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Application of the Piercing the Corporate Veil Doctrine in the Accountability of the Board of Directors Linked to Law Number 40 of 2007 concerning Limited Liability Companies

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Abstract

The purpose of this paper is to analyze the position of the Board of Directors in a Limited Liability Company according to Law Number 40 of 2007 concerning Limited Liability Companies, and the application of the Piercing the Corporate Veil doctrine in the accountability of the Board of Directors in relation to Law Number 40 of 2007 concerning Limited Liability Companies. The research method used in this research is descriptive analytical, with a normative juridical approach. This research was conducted by means of library research and field research with data collection techniques through documentation studies and interviews as well as data analysis methods used in this study using qualitative juridical analysis. Based on the results of the discussion above, it can be concluded: First, UUPT to some extent acknowledge the validity of this theory of Piercing the Corporate Veil. The application of this theory to the actions of a company causes legal responsibility not only to be requested from the company (even though it is a legal entity), but legal liability can also be requested from its shareholders, Directors or Commissioners. Second, The actions of the Board of Directors which are not based on the principle of fiduciary duty that cause losses to the PT, the Board of Directors can not only be fully responsible personally for the losses that occur in accordance with Article 97 paragraphs (3) and (4) of the Company Law, the Board of Directors must be responsible for the losses incurred by the company due to his or her mistakes and omissions.

Keywords
limited liability company; directors; piercing the corporate veil doctrine

I. Introduction

In order to realize national development, it is necessary to improve quality and productivity in various sectors, one of which is the economic sector. The economic condition of the population is a condition that describes human life that has economic score (Shah et al, 2020). Economic activities are very supportive of development activities in Indonesia today, one of which is economic activity in the form of companies or business entities founded by individuals or individuals. A business activity is an activity that develops from time to time, each individual is always looking for a way to get something more profitable by establishing trade business forms, one of which is a Limited Liability Company (hereinafter abbreviated as PT).

A limited liability company is an independent legal subject (Rechtpersoon), which is independent of the legal subjects of its shareholders (Natuurlijkepersoon). To the extent that the formation of the company complies with the prevailing laws and regulations, the limited liability company is a separate legal entity from its shareholders, regardless of the background of its formation. The basic doctrine of a Limited Liability Company is that a

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Limited Liability Company is a company which is a separate legal entity from the individual legal subjects who are the founders or shareholders of the Limited Liability Company.

The disclosure of the corporate veil or in English is called piercing the corporate veil, in almost all modern legal systems this theory is known. It's just that what differs is the degree of recognition and the variety of applications. These differences are caused either by the legal tradition of the country concerned, namely whether from the Anglo Saxon legal tradition, the Pranas Continental European Law tradition, or the German Continental European legal tradition, or because of differences in interpretation and legal experience in the country concerned". With the enactment of the Limited Liability Company Law Number 40 of 2007, Indonesian law began to recognize the doctrine of piercing the corporate veil to a certain extent, which was directed at shareholders, directors, even in very special cases to the board of commissioners of a limited liability company.

According to the Company Law, as emphasized in Article 3 paragraph (2) that in certain cases, it is possible to eliminate the liability of the Limited Liability Company.Not infrequently, business decisions that have been in accordance with procedures still suffer losses. To accommodate this and so that the Board of Directors dares to take business decisions so that SOEs can still compete with other economic actors, Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the Limited Liability Company Law) provides legal protection to the Company's Directors through the principle of Business Judgment Rule (hereinafter referred to as BJR).). The BJR principle postulates that a member of the Board of Directors cannot be prosecuted for his decisions that result in losses on the condition that the decisions are taken carefully, have followed the applicable regulations, and are carried out in good faith. This principle aims to protect the Board of Directors from any business decisions taken for the benefit of the Company.

Certain matters are referred to, among others, if it is proven that there is a mingling between the personal assets of the shareholders and the assets of the Limited Liability Company, so that the Limited Liability Company is established solely as a tool used by the shareholders to fulfill their personal goals. With the adoption of the Piercing the Corporate Veil doctrine in company law, the legal liability of shareholders which was originally limited can become unlimited in certain cases.

