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The Position of the Principle of Piercing the Corporate Veil in Company Law in Indonesia

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Abstract

A limited liability company is a legal entity. This means that shareholders are responsible for the number of shares owned. Likewise, the board of directors and the board of commissioners in carrying out their duties and obligations for and on behalf of a limited liability company as a legal entity. However, this general principle is excluded, due to the application of the principle of piercing the corporate veil. This study intends to analyze what factors lead to the application of the principle of piercing the corporate veil and what are the legal consequences. The approach used in this research is the statutory approach and the conceptual approach. The legal material analysis method used in this study is a normative method, namely by conducting prescriptions with deductive-inductive reasoning to produce propositions or concepts as answers to the problems studied. The results of the study show that the shareholder's responsibility is not limited to the number of shares owned when the shareholder commits ultra vires (abuse of authority). Likewise, the responsibility of the board of directors and the board of commissioners in accordance with the authority they have sourced from the law and the articles of association of the company which should be the responsibility of the legal entity has turned into the personal responsibility of the directors and commissioners for carrying out ultra vires.

Keywords: *Legal Entity; Piercing The Corporate Veil*

Introduction

Background

The position of the principle of piercing the corporate veil in corporate law in Indonesia can be said to have a very important meaning for the progress of substantive corporate governance. This is understandable because the existence of this principle allows the shareholders, directors and board of commissioners to try their best so that the company as a legal entity can carry out its purposes and objectives properly in accordance with the mandate of the law and the articles of association of a limited liability company. This means that the application of the principle of piercing the corporate veil is an inseparable part of good corporate governance based on the principles of good corporate governance.

The provisions of Article 1 point 1 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT 2007), states that a limited liability company, hereinafter referred to as a company, is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital entirely divided into shares and fulfill the requirements stipulated in this law and its implementing regulations. This affirmation of legal entities means that the liability of shareholders, directors and board of commissioners in a company that is a legal entity is limited, namely that shareholders are responsible to the extent of their own capital, and directors are responsible for matters relating to their duties and authorities as directors and board of commissioners. Responsible for the position and function of the supervision it carries out. The question is what are the factors that cause the implementation of the principle of piercing the corporate veil and what are the legal consequences.

This research is expected to contribute to the development of law in general and corporate law in particular. In the sense that the results of this study are expected to answer the company's legal problems related to the liability of the limited liability company as a legal entity as well as the responsibility of the shareholders, directors and commissioners personally.

Literature Review

Limited Liability Company Position as a Legal Entity

A limited liability company is a legal entity.[1] The company obtains the status of a legal entity on the date of the issuance of a ministerial decree regarding the ratification of the company's legal entity.[2] This provision confirms that the status of a limited liability company as a legal entity does not need to be interpreted again because it has been expressly stated by the legislators. Nevertheless, history records that before the enactment of Law Number 1 of 1995 (hereinafter referred to as UUPT 1995) jo. The 2007 Company Law, the status of a limited liability company as a legal entity, is interpreted from several statutory provisions, especially the *Wetboek van Koophandel* (WvK/KUHD) and the Bankruptcy Regulations. Siti Soemarti Hartono.[3] stated that although in the old regulations it did not explicitly state that a limited liability company was a legal entity, but in Article 40 paragraph (2) (WvK/KUHD)[4] dan Pasal 45 ayat (1) (WvK/KUHD)[5] it can be concluded that a limited liability company is a legal entity. Even H.M.N. Purwosutjipt[6] states that if it is explored further outside (WvK/KUHD), namely in the Bankruptcy Regulations in particular Article 2 paragraph (7)[7] and Article 102[8] recognition of a limited liability company as a legal entity, is expressly recognized. In which case of the two articles, a limited liability company is grouped in a partnership that is a legal entity.

Recognition of a limited liability company as a legal entity is expressly recognized. In which case of the two articles, a limited liability company is grouped in a partnership that is a legal entity.

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[1]Article 1 point 1 UUPT 2007: Limited Liability Company is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this law and its implementing regulations.

[2]Article 7 paragraph (4) UUPT 2007.

[3]Siti Soemarti Hartono, Limited Liability Company in Establishment, Working Paper in One Day Seminar on Company Law and Insurance Law in Reality and Expectations, Faculty of Law UGM, Yogyakarta, 1988, p. 6.

[4]Article 40 paragraph (2) of the KUHD states that "partners or shareholders are not responsible for more than the full amount of the shares."

[5]Article 45 paragraph (1) of the KUHD which states that "the management is not responsible for more than the proper implementation of the burden ordered to him; they are not personally bound to third parties based on engagements made by the company."

[6]H.M.N. Purwosutjipto, Basic Understanding of Indonesian Commercial Law, Forms of Companies, Part Two, Djmbatan, Jakarta, 2008, p. 91.

[7]Article 2 paragraph (7) of the Bankruptcy Regulation: "For limited companies, mutual trust associations, cooperative associations or other associations that are legal entities and for foundations for the application of this article the place where it is domiciled as a place of residence shall apply."

[8]Article 102 Bankruptcy Regulations: "In the event of a limited liability company, insurance carrier or mutual underwriting, cooperative association or other association having a legal entity or a foundation, the provisions of Articles 84 to 88 of the management shall be treated. Of Article 101 paragraph (1) on the management and commissioners."

