

Breach of Contract by The Owner of a Multilevel Marketing Business in International Transactions

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Abstract

Introduction: A multilevel business owner who breaches a promise, or in other words, commits a breach of contract in international transactions, is proven to have breached a promise in this study. This study examines whether the breach of contract by multilevel business owners in international transactions is a deliberate act, a legal act, or the result of information asymmetry, differences in regulations between countries, and weak oversight of multilevel business schemes that fall under jurisdictional authority.

Purposes of the Research: To examine the rights of multilevel marketing members in cases of breach of contract by multilevel marketing business owners who fail to fulfill their obligations, or, in other words, in international transactions, as well as the legal consequences of such transactions.

Methods of the Research: The research method used is the normative legal method, employing a legislative and conceptual approach.

Results of the Research: Breach of contract by multi-level business owners in international transactions, where such owners have been found to potentially commit breach of contract in the form of a breach of promise – specifically, by failing to pay bonuses or commissions in accordance with the promised scheme to cross-border recipients. The legal consequences of breach of contract refer to Article 1243 of the Civil Code, namely compensation, cancellation of the agreement accompanied by compensation, transfer of risk, and payment of legal costs, but in an international context. The affected members face challenges in the form of a conflict of laws when the contract does not specify a clear choice of law. In this case, compensation is sought in the form of monetary damages.

Keywords: Breach of Contract; Multi-Level Marketing; Business Owners.

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INTRODUCTION

In the community, this business is also known as multi-level marketing, which involves the tiered marketing of goods through a hierarchical structure that has become legally accepted among the public. The public often views MLM as a "money game," largely due to the bonuses received by members. This is a tiered marketing method in which distributors earn commissions from direct product sales to consumers, as well as from sales and network development. It is important to ensure that a multi-level marketing company is legitimate, offers physical products, and is not based on a pyramid scheme. This type of marketing employs a tiered strategy where distributors earn commissions from direct product sales and the recruitment of new members (downline). Legitimate and legal multi-level marketing focuses on the sale of actual products, not merely recruitment or Ponzi schemes,

and is registered with relevant associations.¹ Itijad serves as a legal method that facilitates the development of contemporary globalized thinking. Various types of transactions have emerged and spread across all segments of society—from the lower, middle, to upper classes. One such example is the multi-level marketing business, which promises substantial business opportunities and multiplied profits for its members or participants; however, some people view this business as a pyramid scheme.

This business model involves agents not only selling products personally but also recruiting new members to build a network in order to increase sales and income. The benefits include potential income from personal and team commissions, flexible hours, and business training. Potential challenges include personal and team commissions, flexible hours, and business training. The general multi-level marketing scheme requires paying a registration fee—you initially pay this fee to join the business. After that, you receive the tools to perform your duties as a partner. Second, you sign a contract after paying the registration fee. You must sign the contract that follows. Here, you must comply with the rules and fulfill your obligations, while the company is obligated to fulfill your rights as a partner. ²The next step is that the multilevel marketing business buyer has become an official multilevel marketing business partner. Next, you need to sell products while recruiting others as new partners. Finally, in addition to selling products, as a partner you must build a network and meet many people to bring in new partners.

Social-based e-commerce platforms that rely on a referral model face both technical and operational challenges, even as they strive to survive and grow. The advantage of joining a multi-level marketing (MLM) business is that you can work independently with minimal startup costs. You can also reach more customers at a lower cost. A third point to consider is that multi-level marketing can serve as a side hustle and provide additional income—meaning, in addition to your salary from your main job, you’ll have more financial breathing room. However, multi-level marketing isn’t just about the benefits; there are also drawbacks to this model.³ Although it has a number of advantages, multi-level marketing also has several drawbacks that need to be considered. The first drawback of multi-level marketing is that partners are bound by the existing hierarchy and system. Second, multi-level marketing is notorious for being a predatory business due to its use of Ponzi schemes or the sale of goods. Under conventional legal provisions, the MLM mechanism is regulated by Ministry of Trade Regulation Number 32 .M-DAG/8/2008 regarding the conduct of business activities in direct sales.⁴ Issues surrounding F’s multi-level marketing business certainly exist today because it’s easy to make promises to multi-level marketing members. One such business, Fingo, gained attention in Indonesia around 2020. A 48-year-old victim, lured by this business scheme, stated that he was introduced to the business in early 2020 and was later contacted during the recruitment process by Heri, a resident of South Sumatra who claimed to be the Indonesian leader. Company F is headquartered in Malaysia but has many users in Indonesia. Based on an investigation of Company F on July 3, 2020, Finggo Indonesia was included in the list of entities whose businesses were suspended by the Financial Services Authority (OJK) and the Investment Alert Task Force—note that the Investment Alert Task Force includes the Ministry of Trade and the Ministry of

¹ Van Apeldoorn, *Pengantar Ilmu Hukum* (Jakarta: Pradnya Paramita, 1990).

