THE DOCTRINE OF PIERCING THE CORPORATE REVIEW IN THE COURT DECISION NO. 656/PDT.G/2015/PN.MDN

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Abstract

Limited Liability Company (Ltd.) or Perseroan Terbatas (PT) is a legal entity in Indonesia that constitutes a capital alliance formed by an agreement that features a limited liability principle. Limited liability is a principle that limits the responsibility of shareholders to the risk of the Company. However, the principle of limited liability is frequently misapplied, as shareholders look for ways to protect themselves from the risk of more significant losses, to take advantage of all company profits for personal gain. Shareholders who abuse the principle of limited liability for personal gain, on the other hand, will be subject to the Piercing the Corporate Veil doctrine. This doctrine imposes the transfer of liability for personal losses to shareholders who cause harm to the company in bad faith. Based on this understanding, this paper seeks to comprehend the application of the Piercing the Corporate Veil doctrine by analyzing Medan District Court Decision Number: 656/Pdt.G/2015/PN.Mdn. The research method used in this study was normative legal research reviewed with a statute approach and a conceptual approach. The conclusion drawn from the problem is as follows: the regulation regarding the Piercing the Corporate Veil doctrine is borne not only by shareholders but also by the Board of Directors and the Board of Commissioners who fail to implement the principles of fiduciary duty of skill and care. Furthermore, in the case of 656/Pdt.G/2015/PN.Mdn, the judge considered the provisions of Article 3 paragraph (2) of the UUPT in implementing the Piercing the Corporate Veil Doctrine by punishing the Defendants jointly and severally to indemnify the Plaintiff.

Keywords: Limited Liability, Piercing the Corporate Veil Doctrine, and Shareholder.

A. Introduction

A legal entity is treated as a legal subject like a human being with contractual authority. This entity can enter into contractual relationships in its name and has the right to sue and be sued in court.¹ A Limited Liability Company (Ltd.) or *Perseroan Terbatas* (PT), as a legal entity, has characteristics such as asset separation, in which the capital provided by the company's founder belongs to the Ltd. as an independent legal subject (artificial person). The form of separation of assets of the founders with shareholders, the board of directors, and board of commissioners of Ltd. are related to the existence of the Limited Liability Principle.² Limited

¹ Ridwan Khairandy, "Korupsi Di Badan Usaha Milik Negara Khususnya Perusahaan Perseroan: Suatu Kajian Atas Makna Kekayaan Negara Yang Dipisahkan Dan Keuangan Negara," *Jurnal Hukum Ius Quia Iustum* 16, no. 1 (2009): 73–87, <https://doi.org/10.20885/iustum.vol16.iss1.art5>.

² Jamin Ginting, *Hukum Perseroan Terbatas (UU No. 40 Tahun 2007)* (Bandung: Citra Aditya Bakti, 2013): 13.

Liability is a condition where the shareholders of a company are only responsible for a limited number of shares owned by the LLC.³

The characteristics of shareholders are regulated in Article 3 paragraph (1) of the Company Law in In-Law No. 40 of 2007 concerning Limited Liability Companies (*UU No. 40 Tahun 2007 tentang Perseroan Terbatas/ UUPT*). The provisions governing shareholder characteristics state that the company's shareholders are not personally liable for the company's engagements and are not liable for the company's losses arising from the shares owned. The regulation of the limited liability principle in Indonesian laws certainly creates a favourable investment climate. It promotes business development in Indonesia because it instils trust and motivates investors to invest. Elucidation of Article 3 paragraph (1) of the Company Law explains that shareholders are only responsible for depositing all the shares they own and not including their assets. According to the regulation, except for the amount of capital invested in the company, shareholders cannot be held liable. It also limits that liability does not cover the personal assets of shareholders. Leaving this arrangement raises the question of whether shareholders' limited liability can be increased to unlimited liability. The term "not limited" refers to the fact that the holder is responsible for more than the amount of money invested in the business.

However, shareholders frequently misapply the principle of limited liability to carry out actions that benefit themselves against the law with a limited liability burden and look for ways to protect themselves from the risk of more significant losses to take advantage of all company profits for personal gain.⁴ Many shareholders concurrently serve as management of the LLC, both as directors and commissioners, in order to control the company, which has the potential to create a conflict of interest between the LLC's objectives and those of its shareholders.⁵ If this principle is applied rigidly, it can cause injustice to investors and other shareholders in a company and the company will suffer losses because every action is only for the personal gain of shareholders.⁶ Limitations related to power and accountability must continue to be maintained, whether it is about the judicial system or otherwise.⁷ As a result of these circumstances, to anticipate the misuse of the legal principle of limited liability by shareholders who have bad intentions, in certain circumstances, the *Piercing the Corporate Veil* doctrine, which justifies the breach of limited liability principle of shareholders, can be applied.

