



Implementation of Piercing The Corporate Veil By Shareholders in Limited Liability Companies

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ABSTRACT

This study aims to obtain data and information or information for: Knowing the Implementation of Piercing The Corporate Veil by Shareholders in Limited Liability Company law, Knowing the implementation of Piercing The Corporate Veil by holders share. The approach used in writing this thesis is a normative juridical approach. This means reviewing statutory provisions while still addressing existing problems as well as researching their implementation in practice. only as a tool used by shareholders to fulfill their personal goals, usually these illegal acts are carried out by majority shareholders who do not have good intentions. If a shareholder commits an unlawful or fraudulent act on behalf of the company, he must be responsible for his personal wealth, and this is detrimental to shareholders and stakeholders. Recognition of this principle is something that is generally accepted in any legal system, in the Indonesian legal system it is expressly recognized by UUPT Number 1 of 1995, through Article 3 paragraph (1). 2. Piercing the Corporate Veil by shareholders can be enforced as stated in Article 3 paragraph (2) which states that if there is a mixing of the shareholder's personal assets with the company's assets, then the limited liability will be abolished. The holder of 101 shares is not only responsible for the capital deposited in the company, but must bear the risk to personal assets, if the company suffers a loss, then the responsibility becomes unlimited or no longer a legal act of PT.

1. Introduction

The business world in order to meet demands, on the one hand requires meeting the need for capital for a business, on the other hand it is also possible for passive investors who are not involved with business activities to invest in business activities further than just the investors themselves, then the birth of a limited liability company can be said to be the greatest single invention in the modern century. Future economic chroniclers will place the anonymous founders of limited liability companies in an honorable place with the pioneers of other industries. The statement above shows how important the limited liability company legal entity is in this modern life. Because through a limited liability company, passive investors can deposit a certain amount of capital which is then collected, organized,

A limited liability company as a company with a legal entity is expressly recognized in the provisions of Article 1 point 1 of the Limited Liability Company Law Number 1 of 1995, with the condition that the status of a company legal entity is only obtained after the deed of

establishment of the company is ratified by the Minister of Justice and Human Rights. The ratification of this deed of establishment is when the Company's status changes to become a legal entity.

However, as an artificial person, the company cannot act alone. The company does not have the will to run itself, for this reason people who have the will are needed to run the company in accordance with the aims and objectives of the company's establishment. The people who run, manage and manage this company in the Limited Liability Company Law are referred to as company organs. The term corporate organs is used in Article 1 point 2 of the Limited Liability Company Law, which states that the organs of a company are the General Meeting of Shareholders (GMS), Directors and Commissioners. Each organ within the Company has different duties and authorities in managing and administering the Company.

The term Limited Liability Company itself consists of two words, namely company and limited. Company, refers to limited liability company capital consisting of holdings or shares. The word limited, refers to the responsibilities of shareholders whose scope is limited to the nominal value of all shares owned by shareholders and the limited responsibilities of the Board of Directors as management in a company that is a legal entity such as a limited liability company.

The rationale that the capital of a limited liability company consists of shares or shares can be traced from the provisions of Article 1 of the Limited Liability Company Law, namely:

"Limited Liability Company, hereinafter referred to as a company, is a legal entity established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares, and fulfilling the requirements stipulated in this law and its implementing regulations".

So then a limited liability company as a legal entity, namely an independent legal entity (*persona standi in iudicio*), has characteristics and quality characteristics that are different from other business forms, which are known as the characteristics of a limited liability company, namely as follows: As a capital association ; The assets and debts of the Limited Liability Company are separate from the assets and debts of the Shareholders; Shareholders: (Responsible only for what is deposited or have limited liability); Not responsible for losses of the company (PT) exceeding the value of the shares it has taken; Not personally responsible for agreements made on behalf of the company); There is a separation of functions between shareholders and management or Directors; Have a Commissioner who functions as a supervisor;

The doctrine of Piercing The Corporate Veil or Lifting The Veil then emerged, which means to penetrate the company's veil or penetrate the veil, which, if analogous to a limited liability company, means to penetrate the characteristics of the limited liability possessed by shareholders, company management who commit acts against the law, causing harm company, shareholders and stakeholders. This doctrine emerged from the experience of corporate management in the United States and is part of the common law legal system. This doctrine states that if the shareholders and management of the company commit acts against the law or fraud on behalf of the company, then these parties must be responsible up to personal wealth.

