

THESIS

THE APPLICATION OF PIERCING THE CORPORATE VEIL PRINCIPLES IN DECISION DISTRICT COURT NUMBER 95/Pdt.G/2017/PN.JKT.SEL AND 47/Pdt.G/2021/PN.MTR



By:

AGIZAH DHIYA SYADZWINA
Student ID. **B011191069**

**BACHELOR OF LAW STUDY PROGRAM
FACULTY OF LAW HASANUDDIN UNIVERSITY
MAKASSAR
2024**

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TITLE PAGE

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Submitted as One of the Requirements to Achieve a Bachelor's Degree in
the Bachelor of Law Study Program

Arrange and submitted by:

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THESIS APPROVAL

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Arranged and Submitted by :

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to complete the Study of Undergraduate Program of Civil Department,
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On Tuesday, July 16, 2024
And declared to have met the graduation requirements

Approved,

Main Supervisor

Companion Supervisor

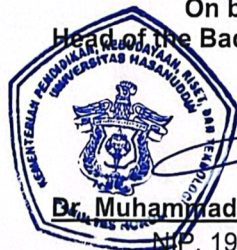


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STATEMENT OF AUTHENTICITY

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I hereby declare that the thesis entitled **THE APPLICATION OF PIERCING THE CORPORATE VEIL PRINCIPLES IN DECISION DISTRICT COURT NUMBER 95/Pdt.G/2017/PN.JKT.SEL AND 47/Pdt.G/2021/PN.MTR** is genuinely my work. Anything that is not my work in this thesis is appropriately cited and indicated in the bibliography.

If in the future it is proven that my statement is untrue, I am willing to accept sanctions in accordance with the regulations of the Minister of National Education of the Republic of Indonesia Number 17 of 2010 and the applicable law and regulation.

Makassar, 01 July 2024



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FOREWORD

All Praise to Allah SWT for His abundance of grace so that the Author can complete the writing of a thesis entitled "The Application of Piercing The Corporate Veil Principles In Decision District Court Number 95/Pdt.G/2017/PN.JKT.SEL and 47/Pdt.G/2021/PN.MTR" as one of the requirements in obtaining a Bachelor of Law degree at the Faculty of Law, Hasanuddin University. Shalawat and salaam to Prophet Muhammad SAW and His Family, the Prophet who has led us to a life full of goodness.

On this occasion, with humility, the Author would like to express the deepest gratitude to the Author's parents, Mr. Sofyan Muhammad, S.T., M.T. and Mrs. Jumrah, S.E. whose prayers and support have never been stopped for the Author, may Allah always give the blessing of life with a lot of happiness. As well as the Author's brothers and sister, Ghazy, Afrah, and Azka who always provide warmth at home, may you all always be surrounded by good things in this world.

The author would also like to express the deepest gratitude to:

1. Prof. Dr. Ir. Jamaluddin Jompa, M.Sc. Rector of Hasanuddin University, Mr. Prof. drg. Muhammad Ruslin, M. Kes., Ph.D., Sp.BM(K), Vice-Rector for Academic and Student Affairs, Prof. Dr. Subehan, S.Si., M.Pharm., Sc., Ph. D, Apt., Vice-Rector for Planning, Development and Finance, Prof. Dr. Farida Patittingi S.H., M. Hum., Vice-Rector for Human Resources, Alumni, and Information Systems, Prof. Dr. Eng. Adi

Maulana, S.T., M.Phil., Vice-Rector for Partnership, Innovation, Entrepreneurship, and Business, Prof. Ir. Sumbangan Baja, M.Phil., Ph.D., Secretary of Hasanudin University;

2. Prof. Dr. Hamzah Halim, S.H., M.H., M.A.P. as Dean of the Faculty of Law, Hasanudin University, Prof. Dr. Maskun, S.H., LL.M. as Vice Dean for Academic and Student Affairs, Faculty of Law, Hasanudin University, Prof. Dr. Iin Karita Sakharina, S.H., M.A. as Vice Dean for Resource Planning and Alumni, Faculty of Law, Hasanudin University, Dr. Ratnawati, S.H., M.H. as Vice Dean for Partnership, Research and Innovation, Faculty of Law, Hasanudin University;
3. Dr. Muh. Ilham Arisaputra, S.H., M.Kn. as the Head of Bachelor Law Program in the Faculty of Law, Hasanuddin University;
4. Dr. Oky Deviany, S.H., M.H., as the main supervisor and Mrs. Andi Suci Wahyuni, S.H., M.Kn., as co-supervisor. Thank you for the guidance, direction, knowledge, and opportunities in compiling this thesis research. Even though they have a lot of schedules and activities.
5. Dr. Winner Sitorus, S.H., M.H., LL.M., and Mrs. Fadilla Jamila, S.H., LL.M. as examiners in this thesis research. Thank you for the feedback, advice, and knowledge to the Author in compiling this thesis research.
6. Prof. Dr. Iin Karita Sakharina, S.H., M.A. as the Author's Academic Advisor who gives direction for the Author during the Author's lecture period in the Faculty of Law Hasanuddin University;
7. Dr. Aulia Rifai, S.H., M.H. as the Head of Civil Law Department and Mrs. Amaliyah, S.H., M.H. as the Secretary of Civil Law Department in Faculty of Law, Hasanuddin University;

8. All Lecturers and Staffs in Faculty of Law, Hasanuddin University, especially the lecturers of Civil Law Department and all the lecturers in charge for the International Class;
9. To my Senior High School best friends, Jaja, Aulika, Tasya, Amel, Nilam, and Kevina. Thank you for always being the most comfortable place to share all the worries;
10. To my lovely friends, Aulia and Meutia. Thank you for being with the Author since the beginning of college and always being there to go through many happy and sad things together in this college journey;
11. To my International Class-mates, Syabina, Rifa, Almira, Sarah, Ipeh, Fira, Atha, Vivi, Aulia, Meutia, Jihad, Arya, Nata, Aghil, Amjad, and Rafly. Thank you for being a big part of this college journey, may we all be able to continue this friendship even though college is over;
12. To my Maros best friends, Icha, Yaomil, and Odi. Thank you for being a kind and fun new friend during the sleepover in Maros for a month;
13. To Adakatrip, Vivi, Yaomil, Afhi, Ilma, Hanny, Efi, Nafa, Nupe, Ririn, Icha, Galuh, Marsyah, Cica, Aulia, and Meutia, Eki. Thank you for being a part of Author's healing journey, can't wait to see our many more trips together;
14. To HLSC. Thank you for being an organization that provided many opportunities to self-develop in this college journey;
15. Last but not least Agizah Dhiya, which is me as the Author of this thesis. I didn't expect that I would finally be in this last chapter Undergraduate Law Program. For me who has tried so hard, may I be strong until the end.

Likewise, thank you so much to all the parties whose names cannot be mentioned one by one who helped the Author in completing this thesis. This thesis is far from perfect, therefore, with all humility, the Author expects the criticism and suggestions.

Makassar, 01 July 2024

Agizah Dhiya Syadzwin

ABSTRACT

AGIZAH DHIYA SYADZWINA (B011191069). *With the title "THE APPLICATION OF PIERCING THE CORPORATE VEIL PRINCIPLES IN DECISION DISTRICT COURT NUMBER 95/Pdt.G/2017/PN.JKT.SEL AND 47/Pdt.G/2021/PN.MTR". Supervised by Oky Deviany and Andi Suci Wahyuni.*

This research aims to identify and express the basis of the judge's considerations in applying or not applying the principle of piercing the corporate veil in Decision Number 95/PDT.G/2017/PN.JKT.SEL and Decision Number 47/PDT.G/2021/PN.MTR and to analyze whether the application of the principle of piercing the corporate veil in Decision Number 95/PDT.G/2017/PN.JKT.SEL and Decision Number 47/PDT.G/2021/PN.MTR has fulfilled legal certainty.

The research method used in this research is normative research with a statutory approach, conceptual approach, and case approach that uses deductive analysis in analyzing the legal issues raised to provide prescriptions.

The research results indicate that 1) Decision Number 95/Pdt.G/2017/PN.Jkt Sel and Decision Number 60/Pdt.G/2016/PN. Jkt Bar has fulfilled legal certainty in terms of applying piercing the corporate veil principle to the company's organs based on how far the acts of the company's organs in the case. Meanwhile, Decision Number 47/Pdt.G/2021/PN.Mtr has not fulfilled legal certainty because the decision was decided by default judgement so that information from the defendant is minimal to examine the extent of the role of the company's organs in the default committed by the company; 2) The basis for the judge's consideration in applying the principle of piercing the corporate veil in the case of default by the company is the action of the company's organs which clearly violates the concept of separation of assets and separation of responsibilities in a Limited Liability Company and the company's organs make the Limited Liability Company an alter ego by voluntarily becoming a guarantor in a personal guarantee (borgtocht) and releasing privileges as a guarantor of the company's obligations.

Keywords: Company Organ; Limited Liability Company; Piercing The Corporate Veil;

ABSTRAK

AGIZAH DHIYA SYADZWINA (B011191069), dengan judul "The Application of Piercing The Corporate Veil Principles in Decision of District Court Number 95/Pdt.G/2017/Pn.Jkt.Sel and 47/Pdt.G/2021/Pn.Mtr". Dibimbing oleh Oky Deviany dan Andi Suci Wahyuni.

Penelitian ini bertujuan untuk mengetahui dan mengemukakan dasar pertimbangan hakim dalam menerapkan atau tidak menerapkan prinsip *pericing corporate veil* pada Putusan Nomor 95/PDT.G/2017/PN.JKT.SEL dan Putusan Nomor 47/PDT.G/2021/PN.MTR serta untuk menganalisis penerapan prinsip *pericing corporate veil* dalam Putusan Nomor 95/PDT.G/2017/PN.JKT.SEL dan Putusan Nomor 47/PDT.G/2021/PN.MTR apakah telah memenuhi kepastian hukum.

Metode penelitian yang digunakan dalam penelitian ini ialah tipe penelitian normatif dengan pendekatan undang-undang, pendekatan konseptual, dan pendekatan kasus yang menggunakan analisis deduktif dalam menganalisis isu hukum yang diangkat untuk kemudian memberikan preskripsi.

