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Responsibility of the Board of Directors of Islamic Banking Regarding Unrecorded *Mudharabah* Deposits in Cash Account Reports

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Deposits;
Investment;
Mudharib; *Shahibul*
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Abstract

In sharia banking, *Mudharabah* deposits are known as banking products and are a form of investment for debtors and creditors. *Mudharabah* is an investment transaction from the capital owner, namely *Shahibul Maal*, to the *Mudharib*, or capital manager, to carry out certain business activities in line with sharia principles. In *Mudharabah* deposits, there is a profit-sharing principle used between *Mudharib* and *Shahibul Maal*. However, currently, problems have been discovered related to the deliberate act of not including records in the bank cash account transaction report documents for *Mudharabah* deposits. *Mudharib* argued on the basis of reducing the cash balance on the balance sheet due to the difference. *Mudharabah* deposits that are not recorded in the bank cash account transaction report document are a loss to *Shahibul Maal* as an investor because the funds that have been deposited are not recognized as savings. The problem that will be studied in this article relates to the directors' responsibility for *Mudharabah* deposits, which are not recorded in the bank cash account transaction report document by the *Mudharib*. This research uses statutory, conceptual, and case approaches. The results of this research show that the directors are fully responsible for the losses experienced by *Shahibul Maal* on *Mudharabah* deposits that were not recorded in the banking cash account report carried out by the *Mudharabah*.

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Introduction

Capital investment or investment in general can be defined as an activity carried out by a *Natural Person* (individual) or *Juridical Person* (legal entity) to maintain and/or increase the value of the capital, either in the form of *Cash Money*, equipment, intellectual property rights, immovable assets, or skills. ¹The relationship between the business world and the investment world is so close because, in the business world, investment is needed as a form of capital investment for the company so that the sustainability of the company's operations improves and with additional capital to expand the scope of the business, one of which is in the banking world. In the world of Islamic banking, there is a *Mudharabah savings* which is a banking product as a form of investment for *shahibul*

¹ Suradiyanto and Made Warka, 'Pembangunan Hukum Investasi Dalam Peningkatan Penanaman Modal Di Indonesia' (2015) 11 DiH: Jurnal Ilmu Hukum 25.

maal to *mudharib*.² *Mudharabah* deposit is a product from banking as a form investment in *owner of capital* to *mudharib*.³ *Mudharabah* is simply a capital investment transaction from the capital owner, namely *Shahibul Maal*, to *Mudharib* or capital manager to carry out certain business activities in line with sharia principles, with the withdrawal of business results from both parties according to a previously agreed ratio.

In Islamic banks, *Mudharabah* deposit products with profit sharing principles have different characteristics from deposits in general. As a basic foundation and general character of the profit sharing principle for operationalization, a *Mudharabah* can have implications for changing the character of the legal relationship between the manager and the owner of the funds. Sharia deposit products are in the form of *Mudharabah* deposits as stated in Law Number 21 of 2008 concerning Islamic Banking in Article 19 , including the activities of Islamic Commercial Banks, which are collecting funds in the form of investments, namely deposits according to the *Mudharabah* contract in line with sharia principles.⁴ According to the general authority conveyed to the *mudharib*, *Mudharabah* deposits are divided into two, namely *Mudharabah Muqayyadah* and *Mudharabah Mutlaqah*.⁵

In *Mudharabah Mutlaqah*, the fund manager is fully responsible for managing the capital, unlike *Mudharabah Muqayyadah*, where the capital owner also has the authority to determine the management of the capital. The implementation of *Mudharabah* deposits technically means that the capital owner does not necessarily get a profit from capital managed by the capital manager because the capital manager in carrying out the management does not necessarily make a profit and can also result in losses. When in a condition where the capital manager suffers a loss from the capital he manages, this loss will be borne by the *Shahibul Maal* or capital owner as long as this loss is not due to the negligence of the *Mudharib* . There is a loss due to the negligence or fraud of the

² Fariz Al-Hasni, 'Akad Mudharabah Mutlaqah Dalam Praktik Perbankan Syariah' (2017) 9 Mu'amalat: Jurnal Kajian Hukum Ekonomi Syariah 208.