Sudikno Mertokusumo[9] In writing, a legal entity is an organization or group of people who have certain goals that can carry rights and obligations. The definition of persona standi in judicio is the authority to act as a party to the law.[10] Yan Pramadya[11] mentioning that a legal entity is an organization, association or other association where its establishment is by an authentic deed and by law it is treated as a person or as a person, has rights and obligations, can be sued and or can sue before a court and can also own assets, its activities are in the field of trading, social and other fields in accordance with the contents (in part) of the deed of establishment. Ali Rido[12] explain the elements of a legal entity are: (1) The existence of separate assets. (2) There is a specific purpose. (3) The existence of self-interest, and (4) The existence of an organized organization. According to the author, the core issue regarding legal entities is a juridically constructed persona who carries out rights and obligations.

Sutantyo R. Hadikusuma dan Soemantoro[13] concluded that there are three elements that exist in a limited liability company. These elements are: (1) The existence of assets that are separate from the personal assets of each shareholder (shareholders) with the aim of establishing a number of funds as collateral for all corporate engagements. (2) There is a shareholder or shareholder whose liability is limited to the nominal number of shares owned. The shareholders in the GMS are the highest authority holders in the company, who are authorized to appoint and dismiss directors and commissioners, have the right to determine the outlines of policies in running the company, and others. (3) There are management (board of directors) and commissioners who are a unit of management and supervision of the company and have limited responsibility for their duties which must be in accordance with the articles of association and/or the provisions outlined by the GMS.

If the elements of a limited liability company are connected with the elements of a legal entity as described above, it will be clearly seen that the limited liability company as a legal entity. Nindyo Pramono,[14] explained that the elements of legal entities that developed in the doctrine and elements of legal entities that existed in the UUPT had similarities. These similarities are what he referred to as the elements of a limited liability company, namely: (1) The existence of separate assets. (2) There is a specific purpose. (3) Has its own interests, and (4) The existence of an organized organization.

Legal Entity Elements

1.Existence of Separate Wealth

A limited liability company has assets that are separate from the assets of its management. Limited liability company assets are needed in order to achieve the company's goals and objectives. Without assets, a limited liability company cannot achieve its goals and objectives. Assets are also useful for limited liability companies in making agreements with third parties. The assets of the company must be separated from the assets of the management (board of directors), commissioners and shareholders of the company itself. Although the company's assets are ultimately enjoyed by the directors, commissioners and shareholders and even all other stakeholders, the separation of the assets of the limited liability company is very important because it relates to the legal responsibilities of the limited liability company to third parties. The separation of the assets of the limited liability company and the management is also in line with the theory of purposeful assets (zweckvermogen) from Brinz.[15] This means that the assets

[9] Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, p. 68.
[10] Sudikno Mertokusumo, *Penemuan Hukum Sebuah Pengantar*, Liberty, Yogyakarta, 2004, p. 125.
[11] Yan Pramadya Puspa, *Kamus Hukum Edisi Lengkap Bahasa Belanda, Indonesia,Inggris*, Aneka Ilmu, Semarang, Tanpa Tahun, p. 668.
[12] Ali Rido, *Badan Hukum dan Kedudukan Hukum Perkumpulan, Koperasi, Yayasan, Wakaf*, Alumni, Bandung, 1977, p. 56.
[13] Sutantyo R. Hadikusuma dan Soemantoro, *Pengertian Pokok Hukum Perusahaan, Bentuk-Bentuk Perusahaan yang Berlaku di Indonesia*, Rajawali Pers, Jakarta, 1991, p. 40.
[14] Nindyo Pramono, *Hukum PT Go Publik dan Pasar Modal*, Andi, Yogyakarta, 2013, p.34-36. See Eduardus Bayo Sili, 2015, *Prinsip Perlindungan Hukum Investor Obligasi*, *Disertasi*, Doctoral Program in Law, Faculty of Law, Airlangga University, Surabaya.hal. 343-347.
[15] Ali Rido,*Op. Cit.*, p. 9.

become collateral for the engagements that have been made by the company with third parties. If in the future there are obligations that must be fulfilled by the limited liability company, then the resulting liability is solely borne by the assets of the limited liability company, unless piercing the corporate veil is enforced.[16] Due to abuse of authority by the board of directors, commissioners and/or shareholders.

Further consequences of the separation of the assets of the limited liability company as a legal entity from the personal assets of the partners, namely: (1) The private creditors of the partners and/or the equipment of the limited liability company do not have the right to claim the assets of the limited liability company. (2) The private shareholders, as well as the personal limited liability company equipment, do not have the right to collect receivables from legal entities against third parties. (3) Compensation between personal debt and limited liability company debt is not allowed. (4) Legal relationships, both engagements and other processes between the partners and/or equipment of the limited liability company and the limited liability company as a legal entity, may occur as well as legal relationships or engagements between legal entities and third parties. (5) In the event of bankruptcy, the creditors of the limited liability company can only claim the separate assets.[17]

2.There is a Specific Purpose

The purpose of a limited liability company is something that is imperative (dwingendrecht) because it is required by law. Based on the Company Law, the aims and objectives as well as the company's business activities are one unit contained in one article.[18] The inclusion of the purposes and objectives as well as the company's business activities in the articles of association of the company has a principal function because the inclusion provides a legal basis for the board of directors in carrying out the duties of beheerdaden (management) and beschkkingdaden (representative) for a limited liability company. These are signs for the board of directors so that every legal action carried out by the board of directors does not deviate, go beyond or exceed the things that have been written in the aims and objectives as well as business activities specified in the articles of association.

