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Check Jurisprudence - Rights of Pyramid Transactions Schemes in Iran and Islamic Jurisprudence Rights

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ABSTRACT

An increasingly growing in various kinds of pyramid companies and their wide activities which don't have any economic values, create harmful and unpleasant concerns in economic and social interactions. Pyramid agreements include trample of property and a kind of invalid transaction and the jurists are disagree with that. As this kind of agreement is done by deceptive and fraudulent methods and also they attract people by creating hope on them and these people accept such agreement just to benefit, but according to the perspective of Iran rights and Islamic jurisprudence, pyramid sales are reliable and also are invalid.

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INTRODUCTION

All pyramid companies are working like together. These companies get money from people and instead of that give goods or services in installments or cash way to the customers. Of course their main aim is to installment sales and they want customers to pay part of the cost of goods or services, and marketing to the other part of the cost of goods or they get all the money, and also encourage their customers to earn more money. It seems that these companies act to their promises that mention on those cases in contractions, but paying fees of marketing needed some conditions that it wasn't done to all of customers. There were and there are so many pyramid companies in Iran, like Pentagene, Goldkuist, EVU Kimberli, Gold mine, Amga and other companies.

An increasingly growing in various kinds of pyramid companies and their wide activities which don't have any economic values, create harmful and unpleasant concerns in economic and social interactions, and it needs to study about it.

Concepts:

Today improving of information technology and using the Internet widely created some problems that some people misusing the Internet and making unsafe marketing websites. Lack of familiarity about this kind of marketing has caused many lawsuits.

A. Definition of business:

Before talking about electronic business first it should be defined about business itself. In Iranian law, it doesn't exist any word to define "business" legally. Although it was exist, surely it was legislation definition that is the basis of survey and legal application. In some contexts that was collected to present definitions about phrases and words (like assembly approvals, council of ministers approvals, bylaws and so on), there isn't any word that defines the word "business". Of course the "businessman" word has legal definition. These kinds of business are natural, mandatory, and subordinated that was mentioned in articles number 2 and 3 of business law. Some professors have defined business in this way "trade that its aim is profit, so that common law be true in convention". Then they add " in business law articles number 2,3,4 business operation is envisaged, but there isn't general definition about business operation or business, the definition that mentioned above is opinion of author, and it partly clarify the nature of business operation".

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B. Meaning of electronic business:

Most of the economists, experts and providents believe that in last years a revolution has occurred that was similar to industrial revolution which made the world familiar with information age, and this revolution made a big change in human life from some aspects like economic, social, and cultural aspects. One of the aspects of this change is a big change that was created in the economic communication of people, companies, and governor. It means that business which happened among people with each other, companies with each other and people with companies and governors interchange traditional business that is data on paper with electronic information.

Electronic business opened new way by speed, efficiency, reduction of costs, and taking advantage of fleeting opportunities. It was said that if any business being away of this evolution, it will be alone in the world economy. Although electronic business has advantages, at the same time it has some disadvantages too.

C. Network Marketing:

Network marketing is a new kind of marketing which in short is called (NM). Also it is called (MLM) or Multilevel Marketing. If network marketing does its work on selling goods in a real way, in this kind of scheme profitability will be based on direct sales.

Multilevel benefit schemes are divided into four main types which are: single level, matrix, stoppage, and unrestricted awards and a binary. If the terms and conditions of awarding will set in a way that attempt to "sale of goods" faded or forgotten and instead of that "recruitment" and capital of pyramid planned, just some of these capitalists will benefit and the rest will hited. According to unsafe network marketing this kind of marketing is called "recruitment network marketing".

Because "trying to sell goods" is related to the meaning of "marketing", it cannot be counted as a network marketing, although it has been mentioned as marketing. For these reasons it called till now as "pyramid plot", "marketing chain", "tack scheme".

Some people use name of "pyramid companies" to show an unsafe economic activity. While using from pyramid schemes means award or beneficial schemes that exist in all network marketing, whether they don't misuse real marketing or use it as a scheme, without any principle and be used solely to make money.

The activists in marketing arena are called in three titles: participants who take participate in schemes is called "net worker", participants who work in higher ranks of their compan and their activities contribute to attract others is called "twig", and persons who is attracted by members is called "sub".