³ Ardiani Ika Sulistyawati, Nurul Hidayah and Aprih Santoso, 'Analisis Determinan Deposito Mudharabah' (2020) 2 Indonesia Accounting Journal 133.

⁴ Teguh Wiyono, Agus Nugroho, Lola Yorita Astri, 'Design Of Employment Applications And Registration At Legal Relationships (Case Study: Office Of The Jambi City National Land Agency)' (SKRIPSI 2019).

⁵ Widhi Ariyo Bimo and Tommy Cahya, 'Strategi Pemasaran Tabungan Haji Dengan Akad Mudharabah Mutlaqah Pada PT. Bank Tabungan Negara Syariah (Persero) Tbk. Cabang Bogor' (2018) 6 Moneter: Jurnal Keuangan dan Perbankan 63 <<https://doi.org/10.32832/moneter.v6i2.2413>>.

Mudharib, the *Mudharib* must be responsible for the losses experienced. So that if there is a loss due not to the *Mudharib* in managing the funds, then the *Shahibul Maal* or capital owner will lose the profit and reward from the management of the funds listed in the form of a *Mudharabah deposit*. There is an imbalance that arises between the *Mudharib* and the *Shahibul Maal* in the *Mudharabah deposit*, considering that the management of funds is only carried out by the *Mudharib* but when a loss occurs it becomes the responsibility of the capital owner or *Shahibul Maal* or customer only. The *Mudharib's* responsibility can be carried out with the provision that the loss arises due to an error or negligence in management by the *Mudharib*.

The formulation of the concept that the *Mudharib* party also has responsibility for losses when there is an error from the manager, which is a vague or unclear concept, because it is very difficult for the capital owner to recognize the cause of the loss in capital management due to negligence or fraud of the capital manager. This is because, in the implementation of *Mudharabah* deposits, the capital owner does not have the authority to participate in managing capital. In the implementation of *Mudharabah* deposits, there is no aspect of equality of justice between the managing bank or *Mudharib* and the investor customer or *Shahibul Maal* when a loss occurs in managing capital carried out by the capital manager or *Mudharib*. In addition to the issue of the fund management system between *Mudharabah* and *Shahibul Maal*, there was also a condition where there was an action intentionally not to include recording in the bank cash account transaction report document in the *Mudharabah deposit*. This happened because *Mudharib* argued on the basis of reducing the cash balance on the balance sheet because of the difference. *Mudharabah* deposits that are not recorded in the bank cash account transaction report document are a loss for *Shahibul Maal* as an investor, because the funds that have been deposited are not recognized as savings.

In unrecorded *Mudharabah deposit* transactions, there is an indication of intention not to record or enter transaction document reports into bank accounts by *Mudharib* as an effort to reduce the cash balance in the balance sheet due to differences. However, the recording is done manually by *Mudharib* not in accordance with the procedure. As a result, with the absence of recording in the transaction document report to the bank

account, *Shahibul Maal* will experience losses because the funds that have been deposited with *Mudharabah* deposits are not recognized as savings. Therefore, the above problems provide the view that in the world of Islamic banking business, it is not only the banking party that is harmed by *Mudharabah* deposit activities whose fund management results in losses, but *Shahibul Maal* can be harmed when Islamic banking does not carry out the procedures that should be in *Mudharabah* deposits.

In every Islamic banking transaction, namely *Mudharabah* deposits, it must provide certainty that the *Shahibul Maal* funds deposited receive adequate protection. One of the institutions responsible for providing this protection is the Deposit Insurance Agency (LPS).⁶ LPS has the main function of guaranteeing bank customer deposits, which can be in the form of savings, deposits, current accounts, certificates of deposit, and other forms equivalent to that. The main function of LPS is to provide assurance to customers that funds will be safe even if there is a failure or difficulty at the bank where the deposit is made. In the event of an error at the bank, LPS will act to resolve or handle the problem. This can mean replacing customer funds that are lost or constrained in a certain amount, in accordance with applicable provisions and limitations.