3.Have Your Own Interests

Interests are subjective rights[19] as a result of legal events. The interest in question is an interest protected by law. Interest can mean an important need, the main one.[20] Interest essentially contains power that is guaranteed and protected by law.[21] The Board of Directors in carrying out the management of the company must be oriented to the interests of the company and in accordance with the aims and objectives of the company.[22] The limited liability company's interests are reflected in its rights to be able to sue and defend its interests against third parties in its legal relationship. The interests of the limited liability company will differ from the interests of the individual shareholders or individuals. The interests of the limited liability company are the main thing for the limited liability company, namely the purpose of the limited liability company, the purpose of obtaining profits for the limited liability company, which is indirectly also for the interests of the shareholders. For example: if the interests of the shareholders are

[16]Munif Fuady, *Op. Cit.*, p. 7-8. Doktrin *piercing the corporate veil* This has been adopted in the 2007 Company Law. See Article 3 paragraph (2), Article 97 paragraph (5), Article 114 paragraph (3) of the 2007 Company Law.
[17]Nindyo Pramono, *Op. Cit.*, p.34.
[18]Article 16 paragraph (1) UUPT 2007.
[19]In relation to subjective interests or rights, Hans Kelsen states that "*subjective right, by claiming that the latter is defined as interest that is protected by the former, as will that is recognized or guaranteed by the former*." See Hans Kelsen, *Introduction to the Problems of Legal Theory*, Clarendon, Oxford, 1992, hal. 38.
[20]Nindyo Pramono, *Op. Cit.*, p.36.
[21]Sudikno Mertokusumo I, *Op. Cit.*, p. 43. In relation to subjective rights, Hans Kelsen states that "*subjective right, by claiming that the latter is defined as interest that is protected by the former, as will that is recognized or guaranteed by the former.*" See Hans Kelsen, *Introduction to the Problems of Legal Theory*, Clarendon, Oxford, 1992, p. 38.
[22]Article 92 paragraph (1) UUPT 2007.

dividends or capital gains, then the interests of the limited liability company may not be that, but prefer reserve funds instead of dividends or capital gains.[23]

4.The existence of an organized organization

An organized organization is a description of the internal rules that apply in an organization called a legal entity. Legal entities are legal constructions, namely a personification of juridical beings as legal subjects; legal entities in carrying out their legal actions are represented by their organs. This is in line with the organ theory of Otto van Gierke[24] which states that the legal entity is a real reality just like the nature of human personality that exists in legal association. This is also in line with the theory of reality. That is why the legal entity is not only a real person, but the legal entity also has its own will or will which is formed through its equipment (administrators, members). As an organized organization, it can be seen in the articles of association and by-laws or the regulations and decisions taken at a meeting of members of the legal entity.

Preliminary Study and Research Roadmap

This group's previous research road map that is relevant to this research: Liability of Broker-Dealer and Broker-Dealer Representatives in Trading Transactions in the Capital Market (2016), Responsibilities of Capital Market Legal Consultants in Protecting Investors (2017), Responsibilities of Public Accountants to Investors in the Capital Market (2017), Responsibilities of Issuers Due to Securities Delisting on the Exchange (2019). Implementation of the Business Judgment Rule Doctrine in the Management of Limited Liability Companies (2020).

Research Methods

Types of Research and Approach Methods

The approach used in this research is a statutory approach and a conceptual approach. The statutory approach, which is an approach in legal research that emphasizes the search for norms contained in statutory provisions. Conceptual approach (conceptual approach), which is an approach that moves from the views and doctrines that develop in the science of law. Thus, researchers will find ideas that give birth to legal notions, legal concepts, and legal principles that are relevant to the legal issues faced. The understanding of these views and doctrines is the basis for researchers in building a legal argument in solving the issues at hand.

Sources and Types of Legal Materials

The legal materials used in this research are primary and secondary legal materials. Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions. Meanwhile, secondary legal materials are all publications on law which are not official documents. Publications on law include textbooks, legal dictionaries, legal journals, and commentaries on court decisions.

Legal Materials Collection Techniques

Legal materials, both primary and secondary obtained will be inventoried and identified for further use in analyzing problems related to this research study. It is hoped that this inventory and identification of legal sources will facilitate the flow of this research. After the sources of legal materials

[23]Nindyo Pramono, *Op. Cit*., p.36.
[24]Ali Rido, *Op. Cit*., p. 9.

are inventoried and identified, then the next step is to systematize all existing sources of legal materials. This systematization process is also applied to theories, concepts, doctrines and other reference materials.

Legal Material Analysis Techniques

The series of stages of inventory, identification and systematization are intended to facilitate research on problems. The next series of steps is to conduct analysis using deductive reasoning accompanied by analytical descriptive descriptions.

Research Results and Discussion

Factors Causing Application of the Principle Piercing the Corporate Veil

What is the principle of piercing the corporate veil and how can this principle be applied in the company? Normin S. Pakpahan[25] The ELIPS Economic Law Dictionary defines piercing the corporate veil as the opening of the corporate veil, namely a doctrine in corporate law which states that in certain cases the company as a legal entity can be set aside, especially when it comes to groups of companies, due to legal responsibility for their actions. The law from the company can be requested from its shareholders, directors, and the parent company's liability for the legal actions of its subsidiaries, even though the two companies are actually separate legal entities.

