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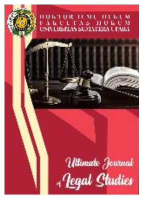

Analysis of the Application of the *Piercing the Corporate Veil* Doctrine to Directors and Commissioners Who Concurrently Serve as Shareholders in Third-Party Lawsuits (Case Study of Decision No. 47/Pdt.G/2021/PN Mtr)

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ABSTRACT

A Limited Liability Company (PT) is the most widely used legal entity in Indonesian business practice due to the application of the limited liability principle for shareholders. However, this principle may be misused when directors, commissioners, or shareholders engage in actions that harm third parties. In such circumstances, the piercing the corporate veil doctrine may be invoked to disregard the company's separate legal personality and impose personal liability on corporate actors. This study examines the application of the piercing the corporate veil doctrine to directors and commissioners who concurrently serve as shareholders in third-party lawsuits, using a normative juridical method and a case study approach on Decision No. 47/Pdt.G/2021/PN Mtr. Although indications of misuse of the corporate entity were present, the court held only the company liable and did not extend liability to the directors or commissioners. The findings indicate that while the doctrine has significant potential to provide legal protection for harmed third parties, its application in Indonesian judicial practice remains limited and is influenced by judicial caution and the high evidentiary threshold required to substantiate abuse of the corporate entity. Therefore, stronger regulatory guidance and more consistent jurisprudence are needed to ensure the doctrine's effectiveness in delivering justice for aggrieved third parties.

Keyword: *Directors; Commissioners; Limited Liability Company; Piercing the Corporate Veil; Third-Party Lawsuit*

ABSTRAK

Perseroan Terbatas (PT) merupakan bentuk entitas hukum yang paling banyak digunakan dalam praktik bisnis di Indonesia karena menerapkan prinsip tanggung jawab terbatas (*limited liability*) bagi pemegang saham. Namun, prinsip ini berpotensi disalahgunakan apabila direksi, komisaris, atau pemegang saham melakukan tindakan yang merugikan pihak ketiga. Dalam kondisi demikian, doktrin *piercing the corporate veil* dapat diterapkan untuk menembus kepribadian hukum perseroan dan menuntut tanggung jawab pribadi organ perseroan. Penelitian ini bertujuan menganalisis penerapan doktrin *piercing the corporate veil* terhadap direksi dan komisaris yang merangkap sebagai pemegang saham dalam gugatan pihak ketiga, dengan menggunakan metode yuridis normatif dan pendekatan studi kasus pada Putusan No. 47/Pdt.G/2021/PN Mtr. Meskipun terdapat indikasi penyalahgunaan badan hukum dalam perkara tersebut, pengadilan hanya menetapkan tanggung jawab pada perseroan dan tidak menerapkan doktrin terhadap direksi maupun komisaris. Hasil penelitian menunjukkan bahwa meskipun doktrin ini berpotensi memberikan perlindungan hukum bagi pihak ketiga yang dirugikan, penerapannya dalam praktik peradilan Indonesia masih terbatas dan sangat bergantung pada kehati-hatian hakim serta pembuktian yang kuat terkait penyalahgunaan badan hukum. Oleh karena itu, penguatan regulasi dan

konsistensi yurisprudensi diperlukan agar penerapan doktrin ini dapat lebih efektif dalam memberikan keadilan bagi pihak ketiga yang dirugikan.
Keyword: Direksi; Komisaris; Gugatan pihak ketiga; Perseroan terbatas, Piercing the Corporate Veil.