Hasil dari penelitian ini menunjukkan bahwa 1) Pada Putusan Nomor 95/Pdt.G/2017/PN.Jkt Sel dan Putusan Nomor 60/Pdt.G/2016/PN. Jkt Bar telah memenuhi kepastian hukum dalam hal penerapan prinsip *pericing corporate veil* kepada organ perseroan berdasarkan sejauh mana tindakan atau perbuatan organ perseroan dalam perkaranya. Sedangkan dalam Putusan Nomor 47/Pdt.G/2021/PN.Mtr belum memenuhi kepastian hukum sebab, putusan yang diputuskan secara *verstek* sehingga informasi dari tergugat sangat minim untuk menelaah sejauh mana peran organ perseroan dalam wanprestasi yang dilakukan oleh perseroan; 2) dasar pertimbangan hakim dalam menerapkan prinsip *pericing corporate veil* dalam perkara wanprestasi oleh perseroan yaitu adanya tindakan dari organ perseroan yang secara nyata melanggar konsep pemisahan harta dan pemisahan tanggungjawab dalam Perseroan Terbatas serta organ perseroan menjadikan Perseroan Terbatas sebagai *alter ego* dengan secara sukarela menjadi penjamin dalam jaminan perorangan (*personal guarantee/borgtocht*) dan melepaskan hak-hak istimewa sebagai penjamin atas perikatan perseroan.

Kata Kunci: Organ Perseroan, Perseroan Terbatas, *Piercing Corporate Veil*;

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CHAPTER I

INTRODUCTION

A. Background

The evolution of the era brings social issues to a more significant level, not only legal issues that become complex issues to deal with but economic issues turn into issues that are difficult to resolve. Conflict of economic problems requires a person to be creative in carrying out activities in the economic sector, so there are now many new business actors in the business world, either in individual form or in legal entity form.¹

In business practice, it is difficult for entrepreneurs not to interact with other parties by creating obligations and making agreements. The obligation can occur due to law either in accordance with the law or due to unlawful acts. Limited Liability Company is one of the business entities that also has the intention that cannot be separated from conducting legal relations. The obligation basically puts receivable obligations between the creditor and the debtor, and sometimes it cannot be resolved by deliberation, so it causes a dispute. One of the debtor's liabilities is to pay debts or an obligation to fulfill the performance. If the Limited Liability Company defaults, it can be categorized as an agreement violation or not fulfilling its obligations. If the obligation to pay debts goes according to what is stipulated in the agreement, it does not cause problems. Problems will occur if the debtor

¹ Sudikno Mertokusumo, 2001, *Introduction to Written Civil Law (BW)*, Yogyakarta: Sinar Grafika, p. 23.

has difficulties paying off his debts, and in the end the debtor stops paying his debts, either because he is unable to pay or because he does not want to pay or defaults.²

Limited Liability Company or hereinafter referred to as "PT" is a form of business entity that is commonly used these days with characteristics such as limitation of liability in it.³ In other words, PT and shareholders are both separate legal subjects, where each of them has different rights and obligations. This is none other than because in its concept and regulation, PT since the beginning is a form of business entity as well as a legal entity adhering to the principle of separate entity. According to Zainal Asikin and Wira Pria Shuhartana, what is meant by a legal entity is that a PT becomes a legal subject that carries rights and obligations, as a legal entity, PT has an independent position (*persona standi in judicio*) which does not depend on its shareholders.⁴

The principle does not only apply to shareholders but also to PT organs such as Directors and Commissioners, so that Directors and Commissioners, who are known to act for the interests of the PT, also have limited liability that separates themselves and their rights and obligations as private individuals. Directors and Commissioners only carry out their duties and responsibilities as organs of the PT as regulated by the law and the

² Man S. Sastrawidjaja, 2010, *Bankruptcy Law and Suspension of Debt Payment Obligation*, Bandung: Alumni, p. 1

³ Binoto Nadapdap, 2016, *Limited Liability Company Law*, Jakarta: Jala Permata Aksara, p.1.

⁴ Zainal Asikin and Wira Pria Suhartana, 2016, *Introduction to Company Law*, Jakarta: Kencana Group, p. 52.

articles of association of the PT and will be held personally liable if they act unlawfully by violating the provisions of the law and the agreed articles of association of the PT.⁵ As stipulated in Article 97 paragraph (3) of Law Number 40 Year 2007 on PT, that:

" Each member of the Directors shall be personally liable for the losses of the Company if he/she is guilty or negligent in carrying out his/her duties in accordance with the provisions as referred to in paragraph (2)"⁶

In business practice, PT is inevitable from problems related to the responsibility of PT as a business entity in running its business. If PT performs legal relations such as sale and purchase, where PT A is the seller and PT B is the buyer, the problem in the implementation of the sale and purchase is constrained by the decision of the shareholders, especially the majority of shareholders. Meanwhile, in law, PT is known for the principle of piercing the corporate veil, this principle is an exception to the principle of limited liability in PT. Piercing the Corporate Veil is the process of imposing responsibility on other parties (shareholders and / or directors) who are not the company itself, even though it is known that the act is carried out legally and by and on behalf of the company as a legal entity.⁷

Problems with liability based on limited liability in its application are also problematic. In its application, there are two decisions that differently apply the exceptions to the form of limited liability. First, this incident occurred in

⁵ Adrian Sutedi, 2015, *Smart Book of Limited Liability Company Law. First Printing*, Jakarta: Raih Asa Sukses, p. 101

⁶ Article 97 paragraph (3) of Law Number 40 of 2007.

⁷ Munir Fuady, 2014, *Doctrines of Corporate Law in its Existence in Limited Liability Company Law*, Bandung: Citra Aditya Bakti, p. 7.

the case of Decision Number 95/PDT.G/2017/PN.JKT.SEL, in which the case originated from a coal sale and purchase agreement between PT Prakarsa Anugerah Artha as the seller and PT Bukit Asam Prima as the buyer through Coal Sale and Purchase Agreement No. 06/K/PT.BAP-PT.PAA/2008 dated March 17, 2008, the buyer had submitted an advance payment of Rp. 2,000,000,000, - (two billion rupiah) and then a total of 50,000 Mt of coal will be delivered to the buyer in stages, but in the process the seller stated that he could not fulfill the obligation to deliver the coal, so that the previous down payment would be returned in installments to the buyer.

The seller has made installment payments of Rp. 300,000,000, - (three hundred million rupiah) so that it still leaves a return obligation of Rp. 1,700,000,000, - (one billion seven hundred million rupiah), and after that the seller only made payments for 2 (two) times, leaving an obligation of Rp. 1,062,150,000, - (one billion sixty-two million one hundred and fifty thousand rupiah).

In addition, the buyer never received payment from the seller, so the buyer sent a summons to collect, reprimand, and warn 3 (three) times. However, the seller never made repayment of his obligations so the buyer filed a lawsuit to the court on the basis of default acts by the seller. Based on Article 1238 of the Civil Code, default or breach of contract is a condition when the debtor is declared negligent by warrant, or by similar deed, or

based on the strength of the obligation itself, namely when this obligation causes the debtor to be deemed negligent with the time specified.

The lawsuit of default from the buyer to the seller and Widodo Agus Hartono (Director and shareholder of PT. Prakarsa Anugrah Artha) has been accepted and granted by the panel of judges through one of the verdicts which basically states that "Defendant I and Defendant II are in default and are jointly and severally responsible for fulfilling their obligations to the plaintiff." The verdict indirectly implies the realization of Article 3 paragraph (2) and Article 97 paragraph (3) of the Company Law, where previously in his consideration the judge had considered that:

"Based on the provisions of Article 3 of Law Number 40 of 2007 concerning Limited Liability Companies, the panel of judges argues that with the withdrawal of Widodo Agus as Defendant II, it is not contrary to the principle of piercing the corporate veil, therefore Defendant II remains personally liable for obligations made on the Company's behalf".⁸

Based on the verdict and the judge's consideration regarding piercing the corporate veil, the Director and shareholder of PT Prakarsa Anugrah Artha (Widodo Agus) is jointly responsible with PT Prakarsa Anugrah Artha to fulfill its obligations to the plaintiff in accordance with the principle of piercing the corporate veil.

Another application related to the issue of limited liability was found in Decision Number 47/PDT.G/2021/PN.MTR which was a case of default against the Villa / Hotel Construction Agreement dated June 15, 2015 made by Steefan Louis Mariette Wouters (as the Plaintiff) and PT Amanah Group

⁸ *Ibid.*

International (as the Defendant I), an private deed and was registered and recorded (waarmerking) by Notary Lalu Prima Ade Pramana, S.H., M.Kn. The Plaintiff has paid the total cost of the villa/hotel construction to PT Amanah Group International in Rp. 4,378,165,909 (four billion three hundred seventy-eight million one hundred sixty-five thousand nine hundred nine rupiahs), which amount has been detailed in the agreement.

However, after 7 (seven) months, there was no development of the construction of the villa/hotel as promised. Plaintiff has also tried to ask Defendant II, Jonas San Martin Falcon as the Director of PT Amanah Group International and Defendant III, Wouter Van Der Linden as the Commissioner of PT Amanah Group International, but both of them could not provide a reason why the villa/hotel did not started the construction and disappeared. On this basis, the Plaintiff in his lawsuit also included the Directors and Commissioners as Defendants by adhering to the principle of piercing the corporate veil in PT for the purpose of Defendant II and Defendant III being personally liable for the losses claimed by the Plaintiff. However, in the verdict, the panel of judges only stated “Granting the claim and stating that Defendant I obviously made a default to the Plaintiff and punished Defendant I to pay losses to the Plaintiff in the amount of Rp. 2,669,164,102, - (two billion six hundred sixty nine million one hundred sixty four thousand one hundred and two rupiah)”. In his consideration, the judge stated that:

"The Construction Agreement was only made by Defendant I, and represented by Defendant II as President Director, and was not made or undertaken by Defendant II and Defendant III personally; therefore, the Agreement was only binding on the Plaintiff and Defendant I, and was not binding on Defendant II and Defendant III, and they could not be civil sanction to commit an act of breach of contract."⁹

Based on the verdict and consideration of the judge, it can be clearly concluded that the panel of judges refused to grant the argument of the Plaintiff's claim to apply the principle of piercing the corporate veil against Defendant II and Defendant III to be personally liable for the default that occurred by Defendant I to the Plaintiff.¹⁰

Based on the description of the two cases above in connection with the application of the principle of "piercing the corporate veil" in cases of default lawsuits committed by Limited Liability Companies, the author is interested in further researching the two case decisions, namely Decision Number 95/PDT.G/2017/PN.JKT.SEL and Decision Number 47/PDT.G/2021/PN.MTR and analyzing the application and legal certainty in applying the principle of piercing the corporate veil in practice.