2. Method

2.1 Research Object

Implementation of Piercing The Corporate Veil by Shareholders in limited liability companies.

2.2 Data source

Primary data, namely data obtained from the results of research conducted in the field through

direct observation and interviews. Interviews were conducted by asking a series of questions directly and/or indirectly with the respondent based on questions that had been arranged systematically (guided interview).

Secondary data, namely data obtained by studying various literature related to the problem under study. This data is grouped into three parts, namely: Primary legal materials, namely: legal materials that have binding force, consisting of the Civil Code, Law no. 1 of 1995 concerning Limited Liability Companies, other laws and regulations that need to be examined. 2) Secondary legal materials, namely: legal materials that provide clarity on primary legal materials consisting of books, research reports, scientific journals and other writings that need to be examined. 3) Tertiary legal materials, namely: legal materials that provide clarity on primary and secondary legal materials such as legal dictionaries, economic dictionaries and Indonesian language dictionaries.

2.3 Approach Method

The approach used in writing this thesis is a normative juridical approach. This means reviewing statutory provisions while still addressing existing problems while examining their implementation in practice.

2.4 Data analysis

Data analysis was carried out in a qualitative descriptive manner, namely: collecting data related to the problem to be studied so that it can be described descriptively, qualitatively and comprehensively, namely describing the prevailing reality and still having something to do with applicable legal aspects.

3. Analysis and Results

3.1 Implementation of Piercing The Corporate Veil By Shareholders in Limited Liability Companies.

Every company in the form of a legal entity such as a limited liability company, cooperative, and others, in principle, its assets are legally separate from the assets of the founder or owner, therefore legal responsibility is also separated from the personal assets of the owner of the company in the form of a legal entity. . For example, a limited liability company commits an act with another party, which is responsible for the company and its responsibility is limited to the property owned by the company. The personal property of the shareholders cannot be confiscated or sued for the responsibility of the company, this is a generally accepted principle under normal circumstances. According to Article 3 UUPT.

At present there is a lot of misuse of company assets by shareholders, due to the mixing of personal assets with company assets. This is an unlawful act committed by the shareholder, usually the unlawful act is mostly committed by the majority shareholder who is not in good faith, because the majority shareholder can easily take advantage of the principle of one share one vote through the majority rule to take legal action that is detrimental to the shareholder majority.

Unlawful acts by shareholders, which are generally committed by majority shareholders, may occur in the following cases:

- a) The act violated the law of the majority shareholder at the time before the PT had not yet become a legal entity. Like the majority shareholder of a PT who serves as a director, runs the PT's business by utilizing the existing facilities at the PT for the benefit of his personal company. a. The majority shareholder who became a director wanted the factory construction to be carried out by him, but because the majority shareholder did not have good intentions, he took legal action to manipulate the construction work which ultimately resulted in other shareholders suffering losses. b. Majority shareholders who are experts in the field of financial management become directors of PT. When managing the PT, the

shareholder uses his expertise by taking advantage of his position to use the company's money for his personal interests.

- b) Unlawful act by the majority shareholder who controls and controls the GMS a. When ADPT changes regarding PT capital by issuing new shares in large numbers, the majority shareholder can easily beat the minority shareholder, because the minority shareholder cannot exercise his right to buy new shares (due to lack of funds). As a result, dilution occurs, namely the number of shares owned by minority shareholders becomes smaller, while the number of shares owned by majority shareholders becomes larger. b. The appointment of members of the board of directors and commissioners as company organs often occurs due to the majority rule provisions of the PT, so that decisions can be taken unilaterally by the majority shareholder. c. Granting GMS approval to provide financial assistance to other PTs benefits the majority shareholder, because the PT being assisted is affiliated with a PT owned by the majority shareholder. d. Mergers, consolidations, acquisitions and dissolution of companies that do not involve minority shareholders. e. Selling, guaranteeing and exchanging most or all of the company's assets solely for the benefit of the majority shareholder.

