

# CHAPTER I

## INTRODUCTION

### A. Context of Study

The rapid development in the banking sector does not only occur in conventional banks but also occurs in the Islamic banking system. The first country implemented and developed sharia banking was Malaysia in 1940. It was an investment of savings in Hajj programs in real estate and plantations which follow sharia principle, although it did not end up as expected.<sup>1</sup> The application of the Islamic banking system sparked economic growth with the establishment of sharia in Indonesia Law Number 7 of 1992.<sup>2</sup>

The amendment of Law Number 7 of 1992 into Law Number 10 of 1998 became a prove of rapid development in the sector of Islamic banking in Indonesia.<sup>3</sup> This law is the basis for the application of Islamic economic principles applied in Islamic banking in Indonesia. In 1998, Indonesia implemented a dual banking system in which the banks can operate profit sharing principles where conventional banks and Islamic banks stand side by side in the banking system.

The existence and development in banking sector in Indonesia receive a very positive attitude from the society, it become the reason of the enactment of the banking law. The government then needs to establish rules called implementing regulations to support the application of the law. The first

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<sup>1</sup> Zairin Arifin, Director of Muamalat Bank, as stated on interview with *Ekonomi Neraca* daily, January 11st 1999.

<sup>2</sup> Banking Law of Indonesia, Law Number 7 Year 1992.

<sup>3</sup> Law Number 10 Year 1998, Article 1 (3-4) as amandement of Law Number 7 Year 1992.

implementing regulation created and approved by the government is Bank Indonesia Board of Directors Decree No.32 / 34 / KEP / DIR / 1999 concerning Bank Perkreditan Rakyat based on Sharia principles, as a form of implementing regulations for the banking law.<sup>4</sup>

This law also becomes the basis of the first Islamic bank established in Indonesia, Bank Muamalat, in 1992.<sup>5</sup> The legal basis of Islamic banking is continued and stipulated in Law Number 21 of 2008.<sup>6</sup> Since the law was applied, the Islamic banking in Indonesia is growing steadily.

The financial services in the Islamic banking system is defined as *mudharabah* financing. *Mudharabah* is a financing transaction based on sharia, which is also used as an Islamic bank financing transaction, conducted by the parties based on trust.<sup>7</sup> *Mudharabah* is the main tool for Islamic financial institutions to mobilize public funds and to provide various facilities, including financing facilities for entrepreneurs.<sup>8</sup> The legal basis of *mudharabah* financing is stated in Q:S Muzzammil (20):<sup>9</sup>

﴿ إِنَّ رَبَّكَ يَعْلَمُ أَنَّكَ تَقُومُ أَدْنَىٰ مِن ثُلُثِي اللَّيْلِ وَنِصْفَهُ، وَثُلُثَهُ، وَطَائِفَةٌ مِّنَ الَّذِينَ مَعَكَ  
وَاللَّهُ يَقْدِرُ اللَّيْلَ وَالنَّهَارَ عِلْمَٰنَ لَّنْ نَّحْصُوهُ فَنَابَّ عَلَيْكَ فَاقْرَأْ مَا تيسَّرَ مِنَ الْقُرْآنِ  
عَلِمَٰنَ أَن سَيَكُونُ مِنكُمْ مَّرْضَىٰ وَءَاخِرُونَ يَضْرِبُونَ فِي الْأَرْضِ يَبْتَغُونَ مِن فَضْلِ اللَّهِ  
وَأَخِرُونَ يَقْتُلُونَ فِي سَبِيلِ اللَّهِ فَاقْرَأْ مَا تيسَّرَ مِنْهُ وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ  
وَأَقْرَضُوا اللَّهَ قَرْضًا حَسَنًا وَمَا تُقَدِّمُوا لِأَنفُسِكُمْ مِن خَيْرٍ نَّحْدُوهُ عِنْدَ اللَّهِ هُوَ خَيْرًا وَأَعْظَمَ  
أَجْرًا وَاسْتَغْفِرُوا لِلَّذِينَ آمَنُوا عِندَ رَبِّكُمْ تَجْمُومَ ۝﴾

<sup>4</sup> Sutan Remy Sjahdeini, *Perbankan Islam dan Kedudukannya dalam Tata Hukum Perbankan Indonesia*, Jakarta: Pustaka Utama Grafiti, 1999, page. 199.