B. Problem Formulation

Based on the background described above, the problem formulation in this research is :

1. Can the application of piercing the corporate veil principles in district court decisions number 95/Pdt.G/2017/PN.JKT.SEL and 47/Pdt.G/2021/PN.MTR provide legal certainty?

⁹ Decision Number 47/PDT.G/2021/PN.MTR

¹⁰ *Ibid.*

2. What is the basis of the judge's consideration in applying or not applying piercing the corporate veil principles in district court decisions number 95/Pdt.G/2017/PN.JKT.SEL and 47/Pdt.G/2021/PN.MTR?

C. Research Purpose

The objectives of this research are as follows :

1. To analyze and describe whether the application of piercing the corporate veil principles in district court decisions number 95/Pdt.G/2017/PN.JKT.SEL and 47/Pdt.G/2021/PN.MTR can provide legal certainty.
2. To analyze and determine the basis of the judge's consideration in applying or not applying piercing the corporate veil principles in the decisions of district court number 95/Pdt.G/2017/PN.JKT.SEL and 47/Pdt.G/2021/PN.MTR.

D. Benefit of Research

The benefits and uses of this research are as follows :

1. Theoretical benefits: Later, the research results can be used to develop civil law related to Limited Liability Companies, specifically for company law.
2. Practical benefits: Later, it can become a reference, input, or reference for legal practitioners, students, academics, and law enforcement officers in handling problems related to applying piercing the corporate veil principle in a Limited Liability Company.

E. Originality of Research

Based on the author's search results, several previous studies are related to this research, as follows :

Writer's name	:	Benny Batara Tumpal Hutabarat
Post Title	:	Application Piercing the Corporate Veil Principles to Shareholders as Corporate Control Personnel in the Crime of Money Laundering by Limited Liability Companies
Category	:	Thesis
Year	:	2011
College	:	Faculty of Law, University of Indonesia
Description		Previous Research
Issues and Problems	:	<p>1) How is the piercing the corporate veil principle regulated by shareholders?</p> <p>2) How is the application of piercing the corporate veil principle to shareholders as controllers about money laundering offenses?</p>
		Research plan
		<p>1) Can the application of piercing the corporate veil principles in district court decisions number 95/Pdt.G/2017/PN.JKT.SEL and 47/Pdt.G/2021/PN.MTR provide legal certainty?</p> <p>2) What is the basis of the judge's consideration in applying or not applying piercing the corporate veil principles in district court decisions number 95/Pdt.G/2017/PN.JKT.SEL and 47/Pdt.G/2021/PN.MTR?</p>
Research methods	:	Normative
Results and Discussion	:	<p>The research results show that based on Article 1365 of the Civil Code and Article 3 paragraph (2) of the Law on PT, the application of piercing the corporate veil principle is not only limited to the actions</p> <p>The difference in the author's research, namely the problem's object, is focused on legal analysis through two different court decisions regarding the application of piercing the corporate veil and its relationship with legal certainty. It does not explicitly discuss its relationship with criminal acts.</p>

	mentioned in the article but also includes various aspects of legal acts that are not in line with the law and contrary to the aims and objectives of the company, including money laundering as regulated in Law Number 8 of 2010 concerning Prevention and Eradicating the Crime of Money Laundering.	
Writer's name	:	Fahmi Afham Fuady
Post Title	:	Responsibility of Controlling Shareholders Based on the Doctrine of Piercing the Corporate Veil in Corruption Cases
Category	:	Thesis
Year	:	2023
College	:	Hasanuddin University, Faculty of Law
Description	Previous Research	Research plan
Issues and Problems	: 1) What is the criminal liability of the controlling shareholder of a PT as the party that plays a significant role in corporate decision-making to commit criminal acts of corruption? 2) How is piercing the corporate veil doctrine applied about controlling shareholders as parties who play a significant role in	1) Can the application of piercing the corporate veil principles in district court decisions number 95/Pdt.G/2017/PN.JKT.SEL and 47/Pdt.G/2021/PN.MTR provide legal certainty? 2) What is the basis of the judge's consideration in applying or not applying piercing the corporate veil principles in district court decisions number 95/Pdt.G/2017/PN.JKT.SEL and 47/Pdt.G/2021/PN.MTR?

		corporate decisions to commit criminal acts of corruption?	
Research methods	:	Normative	Normative
Results and Discussion	:	The research results show that shareholders are directly or indirectly related to utilizing a company for personal interests in bad faith, and committing a criminal act of corruption in the company's name can be held accountable by piercing the corporate veil.	The difference in the author's research, namely the problem's object, this research focused on legal analysis through two different court decisions regarding the application of piercing the corporate veil and its relationship with legal certainty. It does not explicitly discuss its relationship with criminal acts.

Based on the description above, the author has significant differences with previous research. These differences are in terms of the object of research, the regulations used, and the subject matter studied. On this basis, the originality of the research from the author's research can be scientifically responsible.

CHAPTER II

LITERATURE REVIEW

A. General Overview of Limited Liability Companies

1. Definition of Limited Liability Company

The word Company in the general sense is a company or business organization. Meanwhile, a Limited Liability Company is one of the forms of business organization that exists and is known in the Indonesian commercial law system. The forms of business entities known in the Indonesian commercial law system are the General Partnership (Fa), the Company Commander (CV, Comanditaire Vennootschap), and the Limited Liability Company (PT). These forms are regulated in book one Chapter III section 1 of the Indonesian Commercial Code (KUHD). In addition, there is another form of business regulated in the Civil Code called maatschap or civil partnership.¹¹

According to Ridwan Khairandy, the term Limited Liability Company consists of two words, namely Company and Limited. Company refers to the capital of a PT which consists of shares. The word limited refers to the responsibility of shareholders which is limited only to the nominal value of all shares they own.¹²

Based on Article 1 number 1 of Law Number 40 Year 2007 on Limited Liability Companies as last amended by Law Number 6 Year 2023 on the

¹¹ *Ibid.*

¹² Ridwan Khairandy, 2014, *Limited Liability Company Law*, Yogyakarta: UII Press, p.1.

Stipulation of Government Regulation in Lieu of Law Number 2 Year 2022 on Job Creation into Law (hereinafter referred to as "UUPT"), which regulates the definition of PT, namely:¹³

"Limited Liability Company, hereinafter referred to as the Company, is a legal entity which is a capital alliance, established based on an agreement, doing business activities with authorized capital which is entirely divided into shares or an individual legal entity that meets the criteria of micro and small enterprises as stipulated in laws and regulations concerning micro and small enterprises."

As explained above, the Company is a legal entity, which means that the Company is a legal subject that can be burdened with rights and obligations just like humans in general. Therefore, as a legal entity, PT has its own wealth which is separate from the wealth of its management. In performing legal acts, what is seen is not the act of the management or its officials, but what must be seen is the Company, because the one who is responsible is the Company. In this case, the responsibility of PT is represented by its Directors (Article 1 paragraph 5 UUPT).¹⁴

Based on the definition of a Limited Liability Company given by law, there are five main things that characterize it, namely: ¹⁵

- a. Limited Liability Company as a Legal Entity
- b. Limited Liability Company Established Based on Agreement
- c. The Company Must Carry Out Business Activities
- d. The Company Must Have Capital Divided into Shares

¹³ Article 1 paragraph (1) of Law Number 40 of 2007.

¹⁴ Gatot Supramono, 2004, *New Limited Liability Company Law*, Revised Third Printing, Jakarta: Djambatan, p. 2.

¹⁵ Ahmad Yani and Gunawan Widjaja, 2006, *Limited Liability Company Business Law Series*, Jakarta: PT Rajagrafindo, p. 8-13.

e. Fulfills the Requirements of the Law.

In addition, with the amendment in which there is an additional definition of Limited Liability Company in the Job Creation Law, it is necessary to add the five main characters above. The new character is a legal entity of an individual who meets the criteria as a micro and small enterprise.

2. Establishment of a Limited Liability Company

To establish a limited liability company, the requirements of the UUPT must be fulfilled. These requirements are as follows:¹⁶

a. An agreement of two or more people.

The Company must be established by two or more persons. This minimum provision of two persons confirms the principle of partnership adopted by UUPT, which means that the company as a legal entity is based on an agreement. (Article 7 paragraph (1) UUPT)

b. Made by Notarial Deed.

The agreement to create or establish a company must be made by an authentic notarial deed and must be in Indonesian language (Article 7 paragraph (1) UUPT). The agreement is a deed of establishment that also contains the agreed articles of association.

¹⁶ Zaeni Asyhadie, 2005, *Business Law Principles and Implementation in Indonesia*, Jakarta: PT. Raja Grafindo Persada, p. 43-44.

c. Authorized capital.

The authorized capital of the company is determined in accordance with the decision of the founders of the company. (Article 3 paragraph (2) of Government Regulation Number 8 Year 2021)

d. Taking Shares when the Company is Established

Each founder of the company must take shares when the company is established (Article 7 paragraph (2) of the UUPT).

Meanwhile, specifically and as an exception for Individual Companies for Micro and Small Enterprises based on Article 6 paragraph (1) of Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises emphasizes that Individual Companies are established by Indonesian Citizens by filling out a statement of establishment in Indonesian. The format of the statement of establishment is contained in Appendix I of GR 8/2021. The Indonesian citizen referred to in Article 6 paragraph (1) of GR 8/2021 must fulfill two requirements, namely at least 17 (seventeen) years old and legally capable.