Based on the description above, this paper focuses on problems, namely what is the position of the Board of Directors in a Limited Liability Company according to Law Number 40 of 2007 concerning Limited Liability Companies?; and the application of the Piercing the Corporate Veil doctrine in the accountability of the Board of Directors in relation to Law Number 40 of 2007 concerning Limited Liability Companies?

II. Research Method

This research is analytical descriptive in nature, namely making systematic, factual and accurate predictions about facts. Thus, this study will describe various legal and factual issues as well as other symptoms, which are related to the application of the doctrine of piercing the corporate veil on the responsibility of directors based on Law Number 40 of 2007 concerning Limited Liability Companies.

This study uses a normative juridical approach, namely by using a number of secondary data obtained from the results of the study, in order to examine whether the applicable legal provisions in practice are appropriate to be applied in solving a problem. In addition, to examine legal principles, it is carried out with legal norms which are the benchmark for behaving or doing appropriate actions.

Research conducted by the author, emphasizes library research supported by field research. Thus, this research is divided into 2 (two) stages, namely: Library research is carried out by examining secondary data which is primary legal material, namely in the form of statutory provisions and secondary legal materials in the form of scientific writings of Law Scholars. relating to the writing of this thesis as well as tertiary legal materials in the form of newspapers or magazines, and field research intended to complement secondary data obtained through library research.

The technique used to conclude this data is in 2 (two) ways, namely document studies, namely conducting research on documents in the form of books, literatures and laws and regulations, which are closely related to the problem being studied, and interviews, namely conducting interviews question and answer to obtain supporting data directly from the relevant agencies.

The method of analysis in this study uses a qualitative normative analysis, namely legislation that does not conflict with one another, pays attention to the legal hierarchy and looks for a living law. Juridical, because this research is based on the existing regulations as positive law. Qualitative because it is an analysis of data derived from information from interviews. Thus it is a data analysis without using mathematical formulas and numbers.

III. Results and Discussion

3.1 The position of the Board of Directors in a Limited Liability Company according to Law Number 40 of 2007 concerning Limited Liability Companies

The Board of Directors in a company is one of the most important organs in the implementation of the company which is tasked and responsible for managing the company. As for what is meant by directors according to Article 1 point 5 of Law Number 40 of 2007 concerning Limited Liability Companies are as follows:

"The Board of Directors is a Company Organ that is authorized and fully responsible for the management of the Company for the benefit of the Company, in accordance with the purposes and objectives of the Company and represents the Company, both inside and outside the court in accordance with the provisions of the articles of association."

Several legal experts and scientists formulate the position of the Board of Directors in a Limited Liability Company as a combination of 2 (two) kinds of agreements or agreements, namely:

a. Power of attorney agreement, on the one hand, and
b. Employment or labor agreements, on the other hand.

The Board of Directors on the one hand, is treated as the recipient of the power of attorney from the Company to run the Company in accordance with its interests to achieve the Company's goals as outlined in the Company's Articles of Association, and on the other hand is treated as an employee of the Company, in a superior-subordinate relationship in a labor agreement which means The Board of Directors is not allowed to do anything that is not or is not their duty.

The main task of a Board of Directors is to carry out the best management of the Company for the interests and objectives of the Company and to represent the Company inside and outside the court, so that the purposes and objectives of the Company will be achieved. The management duties of the Board of Directors are not limited to routine activities, but are also authorized and obliged to take the initiative to make plans and estimates regarding the development of the Company for the future in order to realize the aims and objectives of the Company.

The Board of Directors is one of the vital organs of the Company, which is fully responsible for managing the Company for the interests and objectives of the Company and representing the Company both inside and outside the court (Article 98 paragraph (1) of the Company Law). In this case, there are two powers of the Board of Directors, namely management and representation. Management talks about the internal relationship between the management and people whose assets are in the management of the management, then the representative talks about external relations, namely the relationship between the management and the assets managed by the management, with a third party with whom a legal action is carried out by the management in his capacity as manager of other people's property.

