REMOVAL OF LIMITED LIABILITY OF SHAREHOLDERS OF LIMITED COMPANIES THROUGH THE PRINCIPLE OF PIERCING THE CORPORATE VEIl

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ABSTRACT

The limited liability of shareholders has been regulated in Article 3 paragraph (1) of the Company Law 2007 where the shareholders of the Company a r e not personally liable for the agreements made on behalf of the Company and are not responsible for the Company's losses exceeding the shares owned. However, this right is not absolute, considering the many bad intentions of shareholders in running the company, theprinciple of piercing the corporate veil is intended to prevent the abuse of legal protection given toshareholders based on the principle of limited liability. The method in this research is normative legal research method with the focus of the study discussing the doctrines or principles of law. The result of this research is based on the principle of piercing the corporate veil which eliminates limited liability into unlimited liability in a Limited Liability Company, this has also been regulated in Article 3 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies which states that in certain cases the possibility of eliminating limited liability is not closed. Shareholders assume the risk together with the Company to pay the Company's debts from the personal assets of the shareholders concerned.

***Keyword**: Piercing the Corporare Veil, Limited Liability, Shareholders, Limited Liability Company.*

ABSTRAK

Menurut Pasal 3 Ayat (1) UUPT 2007, tanggung jawab pemegang saham Perseroan terbatas. Ini berarti mereka tidak bertanggung jawab secara pribadi atas perikatan yang dibuat atas nama Perseroan dan tidak bertanggung jawab atas kerugian Perseroan lebih dari jumlah saham yang mereka miliki. Namun, hak tersebut tidak mutlak karena banyaknya niat buruk para pemegang saham tentang bagaimana perusahaan berjalan. Oleh karena itu, prinsip piercing the corporate veil dimaksudkan untuk mencegah pemegang saham menyalahgunakan perlindungan hukum yang diberikan oleh prinsip tanggung jawab terbatas. Penelitian ini menggunakan metode penelitian hukum normatif, dan fokus penelitian adalah doktrin atau asas hukum. Prinsip piercing the corporate veil adalah dasar penelitian ini, yang mengubah tanggung jawab terbatas (limited liability) dalam sebuah perseroan terbatas menjadi tanggung jawab tidak terbatas (unlimited liability). Ini juga diatur dalam Pasal 3 ayat 2 Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas, yang menyatakan bahwa dalam beberapa kasus, hapusnya tanggung jawab terbatas dapat terjadi. Pemegang saham memikul resiko bersama dengan Perseroan untuk membayar utang Perseroan dengan harta pribadi mereka.

Kata Kunci: Piercing the Corporare Veil, Limited Liability, Pemegang Saham, Perseroan Terbatas.

A. BACKGROUND

In the perspective of Fiction Theory, a Company is an artificial entity that has no substantial reality, no mind, invisible, and intangible that exists and is formed by law through government approval in the form of fiat, approval, or consensus of the government. Scientifically, the Company is not a human being, but as a legal entity, the Company can act on its own and perform the necessary legal acts. In Indonesia, the term Perseroan Terbatas (PT) consists of the words 'Perseroan' which refers to the company's capital divided into shares and 'Terbatas' which indicates the limited liability of the shareholders. The company as a legal entity means that the company is a legal subject, so it can be burdened with rights and obligations like humans in general. Therefore, the company is a legal person that has the legal position, rights and responsibilities of a natural person, but the company is a separate legal entity from its directors and shareholders.[1]

As a legal entity, a company has assets that are separate from the assets of its management and shareholders. One of the main advantages obtained by shareholders in the Company is limited liability, known as the legal principle of limited liability. liability is a fundamental principle in modern corporate law and is one aspect of the legal protection afforded to shareholders. This means that the limited liability of shareholders is not absolute. If it can be proven that there is a mixing of the shareholder's personal assets with the company's assets, then the limited liability can change to unlimited liability. This means that the shareholders will be personally liable for the company's losses, not only to the extent of the shares they own in the company, in accordance with the principle of liability adopted by a legal entity.[2]