The shareholders or founders have limited liability after the company is registered by the Minister. This means that the established company already has or obtains the status of a legal entity after its deed of establishment is ratified by the Minister. As stipulated in Article 7 paragraph

(4) of the UUPT, that the Company obtains the status of a legal entity on the date of issuance of the Ministerial Decree concerning the ratification of the Company's legal entity.

3. Organ of Limited Liability Company

It is known that the company's organs consist of the General Meeting of Shareholders (GMS), Commissioners, and Directors.

These three organs have different duties, authorities and responsibilities from one another.¹⁷

These three organs have different duties, authorities and responsibilities from one another.

The Directors are one of the organs of a limited liability company that has the duty and is fully responsible for the management of the company for the benefit of the company's objectives and represents the company both inside and outside the court in accordance with the provisions of the articles of association.

The directors has a very central function and role in the paradigm of a limited liability company.

This is because the board of directors will carry out the management and representative functions of a limited liability company.¹⁸

According to Otto von Gierke's Organism theory, "the Directors are the organs or equipment of a legal entity.

¹⁷ M. Hadi Subhan, 2021, *Bankruptcy Law, Principles, Norms and Judicial Practice*, Jakarta: Prenada Media Group, p. 225.

¹⁸ Ibid.

Just as humans have organs, such as hands, feet, eyes, ears and so on and because every movement of these organs is willed or ordered by the human brain, every movement or activity of the Directors of a legal entity is willed or ordered by the legal entity itself.

The Directors is the personification of the legal entity itself.” (Otto von Gierke, 1954). On the contrary, Paul Scholten and Bregstein (1954), directly said that the Directors represents the legal entity.¹⁹

The Company's organs are described below in general terms:

a. Director

According to Article 1 point 5 of Law Number 40 Year 2007 on PT, Directors are the Company's organs authorized and fully responsible for the management of the company for the benefit of the company's objectives and represent the company both inside and outside the court in accordance with the provisions of the articles of association.²⁰

In the case of appointment, replacement and dismissal of members of the board of directors, the directors are obliged to notify the Minister of the changes in the members of the directors. The announcement must be submitted to be recorded in the company register. The notification shall be submitted within a period of no later than 30 days as of the date of the resolution of the GMS. The

¹⁹ Nindyo Pramono, 2007, *Responsibility and Liability of PT (Bank) Management According to Law No. 40/2007 on Limited Liability Companies*, Jakarta: Bulletin of Law and Banking, p.15

²⁰ Article 1 paragraph (5) of Law Number 40 of 2007

notification does not include notifications submitted by new directors upon their own appointment.²¹

Article 105 of the UUPT stipulates that members of the directors may be dismissed at any time based on a GMS resolution.

The decision of the GMS to dismiss a member of the directors may be made on the grounds that the person concerned no longer meets the requirements stipulated by the Company Law, among others, committing actions that are detrimental to the company or for other reasons deemed appropriate by the GMS.

The dismissal of a member of the directors is effective as of the closing of the GMS, or the date of the decision to dismiss a member of the directors made by circular resolution, or another date stipulated in the GMS decision, or another date stipulated in the circular resolution²²

The Directors have a function and role that is very central in the paradigm of PT.

This is because the Directors will carry out the management and representative functions of PT in accordance with the principle of fiduciary duty.²³

²¹ Article 94 of Law No. 40/2007 on Limited Liability Companies

²² Article 105 of Law No. 40/2007 on Limited Liability Companies

²³ Ridwan Khairandy, 2009, *Limited Liability Company Doctrine, Legislation, and Jurisprudence*, Yogyakarta: Total Media, p. 205.

The principle of Fiduciary duty of the Directors means that:²⁴

- a) Directors in performing their duties are not allowed to do it for personal interests or the interests of third parties, without the approval of the company.
- b) Directors may not utilize their position as management to obtain benefits, either for themselves or third parties, except with the approval of the company.
- c) Directors must not use or misuse the company's assets for their own interests or those of third parties.

b. Board of Commissioners

The Board of Commissioners based on Article 1 point 6 of the UUPT is an organ of the company that is responsible for overseeing in general and/or specifically in accordance with the articles of association and providing advice to the Directors.²⁵

The Board of Commissioners may consist of one or more persons. The Board of Commissioners is a council.

A Board of Commissioners consists of more than one member, each member of the Board of Commissioners cannot act individually but based on the decision of the Board of Commissioners.²⁶

²⁴ Chatamarrasjid, 2004, *Breaking the Corporate Veil and Actual Questions of Corporate Law*, Bandung: Citra Aditya Bakti, p. 196-197.

²⁵ Article 1 paragraph (6) of Law Number 40 Year 2007.

²⁶ Gunawan Widjaja, *Op.Cit.*, p. 79.

In the case of appointment, replacement and dismissal of members of the board of commissioners, the directors shall notify the Minister of such changes to be recorded in the register of companies within a period of no later than 30 days as from the date of the resolution of the GMS. In the event that the notification has not been made, the Minister shall reject any subsequent notification of changes in the composition of the board of commissioners submitted to the Minister by the directors.²⁷

Article 112 of the UUPT stipulates that the appointment of a member of the board of commissioners who does not fulfill the requirements mentioned above is null and void since the other members of the board of commissioners are aware of the non-fulfillment of the requirements.

Within a period of no later than 17 days from the date of knowledge, the directors must announce the cancellation of the appointment of the member of the board of commissioners concerned to the Minister to be recorded in the company register.

Legal actions that have been carried out by the member of the board of commissioners for and on behalf of the board of commissioners before his appointment is canceled, still bind and become the responsibility of the company.²⁸

²⁷ Article 111 of Law No. 40/2007 on Limited Liability Companies

²⁸ Article 112 of Law Number 40 Year 2007 on Limited Liability Companies

In carrying out its duties, the Board of Commissioners also has certain obligations. These obligations are stipulated in Article 116 of the Company Law, including: ²⁹

- a) Make a note of the Board of Commissioners' meeting and keep a copy;
- b) Report to the Company on its and/or its family's share ownership in the Company and other companies, or;
- c) Provide a report regarding the supervisory duties that have been carried out during the past book year to the GMS.

c. General Meeting of Shareholders

Based on Article 1 paragraph 4 of the UUPT, the General Meeting of Shareholders abbreviated as GMS is an organ of the Company that has authority not granted to the Directors or the Board of Commissioners within the limits stipulated in this law and/or the articles of association.³⁰

1) Position of GMS in Limited Liability Company

The explanation of the authority of the GMS based on the UUPT in relation to other organs of the Company is as follows:³¹

²⁹ Ridwan Khairandy, *Op. Cit.*, p. 246.

³⁰ Article 1 paragraph (4) of Law Number 40 Year 2007.

³¹ M. Yahya Harahap, *Op. Cit.*, p. 307-308.

- a) Declare to accept or take over all rights and obligations arising from legal actions carried out by the founders or their proxies;
- b) To approve legal actions on behalf of the company performed by all members of the directors, all members of the board of commissioners together with the founders on the condition that all shareholders are present at the GMS, and all shareholders approve in the GMS;
- c) Amendments of Articles of Association stipulated by the GMS;
- d) To approve the repurchase or further transfer of shares issued by the company;
- e) To delegate authority to the board of commissioners to approve the implementation of the GMS resolution on the repurchase or further transfer of shares issued by the company;
- f) Approving the increase of the company's capital;
- g) Approve the reduction of the company's capital;
- h) Approve the annual work plan if the Articles of Association determine it;
- i) To approve the annual report and ratification of the financial statements and supervisory duty report of the board of commissioners;

- j) Deciding on the use of net profit, including determining the amount of allowance for mandatory reserves and other reserves;
- k) Appointing members of the directors;
- l) Determining the amount of salary and allowances for members of the directors;
- m) Appointing other parties to represent the company if all members of the directors or the board of commissioners have a conflict of interest with the company;
- n) Give approval to the directors to:
 - (1) Transferring the company's assets, or
 - (2) Placing the company's assets as collateral for debts, this approval is required if more than 50% of the total net assets of the company in one or more transactions, whether related to each other or not
- o) Giving approval to the directors to apply for bankruptcy of a separate company to the Commercial Court;
- p) Member of the directors shall be dismissed;
- q) Confirming the decision of temporary dismissal made by the board of commissioners against members of the directors;
- r) Appointing members of the board of commissioners;

- s) Determining the amount of salary or honorarium and allowances of members of the board of commissioners;
- t) Appointing independent commissioners;
- u) Giving approval to the draft merger;
- v) To approve the merger, acquisition or separation;
- w) Deciding on the dissolution of the company;
- x) Accepting the liquidator's responsibility of liquidation;

2) Organizing GMS

Regarding the organization of GMS, Article 78 paragraph (1) of the UUPT classifies it into two forms, namely annual GMS and other GMS. The annual GMS must be held within the time limit set by the Law, at least 6 (six) months after the financial year ends. Meanwhile, other GMS or in practice commonly called extraordinary GMS can be held at any time in accordance with the interests of the Company.³²

3) Quorum GMS

The quorum is regulated in Articles 86, 88 and 89 of Law No. 40/2007 on PT. In general, the quorum depends on the topics that will be discussed in the meeting, which include the ordinary agenda, the agenda to amend the Company's articles

³² Article 78 paragraphs (2), (3), and (4) of Law Number 40 of 2007.

of association, and the agenda mentioned in Article 89 paragraph (1) of Law No. 40/2007 concerning PT.

B. Responsibilities of Directors

Responsibilities of the Directors under the UUPT, namely: ³³

1. The Directors are jointly and severally liable for the shareholders' losses arising from the repurchase which is canceled due to the law. (Article 37 paragraph (3) of the UUPT);
2. The Directors (and members of the Board of Commissioners) are jointly and severally liable for parties harmed caused by the company's financial statements. (Article 69 paragraph (3) of the UUPT);
3. The Directors are liable when the Directors distribute interim dividends (with the approval of the Board of Commissioners) before the end of the Company's financial year, but it turns out that the Company has suffered a loss;
4. Each member of the Directors shall be personally liable for the Company's losses if he/she is guilty or negligent in running the Company (Article 97 paragraph (3) of the UUPT).

³³ Gunawan Widjaja, 2008, *Legal Risk Owners, Directors & Commissioners of PT*, Second Printing, Jakarta: Forum Sahabat, p. 35.