However, the guarantee of funds by LPS for *Mudharabah* deposits that are not recorded or include transaction document reports to bank accounts has actually been regulated, but the enforcement action is still not firm. Given that the guarantee of funds carried out by LPS has criteria provisions that must be met. Therefore, *Mudharabah* deposits that are not recorded or entered into transaction document reports into bank accounts are important to identify, because they are related to the form of accountability of the directors of Islamic banking for the losses experienced by *Shahibul Maal*. The purpose of this study is to find the accountability of the directors of Islamic banking for *Mudharabah* deposits that are not recorded or entered into transaction document reports into bank accounts. Not recording or entering transaction document reports into the bank account resulted in losses to *Shahibul Maal*.

⁶ Maghfiro Atika and others, 'Kedudukan Lembaga Penjamin Simpanan pada Koperasi Simpan Pinjam Berdasarkan Undang-undang Nomor 17 Tahun 2012 Tentang Perkoperasian' (Fakultas Hukum Universitas Brawijaya 2014) < <https://www.neliti.com/id/publications/34753/kedudukan-lembaga-penjamin-simpanan-pada-koperasi-simpan-pinjam-berdasarkan-unda>>.

Research Method

The type of research used is normative legal research, which means that this research is focused on examining the contents of laws and regulations on the main problems/legal issues in terms of their consistency with the legal principles relating to the directors' responsibility for *Mudharabah* deposits and not recording or entering transaction document reports into bank accounts.⁷ This study uses a legislative approach and a conceptual approach, combined with primary legal materials and secondary legal materials.

LPS Guarantee for *Mudharabah* Deposits that are not Recorded in the Transaction Report to the Bank Cash Account

Investment Fund is an investment of capital on several resources or funds that are implemented now, with the hope of getting some profit in the future. The term investment can relate to various activities. Carrying out investment activities in the real sector (gold, land, buildings or machinery) or financial assets (deposits, bonds or stocks), is a common activity.⁸ In Law No. 21 of 2008 concerning Islamic Banking (hereinafter referred to as Law No. 21/2008) Article 1 number 22 that deposits are investment funds given by customers to Islamic banking according to the *Mudharabah* contract or other contracts that do not conflict with the sharia basis in the form of savings, deposits, or other forms that are equivalent to these. In addition, in Article 19 paragraph (1) letter b of Law No. 21/2008 explains the meaning of the *Mudharabah* contract, namely the collection of funds with a cooperation contract between the first party (*Shahibul Mal*, *Malik*, or customer) as the owner of the funds and the second party (*Mudharib*, *'Amil*, or Islamic bank) as the fund manager by providing a portion of the business profit in line with the agreement stated in the contract. *Mudharabah* deposits are divided into two types, namely:⁹

- a. *Mudharabah Mutlaqah* (general investment) is where the capital owner does not give restrictions (limits) of the invested funds, while the capital manager is given the

⁷ Peter Mahmud Marzuki, 'Penelitian Hukum, Cetakan Ke-11' (2022) 4 Jurnal Pembangunan Hukum Indonesia

⁸ Dr H Jaja Suteja and Ardi Gunardi, 'Manajemen Investasi dan Portofolio' (2014) 13.

⁹ Sulistyawati, Hidayah and Santoso (n 3).

authority to manage these funds with a time period, place, type of service and type of business. The form of applying *Mudharabah Mutlaqah* is by deposit.

- b. *Mudhrarabah Muqayyadah* , namely a contract that is given limitations by the type of business, place of business and time period. In this type of mudharabah, the capital owner gives limitations on the invested funds, and the manager can only manage the funds in line with the limitations given by the capital owner.