<sup>5</sup> No Author, *Profil Bank Muamalat*, [website], 2016, <http://www.bankmuamalat.co.id/profil-bank-muamalat>, Accessed 10<sup>th</sup> October 2018 time 10:10 WIB)

<sup>6</sup> Islamic Banking Law of Indonesia, Law Number 21 Year 2008.

<sup>7</sup> Elias G. Kazarian, *Islamic Versus Traditional Banking, Financial Innovation in Egypt*. Boulder [et.al.]: Westview Press, 1993, page. 48.

<sup>8</sup> Nabil A. Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law: Riba, Ghahar and Islamic Banking*. Cambridge: Cambridge University Press, 1986, h. 104. Elias G. Kazarian, *Op. cit.*, page. 61.

<sup>9</sup> Al-Qur'an Kareem. Surah Al-Muzzammil: 20.

*“(O Prophet), your Lord knows that you sometimes stand up in Prayer nearly two-thirds of the night, and sometimes half or one-third of it, and so does a party of those with you; Allah measures the night and the day. He knows that you cannot keep an accurate count of it, so He has shown mercy to you. So now recite as much of the Qur'an as you can. He knows that there are among you those who are sick and others who are journeying in the land in quest of Allah's bounty, and still others who are fighting in the cause of Allah. So recite as much of the Qur'an as you easily can, and establish Prayer, and pay Zakah, and give Allah a goodly loan. Whatever good you send forth for yourselves, you shall find it with Allah. That is better and its reward is greater. And ask for Allah's forgiveness; surely He is Most Forgiving, Most Compassionate.”*

The *mudharabah* financing system was first introduced in the pre-prophetic period of Muhammad. Khadija, a wealthy businesswoman and Muhammad worked as a trader and traded to Sham. At that time, Khadija provided capital to Muhammad to trade based on a system for the results and the confidence to cultivate a given venture capital.<sup>10</sup> The purpose of *mudharabah* financing is to provide capital to someone who has the ability and competency in his field to conduct a business activity.<sup>11</sup>

*Mudharabah* financing categorized as risky financing because it relies on trust between the capital provider and the receiver. Trust is the core in the running of *Mudharabah* financing as mentioned:

*"Two people who buy and sell may choose (to hold or cancel the sale and purchase) as long as they are not separate." If both are honest and explain their merchandise (honestly), the sale and purchase transaction will be blessed. However, if both of them hide defects and lie, then the blessings of buying and selling are both abolished "*

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<sup>10</sup> M. Anwar Ibrahim, “Konsep Profit and Loss Sharing System menurut Empat Madzhab”. Unreleased Article h. 1-2. Based on Al-Qur’an QS (73:20). Based on Sunnah, one of them are hadith from Ibnu Abbas r.a which stated Prophet acknowledge requirements of *mudharabah* applied by Al-Abbas bin Abdul Muthalib to *mudharib*. Based on Ijma, because this system already acknowledges in Prophet era and after Prophet era. However, *Shahaabah* of Prophet practice the *mudharabah*.

<sup>11</sup> Siah Khosyi’ah, *Fiqh Muamalah Perbandingan*, Bandung: Pustaka Setia, 2014, page. 152.

(HR Bukhari Al-Lu'Lu'Wal Marjan No. 980 Page 735 Chapter Buy and Sell).

So according to the Hadith it is very important for the recipients of capital (*mudharib*) to be a Muslim who will not break a promise nor against anything that has been written in the agreement. The recipient of capital must also be ascertained as someone who can be trusted by the capital provider (*shahibul mal*), so the capital provider should not give money to people who cannot be trusted because precautionary and maintaining welfare are important in Islam.<sup>12</sup>

In the application of *mudharabah* financing, the core of financing is trust. It also becomes one of indications of shariah compliance. Shariah compliance is required to run the financing under Islamic Sharia. The business activities follow Islamic sharia and avoid failure in the aspect of sharia compliance. Since if they did not obey sharia compliance, it will raise a fundamental question that is directly related to the legality of a bank in terms of its sharia.