D. Pyramid Companies:

According to definition, the law, called pyramid companies as companies which their bases are attracting people. It means that the commission is based on the number of people who are attracted. This is special feature of pyramid companies. These companies instead of selling goods to customers, get money from them and say that if you want have benefit, you should do some things like adding another people. There isn't any good or bad pyramid company. Because the definition of pyramid company is, a company that has clear structure, with a particular behavior, and the functioning of the economy, which this company call their activities as a criminal activities.

The basic condition for the validity of the transaction:

All contracts, whether definite or non-definite, will be legal when they have basic condition for validity of the transaction and article number 190 of civil code refers to this issue directly. It means that for validity of every transaction the below condition is required:

A: Intention of the parties and their consent:

Intention of the parties and their consent is counted as one of the main conditions in validity of transaction at paragraph 1 of article number 90 of civil code and its principles are detailed from article number 191 till 209. The basic conditions of contract are consent of both parties. so if one of the parties be reluctant to the contract, this contract will be lack of validity legally.

B. Capacity of the parties:

Necessity of capacity is other conditions which are known necessary to the validity of contracts in the second paragraph of article number 190 of civil code. The capacity is divided into two main parts: enchantment capacity and advocate capacity. In real, all people (both minor and major, sane and insane,...) have enchantment capacity. At the same time it's possible that lawmakers restrict enchantment capacity in some cases. But advocate capacity is to support interdictors. A group of interdictors are lack of the advocate capacity in their financial and non-financial rights because of loss of will. It's clear that contracts among them are null and there

aren't any difference between main contract and conditions. Because in this situation intend writing contract as an important element is non-valid.

Another group of interdictors, have ability to write law functions. The members of this group are stupid people and children. In this position stupid people pay attention to financial issues and accepting of contracts relate to "warden" and "guardian" permission. But this group of interdictors to capture non-financial writing, don't need any permission or enforcement. Unlike stupid individuals, children rights relate to both financial and non-financial rights. Of course this problem and generally the disputation point are about small points in Islamic jurisprudence and Iran law. In a way that from jurisprudence point of view, null of transaction is valid when wardens and guardians permit to it. But some presented reasons about this issue have been criticized by jurisprudence and some of them while criticism and rejection of valid reasons and rejection of valid narrative reasons, the wardens and guardians permit to do minor and clear transactions. Also some people criticized that now most of the jurists seem not to have minor and clear transaction and accept it with enforcement of warden which is right transaction from their point of view.

C. Clearness and specification of issue:

According to the third paragraph of article number 190 and article number 216 of civil law, valid condition of every contract is its clearness and specification. Studying of various religious books shows that the Islamic jurists knew the invalidity of contracts, definite default and unclearness of contract issue, being Gharrary. Of course it should be focused that according to the presented reasons, detailed knowledge of the contract issue, are for the cases that its absence leads to Gharrar. So in the cases that agreement is on the base of tolerance, the tolerance shall be accepted, and Overview of the agreement must be accepted. Because of this article number 216 of civil law in specific cases, know overview knowledge enough. Based on this article " the issue of the article should not be vague, just in some cases that overview knowledge know it enough". It's clear that in specific situations they should refer to the law. Now there is a question and it's this, if detailed knowledge to the issue is necessary or overview knowledge is enough. It should be mentioned that if the issue will be vague, it's null because it's not possible to do. Indeed as some law experts expressed, we know that vague condition is lack of the benefit from rationally point of view and the paragraph 2 of article number 232 of civil law also to this issue too. So disputation issue is necessity of detailed knowledge or adequacy of overview knowledge.

It seems that in examination of problem, it should be focused to the secondary feature of it. in other word, because implied terms are not important, ignorance of issue doesn't lead to Gharrary of transaction. It's clear that ignorance of terms, leads to ignorance of the issues in detailed knowledge, the main contract is null and term is null too. Hereof we can refer to second paragraph of article number 233 of civil law which talks about null conditions. Based on this article the below conditions are null:

1. Conditions despite contract
2. Vague conditions that ignorance of them leads to ignorance of detailed knowledge.

It's clear that if ignorance to condition doesn't relate to issue of main issue and also be vague, there isn't any reason to be null. So, if in the selling of house, it will be provided that all furniture of that house is owned by buyer, while the buyer is not aware about its detailed knowledge, the condition is true.