Unlawful acts of the Board of Directors or Commissioners as a result of the Choice or recommendation of the Majority Shareholders:

- a) The Board of Directors cooperates with other companies, but the company is affiliated with a company owned by the majority shareholder,
- b) Directors carry out foreign exchange transactions with the intent and purpose of speculation,
- c) Commissioners act in the interests of the Majority Shareholders and not for the interests of all Majority Shareholders,
- d) Commissioners do not carry out supervision and field inspections, because it has been regulated by the Majority Shareholders.

The acts against the law as mentioned above illustrate an asymmetrical relationship between the majority shareholders and minority shareholders, indicating the existence of various problems that result in loss to the minority shareholders.

Through certain rights granted by law, therefore, in legal efforts the doctrine of piercing the corporate veil. The aggrieved party can sue the party who commits an unlawful act which harms their interests.

The interests of shareholders can be protected through certain rights granted by the Company Law or based on agreements. These rights are as follows: personal rights, preemptive rights, appraisal rights, inquiry or inspection rights and derivative rights, which are legal remedies. Shareholders file a lawsuit against the party that harms them through the court. These rights are expressly or vaguely contained in the provisions of the Company Law and its implementing regulations.

Legal actions taken by shareholders, especially minority shareholders, to sell their shares, mostly due to forced circumstances. This compulsion may have been created by the management of the company or the majority shareholder with bad intentions. If this is the case, then the variations in the allowance for the majority shareholder are known as squeeze outs. In relation to legal protection for shareholders when the Company Law was still in the draft stage. Normin S. Pakpahan in the foreword of his book stated that shareholders are given an Appraisal Right for the shares they wish to sell and a request to the company, so that the shares are purchased at a fair price.

The provisions of UUPT, each shareholder has the right to request that the company buy its shares at a reasonable price, if the shareholder does not agree with the policies of the Board of Directors or Commissioners, disagrees with ADPT changes and others.

The irony is regarding the determination of a fair share price, which must be determined fairly and fairly, which is generally guided by market prices and assessed by an independent appraisal company. The assessment must consider the company's performance in the past and predictions of the company's performance in the future, so that the company's share price will be different for companies that are experiencing financial difficulties; companies that are performing well and companies that have a bright future (Blue Chip Shares). Determination of a fair share value according to the valuation method that has been carried out in the United States is quite fair, because (experience in the United States) the assessment of a fair share price is based on past performance of the company (Past Performance). now and in the future. As for measuring past performance, one must pay attention to: Market Price, Past Earnings, Book Value, Liquidation Value and Going Concern Value. The combination of these elements can produce a fair price (Fair). If the determination of the share price cannot be accepted by the shareholders, then the last legal remedy for the shareholders is the court.

3.2 Implementation of Piercing The Corporate Veil by Shareholders

To further sharpen the study and find out more about legal efforts for the Piercing The Corporate Veil doctrine, the following is a legal case that uses the Piercing The Corporate Veil doctrine:

a) Settlement with the Court

PT Bank Development Asia against PT Djaya Tunggal

PT Bank Development Asia (Bank) domiciled in Jakarta provides credit (loan money) to PT Djaya Tunggal (DT) domiciled in Bogor. Collateral for the credit loan is land including the factory building on it, which is described in the certificate of Building Use Rights (HGB) in the name of DT. After the credit agreement matured, DT was unable to repay the loan, because the company was no longer operating due to heavy losses. However, in reality, President Commissioner Tuan Lee Darmawan (LD) as a creditor is also an administrator at DT who is a debtor at the Bank. LD, in collaboration with the President Director of DT, sold the land and buildings that were used as collateral to Mr. Jahya Poedjokerto (JP), Based on the deed of sale and purchase made by PPAT Bogor, the Bogor Agrarian Office processed the transfer of the name of the land rights from DT to JP and at the same time made a new HGB certificate, because the validity period of the HGB had expired.