An exception to the general rule of limited liability is the doctrine of piercing the corporate veil, which is a rule that attributes liability to the company's shareholders for all types of corporate debt. The doctrine of piercing the corporate veil is a doctrine that developed in the English common law tradition 122 years ago. In the common law tradition, shareholders of a company are exempted from personal liability for the obligations of the company (corporate veil). The shareholders of a company have no

[1] Bergkamp, Lucas and Wan-Q Pak. (2001). Piercing the Corporate Veil: Shareholder Liability for Corporate Torts, "Maastricht Journal of European and Comparative Law", Vol. 8 No.2, 167-188: 167.

[2] Berle Jr, Adolf A. (1947) The Theory of Enterprise Entity, Columbia Law Review, Vol. 47, No. 3, 343-358: 343

responsibility for the company's debt creditors.[3] This principle of separation of corporate liability from shareholders has been followed since the Solomon decision. The doctrine of piercing the corporate veil emerged as a response to the inapplicability of the principle of limited liability which did not allow shareholders to be asked to pay for their shares.

B. RESEARCH METHODOLOGY

This writing uses normative legal research methods, which focus on the discussion of doctrines or legal principles. The sources of legal materials used include laws and regulations as primary legal materials and relevant literature as secondary legal materials. The legal materials are then analyzed using description, evaluation, and argumentation techniques. This type of research article uses normative research or library research, namely by examining the law conceptualized as a norm or a rule that applies in society and not examining the implementation or implementation of the law. This normative legal research method is expected to find legal truths from the normative side so that a normative way of working of legal science is built using the object of law itself, based on this, it is hoped that a systematic picture of the regulation and application of the Piercing the Corporate Veil doctrine in Indonesia will emerge.

The approach in this article is a statutory approach by analyzing relevant national and international legal instruments related to the doctrine of Piercing the Corporate Veil. This normative research aims to obtain secondary data, namely literature discussion which includes primary, secondary, and tertiary legal materials. Examples are materials that have juridically binding force as primary legal materials. Complementary materials as secondary legal materials. Tertiary legal materials such as legal dictionaries, indexes, bibliographies, or bibliographies and search materials in the search for legal materials using literature studies on materials relevant to this article. Furthermore, in its processing, the author uses descriptive legal material techniques to answer problems.

C. FINDING & DISCUSSION

[3] Bordwin, Milton. (1995). Piercing the Corporate Veil, "Management Review", Vol. 84, No. 8, 37.

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1. Setting the Doctrine of Piercing the Corporate Veil in Indonesian Corporate Law

Law Number 40 of 2007 on Limited Liability Companies (hereinafter referred to as UUPT) adheres to the principle of Separate Legal Personality as stated in Article 3 paragraph (1) of the UUPT which reads: "The shareholders of the Company are not personally liable for agreements made on behalf of the Company and are not responsible for the Company's losses exceeding the shares owned". The article explains that for companies in the form of legal entities, such as limited liability companies (PT), cooperatives and others, the assets of the founders or owners or shareholders are separate from the assets of the legal entity they own. The property of the owner of the company or its shareholders cannot be confiscated or sued to be charged and responsible for the losses of the company.[4]

The principle of Separate Legal Personality was first derived from the Salomon case v. A Salomon & Co. Ltd.4 The Separate Legal Personality principle is to provide indirect protection for the investment of shareholders in the company's business.[5] According to this principle, if there is an action taken by the company through the order of the shareholders, bringing losses to the company or there is an agreement that creates obligations for the company, even if the shareholders must take responsibility, the liability is limited to their shares. In addition, Article 40 Paragraph (2) of the Commercial Code (hereinafter referred to as KUHD) states that "The limited liability company or shareholder is not liable for more than the full amount of the share".