D. legitimacy to orientation:

The 4th paragraph of article number 190 of civil law, knew the legality of orientation contract as another main conditions in contract. It doesn't mentioned about orientation contract in civil law, but some of law experts believe that it's a immediate aim that if there isn't, the contract doesn't happened. Indeed there is an aim in transaction that dealer transact because of that. So, because all dealers don't have the same aim in transaction, the contract orientation should be counted as private and shifty. Iranian lawmakers know the contract null when it is illicit and mention to this case in the contract. As some of the law experts expressed, the aim of word "illicit" is contrary to international law, whether these rules relate to statute or Islamic jurisprudence or other matters relating to public order or good morals. By this definition it can be said that lawmaker intervention is to protect society and requirements of public order. Of course from jurisprudence point of view the main reason for null of the illicit of contract is prohibition of assistance to enemies, and in the cases that such topics are true the contract is null in illicit orientation.

Legal aspects of electronic trading:

The act of parliament in dealing with ruinous pyramid schemes, specifically, ratification and accession of paragraph (g) in article number 1of disruptors criminal law in the country economic system in 1991, and amend clause of number 1 of article 2, the mentioned law in 2005/10/11 that it text is in this way:

Article 1_Committing to any of the mentioned acts is crime and convict will be sentenced by definite penalties:... paragraph (g)- any establishment, agency, recruitment and enrollment in firm, institution, group or list of names with the promise of increased revenue due to network members, whether through the supply of goods or services or obligation to purchase or receive fees or other similar practices, or by attracting customers

as marketing or other promise as to any goods and services received free or costs that are less than actual price or a percentage (commission) or the distribution of prizes.

Article 2_ every actions that mentioned in article number 1 will be done to offend system of Islamic republic of Iran or to act against it in a way that being corruption of earth, this person must be hanged or sentenced to jail from 5 to 20 years and in both cases the court of law for financial sentence will record all property that obtained through unlawful acts. The court can also sentence convict to 20 to 74 lashes in public.

Clause 1. In a cases which is about intrigue issue ,if one of the septet matters that mentioned in article (1) not to be major, convict in addition to rejection of property will sentence to jail from 6 months to 3 years and will condemn to fines which will double property earned in this way.

Pyramid transaction from Islamic jurisprudence perspective

Obviously pyramid transaction doesn't mentioned in traditional jurisprudence because it's new and has been considered as reclaimed issued by contemporary jurists. Including Ayatollah Makarem Shirazi and Ayatollah Fazel Lankarani believe that trading of such companies, as a first and second sentence is unlawful and void. But others say: from first aspect transaction is valid, because such contracts are with agreement and sign of both dealers and is an evidence of verse about trade by mutual consent. These jurists believe that the only problem in transactions is on secondary precepts. Because of this, it's necessary to explain these two precepts.

A: Prohibition of governor and Islamic lawmaker

It's possible that Islamic governor or clergyman prohibit some transactions because of instance of secondary titles. In this situation, there is one question which is how these prohibited transactions is? For example, rulling of Aytollah Shirazi that in his declaration addressed people in public: "using every kind of tobacco is unlawful and it's like fight with Imam Mahdi (aj) ". What effects can have these kinds of provisions in contracts from validity and invalidity of cigarettes, tobacco and other types of tobacco? Is the prohibition of ruling or Islamic lawmaker like prophet prohibition on consumption of pork and wine, and are these kinds of transactions valid or not?

The answer to this question, according to the principles of Islam is positive, it mean's that, prohibition of governor, in ruling of sanction is lawgiver otherwise, it will overturn. Human welfare, interwine with economic, cultural, political, and social matters. A religion which doesn't include these kinds of matters, are not general religion. Islam not only pay attention praying, but also have principles in economic, taxation, criminal, civil, defense, international treaties, and so on... Islamic provisions have not been abrogated (second introduction). The reason of governing and provincial at the time of absence is the same necessary reason of provincial of Imams. According to a valid narrative Omar Ebne Hnazole, when a clergyman by paying attention to the prudence of society and what he knows about lawful and unlawful provision of and generalize and no one accept him the order of God is been considered null and reject prophet, and everyone rejects him it's like that he rejects the God and this action is as idolatry to the God. Here it's necessary to pay attention two points: first when we say prohibition of governor, it's in the order of sanction of lawgiver, it doesn't mean that Islamic governor have all the creditability and character of prophet and Imams specially chastity, but the aim is to say that what clergyman generalize by his perception has the same validity that Imam generalize, because in absence of Imam Mahdi he is trustee of religion and he should do his responsibility in all aspects and provision of society. If it is unlike of that situation, managing of society and prevention of corruption will be impossible for him, and of course prohibition of governor about this matter according to an opinion will be secondary order, and doesn't lessen from credibility of order, because as mentioned before secondary provisions are as a real Islamic provisions.