As with other violations of law, which gives the right to the injured party to and on his behalf to sue the party who caused the loss. Violations by the Directors in managing the company, also issue the right for the injured party to sue the Directors and/or each of its members who have caused the loss.

The responsibilities of the Directors are separated by various criteria as follows:

1. Personal Responsibility of the Directors

If the Directors consist of two or more members, there must be a division of duties and authority for managing the company among the members of the Directors. Based on Article 92 paragraph (5) of the UUPT, the division of duties and authority is determined based on a GMS decision. However, if the GMS does not determine the division of duties and authority of the members of directors, it is determined based on the decision of the directors.³⁴

Each member of the Directors is fully personally liable for the company's losses if he/she is guilty or negligent in carrying out his/her duties. This provision is with the exception as stipulated in Article 97 paragraph (5) of the UUPT if the Directors can prove that:³⁵

³⁴ M. Yahya Harahap, *Op.Cit.*, p. 353.

³⁵ Rudhi Prasetya, 2014, *Limited Liability Company: Theory and Practice*, Jakarta: Sinar Grafika, p. 23-24.

- a. The loss is not caused by his fault or negligence;
- b. Has carried out management in good faith and carefully for the interests and in accordance with the purposes and objectives of the Company;
- c. Has no conflict of interest either directly or indirectly over the management actions that resulted a loss; and
- d. Has taken actions to prevent the incidence or continuation of the losses.

Meanwhile, in bankruptcy law, the Directors are no longer responsible to the company and shareholders but to the company's creditors.

The company's right to sue the Directors who commit unlawful acts that cause losses to the company is also subsequently given to creditors, when the company is in bankruptcy due to the Directors' unlawful acts.³⁶

This is contained in Article 104 paragraph (2) of the UUPT which stipulates that:

“(2) In case of bankruptcy as referred to in paragraph (1) occurs due to the fault or negligence of the Directors and the bankruptcy assets are not sufficient to pay all the obligations of the Company in the bankruptcy, each member of the Directors shall be jointly and severally liable for all obligations that are not repaid from the bankruptcy assets.”

2. Action Ultra Vires

The Directors are only entitled and authorized to act on behalf of and for the benefit of the company within the limits permitted by the legislation applicable and its articles of association.

³⁶ Gunawan Widjaja, *Op.Cit.*, p. 76

Legal actions of the Directors are considered ultra vires if they exceed the limits of the authority stated in the articles of association and legislation.³⁷

A legal action is seen as outside the purpose and objectives of the company when it meets one of the criteria: ³⁸

- a. The articles of association expressly prohibit the legal action concerned;
- b. By observing special circumstances, the legal action concerned cannot be said to support the activities mentioned in the articles of association;
- c. By observing the special circumstances, the legal action concerned cannot be interpreted as supporting the interests of PT.

According to Indonesian law, based on the concept of civil law, in case of ultra vires, the legal acts committed do not become void.

The legal action that has been carried out is still valid, but in this case the third party cannot sue the company, but with the personal responsibility of the Directors who are the parties that are responsible for the legal action.³⁹

3. Business Judgement Rule

Business Judgement Rule abbreviated as BJR is a doctrine that provides immunity or protection for the management of the company from any responsibility that comes as a result of transactions or activities carried out

³⁷ *Ibid.* p. 23.

³⁸ Ridwan Khairandy, *Op.Cit.*, p. 228.

³⁹ Rudhi Prasetya, *Op.Cit.*, p. 26.

by it in accordance with the limits of authority and power given to it. The Directors as long as in making their decisions,

The Directors are not allowed to take actions that provide self-dealing or do not have personal interests and have carried out prudential principles in good faith.⁴⁰

Any party who denies, doubts, and has questions about the decision taken by the Directors of the company is obliged to prove in advance whether the decision that has been taken has been carried out by means of:⁴¹

- a. Not fulfilling the required process or procedure;
- b. Not carried out for the interest of the company and its stakeholders, namely that the decision:
 - 1) Taken with fraud,
 - 2) Has a conflict of interest in it,
 - 3) There is an element of illegality,
 - 4) The occurrence of gross negligence.

If the actions of the Directors that cause losses are not based on good faith, then it can be categorized as a violation of fiduciary duty that gives personal responsibility.⁴²

⁴⁰ *Ibid.*, p. 67.

⁴¹ *Ibid.*

⁴² Ridwan Khairandy, *Op.Cit.*, p. 235.

4. Sanctions and Derivative Lawsuits

If the directors violate their duties, they may be subject to sanctions, among others:⁴³

- Injunction or declaration, which is aimed at preventing further breaches of fiduciary duty;
- Damages or compensation,
- Restoration of the company's property, in the form of returning the company's assets that have been taken and or utilized illegally;
- Rescission of the contract, namely the cancellation of the agreement that has been made for the benefit of personal directors;
- Account of profits, namely the transfer of profits obtained by the members of the directors as a result of actions carried out illegally, which benefit themselves to the company;
- Summary dismissal, which is related to employment rights, namely the company's right as an employer to dismiss members of the board of directors as its employees;
- Expropriation of member's property, which is only applied or enforced in the event of fraud on minority, which is detrimental to minority interests in the company.

For losses suffered by the company, whether it is a breach of fiduciary duty, ultra vires or other errors committed by members of the board of directors, the shareholders of the company concerned have the right to file a

⁴³ Gunawan Widjaja, *Op.Cit.*, p. 72

derivative lawsuit against the members of the board of directors. It is said to be derivative because the lawsuit is filed by shareholders for and on behalf of the company, which lawsuit is actually derived from the lawsuit that should be carried out by the company.⁴⁴

C. Responsibility of the Board of Commissioners

Discussing the responsibilities of the Board of Commissioners of a limited liability company, it is necessary to look at the provisions of Article 1 number 6 of the UUPT which is defined as follows

“The Board of Commissioners is an organ of the company that is tasked with conducting general and or special supervision as stipulated in the articles of association and providing advice to the Directors”.

Based on the definition given by the law, it can be seen that the main task of the Board of Commissioners is to supervise the management of the company carried out by the Directors and provide advice to the Directors.

The Board of Commissioners is a supervisory institution for the benefit of the company, it no longer acts on behalf of shareholders but must defend the interests of the company against anyone, including shareholders.

The Board of Commissioners has its own duties as an organ of the company but is not a representative of the shareholders or interested parties.⁴⁵

⁴⁴ Ridwan Khairandy, *Op.Cit.*, p. 235-236

⁴⁵ Moenaf H. Regar, 2000, “*The Role of the Board of Commissioners as an Organ of the Company, First Printing*”, Jakarta: PT. Bumi Aksara, p. 40.

In carrying out its duties, if the Board of Commissioners in the company consists of more than 1 (one) member, they are an assembly and each member of the Board of Commissioners cannot act alone

Based on the decision of the Board of Commissioners, so they are collegial in carrying out their duties (Article 108 paragraph 4 UUPT), the Board of Commissioners is appointed by the General Meeting of Shareholders, with a specific time with the possibility of being reappointed.

If the Board of Commissioners, in carrying out its duties, finds that the work of the Directors is deemed inappropriate or deviates from the UUPT and the articles of association which may result in losses to the company, the Board of Commissioners is required to provide advice to the Directors so that their duties are carried out in accordance with the provisions outlined by the UUPT and the articles of association.⁴⁶

According to Gunawan Widjaja, in the UUPT, if carefully considered, at least 5 (five) articles can be found that expressly regulate the personal responsibility of each member of the board of commissioners and joint responsibility of all members of the Board of Commissioners of the company. The five articles in the UUPT in order are: ⁴⁷

1. Article 69 paragraph 3 of the UUPT, which occurs in the event that the financial statements provided are found to be untrue and or misleading, members of the Board of Directors and members of the Board of

⁴⁶ Article 108 paragraph 4 of Law Number 40 of 2007.

⁴⁷ *Ibid.*

Commissioners are jointly and severally liable to third parties who are harmed.

2. Article 72 paragraph 6 of the UUPT, which relates to the distribution of interim dividends made by the Board of Directors with the approval of the Board of Commissioners before the end of the company's financial year, but it turns out that after the end of the financial year it is known and the company is proven to have suffered losses, while the shareholders cannot return the interim dividends that have been distributed to the company. So in this case, the element of caution to avoid mistakes is emphasized.
3. Article 112 paragraph 4 of the UUPT in case of cancellation of the appointment of a member of the Board of Commissioners due to failure to fulfill the requirements for appointment, then although the legal acts that have been carried out for and on behalf of the Board of Commissioners before the appointment is canceled, they are still binding and become the responsibility of the company, however, the member of the Board of Commissioners concerned is still responsible for the company's losses.
4. Article 114 paragraph 2 of the UUPT, related to the personal responsibility of each member of the Board of Commissioners for the company's losses if he/she is guilty or negligent in carrying out his/her duties. In the event that the Board of Commissioners consists of 2 (two) or more members of the Board of Commissioners, then according to the

provisions of article 114 paragraph 4 of the UUPT, the responsibility as mentioned above shall apply jointly and severally to each member of the Board of Commissioners.

5. Article 115 paragraph 1 UUPT in case of bankruptcy due to the fault or negligence of the Board of Commissioners in supervising the management carried out by the Directors and the company's assets are not sufficient to pay all of the company's obligations due to the bankruptcy, each member of the Board of Commissioners shall be jointly and severally liable (with the members of the Directors) for the outstanding obligations. This responsibility also applies to members of the Board of Commissioners who have not served 5 (five) years before the bankruptcy declaration is pronounced (Article 115 paragraph 2 UUPT).

The Board of Commissioners basically does not have an executive function, the Board of Commissioners only has the functions and duties stipulated in Article 108 paragraph 1 of the UUPT, namely the duties and functions of supervising management policies.

The operation of management in general regarding the company and the company's business and providing advice to the Board of Directors, although based on the provisions of Article 117 paragraph 1 of the UUPT stipulates that:⁴⁸

⁴⁸ Article 117 paragraph 1 of Law Number 40 of 2007.

"The articles of association may stipulate the granting of authority to the Board of Commissioners to give approval or assistance to the Directors in carrying out certain legal actions".