Piercing the Corporate Veil (hereinafter referred to as PCV) is a doctrine that can prevent the misuse of shareholders' limited liability. PCV doctrine is the antithesis of the Limited Liability Principle, which opposes limiting the liability of shareholders or founders of a company. This doctrine in corporate law is interpreted as a principle or theory that reflects a process to impose responsibility on another party by legal act, even though the act is carried out by the perpetrator's company.⁸ The application of the PCV doctrine can be carried out if the

³ Sandra Dewi, "Pengaturan Perseroan Terbatas Terhadap Kasus-Kasus Di Berbagai Negara Dalam Hal Tanggung Jawab Terbatas Atau Limited Liability," *Ensiklopedia of Journal* 1, no. 1 (2018): 124–33, <https://doi.org/10.33559/eoj.v1i1.11>.

⁴ Sulistiowati, "Limited Liability Dalam Limited Liability Pada Konstruksi Perusahaan Kelompok Piramida," *Mimbar Hukum* 23, no. 2 (2011): 249–62, <https://doi.org/10.22146/jmh.16182>.

⁵ Putu Anom Mahadwartha, "Conflict of Interest on Ownership Versus Free Cash Flow: Dividend Policy Effectiveness," *Journal of Indonesian Economy and Business* 22, no. 4 (2007): 386–404, <https://doi.org/10.22146/jieb.6489>.

⁶ Lucian Arye Bebchuk, "The Case for Increasing Shareholder Power," *Harvard Law Review* 118, no. 3 (2005): 833–914, <https://www.jstor.org/stable/4093350>.

⁷ Kerttuli Lingenfelter and Samuli Miettinen, "Obstacles to Supranational Operational Police Powers in the European Union: Europol Reform and the Construction of Trust between National Police Authorities," *Maastricht Journal of European and Comparative Law* 28, no. 2 (2021): 182–91, <https://doi.org/10.1177/1023263X211005160>.

⁸ Munir Fuady, *Doktrin-Doktrin Modern Dalam Corporate Law Dan Eksistensinya Dalam Hukum Indonesia*, 4th ed. (Bandung: PT Citra Aditya Bakti, 2014): 7.

court can prove the alter ego contained in the relationship between the two.⁹ This doctrine is intended for shareholders as owners of capital in a company, as stated explicitly in Article 3 paragraph (2) of Law Number 40 of 2007 Concerning Limited Liability Companies (hereinafter abbreviated as UUPT). Article 3 paragraph (2) of the Company Law states that shareholders' limited liability does not apply or is not limited if the following actions occur:

- a. the Company's requirements as a legal entity have not been met or are not being met;
- b. the relevant shareholders, either directly or indirectly, exploit the Company in bad faith for their own benefit;
- c. the relevant shareholders are involved in the Company's illegal actions; or
- d. The relevant Shareholders illegally use the Company's assets, either directly or indirectly, resulting in the Company's assets becoming insufficient to settle the Company's debt.

By adhering to the various halls mentioned above, shareholders can not only survive with the principle of being solely responsible for their capital, but it can also become unlimited. If the shareholders comply with one of the provisions of Article 3 paragraph (2) and their actions are solely for the benefit of the shareholders' interests rather than the benefit of the company as a whole, their liability in the amount of the deposit for all the shares they own may be nullified.

The actions taken by the LLC are only a reflection of the personal actions of their shareholders. Thus, the company only functions as an "instrument" for other parties' shareholders for personal gain. Such a company is referred to as the alter ego (sometimes also referred to as instrumentality, dummy, or agent) of the shareholders concerned.¹⁰ On the other hand, minority shareholders or third parties who cooperate in the business activities carried out will be greatly disadvantaged if the Company is unable to carry out its obligations, whether it is paying debts with third parties or distributing dividends to other shareholders. Suppose the Board of Directors has violated the principle of fiduciary duty to the company, in that case, their decision-making actions are not based on good faith and prudence, and they are found to have violated laws and regulations, they can be held individually or jointly liable.¹¹

Shareholders who are dissatisfied with the actions of other shareholders or third parties who intend to file a lawsuit based on these provisions are frequently caught in doubts about whether this doctrine is included in the realm of a breach of contract, so lawsuits are frequently rejected because the lawsuit is obscure (*obscuur libel*). Nonetheless, judges' interpretations of the *ratio decidendi* (legal considerations) related to the PCV doctrine to decide the case in question continue to differ. As a result, an implementation analysis examining the application of the PCV doctrine in court decisions is required to determine the effectiveness of the doctrine's application. Based on this understanding, this paper seeks to comprehend how PCV doctrine is regulated according to Law Number 40 of 2007 concerning Limited Liability Companies and the basis for judges' considerations in applying the PCV doctrine to the Medan Decision Number 656/Pdt.G/2015 /PNMdn. The research method used in this research is normative juridical research which is legal research conducted by examining library materials or secondary materials.