However, asymmetry information could happen in the implementation of *Mudharabah* financing when capital givers and receivers do not comply or violate a sharia compliance.<sup>13</sup> Asymmetry information occurs when *mudharib* knows information that is not known by the bank.<sup>14</sup> This asymmetry information may cause some problems in the implementation of financing. As already mention above that trust in this financing method is important, so when

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<sup>12</sup> Umer Chapra, *Al-qur'an Menuju Sistem Moneter yang Adil*, PT. DANA BHAKTI PRIMA YASA, 1997.

<sup>13</sup> Agus Triyanta, *Hukum Perbankan Syariah: Regulasi, Implementasi dan Formulasi Kepatuhan terhadap Prinsip-prinsip Islam*, Malang: Setara Press, 2016, page. 69.

<sup>14</sup> Ir. Adiwarmanto A. Karim, *Bank Islam Analisis Fiqh dan Keuangan*, Jakarta: PT RajaGrafindo Persada, 2004, page. 214.

asymmetry information occurred, the bank can be indicated violating sharia compliance.

The concept of asymmetry information can also be found in the practice of sale and purchase in *fiqh muamalah*, in the form of a prohibition in sale and purchase which one of them is *Talaqqi ar-Rukban*. *Talaqqi ar-Rukban* is a situation where a seller comes to the market and a buyer confronts him before the seller reaches the market.<sup>15</sup> The buyer buys goods at a price below the market standard because the seller does not know the exact price in market. Islamic Shari'a prohibits the sale and purchase like this because it contains deception and harm other sellers and consumers.

Then such actions can be equated application with asymmetry information in the form of one of the parties (buyers who know more information in the market regarding the price of the standard applicable to an item) from the other party (the seller that in the course of carrying item and had no time to know or consider the intended market price) and harm another parties. As described above it can be concluded that a huge potential of asymmetry information can be occurred both in the practice of sale-purchase and in *Mudharabah* Financing performance of Islamic banking.

There was a case regarding asymmetry information in islamic banking between Dapenda, Bank Syariah Mandiri and PT. Sari Indo Prima<sup>16</sup>. This case began when Bank Syariah Mandiri submitted a proposal for a *Mudharabah Muqayyadah* financing agreement to Dapenda in December 2003. The proposal

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<sup>15</sup> Abdullah bin Muhammad Ath-Thayyar, *Ensiklopedia Fiqih Muamalah dalam Pandangan 4 Madzhab*, Yogyakarta: Maktabah Al-Hanif Griya Wirokerten Indah, 2015, page. 52.

<sup>16</sup> No Author, *Bank Syariah Mandiri Terbelit Akad Mudharabah Muqayyadah*, [website], 2009, <https://www.hukumonline.com/berita/baca/hol21873/bank-syariah-mandiri-terbelit-akad-mudharabah-muqayyadah/> (accessed 18 September 2019 18:09 WIB)

stated that the financing would be give to PT. Sari Indo Prima as a cost sack making business development.

At that time, Dapenda assumed that the financing scheme was the same as the placement of deposits in Islamic banks. Therefore Dapenda agreed to place the funds at Bank Syariah Mandiri. In January 23, 2004. Bank Syariah Mandiri, PT. Sari Indo Prima and Dapenda made an agreement with *Mudharabah Muqayyadah* No. 006 / MoU / DPAPII / I / 2004, No.103 / 0110 / MoU-SIP / I / 2004, and No. 05/1393/017. At the same time, Dapenda transferred funds to Bank Syariah Mandiri with letter No. 045 / DPAP II / KI / I / 2004 on the issuance of deposits amounted to Rp 5 billion. The agreement was then outlined in the *Mudharabah Muqayyadah* financing deed of Rp 10 billion in January 28, 2004 between Dapenda, PT. Sari Indo Prima and Bank Syariah Mandiri.

Six months later, Dapenda did not get any profit sharing ratio because PT. Sari Indo Prima and Bank Syariah Mandiri did not pay the installments, which are the principal obligation and profit sharing margin. Since the beginning of the financing process, Dapenda considered that Bank Syariah Mandiri was not transparent. This was reflected in the initial financing of PT. Sari Indo Prima amounted to Rp 6.5 billion in October 2003, before the contract was made. Meanwhile, the financing agreement No. 108 mentioned that PT. Sari Indo Prima is not in debt to other parties.