Henry Campbell Black, even stated that if a company commits a crime, the company's organs personally or their employees can be held personally responsible. Henry Campbell Black[26] fully states that the principle *piercing the corpoare veil*, adalah "Judicial process whereby court will disregard usual immunity of corporate officers or entities from liability for wrongful corporae activities; e.g. when incorporation exists for sole purpose of perpetrating fraud.The doctrine which holds that the corporate stuctrure with its attendant limited liability of stockholders may be disregarded and personal liability imposed on stockholders, officers and directors in the case of fraud or other wrongful acts done in the name of corporation. The court, may look beyond the corporate from only for the defeat of fraud or wrong or the remedying of injustice." (The legal process carried out by the courts usually ignores the general immunity of company officials or certain company parties from being responsible for company activities, for example when the company intentionally commits a crime. This doctrine holds that a company structure with limited liability of shareholders can ignore the responsibility of shareholders shareholders, company officers and directors of the company. The court in this case will view the company only from the side of the failure of the defense of crimes or wrongdoing or the imposition of punitive sanctions). The general principle is that the liability of shareholders is limited, but it becomes invalid if shareholders take ultra vires actions. For example, making a company that is a legal entity as a vehicle for purposes that deviate from applicable legal norms.

A limited liability company is a legal entity.[27] This has a juridical consequence that the shareholders are responsible for the number of shares owned, and even the directors and commissioners in carrying out their duties and obligations for and on behalf of the limited liability company so that the responsibility or liability attached to these two organs is of course related to company as a legal entity. Such provisions cannot work properly when there is an organ of the company intended to abuse (ultra vires).

When does a company acquire status as a legal entity? The Company obtains the status as a legal entity on the issuance date of the ministerial decree regarding the ratification of the company's legal

[25] Normin S. Pakpahan, *Kamus Hukum Ekonomi ELIPS*, Proyek ELIPS, Jakarta, 1997, p. 129.
[26] Henry Campbell Black, *Black's Law Dictionary*, West Publishing Co, ST. Paul Minn, 1990, p. 1147-1148.
[27] Article 1 point 1 UUPT 2007: Limited Liability Company is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this law and its implementing regulations.

entity.[28] Although the Company Law explicitly recognizes a limited liability company as a legal entity, the notion of a legal entity itself is not explicitly explained in various laws and regulations, including the Company Law. To get an understanding of the meaning of a legal entity, one has to look in the doctrine or opinions of experts. Through general doctrine or teachings (de heersende leer) it is possible to know the meaning or elements of a legal entity. Sudikno Mertokusumo[29] In writing, a legal entity is an organization or group of people who have certain goals that can carry rights and obligations. The definition of persona standi in judicio is the authority to act as a party to the law.[30]

Ali Rido[31] explain the elements of a legal entity are: (1) The existence of separate assets. (2) There is a specific purpose. (3) The existence of self-interest, and (4) The existence of an organized organization. Nindyo Pramono,[32] explained that the elements of legal entities that developed in the doctrine and elements of legal entities that existed in the UUPT had similarities. These similarities are what he referred to as the elements of a limited liability company, namely: (1) The existence of separate assets. (2) There is a specific purpose. (3) Has its own interests, and (4) The existence of an organized organization, as described above.

Based on the 1995 Company Law, once the deed of establishment is ratified by the minister, there is still an obligation for the board of directors to register it in the company register[33] and announce it in the Supplement to the State Gazette of the legalized deed for the purpose of publication for third parties.[34] If this is not heeded by the company's directors, then according to Article 23 of the 1995 Company Law, the company's directors are jointly and severally responsible for all legal actions carried out by the company.[35] Similar provisions are no longer found in the 2007 Company Law. In fact, the announcement was made by the minister of law and human rights, not by the board of directors. It may happen that the time of ratification with the issuance date of the ministerial decree may be different. Incidents like this in practice create complicated legal issues, because it is very difficult to determine which date should be recognized and followed by law as the time for legalization of a limited liability company as a legal entity. This is a strong reason for making changes to the editorial or formulation in the 1995 Limited Liability Company Law. Such changes are as regulated in Article 7 paragraph (4) of the 2007 Limited Liability Company Law which expressly states that the company obtains legal entity status on the date of issuance of the ministerial decree regarding the ratification of the corporate body company law. Certainty about the birth of a limited liability company as a legal entity is important, not only to distinguish the time when a limited liability company was established (when it was established) and the time when a limited liability company became a legal entity, but even more so in relation to the legal responsibilities of the founder, shareholders and the limited liability company itself.

The status of a limited liability company as a legal entity is no longer in doubt. There is no need to even debate when the legal entity status of a limited liability company was born, because in the 2007 Limited Liability Company Law, it is recognized as a legal entity that has been expressly stated so by law, especially in Article 1 paragraph (1)[36] jo Article 7 paragraph (4) UUPT. This means that the polemic

[28] Article 7 paragraph (4) UUPT 2007.
[29] Sudikno Mertokusumo I, *Op. Cit*., p. 68.
[30] Sudikno Mertokusumo II, *Op. Cit*., p. 125.
[31] Ali Rido, *Badan Hukum dan Kedudukan Hukum Perkumpulan, Koperasi, Yayasan, Wakaf*, Alumni, Bandung, 1977, p. 56.
[32] Nindyo Pramono, *Op. Cit*., p.34-36.
[33] According to Law no. 3 of 1992 concerning Compulsory Company Registration. The obligation to register and announce the deed of establishment of a PT which was previously carried out at the district court's clerk's office, after the enactment of Law no. 3 of 1992 was carried out at the company registration office.
[34] See Article 21 and Article 22 of the 1995 Company Law.
[35] Article 23 of the 1995 Company Law states that "as long as the registration and announcement as referred to in Article 21 and Article 22 have not been carried out, the board of directors is jointly and severally responsible for all legal actions carried out by the company."
[36] Article 1 paragraph (1) of the Company Law states that "a limited liability company, hereinafter referred to as a company, is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this law. as well as implementing regulations.

about when the status of a limited liability company as a legal entity ends with the promulgation of the 2007 Company Law.