B. Discussion

The development of the business world makes people prefer the form of a limited liability company to carry out their business activities. This is because a Limited Liability Company

⁹ Ridwan Khairandy, *Perseroan Terbatas Doktrin, Peraturan Perundang-Undangan, Dan Yurisprudensi Edisi Revisi* (Yogyakarta: Kreasi Total Media, 2009): 270.

¹⁰ Fuady, *Doktrin-Doktrin Modern Dalam Corporate Law Dan Eksistensinya Dalam Hukum Indonesia*: 20.

¹¹ Dedy Indrawan Darsan, "Doktrin Business Judgment Rule Atas Tindakan Direksi Yang Dianggap Melanggar Prinsip Fiduciary Duty," *Program Pascasarjana UNHAS* (Universitas Hasanuddin Makassar, 2013), 1-68. <http://pasca.unhas.ac.id/jurnal/files/e17e326e1a8dc912b593b325c8617474.pdf>.

(LLC) is a form of a business entity whose founder is only responsible for the value of the paid-up shares, without the need to involve the personal assets of other parties known as limited liability, this principle is the antithesis of the PCV doctrine which opposes limiting the liability of shareholders or founders of a company. Today's media has also brought attention to the possibility of predictive systems causing different impacts.¹²

The decision of the English court of *Salomon vs Salomon*, in 1897 was the first jurisprudence to issue the term-limited liability principle. The principle stipulates that the shareholders of a limited liability company cannot be held liable for more than the capital they provide. Furthermore, according to Robert Thompson, understanding the principle of limited liability is defined as a legal instrument that can provide legal protection and certainty to investors. The goal is that investors can be motivated to manoeuvre in business development without worrying about the risk of failure.¹³

Shareholders and directors as management are generally protected from their responsibility for the company's debts. The principle that develops in a country with a common law legal system provides for the separation of the rights and obligations of the Limited Liability Company from the founders or shareholders, which means that both are not responsible for the debts and obligations of the Limited Liability Company.¹⁴ However, this is not absolute, under certain conditions, shareholders, and directors as management can be sued before the court to account for the risk of loss to the Limited Liability Company. In protect corporate wealth and promote organizational expansion, the basic anatomy of corporate law has found unprecedented similarities with the primary goal of accumulating unlimited wealth.¹⁵

Directors or shareholders transact for their own needs through the corporation, making it seems as if they are transacting privately, even though they are faced with a third party who becomes private in the contract is the corporation itself. In addition, according to the Wisconsin Supreme Court, there is another element in this alter ego, namely the use of the concept of corporate fiction to commit fraud. The New Jersey Court also agreed in the case of *Walensky vs Jonathan Royce International, Inc.*, which contends that there are two primary factors to consider when applying personal responsibility. The Wisconsin Supreme Court argued that limited liability could not be recognized in the case of *Milwaukee Toy Co. Ltd. vs Industrial Commission of Wisconsin*. In contrast, the veil separating a corporation from its directors and shareholders could be lifted when it does not have a separate existence.¹⁶

Because there is no rule of law in most countries that spell this principle, many decisions are based on common law precedents.¹⁷ After nearly 60 years since the Wisconsin Supreme Court introduced the alter ego doctrine in the *Milwaukee Toy* case, the Wisconsin Supreme Court finally formulated "The Prima Facie Element of Veil Piercing" in its development to answer this problem. First applied in 1988 in the case of *Consumer's Co-op of Walworth*

¹² Kiana Alikhademi et al., "A Review of Predictive Policing from the Perspective of Fairness," *Artificial Intelligence and Law*, April 15, 2021, 1–17, <https://doi.org/10.1007/s10506-021-09286-4>.

¹³ Sulistiowati and Veri Antoni, "Konsistensi Penerapan Doktrin Piercing The Corporate Veil Pada Perseroan Terbatas Di Indonesia," *Yustisia Jurnal Hukum* 2, no. 3 (2013): 23–33, <https://doi.org/10.20961/yustisia.v2i3.10152>.