The asymmetry information in that case occurred in the form of Bank Mandiri Syariah as *Mudharib* committed an act without the knowledge of Dapenda as *Shahibul Maal*, namely providing financing to PT. Sari Indo Prima in the amount of Rp 6.5 billion in October 2003, before the contract was made.

Meanwhile, in the financing agreement No. 108 mentioned that PT. Sari Indo Prima is not in debt to other parties. From the case above, it can be seen that there is a great possibility of asymmetry information in *mudharabah* financing at Islamic banks.

It also shows that in performing *mudharabah* financing there will be a possibility to breach of contract in the form of non-transparency from *Mudharib* in managing capital provided by *Shahibul Maal*. This non-transparency leads to dishonesty committed by *Mudharib*. Since honesty is the core of *mudharabah* financing, if honesty is no longer applied in performing a *mudharabah* financing, then Islamic banking will be questioned for its sharia compliance.

Consumption in Islamic banks shows a higher development than financing working capital and investment. This is due to the lower level of asymmetry information, higher levels of loyalty and higher religious motivation. Because the level of asymmetry information influences the level of sharia compliance in Islamic banks, Islamic banks in making financing policies must consider asymmetry information and use policies to improve bank development better, such as determining the margin for making profit sharing and financing products.<sup>17</sup> Therefore, according to the explanation above, the researcher considers the need for further research on legal effect of sharia compliance fulfillment on *mudharabah* financing performance through asymmetry information on Islamic bank.

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<sup>17</sup> Tri Joko Prasety, *Bank Syariah Menghadapi Masalah Asimetri Informasi*, [website], 2017, <https://ugm.ac.id/id/berita/13241-bank-syariah-menghadapi-masalah-asimetri-informasi> (Accessed 9 July 9, 2019 time 20:54 WIB)

## **B. Problem Formulation**

1. Does Asymmetry Information in *Mudharabah* Financing infringe Shariah Compliance in Islamic Banking?
2. How the Legal Effect of Sharia Compliance Fulfillment on *Mudharabah* Financing Performance through Asymmetry Information on Islamic Bank?

## **C. Purpose of Study**

1. To know the relation between asymmetry information and sharia compliance fulfillment on *mudharabah* financing performance through asymmetry information on Islamic bank.
2. To increase an awareness of society towards legal effect of sharia compliance fulfillment on *mudharabah* financing performance through asymmetry information on Islamic banks.

## **D. Terms and Definitions**

1. Asymmetry Information means condition where the owner does not have enough information about agent performance.
2. DPS means Supervisory Council of Indonesia which have an authority to assess and ensure sharia compliance on operational guidelines and products issued by banks.<sup>18</sup>
3. *Mudharabah* means a contract based on trust, where one party as the provider or owner of capital and the other as a commercial manager to

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<sup>18</sup> Moh. Jatim, *Tugas dan Fungsi Dewan Pengawas Syariah (DPS) pada Perbankan Syariah (dalam Meneliti Bentuk-Bentuk Akad)*, [website], <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/tugas-dan-fungsi-dewan-pengawas-syariah-dps-pada-perbankan-syariah-oleh-moh-jatim-sag-mhi-101> (Accessed 9 July 2019 time 08:01 WIB)



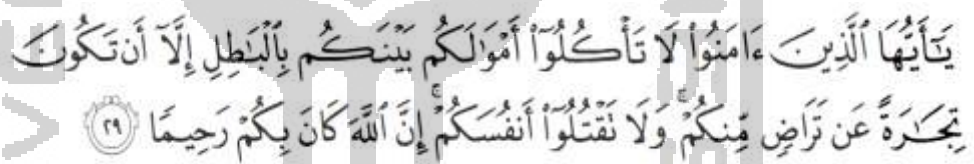
perform both of their names and the profits are divided according to certain agreed formula.<sup>19</sup>

4. PBI means Indonesian Bank Regulation.
5. Shariah Compliance means condition where all the activities of a financial institution in line with sharia, or equivalence of all activities of Islamic financial institutions with Islamic Sharia.<sup>20</sup>

## E. Theoretical Framework

### a. *Mudharabah Contract in Islamic Bank*

Islamic banks are banks running their business based on the principles of Islamic Sharia.<sup>21</sup> Basis of Islamic bank stated in the Al-Qur'an surah An-Nisa: 29<sup>22</sup> mentioned as follows:



يَتَايَهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ  
تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ﴿٢٩﴾

“O you who have believed, do not consume one another’s wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [for one another]. Indeed, Allah is to you ever Merciful.”