Indeed, Article 7 paragraph (4) of the Company Law expressly states that the status of a limited liability company as a legal entity occurs at the time of the issuance of the decision of the minister of law and human rights regarding the ratification of the company's legal entity. This provision of Article 7 paragraph (4) does not mean that the approval of the minister of justice and human rights creates a limited liability company. according to Nindyo Pramono,[37] the approval or justification of the Minister of Justice and Human Rights, only functions as preventive supervision, then is welcome, allowed to enter into legal relations and is binding as a creditor or debtor. A limited liability company is born and exists as a legal entity because it can be deduced from the law after the notarial deed regarding the establishment of a limited liability company is drawn up. The approval or justification of the Minister of Justice only serves as a preventive oversight, then he is welcome, allowed to enter into legal relations and binds him as a creditor or debtor.

Regarding the obligation to register a company according to Law Number 3 of 1982 concerning Compulsory Company Registration, every company is required to register a company at the company registration office. Based on practice, it is often found that there are errors in understanding the meaning of company registration and company registration. This error is often motivated by an understanding that the provisions previously regulated in Article 21 of the 1995 Company Law stating that company directors are required to register in the company register are no longer regulated in the 2007 Limited Liability Company Law. Company registration. It must be understood that even though the 2007 Company Law does not regulate these obligations, it does not mean that the 2007 Company Law revokes the provisions or substances regulated in Law no. 3 of 1982 concerning Compulsory Company Registration.

Another mistake is the equating of the meaning of "registered company" as regulated in Articles 21 and 22 paragraph (1) of the 1995 Company Law with the meaning of "company register" as regulated in Article 29 of the 2007 Company Law. Equating the meaning of "registered company" and "Registration Company" as if the substance regulated in Article 29 of the 2007 Company Law already includes the substance regulated in Articles 21 and 22 of the 1995 Company Law. Even though the substance of the regulation of the two matters is very different. List of companies referred to in Article 29 of the 2007 Company Law[38] is a list of companies that must be carried out by the Minister of Law and Human Rights for the purpose of publication, which in the 1995 Company Law the obligation is carried out by the board of directors, while the definition of "registered company" as stipulated in the 1995 Company Law is the obligation of the board of directors to carry out company registration obligations as stipulated in the 1995 Limited Liability Company Law. UU no. 3 of 1982 concerning Compulsory

[37]Nindyo Pramono, *Op. Cit*., p. 46.

[38]Article 29 of the 2007 Company Law, paragraph (1): "The list of companies is maintained by the Minister." Paragraph (2) "The list of companies as referred to in paragraph (1) contains data on companies which include: (a) name and domicile, purpose and objectives as well as business activities, period of establishment and capital; (b) the complete address of the company as referred to in Article 5; (c) the number and date of the deed of establishment and the Minister's decision regarding the ratification of the company's legal entity as referred to in Article 7 paragraph (3); (d) the number and date of the deed of amendment to the articles of association and approval of the Minister as referred to in Article 23 paragraph (1); (e) the number and date of the deed of amendment to the articles of association and the date of receipt of notification by the minister as referred to in Article 23 paragraph (2); (f) the name and domicile of the notary who made the deed of establishment and the deed of amendment to the articles of association; (g) the full names and addresses of shareholders, members of the board of directors, and members of the board of commissioners of the company; (h) the number and date of the deed of dissolution or the number and date of the court's decision on the dissolution of the company which has been notified to the Minister; (i) expiration of the legal entity status of the company; (j) balance sheet and income statement for the relevant financial year for companies that are required to be audited." Paragraph (3) "The company data as referred to in paragraph (2) is entered in the company register on the same date as the date: (a) the Minister's decision regarding the ratification of the company's legal entity, approval of amendments to the articles of association that require approval; (b) receipt of notification of amendments to the articles of association that do not require approval; or (c) receipt of notification of changes to company data which are not changes to the articles of association."

Company Registration, which is not explicitly stated in the 2007 Company Law. Although not explicitly stated, this obligation still applies not only to limited liability companies but also to cooperatives, maatschap, CV, firms and other individual businesses.

If we trace back far, only natural humans (naturalijk) can be categorized as legal subjects. As naturalijkpersoon, humans have limitations in maintaining their rights and obligations. If a person naturally dies, then he/she ceases to be a legal subject. His authority to own property and carry out legal actions has disappeared. However, humans as legal subjects can avoid these limitations naturally because positive law recognizes legal entities or rechtspersoons.[39] Through a legal entity, the person's assets can be used for noble purposes. Likewise, his newly initiated business did not just stop with the death of that person.

Even though a human as a naturalijkpersoon dies, his business can continue, his debts can be collected and his debts can be paid. All of this can happen because positive law introduces humans to a deed of establishment, for a certain purpose, to revive a legal entity or rechtspersoon and to give an independent juridical being certain assets and then to allow it in its own name and on behalf of its own dependents to carry out legal actions. . These juridical beings cannot act alone like humans, so an organ is needed to act to represent these juridical beings. This fact is actually the main motivation for the existence of a legal entity, such as a limited liability company.[40]

Based on the provisions of Article 7 paragraph (1) of the 2007 Company Law, it can be seen that the establishment of a limited liability company in Indonesia adheres to the understanding of the agreement (*overeenkomst*),[41] as regulated in Article 1313 jo 1320 BW. In relation to the understanding of this agreement, Article 1320 BW has stated limitatively that the conditions for a valid agreement must meet four elements, namely: (1) Agree with those who bind themselves. (2) The ability to make an engagement. (3) A certain thing. (4) A lawful cause. The first and second elements are called subjective terms because they relate to the people, while the third and fourth elements are called objective terms because they relate to the object.[42] In connection with the establishment of a limited liability company, the subjective requirements are: a minimum of two people,[43] and the objective requirements: must be with a notarial deed and in the Indonesian language.

