education, information dissemination and literacy enhancement about the fatwa on MLM. Another possible activity is research on the impact of the fatwa on the MLM industry.

Third, DSN-MUI needs to conduct research on MLM companies that have obtained shari'a compliance certificates from DSN-MUI to measure the degree of their compliance with Shari'a. This is to acknowledge the difficulties faced in interpreting the DSN-MUI fatwa on MLM. Fourth, All stakeholders in the MLM industry, including APLI and the Ministry of Trading, need to repair the image of the MLM industry. The practice of money games negatively impacts MLM business. Better regulation and supervision by the government is needed to prevent illegal business practices.

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