The development of Islamic banking in Indonesia occurred in 1992 due to the emergence of an alternative bank needs in accordance with the principles of Islamic economics for the Indonesian people who are

<sup>19</sup> Agus Triyanta, *Op. Cit*, Page 53.

<sup>20</sup> Mohammad Amin Ali Qaththan, *Al-Riqabah al-Shar'iyah fi Mu'assaah Shina'ah al-Khadamat al-Maliyyah al-Islamiyyah, Dirasah Shar'iyah Tathbiqiyah*, (Al-Qahirah: Dar al-Nahdhah al-'Arabiyyah, 2004,) 12-13.

<sup>21</sup> No Author, *Apa itu Bank Syariah?* [website], 2015, <https://www.syariahbank.com/apa-itu-bank-syariah/>, (Accessed 6 December 2018 time 22:02 WIB)

<sup>22</sup> Abdullah Yusuf Ali, *The Holy Qur'an Translation By Abdullah Yusuf Ali*, [website], 2018, <https://quranyusufali.com/4/>, (Accessed 9 October 2019 08:45 WIB)

predominantly Muslim. The first law established was Law Number 7 of 1992.

In Law Number 7 of 1992, it has not been clearly stated about the existence of banks conducting their activities based on Sharia principles. Whereas in Law number 10 of 1998 concerning banking explicitly acknowledges financing based on Sharia principles that can be carried out by a bank, both commercial banks and people's credit banks.<sup>23</sup>

In another hand, regulation of Islamic bank is not only based on Law but also stated in Indonesia's Bank Regulation No. 9/19 / PBI / 2007 which contains the implementation of sharia principles in fund collection and fund distribution activities and services from sharia banks<sup>24</sup> and Indonesia's Bank Regulation No.6 / 24 / PBI / 2004 which talks about commercial banks conducting business activities or their duties are based on sharia principles.<sup>25</sup> In carrying out its operational activities, Islamic banking in Indonesia must be based on sharia principles that produce a products in the form of:

1. Funding Product
2. Financing Product
3. Services Product

The product that is often offered by Islamic banking in Indonesia is financing product based on profit sharing, which one of them is *Mudharabah*.. The meaning of *mudharabah* itself is a contract based on trust, where one party as the provider or owner of capital and the other as a commercial manager to

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<sup>23</sup> Sutan Remy Sjahdeini, *Op. Cit.* Page 123.

<sup>24</sup> Indonesia's Bank Regulation No. 9/19 / PBI / 2007.

<sup>25</sup> Indonesia's Bank Regulation No. 6/26/ PBI / 2004.

perform both of their names and the profits are divided according to certain agreed formula.<sup>26</sup>

Based on DSN-MUI No. 7/DSN-MUI/IV/2000 about *Mudharabah* Financing, the meaning of *Mudharabah* financing is financing provided by Islamic Financial Institutions to the other party to a productive business.<sup>27</sup>

In performing *mudharabah* financing, Islamic bank need Shariah Compliance to ensure whether the application is already based on Islamic law or not, also to maintain the pureness or Islamic value in *mudharabah* financing.