Later, it was found that the deed made by PPAT Bogor was incorrect, because the deed was made when the PPAT was not authorized to make it (had ended his term of office or retired), for this incident the bank management filed a lawsuit against the debtor as well as LD and friends. who are no longer the shareholders and management of the Bank. In addition, the new management of the Bank also submitted a request to the Mayor through the Head of the Bogor Land Office to block the issuance of new HGB certificates which had been used as collateral for the Bank. This case involved Bank management and DT management, namely Mr. Tan Sri Junaida (TJS) as President Director, Mr. Koesnan (K) as Director, Mr. LD as Commissioner and Mr. Heri Kianto (HT) as Commissioner. In addition, Mr. JP as the transferee of the collateral land.

The bank asked the Bogor District Court to punish the parties involved in the unlawful act and pay all DT loan money. However, the Bogor District Court in its legal considerations stated: pursuant to Article 45 paragraph (1) of the Commercial Code, company management is not responsible for the agreement made by the company. Therefore, the Bogor District Court, among other things, decided:

Punish PT Djaya Tunggal to pay all loans including interest to PT Bank Development Asia. The case continued to the Bandung High Court, due to an appeal, then the case was decided by the Bandung High Court, among others as follows:

Strengthening the Bogor District Court Decision, number 136/Pdt.G/1987/PN.Bgr. October 24, 1988.

Regarding the appeal decision from the Bandung High Court, the parties were dissatisfied and appealed to the Supreme Court. In its legal considerations, the Supreme Court applied the Piercing The Corporate Veil doctrine and made the following decisions: Punish PT Djaya

Tunggal, the management of PT Djaya Tunggal which consisted of Mr. Sri Junaida who was then President Director, Mr. Koesnan who was then Director, Mr. Lee Darmawan who at that time was Commissioner and Mr. Heri Kianto who was then Commissioner; Likewise Mr. Jahja Poedjokerto as the transferee of the collateral land; Mr. Samadi as PPAT in Bogor who has retired, all of them must be responsible to the extent that personal wealth pays all of PT Djaya Tunggal's loans to the Bank.

This case can be concluded, that the perpetrators of violations of the law or parties who commit acts against the law, must be responsible for their actions up to personal wealth. The court does not only look at the formal legal aspect, it also continues to trace it until it is discovered who is actually the *modus operandi*.

The case of Salomon vs. Salomon

The Case of Solomon (1897) AC 22, House Of Lord. Aron Salomon, a leather and shoe trader with his wife and four children, registered the establishment of a limited liability company under the Companies Act 1862 (UK), and this company bought Aron Salomon's business. The only shareholders of the company are Salomon, his wife and their children. Salomon sold his business for £38,782. It is as if the company paid part of it in cash, which was immediately returned to the company for the return of the share price it owned (20,001 shares). The biggest part of the return price was in the form of a £10,000 corporate note to Aron Salomon. The company's assets are used as collateral for the debt. So, Aron Salomon is the majority shareholder in the company, as well as a creditor whose debt is guaranteed by the company's assets (preferred creditor). He is also the Managing Director who controls the company, because his wife and children vote according to Solomon's instructions. Salomon has 20,001 shares, while the others each have one share. The company then went bankrupt, with a lot of debt to outsiders. When the company is liquidated, its assets are insufficient to pay off unsecured debts. A shortfall of £7,733. its assets are insufficient to pay its unsecured debts. A shortfall of £7,733. its assets are insufficient to pay its unsecured debts. A shortfall of £7,733.

Usually, payment priority is given to creditors with collateral rather than those without collateral. However, the liquidator tried to delay payments to Aron Salomon personally, with the intention of being able to pay creditors without collateral. The liquidator believes that the company is only an agent for Aron Salomon. If this argument is acceptable, then under the agency law, Aron Salomon, as the principal, must bear the losses suffered by his "agent", namely the company.

The court at the first level accepted the liquidator's view by stating: The company does business activities not as the company itself, but as an agent for Aron Salomon; Salomon, as the principal, is obliged to bear the losses of his agent, namely the company; The company, as an agent, has the right to pledge or sell the principal's assets in its possession, to pay debts to third parties, what is meant here are assets used as collateral for the company's debt to Aron Salomon.