In other words, shareholders are only liable to the extent of their shares or capital. KUHD does not further regulate whether in his position as a shareholder, he can still be held liable even if he exceeds his capital. Article 3 paragraph (1) of the Company Law also shows the existence of the Limited Liability principle that separating the owner's personal assets.[6] According to Pettet, shareholders are

[4] Dewi, Sandra. The Principle of Piercing the Corporate Veil in Limited Liability Companies in Relation to Good Corporate Governance, Respublica Law Journal, Vol. 16, No. 2 Year 2017: 252-266: 261.

[5] Davies, "The features which most centrally define the company and distinguish it from all other types of organization are the principles of separate legal personality and limited liability." Hansmann and Kraakman, What is Corporate law?", Introduction, Chapter 1. In RossGrantham, The Limited Liability of Company Directors, The University of Queensland, TC Beirne School of Law, Legal Studies Research Paper Series, Research Paper No. 07-03, 2007, pp. 2

[6] Sandra Dewi, "Application of The Principle of Piercing The Corporate Veil, International Journal of Law And Public Policy, Vol. 2, No. 2, 2020, pp. 66.

notresponsible for contributing to the company's assets beyond the shares they own. There fore , it is concluded by R oss Grantham that the principle of Limited Liability "speaks expressly to shareholders, ".[7]

In its development, the principle of Limited Liability does not apply fully since the doctrine of Piercing The Corporate Veil which allows for the exclusion of limited liability of the organs of the company. In order to avoid the abuse of the principle of Limited Liability by shareholders who utilize limited liability companies for their personal interests, there is the doctrine of Piercing The Corporate Veil. The doctrine of Piercing The Corporate Veil is an exception to the principle of Separate Legal Personality and the principle of Limited Liability, the regulation of the doctrine of Piercing the Corporate Veil is contained in Article 3 paragraph (2) of the Company Law which regulates the elimination of the limited liability of shareholders for the liability of a company, namely:

a. Incompleteness of the company's requirements as a legal entity;
b. The bad faith of shareholders in utilizing the company for personal interests;
c. Shareholders are engaged in unlawful conduct;
d. Shareholders use the company's assets so that the company cannot repay its debts;
e. Failure to fulfill the minimum requirement of 2 (two) shareholders within six months after the change of shareholders.

To apply the doctrine of Piercing The Corporate Veil in a case, it requires the existence of an element of "unusual circumstances" in the company's activities. Such circumstances may be caused by one of the following circumstances:[8]

a. Third parties feel cheated by the company during transactions, confusing behavior of the company, the company's capital is not properly stated or not deposited, personal guarantees play a more dominant role than shareholders, and the operation of the company is not good.

[7] Pettet, "the meaning of limited liability in company law is that by virtue of statute a shareholder is not liable to contribute to the assets of the company on a winding up beyond the amount remaining unpaid on his or her shares.", Limited Liability, Gower's Principles of Modern Company Law 7th Ed. pp. 126-127.

[8] M. Fuady, Modern Doctrines in Corporate Law (3rd ed), Bandung: Citra Aditya Bakti, 2014, p. 26.

b. If the activities of a company are considered a criminal offense or unlawful act, even though it is carried out by the company itself, then based on the doctrine of Piercing The Corporate Veil, it can be justified as according to the law if the responsibility is requested against other parties, for example the directors, commissioners and shareholders. The unlawful acts of the company in question include large-scale corporate activities but the capital is very small, the company was formed specifically to carry out harmful activities without legal approval.

c. Relates to the relationship between the parent company and its subsidiaries. Piercing the Corporate Veil doctrine is known as the "instrumental doctrine". According to the doctrine, the doctrine of Piercing the Corporate Veil can be applied when the responsible party is not only the legal entity that performs the legal act, but also the shareholder (holding company) is also responsible if one of the elements is fulfilled, namely: express agency, or estoppel, or direct tort, or it can be proven that there are three elements as follows: 1) control of subsidiaries by the parent company. 2) Controlling the parent company to commit fraud, dishonesty or other unfair acts. 3) the existence of losses resulting from the parent company's breach of obligations. In addition, in parent and subsidiary companies, the doctrine of Piercing the Corporate Veil can also be applied to cases that contain facts of misconduct, fraud, and injustice, to protect minority shareholders, in the following cases.[9]