#### **b. Shariah Compliance**

Sharia compliance in Islamic banking is regulated under Law Number 21 of 2008 regarding Islamic Banking. Sharia compliance under Indonesian law is supervise under special institution called as National Sharia Council made on behalf of Islamic Council of Indonesia (MUI). National Sharia Council – MUI also issued basic guidelines on Islamic banking. The guideline was stipulated by Decree of MUI No. 01 of 2000 concerning the Basic Guidelines of the National Sharia Council - MUI which states that one of the duties of the National Sharia Council is to develop the application of Islamic values in economic activities in general and finance in particular.<sup>28</sup> Shariah compliance is defined as a condition where all the activities of a financial institution in line with sharia, or equivalence of all activities of Islamic financial institutions with Islamic Sharia.<sup>29</sup>

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<sup>26</sup> Agus Triyanta, *Loc. Cit.*

<sup>27</sup> Fatwa DSN 07/DSN-MUI/IV/2000: Pembiayaan Mudharabah (Qiradh), Ulama Council of Indonesia.

<sup>28</sup> Keputusan Dewan Syariah Nasional MUI No.01 Tahun 2000 regarding Basic Guidelines DSN-MUI.

<sup>29</sup> Mohammad Amin Ali Qaththan, *Loc. Cit.*, 12-13.

This definition is an indication of the importance of Islamic banks having carried out banking activities in accordance with applicable Islamic banking principles. The Sharia Principle issued is the principle of Islamic law in banking activities based on a fatwa issued by an institution that has requirements in the determination of fatwas in the field of Sharia.<sup>30</sup> It is then explained in Article 26 Clause 1-3 mentioned as follows:

1. Business activities as referred to in article 19, article 20, article 21 and / or Sharia products and services, must comply with Sharia principles.
2. The Sharia Principles as referred to in paragraph (1) are stated by the Indonesian Ulama Council.
3. The fatwa referred to in paragraph (2) is set forth in Bank Indonesia Regulations.

Sharia compliance is an inseparable aspect of Sharia banking, because Sharia banking itself is a manifestation of the Islamic concept in the economic or financial field. Failure to implement Sharia compliance will result in legal consequences in the form of legality of Sharia aspects of a bank.

### c. **Asymmetry Information**

The meaning of asymmetry information is a condition where the owner does not have enough information about agent performance. Asymmetry information divided into two, mention as follows:<sup>31</sup>

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<sup>30</sup> Islamic Banking Law of Indonesia, Law Number 21 Year 2008.

<sup>31</sup> No Author, *Pengertian Asimetri Informasi*, [website], 2013, <http://ilmuakuntansi.co.id/pengertian-asimetri-informasi/> (Accessed 4 october 2019 time 14:04 WIB)

## 1. Adverse Selection

The type of asymmetry information in which one or more parties that hold or will hold a business transaction, or potential business transaction has more information on other parties.

## 2. Moral Hazard

The type of asymmetry information in which one party who hold or will hold a business transaction or potential business transaction can observe their actions in the completion of their transactions while the other parties do not.

In application of *mudharabah* financing, it will be possible if there are an asymmetry information in performing a contract of *mudharabah* financing. The emergence of asymmetry information in *mudharabah* financing contract because *mudharib* as an agent has more information on two aspects, namely:<sup>32</sup>

- 1) *Mudharib* make a contract with *Shahibul Maal*, so that *mudharib* has the ability to observe business demand and productivity.
- 2) Only *mudharib* are able to observe the level of business and effort that has been done without the intervention of the *shahibul maal*.

Another example in the application of asymmetry information is in the capital market where insider trading occurs. Insider trading occurs because of material information that has not been published to the public, but has been

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<sup>32</sup> Friyanto, "Pembiayaan Mudharabah Risiko dan Penanganannya". Jurnal Manajemen dan Kewirausahaan, Vol. 15, No. 2, September 2013, page. 113.

known by people in the company first, so that information is asymmetrical (unbalanced) with other public shareholders. The existence of such information is due to publications that have not been delivered to the public, which also have the right to know, but have been used in advance by insiders even though those are strictly prohibited as regulated in Bapepam Rule Number X.K.1 concerning Material Information Disclosure that Must Be Announced Shortly to the Public.<sup>33</sup>

This asymmetry information may cause some problems in the implementation of financing. In this case the need for the development of theories to see the application of shariah compliance in *mudharabah* financing.