Second, we accept that prohibited transaction is not always corrupt, but certainly, prohibition of transactions that are detrimental to the system and according to law experts it will be contrary to public economic order, it should be considered as corrupt and defeasance. Because protection of Islam is very necessary and clergyman responsibility is enforcement of law, economic and prohibition of corruption and perversion society.

Now that clergymen prohibited marketing and selling in a pyramid way, there is one question: what is the reason of prohibition? What is the problem that some people especially young people do this work? We answer to this question in this way: youth unemployment is very good, but when commenting on every legal and social case, it should be examined and then commented. In the companies that do their selling in a pyramid scheme, although many people getting busy and some of them earn so much money, but if we look at all the actives in this field, based on experts comments almost 75to 96 percent of participants lose their investment. Of course people that are at the middle or bottom of pyramid, always lost their money. Because from one aspect their money is more than price of goods and services, from the other aspect, they couldn't find members and don't receive commissions. While the basic principles of marketing is equality of goods value or services with the value of market and in this position there wouldn't be any lost.

These kinds of firms don't have any positive economic activity, just they attract members and create pyramid like groups and then from the cost of new members pay the money to the people that are at the top of

pyramid. These kinds of pyramids continue to their work till they have people that join them and the last ones who pay money are victims.

Indeed, unlike claim of these companies, intermediaries cannot be deleted, but the customer are deleting and all of them change to market maker not marketer and these kinds of companies are exploited to realize their interests. In these websites people by hoping be rich enter to the system and they have learned to attract people in this way too.

From Islam point of view protection of society system from all aspects like economic system, political and legal system and other social regime which human life depends on it, is important and very vital, and jurists and scholars of Islamic law focus on it specially. Because of this, transactions that are contrary with system and public order of Islamic society is not valid.

Prohibition of pyramid transaction is not only as a secondary order, but also including primary provision, because these contractions are wasting property and illegal seizure of others property which is the result of deception and some verses and narratives point out to it: The God in verses 29 and 30 of Nesa Surah says: " O people who believe the God! Don't waste each other property, unless the business is done with your consent and don't suicide, the God is so kind and anyone who do these acts on aggression and injustice, soon we will sentence him, and this is so easy for God. Wasting property of another one or illicit gains which make aggression is unlawful and major sin. "Wasting property of another one means that an individual without any positive activity or lawful reason, gains property suddenly. In Gold Quest or companies like this it can be seen clearly. People which are in first rate, without any activity gain so much money, and other people that are at bottom are real victims".

Deception of pyramid companies and their claim about their legal activities, applying fraudulent provisions that attributed to Ayatollahs which show that transaction is lawful and other deceptive claims provide fortune to apply unvalid rules. A pasty person can refer to cheater. Even if a person as a marketer express contrast claims belief in authenticity, again pride rule is performable, because it's possible to do that rule to a person who hit property of someone else.

B. It's possible that pyramid contrasts will be gambling:

Some people believe that pyramid transactions are gambling. The condition of observance of equilibrium like 1-1 or 3-3 and like these which companies are pyramid firms, create gambling marketing in websites. Although owners try to cover it by transaction, gift, peace, commission and something like these in order to gain people property. In verse number 219 of Ba'gara use the word gamble which means easy. Gamblers try to find a way to gain money easily.

Mysterious economic activities of pyramid companies is like lottery, which it was named in holy Quran as "Azlam" and also wine and gamble have a long history and people infected to them before Islam. In Azlam it was in this way that, for example 10 people bet and bought an animal and slaughter. Then they wrote at 7 piece of wood "winner" word and in 3 of them "loser" word then put them in a bag and as a lottery take the all 10 cards out. Everyone take one of them and one of the persons who has winner piece take some meat (everyone 1 seventh) and didn't pay any money, but those 3 persons who has losre piece, they should pay the cost of animal without taking a few meat. These pices of woods are called "Azlam". Islam forbade eating of such meat, and it's like eat pork, blood, carrion, etc. of course it doesn't mean that eating meat is forbid, but it's because this action is ike gambling and lottery. It's obvious that forbid of gambling and something like that not only relate to meat of animals, but also relates to every action.

