

## Research Article

# The Responsibility of Mudharib toward the Customer Fund of Shahibul Maal in a Financing Agreement

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**Abstract.**

The Association of State-Owned Banks (Himbara) has taken over the ownership of three Islamic banks, Bank Rakyat Indonesia Syariah, Bank Syariah Mandiri, and Bank Negara Indonesia. As a result of this, the government expects Islamic finance to be more competitive in the digital age. To comply with the legislation, deposits made by customers who deposit money also go to the combined bank. According to the explanation of Article 28 of Law No. 10 of 1998 on Banking, the responsibility of the bank for customer funds in connection with a merger of banks is typically regulated. The merger carried out by the bank must not impair the interests of the customer. However, neither the Banking Law nor other pertinent laws and regulations provide additional guidance on the types of legal remedies that consumers negatively affected by this merger could use. This study aimed to ascertain the obligation of the Mudharib under the Mudharabah financing arrangement to Shahibul Maal funds following the merger into an Indonesian Sharia Commercial Bank. The results showed that the mudharib must continue the mudharabah financing agreement and continue to offer profit sharing in accordance with the terms of the shahibul maal funds in the mudharabah financing agreement following the merger into Bank Syariah Indonesia.

**Keywords:** Merger, Mudharabah, Legal Protection

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## 1. Introduction

Syariah Bank of Indonesia is a merge of three state-owned commercial banks namely, BRI Syariah Tbk (BRIS), Bank BNI Syariah (BNIS), and PT Bank Syariah Mandiri. The government plans to make Indonesia as one of the world's major Islamic financial hubs by focusing on the country's 87% Muslim population. A bank is a company that gathers money from the public in the form of savings, current accounts, or time deposits. The money is then recirculated by the bank to the public in the form of giving the community credit or in other ways to raise the general standard of lives of the public.[1] The role

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of the bank as a bridge between the overpopulated and the undercapitalized following collection will distribute community surplus capital to those in need. This is what the function of the financial intermediation of the bank entails.[2] Because the banking industry performs a financial intermediation role that connects surplus fund units with deficit fund units, trust is essential. As a result, transparency as a means of accountability requires trust. Initially, as an organisation that receives donations from the public in the form of deposits, the bank grants credit to the public. In addition, bank facilitates business transactions and money circulation.[3]

With the establishment of Muamalat Bank of Indonesia, a project of the government and the Indonesian Ulema Council, Islamic banking started to expand and prosper in 1992.[4] The establishment of Islamic banking aims to accommodate or quell community debates that call for the provision and implementation of ethical financial transaction services in line with Islamic sharia standards. Since Islamic law forbids the practise of usury, speculative activities (*maisir*), and obscurity (*gharar*) in any region, including Indonesia, where most of the population is Muslim. According to Islamic law, usurers are those who view interest and capital whose outcomes are predetermined (predetermined return). Islamic banking is another attempt by Muslims to base economic decisions on the Qur'an and As-Sunnah.[5] The four components of Islamic bank activities include client deposits, loans, trade finance, and other services. The rules and agreements of Islamic sharia are followed when doing these four different sorts of operations.[6] If you pay attention to each of these sorts of operations, you will notice that they are permitted to produce a variety of products. Most importantly, each form of operation and the items it produces must adhere to sharia law.

Money in Islamic banks can be collected in the form of time deposits, savings accounts, or current accounts. Mudharabah is one of the operational tenets of sharia that is used in the collection of public monies. When it comes to putting the notion of *mudharabah* into practise, the bank serves as both *mudharib* and *shahibul maal* (owner of capital).[7] *Al-mudharabah* is a commercial partnership agreement between two parties in which the first party (*shahibul maal*) contributes all the capital and the second party takes on the role of management (*mudharib*). The *mudharabah* business's profits are distributed in accordance with the terms of the contract, while any losses are paid for by the capital owner, provided the manager is not at fault. The manager must bear responsibility for the loss if their deception or carelessness led to it.[8] Banks can have a variety of positions since they are intermediaries. Since it transfers

customer capital to outside parties, the bank is in the position of a *shahibul maal*. Second, the bank occupies a *mudharib* position since it manages customer capital to produce desirable outcomes. In this study, *mudharabah* financing refers to a financing arrangement between clients, referred to as *Shahibul Maal*, and banks, referred to as *Mudharib*, for the purpose of carrying out business operations. *Shahibul Maal* supplies capital, while *Mudharib* manages its operations.

The *mudharabah* funding arrangement takes the form of an *amanah* contract (*uqud al-amanah*), which calls for extreme honesty and supports justice. The three Sharia principles are combined in this situation when the parties have committed to the *mudharabah* financing arrangement and the customer has given his funds to the Islamic bank as a *mudharib*, who is required to manage the funds, in his capacity as *shahibul maal*. The funds are combined, and the position of the *mudharib* is changed to be assumed by the merged bank. The *mudharabah* contract was not renewed following the merge, and there was no openness on information pertaining to the purchase of client funds as *shahibul maal*. This study aims to examine the obligations of the *mudharib* under the *mudharabah* financing agreement to *shahibul maal* client funds following their merge with Syariah Bank of Indonesia.