#### F. Literature Review

| No. | Previous Research   | Differentiation   |  |
|-----|---|---|--|
|     |   | Author  | Researcher   |
| 1.  | Arief Budiono, 2017, <i>Penerapan Prinsip Syariah pada Lembaga Keuangan Syariah</i> . Journal Law and Justice Vol. 2 No. 1 April 2017 | This research concludes the existing Islamic banking and Islamic financial institutions have not fully implemented the fatwa of the National Sharia Council. This journal is use by | Researchers will emphasize the legal effect if Islamic banking are not conduct a sharia compliance fulfillment, especially in the case of asymmetry information. |

<sup>33</sup> No Author, *RPOJK Keterbukaan atas Informasi Materiil Perusahaan Terbuka*, [website], [https://www.ojk.go.id/Files/201508/RPOJKKeterbukaanAtasInformasiAtauFaktaMaterialPerusahaanTerbuka\\_1438648189.pdf](https://www.ojk.go.id/Files/201508/RPOJKKeterbukaanAtasInformasiAtauFaktaMaterialPerusahaanTerbuka_1438648189.pdf) (Accessed 12 September 2019 time 07:00 WIB)

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|----|---|--|---|
|    |   | researcher to know the implementation of shariah compliance in Islamic banking of Indonesia.   |   |
| 2. | Abdul Nasser Hasibuan, 2015, <i>Asimetri Informasi dalam Perbankan Syariah</i> , Vol. 1, No.1, Januari – Juni 2015. | <p>This research result is asymmetry information on Islamic banking is divided into three theory which are:</p> <ol style="list-style-type: none"> <li>1. Enterprise Theory</li> <li>2. Agency Theory</li> <li>3. Shari'a Agency Theory</li> </ol> <p>Result of research will be use by researcher to define the relation between asymmetry information and Islamic banking.</p> | In this research, will discuss deeply about the relationship between asymmetry information that occurs in Islamic banking and how it effects on sharia compliance itself. |
| 3. | Slamet Haryono, 2015, <i>Asimetri Informasi dalam Transaksi Perbankan</i>   | The research focus on the occurrence of asymmetry information in sharia banking  | This research specifically focused on the asymmetry information that  |

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|----|--|---|---|
|    | <p><i>Syariah di Indonesia</i>,<br/>Ijtihad Jurnal Wacana<br/>Hukum Islam dan<br/>Kemanusiaan Vol.<br/>15, No. 1, Juni 2015.</p>   | <p>transactions. Inequality<br/>of information can be<br/>seen between<br/>businesses to get<br/>profits and the position<br/>of consumers to get<br/>satisfaction through<br/>meeting their needs.</p>   | <p>happen in the<br/><i>mudharabah</i> financing<br/>contract.</p>  |
| 4. | <p>Luqman Nurhisam,<br/>2016, <i>Kepatuhan<br/>Syariah (Shariah<br/>Compliance) dalam<br/>Industri Keuangan<br/>Syariah</i>, Jurnal<br/>Hukum IUS QUIA<br/>IUSTUM No. 1 Vol.<br/>23, Januari 2016.</p> | <p>This research contains<br/>the duties and authority<br/>of the sharia<br/>supervisory board as a<br/>body charged with<br/>overseeing the<br/>implementation of<br/>Islamic principles in<br/>the operation of<br/>Islamic banking<br/>system.</p> | <p>This research will<br/>elaborate more about<br/>function of Sharia<br/>Supervisory Body and<br/>other Islamic bank<br/>organ in implementing<br/>sharia principle.</p> |
| 5. | <p>Nofinawati, 2015,<br/><i>Perkembangan<br/>Perbankan Syariah di<br/>Indonesia</i>, JURIS<br/>Vol. 14 No. 2, Juli-<br/>Desember 2015.</p>   | <p>This research<br/>concluded that efforts<br/>from all stakeholders<br/>of the Islamic financial<br/>industry are needed to<br/>support the</p>   | <p>Researcher mentioned<br/>about the historical<br/>development of Islamic<br/>banking from year to<br/>year following by the<br/>supporting factors.</p>                |