¹⁴ Frans Satrio Wicaksono, *Tanggung Jawab Pemegang Saham, Direksi, & Komisaris Perseroan Terbatas (PT)* (Jakarta: Visi Media, 2009): 112.

¹⁵ Michael Galanis, "Corporate Law Versus Social Autonomy: Law as Social Hazard," *Law and Critique* 32, no. 1 (2021): 1–32, <https://doi.org/10.1007/s10978-020-09267-7>.

¹⁶ Freddy Harris and Teddy Anggoro, *Hukum Perseroan Terbatas Kewajiban Pemberitahuan Oleh Direksi* (Bogor: Ghalia Indonesia, 2013): 73.

¹⁷ Benny Batara Tumpal Hutabarat, "Penerapan Prinsip Piercing the Corporate Veil Terhadap Pemegang Saham Selaku Personil Pengendali Korporasi Dalam Tindak Pidana Pencucian Uang Oleh Perseroan Terbatas" (Universitas Indonesia, 2011): 87.

Country vs. Olsen. The Wisconsin Supreme Court categorizes how PCV can be applied, by providing a three-part test that the plaintiff must prove, namely:¹⁸

- a. Proving that the relationship between the defendant and the corporation has alter ego causality.
- b. Proving an abuse of power by committing acts of bad faith and for personal gain by using his control to commit fraud or certain wrongdoings.
- c. Between the first and second elements, there must be a causal connection that causes the plaintiff's loss.

The application of the PCV doctrine can be carried out in several cases of the company, such as insufficient capital (inadequate capitalization), fraud, failure to meet the formal requirements for the establishment of the company, and abuse of authority by certain parties as a form of domination by one or more shareholders.¹⁹ In addition, it can also be imposed in cases of shares, efforts to avoid legal obligations, violations of the principles of fiduciary duty and agency, unpaid dividends including excessive dividend payments, as well as the majority shareholder being detected using self-guarantee to bear the company's obligation.²⁰ Public administration should be given more or less flexibility in making decisions under existing company data.²¹ Although the PCV doctrine emerged and developed in the common law legal system, Indonesia, a country with a civil law legal system, adopted it by incorporating it into Law Number 40 of 2007 concerning Limited Liability Companies (*UU No. 40 Tahun 2007 tentang Perseroan Terbatas/ UUPT*).

1. The Piercing the Corporate Veil Doctrine's Regulation in Law Number 40 of 2007 concerning Limited Liability Companies

The normative legal provisions governing Limited Liability Companies were previously regulated in the Commercial Code or *Kitab Undang-Undang Hukum Dagang* (KUHD/*Wetboek van Kophande*) which, upon closer inspection, has not accommodated any arrangements related to the PCV doctrine. The KUHD has just introduced the principle of limited liability as regulated in Article 40 paragraph (2) of the KUHD which essentially limits the liability of shareholders to the amount of their share capital. The PCV doctrine was explicitly institutionalized in the UUPT which was ratified on March 7, 1995, which was subsequently replaced by Law No. 40 of 2007 to adapt to the development of the business field. In accordance with the enactment of the UUPT, the provisions of Book One Chapter III Part Three, Articles 36-56 of the KUHD are declared no longer valid. Thus, the court's current opinion has raised the prospect that the court may be subject to jurisdiction.²²

Setting the PCV doctrine into the UUPT has a crucial meaning in the development of the business field, because if the limited liability principle as regulated in Article 3 paragraph (1) of the UUPT is enforced rigidly without any exceptions that can impose responsibility on shareholders, then with greater power owned by shareholders, the Limited Liability Company will only be used as a protector (shield) for any actions of shareholders that harm the company.

¹⁸ Harris and Anggoro, *Hukum Perseroan Terbatas Kewajiban Pemberitahuan Oleh Direksi*: 66.

¹⁹ Albana Karapanço and Ina Karapanço, "The Piercing of the Corporate Veil Doctrine: A Comparative Approach to the Piercing of the Corporate Veil in European Union and Albania," *Academic Journal of Interdisciplinary Studies* 2, no. 9 (2013): 153–59, <https://doi.org/10.5901/ajis.2013.v2n9p153>.

²⁰ Bismar Nasution, "Tanggung Jawab Pemegang Saham Bank Dan Doktrin Piercing The Corporate Veil," in *Pembahasan Isu Mengenai Bank Pembangunan Dan Tanggung Jawab Pemegang Saham Pengendali Bank Dalam Kelompok Usaha* (Makassar: Focus Group Discussion, 2015), 3.