The above circumstances cannot stand on their own, but it must be proven that they are interrelated. The regulation regarding the principle of Piercing The Corporate Veil has been adopted in the provisions of Indonesian positive law, namely in Article 3 paragraph (2), and Article 7 paragraph (5) and paragraph (6) of the Company Law. Article 7 paragraph (5) and paragraph (6) of the Company Law are explained as follows: "(5) After the Com pany obtains the status of a legal entity and the shareholders becom e less than 2 (two) persons, within a period of not m

[9] M. Fuady, Modern Doctrines in Corporate Law (3rd ed), Bandung: Citra Aditya Bakti, 2014, p. 35.

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ore than 6 (six) m onths as from the date of such situation the shareholder concerned m ust transfer part of his shares to another person or the Com pany m ust issue new shares to another person.

(6) In the event that the period contem plated in paragraph (5) has elapsed and the shareholders are still less than 2 (two) persons, the shareholders shall be personally liable for all of the Com pany's obligations and losses, and at the request of an interested party, the district court m ay dissolve the Com pany." These provisions are a concretization of the Piercing the Corporate Veil doctrine. Through this concretization, the party held liable is usually the shareholder or holding company. However, in its concretization, it is not possible to impose liability on the board of directors and the board of commissioners, namely when the board of directors or the board of commissioners acts very dominantly in committing acts that result in the emergence of the doctrine of Piercing the Corporate Veil.[10]

In principle, the doctrine will be applied if there is a very unfair situation in which the responsibility is asked for the company as a legal entity alone, resulting in only the company being unable to own its assets. It becomes unfair when only the company can be claimed by third parties while the loss is also caused by the directors or board of commissioners. Thus, the doctrine of Piercing The Corporate Veil can transfer a responsibility from the company to shareholders, directors, or directors. This doctrine is an attempt to hold shareholders personally liable for utilizing the company for personal interests or incurring a loss as a result of the shareholder's actions.[11]

Thus, the limited liability of shareholders is not absolute. The application of the Piercing the Corporate Veil doctrine can be applied to cases such as fraud, inadequate capitalization, failure to meet the formal requirements of company establishment, and abuse of authority in the company due to the domination of one or more shareholders. In addition, the doctrine of Piercing the Corporate Veil can also be applied to cases to avoid legal liability, violations of fiduciary duty and agency, unpaid dividends or excessive dividends paid to shareholders, and using

[10] Emilda Kuspraningrum, "Directors' Liability Under the Limited Liability Company Law Number 1 Year 1995 and Its Comparison with KUHD", Legal Treatise, Vol 1, 2005, p. 43. 43.

[11] Fuady, Munir. (1999). Corporate Law in the Paradigm of Business Law, Bandung: Citra Aditya Bakti. p. 312.

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personal guarantees to be liable for corporate obligations by the majority of shareholders.[12]

The application of the Piercing the Corporate doctrine to corporate law in Indonesia is further regulated in Chapter VII of the UUPT regarding directors and board of commissioners showing this doctrine can be applied. The UUPT regulates that if the directors and board of commissioners violate their obligations in the UUPT, it can result in the application of the Piercing the Corporate Veil doctrine as Article 97 paragraph (1), (2) and (3) UUPT, which i nti of the article regulates the board of directors is responsible for management of the company.[13] The management of the company must be carried out by each member of the company directors in good faith and with full responsibility.

