COMPARISON OF THE IMPOSITION OF THE DOCTRINE OF PIERCING THE CORPORATE VEIL IN A LIMITED LIABILITY COMPANY BETWEEN THE BOARD OF DIRECTORS AND SHAREHOLDERS IN TERMS OF LAW NUMBER 40 OF 2007 CONCERNING LIMITED LIABILITY COMPANY

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Abstract
The purpose of writing this journal is to determine the comparison of the imposition of the doctrine of piercing the corporate veil in a Limited Liability Company between the Board of Directors and shareholders, with a review of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). The Doctrine of Piercing the Corporate Veil is a doctrine that has long been present in the business world, especially attached to the legal entity of Limited Liability Companies in Indonesia. UUPT as the law governing Limited Liability Companies in Indonesia has set out the rules regarding the doctrine of piercing the corporate veil. The doctrine has historically been widely used in court decisions, the presence of the doctrine of piercing the corporate veil can penetrate the distinctive nature of a Limited Liability Company, namely limited liability. Departing from this inevitability, the author then formulates the problem in writing this journal, namely why there is a doctrine of piercing the corporate veil in a Limited Liability Company and how the comparison of the imposition of the doctrine of Piercing the Corporate Veil in a Limited Liability Company between the Board of Directors and shareholders is reviewed from the Company Law. The research method used is normative legal research, based on sources obtained through literature studies, in the form of primary, secondary, and tertiary legal materials related to the writing of this journal. This research shows that the presence of the doctrine of piercing the corporate veil in a Limited Liability Company is needed as a form of legal protection for the Limited Liability Company entity and its related parties, and there are differences in the imposition of the doctrine on the Board of Directors of...
the company and the company's shareholders. The difference in the imposition between the Board of Directors and the shareholders of the company is that, if the Board of Directors is required another article in relation to its good faith in running the company (fiduciary duty), while the shareholders of the company are expressly regulated in Article 3 of the Company Law.

I. Introduction

The doctrine of Piercing the Corporate Veil appeared as an answer to the rigidity of a Limited Liability Company regulation. According to the doctrine, shareholders in a Limited Liability Company cannot be held personally liable to creditors of the company's debts exceeding the amount of shares they have deposited in the company.\(^1\) The definition of Piercing the Corporate Veil doctrine according to Black’s Law Dictionary is \(^2\):

“Piercing the corporate veil is a judicial process whereby court will disregard usual immunity of corporate officers or entities from liability for wrongful corporate activities; e.g., when incorporation exists for sole purpose of perpetrating fraud.”

Departing from the above understanding, then if translated into Indonesian, Piercing the Corporate Veil is a legal process, in which the court will ignore immunity or limited liability for the actions of corporate officers\(^3\) or entity responsible for the actions that gave rise to the misconduct and offence,\(^4\) with one example being the purpose of perpetrating fraud.\(^5\) In comparison to shareholders, the doctrine can also be applied to one of the organs in a Limited Liability Company, namely the Board of Directors of the company. The Board of Directors of the company is an organ that has the authority and responsibility regarding the management of the company, which is in line with the company's business activities, and for the benefit of the company. In addition, the Board of Directors also has the right to represent the company, both in court and outside the court.\(^6\)

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3. Corporate Officers defined as persons working in the Company who are appointed as officers thereof, in this paper it is relevant that corporate officers refer to the Board of Directors.
4. Entities refer to legal entities, considering that in addition to individuals or individuals, legal entities can occupy positions as shareholders in Limited Liability Companies. For example, PT H is domiciled in South Jakarta and one of its shareholders is PT F.
6. UUPT sebagaimana diubah oleh UUPPCK, Pasal 1 angka 5.
The main obligations of the Board of Directors of the company include managing and administering the company, accounting for the company's assets and assets, and representing the company in carrying out legal actions. The position of the Board of Directors in the company includes its responsibility as an organ of the company. In managing the company, the Board of Directors is obliged to carry out the management in good faith as stated in the aims and objectives of the company in its articles of association. If in carrying out the management, the Board of Directors makes a mistake, then the Board of Directors can also be held liable.

The Board of Directors as a representative of the company, at least can know in advance the limits of its authority to act and its authority in the company. In addition to the doctrine of piercing the corporate veil, the Board of Directors is also closely related to doctrines such as ultra vires to fiduciary duty. The actions of the Board of Directors are directly supervised based on the doctrine of ultra vires, which is related to the limits of its authority in managing the company, so that in carrying out its duties, the Board of Directors must carry out its duties in good faith, seriously and carefully, in addition to having skills in management of course. The limit of authority of the Board of Directors itself is stipulated in the Company's business activities, which is a mandate from the shareholders to the Board of Directors. In the event that the Board of Directors commits ultra vires or exceeds its authority, the court can open documents and files belonging to the company, including an examination of the company, this is where it relates to the doctrine of piercing the corporate veil.