In running *Mudharabah* deposits, sharia principles are the main foundation in all activities and transactions carried out. These principles include Islamic legal provisions that regulate all aspects of finance and banking. Some of the main principles that are the basis for the operation of sharia banks include:¹⁰

1. The Principle of Prohibition of Usury.
Usury is the practice of paying or receiving interest or additional interest in financial transactions. Islamic banks operate without using usury, which is considered a forbidden practice in Islam. Instead, Islamic banks adopt the concept of profit sharing, where profits and losses are shared between the bank and the customer.
2. The Principle of Certainty (*Qardh*).
This principle includes transparency and assurance of customer funds. All transactions must be transparent, and customers have the right to know how their funds are used.
3. Profit Sharing Principle (*Mudharabah*).
This principle regulates the distribution of profits between the bank and the customer. The bank acts as the Mudharib (fund manager) (sometimes the bank is the *Shahibul Maal*), while the customer is the *Shahibul Maal* (fund owner). Profits are divided based on previous agreement.
4. The Principle of Prohibition of *Maysir* and *Gharar*.
Maysir refers to the practice of gambling, while *gharar* is uncertainty or ambiguity in transactions. Islamic banks should not engage in these practices.
5. Sharia Compliance Principles.
All bank operations must comply with Islamic law, and banks must have a sharia supervisory board that ensures compliance with sharia principles in all aspects of its business.

In addition, the principles underlying every transaction are fairness, partisanship, and impartiality. Therefore, the guarantee of protection provided by the deposit insurance institution (LPS) has a very important role in maintaining integrity and trust

¹⁰ Hesi Eka Puteri and Baginda Parsaulian, *Dasar-Dasar Operasional Perbankan Syariah* (Pustaka Egaliter 2023).

in the Islamic banking system. One of the prominent Islamic banking products is the *Mudharabah deposit*, where funds are deposited by the *Shahibul Maal* (capital owner) with the aim of being used in investment and business by the bank as the *Mudharib* (capital manager). The profit sharing from this business will be distributed between the *Shahibul Maal* and the bank according to the initial agreement. However, to ensure the security and protection of the *Mudharabah deposit* and so that the profit sharing system runs smoothly, the role of the LPS is very important. The LPS is here to provide assurance to the *Shahibul Maal* that the funds they place in the *Mudharabah deposit* will be protected and safe.¹¹ In undesirable situations, such as bank failure or the bank's inability to fulfill its obligations, the LPS will act as a savior. The guarantee of protection from the LPS can mean replacing funds that are lost or constrained in a predetermined amount, in accordance with applicable regulations. This is an important mechanism that helps eliminate uncertainty and risk in investments made by the *Shahibul Maal* through *Mudharabah* deposits. With the guarantee of protection from LPS, Islamic banking can attract more investors and build trust in the system. It also creates a more stable environment for the development of a sharia-based economy, which is in accordance with Islamic moral and ethical principles.¹²

In the provisions of DSN Fatwa No. 07/DSN-MUI/IV/2000 regarding *Mudharabah* financing (*Qiradh*), describes the principles of *Musyarakah* financing and *Mudharabah* financing in the context of Islamic banking that in principle in *Mudharabah* financing there is no guarantee or collateral provided by the party borrowing funds (*Mudharib*) to the party providing funds (*Shahibul Maal*).¹³ It is understood that in *Musyarakah* and *Mudharabah*, the investment risk is fully borne by the *Shahibul Maal*, and there is no collateral accompanying it. This is in accordance with the basic principles of Islamic

¹¹ Rudy Susanto and Zainal Arifin H. Masri, 'Peran Lembaga Penjamin Simpanan Dalam Pengelolaan Sistem Stabilitas Keuangan Indonesia' (2020) 16 *Relasi : Jurnal Ekonomi* 249 <<https://jurnal.itsm.ac.id/index.php/relasi/article/view/363>>.