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|----|--|---|---|
|    |  | development of Islamic banks in Indonesia.  |   |
| 6. | Rusdan, 2016, <i>Resiko Manajemen Pengawasan Resiko Bank Syariah</i> , Palapa: Jurnal Studi Keislaman dan Ilmu Pendidikan Vol. 4 No. 2, November 2016. | The types of risks described in this research can be divided into two major groups, namely systemic risk and unsystemic risk.   | This research contained kinds of risk that will be born by Islamic banking if there were proven an asymmetry information. |
| 7. | Mariska Dewi Anggraeni, 2011, <i>Agency Theory dalam Perspektif Islam</i> , Vol. 9 No. 2 Desember 2011.  | This research mentioned about Agency theories in the perspective of Islam violating the mandate is an action that leads to betrayal, and this is an act that is forbidden and the prohibition in religion is "sin". | The agency theories in this research used as a guidance in analyzing the cause of asymmetry information on Islamic Bank.  |

## **G. Research Methodology**

### **a. Research Type**

The type of this research was normative legal research which look for the legal effect of shariah compliance fulfillment on *mudharabah* financing performance through asymmetry information on Islamic bank.

### **b. Research Object**

The object of research was the legal effect of shariah compliance fulfillment on *mudharabah* financing performance through asymmetry information on Islamic bank.

### **c. Research Subject**

The research subject were the Islamic bank and person who entered into *mudharabah* financing.

### **d. Legal Material**

Legal Material that used by researcher to solve the research problem are:

#### **1. Primary Legal Data**

The primary legal data that used by researcher consist of law and regulations regarding the application of *mudharabah* financing in Indonesia and theory of shariah compliance in *mudharabah* financing performance through asymmetry information to define the legal effect of the topic.

## 2. Secondary Legal Data

Legal Data obtained by literature research towards books related to the application of *mudharabah* financing performance through asymmetry information and the legal effect of shariah compliance fulfillment, statutory regulations about application of *mudharabah* financing in Indonesia, journals of previous research related to the topic and statistical data which show the percentage of *mudharabah* financing in Indonesia.

### e. Method of Collecting Material

The method that used to collect material as follows:

#### 1. Interview

The interview was conducted by researcher to the bank employees and the customers who entered into *mudharabah* financing on Islamic bank.

#### 2. Literature Study and Study of Documents

The researcher conducted a literature study and study of documents from the book regarding the legal basis and application of *mudharabah* financing, also journals related to the application of shariah compliance on *mudharabah* financing performance through asymmetry information on Islamic bank. Researcher also used statutory regulations regarding Islamic bank especially on *mudharabah* financing systems and statistical data of application of *mudharabah* financing in Indonesia.

### f. Research Approach

This research was normative legal research which used conceptual approach. Conceptual approach that used is from the views or doctrine such

as a shariah compliance. Shariah compliance used as a basis to know the legal effect of *mudharabah* financing performance through asymmetry information on Islamic banking. Therefore, from the shariah compliance researcher known if the concept gives legal effect towards the application of *mudharabah* financing through asymmetry information.

**g. Data Analysis**

This research was normative legal research and used conceptual approach. Therefore, researcher used the views or doctrine regarding the topic such as Shariah Compliance, Asymmetry Information, and *Mudharabah* Financing.

There is also additional theory which need to understand by researcher to process the data. The theory is theory of relationship between shariah compliance and asymmetry information which already stated in several journals.

After conducted a deep understanding about the topic, then researcher found the elements of the topic. The elements of the topic consisted of Legal effect – Shariah Compliance Fulfillment – Financing Performance – Asymmetry Information.

The relation of each elements in *mudharabah* financing performance, it created an asymmetry information. The asymmetry information is one of acts which violated shariah compliance in performing a business action. If there are violation in conducting business action, there should be a law or provisions which regulate the legal effect. Therefore, researcher conducted the analysis based on data.

The data analysis has conducted by understanding the law and provisions regarding Islamic banking, asymmetry information and *mudharabah* financing performance in Indonesia. Analysis process started from understanding the meaning of each object of research then the researcher started to found the legal basis of each object of research.

After the law was found, researcher defined the law or found the legal effect which occurred from the violation of shariah compliance on *mudharabah* financing performance through asymmetry information on Islamic bank.

Next steps are found the actual application of the topic in Indonesia's legal system. The previous research is mainly used economic perspective, therefore in this research researcher used legal perspective to know the legal effect of the topic.