## 2. Methods

As doctrinal legal research, this study conceptualises the positive law. The researchers argued that exploratory descriptive research is pertinent to this study. This study was conducted using a normative juridical method, which sees law as a doctrine or a body of normative principles. This strategy is put into practise by trying to read or research the legal literature. It is expected that a thorough and organised understanding of the legal protection of the customer money of the *shahibul maal* in *mudharabah* financing agreement after the merge of the Syariah Bank of Indonesia and the obligations of the *mudharib* to *shahibul maal* after the merge into Syariah Bank of Indonesia would be attained.

## 3. Results and Discussion

Companies must constantly establish corporate strategies to survive or advance due to the increasingly intense commercial competition that exists in the era of free trade.

Because of this, businesses must create the best strategy to continue operating and perform better. One tactic is a merge, which involves joining two or more businesses to concentrate economic power (synergy) to generate a strong competitive advantage, boost market share, and improve company productivity.[9] Contrary to the western banking system, Islamic banking prohibits interest, hence it is important to distinguish between the terms "rate of interest" and "rate of return" in this context. Islam expressly forbids interest rates, and it not only defends but promotes trade incentives and financial gains. The primary method used by Islamic financial organisations to mobilise public funds and offer various services is called mudharabah.[10] Mudharabah is an agreement in which a property or share (ras al-mal) is offered to another party by its owner or administrator (rabb al-mal) to establish a business. The two parties to the alliance will divide the profits from the joint-partnership, which is a joint venture. Benefits are due to the other party because of his efforts in managing riches. The name of this individual is Mudharib. This document is a contract for cooperative work.[11]

The most fundamental requirement for mudharabah, an economic cooperation activity between two parties, is *ijab and qabul* (offer and acceptance), which means that the goals of both sides and their intentions must be in line with the cooperation bond. Following the merging of three Islamic banks into Syariah Bank of Indonesia, legal issues linked to the law on merger, such as the transfer of active and passive assets, arise along with the mudharabah funding. Syariah Bank of Indonesia owns the business. In this situation, the fund distribution contract may immediately pass to the bank that approves the merge or remain with it.[12] When one of the parties to a valid contract expires, the contract typically immediately transfers to another business in collecting mudharabah monies, where the depository customer functions as a *shahibul maal* and the bank as a *mudharib*.

When Islamic banks merge, it is important to consider the differences between client and bank contracts about specific contract provisions. Customers of Syariah Bank of Mandiri can receive a higher profit share than those of other Islamic banks. However, because of the equalised profit sharing, Syariah Bank of Mandiri customers lost their ability to receive a larger profit share. This indicates that since the establishment of Islamic banking, the values of justice and trust have been compromised. The profit-sharing ratio is unaffected by the transfer of the mudharabah contract to *Shahibul maal* clients prior to the merge and following the merge into Syariah Bank of Indonesia. This highlights the issue of how different profit-sharing ratios for clients of various banks will

undoubtedly be different profit-sharing ratios in accordance with the original contract. Given that the principle of fairness ('is), which must also be utilised as a guideline in entering contracts with other customers, is one of the fundamentals of the Islamic economy, Bank Syariah Indonesia must find a solution to this issue.

Following the merge into Syariah Bank of Indonesia, there is a responsibility claimed to be satisfied in respect to the *mudharib* obligation to *shahibul maal* under the *mudharabah* financing agreement in the case that the *shahibul maal* party suffers losses. In general, the current contract between the bank and the customer is unaffected by the merge of Syariah Bank of Indonesia and the client. The bank that accepts the merge merely extends the current contract through its expiration date. However, Islamic banks that have joined Syariah Bank of Indonesia are required to continue the *mudharabah* financing agreement and still provide profit sharing in accordance with the agreement before the agreement. In *mudharabah* financing, customers serve as *shahibul maal* and provide financing to the bank, which serves as the *mudharib* that manages the financing. To ensure that there is no discrepancy in the ratio between legacy bank products and bank survivor products, Syariah Bank of Indonesia must be accountable for providing renewal of *mudharabah* contracts to consumers in a *shahibul maal* way so that clients like *shahibul maal* can receive equitable treatment.

## 4. Conclusion

After the merge into Syariah Bank of Indonesia, *mudharib* on *shahibul maal* funds in the *mudharabah* financing agreement must be responsible for continuing the financing agreement and pay profit sharing in accordance with the agreement prior to the merge. Hence, Central Bank of Indonesia is recommended to issue the rules that uncertain this responsibility by *mudharib* following its legal sanction for ignoring this obligation.

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