¹² Suci Hayati, 'Perilaku Nasabah Deposito Mudharabah Terhadap Bi Rate Dan Bagi Hasil Di Bank Muamalat Indonesia Kantor Cabang Pembantu Metro' (2018) 01 *FINANSIA : Jurnal Akuntansi dan Perbankan Syariah* 179 <<https://e-journal.metrouniv.ac.id/index.php/FINANSIA/article/view/1261/1163>>.

¹³ Mohammad Fauzan, Akad Mudharabah and Bagi Hasil, 'Penerapan Fatwa DSN-MUI No . 07 / DSN- MUI / IV / 2000 Tentang Mudharabah Di PT . BNI Syariah Cabang Palu Perspektif Maqasid Syariah The Implementation of Fatwa of DSN-MUI No . 07 / DSN-MUI / IV / 2000 on Mudharabah at PT . BNI Syariah , Palu Branch Offic' (2019) 19 77.

banking which prioritize the principle of justice and risk sharing between the parties involved in the transaction. However, in a practical context, sometimes the LPS can provide protection guarantees. However, this guarantee is not given automatically. In order to obtain a guarantee from LPS, there are several requirements that must be met. One of the main requirements is that the *Mudharib* (recipient of funds) must be proven to have violated the agreement or provisions that have been agreed upon in the contract. This means that if the *Mudharib* commits a violation or action that is not in accordance with the agreement that has been made with the *Shahibul Maal*, LPS can take action to provide a guarantee or replace the losses experienced by the *Shahibul Maal*. However, this guarantee is limited to cases where there is a violation that can be proven.

In the context of the protection policy provided by the Deposit Insurance Corporation, one of the important requirements for deposit funds to be guaranteed is the existence of clear records in the bank's books. This means that every deposit transaction must be recorded in detail, including the name of the individual or entity making the deposit and the amount of money deposited. The existence of strong and well-documented records allows LPS to determine with certainty who owns the deposit and the amount of money that should be guaranteed if there is a problem at the bank. However, in the context of *Mudharabah* deposits that are not recorded by the bank or *Mudharib*, there is a potential risk related to protection from LPS. *Mudharabah* deposits are a form of investment that involves an agreement between the customer (*Shahibul Maal*) and the bank (*Mudharib*) to invest together in a particular business. The profits from this investment will be shared based on a previous agreement. If the *Mudharabah* deposit transaction is not recorded by the bank or *Mudharib*, it will not only result in unclear ownership of the funds, but also create obstacles in terms of protection from LPS. In the case of unrecorded *Mudharabah* deposits, LPS may have difficulty determining who owns the funds that should be guaranteed and in what amount. This can hinder the process of claiming protection by customers in the event of problems, such as bank failure or liquidation. Given that LPS functions to guarantee deposits that can be clearly identified through bank bookkeeping records, the existence of strong transaction records and documentation is important. The existence of bookkeeping records containing the

name of the deposit owner and the amount of the deposit can be easily identified, to enable *Shahibul Maal* to obtain legal protection. Funds in *Mudharabah* deposits in order to be guaranteed by LPS, must meet the requirements, one of which is the existence of clear records and documentation. Recording is fundamental for *Shahibul Maal* involved in *Mudharabah* deposits to ensure that every transaction is recorded properly and strong documentation is available as proof of ownership and the amount of funds that have been placed. Recording can increase the possibility of getting protection from LPS in undesirable situations. This protection becomes more important to maintain the trust and security of *Shahibul Maal* in transacting with Islamic banks.

The Board of Directors' Responsibility for *Mudharabah* Deposits when No Recording was Made in the Transaction Report to the Bank Cash Account.

The directors' responsibility for funds from *Mudharabah* deposits involves the obligation to manage responsibly, answer in good faith, and comply with sharia principles and statutory regulations invitation. in the context where the board of directors do no recording or official transaction reporting, using manual recording, and cover the existence difference in cash balance, this can cause problems and harm investor customers.¹⁴ As a trust holder (*fiduciary*), the board of directors owns the obligation to guard the trust of investor clients and carry out fund management with transparency and accountability. In this case, the board of directors has the responsibility to accurately record and report transactions related to *Mudharabah* deposit funds.