Even if the articles of association of a limited liability company determine the actions of the Directors that require the approval of the Board of Commissioners, the approval is not a grant of power and not a management action.⁴⁹

Based on the description above, it is clear that the Directors cannot escape their responsibility by arguing that to carry out the legal action they have obtained approval from the Board of Commissioners so that their responsibility switches to the Board of Commissioners.

The Directors can never hide behind the "approval" given by the Board of Commissioners. The granting of such approval cannot relieve the Directors from their responsibility of the management company.

The granting of approval here is only intended that for certain legal actions, more specific supervision is required from the Board of Commissioners so that through this approval institution, it is hoped that deviations in carrying out these legal actions can be minimized.

It is said not to be "granting power" because the management and representation authority possessed by the Directors is sourced in the law,

⁴⁹ Fred B. G. Tumbuan: *"Duties and Authorities of Limited Liability Company Organs According to the Law on Limited Liability Companies"*, paper delivered at the "Socialization of the Law on Limited Liability Companies" organized by the Indonesian Notary Association (INI) on 22 August 2007 in Jakarta, p. 24.

namely the provisions in Article 92 paragraph 1 of the UUPT or in other words that the authority of the Directors to represent the company does not merely arise because of the approval of the Board of Commissioners but the authority of the Directors is indeed stipulated by law while the obligation to seek the approval of the Board of Commissioners is only a complementary act for the validity of the actions of the Directors, while it is said not to be a “management action”, because the approval is not an instruction or order that must be carried out by the Directors.

Even if the Directors have obtained the approval of the Board of Commissioners, the Directors are still free to decide whether the legal action concerned will be carried out or not. If the circumstances indicate that the implementation of the legal action should be undone, the Directors are obliged to cancel it.

Thus it is clear that the Board of Commissioners does not have an executive function as well as the function of the Directors, but by referring to the provisions of Article 114 paragraph 2 of the UUPT where it is said that the Board of Commissioners must in good faith, prudence and full responsibility perform their duties for the interests and business of the company.

It can be concluded that the Board of Commissioners has a responsibility similar to that of the Directors.

The Board of Commissioners in carrying out its duties must also be guided by three principles, namely the trust given to it by the company, the

principle that shows the ability and prudence of the Board of Commissioners' actions, and the duties based on the provisions of the Law.

50

Regarding the internal liability of the Board of Commissioners, the Board of Commissioners can be held personally liable through “derivative action” by shareholders for and on behalf of the company as stipulated in Article 114 paragraph 6 of the UUPT and or by shareholders for their own interests based on the provisions of Article 61 paragraph 1 of the UUPT.

As for the external liability of the Board of Commissioners, if the actions of the Board of Commissioners result in losses to third parties, for example, the Board of Commissioners knowing that the company may not be able to carry out an agreement, but still gives approval to the Directors to and on behalf of the company to enter into the agreement, then in that case if a third party suffers a loss due to the action.

The Board of Commissioners can be held personally liable for the losses suffered by the third party, the claim is either based on the provisions of Article 114 paragraph 6 in conjunction with Article 61 paragraph 1 and Article 69 paragraph 3 of the UUPT or based on the provisions of tort in Article 1365 and Article 1366 BW.⁵¹

⁵⁰ *Ibid.*

⁵¹ Article 1365 of Indonesian Civil Code stipulates that: Every unlawful act which causes damage to another person, obliges the person who caused the damage through his fault to compensate for the loss.

Article 1366 of Indonesian Civil Code provides that: Every person is liable, not only for damages caused by his acts, but also for damages caused by his negligence or recklessness.

D. Responsibilities of Shareholders

If the status of a PT has been determined as a legal entity by the Minister of Law and Human Rights, then since then the law applies the owner or shareholder separately from the PT itself, known as “separate legal personality”, namely as an independent individual. This is as stipulated in Article 9 paragraph (1) UUPT, thus, shareholders do not have an interest in the assets of the PT, so shareholders are not personally liable for legal acts committed on behalf of the PT.⁵²

One of the biggest advantages that shareholders enjoy is limited liability. This advantage is given to them by law. This principle is further emphasized in the explanation of Article 3 paragraph (1) of the UUPT, that shareholders are only liable for the amount of the deposit of all shares they own and does not include their personal assets. The principle of separate entity and corporate entity which creates limited liability for shareholders, has several consequences, such as:⁵³

1. The Company as a legal entity is a legal unit with separate authority and capacity from the shareholders to control assets, make contracts, sue and be sued, and continue its life and existence even if the shareholders change the Directors are dismissed or replaced;
2. The assets, rights and interests, and responsibilities of the company are separate from the shareholders;

⁵² Kurniawan, 2014, *Responsibility of Limited Liability Company Shareholders According to Positive Law*, Mimbar Hukum Journal, Volume 26 Number 1, p. 75-76.

⁵³ *Ibid.*, p. 77.

3. Furthermore, according to the law in accordance with the provisions of Article 3 paragraph (1) of the UUPT, shareholders have immunity from the obligations and responsibilities of the company, because between shareholders and the company there is a difference and separation, legal personality.

With the existence of limited liability, Shareholders who can also act as Directors or Commissioners must be able to identify actions that can be categorized as PT actions and actions as individuals.

With the existence of limited liability in a PT, at least it avoids personal liability because the company has losses whereas the company is carried out in accordance with applicable regulations and is carried out without any mistakes and is purely a risk of company activities.

However, if in practice the company's activities become the alter ego of the shareholders, then the shareholders can be held directly responsible and sued personally by applying the principle of piercing the corporate veil.⁵⁴

The Limited Liability Company Law explains that legal protection for shareholders can be obtained in the following ways:⁵⁵

1. Filing a direct suit

Article 61 paragraph (1) of the UUPT, shareholders regardless of the percentage of shares they own have the right to sue the

⁵⁴ Paula, 2021, *Responsibility of Limited Liability Company in Liquidation*, Kenotariatan Law Science Journal, Volume 4 Number 2, p. 343.

⁵⁵ Ibid. p.115-124

company in court if the shareholders suffer losses due to unfair and unreasonable actions taken by the Directors, the Board of Commissioners or the General Meeting of Shareholders.

2. Derivative Suit

A lawsuit based on the primary right of the company carried out by shareholders on behalf of the company. A derivative suit in which it is represented by the shareholders to sue the Board of Directors who are the defendant parties. Article 97 paragraph (6) and Article 114 paragraph (6) of the UUPT allow the right to sue a derivative suit to the shareholders with the following conditions:

- The lawsuit is conducted by 10% (ten percent) of the shareholders, and
- A lawsuit is filed only against the interested Directors and/or Commissioners.

3. Right to inspect company documents

Article 138 paragraph (1) of the UUPT states that an examination can be carried out with the aim of obtaining data or information in the event that there are allegations that:

- a. The Company has committed an illegal act that is detrimental to shareholders or third parties; or

b. A member of the Directors or the Board of Commissioners commits an unlawful act that is detrimental to the shareholders or third parties.⁵⁶

4. The right to request a GMS to be held

A request to hold a GMS can be made by a shareholder if the shareholder feels that there are important matters that need to be decided at the meeting. According to Article 79 paragraph (2) of the UUPT which states that:⁵⁷

“1 (one) or more shareholders representing 1/10 (one-tenth) of the total number of shares with voting rights, are entitled to request the holding of a GMS.”

By not making the invitation to the GMS by the Directors and the Board of Commissioners, the shareholders can make their own invitation in accordance with Article 80 paragraph (1) of the Company Law which states that:

“Minority shareholders have the right to submit an application to the Chairman of the District Court whose jurisdiction covers the place of establishment, in order to grant permission to the applicant to make their own summons”.⁵⁸

⁵⁶ Article 138 paragraph (1) of the Company Law

⁵⁷ Article 79 paragraph (2) of the Company Law

⁵⁸ Article 80 paragraph (1) of the Company Law

E. Overview Piercing the Corporate Veil Principle

In certain circumstances the principle of separation of the company from the shareholders, casuistically, needs to be removed by piercing the corporate veil of limited liability.

The legal consequences of revealing the veil or wall of protection are commonly called piercing the corporate veil.⁵⁹

According to Yafet W Rissy, the principle of piercing the corporate veil can be applied against shareholders if there are:⁶⁰

1. incompleteness of the company's requirements as a legal entity;
2. bad faith of the shareholders in utilizing the company for personal interests;
3. the shareholder is involved in an illegal act;
4. the shareholder uses the company's assets so that the company cannot pay off its debts (Article 3 paragraphs (1) and (2));
5. the minimum requirement of two shareholders is not fulfilled six months after the shareholder composition changes (Article 7 paragraphs (5) and (6)).

⁵⁹ Munir Fuady, *Op. Cit.*, p. 7.

⁶⁰ Yafet W Rissy, 2019, *The Doctrine of Piercing The Corporate Veil: Its Provisions and Application in the UK, Australia, and Indonesia*, Law Science "Legal Reflection" Journal, Volume 4 Number 1, p. 10.

In addition, there is also a condition where the principle of piercing the corporate veil can be applied to the Directors of the company, namely if:⁶¹

- a. The director does not fulfill the requirements for the establishment of a PT. When the requirements have not been fulfilled, the company does not yet have the status of a legal entity. Therefore, if the company commits a legal act, the founders of the company, directors and commissioners are jointly and severally liable;
- b. The director violates the company's purpose, the interests of the company, the articles of association, and the law or the director acts outside his authority or ultra vires (Compare Article 1 paragraph (5), Article 97 paragraph (5) letter (b), Article 104 paragraph (4) letter (b) UUPT);
- c. The director breached his fiduciary duties, namely the duty to act in good faith and in the best interests of the company and breached the duty of care and based on his expertise which caused losses to the company (Article 97 paragraphs (3) and (5) UUPT);
- d. Director violates fiduciary duties, namely the duty to act in good faith and in the best interest of the company and violates the duty of care and causes the company to be bankrupt (Article 97 paragraph (3), Article 104 paragraph (2) UUPT);

⁶¹ *Ibid.*, p. 11.

- e. The director prepares financial statements that are misleading or untrue (Article 69 paragraph (3) UUPT).