Thus, the management of the Company talks about internal relations, namely the relationship between the Board of Directors and the Company and shareholders (General Meeting of Shareholders). The Company's representatives spoke about external relations, namely the relationship between the Board of Directors and third parties in carrying out legal actions for and on behalf of the Company. Therefore, the responsibilities of the Board of Directors can be divided into:

a. The internal responsibilities of the Board of Directors include the responsibilities of the Board of Directors towards the Company and the Company's shareholders;
b. External responsibilities of the Board of Directors, which include the responsibilities of the Board of Directors to third parties who have legal relations, either directly or indirectly with the company.

The responsibility of the Board of Directors of the Company to third parties is manifested in the obligation of the Board of Directors to provide disclosure to third parties for each of the Company's activities, which are considered to be able to affect the Company's assets.

In the event that the members of the Board of Directors consist of more than 1 (one) member of the Board of Directors, each member of the Board of Directors is authorized to represent the Company unless otherwise stipulated in the Company Law and/or Articles of Association. This is because the Company Law adopts a collegial representation system, meaning that each member of the Board of Directors is authorized to represent the Company. Therefore, the authority of the Board of Directors to represent the Company is unlimited and unconditional, unless otherwise stipulated in the Company Law, articles of association, or the decision of the General Meeting of Shareholders. The decision of the General Meeting of Shareholders may not conflict with the provisions of the Company Law and/or the articles of association of the Company.

Limited Liability Company as a legal entity in carrying out legal actions must go through its management. Without the management of the legal entity it will not be able to function. The dependence between legal entities and management is the reason why between legal entities and management creates a fiduciary relationship (fiduciary duties) where the management is always the party who is trusted to act and use their authority only for the benefit of the Company.

A Limited Liability Company as a legal entity (legal entity) is an independent legal entity (persona standi in judicio) which has characteristics and qualities that are different from other forms of business. The relationship between the Board of Directors and the Company is not only based on a working relationship, but the Board of Directors also has a fiduciary relationship with the Company. The Board of Directors has a fiduciary position in the Company. The fiduciary duty of the Board of Directors will provide significant protection for shareholders in the implementation of the management of the Company.

This is because the shareholders and the Company cannot fully protect themselves from the harmful actions of the Board of Directors where the Board of Directors acts on behalf of the company and shareholders. So to avoid misuse of company assets and authority by the Board of Directors, the Board of Directors is thus charged with fiduciary duty.

The Board of Directors as an organ of the Company historically, in principle there is a theory of fiduciary duties which are imposed on the Board of Directors. Therefore, many arguments and jurisprudence have been made for the responsibility of the Board of Directors in carrying out the fiduciary duty relationship between the Board of Directors and the Company. However, in its development, the fiduciary duty principle by the Board of Directors has been developed and applied to several other parties in the Company, namely the shareholders and employees of the company.

The doctrine of duty of care, requires directors and management to behave carefully as people behave in the same situation. If the director violates the duty of care and causes the company to suffer financial losses, the court will decide that the director and management are personally responsible for paying compensation to the company. On the other hand, if the board of directors and management approve a transaction by ignoring the duty of care and the transaction has not been carried out, the court will apply an injection to prevent the transaction. Precautionary criteria or standards can be divided into several types, namely:

a. The basic standard, that directors should act like ordinary people who are careful in the same situation:
    1. If someone is already sitting as a board of directors then he is subject to duty of care, even though that person is only a puppet;
    2. Liability for breach of duty of care only applies if the director commits an act of gross negligence.
b. Objective standards, meaning that directors who have abilities below the average of ordinary people in the position of directors must meet the standards of the average person. On the other hand, directors who have special skills must use these special skills.
c. Favorable decisions to expert advice and committees. The Board of Directors has the right to make decisions based on expert advice and committees, but it must make sense in certain situations.
d. Passive negligence, the directors are not responsible for their negligence because they do not know the mistakes made by management and employees. However, if he knows the facts that lead to the suspicion of deviant behavior, then he cannot turn a blind eye to that fact. In a large company, directors who do not implement mechanisms to monitor misconduct, such as internal accounting controls or audit committees, may be deemed to have violated the duty of care.
e. Even if the board of directors violates the duty of care, he is only responsible for losses if his actions are the proximate cause or the closest cause of the loss.