When funds deposited by investor customers with *Mudharabah* deposits are not recognized as savings and are not adequately recorded, investor customers may suffer financial losses. Investor customers may lose certainty and their rights as capital owners, and cannot effectively monitor the development of their investments. In this situation, the board of directors may be considered to have violated their responsibilities to

¹⁴ Hasbullah F Sjawie, 'Tanggung Jawab Direksi Perseroan Terbatas Atas Tindakan Ultra Vires' (2017) 6 Jurnal Hukum PRIORIS 12 <<https://www.neliti.com/id/publications/82266/tanggung-jawab-direksi-perseroan-terbatas-atas-tindakan-ultra-vires>>.

investor customers. The responsibilities of directors include the obligation to maintain the integrity and reliability of the recording system, report accurately, and manage deposit funds in good faith. If there is a loss arising from negligence or improper actions of the board of directors, investor customers may have a legal basis to file a claim or request compensation. It is important for directors to always carry out their duties with full responsibility, transparency, and in line with sharia principles. Accurate recording, timely reporting, and careful management of funds are important elements that must be met to maintain investor customers' trust and protect their interests.

In the *Fiduciary Duty Principle*, there is an indication of a violation by the board of directors to not sufficiently answer fiduciary questions by investor customers. *Fiduciary duty* is obligation in law and ethics which requires the board of directors to act in the best interest of the company and its shareholders.¹⁵ In the context of *Mudharabah* deposits, the board of directors own *fiduciary* responsibility toward investor clients to carry out management funds with good faith, transparency, and caution. The relevant fiduciary duty principles in this case are as follows:¹⁶

1. Trust: The Board of Directors is considered as a trust holder by investor customers. They must hold and manage funds with good faith, guard trust given by investor customers, and not use funds for personal gain or to cover up mistakes or inaccuracy.
2. Duty of Care : The Board of Directors has an obligation to behave with caution in management of *Mudharabah* deposit funds. They must keep records and report transactions accurately, ensuring that funds are managed properly with professionalism, and avoiding actions that could be detrimental to investor customers.
3. Good Faith: Directors must carry out their duties in good faith which means acting with integrity, honesty, and not withholding relevant information from investor customers. They may not deliberately use logging manual or practices which can cover inaccuracy or error.

¹⁵ Putu Ratih Purwantari and Made Mahartayasa, 'Tanggung Jawab Direksi Berdasarkan Prinsip Fiduciary Duties Dalam Perseroan Terbatas' (2014) 02 Hukum.

¹⁶ Siti Hapsah Isfardiyana, 'Tanggung Jawab Direksi Perseroan Terbatas Dalam Pelanggaran Fiduciary Duty' (2015) 2 PADJADJARAN Jurnal Ilmu Hukum (Journal of Law) 168 <<https://doi.org/10.22304/pjih.v2n1.a10>>.

Violation of fiduciary duty principles can result in losses for investor customers and damage their trust in the board of directors. Investor customers have the right to demand directors' liability for losses arising from negligence or actions that violate fiduciary obligations. It is important for directors to understand and respect the principles of fiduciary duty in *Mudharabah* deposit fund management. They must maintain integrity, transparency, and investor customer interests as top priority in decision-making regarding the determination of funds to be invested in field certain business or project certain.