The activities which are done in pyramid companies don't make any difference with Azlam. But these new lotteries are really bad because in Azlam as it was mentioned the cost of one third of participants gave money to two third of them. While in the mentioned companies it was so much based on calculation. Depending on company and provided conditions to payment for marketing about 75 to 90 percent of paid money paying to these cheater companies and with the rest 10 to 25 percent they pay all the costs of company like cost of marketing.

In USA law pyramid transaction is gambling too, because in these kinds of transactions are not based on economic and success of people don't relate to their ability, perhaps it's based on chance, because just joining of pasty new members, receive the investment which has been paid at first.

Lottery rules which wa in unit 18 and according to its 1923, 1962 and 1964 forbade selling of pyramid schemes. Great Britian law also forbade it in 2005.

Despite all the stuff that was said, the jurists believe that gamble is a game that should be done with its own tools, otherwise, gambler waste property of others.

Generally from Islam perspective, protect society- like economic and livelihood system, political system, legal system and other social regim which the life of human depend on it- is very important and most of the jurists and experts pay attention to it. Because of this contracts which are contrary to public order of Islamic society, specially pyramid contracts, are not valid

C. *Vanity rule and denial of it:*

The meaning of pride in the terms of jurists is the same with the lexical meaning, because jurists said: "vanity" means doing an action which causes loss of another one. Of course if a person is cheated or the action that deceived him, although he may not intend to deceive or being ignorant, but because prove of intend couldn't be valid, so this person can refer to deceiver and take loss.

Imami jurists presented various definitions to Gharrar and these difference are because of difference in nature of that word. Some of them think it is in sale condition and the others believe truth of sale. Some of the jurists know the Gharrar ignorant and some of them like Saheb Javaher define Gharrar as: " Gharrar which danger forbade, means danger that arise from ignorance and feature of sale, not absolute risk, because in sale the absent goods is danger but selling of absent goods are legal or in selling of fruit which have not been picked up there are risks, but sale of them are valid. So Gharrar is not, absolute risk"

From Hanifeh, Shafeiyeh, Zeydiyeh, Hanabeleh, and Abbazyeh point of view Gharrary sale is something which there isn't any knowledge about its presence and absence or about its quantity or there isn't any power to delivery of it.

For example in "Bahro Alzakhar" it was said that: the meaning of Gharrar is doubt in existence of dealer, or doubt in existence of goods, like a bird at sky and Gharrar sale is doubt in gaining of dealer and unavailability without any preference".

At the end we can present this definition to Gharrar: "Gharrar is a risk in transaction that there is possibility to loss and is at the result of uncertainty in some aspects of transaction which was created by ignorance".

Gharrar which create loss and litigation in transactions, may be caused by several cases. Among the validity sale condition, conditions which set in transaction- of course some of them suggest in the following attribute sale- and also condition of dealer. According to this problem it can be said the most important cases in Gharrar that are:

First, there is a hesitation in the presence of dealer, it means that the risk is at the result of hesitation about existance of goods, like selling of fruit before growing of that. Transactions of such things are Gharrary, because it is possible that the fruit don't grow. One might think that paying the cost at first is incompatible with this case. In the answer of this case we can say that the aim of vague condition means absence of customary probability to the emergence or survival of property at the time of delivery. It means that customary don't believe to the survival of property till the time of delivery. For example, we refer to the attitudes of Saheb Sharraiee: the knows the sixth condition of paying cost at first as overcome to the presence of goods, it means that dealer should be prevailing at the time of delivery, although he would be absent at the time of contract.

Second, in a case that submission or receipt sales not to be conclusive. Although be ensure at the time of delivery, like selling possessed fish which are at sea or selling of birds which are free at sky and don't come back.

Third, when the cost of goods be vague. Although availability to property of transaction will be easy. Like deal of goods which the feature of that goods is vague or selling of a house, without specifying the exact location of the building, infrastructure and other characteristics that affecting the price, while we are sure about presence of house and delivery of it at the certain time. Of course three mentioned cases are wide which could be validity of sale, condition of dealer and other conditions.