The Law No. 40/2007 on Limited Liability Companies (hereinafter referred to as UUPT) is a law that was born in response to the fact that Limited Liability Companies as one of the pillars supporting the national economy and development require a more solid legal foundation in the face of the rapid development of the business world. After being officially promulgated as a law on 16 August 2007, the Company Law revoked the previous regulation governing Limited Liability Companies, namely Law Number 1 Year 1995 on Limited Liability Companies. The presence of UUPT as a regulation for Limited Liability Companies in Indonesia is now also supported by the presence of Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law ("UUPPCK").

At first, before the enactment of UUPPCK, Law Number 11 of 2020 on Job Creation (hereinafter referred to as UUCiptaker) was first born with the Omnibus
Law method,\(^\text{10}\) that the method is interpreted as one law regulating and containing various content materials of other laws. Furthermore, the validity status of UUCiptaker was eventually revoked and replaced by UUPPCK. The UUPPCK itself has also regulated, among others, the Limited Liability Company, namely precisely in the fifth part, in Article 109 of the UUPPCK. Thus, now the UUPT and UUPPCK in the fifth part, complement each other as positive laws governing Limited Liability Companies in Indonesia.

Limited Liability Company is the name used today, in the past, the term referred to NV or the Dutch language is Naamloze Vennootschap. As for terms other than NV, it is also known as the term Benhard Trade Union or SDN BHD and Corporate Limited (Co. Ltd.). The word company is defined as shares or sero, which relates to the capital of the company, while the word limited is defined as shareholders in the company, which is limited to the number of shares owned in it.\(^\text{11}\) The definition of a Limited Liability Company itself has changed after the enactment of UUPPCK. Article 109 Point 1 of Article 1 of the UUPPCK states that a Limited Liability Company shall be:\(^\text{12}\)

“a corporate legal entity that is a capital alliance, established based on an agreement, conducting business activities with authorised capital that is entirely divided into shares or an individual Legal Entity that fulfils the criteria of Micro and Small Enterprises as stipulated in the laws and regulations concerning Micro and Small Enterprises.”

Based on the above article, the elements of a Limited Liability Company under the UUPPCK consist of a legal entity, in the form of a capital alliance, established based on an agreement, conducting business activities,\(^\text{13}\) by having authorised capital in the form of shares,\(^\text{14}\) conducting business activities with the aim of course for profit, and now, a Limited Liability Company can be established individually, that is, only by 1 (one) person, known as an Individual Company which must fulfil the criteria of micro and small capital.\(^\text{15}\)

\(^{10}\) Arasy Pradana A. Azis, ‘Proses Pembentukan Omnibus Law Berikut 5 Tahapannya’, Hukum Online, 2022 <https://www.hukumonline.com/klinik/a/proses-pembentukan-omnibus-ilaw-i-berikut-5-tahapanya-lt5dfb391ead1ef/>. \\
\(^{11}\) Zainal Asikin dan L. Wira Pria Suhartana, Pengantar Hukum Perusahaan (Jakarta: Kencana, 2016). \\
\(^{12}\) Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas (Indonesia); Undang-Undang Nomor 6 Tahun 2023 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja. \\
\(^{13}\) Business activity means the purposes and objectives of the Company as stated in the Company's articles of association, with due observance of the laws and regulations. See Article 18 of the Company Law. These business activities are now listed in the 2020 Indonesian Standard Industrial Classification (KBLI) which can be accessed at https://oss.go.id/informasi/kbli-berbasis-risiko. \\
\(^{14}\) Capital in a Limited Liability Company consists of Authorized Capital, Issued Capital and Paid-up Capital. These capitals are stated in the nominal value of shares. The Company Law requires that 25% (twenty-five) percent of the Authorized Capital must be issued and paid up in the Company. Lihat Pasal 31 jo. 33 UUPT. \\
\(^{15}\) Kriteria modal dalam lingkup mikro dan kecil dapat diartikan sebagai klasifikasi modal tertentu yang memenuhi klasifikasi modal mikro dan kecil. Perseroan Perorangan sendiri diwajibkan berubah bentuknya menjadi Perseroan Terbatas apabila Perseroan Perorangan itu tidak memenuhi kriteria usaha mikro dan
The distinctive characteristics of the Limited Liability Company itself include being a legal entity, shares are easily transferable as an association of capital, and liability is limited based on the number of issued and paid-up shares (limited liability is known as Limited Liability) or in other words, each organ, including the Company’s stakeholders, namely the employees who work in it, have had their respective duties, principal, and functions (tupoksi). With the existence of one of the characteristics of a Limited Liability Company, as stated in Article 3 paragraph (1) of the Company Law, the shareholders in a Limited Liability Company cannot be held liable up to the shareholders' personal assets for any agreements made in the name of the Company and are not responsible for losses suffered by the Company, however, this does not apply if the shareholders in the Limited Liability Company commit acts that harm the company. Examples of such acts are bad faith use of the company, committing illegal acts, including using the company's assets for the personal benefit of the shareholders, where the company's assets become insufficient to pay off the company's debts if such a thing exists, and the requirements as a company in the form of a legal entity have not been and/or are not fulfilled. All of these acts are not cumulative, so that if one act is fulfilled, then it is fulfilled for the presence of the doctrine of Piercing the Corporate Veil, or opening the curtain of the company's cover.