In situations where funds from *Mudharabah* deposits are not officially recorded or reported, and manual recording is used instead, the board of directors is accountable to the depositors for any resulting consequences. The directors' fiduciary duty to the depositors requires them to act with utmost responsibility and good faith in managing the funds. When there is a lack of accurate or official transaction records, this can be considered a breach of fiduciary duty, which is a legal obligation placed on an individual or certain individuals to act in the best interests of another party or group entrusted to them. They bear a fiduciary obligation, called as Trustee, that mandates them to safeguard, manage, and utilize the assets or interests of the other party with honesty, good faith, and accountable responses. Fiduciary duties are grounded in a relationship of trust between the Trustee and the other party who entrusts their interests (the beneficiary). The Trustee must prioritize the interests and well-being of the beneficiary over their own personal interests or those of other parties. They must act with care, honesty, and loyalty to the beneficiary's interests, and adhere to high fiduciary standards.¹⁷

In the context of a company's board of directors company, the fiduciary obligation require them to act with good faith for the sake of interest of the company and all its shareholders. The board of directors must carry out duties and authorities with care, honesty and integrity, and may not use their position for personal gain or to harm the company or its shareholders. As a consequence from inaccuracy the customer can experience financial loss.

¹⁷ Ali Muhayatsyah, 'Keputusan Bisnis Dan Tanggung Jawab Direksi Dalam Prinsip Fiduciary Duties Pada Perseroan Terbatas' (2019) 1 Jurnal At-Tijarah <<https://media.neliti.com/media/publications/338704-keputusan-bisnis-dan-tanggungjawab-direk-77a49db2.pdf>>.

In this case, the customer has the right to demand accountability of the directors. Besides that, the customer must prove that they have lost bank interest or any profit they should get. When a customer is capable to prove financial loss happened as a result of negligence or actions that violated fiduciary obligations, they can claim compensation from the board of directors or related financial institutions. Compensation can cover direct loss which arises as a consequence of no existence of accurate records or recording or abuse of funds.

In the theory of legal responsibility based on the opinion of Hans Kelsen, the legal responsibility of directors in cases where funds from *Mudharabah* deposits are not noted in an official way and manual recording alone is used, this can be linked to more stringent broad legal principles. In the context of legal responsibility, Kelsen views that the law has a function to regulate actions and relationships between individuals in society. Legal responsibility relates to the legal consequences that individuals will receive if they violate norms which have been set. For Kelsen, insufficient legal responsibility is related to moral or ethical aspects in regard to implementation of law norms which apply objectively and neutrally. In Kelsen's view, the law does not give an assessment of someone's actions based on whether the action is morally right or wrong, but only focuses on compliance with established norms. In theory, this is insufficient to answer the law based on Kelsen where violation against legal norms can result in legal consequences that have been regulated.¹⁸

In this context, the legal responsibility of the board of directors can be seen in two aspects. First, there is the legal responsibility of the board of directors toward investor customers as parties who have an interest in *Mudharabah* deposit funds. the board of directors own fiduciary obligation to protect and manage these funds with good faith honesty, and to answer responsibly. In the matter where no official records are made or in the use of manual records alone, this can be considered a breach of fiduciary responsibility, because this can result in losses for investor customers. Second, related with Kelsen's theory of the law which emphasizes hierarchy norms, the directors' responsibilities can also be seen in the context of obedience to the rule of law.

¹⁸ Vina Akfa Dyani, 'Pertanggungjawaban Hukum Dan Perlindungan Hukum Bagi Notaris Dalam Membuat Party Acte' (2017) 2 Jurnal Lex Renaissance 162 <<https://doi.org/10.20885/JLR.vol2.iss1.art11>>.

In this case, when the board of directors does not submit a document reporting transactions officially, they may violate the rules and regulations which regulate the procedures for managing *Mudharabah* deposit funds. This can be considered as violation and insufficient to answer the law according to the Constitution which regulates transparency, accountability, and protection of customer interests. Based on Kelsen's theory regarding violation of the law, the directors' liability in this case may trigger legal consequences. Investor customers or parties who feel they have been harmed can file a claim against directors because they have violated fiduciary obligation and/or violated legal regulation which, as a consequence may arise in the form of compensation or other legal action.