3.2 Application of the Piercing the Corporate Veil Doctrine in the Accountability of the Board of Directors Linked to Law Number 40 of 2007 concerning Limited Liability Companies

One of the popular topics in corporate law is the topic of piercing the corporate veil. The doctrine of Piercing the corporate veil is closely related to the nature of the Limited Liability Company itself. Limited Liability Company is a business entity that has the status of a legal entity. With the status of a legal entity, the Limited Liability Company has its own assets and responsibilities.

The universal application of Piercing the Corporate Veil Theory is carried out in the following ways:

a. Limited liability companies do not follow certain formalities;
b. Application of Piercing The Corporate Veil to legal entities that are only artificially separated;
c. Application of Piercing The Corporate Veil based on a contractual relationship; and
d. Application of Piercing The Corporate Veil due to unlawful acts or criminal acts.

The Board of Directors does enjoy limited liability, but it is also not absolute. If the board of directors does not carry out their duties to manage the company in good faith and full of responsibility as contained in Article 97 paragraph (2) jo (3), then the responsibility can reach personal assets.

Things that can make the board of directors be held personally responsible for the loss of a limited liability company include:

a. The Board of Directors does not carry out Fiduciary Duty to the company;
b. Financial statements of limited liability companies that are incorrect and/or misleading;
c. The limited liability company is bankrupt due to the fault or negligence of the board of directors;
d. The member of the board of directors does not report the share ownership by the member of the board of directors concerned and/or his family in a limited liability company, so that the member of the board of directors concerned is personally responsible in accordance with Article 101 paragraphs (1) and (2) of the Company Law.

Any violation or deviation from the duties and obligations of the board of directors, the board of directors must be responsible to their personal assets for the losses suffered by each interested party. The forms of violations and deviations are as follows:

a. Not carrying out their duties professionally in accordance with their expertise. The forms of professional violations include:
b. Whether intentionally or not, commits a breach of the assigned duty (breach of duty);
c. Whether intentionally or not, neglecting the duties that should be carried out (omission of duty);
d. Whether intentionally or not, giving a false statement (misstatement);
e. Whether intentionally or not, providing a misleading statement (misleading statement);
f. Whether intentionally or not, abuse of authority or power as directors;
g. Whether intentionally or not, does not fulfill the promise that has been given (breach of warranty or authorithy commitment).
h. Not carrying out his duties as a shareholder representative properly.

The company's losses will be the responsibility of the board of directors if all such errors or omissions can be proven.

In this case, the public shareholder as an investor in PT Askrindo can ask the Board of Directors for personal responsibility, by replacing all costs that have been or will be incurred by the company provided that it is proven that the directors are proven to have made mistakes or negligence in carrying out their duties to manage the company (fiduciary duty), which will lead to losses suffered by PT. Askrindo.

Based on Article 97 paragraph (3) jo (2) of the Company Law, it is stated that the Board of Directors must first state their mistakes or negligence. In cases where it appears that the board of directors has takenthe decision to provide investment to PT. Cable Tranka, PT. Vitron, PT. Indowan and PT. Multimegah is not carried out with the principle of prudence, and does not calculate the risk of loss. This indicates that the board of directors has committed an unlawful act. The placement of Askrindo's funds in the form of repurchase agreements (Repo), fund management contracts (KPD), bonds and mutual funds has enriched the investment managers. Of the Rp 442 billion investment fund, the new investment manager returned Rp 35 billion. There is still around Rp 407 billion which has not been returned to PT. Askrindo. The funds that have not been returned are PT Askrindo's losses, because the shares are owned by the government, so PT Askrindo's finances are state finances. Thus, the Board of Directorscan be held accountable for this company's decision for not managing the company properly. The definition of managing the company with full responsibility by the explanation of Article 97 paragraph (2) of the Company Law is defined as paying attention to the company carefully and diligently. In this case, it relates to the duties of the board of directors in managing the company as well as supervising the management by implementing elements whose position is lower than the directors as executor in the field.