Although the establishment of a limited liability company adheres to the understanding of the agreement, the 2007 Company Law itself, especially in Article 7 paragraph (7), creates an exception principle to the subjective requirement, namely allowing only one shareholder. This exclusion principle only applies to state-owned companies and companies operating in the capital market, namely companies that manage the stock exchange (PT Bursa Efek Indonesia), Clearing Guarantee Institution (PT Kliring Penjaminan Efek Indonesia), Depository and Guarantee Institutions. Settlement (PT Kustodian Sentral Efek Indonesia) and other institutions as regulated in UUPM,[44] PT Micro and Small Enterprises based on Law Number 11 of 2020 concerning Job Creation.

The Board of Directors is responsible for managing the company as referred to in Article 92 paragraph (1) of the 2007 Company Law. The Board of Directors in managing the company is supervised by a commissioner. The board of commissioners supervises management policies, the course of

[39]Hartono Soerjapratiknjo, *Op. Cit*., p. 8.
[40]Nindyo Pramono, *Op. Cit*., p. 47.
[41]Elucidation of Article 7 paragraph (1) of the 2007 Company Law states: "The provisions in this paragraph emphasize the principle that applies under this law that basically as a legal entity, a company is established based on an agreement, therefore it has more than 1 (one) shareholder. "
[42]Subekti, *Hukum Perjanjian*, Intermasa, Jakarta, 2008, p. 17.
[43]What is meant by people is *naturalijkpersoon* dan/atau *rechtspersoon*.
[44]Article 7 paragraph (7) of the 2007 Company Law "The provisions that require the company to be established by 2 (two) or more persons as referred to in paragraph (1) and the provisions in paragraph (5) and paragraph (6) do not apply to: whose shares are wholly owned by the state; or (b) companies that manage stock exchanges, clearing and guarantee institutions, depository and settlement institutions, and other institutions as regulated in the Law on Capital Markets."

management in general, both regarding the company and the company's business, and provides[45] advice to directors.[46] The board of commissioners is responsible for the supervision of the company as referred to in Article 108 paragraph (1). Each member of the board of commissioners must in good faith, exercise prudence, be responsible for carrying out supervisory duties and providing advice to the board of directors as referred to in Article 108 paragraph (1) for the benefit of the company and in accordance with the aims and objectives of the company[47]Likewise, as a legal entity, the shareholders of the company are not personally responsible for the agreements made on behalf of the company and are not responsible for the company's losses in excess of the shares owned[48] except for piercing the corporate veil[49] due to abuse of authority by the board of directors, commissioners and/or shareholders.

Based on the description above, it can be concluded that a limited liability company as a legal entity in the form of a limited liability company, has legal entity liability. However, the liability of the legal entity is ignored when the board of directors, board of commissioners and shareholders take ultra vires actions so that the three organs of the limited liability company are subjected to piercing the corporate veil.

Legal Consequences of Implementing the Principle of Piercing the Corporate Veil

1.Board of Directors Liability

Article 97 paragraph (1) of the 2007 Company Law states that the board of directors is responsible or responsible for the management of the company as referred to in Article 92 paragraph (1). According to Article 97 paragraph (2) of the 2007 Company Law, it is stated that the management as referred to in paragraph (1) must be carried out by every member of the board of directors in good faith and full of responsibility. Based on these provisions, it can be interpreted that if a member of the board of directors is negligent, especially if he intentionally violates these provisions, then there are legal consequences that must be borne by him, namely being personally responsible. Based on Article 92 paragraph (1) of the 2007 Company Law, it is stated that the board of directors in carrying out the management of the company is for the benefit of the company and in accordance with the aims and objectives of the company. This provision can be interpreted that the board of directors in carrying out the management of the company must be solely for the benefit of the company, not for personal or other interests. If it can be proven that a member of the board of directors has performed his duties not for the benefit of the company he leads, then the actions of the member of the board of directors are not binding on the company and become personal responsibility. In the articles of association of the company, the purpose and objectives of the company are described in detail. If this is also violated by the board of directors, the legal action taken is categorized as ultra vires. The consequence of ultra vires is that the legal actions taken by the board of directors are not binding on the company but are the personal responsibility of the member of the board of directors concerned.

According to Article 97 paragraph (3) of the 2007 Company Law, it is stated that each member of the board of directors is personally responsible for the loss of the company if the person concerned is

[45]Article 114 paragraph (1) UUPT 2007.
[46]Article 108 paragraph (1) UUPT 2007.
[47]Article 114 paragraph (2) UUPT 2007.
[48]Article 3 paragraph (1) UUPT 2007.
[49]Munif Fuady II, *Op. Cit.*, p. 7-8. *Piercing the corporate veil* or *lifting the corporate veil* interpreted by Munir Fuady literally means tearing the curtain of the company. According to the ELIPS Economic Law Dictionary, piercing the corporate veil or lifting the corporate veil is a corporate legal doctrine which states that in certain cases a company as a legal entity can be set aside, especially when it comes to groups of companies, resulting in legal liability for legal actions. From the company can be requested from its shareholders, directors and the parent company's liability for the legal actions of its subsidiaries, even though the two companies are actually separate legal entities. See ELIPS Economic Law Dictionary, ELIPS Project, Jakarta, 1997, p.128. In common law, the board of directors also includes commissioners because the functions of the directors and commissioners are carried out by the CEO. This model in common law is called a single board system. See I Nyoman Tjager, et. al, Op. cit. h. 36-37. The doctrine of piercing the corporate veil has been adopted in the 2007 Company Law. See Article 3 paragraph (2), Article 97 paragraph (5), Article 114 paragraph (3) of the Company Law.