Based on the background explanation above, the formulation of the problem, are going to discussed further in this paper, namely why there is the doctrine of piercing the corporate veil in a Limited Liability Company and how the comparison of the imposition of the doctrine of piercing the corporate veil in a Limited Liability Company between the Board of Directors and shareholders is reviewed from Law Number 40 of 2007 concerning Limited Liability Companies, thus, the author raises this journal writing with the title "Comparison of the Imposition of the Doctrine of Piercing the Corporate Veil in a Limited Liability Company Between Directors and Shareholders in Review of Law Number 40 of 2007 concerning Limited Liability Companies.

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16 Ali Ridho, Badan Hukum Dan Kedudukan Badan Hukum Perseroan, Perkumpulan, Koperasi, Yayasan, Dan Wakaf (Badung: Alumni, 1999).
17 Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas.
19 Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas., Pasal 3 ayat (2).
2. Research Method

Legal research is a process of finding legal rules, legal principles, and legal doctrines to answer the legal issues we face. The type of research used in this legal research is normative juridical research, where the legal material includes primary and secondary materials obtained by studying and reading them in order to obtain arguments in solving legal problems. Furthermore, the approach used in legal research consists of a statutory approach, case approach, historical approach, comparative approach and conceptual approach. This approach in using a legal research approach, namely by examining the applicable laws and regulations, especially in Indonesia and associated with the problems that the author will write in this paper.

The type of data used is secondary data, which consists of primary legal materials, secondary legal materials and tertiary legal materials. Primary legal material itself consists of laws, judges' decisions, and official records, in this writing, the primary legal material consists of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). Furthermore, regarding secondary legal materials, they are supporting legal materials that are not official documents, such as journals, books, expert opinions or experts, legal dictionaries, articles and papers, including materials from print media, electronic media and internet media regarding Limited Liability Companies, directors, shareholders and the doctrine of piercing the corporate veil associated with the UUPT, while tertiary legal materials are in the form of the Big Indonesian Dictionary and other dictionaries related to this writing.

The writing of this legal research is analysed using the deduction method, which is based on the rule of law (major premise) which is then derived into legal facts (minor premise), so that from the rule of law with legal facts, a conclusion can be obtained, on Comparison of the Imposition of Piercing the Corporate Veil Doctrine in Limited Liability Companies Between Directors and Shareholders in Review of Law Number 40 Year 2007 on Limited Liability Companies.

3. Results and Discussion

Presence of Piercing the Corporate Veil Doctrine in Limited Liability Companies

The main characteristic of a Limited Liability Company, namely as an entity separate from its shareholders, has long been recognised and applied in countries with both common law and civil law systems. Initially, this distinctive
trait was the basic identity of the Limited Liability Company as a legal entity and even the courts were hesitant to intervene. However, in the course of time, this identity is not absolute. The court can open and pierce the corporate veil, through piercing the corporate veil.24

Piercing the corporate The veil as a doctrine is the most frequently encountered and discussed issue in corporate law, but behind this fact, piercing the corporate veil is also the most difficult thing to understand in corporate law. Benyamin Cardozo in his 1926 testimony stated that the exceptions that arise with the doctrine of piercing the corporate veil are difficult to understand and there are unclear and incomplete explanations from the courts that have applied the doctrine. Cardozo’s criticism was aimed at the use of language in courts that have applied the doctrine of piercing the corporate veil with judicial decisions that do not explain in detail why the doctrine is used or not used in a case.25