1. Introduction

Limited Liability Companies (PT) are the most commonly used form of legal entity in business practice because of their own advantages that provide a separation between the owner's personal wealth and the company's wealth. However, in some cases, legal issues arise related to the personal liability of the shareholders, directors, and commissioners of the Limited Liability Company, especially in situations where the interests of third parties are affected. In an effort to respond to these emerging legal challenges, the legal doctrine of Piercing the Corporate Veil emerges as an interesting and complex aspect. Keep in mind, basically the principle of responsibility owned by the company's shareholders is limited liability or known as limited liability.(Sjahdeni, 2001) This principle can be found in Article 3 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies, hereinafter referred to as the PT Law, which basically explains that in the event that the company creates an engagement on behalf of the company and there is a loss of more than the shares that have been deposited, The responsibility of the shareholder does not include the personal realm.(Harahap, 2016a)

The affirmation of this principle can be seen again in the explanation of Article 3 paragraph (1) of the PT Law that the liability of the shareholder is only as large as his shares and does not include the personal property owned by the shareholder. In addition to the PT Law, the limited liability of shareholders is also contained in Article 40 paragraph (2) of the Commercial Code (KUHD) which basically explains the limitation of the responsibility of shareholders.(Kurniawan, 2014) The implementation of the principle of limited liability to shareholders is considered to cause injustice because shareholders can abuse the principle of limited liability.(Sulistiowati & Antoni, 2013) There are certain conditions that make the principle of limited liability invalid and the veil separating the company from shareholders can be ignored so that Piercing the Corporate Veil can be applied. The implementation of the Piercing the Corporate Veil doctrine generally aims to create justice and avoid several things such as fraud, abuse of authority, and misrepresentation committed by shareholders.(Khairandy, 2014) This doctrine encourages shareholders to be responsible up to personal property, when the company suffers losses and is unable to pay its debts.(Sulistiowati, 2013)

Regarding the application of the doctrine of Piercing the Corporate Veil, Munir Fuady stated that in its development it also imposes legal responsibilities on other company organs.(Fuady, 2002) Other company organs in question are directors and commissioners. This makes the PT Law recognize the existence of the doctrine of Piercing the Corporate Veil by dividing the burden of responsibility to several parties. Thus, Piercing the Corporate Veil is essentially a doctrine that transfers responsibility from the company to shareholders, directors or board of commissioners in a situation where certain.

In many cases, the doctrine of Piercing the Corporate Veil has been used to enforce personal responsibility in the event of violations of the law or non-compliance with business norms. However, the application of this doctrine raises the question of whether the doctrine of Piercing the Corporate Veil can be applied as an effective legal means in support of the interests of aggrieved third parties, and the extent to which the personal liability of the owner or shareholders can be enforced through this doctrine. In the decision of the Mataram City District Court No.47/Pdt.G/2021/PN Mtr, the plaintiff, who is an individual and a third party, agreed and signed a cooperation agreement with defendant I, which is a Limited Liability Company, to build a villa/hotel worth 4.38 billion. As an initial effort, the plaintiff had paid a sum of 2.67 billion to defendant I. However, after seven months since the payment, the construction project had not yet started, and the plaintiff tried to contact defendant II (directors) and defendant III (commissioner). Unfortunately, the two could not be contacted and disappeared.

Then the plaintiff filed a lawsuit and in fact it was proven that defendant II and defendant III with bad faith did not fulfill their obligations in carrying out their responsibilities towards the plaintiff. However, in the court decision, the panel of judges only sentenced defendant 1 (PT) to pay damages to the plaintiff, while defendant

II (Directors) and defendant III (Commissioner) did not receive punishment. Therefore, the doctrine of Piercing the Corporate Veil is not applied in this case. In response to these problems, the author is interested in conducting further analysis regarding the failure to apply the Piercing the Corporate Veil doctrine in dealing with the case. By examining concrete cases and analyzing relevant court decisions, this study will investigate the extent to which this doctrine can provide a fair and effective solution for all parties involved.

Therefore, this study aims to conduct an in-depth analysis of the application of the Piercing the Corporate Veil doctrine to the directors and commissioners of Limited Liability Companies in third-party lawsuits, using the case study of Decision No.47/Pdt.G/2021/PN Mtr as a foundation. Thus, it is hoped that this research can make a significant contribution to our understanding of the legal responsibilities of directors and commissioners of Limited Liability Companies, as well as their implications for business practices and court decisions.