guilty or negligent in carrying out his duties in accordance with the provisions referred to in paragraph (2). Article 97 paragraph (4) of the 2007 Company Law states that in the event that the board of directors consists of 2 (two) or more members of the board of directors, the liability or responsibility as referred to in paragraph (3) applies jointly and severally to each member of the board of directors. According to Article 104 paragraph (2) of the 2007 Company Law, it states that in the event that the bankruptcy referred to in the bankruptcy referred to in paragraph (1) occurs due to the fault or negligence of the board of directors and the bankruptcy assets are not sufficient to pay all of the company's obligations in the bankruptcy, each member of the board of directors is responsible for jointly and severally responsible for all outstanding obligations of the bankruptcy estate.

2.Commissioner Liability

According to Article 114 paragraph (3) of the 2007 Company Law, it states that each member of the board of commissioners is personally responsible or liable for the loss of the company if the person concerned is guilty or negligent in carrying out his duties as referred to in paragraph (2). Likewise, Article 115 paragraph (1) of the 2007 Company Law states that in the event of bankruptcy due to an error or negligence of the board of commissioners in supervising the management carried out by the board of directors and the assets of the company are not sufficient to pay all the obligations of the company as a result of the bankruptcy, each member of the board of commissioners jointly and severally share responsibility with members of the board of directors for outstanding obligations.

Both Article 114 paragraph (3) and Article 115 paragraph (1) essentially alludes to losses and bankruptcy which are the result of the commissioner's actions. Which actions are of course related to the duties and obligations of the board of commissioners. According to Article 108 paragraph (1) of the 2007 Company Law, the task of the board of commissioners is to supervise management policies, the general course of management, both regarding the company and the company's business, and provide advice to the board of directors. The core of the duties of the commissioners is to supervise and provide advice to the board of directors. The board of commissioners is not authorized to carry out management duties which are the duties, obligations, authorities and responsibilities of the board of directors. If a member of the board of commissioners commits a legal act on behalf of the company, then the act is categorized as an ultra vires act. Thus, the act is certainly not binding on the company and becomes the personal responsibility of the member of the board of commissioners concerned.

Usually in the company's articles of association there are several provisions that require the directors to seek approval from the board of commissioners first. This means that if the legal action is carried out by the board of directors without the approval of the board of commissioners, then the act is also not binding on the company because it is categorized as an ultra vires act. Therefore, the legal action only binds the members of the board of directors concerned.

Companies whose business activities are related to collecting and/or managing public funds, companies issuing debt acknowledgments to the public or public companies must have at least 2 (two) members of the board of commissioners.[50] The board of commissioners which consists of more than 1 (one) member is an assembly and each member of the board of commissioners cannot act alone, but based on the decision of the board of commissioners.[51] This provision in the legal literature of the company is referred to as a collegial collective. This means that no member of the board of commissioners, including the main commissioner, is authorized to act for and on behalf of the board of commissioners. Thus, each member of the board of commissioners must obtain approval from other members of the board of commissioners to be able to make decisions on behalf of the board of commissioners.

The members of the board of directors and commissioners apply joint and several liabilities. Accountability jointly and severally for members of the board of directors and commissioners as referred

[50]Article 108 paragraph (5) of the 2007 Company Law.
[51]Article 108 paragraph (4) UUPT 2007.

to in the 2007 Company Law according to Sutan Remy Sjahdeini[52] is defined as follows: (a) Each member of the board of directors and board of commissioners is responsible for the same part. (b) The aggrieved party can claim compensation, sufficient from one member of the board of directors and the board of commissioners only for the total amount of the loss suffered. (c) If one of the members of the board of directors and the board of commissioners has paid compensation to the injured party, then the actions of the member of the board of directors and the board of commissioners relieve the responsibility of other members of the board of directors and commissioners to the injured party. (d) Other members of the board of directors and board of commissioners who have been released from their responsibility to the aggrieved party are then responsible to the members of the board of directors and board of commissioners who have paid the compensation. (e) The members of the board of directors and the board of commissioners who have paid the compensation can then charge other members of the board of directors and commissioners in accordance with their portion of responsibility.

3.Shareholder Liability

In principle, the shareholders of the company are not personally responsible for the agreements made on behalf of the company and are not responsible or not liable for the company's losses in excess of the shares they own.[53] The provisions of Article 3 paragraph (2) of the 2007 Limited Liability Company Law emphasizes that the essence of a Limited Liability Company is limited liability for the shareholders concerned. However, the liability of shareholders is not limited if: (a) the requirements of the company as a legal entity have not been or are not met. (b) The shareholders concerned, either directly or indirectly, in bad faith take advantage of the company for personal gain. (c) The shareholders concerned are involved in unlawful acts committed by the company. (d) The shareholders concerned, either directly or indirectly, illegally use the company's assets, which results in the company's assets being insufficient to pay off the company's debts.[54] The explanation of Article 3 paragraph (2) even means that the liability of shareholders in the amount of the deposit for all the shares they own may be removed if it is proven, among other things, that there is a mixing of the personal assets of the shareholders and the assets of the company so that the company is established solely as a tool used by the shareholders. to fulfill their personal goals as referred to in letters b and d.