If the board of directors is guilty and intentionally or negligently performs the fiduciary duty, in bad faith and is responsible for carrying out duties for the benefit of the company, the board of directors is personally liable. The general provisions if a member of the board of directors is exposed to legal problems refer to Article 97 paragraph (3) of the Company Law which reads "Each member of the Board of Directors is fully personally liable for the losses of the Company if the person concerned is guilty or negligent in carrying out his duties in accordance with the provisions referred to in paragraph (2)" associated with the theory in the Black Law Dictionary which states that there is a doctrine of Piercing the Corporate Veil.

Namely, "the judicial act of imposing personal liability on otherwise immune corporate officers, directors, and shareholders for the corp oration's wrongful act. The theory can be applied if there is wrongful circumstances.[14] Piercing the Corporate Veil can apply depending on the authority and obligations carried by the party who wants to be held personally liable. Thus, one of the causes of the problem that causes Piercing The Corporate Veil to apply is that the board of directors and / or the board of commissioners does not carry out the basic trust

[12] Sandi Nugroho, et al, "Implementation of Shareholder's Alter Ego and It's Accountability According to Piercing The Corporate Veil Doctrine in Indonesia", PalArch's Journal of Archaeology of Egypt, No. 17, Vol. 7, 2020, pp. 2519.

[13] Pramono, Certification of Shares of PT Go Public and Capital Market Law in Indonesia, Bandung: Citra Aditya Bakti, 2001.

[14] Rastuti, T, The Ins and Outs of Companies and Corporate Law, Bandung: Refika Aditama, 2015, pp.

responsibility (fiduciary duty) to the Company. However, based on Article 85 of the Company Law, it does not apply the principle of fiduciary duty thoroughly as seen from the obligation to carry out duties for the benefit of the company so that it has not fully made the position of the board of directors a trustee. Therefore, the UUPT only partially adheres to the principle of fiduciary duty so that there are difficulties in legitimizing if the director takes actions outside the limits of his authority as in the articles of association which result in harm to the company or third parties.

It is further explained in Article 97 paragraph (3) of the Company Law, which expressly states that members of the board of directors must be responsible up to their personal assets or stated that the doctrine of Piercing The Corporate Veil can be applied. The actions of the board of directors outside the limits of their authority granted by law or the company's articles of association or negligent in carrying out their duties and resulting in losses are declared as ultra vires. The actions of the board of directors are within the authority that has been determined by the company, in the event that the board of directors in its capacity as the property of others, either directly or indirectly, can be held accountable internally, namely, the board of directors is responsible for its responsibility to the company and shareholders, in this case it can be held accountable up to the personal property of the board of directors if it is proven that the loss is the result of error or fraud n of the board of directors. In this situation, the doctrine of Piercing The Corporate Veil has been applied.[15]

2. Limited Liability of Shareholders Based on Law Number 40 Year 2007 on Limited Liability Companies

Article 1 paragraph (1) of the Law on Limited Liability Companies (UUPT) explains that a Limited Liability Company is a legal entity that is a capital alliance, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares, and fulfills the requirements set forth in this Law and its implementing regulations. This means that the Company as a legal entity (rechtperson, legal person) is a separate legal entity from the

[15] Putri Sari Harahap and Tumanggor, "Application of the Principle of Piercing the Corporate Veil: Perspective of the Responsibility of the Board of Directors of Limited Liability Companies", Journal of Nuances of Kenotariatan, Vol. 1, No.1, 2015, p. 51. 51.

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shareholders. A company has a personality or "corporate personality" that is different from the person who created it, even though the people who run the company or its shareholders continue to change, the company still has its own identity regardless of the change of management or shareholders.