D. *Jurists attitude about pyramid transactions:*

In the answer of these questions of people, Ayatollah Mokarem Shirazi says that: the activity of companies like Gold Quest, Gold Mine, Almas business, Business, Kar Gosha, etc. that are marketing in a chain is unlawful, although they make some rumors like legality of their activities. The following poll text in this way:

Question: what do you think about activity of the companies that marketing in chain?

Answer: these companies which seem economic and they hide their real activities by creating job or allocating a portion of their income to charities, are mysterious and dangerous firms and their activities are like gambling or lottery. They deceive people and they gain the major part of income without doing any positive activity and this action is obvious case of wasting someone property that the holy Quran reject it directly.

Question: Is the poll that publish in journals and web sites about legality of mentioned companies are valid or not?

Answer: that, polls are fraudulent and lack of validity.

Ayatollah Fazel Lankarani said in his juridicial decree, that communication with Gold Quest company or companies like that are unlawful in both primary and secondary provisions. The poll text in this way:

"About Gold Quest company there is so many questions recently and majoraty of these questions are about wide activity of these companies from quality and quantity point of view, we publish that the activity of these companies from both primary and secondary provisions are unlawful.

First provision: is unlawful because it is wasting of someone else property that is directly rejected in the holy Quran and gaining of money from such ways include all economic, cultural and social aspects.

Second provision: is unlawful because they created a way to earn so much money, and weakening other companies specially Muslims and take out their currencies and block the active people that develop their country and this second provision is more important than the first one, because of this corruption that happens in such transaction and is obvious for anyone was published as unlawful action and the money that comes from this activity, if the owners of this investment be unclear, this money should give to poor exclusively. It is hoped that the noble and Muslim people specially youth, be aware and avoid them.

Abusing of Ayatollah Fazel Lankarani judicial decree:

Gold Quest company with incomplete clarification, asked attitude of Ayatollah Lankarani about this matter in 21st Khordad 81 and he said:

"If they pay commission of workers as their fees, there will not be any problem. But if such matters relate to the Jewish of Israel it's not permitted".

This manuscript was used by Gold Quest workers in Iran. They copied this poll and give it to people. But when this scheme installed again, this matter had been told to Ayatollah Fazel Lankarani, he presented new poll to people:

"... the last answer is about activity of these companies that besides those cases in poll, don't make any economic loss to the society, but if there will be disrupt in economic system, it's not permitted..." the notable matter is that this provision is not regarded important by workers of Gold Quest and marketers.

Ayatollah Sistani:

Question: What's your attitude about web marketing from My Soon Diamonds, by paying attention to this point that goods have their real price and matter of currency is away?

Question: Deposit to individuals account from companies because of introduce of other one who deposit to the account of company, funds to the account of the first and subsequent persons who each of them introduced 3 people is how? (Of course it had been pointed that in tabs, the deposited money is a present)

Question: Is transaction with Gold Quest company or companies like that unlawful?

And just one and the same answer was published to these questions:

Ayatollah Sistani said that these kinds of transactions are unlawful.

Opinion of other Islamic jurists:

Most of the other Islamic jurists like Sistani, Safi Golpayegani, Tabrizi, Mazaheri, Gerami and etc. said in their polls that these transactions are unlawful. By paying attention to the mentioned point, we get that most of the Islamic jurists believe that, Pyramid Company and net marketing is unlawful.

Result:

Although most of the pyramid companies try to show their activities in conspiracy pyramid and spoof companies and also try to say that these companies have a program that a few people manage it like a people from inside of country or by cooperation of foreigners to overcome the property of people, at the other side, some people hope that they will do a safe business and trying to have safe economic activity and imagination of such economic business to these companies even in pyramid scheme is unbelievable.

This matter created a block and proof by polls from jurists. And by the existence of so much emphasis on unlawfulness of cooperation and establishment of such companies,

Sheae jurists know the one of the pillar of transaction is that transaction doesn't be Gharrary and they say that if there will be Gharrar in transaction it will be null. Unless there will be a way to washout Gharrar. Gharrar means, deceive someone, show something in other way, creating void hope and etc. and it seems that pyramid companies have these cases in their activities.

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