2. Method

The research method used in this study is a normative legal research method. Normative legal research is a study that analyzes the law, both written in books and laws decided by judges through the court process.(Amiruddin & Asikin, 2006) Normative legal research is usually "only" a study of documents, namely using sources of legal materials in the form of laws and regulations, contracts/agreements/contracts, legal theories, and the opinions of scholars. This research was carried out by conducting a study on decisions related to the research topic. In addition, this study also obtains additional data through books, expert opinions, journals or other scientific works related to the research topic and then becomes a supporting data as needed by the author in the process of preparing and writing this scientific paper.

3. Result and Discussion

3.1 The Applicability of the Doctrine of Piercing the Corporate Veil to Limited Liability Companies

The doctrine of Piercing the Corporate Veil is one of the important doctrines in modern corporate law, both in the Anglo Saxon and Continental legal systems, which has had a great influence on the company's regulation in Indonesia. Since the enactment of Law No. 1 of 1995 concerning Limited Liability Companies, which was later perfected through Law No. 40 of 2007, various doctrines, such as fiduciary duty, corporate prudential, business judgment rule, intra vires, ultra vires, public document rule, to the doctrine of separate legal personality of company, began to color company law in Indonesia, including in litigation arguments.(Widiyono, 2008) A limited liability company as a separate legal entity has its own assets, rights, and liabilities that cannot be mixed with its shareholders. This principle of separate legal personality emphasizes that the company is not an agent or representative of its members, and the members of the company cannot be sued for the company's obligations, and vice versa. Thus, the recognition of the existence of a company as an independent legal subject is the main cornerstone of limited liability.(Penington, 2001)

The principles of separate legal personality and limited liability were first explicitly affirmed in the case of Salomon v. Salomon in 1897. Since then, limited liability has been widely recognized in the modern business world as a guarantee of legal certainty for investors, which ultimately encourages the development of economic activity.(Cheng, 2011) According to Ross Grantham, the existence of corporate personality results in the recognition of corporations as legal subjects separate from the individuals who benefit from the business.(Grantham, 2007) Limited liability provides protection to shareholders so that they are only responsible for the value of the shares deposited.(Sulistiowati & Antoni, 2013) On the other hand, Limited Liability Companies are also not responsible for the personal actions of their shareholders. However, the existence of this principle is not absolute. Under certain conditions, liability can be extended through the application of the PCV doctrine, especially if there is abuse of the form of a legal entity.(Irawati, 2018)

Shareholders who also concurrently serve as directors or commissioners must be able to distinguish between their actions as individuals and as part of the company. If their personal actions use the company's cover for their own interests, then personal liability can be enforced.(Isfardiyana, 2014) This is important so that the principle of separate legal personality is not abused. If the company's activities turn into the alter ego of the shareholders, then the PCV principle allows a third party to penetrate the veil of a legal entity. The Board of Commissioners and the Board of Directors can also be held personally accountable if their activities cause the company's bankruptcy due to errors or negligence in management.(Indrawan, 2022) The existence of the PCV doctrine is important to uphold justice and prevent abuse of the principle of legal entities. This doctrine allows courts to eliminate the separation between a company and its controlling individuals in certain situations, primarily to prevent fraud, fraud, and manipulation of the law.