²¹ Audinga Baltrunaite et al., "Discretion and Supplier Selection in Public Procurement," *The Journal of Law, Economics, and Organization* 37, no. 1 (2021): 134–66, <https://doi.org/10.1093/jleo/ewaa009>.

²² Rachel Bercovitz, "Law Enforcement Hacking: Defining Jurisdiction," *Columbia Law Review* 121, no. 4 (2021): 1251–88, <https://www.columbialawreview.org/content/law-enforcement-hacking-defining-jurisdiction/>.

Because according to Philips J. Scalatta JR the principle of limited liability has created a dividing wall between the company and the shareholders, which is intended to protect shareholders from any company activities, including:²³

- a. The actions and activities of the company are not actions of the shareholders;
- b. The company's obligations and responsibilities are not borne by the shareholders.

Therefore, this doctrine is regulated in Article 3 paragraph (2) of the UUPT to break down the limits of the shareholder's liability, which may exceed the paid-up shares. Initially, the application of PCV was only aimed at shareholders, because in principle this doctrine emerged as the antithesis to the principle of limited liability which was only owned by shareholders. However, it is widely misused where shareholders only feel responsible for the losses of the Limited Liability Company to the extent of the shares they own. The losses suffered by the Limited Liability Company are the result of the actions of the dominant influence of the shareholders on the management in managing the Company which is only used as a tool to seek shareholder personal gain.

The application of the principle of limited liability that is too free (abuse) is used to give birth to the PCV doctrine that can tear apart the shield (the principle of limited liability) that protects shareholders who in bad faith only want to benefit themselves.²⁴ The PCV concept, also known as "alter ego", can also be called "more instrumentality," which states that if there is no particular situation between the company and the shareholders, then the limited liability of shareholders can be abolished. By removing the barrier between shareholders and the company in carrying out the company's business activities, the limited liability is legally declared null and void.²⁵ As a result, shareholders must participate in and bear responsibility for losses suffered by the company and by interested creditors. The provisions in Article 3 paragraph (2) of the UUPT have accommodated elements of the PCV doctrine, but they are not specific. Several things are unclear and concrete in terms of what kind of action criteria should be used so that shareholders or company organs can be subject to the PCV doctrine. In practice, courts frequently fail to articulate the PCV doctrine in Article 3 paragraph (2) of the UUPT. They are easily trapped in a concept of liability due to an unlawful act or default, causing the company to lose money.

The PCV doctrine is one type of legal principle frequently disputed by parties in court in the United States, a country with a common law system. The PCV doctrine is frequently invoked by courts, particularly when the company in question is clearly and demonstrably failing to comply with statutory provisions. Another thing behind the decision is also because of injustice for creditors if only the company is responsible. Although the court is reluctant to decide a director or active shareholder to be responsible for actions that are legally the responsibility of the company, even when the shareholders of the company are only owned by one party. Because as in the UUPT, many countries do not have legal rules that clearly and comprehensively describe this doctrine. Whereas to make it easier to understand the criteria for applying the PCV doctrine, here are at least some of the factors that are usually considered by the panel of judges to apply the PCV doctrine, namely:²⁶

- a. Absence or inaccuracy of company records;
- b. Misinterpretation of members of shareholders and commissioners;

²³ Ardison Asri, "Doktrin Piercing The Corporate Veil Dalam Pertanggungjawaban Direksi Perseroan Terbatas," *Jurnal Ilmiah Hukum Dirgantara* 8, no. 1 (2014): 79–92, <https://doi.org/10.35968/jh.v8i1.138>.

²⁴ EL Enyew, "The Doctrine of Piercing the Corporate Veil: Its Legal and Judicial Recognition in Ethiopia," *Mizan Law Review* 6, no. 1 (2012): 77–114, <https://doi.org/10.4314/mlr.v6i1.3>.

²⁵ Gunawan Widjaja, *Risiko Hukum Sebagai Direksi, Komisaris & Pemilik PT* (Jakarta: Forum Sahabat, 2008): 25.

²⁶ Hutabarat, "Penerapan Prinsip Piercing the Corporate Veil Terhadap Pemegang Saham Selaku Personil Pengendali Korporasi Dalam Tindak Pidana Pencucian Uang Oleh Perseroan Terbatas.": 87.

- c. Failure to maintain relationships with related entities;
- d. Failure to observe company formalities in terms of behavior and documentation;
- e. Failure to pay dividends;
- f. Mixing of company assets and shareholders;
- g. Manipulation of assets or liabilities to centralize assets;
- h. Officials and/or directors of the company who are not functioning properly. Significant lack of capital;
- i. Taking company funds by the dominant shareholder;
- j. Recognizing and using the company's assets as their own;
- k. Whether the company used as a "*façade*" to the dominance of shareholder (alter ego).