In this context, the application of the Piercing the Corporate Veil principle can be legally justified to hold not only the corporation and its stakeholders accountable, but also to involve other corporate organs such as the board of commissioners. The directors' liability arising from the application of the *Piercing the Corporate Veil* principle can also be examined as a consequence of the fiduciary duty applied by the directors concerned.¹⁹ The application of the Piercing the Corporate Veil principle is sufficiently justified with regard to the directors concerning *Mudharabah* deposit funds that are not officially recorded or reported transactions, using only manual recording, and can serve as a legal consideration in determining whether the directors can be held accountable for their personal actions.

Piercing the Corporate Veil is law doctrine which allows courts to go beyond the legal protections afforded to a legal entity like a company and hold shareholders or parties involved in a personal way to answer on actions or the failure of the company. In this context, the directors are responsible for funds from *Mudharabah* deposits, if the directors purposely ignore or violate fiduciary obligation in managing the funds. When the directors intentionally do not undertake official recording or reporting of transactions, using manual bookkeeping as an effort to cover the difference in cash balance, and as the

¹⁹ Sandra Dewi, 'Prinsip Piercing The Corporate Veil Dalam Perseroan Terbatas Dihubungkan Dengan Good Corporate Good Governance' (2017) 16 *Respublica* <<https://doi.org/10.31849/respublica.v16i2.1439>>.

result investor customers experience loss, the application of the Piercing the Corporate Veil principle can be considered. This means that the board of directors can be sued for actions or failures which harm investor customers.

However, implementation of the Piercing the Corporate Veil principle cannot be in a haphazard fashion but must consider a number of factors and conditions before determining whether this lies beyond the company's legal protection and hold directors personally responsible to answer. Factors cover abuse of power, intermingling between company assets and personal, no separation between corporate entities and individuals, as well as improper purposes or fraud committed by the directors.²⁰ The application of the *Piercing the Corporate Veil* principle can be an effective tool in ensuring accountability of directors for their actions which harm investor customers.

Directors who do not submit transaction document reports in a full official manner and use only manual recording in fund management of *Mudharabah* deposit aiming to cover up differences in cash balance can have legal consequences. Legal consequences are consequences or impacts which arise as result from an action or incident involving aspects of the law. In context, more specific, legal consequences refer to the consequences or impacts that arise as a result of violation against the applicable regulations of law or provisions. Consequences of law in the form of the implementation of the Piercing The Principle Corporate Veil principle allow the court to ignore the separation between the company and individuals involved in its management if there is any deliberate misuse or negligence which causes loss to a third party, like investor customers, namely *Shahibul Maal*. In this case, if the directors intentionally use manual recording to cover the difference in cash balance and losses to *the Benefactor of the Capital*, the court can decide to overcome such separation and impose personal liability on the directors. In consequence of the law the board of directors can be personally responsible and have responsibility to answer for losses faced by investor customers because of their action. Directors may also be faced with lawsuits by investor clients to compensate for the losses that have occurred. In addition, the supervisory authority banking and institution

²⁰ *ibid.*

related to the Financial Services Authority (OJK) can take disciplinary action toward the board of directors and limit their authority in managing deposit funds.

Conclusion

Protection by the Deposit Insurance Corporation (LPS) for *Mudharabah* deposit funds can be done when there are clear records and documentation in the bank's books. Strong and well-documented records allow LPS to identify with certainty the owner of the *Mudharabah* deposit and the amount of money that should be guaranteed if a problem occurs at the bank. *Mudharabah* deposits that are not recorded by LPS cannot provide a guarantee of protection, because LPS cannot determine the owner of the *Mudharabah* deposit and the amount of *Mudharabah* deposit that must be guaranteed. For *Mudharis* who deliberately do not record transactions officially and use manual recording to cover the difference in cash balance in managing *Mudharabah* deposit funds, then the directors can be responsible for the *Mudharib's* actions and have an obligation to replace the losses experienced by *Shahibul Maal* due to these actions; this refers to the principle of Piercing The Corporate Veil. In addition, banking supervisory authorities and related institutions can also take disciplinary action against directors and limit the bank's authority in managing deposit funds.

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