² Gunawan Widjaja, *Memahami Prinsip Keterbukaan Dalam Hukum Perdata*, (Jakarta: Raja Grafindo Persada, 2017).

³ Yosafat Prasetya Nugraha Gusti Bagus Gilang Prawira, “Kedudukan Hukum Akta Perjanjian Pengikatan Jual Beli (PPJB) Dalam Transaksi Jual Beli Tanah,” *Jurnal Magister Kenotariatan Fakultas Hukum Universitas Airlangga* 2 (2022).

⁴ Gusti Bagus Gilang Prawira.

Communication. This was experienced by a friend of mine who used the Finggo app and lost a sum of money deposited in the app.⁵

The issue of business licensing involves Fingo, an e-commerce platform where users must pay to become a "Preferred Shopper" (PS) in order to earn benefits or commissions from recruiting new members. This has raised concerns among the Indonesian public, who are tempted by this business scheme but worried because its model resembles multi-level marketing or pyramid schemes, which carry the risk of financial loss. Additionally, around the early 2000s, the Indonesian public—particularly in Kalimantan—was rocked by a voucher business that swept through parts of the community. And it was no small matter. This scheme promised a 10% profit share for members who invested their money with the business owner, acting as a magnet for the public to invest their capital. Initially, the business ran smoothly, but it was eventually discovered that the system being operated was a form of a money game employing a pyramid scheme, resulting in the potential for investors to suffer significant losses.⁶

Some of the cases described above involve breaches of contract in multi-level marketing, where the forms of breach of contract include: failing to fulfill what was promised at all—that is, failing to perform the obligation; second, performing but not as promised—that is, the performance does not meet the standard or agreement; performing late—fulfilling the obligation but beyond the deadline; and doing something that is prohibited. In this context, this study examines the resulting breaches of contract.⁷ Based on the description of the issue under study, namely the breach of contract by multilevel business owners in international transactions. (2) The legal consequences of a breach of contract by multilevel business owners in international transactions.

METHODS OF THE RESEARCH

The research method used in this study is the normative legal approach. The normative legal approach is an approach based on primary legal sources, involving the examination of legal theories, concepts, principles, and legislation, as well as a conceptual approach.⁸ The scope of this study is descriptive-analytical research, which aims to describe the flow of scientific communication and analyze existing issues; the findings will be presented in a descriptive-analytical manner, meaning the study seeks to provide a descriptive account.⁹ The type of data used is secondary data. Secondary data includes, among other things, literature related to the research; it encompasses primary legal materials, secondary legal materials, and tertiary legal materials.

RESULTS AND DISCUSSION

A. Breach of Contract by Multilevel Marketing Business Owners in International Transactions

Breach of contract or a debtor's failure to fulfill obligations (performance) agreed upon in an agreement or contract. Literally, this term originates from the Dutch word

⁵ Muzakkir Abubakar Budi Sunanda, Amiruddin, A. Wahad, "Pembatalan Perjanjian Jual Beli Tanah Meskipun Telah Memiliki Akta Jual Beli Tanah Dari Ppat Oleh Pengadilan Negeri (Studi Penelitian Putusan Di Pengadilan Negeri Bireun Nomor 11/Pdt.G/2008/PN.Bir," *Jurnal Ilmu Hukum Pascasarja Universitas Syiahiah Kuala*, 2009, 12.

⁶ Mariam Darus Badrulzaman, *KUHPerdata Buku III, Hukum Perikatan Dengan Penjelasan* (Bandung: Alumni, 2011).

⁷ H. Moch. Isnaeni, *Perkembangan Hukum Perdata Di Indonesia, Laksbang Grafiika, Yogyakarta*, (Jakarta: Laksbang Grafiika, 2015).

⁸ Bambang Sunggono, *Metode Penelitian Hukum*, ed. rajafindo persada (Jakarta, 2006).

⁹ Michael Bixby et al, *The Legal Environment of Business*. (New Jerrey: Prentice-Hall Inc, 2001).