This shows that PCV is applied to every party who in their position has the opportunity to make deviations or certain things that can prevent them from doing what they should do, which results in the company's loss. The losses suffered even caused the company to no longer be able to fulfill all of its obligations. Such conditions mean that PCV in its development does not only apply to shareholders, but also to the management board of the company, namely the board of directors or board of commissioners who have legal consequences can be held personally responsible for the company's losses.

Shareholders who apply PCV are required to be responsible to the company's creditors, as a form of causality for the actions of shareholders that cause the company to suffer losses, including if it is unable to fulfill its obligations to the company's creditors. As for the responsibility of the board of directors or the board of commissioners of the company, the form of responsibility depends on their actions that contain causality to the loss of the company, because in carrying out their duties (members of the board of directors or the board of commissioners), they are bound by the principles of fiduciary duty and duty of skill and care. UUPT applies this doctrine by imposing on the following parties:²⁷

- a. The burden of responsibility is transferred to the shareholders;
- b. The burden of responsibility is transferred to the board of directors and the board of commissioners.

Shareholders, directors, and commissioners have limited liability as long as these parties do not make mistakes or omissions in carrying out their duties and obligations. In carrying out the management of PT, it is undeniable that the Board of Directors and Commissioners can make mistakes and/or omissions that are the forerunner of an unlawful act. Likewise, the shareholders tend to dominate the management of PT so that it also influences the policies implemented by PT. This can be qualified as a form of error and/or negligence by the shareholders. So that it can no longer take refuge in the limited liability of the directors, commissioners, and shareholders.

Shareholders are the main target for implementing this doctrine, this is very reasonable considering that shareholders as owners of capital are the most interested parties in the running of a company. In principle, shareholders are protected by limited liability as a form of separation because the company is an independent legal subject based on organ theory. So with this principle, basically all actions taken by the company will not be the responsibility of the shareholders, including the company's losses. The jurisprudence that develops in common law countries conveys a general doctrine for the possibility of violating the principle of limited liability or the possibility of breaching the veil/curtain in a Limited Liability Company (Piercing the Corporate Veil), as follows:

²⁷ Fuady, *Doktrin-Doktrin Modern Dalam Corporate Law Dan Eksistensinya Dalam Hukum Indonesia*: 16.

- a. The doctrine of instrumentality, namely making a Limited Liability Company an instrument or tool used by shareholders for their interests. This doctrine uses an approach that refers to the following three elements:
 - 1) The existence of control over the Limited Liability Company, so that it does not have an independent existence;
 - 2) The control affects the act of neglecting obligations
 - 3) The negligent act causes a loss.
- b. The doctrine of alter ego, which is to make a Limited Liability Company like oneself. This doctrine holds that PCV can be applied if the following indications occur:
 - 1) The interests of the shareholders override the interests of the Limited Liability Company;
 - 2) It is difficult to distinguish between the private entity of the shareholder and the entity of the relevant limited liability company.
- c. The doctrine of identity, namely the doctrine that submits the issue of the existence of unity or separation of wealth between the assets of shareholders and limited liability companies, will be determined in the evidence in court on a case-by-case basis.

The application of this doctrine is expressly regulated in Article 3 paragraph (2) of the UUPT which aims to prevent a Limited Liability Company from being established as a tool to achieve the personal interests of shareholders (alter ego), so that it can no longer be distinguished or mixed between the personal assets of shareholders and their assets owned by the Limited Liability Company. In the implementation of the PCV doctrine, the shareholders are usually held responsible for the activities carried out by the company. However, from the application of the PCV doctrine, the burden of responsibility was also transferred from the company to other parties, namely to the directors or commissioners.

The responsibility of the board of directors resulting from the application of the PCV can also be seen as a result of the board of directors concerned applying the fiduciary duty doctrine according to the UUPT. The application of this doctrine may result in the board of directors being personally liable for the company's activities if there is proven no good intention and responsibility for carrying out the duties for the management of the company, as stipulated in Article 97 paragraph (3) of the UUPT. Members of the board of directors who cause losses to the company due to their mistakes can be sued in court by the company's shareholders. This provision is stated in UUPT Article 97 paragraph (6).