The Court of Appeal is of the opinion that there is a flaw in the reasons given to the Judge of first degree. The court of appeal found that there was no evidence of fraud in the sale and transfer of Aron Salomon's business to the company. The fact that sales and transfers have been made cannot be denied, but even though the company is the owner of the business originally owned by Salomon and as the principal, control remains in the hands of Aron Salomon. The fact that the other six shareholders are not independent means that the company is conducting activities on behalf of Salomon, therefore Salomon is obliged to pay the liquidator the amount required to pay creditors without collateral.

However, in a further appeal (cassation), the House of Lords unanimously rejected the liquidator's argument, stating that the company carries out business activities in its own right, for the benefit of the company, not as an agent or trustee, so the company is not an alias for Salomon. The seven shareholders who are required to form a corporation do not need to be independent from one another. Solomon is not responsible for the company's

losses. The liquidator must give priority to paying debts to Salomon over creditors without collateral for company assets.

The case above shows that a limited liability company is an independent legal subject, which is independent from the legal subject of its shareholders. It can be seen that the court, in so far as the formation of a company follows statutory regulations, but considers the company as a legal entity separate from its shareholders, regardless of the background of its formation.

b) Settlement out of Court:

Modern Bank Case

BI has declared BLBI to Modern Banks in the amount of IDR 2.5 trillion. According to Mulyoharjo's statement, Modern Bank through Samadikun Hartono as the bank's majority shareholder has committed irregularities in the use of BLBI. The amount of irregularities reached IDR 766 billion. The funds are used to carry out foreign exchange transactions and increase funds for related or affiliated company groups to increase production activities.

The case of the Indonesian State Trade Bank

BDNI is a private bank whose majority shareholder is Syamsul Nursalim. This bank managed to collect funds in deposits, demand deposits and savings of IDR 16.904 trillion.

BDNI distributes these funds to companies that are in the same group of companies, namely PT. Dipasena of IDR 12.847 trillion.

Credit reached 75.6% of all loans disbursed. This means that there has been a violation of the maximum lending limit (LLL) stipulated in Article 11 paragraph (4) of Law No. 7 of 1992.

When liquidity problems occur due to the rush experienced by this bank, BI distributes BLBI. It turned out that the BLBI was used for its original purpose, but to cover the financial problems experienced by PT. Dipasena. So, the BLBI allocation is not used to bail out funds for payment of customers' savings, deposits and current accounts, but to be used for the personal interests of shareholders.

The two cases above were resolved by the Settlement of Obligations of Controlling Shareholders (PKPSP). This effort is a manifestation of the personal responsibility of the company's shareholders as stipulated in Law no. 1 of 1995. PKPSP, among others, was carried out using the MSAA (Master Settlement and Acquisition Agreement) instrument. The MSAA is an agreement between IBRA and the BLBI obligors. Basically this agreement regulates the settlement of BLBI debts by handing over assets owned by the obligor to IBRA, by handing over these assets it is hoped that the BLBI debt can be paid or repaid. The assets handed over will then be sold by IBRA. If the results of the sale of assets run smoothly as originally expected, even though it is done in stages, it can gradually accelerate the process of national economic recovery.

4. Conclusion

The implementation of Piercing the Corporate Veil by shareholders in a limited liability company is the mixing of the personal assets of the shareholders with the assets of the company, so that the company or limited liability company is established solely as a tool used by the shareholders to fulfill their personal goals, usually an act against the law. This is mostly done by the majority shareholders who do not have good intentions. If a shareholder commits an unlawful or fraudulent act on behalf of the company, he must be responsible for his personal wealth, and this is detrimental to shareholders and stakeholders. Recognition of this principle is something that is generally accepted in any legal system, in the Indonesian legal system it is expressly recognized by UUPT Number 1 of 1995, through Article 3 paragraph (1). 2. Piercing the Corporate Veil by shareholders can be enforced as stated in Article 3 paragraph (2) which states that if there is a mixing of the shareholder's personal assets with the company's assets, then the limited liability will be abolished. The holder of 101 shares is not only responsible for

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