So, it can be concluded that if the board of directors does not have good faith and does not manage the company with full responsibility (fiduciary duty), then in accordance with Article 97 paragraph (3) jo (4) the board of directors must be responsible for the company's losses caused by his or her omissions or omissions jointly and severally. However, one thing that needs to be considered is the proof of the fault of the board of directors. If the board of directors is able to prove that he is not guilty, then the board of directors is not responsible.

Even the application of the doctrine of piercing the corporate veil in its development also imposes legal responsibilities on other company organs such as directors or commissioners. The Company Law recognizes the doctrine of piercing the corporate veil as stated in Article 3 paragraph (1) of the Company Law, where the Company's shareholders are not personally responsible for the engagement made on behalf of the Company and are not responsible for the Company's losses exceeding the shares they own. Article 3 paragraph (2) of the Company Law confirms that a company lawsuit is a lawsuit that can be brought by or against a company or its organs to the court based on the provisions of the company law or the company's articles of association.

In the Company Law, there are various models of lawsuits/applications to court in relation to lawsuits against PT. The models of lawsuits against a company are as follows:

a. Ordinary lawsuit
   This ordinary lawsuit is a lawsuit that can be brought by or against the PT or its organs to the court based on provisions outside the provisions of the Company Law or outside the articles of association of the PT. And this ordinary lawsuit is involved in ordinary cases such as lawsuits based on unlawful acts (onrechtmatige daad) or default.
b. Lawsuit Against Commissioner Error
   The same lawsuit (derivative lawsuit) as filed for the Director mentioned above based on Article 97 paragraph (6) also applies to members of the Board of Commissioners based on Article 114 paragraph (6) of the Company Law.
c. Lawsuit for Capital Reduction
   In the event of a capital reduction, the creditor may file an objection and the reasons to the company. If within the time specified, the company does not respond adequately, then the creditor may file a lawsuit to the competent District Court (Article 45 paragraph 3 of the Company Law). This is a “direct lawsuit”, with the plaintiff being the creditor and the debtor being the company. It is called a direct lawsuit because the creditor does not represent anyone in filing his lawsuit to the District Court, but represents himself.

d. Lawsuit Against the Plan for Distribution of Wealth Result of Liquidation
If the objection of the creditor on the plan to distribute the assets resulting from the liquidation is rejected by the liquidator, the creditor may file a lawsuit to the District Court within a period of no later than 60 (sixty) days from the date of rejection from the liquidator (see Article 149 paragraph (4)).
e. Lawsuit Against Liquidators
As regulated in Article 150 paragraph (1) of the Limited Liability Company Law, in the event of the dissolution of the company, the creditor can submit a debt claim to the liquidator. In this case the liquidator rejects the claim, then the creditor can file a lawsuit to the competent court. This lawsuit is also a direct lawsuit by the creditor, in which the creditor acts for and on behalf of himself.
f. Lawsuit on Remaining Assets After Liquidation
For the creditor whose identity or address is not known at the time of liquidation, so that he does not submit his claim to the liquidator, the creditor can file a lawsuit to the District Court against the remaining price of the price that has been divided by the liquidator, commencing 2 (two) years. since the dissolution of the company was announced. This is a brief discussion that can be conveyed by the author regarding the lawsuit for and on behalf of the PT, in accordance with the new UUPT, namely Law Number 40 of 2007 concerning Limited Liability Companies.