The application of the PCV doctrine can also be applied to the commissioners. This means that the commissioners personally in certain cases can be held responsible for the losses committed by the company itself. But in essence, the responsibility of the commissioners has less effect on the implementation of the PCV doctrine compared to the shareholders and directors. The commissioner is the last target of implementing the PCV doctrine. This is because the commissioners only have the authority as supervisors in the company's activities. It is different with the board of directors who have the task of carrying out company activities. Likewise with the shareholders who have greater responsibility as the owner of the company/investor.

2. Application of the Piercing the Corporate Veil Doctrine's Analysis in the Medan District Court Decision Number: 656/Pdt.G/2015/PN.Mdn

The problem in the case of Decision Number: 656/Pdt.G/2015/PN.Mdn dated May 4, 2016, is an internal dispute from PT Pantai Perupuk Indah (hereinafter abbreviated as PT PPI), as seen from the position of the parties who act well as shareholders as well as the Commissioners and Directors of PT PPI. The Plaintiff, in this case, felt aggrieved by some of the actions of the Defendants, especially Defendant IV as the Commissioner and Majority Shareholder who was

too dominant in influencing every company policy, even in the trial it was revealed that Defendant II and Defendant III were only extensions of Defendant IV so that they were not free to act. Carry out his position as the Board of Directors at PT PPI. The actions of the Defendants who are considered to dominate and interfere in all company actions include:

- a. Defendant IV was directly involved in the implementation of the Metrolink project (building a complex of shophouses and malls). This involvement can be seen in the unilateral appointment of contractors, the takeover of the project by Defendant IV, and the termination of the construction process.
- b. The Defendants held the General Meeting of Shareholder (GMS) without Plaintiff present, even though there had previously been an attempt to postpone the meeting by Plaintiff.
- c. The Defendants, especially those on the board of directors, have never held an annual GMS and reported their management responsibilities. This action was further strengthened by the absence of Defendant I's financial statements since the Metrolink project.

The Defendants' actions significantly harmed the Plaintiff in his position as a Commissioner who should have had the right to supervise and approve every company's action and did not have the right to fairly know the financial statements and distribution of company dividends. Plaintiff lost his rights as a Shareholder of PT PPI by holding the GMS without his presence because he was dismissed from his position as Commissioner.

Cases between shareholders of PT PPI was decided by the panel of judges at the Medan District Court by granting the Plaintiff's claim and stating that the Defendants had committed an unlawful act. Furthermore, against the decision, the defendants filed an appeal to cassation. However, both the Panel of Judges at the Appeal and Cassation levels still upheld the Medan District Court's decision by punishing the Defendants to pay compensation jointly and severally. In its consideration, the Panel of Judges carefully described the actions of the Defendants and assessed whether the GMS held by the Defendants was legal so that it concluded at the end that the Defendants could apply the PCV doctrine, while the judge's considerations were as follows:

- a. The Panel of Judges assessed that Defendant II and Defendant III in their position as directors had run the company (Defendant I) without heeding the provisions in Article 92 *jo.* Article 97 *jo.* Article 78 paragraph (2) of the UUPT requires the board of directors to hold an annual GMS within 6 (six) months after the end of the financial year.
- b. The panel of judges considered that the GMS held by the Defendants had violated the provisions of the UUPT, because in the implementation of the GMS the Defendants, especially Defendants II and Defendants III as directors, did not implement the provisions as referred to in Article 68 paragraph (1) of the UUPT which requires the Directors to submit the company's financial statements to the public accountant, so that if the obligations as referred to in paragraph (1) are not fulfilled, the annual calculation may not be approved by the GMS.

The legal considerations of the Panel of Judges are strongly influenced by the legal doctrine that develops and the norms governing the Limited Liability Company as stipulated in the UUPT, this is very clearly seen by the thoroughness and accuracy of the judges in linking each of the actions of the Defendants with the legal provisions in the UUPT. So in this case, the Panel of Judges did not hesitate to open/tear/reveal the barrier that protects the Defendants from the principle of limited liability.

Such cases, according to legal teachings, are included as: "extension *de passip* or Piercing The Corporate Veil (in another language called Lefting The Corporate Veil)" namely: cancellation of limited liability from a Limited Liability Company so that the losses incurred can be charged to the management of the legal actions they take for and on behalf of the PT contains conspiracy in bad faith which causes harm to other parties, in this case, the Plaintiff. In *a quo* case, Plaintiff has been able to prove its arguments: first, regarding the Board of

Directors (Defendant II and Defendant III) and the Commissioner (Defendant IV) has not carried out the operations of PT PPI as the Articles of Association and UUPT, this is because in reality the Board of Directors has never carried out accountability for company management, profit/loss financial statements and this has not been rebuked by the Commissioner as an organ that is given the authority to supervise.