“wanprestatie,” which means poor performance or the failure to fulfill obligations due to negligence or willful misconduct. According to legal expert R. Subekti, a person is said to be in breach of contract if they are in the following conditions: failing to do what was promised at all; failing to fulfill obligations; or fulfilling the promise but not in accordance with the agreement, resulting in outcomes such as damaged goods or different specifications.¹⁰

Breach of contract is governed by Article 1243 of the Civil Code. The aggrieved party has the right to seek several remedies, including: damages; rescission of the contract, whereby the contractual relationship is unilaterally terminated through the courts; and, thirdly, specific performance, which compels the other party to fulfill its obligations. In the execution of a contract, the parties often encounter difficulties. For example, one organization may consistently refuse to perform the intended tasks, or there is a possibility that an individual may fail to carry out tasks delegated to them by another organization. Every unavoidable event will have both positive and negative consequences. An unavoidable obligation is one that tends to be positive – the obligation to do something – while one that tends to be negative involves doing things prohibited by the agreement. This is based on the principle of balancing the total burden of obligations on each party involved in the agreement. In contract law, failure to meet the terms of the agreement – as defined in – is referred to as a breach of contract.¹¹ International transactions generally apply the law agreed upon by the parties in the contract (choice of law), which often includes the national law of one of the countries or an international convention such as the 1980 CISG. If not otherwise specified, principles of private international law apply, such as the law of the place where the contract is performed (lex loci performance) or the law of the seller.¹²

Key points regarding freedom of contract include that the parties are free to determine the applicable law as long as it does not conflict with applicable laws. Choice of law: In the event of a dispute, the agreed-upon contract clause serves as the primary reference. The lex loci solution principle, which applies the law of the place where the contract is performed, followed by the principles of private international law. If Breach of contract by a multi-level business owner in international transactions. In the case of the multi-level marketing business Fingo, which failed to pay its members. Fingo was founded by a group of former top executives from the Chinese e-commerce giant Alibaba Group. Fingo aims to enter the rapidly growing e-commerce market and become the largest marketplace in Southeast Asia. The company was founded in China and is now officially operating in Malaysia and Singapore. Its next target market is Indonesia, before expanding into many other countries in Asia.¹³

Fingo is financially backed by Japan’s largest investment group (SoftBank), which previously provided support to Yahoo and Alibaba. This group has allocated funds to support Fingo’s growth and enhance the company’s reputation. In the event of a dispute, the choice of law and choice of forum in international business contracts are based on the principle of freedom of contract and the agreement of the parties. Generally, the limitations on the choice of law and choice of forum in international business are stipulated in Article 1339 of the Civil Code, which states that such choices must not conflict with the public

¹⁰ Bambang Sunggono, *Metode Penelitian Hukum*.

¹¹ Gunawan Widjaja, *Memahami Prinsip Keterbukaan Dalam Hukum Perdata*.

¹² Syahrani H Riduan, *Buku Materi Dasar Hukum Acara Perdata* (Bandung: Citra Adytia Bakti, 2013).

¹³ Agus Yudha Hernoko, *Hukum Perjanjian Azas Proporsionalitas Dalam Kontrak Komersial*, (Jakarta: LaksBang Mediatama, 2008).

policy, customs, laws, and legal systems in force in each country. Existing transaction clauses. Business owners must ensure that each clause is clear to prevent disputes. This is because not all digital platforms use the Indonesian legal system or legislation as the governing law. Similarly, the choice of forum or dispute resolution body may not necessarily involve Indonesian courts.

B. Legal Consequences of Breach of Contract by Multilevel Business Owners in International Transactions

Consequences or effects prescribed by law that arise from a legal event or the act of a legal subject (individual or legal entity). These consequences may take the form of the creation, alteration, or termination of a legal status, as well as the establishment of new rights and obligations—this is the definition of legal consequences. Key points regarding legal consequences include the inevitable outcomes of a series of legal processes, whether involving lawful or unlawful acts.¹⁴

The manifestation of legal consequences is that an employment contract gives rise to rights and obligations between the employer and the employee. The source of legal consequences is a legal act—that is, an intentional action taken to produce legal consequences, such as the execution of a sales contract. Another definition of legal consequences is that they may also refer to actions taken to achieve a result intended by the actor and governed by law. Legal consequences are the results of a legal act.