Dutch law also recognizes that a limited liability company has a legal personality distinct from that of its shareholders. The limited liability of shareholders has been regulated in Article 3 paragraph (1) of the 2007 Company Law which reads: "The shareholders of the Company are not personally liable for agreements entered into on behalf of the Company and are not liable for the Company's losses in excess of the shares owned."The concept and principle of separate entity and limited liability stipulated in Article 3 paragraph (1) of the 2007 Company Law are the same as those in Article 3 paragraph (1) of Law No. 1 Year 1995 on Limited Liability Companies. The concept and principle of separate entity and the corporate entity that gives birth to the limited liability of shareholders, can be summarized as follows:

a. The Company as a legal entity is a legal entity that has separate authority and capacity from shareholders to control wealth, make contracts, sue and be sued, and continue its life and existence despite the change of shareholders or dismissal of the Board of Directors.
b. The Company's assets, rights, interests and liabilities are separate from those of the shareholders.
c. Shareholders, in accordance with Article 3 paragraph (1) of the Company Law 2007, have immunity from the obligations and responsibilities of the Company because there is a difference and separation of legal personalities between shareholders and the Company.

Limited liability is a legal status where the liability of shareholders is limited to the amount of their investment in a company. When a company that imposes limited liability on investors is sued, the plaintiff can usually only collect against the company's assets, not the assets of shareholders or other investors. This principle is also regulated in the Commercial Code (KUHD) through Article 40 paragraph (2) which states that "Persero-persero or shareholders are not liable for more than the number of shares they own". This limited liability principle provides

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protection and legal certainty to investors, thus encouraging them to engage in economic and business activities. If creditors are allowed to reach the investor's personal assets when the business fails, investors may be reluctant to invest.

As already explained, one of the major and important advantages obtained by shareholders in a Company is limited liability, viz:

a. The risk he bears is only as much as his investment in the shares;
b. Shareholders are not personally liable for the Company's debts

3. The Loss of Limited Liability of Shareholders under Law No. 40/2007 and the Principle of Piercing the Corporate Veil

Limited liability of shareholders is not absolute because Law No. 40/2007 on Limited Liability Companies has regulated the elimination of limited liability (piercing the corporate veil) of shareholders. This is regulated in Article 3 paragraph (2) of the Company Law which states that in certain situations, limited liability can be abolished. The legal consequences of disclosure The veil or wall of protection, commonly known as piercing the corporate veil or shefting/lefting the veil:

a. The protection of limited liability of shareholders outlined in Article 3 paragraph (1) of the 2007 Company Law is lost or abolished;
b. By itself, the shareholder assumes the risk together with the Company of paying the Company's debts from the personal assets of the shareholder concerned.

Piercing the corporate veil essentially means ignoring the separation between the regulated corporate entity and the limited liability of shareholders. If limited liability is removed, then the shareholder's liability can extend to his or her personal property. Munir Fuady also argues that: "Piercing the corporate veil teaches that although a legal entity is legally responsible only limited to the assets or assets of the legal entity, but in certain cases the limit of responsibility can be penetrated (piercing) to the assets or assets of the shareholders or owners."

The principle of piercing the corporate veil is intended to prevent the misuse of legal protection granted to shareholders based on the principle of limited liability. In accordance with the explanation of Article 3 paragraph (2) of the second paragraph of the Company Law which states that the limited liability of

shareholders can be removed in certain cases, the things that can remove the limited liability of shareholders have been regulated in Article 3 paragraph (2) of the 2007 Company Law, namely:

a. The requirements for a Company or PT as a legal entity have not been or are not met. Regarding the responsibility for legal acts on behalf of a Company that does not yet have the status of a legal entity, refer to the provisions of Article 14 of the 2007 Company Law which can be classified a s follows: a. Legal actions are performed by all members of the Board of Directors together with all founders and all members of the Board of Commissioners: Article 14 paragraph (1) of UU PT No. 40 Year 2007 explains that legal actions on behalf of a company that has not yet obtained the status of a legal entity must be approved by all founders, members of the Board of Directors, and members of the Board of Commissioners. In this case, all founders, members of the Board of Directors, and members of the Board of Commissioners are jointly and severally liable. However, according to Article 14 paragraph (3) of the 2007 Company Law, the responsibility for such legal acts automatically becomes the responsibility of the Company after the Company obtains the status of a legal person. b. Legal acts are performed by the founder on behalf of the company: If the founder performs a legal act on behalf of a company that has not yet obtained the status of a legal entity, according to Article 14 paragraph (2) of the 2007 Company Law, the legal act becomes the personal responsibility (persoonlijke aansprakelijkheid, personal liability) of the founder concerned, and does not bind the company.
b. Such shareholders, either directly or indirectly, with bad intentions use the company only for personal interests. a. Defrauding creditors: By transferring the Company's assets to its shareholders or affiliates without proper reason and without proper consideration. b. Thin capitalization: The company is undercapitalized or is in a state of "under capitalization". c. Robbery (looting): Transferring the company's assets to shareholders is against the transaction agreement between the company and shareholders, with the aim of defrauding