In this case, it is permissible if a lawsuit is filed by the shareholders. However, the lawsuit on behalf of the PT that was filed based on Article 97 paragraph (6) of the Company Law, namely in the event that the Board of Directors has a conflict of interest, including if the Board of Directors becomes the defendant, it is not a derivative claim. This is because the shareholders according to Article 97 paragraph (6) are considered official by the GMS or the Articles of Association, and act no longer in their capacity as shareholders, but in the company's lawsuit. Incidentally, the company is represented by people who come from shareholders. So, it is different from the lawsuit based on Article 97 paragraph (6) and Article 114 paragraph (6). The provisions as referred to in paragraph (1) do not apply if:

a. Requirements companyas a legal entity has not been or is not fulfilled.
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 unlawfully use the Company's assets which results in the Company's assets being insufficient to pay off the Company's debts.

Apart from the article above, there are still other things that result in the consequence that legal responsibility is imposed on the shoulders of shareholders, even though the responsibility is as a result of actions taken by a PT, which is a legal entity, among others:

a. Not Depositing Capital
Shareholders do not carry out their duties to deposit capital, even though each share must be fully paid up by its shareholders at the time of ratification by the Minister of Justice, or when the shares are issued further.
b. Mixing Personal Affairs with Corporate Affairs
The doctrine of piercing the corporate veil is also appropriate to apply when there is confusion between company affairs and personal affairs, so that the personal responsibility of the shareholders concerned can be requested. Examples of mixing

between company affairs and personal affairs are company funds used for personal matters, PT assets owned by PT in personal names, or PT payments by personal checks without clear justification.

c. Alter Ego
The doctrine of piercing the corporate veil is also appropriate to apply to shareholders when the shareholders are too dominant in the company's activities beyond the proper role of shareholders. Thus, in this case the company only functions as an "instrument" seeking personal gain from the shareholders. In this case, the PT is said to be the alter ego (sometimes referred to as instrumentality, dummy or agent) of the shareholder concerned. It's just that the use of the word "agent" here is not in the right place. Because if it is said that the PT is only an agent of the shareholder, this means that the PT as an agent should have the authority to bind the principal (shareholder) with a third party. However, this authority does not belong to the company.

d. Personal Guarantee and Shareholders
If the shareholders provide personal guarantees for contracts or businesses made by the company, it means that the shareholders do want to be responsible for certain activities carried out by the PT. So that by itself, the shareholders are also responsible when there is a lawsuit from a third party for losses arising from the activities they guaranteed earlier. When and to what extent the shareholders are responsible, depends on the content of the guarantee agreement (guarantee). The guarantee agreement from the shareholders is an example of the contractual application of the doctrine of piercing the corporate veil.

e. Improper Capital
Inappropriate capital, for example too little capital even though the company's business is large. Due to the obligation of the shareholders to deposit additional capital and the inadequacy of this capital, it creates a transfer of responsibility from the shareholders to the Director. This is totally inappropriate. However, apart from the shareholders who are responsible, to a certain extent, the Board of Directors can also be held responsible for this matter.

In carrying out civil legal remedies, it is known that one of them is legal remedies for filing lawsuits for parties who are harmed by the actions of other parties. Likewise with independent legal subjects, PT has the right to file a lawsuit or a lawsuit is filed for its actions. In addition to lawsuits that are general in nature, there are corporate lawsuits, namely lawsuits that are specifically published in company law, not from procedural law in general. Even the same thing mutatis mutandis also applies in the criminal field, so that what can be called a company indictment also appears. In this case, the company or the parties in it can be the defendant/defendant or as the plaintiff/reporter. The company's lawsuit is stated in the Company Law in the following articles: Article 61 paragraph (1), Article 97 paragraph (6), Article 114 paragraph (6),

In Article 114 paragraph (1) of the Company Law it is stated that: "The Board of Commissioners is responsible for the supervision of the company as referred to in Article 108 paragraph (1)". In the provisions of Article 108 paragraph (1) of the Company Law, it is stated that the Board of Commissioners carries out supervision and management policies, the general course of management, both regarding the company and the company's business, and provides advice to the board of directors.