Another opinion expressed by Gunawan Widjaya regarding the things that cause piercing the corporate veil, namely:⁶²

1. In the first case, it is clear that the shareholders did not seriously intend the limited liability status, which can only be obtained as soon as the established PT obtains authorization from the Minister of Law and Human Rights. By ignoring the processes and formalities that should have been followed, it can be said that the founders of a limited liability company did not intend to seriously establish a PT. In fact, Article 10 paragraph (9) of Law No. 40 of 2007 states that if within a period of 60 (sixty) days as from the date on which the deed of establishment is signed, the application for authorization and obtaining the status of a legal entity is not submitted to the Minister of Law and Human Rights, then the establishment shall become void upon the expiry of such period and the Company which has not obtained the status of a legal entity dissolves by law and its dissolution shall be carried out by the founders.

Not obtaining the status of a legal entity does not only occur because the application for legalization as a legal entity is not submitted, but can occur for various reasons.

⁶² Gunawan Widjaja, *Op. Cit.*, p. 38-40.

These things can occur, for example, because the founder does not want to make a capital deposit as previously determined, the founder does not authorize the company management to carry out the necessary activities while the founder himself does not want to act on behalf of the company;

2. The second point is related to the agency theory, where shareholders in bad faith have used the company for their own interests. In context, this means that the company is only implementing what is the purpose and objective of the shareholders. The shareholders in this case take refuge behind the limited liability of the company, while the company itself is used for their personal interests. So it is clear in this context, shareholders who do not have good faith and are protected by law. Piercing the corporate veil applies in this case to shareholders who utilize the company for their personal interests;
3. The third point refers to the unlawful act of the shareholder. In this regard, it is important to note that whoever causes losses to others is liable for the losses he causes.

As an artificial person, a PT does not have a will. In circumstances where the will of the company is the will of the shareholders, it is clear that the shareholders are responsible;

4. The fourth point is related to the unauthorized use of assets that causes the company's assets to be reduced so that the company cannot pay off all its obligations to creditors of the company.

F. Legal Protection for Directors and Shareholders

4. Definition of Legal Protection

In English, the term legal protection is known as Legal Protection and in Dutch it is known as Rechtsbescherming. In the Indonesian Dictionary (KBBI), the definition of protection is the method, process, and act of protecting.⁶³

Meanwhile, in Black's Law Dictionary, is the act of protecting. So if it is concluded, legal protection is an act where the provisions are regulated in regulations that have been made by the government and local customs that aim to protect social life and apply to all citizens.

According to Satjipto Rahardjo, legal protection is to provide protection to human rights that are harmed by others and this protection is given to the society with the aim that they can enjoy all the rights granted by law.⁶⁴

Meanwhile, according to Setiono, legal protection is an action or effort to protect society from arbitrary actions by the authorities that are not in accordance with the rule of law, to create tranquility that allows humans to enjoy their dignity as human beings.⁶⁵

According to Philipus M. Hadjon, legal protection for the citizens by the government is preventive and repressive.

⁶³ Indonesian Language Dictionary (KBBI) Online, Accessed from <https://kbbi.web.id/> on May 1st, 2023, at 19.53 WITA

⁶⁴ Satjipto Rahardjo, 2014, *Legal Science*, Bandung: Citra Aditya Bakti, p. 53.

⁶⁵ Radhy Alfian Santara, 2019, *"Insurance Legal Protection for Passengers of Intercity Buses Within Provinces (AKDP) That Are Not Roadworthy Based on Positive Law in Indonesia"*, Bandung: Faculty of Law, Pasundan University, p. 40.

Preventive legal protection aims to avoid disputes that direct government actions to be careful in making decisions based on discretion, while repressive legal protection aims to prevent disputes, including handling them in the judiciary.

Meanwhile, according to Lili Rasjidi, the law can function to create protection that is not only adaptive and flexible. But also predictive and anticipatory.⁶⁶

5. Legal Protection of Directors

Legal protection of members of the directors in the management of the company is very important, because the directors as an organ that carries out management have the authority to make decisions and policies of the company in its daily management activities which each company will certainly strive for its business to make a profit-oriented.⁶⁷

The form of legal protection for directors in carrying out PT management actions can be found in the provisions of Article 97 paragraph (5) of the UUPT which states that:⁶⁸

"(5) Members of the Directors cannot be held liable for losses as referred to in paragraph (3) if they can prove:

a. The loss was not due to his fault or negligence;

⁶⁶ Lili Rasjidi and I.B Wysa Putra, 2003, *Law as a System*, Bandung: Remaja Rusdakarya, p. 118.

⁶⁷ Freddy Haris, 2005, "Separation of Liability of Directors of Limited Liability Companies", *Law and Development Journal*. Volume 1 Number 35, p. 92.

⁶⁸ Article 97 paragraph (5) of Law Number 40 of 2007.

- b. He/she has carried out the management in good faith and prudence for the interests and in accordance with the purposes and objectives of the Company;
- c. Has no conflict of interest either directly or indirectly over the management actions that resulted in the loss; and
- d. Has taken measures to prevent the incidence or continuation of such losses.”

This provision is a mirror of a doctrine in PT, which is called the doctrine of business judgment rule, which is a rule that provides protection for good faith company management if there is a loss to the company.⁶⁹

As also regulated in Article 1365 of the Civil Code which stipulates that:

“Every act that is unlawful and brings loss to another person, obliges the person who causes the loss due to his fault to compensate for the loss.”

With the existence of the business judgment rule that is adopted in the UUPT, the directors can be excluded from liability for losses suffered by the company. This also applies in case of bankruptcy of the company, as stipulated in Article 104 paragraph (4) of the UUPT.

6. Legal Protection of Shareholders

According to Misahardi Wilatamarta, although in the structure of the Company, the GMS has the highest power, this does not mean that the

⁶⁹ Gunawan Widjaja, *Op.Cit.*, p. 66.

GMS has the highest level among the organs of the Company, but only has the highest power if the authority is not delegated to other organs of the Company. Thus, each organ of the Company has independent duties and authorities.⁷⁰

The authority of the GMS, which Article 75 paragraph (1) of the UUPT defines as an authority not granted to the Directors or the Board of Commissioners, requires the reader of the UUPT to examine and understand Article by Article in the UUPT and it is not uncommon for the notion of “rights and authorities” that attached to the GMS confuse.

To find out what authority the GMS has that is granted by the UUPT, which is regulated in the UUPT, it is not uncommon to use the phrase “right or entitled” as described in the previous chapter.⁷¹

The UUPT explains that legal protection for shareholders can be obtained in the following way:⁷²

- 1) Filing a lawsuit directly (Article 61 paragraph (1) UUPT);
- 2) Derivative suit (Article 97 paragraph (6) and Article 114 paragraph (6) UUPT);
- 3) The right to inspect company documents (Article 138 paragraph (1) UUPT);

⁷⁰ *Ibid.*, p. 223.

⁷¹ *Ibid.*

⁷² Maya Sari, *et al.*, 2017, *Analysis of Legal Protection for Minority Shareholders in the Acquisition Process Based on Article 126 of Law Number 40 of 2007*. Volume 2 Number 2, Malang: JIPPK, p. 115-124.

- 4) The right to request a GMS (Article 79 paragraph (2) and Article 80 UUPT);
- 5) The right to request that the company dissolve (Article 144 paragraph (1) and 146 paragraph (1) letter c UUPT);
- 6) Appraisal right (Article 62 UUPT).

G. Review regarding Legal Certainty

According to Hans Kelsen, law is a system of norms. Norms are statements that emphasize the “should” or *das sollen* aspect by including some rules about what to do.

Laws that contain general rules become guidelines for individuals to behave in society, both in relationships with other individuals and in relationships with society.

These rules are a limitation for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty.⁷³

Meanwhile, according to Gustav Radbruch, at least the law must contain 3 (three) elements of identity, namely:

1. Principle of Legal Certainty (*rechmatigheid*)
2. Principle of Legal Justice (*gerechtigheit*)
3. Principle of Legal Utility (*zwechmatigheid*).⁷⁴

⁷³ Peter Mahmud Marzuki, *Op.Cit.*, p. 58.

⁷⁴ *Ibid.*, p. 29.

The principle of certainty basically expects and requires the law to be made definitively in written form.

The existence of this principle is important because it will ensure the clarity of an existing positive legal product.

The importance of this principle also has something similarity with the main idea in the construction of legal positivism reasoning, namely certainty. In a legal regulation, there are legal principles that form the basis for its formation. According to Satjipto Rahardjo, legal principles can be interpreted as the “heart” of a legal regulation.⁷⁵

The theory of certainty in this refers to the theory of legal certainty, meaning that every legal act carried out must guarantee legal certainty. For this purpose, for laws that are unclear, it is necessary to interpret the norms.

However, in interpreting the law to a legal expert cannot act arbitrarily. As the Roman proverb quoted by Peter Mahmud Marzuki, namely “*Quamvis sit manifestissimum Edictum Praetoris, attamen non est negligenda interpretatio ejus*”, which means that no matter how clear the instruction is, it is impossible to refuse interpretation because of the lack of interpretation.⁷⁶

⁷⁵ Sudikno Mertokusumo, 2006, *Indonesian Civil Procedure Law*, Yogyakarta: Liberty, p.136.

⁷⁶ Peter Mahmud Marzuki, *Op.Cit.*, p. 111.

The theory of legal protection originally came from the natural law theory, in which it is stated that the law was created by God and is general, eternal and also inseparable.

Legal protection comes from a legal provision and all its regulations whose function is to regulate behavioral relationships between members of society and individuals or individuals with the government who are representatives of the people. Regarding the theory of legal protection, there are several expert opinions.

Fitzgerald cites the theory of legal protection from Salmond that law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can be done by limiting various interests on the other side.

The interest of law is to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected.

Legal protection must see the stages, namely legal protection is born from a legal provision and all legal regulations given by the community which is basically an agreement of the community to regulate behavioral relationships between fellow members of society and between individuals and the government which is considered to represent the interests of society.⁷⁷

⁷⁷ Satjipto Raharjo, *Loc.Cit*, p. 53

According to Philipus M. Hadjon, legal protection for the people carried out by the government is preventive and repressive.