The classic case of Salomon v. Salomon & Co. Ltd provides the basis that a company is a separate entity, but in exceptional circumstances, the corporate curtain can be lifted.(Cheng, 2011) The House of Lords in this case underlined that the principle of separate legal entity must still be respected, except in situations of manifest abuse. Therefore, the PCV doctrine evolved to accommodate the need for substantive justice.(Millier, 1998) Follow-up cases such as Gilford Motor Co Ltd v. Horne and Jones v. Lipman asserts the application of this doctrine when companies are used for unlawful acts. In Horne's case, the company was formed only to avoid contractual obligations; so in the case of Lipman, where the company was used to avoid the settlement of sale and purchase agreements.(Goulding, 1999)

In the Indonesian context, the principle of PCV has been accommodated in Article 3 paragraph (2) of Law No. 40 of 2007. Although it does not explicitly mention the term, the substance of the regulation opens up the possibility of lifting the company's veil if shareholders, directors, or commissioners use the company for unlawful purposes, bad faith, or mixing personal wealth with the company's wealth. Article 3 paragraph (2) of the PT Law is the main basis for the application of this doctrine. The article stipulates that the principle of limited liability does not apply if the shareholders directly or indirectly in bad faith use the company for personal gain, commit unlawful acts, or cause the company's wealth to be insufficient to pay off the liability. This provision is a reflection of the PCV principle in national law, which provides a way for the courts to establish personal liability against shareholders, directors, or commissioners who abuse the form of the company. In the context of the responsibility of the company's organs, the PCV doctrine does not only target shareholders, but can also be applied to directors and commissioners. Based on Article 97 paragraph (3) of the PT Law, each member of the Board of Directors is fully personally responsible for the company's losses if the person concerned is guilty or negligent in carrying out his duties.(Ais, 2000) This provision shows that the protection of limited liability for the Board of Directors is not unlimited. If proven to have committed an unlawful act, the Board of Directors can be held personally responsible.

Likewise with commissioners, Article 114 paragraph (3) of the PT Law stipulates that members of the Board of Commissioners are personally responsible for the company's losses if the person concerned is guilty or negligent in carrying out supervisory duties. This shows that commissioners who are negligent in carrying out supervisory functions and providing advice, thereby causing losses to the company or third parties, can also be covered by legal protection through the PCV doctrine. In addition, the application of the PCV doctrine to directors and commissioners is very closely related to the principle of fiduciary duty which is the moral and legal basis in carrying out management and supervision duties. The Board of Directors is obliged to act in good faith, full of responsibility, and prudence (duty of care and loyalty).(Ais, 2000) Violations of this fiduciary duty, whether in the form of misuse of company assets, conflicts of interest transactions, or negligence in management, open the space for the implementation of PCV to demand personal responsibility for management. The conditions that allow the implementation of PCV in Indonesian practice include:(Harahap, 2016b) the use of the company as a tool to commit unlawful acts, the mixing of personal assets with the company, the abuse of the company's status as an individual alter ego, and the failure of shareholders, directors, or commissioners to fulfill their fiduciary duties. In these circumstances, the company's legal curtain can be "lifted" to protect the interests of aggrieved third parties. It is also important to note that the implementation of PCV in Indonesia must meet strict requirements, including proof of acts in bad faith, abuse of legal entities, and real losses suffered by third parties. The burden of proof is on the plaintiff, who must be able to show that the actions of the shareholders, directors, or commissioners are not in line with the company's sound operational principles. Thus, the doctrine of PCV in Indonesian law serves as a corrective mechanism to ensure that the company's legal entity is not used as a shield for irresponsible behavior. Its application to directors and commissioners, through Articles 97 and 114 of the PT Law, emphasizes the importance of integrity, professionalism, and good faith in the management of a limited liability company. Without the application of this principle, trust in the legal system and the business world will be seriously degraded.

3.2 Application of the Doctrine of Piercing the Corporate Veil by Third Parties in Civil Lawsuits

The position of third parties in lawsuits against limited liability companies (PT) has an important meaning in the civil law system. Basically, if there is a loss, bankruptcy, or liquidation in a corporation, then the corporation itself is responsible. This means that if a corporation with a legal entity suffers losses that have an impact on a third party, then the corporation is the first to be held accountable.(Supriyatin & Herlina, 2020) This responsibility is only limited to assets or assets owned by the corporation. However, if there is an indication of the involvement of shareholders or management in mis-management actions, then these parties can also be held liable for losses suffered by third parties with the application of the PCV doctrine.(Bagaskara et al., 2023)