In the absence of clarity regarding the results of the sale of company assets, it has proven that Defendant II and Defendant III as directors and Defendant IV have deliberately manipulated data for personal gain by eliminating the right of the Plaintiff as Commissioner to know detailed financial statements and can be accounted for in an accountable manner. Financial statements are very important and the board of directors must provide annual calculations in the form of an accountable report, if the financial statements are found to be incorrect (with ordinary evidence), the directors together with the commissioners are jointly and severally responsible based on the PCV doctrine based on Article 69 paragraph (3) UUPT which stipulates: "In the event that the financial statements provided are found to be untrue and/or misleading, members of the Board of Directors and members of the Board of Commissioners are jointly and severally responsible for the injured party". Thus, it is appropriate for the Panel of Judges to apply the PCV doctrine to Defendant II, Defendant III, and Defendant IV.

The application of the PCV doctrine to the directors and commissioners cannot be separated from the influence of the legal doctrine of fiduciary duty and duty of skill and care. The fiduciary duty doctrine is a doctrine born of the duties and positions entrusted to the Board of Directors by the company to manage the company under the company's goals and objectives,²⁸ while the doctrine of duty of skill and care is a doctrine that refers to the ability and prudence of the actions of the board of directors.²⁹ If observed in a *quo* case, basically Defendant IV has a full role in controlling the company. The company is only an alter ego where Defendant IV with his power as a shareholder with a total of 70% uses the Board of Directors only as a tool to carry out every wish expected by Defendant IV.

Based on the consideration of *ratio decidendi* and the decision of the Panel of Judges has applied the PCV doctrine proportionally and wisely and this is in line with the direction and purpose of the PCV doctrine regulated in Article 3 paragraph (2) of the UUPT,³⁰ where in this case the Defendants especially Defendant IV as Commissioners and shareholders either directly or indirectly using the Company in bad faith for personal gain, however, the Panel of Judges in a *quo* case is not rigid in applying the PCV doctrine by linking it to other provisions of the UUPT. According to Chatamarrasjid, it is possible to eliminate the limited liability of shareholders, if it is proven that there has been a renewal of the company's assets so that the company is established solely as a tool used by shareholders to fulfill their personal goals. In this case, Defendant IV not only usurped the rights of the Plaintiff as a shareholder but also took many actions as if the company is only a tool by appointing a company organ that is still a relative of Defendant IV, so that Defendant IV can hold several GMS without the presence of the Plaintiff to dismiss him as a Commissioner and renew the company's assets by transferring credit from Bank BII to other Banks to take advantage of the value of the guaranteed.

C. Conclusion

²⁸ Chatamarrasjid Ais, "'Fiduciary Duty' Sebagai Standar Para Direksi Dalam Melaksanakan Tugasnya," *Jurnal Hukum & Pembangunan* 31, no. 1 (2001): 63–72, <https://doi.org/10.21143/jhp.vol31.no1.1315>.

²⁹ Siti Hapsah Isfardiyana, "Tanggung Jawab Direksi Perseroan Terbatas Dalam Pelanggaran Fiduciary Duty," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 2, no. 1 (2015): 168–91, <https://doi.org/10.22304/pjih.v2n1.a10>.

³⁰ Endra Wijaya, "Peranan Putusan Pengadilan Dalam Program Deradikalisasi Terorisme Di Indonesia," *Kompleksitas Punitas* 3, no. 1 (2010): 109–21, <https://doi.org/10.29123/JY.V3I2.225>.

Based on the analysis and scrutiny of articles in the UUPT, the PCV doctrine is not only imposed on shareholders but can also be applied to the directors and the board of commissioners because in carrying out management duties the principles of fiduciary duty and duty of skill and care are imposed. Then in the consideration of the Judge in the Medan District Court Decision Number Case 656/Pdt.G/2015/PN.Mdn has considered the provisions contained in Article 3 paragraph (2) of the UUPT in applying the PCV Doctrine both to the Shareholders of PT PPI as well as the Board of Directors and The Commissioners. The Panel of Judges has wisely assessed the actions taken by the Defendants, especially Defendant IV as a 70% shareholder who also serves as a Commissioner, where the power has too much influence on the running of the company. Therefore, PT PPI is only a tool (instrumentality, dummy, or agent and alter ego) to benefit Defendant IV personally, so it is appropriate and based on law if the Defendants are jointly and severally sentenced to compensate the Plaintiff's losses with the implementation of this PCV Doctrine.

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