Preventive legal protection aims to prevent disputes that direct government actions to be careful in making decisions based on discretion, while repressive legal protection aims to prevent disputes, including handling them in the judiciary.⁷⁸

Based on the above definition, it can be understood that the description of the functioning of the law in terms of achieving legal objectives, namely justice, benefit, and legal certainty can be seen from the legal protection provided by a country to its citizens.

The legal protection that is meant the protection of legal subjects based on the rule of law in the context of enforcing the rule of law.

H. Review of Case

1. Decision Number 95/PDT.G/2017/PN.JKT.SEL

a) Case Position

In the case of Decision Number 95/PDT.G/2017/PN.JKT.SEL which in the case originated from a coal sale and purchase agreement between PT Prakarsa Anugerah Artha as the seller and PT Bukit Asam Prima as the buyer through the Coal Sale and Purchase Agreement No. 06/K/PT.BAP-PT.PAA/2008 dated March 17, 2008, the buyer had submitted a down payment of Rp. 2,000,000,000, - (two billion rupiah) to the seller and then a total of 50,000 Mt of coal will also be delivered to the buyer in stages, but in

⁷⁸ *Ibid.*, p. 54

the process the seller stated that he could not fulfill the obligation to deliver the coal, so that the previous down payment would be returned in installments to the buyer.

In the meantime, the seller has made an installment payment of Rp. 300,000,000, - (three hundred million rupiah) so that it still leaves a return obligation of Rp. 1,700,000,000, - (one billion seven hundred million rupiah), for the settlement of further obligations the parties have made a Liability Settlement Agreement for the remaining payment obligations worth Rp. 1,700,000,000, - (one billion seven hundred million rupiah) and after the agreement was made, the seller only made payments 2 (two) times with each worth Rp. 50,000,000, - (fifty million rupiah) and the second by handing over assets / personal property of the directors in the form of a plot of land and a house building and its contents worth Rp. 476,000,000, - (four hundred million rupiah). 50,000,000, - (fifty million rupiah) and the second with the delivery of assets / personal property of the directors in the form of a plot of land and house building and its contents worth Rp. 476,000,000, - (four hundred seventy-six million rupiah), and other payments were made several times, leaving obligations worth Rp. 1,062,150,000, - (one billion sixty-two million one hundred fifty thousand rupiah).

The default lawsuit from the buyer to the seller and Widodo Agus Hartono (Director of PT. Prakarsa Anugrah Artha) has been accepted and granted by the panel of judges through its verdict stating that Defendant I and

Defendant II have defaulted and are jointly and severally responsible for fulfilling their obligations to the Defendant.

b) Judge's Verdict

In the judge's decision in this case, it is reflected that the principle of piercing the corporate veil has been applied to the Directors of a PT, this can be seen in one of the verdicts which state this as follows:

1. Accept and grant the Plaintiff's lawsuit in part;
2. Declare the validity of the Coal Sale and Purchase Agreement No. 06/K/PT.BAP-PT.PAA/2008 dated 17 March 2008;
3. Declaring the validity of the Settlement of Obligations Agreement between PT Bukit Asam Prima and PT Prakarsa Anugerah Artha dated 8 June 2010;
4. States that the Defendants owe the Plaintiff Rp. 1,062,150,000,- (one billion sixty-two million one hundred and fifty thousand rupiahs);
5. Declare that the Defendants have defaulted against the Plaintiff by failing to pay the aforementioned debt;
6. Declare that the Defendants are jointly and severally responsible for fulfilling their obligations to the Plaintiff;
7. Reject the Plaintiff's lawsuit for other than and the rest;

8. Sentenced Defendant I and Defendant II jointly and severally to pay all court costs amounting to Rp. 2,156,000- (two million one hundred fifty-six thousand rupiahs).⁷⁹

2. Decision Number 47/PDT.G/2021/PN.MTR

a. Case Position

The default case originated from a Construction Agreement for the construction of a villa/hotel dated June 15, 2015 made by the Plaintiff, Stefaan Louis Mariette Wouters, and Defendant 1, PT Amanah Group International, as a construction company, private deed and signed by a witness and registered and recorded (*waarmerking*) by Notary Lalu Prima Ade Pramana, S.H., M.Kn.

The Plaintiff has paid off the total cost of construction of the villa/hotel to PT Amanah Group in the amount of Rp. 4,378,165,909 (four billion three hundred seventy-eight million one hundred sixty-five thousand nine hundred nine rupiah), which amount has been detailed in the agreement.

However, after 7 (seven) months, there was no physical construction of the villa/hotel as promised. The Plaintiff had also tried to ask Defendant II, Jonas San Martin Falcon as the Director of PT Amanah Group International and Defendant III, Wouter Van Der Linden as the Commissioner of PT Amanah Group International.

Both of them could not provide a clear reason why the villa/hotel had not started the construction and tended to disappear. On this basis then the

⁷⁹ Decision Number 95/Pdt.G/2017/PN.Jkt.Sel

Plaintiff in filing his lawsuit included the Directors and Commissioners by adhering to the principle of “piercing the corporate veil” in PT.

So that according to the plaintiff's intention to attract the Directors as Defendant II and Commissioners as Defendant III to be personally liable for the losses claimed by the plaintiff.

However, in its verdict, the panel of judges only stated that it granted the claim and stated that Defendant I was in default to the Plaintiff and ordered Defendant I to pay damages to the Plaintiff in the amount of Rp. 2,669,164,102, - (two billion six hundred sixty nine million one hundred sixty thousand one hundred and two rupiah).

The panel of judges refused to grant the arguments of the Plaintiff's claim relating to the principle of “piercing the corporate veil” against Defendant II and Defendant III to be personally liable.

b. Judge's Verdict

1. Declaring that the Defendants were legally and properly summoned but did not appear;
2. Granted the Plaintiff's lawsuit in part with default judgement;
3. Declare that Defendant 1 has clearly and committed a breach of contract (default) to Plaintiff based on the "Construction Agreement" dated 15 June 2015 as registered and recorded (Waarmerking) by the authorized public official, namely notary Lalu Prima Ade Pramana, S.H., M. Kn;

4. Sentenced Defendant 1 to pay damages to Plaintiff amounting to Rp. 2,669,164,102 (two billion six hundred sixty-nine million one hundred sixty-four thousand one hundred two rupiahs);
5. Sentenced Defendant 1 to pay interest of 6% a year or 0.5% every month on the Plaintiff's loss of Rp. 2,669,164,102.00 (two billion six hundred sixty-nine million one hundred sixty-four thousand one hundred and two rupiahs) starting from the lawsuit is registered at the Registrar's Office until the Plaintiff's case has permanent legal force;
6. Reject the Plaintiff's lawsuit for other than and the rest;
7. Sentenced the Defendants to pay court costs amounting to Rp. 2,177,500 (two million one hundred seventy-seven thousand five hundred rupiahs)".⁸⁰

3. Decision Number 60/PDT.G/2016/PN.JKT.BRT

a. Case Position

There was a sale and purchase legal relationship between Defendant II, namely PT Pura Dewata Lestari as the attorney of Defendant I, namely PT Bunga Lestari with the Plaintiff, namely PT Oscarmas, for 11 (eleven) units of Hyundai Crawler Excavator R220-LC-9SH LR (hereinafter referred to as Excavators") as stated in Sale and Purchase Agreement No.0035/PJB-OM/JKT-SO/XI-2013 dated November 15, 2013.

⁸⁰ Decision Number 47/PDT.G/2021/PN.MTR

Between the Plaintiff and Defendant II (as the Attorney of Defendant I) there was a legal relationship of sale and purchase of 11 (eleven) units of Hyundai Crawler Excavator R220-LC- 9SH LR as stated in Sale and Purchase Agreement No. 0035/PJB-OM/JKT-SO/XI-2013 dated November 15, 2013;

Then Defendant II (as the Attorney of Defendant I) provided a guarantee to the Plaintiff in the form of: 1 (one) Bank DKI Check No. CC404696 worth Rp. 2,754,940,000, - (two billion seven hundred fifty four million nine hundred forty thousand Rupiah), then Defendant II (as the Attorney of Defendant I).

On January 24, 2014 gave directly to the Plaintiff, 1 (one) Bank DKI Check No. CC404700 worth Rp.10,132,710,000, - (ten billion one hundred thirty two million seven hundred forty thousand Rupiah).

CC404700 worth Rp.10,132,710,000, - (ten billion one hundred thirty-two million seven hundred ten thousand Rupiah) as a guarantee of repayment for 9 (Nine) Excavator units.

On January 26, 2015, Defendant III (for and on behalf of himself and as Director for and on behalf of Defendant II) made a Letter of Acknowledgement of Debt stating that he acknowledged that he owed the Plaintiff USD 946,566.50 (nine hundred forty six thousand five hundred sixty six points fifty United States Dollars);

and stated that he would issue 2 (two) checks as payment guarantee with the following details:

- a). Bank DKI Check No. CC 404696 (a check which on January 17, 2014 was given to the Plaintiff as a guarantee) worth Rp.2,754,940,000, - (two billion seven hundred fifty four million nine hundred forty thousand Rupiah); and
- b). Bank DKI Check No. CC 404700 (a check which on January 24, 2014 was given to the Plaintiff as a guarantee) worth Rp.10,132,710,000, - (ten billion one hundred thirty-two million seven hundred ten thousand Rupiah)

Then the Plaintiff knew based on the receipt of money in the amount of Rp. 14,309,707,500.00 (fourteen billion three hundred nine million seven hundred seven thousand five hundred rupiah) from Co-Defendant 1 to Defendant I as payment for the purchase of 9 (nine) excavator units signed by Mrs. YELMI as Director of Defendant I, but Defendant I did not fulfill its obligation to pay the settlement to the Plaintiff;

b. Judge's Verdict

- Declare that the Defendants (Defendant II / as the attorney of Defendant I), Defendant III, and Defendant IV have been proven to have committed an act of default;

Punish the Defendants jointly and severally to pay the loss suffered by the Plaintiff in the amount of Rp. 12,733,620,250 (twelve billion seven hundred thirty three million six hundred twenty thousand two hundred fifty Rupiah) to the Plaintiff in cash and all at once;