In the context of civil law, third parties such as creditors or investors interact with the PT through various forms of contracts or agreements. When a PT is abused for unlawful purposes or to evade liability, a third party has the right to file a lawsuit under the PCV doctrine. With this doctrine, even though the PT is a separate legal entity, a third party can penetrate the separate status to sue shareholders or directors who have committed irregularities in the management of the company. For example, in the case of a contract dispute or fraud, a third party may use this doctrine to prove that the management of the PT is acting in personal interests and not in the interests of the company. The Board of Directors in this case is required to act in good faith and full of responsibility. If the board of directors is proven to be negligent to cause losses to a third party, then personal responsibility can be requested.(Ritonga et al., 2016) The position of the third party here is important to ensure legal justice and certainty of protection of its rights.

Accountability is the main principle that underlies the legal relationship between directors, commissioners, and third parties. The Board of Directors has the obligation to disclose the company's activities that may affect the company's condition.(Yani & Widjaja, 1999) If the data or information provided to the public or third parties is proven to be inaccurate or misleading, all members of the board of directors or commissioners are jointly and severally liable for the losses incurred, unless it can be proven that the error is not the result of their negligence. In the principles of Good Corporate Governance (GCG), the accountability of the board of directors and commissioners aims to maintain the trust of third parties in the company. The Board of Directors and commissioners are obliged to carry out their duties in good faith, full of responsibility, and pay attention to the principle of openness information.(Bagaskara et al., 2023) Fiduciary duty is the principle that governs the relationship of trust between the board of directors and the company as well as third parties. This principle requires that the directors act solely for the benefit of the company and not for their personal interests.(Black, 1990) Fiduciary duties in the common law system include the duty of loyalty and good faith as well as the duty of care and skill. The Board of Directors must avoid conflicts of interest and must not take advantage of the company's business opportunities for personal gain. Violations of this fiduciary duty can be grounds for personal liability.(Fuady, 2002)

The duty of loyalty requires the board of directors to act with full loyalty to the company and its stakeholders. The Board of Directors shall not use the authority or business opportunity obtained in its capacity for personal gain.(Widjaja, 2008) In the event of a conflict of interest, the Board of Directors shall avoid it or at least disclose it fully to the shareholders or related parties. The duty of skill and care focuses on the expertise and prudence of the Board of Directors in managing PT. The expected caution is that The Board of Directors is avoided from acts of negligence that are detrimental to other parties The ability and prudence expected of the Board of Directors is the ability and prudence that can be expected from a person who has the same position in the same type of company.(Ais, 2003) Thus, strengthening the application of the PCV doctrine in Indonesia is not only the task of lawmakers, but also the ethical and professional responsibility of the judiciary in realizing substantive justice for parties harmed by irresponsible corporate actions.

3.3 Application of the Doctrine of Piercing the Corporate Veil in Decision No. 47/Pdt.G/2021/PN Mtr

In the decision of the Mataram City District Court No.47/Pdt.G/2021/PN Mtr, the plaintiff, who is an individual and a third party, agreed and signed a cooperation agreement with defendant I, which is a Limited Liability Company, to build a villa/hotel worth 4.38 billion. As an initial effort, the plaintiff had paid a sum of 2.67 billion to defendant I. However, after seven months since the payment, the construction project had not yet started, and the plaintiff tried to contact defendant II (directors) and defendant III (commissioner). Unfortunately, the two could not be contacted and disappeared. Then the plaintiff filed a lawsuit and in fact it is evident that defendant II and defendant III with bad intentions did not fulfill their obligations in carrying out their responsibilities towards the plaintiff. However, in the court decision, the panel of judges only sentenced defendant 1 (PT) to pay damages to the plaintiff, while defendant II (Directors) and defendant III (Commissioner) did not receive punishment. Therefore, the doctrine of Piercing the Corporate Veil does not apply in this case.