Burden of Proof

The burden of proof is one of the important aspects in civil cases. R. Subekti[55] states that the distribution of the burden of proof must be carried out fairly and impartially because a one-sided distribution of the burden of proof means that a priori the party who accepts the burden of proof that is too heavy, falls into the abyss of defeat. This division of the burden of proof is considered a legal or juridical matter, which can be fought up to the level of cassation in the Supreme Court. Implementing an unfair distribution of the burden of proof is considered a violation of law or legislation which is a reason for the Supreme Court to cancel the decision of the judge or court concerned.

Sudikno Mertokusumo[56] both parties, namely the plaintiff and the defendant, can be burdened with proof. In particular, the plaintiff is obliged to prove the events he proposes, while the defendant is obliged to prove his objection. The plaintiff is not required to prove the truth of the defendant's rebuttal, and vice versa, the defendant is not required to prove the truth of the events proposed by the plaintiff. If the plaintiff cannot prove the event he is presenting, he must be defeated. Likewise, if the defendant cannot prove his objection, he must also be defeated. So if one of the parties is burdened with proof and

[52] Sutan Remy Sjahdeini, The Principle of Burden of Reverse Evidence for the Responsibilities of Members of the Board of Directors and Members of the Board of Commissioners of a Limited Liability Company, in *Perkembangan dan Dinamika Hukum Perdata Indonesia*, Lutfansah Mediatama, Surabaya, 2009, p. 75-76.

[53] Article 3 paragraph (1) UUPT 2007.

[54] Article 3 paragraph (2) UUPT 2007.

[55] R. Subekti, *Hukum Pembuktian*, Pradnya Paramita, Jakarta, 2005, p. 15.

[56] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, 1988, p. 110.

he cannot prove, then he will be defeated (risk of proof). In essence, this is nothing but to fulfill the requirements of justice, so that the risk in the burden of proof is not one-sided. Therefore, the distribution of the burden of proof will determine the course of the trial.

The principle of sharing the burden of proof is regulated in Article 163 HIR, Article 283 Rbg and Article 1865 BW which essentially states that whoever argues that he has a right or to confirm his own right or to refute a right of another person, refers to an event, is obliged to prove the existence of a right.

The provisions contained in Article 163 HIR, Article 283 Rbg and Article 1865 BW can be concluded that: (a) Whoever says he has the right, or he presents an event to strengthen the right, is charged with mandatory evidence to prove his right; (b) On the other hand, whoever denies the rights of others, he is charged with the obligation of proof to prove his rights.

The burden of proof as described above is different from the burden of proof regulated in the 2007 Company Law. Limited liability companies as a legal entity recognize the principle of the reverse burden of proof against the directors and commissioners. This can be seen in several provisions, namely Article 97 paragraph (5), 104 paragraphs (4), 114 paragraphs (5), 115 paragraphs (3) of the 2007 Company Law. According to Article 97 paragraph (5) of the 2007 Company Law, it is stated that members of the Board of Directors cannot be responsible for the loss as referred to in paragraph (3) if it can prove: (a) The loss was not due to an error or negligence. (b) Has carried out management in good faith and prudence for the benefit and in accordance with the aims and objectives of the company. (c) Has no conflict of interest, either directly or indirectly, over management actions that result in losses. (d) Have taken action to prevent the occurrence or continuation of the loss.

Based on Article 104 paragraph (4) of the 2007 Company Law, it is stated that members of the board of directors are not responsible for the bankruptcy of the company as referred to in paragraph (2) if they can prove: (a) The bankruptcy was not due to their fault or negligence. (b) Has carried out management in good faith, prudence and full responsibility for the interests of the company and in accordance with the aims and objectives of the company. (c) Has no conflict of interest, either directly or indirectly, over the management actions taken. (d) Has taken action to prevent bankruptcy.

Article 114 paragraph (5) of the 2007 Company Law states that members of the board of commissioners cannot be held responsible for losses as referred to in paragraph (3) if they can prove: (a) They have carried out supervision in good faith and prudence for the benefit of the company and in accordance with the purposes and company goals. (b) Has no personal interest, either directly or indirectly, in the actions of the management of the board of directors that result in losses. (c) Has provided advice to the board of directors to prevent the occurrence or continuation of such losses.

Article 115 paragraph (3) of the 2007 Company Law states that members of the board of commissioners cannot be held responsible for the bankruptcy of the company as referred to in paragraph (1) if they can prove: (a) The bankruptcy was not due to their fault or negligence. (b) Has carried out supervisory duties in good faith and prudence for the benefit of the company and in accordance with the aims and objectives of the company. (c) Has no personal interest, either directly or indirectly, in the management actions by the board of directors that result in bankruptcy. (d) Has provided advice to the board of directors to prevent bankruptcy.

Based on the above provisions, it can be understood that the plaintiff does not need to prove that the loss or bankruptcy of the company was caused by the fault or negligence of the members of the board of directors or the board of commissioners. It is sufficient for the plaintiff to prove that the plaintiff suffered a loss because the company suffered a loss or was declared bankrupt. The sued members of the board of directors or commissioners who must prove that the loss or bankruptcy of the company was not caused by their fault or negligence.

Conclusion

The factor causing the application of the principle of piercing the corporate veil in limited liability companies is that although the limited liability company is a legal entity, the status of the legal entity is ignored or not taken into account legally when the directors, board of commissioners and/or shareholders abuse their authority (ultra vires).

The legal consequence of applying the principle of piercing the corporate veil in limited liability companies is that the status of the limited liability company, which is actually the responsibility or liability of the legal entity of the company, has shifted to the personal responsibility of the directors, commissioners and/or individual shareholders. share.

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