creditors. d. Circumventing a statute: For example, the company is prohibited from conducting retail business in a certain place. To circumvent the prohibition, the company establishes a subsidiary company that can conduct retail activities in that place, where all of its assets are owned by the company. e. Avoiding an existing obligation: For example, to avoid fulfillment of responsibility for agreements made with third parties (creditors), it is often done by establishing a subsidiary company. The new company or subsidiary then claims that it is not related to the old company (parent company) and is not responsible for contracts made by the old company, even though it continues the business of the o l d company.

c. The Shareholder concerned is involved in an unlawful act committed by the company. If the shareholder is involved or conspires with the company in committing unlawful acts that cause harm to other parties, the application of this reason is not complicated. What needs to be proven is the existence of facts that show the shareholder's involvement in unlawful acts committed by the company.

d. Shareholders involved, either directly or indirectly, in the unlawful use of the company's assets, may cause the company's assets to be insufficient to pay off the company's debts.

Liability in a Limited Liability Company (PT) is basically limited to the assets owned by the PT. Hence, it is called "limited", which means limited in terms of liability. Thus, the shareholders are not personally liable. This means that in the event of a lawsuit from a party In any case, the personal assets of shareholders, members of the board of directors or board of commissioners cannot in principle be seized. Article 3 paragraph (1) of Law Number 40 Year 2007 concerning Limited Liability Companies (UUPT) explains the limited liability of shareholders, however, the limited liability is not absolute due to the principle of piercing the corporate veil. This principle is applied in the company because of the many cases of bad faith of shareholders that result in losses for the company so that the company is no longer able to fulfill its obligations. The application of the theory of

piercing the corporate veil makes legal responsibility not only requested from the company, but also from its shareholders.[16]

In fact, legal responsibility can also be requested to other company organs, such as directors or commissioners. Thus, the application of this principle does not only apply to shareholders, but also to other parties who have the potential to cause harm to the company. In the context of shareholders, the application of the principle of piercing the corporate veil makes them responsible to the company's creditors for losses caused by their actions that harm the company. Meanwhile, the directors or board of commissioners are responsible to the company for losses caused by their actions. With the application of the principle of piercing the corporate veil in a limited liability company, the limited liability of the shareholders is legally removed, and they are also personally liable for errors and losses in the company caused by their negligence.

D. CONCLUSIONS AND RECOMMENDATIONS

The responsibility of shareholders according to Article 3 paragraph (1) of the 2007 Company Law is that they are not personally liable for agreements made on behalf of the Company or losses suffered by the Company. The risk borne by shareholders is only to the extent of their investment and does not exceed the number of shares they own in the Company, as stipulated in Article 40 paragraph (2) of the KUHD. However, based on the principle of piercing the corporate veil which is stipulated in Article 3 paragraph (2) Under the 2007 Company Law, shareholders' liability can be abolished and become unlimited liability in some situations. For example, when the Company's requirements as a legal entity have not been or are not fulfilled, the shareholder concerned uses the Company for personal interests in bad faith, is involved in unlawful acts committed by the Company, or uses the Company's assets unlawfully so that the Company's assets are not sufficient to pay off the Company's debts. If the limited liability is removed, the shareholder's liability will extend to his or her personal assets.

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