The basis for the judge's consideration in imposing the verdict is that in Law Number 40 of 2007 concerning The Limited Liability Company regulates the liability of the Board of Directors and Commissioners to individuals if in carrying out the management and supervision of the company, both the Board of Directors and Commissioners do not carry out in good faith and negligence so as to cause losses to the company. Article 97 paragraph (3): "Each member of the Board of Directors is fully personally responsible for the Company's losses if the person concerned is guilty or negligent in carrying out his duties in accordance with the provisions as intended in paragraph (2)" Article 114 paragraph (3): "Each member of the Board of Commissioners is personally responsible for the Company's losses if the person concerned is guilty or negligent in carrying out his duties as intended in paragraph (2)." In Law No. 40 of 2007 concerning The Limited Liability Company regulates the liability of the Board of Directors and Commissioners to the individual if in carrying out the management and supervision of the company, both the Board of Directors and Commissioners do not carry out in good faith and negligence to cause losses to the company (Article 97 and Article 114).

Based on the description above, the actions and deeds carried out by the Board of Directors are to represent and on behalf of the company. The personal liability of the Board of Directors and Commissioners can be demanded if their actions are detrimental to the company, while if the company's actions are detrimental to other parties. Law Number 40 of 2007 concerning Limited Liability Companies does not regulate personal liability to the Board of Directors and Commissioners. Because the Board of Directors acts for and on behalf of the company, based on Law Number 40 of 2007 concerning Limited Liability Companies and the description of the considerations mentioned above, the payment of losses and moratorium interest is only charged jointly and severally to Defendant II and Defendant III. This verdict is a clear example of the failure of the implementation of PCV in the Indonesian judicial system.

When the company's management actively engages in misconduct and even avoids liability, the court should consider the principles of justice and propriety to pierce the curtain of legal entities and demand direct liability from the individual concerned. In comparison, the journal also reviews other court rulings, both national and international, that show that the proper application of PCV can provide a more balanced justice, particularly in cases where corporate executives act as masterminds of legal violations that harm others. For example, in the case of Decision Number 95/Pdt.G/2017/PN JKT. SEL, PT Bukit Asam Prima gave an advance of 2 billion rupiah to PT Prakarsa Anugerah Artha for the purchase of 50,000 Mt of coal. However, PT Prakarsa Anugerah Artha failed to hand over coal due to problems in the mine. They promised to return the advance in installments, but then they were negligent and stopped paying, so PT Bukit Asam Prima sued them for default.

The judge's consideration in sentencing the decision related to PCV in Decision Number 95/Pdt.G/2017/PN JKT. SEL is that there is an indication of mixing the personal property of the directors with the company's personal property which is because the Board of Directors (Defendant II) mixes personal finances with the company, as evidenced by using personal property to pay part of the default debt. Therefore, in accordance with Article 3 paragraph (2) d UUPT, the judge sentenced the Board of Directors to personally responsible for the company's losses. Thus, this case study shows that the problem in the implementation of PCV lies in the willingness of the courts to interpret the law progressively. Therefore, to realize justice for aggrieved third parties, there needs to be an encouragement for Indonesian jurisprudence to adopt a bolder and more responsive approach in responding to cases of abuse of legal entities.

4. Conclusion

The doctrine of Piercing the Corporate Veil in Indonesia has a strong legal basis in the Constitution and serves as an exception to the principle of limited liability when there is abuse of a legal entity. This doctrine provides an opportunity for third parties to demand personal responsibility from the directors or commissioners if there is clear evidence of unlawful acts, bad faith, or the use of the company for personal gain. However, its application in judicial practice is still inconsistent. Case studies show that despite indications of abuse, some courts remain cautious and only impose liability on companies, while others apply this doctrine strictly. The effectiveness of the doctrine depends heavily on the strength of the evidence, the judge's understanding, and the courage to penetrate the formal boundaries of legal entities for the sake of justice for third parties.

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