Supervision and providing advice in Article 108 paragraph (1) of the Company Law is carried out for the benefit of the company and in accordance with the aims and objectives of the company. In the explanation in Article 108 paragraph (2) of the Company

Law it is explained that what is meant by "for the interest of the company and in accordance with the aims and objectives of the company" is that the supervision and providing advice carried out by the Board of Commissioners is not for the benefit of certain parties or groups, but for the interests of the company. thoroughly and in accordance with the aims and objectives of the company.

Furthermore, the provisions of Article 114 paragraph (2) of the Company Law stipulates that each member of the Board of Commissioners must be in good faith, be careful and responsible in carrying out supervisory duties and providing advice to the board of directors for the benefit of the company and in accordance with the aims and objectives of the company.

The provisions of Article 114 paragraph (2) of the Company Law are the principle of duty of care that must be obeyed by the board of commissioners. As with the principle of duty of care of a director, if the Board of Commissioners has violated this principle, it can also be subject to punishment. The Board of Commissioners is also personally responsible for the company's losses if the person concerned is guilty or negligent in carrying out his duties.

Even though the Board of Commissioners is in charge of supervising, it does not mean that the commissioners have no responsibility and cannot be held accountable in the event of a loss in the company. In the provisions of Article 114 paragraph (3) of the Company Law, obligations are imposed on members of the commissioners, then the law implicitly also provides sanctions if these obligations are violated. If in the articles of association the commissioner is given the authority to give approval to the Board of Directors/members of the Board of Directors in carrying out certain legal actions, then in this case there is a loss to the company with the approval of the Commissioner, the Commissioner can be held accountable for legal actions taken by the Board of Directors/members of the Board of Directors. with the approval of the Commissioner.

In the event of bankruptcy due to the error or negligence of the board of commissioners in carrying out the supervision carried out by the board of directors and the company's assets are not sufficient to pay all of the company's obligations as a result of the bankruptcy, each member of the board of commissioners is jointly and severally responsible for the members of the board of directors or obligations that have not been paid off.

Members of the Board of Commissioners cannot be held accountable if they can prove:

a. The bankruptcy is not due to his fault or negligence;
b. Has carried out supervisory duties in good faith and prudence for the benefit of the company or in accordance with the aims and objectives of the company;
c. Does not have a personal interest, either directly or indirectly, in the management actions by the board of directors that result in bankruptcy; and
d. Has provided advice to the board of directors to prevent bankruptcy.

IV. Conclusion

Based on the results of the discussion above, it can be concluded: First, UUPT to some extent acknowledge the validity of this theory of Piercing the Corporate Veil. The application of this theory to the actions of a company causes legal liability not only to be requested from the company (even though it is a legal entity), but legal liability can also be requested from its shareholders. Even the application of the doctrine of piercing the corporate veil in its development also imposes legal responsibilities on other company organs such as the Board of Directors or Commissioners. The doctrine of piercing the corporate veil can be applied in limited liability companies in the event of misleading facts, fraud and injustice and to protect minority shareholders, the shareholders concerned, either directly or indirectly in bad faith (tekwaadetrouw or faith) using the company solely for personal interests, the shareholders concerned, either directly or indirectly illegally using the company's assets is not sufficient to pay off the debts of the company or PT; Second, The actions of the Board of Directors that are not based on the principle of fiduciary duty that cause losses to the PT, the Directors can not only be fully responsible personally for the losses that occur, but the directors can also be sued in court by other shareholders. Thus, the Board of Directors does not have good faith and does not manage the company with full responsibility (fiduciary duty), then in accordance with Article 97 paragraphs (3) and (4) of the Company Law, the Board of Directors must be responsible for the company's losses caused by mistakes and negligence is jointly and severally.

References

Ais, Chatamarrasjid Ais. 2000. *Menyingkap Tabir Perseroan "Piercing the Corporate Veil" Kapita Selekta Hukum Perusahaan*. Bandung: Citra Aditya Bakti.