The legal consequences of a breach of contract by a multi-level marketing company, such as Fingo, where the company failed to pay its members. Fingo was founded by a group of former top executives from the Chinese e-commerce giant Alibaba Group. Fingo aims to enter the rapidly growing e-commerce market and become the largest marketplace in Southeast Asia. Fingo was launched in China and is now officially operating in Malaysia and Singapore. Its next target market is Indonesia, before expanding into many other countries in Asia. This results in the restoration of the rights of the aggrieved party, with consequences for the defendant in the form of sanctions or fulfillment of obligations.¹⁵ The consequences include the award of damages, whereby the party that breaches the contract (default) or commits an unlawful act is required to pay damages in the form of costs, losses, and interest to the aggrieved party. Another possible legal remedy is the enforcement of the terms of the contract that were previously delayed or not fulfilled by the debtor.

Termination of a contract refers to the cancellation of a contract based on an unlawful act or breach of contract. The defendant may also be subject to a conservatory attachment (conservator beslag) or have their assets seized as security for the satisfaction of the claim. In the case of a breach, the owner of the multi-level marketing business is obligated to fulfill the agreement; the other party may demand that the performance be carried out. This is in accordance with Article 1338 of the Civil Code, which states that all validly entered into agreements are binding as law upon the parties who entered into them.¹⁶

The actions of a defaulting multi-level marketing business owner are also assessed based on the requirements that must be met: first, the existence of a valid agreement, whether written or oral, that complies with Article 1320 of the Civil Code. Second, there must be a

¹⁴ Syahrani H Riduan, *Buku Materi Dasar Hukum Acara Perdata*.

¹⁵ P N H Simanjuntak, *Hukum Perdata Indonesia* (Jakarta: Kencana Prenada Media Group, 2022).

¹⁶ Kristiane Paendong and Herts Taunaumang, "Kajian Yuridis Wanprestasi Dalam Perikatan Dan Perjanjian Ditinjau Dari Hukum Perdata," *Lex Privatum* 10, no. 3 (2022), <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/41642>.

clear and quantifiable obligation to perform, and third, a failure by one party to fulfill that obligation. The next point involves a warning or demand to fulfill the obligation, unless under certain conditions where a demand is not required; third, there must be a loss to the other party resulting from the failure to fulfill the obligation.

Compensation in online transactions includes refunds, exchanges, or repairs if the item is defective or does not match the order, as stipulated in the Consumer Protection Law and the platform's terms of service. Complaints must be filed immediately upon receipt of the order, as stipulated in the Consumer Protection Law and the platform's terms of service. The seller is responsible for providing compensation in the form of a refund, product exchange, or repair, (if applicable) for the price difference.¹⁷

Grounds for compensation regarding the terms of a pre-drafted agreement. Without reading the online shopping agreement in detail, consumers often face legal issues. Third, goods received as ordered but containing defects. These defects may be hidden or intentionally concealed by the seller. Article 1458 of the Civil Code confirms that the sale has already taken place even if the goods will only be delivered some time later, and payment for the goods is made upon arrival.¹⁸ The online sales agreement mentioned earlier is merely an obligation.

CONCLUSION

Breach of contract by multilevel business owners in international transactions, where such owners have been shown to potentially breach contracts by failing to pay bonuses or commissions in accordance with the promised scheme to cross-border distributors. This occurs due to contract clauses that are unclear, biased, or not officially translated, leading to multiple interpretations. Many contracts are drafted unilaterally by business owners without balanced negotiation, inevitably leading to differences in legal provisions between the company's country of origin and the partner country. Some countries have not explicitly regulated multi-level marketing, allowing business owners to exploit legal loopholes. Difficulties arise in enforcing foreign court judgments in Indonesia and vice versa, as not all countries are party to international civil judgment enforcement agreements. The legal consequences of breach of contract refer to Article 1243 of the Civil Code, namely compensation, cancellation of the agreement accompanied by compensation, transfer of risk, and payment of legal costs, but in an international context. Affected members face challenges in the form of a conflict of laws when the contract does not specify a clear choice of law.

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¹⁷ Rifqi Devi Lawra and Yulfa Mulyeni, "Analisis Dasar Hukum Jual Beli Melalui E-Commerce : Perpektif Hukum Perdata Dan Ekonomi Syariah," *Journal of Innovation Research and Knowledge* 1, no. 8 (2022).

¹⁸ Dominikus Rato, *Filsafat Hukum Mencari: Memahami Dan Memahami Hukum* (Yogyakarta: Laksbang Pressind, 2009).

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