Chatamarrasjid Ais, 2003. "Pengaruh Piercing The Corporate Veil Dalam Perseroan Terbatas", *Jurnal Hukum Bisnis*, volume 22-No. 6 Tahun 2003.

Chatamarrasjid Ais, 2004. *Penerobosan Cadar Perseroan dan Soal-soal Aktual Hukum Perusahaan*. Bandung: Citra Aditya Bakti.

Doktrin *Fiduciary Duty* dan Peran Direksi, 7 April 2009.

Fisher, Simon, et.al. (2001). *Corporation Law*. Australia: Butterworths.

Friedman, Jack P.1987. *Dictionary of Business Terms*. New York : Baron's Educational Services, Inc..

Fuady, Munir. 2010. *Doktrin-doktrin Modern Dalam Corporate Law dan Eksistensinya Dalam Hukum Indonesia*. Bandung: Citra Aditya Bakti.

Hadikusuma, Hilman. 1995. *Metode Pembuatan Kertas Kerja atau Skripsi Ilmu Hukum*. Bandung: Mandar Maju.

Hanitijo Soemitro, Ronny. 1998. *Metodologi Penelitian Hukum dan Jurimetri*. Semarang: Ghalia Indonesia.

http://www.rmol.co/read/2012/07/07/69992/5, Tersangka Kasus Askrindo Segera Digiring ke Pengadilan. Diakses pada tanggal 06 September 2012, pukul 20.00 WIB.

Mertokusumo, Sudikno. 1996. *Penemuan Hukum* (*Sebuah Pengantar*). Yogyakarta: Liberty.

Moeljatno, 2000. *Asas-Asas Hukum Perdata*. Jakarta: Rineka Cipta, h. 165.

Muhammad, Abdulkadir. 2002. *Hukum Perseroan Indonesia*. Bandung: Citra Aditya Bakti.

Putusan Mahkamah Agung Nomor 121 K/Pid.Sus/2020.

Putusan Mahkamah Agung Nomor 1401 K/Pid.Sus/2014.

Ray Widjaya, I.G. 2005. *Hukum Perusahaan*. Jakarta: Mega Poin.

Sembiring, Sentosa. 2008. *Hukum Dagang*. Bandung: Citra Aditya Bakti.

Shah, M. M., et al. (2020). The Development Impact of PT. Medco E & P Malaka on Economic Aspects in East Aceh Regency. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*. Volume 3, No 1, Page: 276-286

Sihombing, Bernard. 2008. *Piercing The Corporate Veil dalam Korporasi*. Depok: Fakultas Hukum Universitas Indonesia.

Soekanto, Soerjono dan Srimamudji, 2001. *Penelitian Hukum Normatif*. Jakarta: Raja Grafindo Persada.

Suharnoko, 2004. *Hukum Perjanjian, Teori Dan Analisa Kasus*. Jakarta: Prenada Media Group.

Sumadi, 1988. *Metode Penelitian.* Jakarta: Rajawali.

Umar Kasim, 2005. "Tanggung Jawab Korporasi dalam Hal Mengalami Kerugian, Kepailitan atau Likuidasi", *Informasi Hukum*, Vol. 2, 2005, Tahun VII, http:// www.nakertrans.go.id/majalah_buletin/info_hukum/vol2_v_ii_2005/ Tanggung_jawab_korporasi.php. Diakses pada tanggal 15 September 2012, pukul 13.00 WIB.

Undang-Undang Nomor 40 tahun 2007 tentang Perseroan Terbatas

Widjaja, Gunawan dan Yani, Ahmad. 2000. *Seri Hukum Bisnis: Perseroan Terbatas*. Jakarta: Rajagrafindo Persada.

Widjaja, Gunawan. 2004. *Seri Aspek Hukum dalam Bisnis: Pemilikan, Pengurusan, Perwakilan dan Pemberian Kuasa dalam Sudut Pandang KUH Perdata.* Jakarta: Kencana.

_____, 2008. *Risiko Hukum Sebagai Direksi, Komisaris dan Pemilik PT*. Jakarta: Forum Sahabat.