Based on research conducted by Ng Catharina Enggar Kusuma and Fl. Yudhi Priyo Amboro, there are differences in the application of the doctrine of piercing the corporate veil in the United States, United Kingdom and Indonesia. In the United States, there are 2 (two) reasons for the application of piercing the corporate veil, namely the corporation is used as an alter ego and there is a violation of rights that causes harm to other parties. Whereas in the United Kingdom, there are 3 (three) reasons for the application of piercing the corporate veil, namely the existence of the fraud doctrine, the doctrine of single economic unity and the agency doctrine. Both countries adhere to a common law legal system, while the application of the doctrine of piercing the corporate veil in Indonesia as a country that adheres to a civil law legal system, has been contained in the applicable law as positive law, namely in the Company Law. The striking difference between the application of piercing the corporate veil in a common law country and a civil law country like Indonesia is that common law countries follow the discretion of judges too much, while Indonesia as a civil law country has expressly stated the doctrine in its Limited Liability Company law.26

The presence of piercing the corporate veil doctrine in Limited Liability Companies is closely related to the doctrine of fiduciary duty. The etymology of fiduciary duty itself comes from two words, namely fiduciary which comes from Latin in the form of fiduciarius which is defined as trust or trusting, while duty itself is defined as duty. So literally, the doctrine of fiduciary duty states that a person who is given a task and carries out this task with trust.27 UUPT as

27 Zainal Asikin dan L. Wira Pria Suhartana.
a law regulating Limited Liability Companies, apart from stating that shareholders can be subject to the doctrine of piercing the corporate veil, the organs of the Board of Directors can also be subject to piercing the corporate veil if the Board of Directors does not carry out fiduciary duty. Thus, the imposition of this doctrine is not only limited to shareholders in the company.

Furthermore, Sandra Dewi in her research stated that piercing the corporate veil contained in the Company Law has not explicitly regulated the sanctions that can be imposed on the perpetrators. Thus, in imposing sanctions on the perpetrator, it takes time to wait for a decision from a court that has been legally binding (inkracht) which has the authority to decide the case. Reflecting on this fact, the development of piercing the corporate veil as a doctrine in Limited Liability Companies, especially in Indonesia, has developed widely, considering that there are now also many jurisprudence on piercing the corporate veil, although on the one hand it has not been specifically regulated as well as Sandra Dewi’s opinion regarding the absence of sanctions regarding piercing the corporate veil in the Company Law.

*Piercing the corporate veil itself is an English term*, which if interpreted into Indonesian can be referred to as an examination of Limited Liability Companies. In the author's opinion, as has been explained through the opinions of Benyamin Cardozo and Sandra Dewi above, the court is the party authorised to examine to determine the presence of the doctrine of piercing the corporate veil of a Limited Liability Company. With the development of corporate law, including perhaps the problems that surround it, the court's decision should be getting better in deciding cases that have to do with the presence of this doctrine. A further example is the existence of the UUPT which has discussed the doctrine of piercing the corporate veil in Indonesia, even if in the future there are sanctions governing it, the author argues that the UUPT is correct by applying the application of the doctrine of piercing the corporate veil in general. This means that the UUPT does not need to write the punishment for the perpetrators of piercing the *corporate veil in it*.

This is so that the doctrine of piercing the corporate veil does not look scary to investors who want to invest in a company. It is not uncommon for investors to only focus on their investment and not take part in the management of the company, and it should be like that. At least, the court still needs help to decide a case when it comes to this doctrine. Remembering, opening the curtain of this company is a case that is not easy and that is where the role of the court is needed to decide the case and determine the punishment if it is proven. The punishment can be in the form of compensation, to the obligation to perform an act that has been decided by the court.

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28 Sandra Dewi, ‘Prinsip Piercing the Corporate Veil Dalam Perseroan Terbatas Dihubungkan Dengan Good Corporate Governance’, *Jurnal Hukum Respublica*, 16.2 (2017), 266.
29 Agus Sardjono; et.al., p. 90
The court can override the status of a legal entity owned by a Limited Liability Company, this refers to it as a separate entity, where the Limited Liability Company can be used as a legal subject, relating to rights and obligations under the name of the company. The court as the party authorised to examine the Limited Liability Company, can pierce the curtain covering the company in the form of immunity owned by the Board of Directors, as well as shareholders in the Limited Liability Company. The immunity is in the form of limited liability, i.e. they are not liable for the company’s losses exceeding the number of shares they own in the company, including inevitably to the Board of Directors of the company in carrying out the management of the company in good faith through fiduciary duty, in a conscientious and careful manner, and always knowing the limits of his/her authority.

The purpose of the doctrine of piercing the corporate veil in a Limited Liability Company is to find out the truth about the existence of unlawful acts in a legal event that creates losses for the parties involved. The doctrine of piercing the corporate veil is present in Limited Liability Companies considering that the perpetrators who commit such unlawful acts can hide under the pretext of limited liability of the company. The presence of the doctrine of piercing the corporate veil is expected to protect the Limited Liability Company as a legal subject from the arbitrary actions of irresponsible parties and utilise the company for their personal interests.

Thus, the doctrine of piercing the corporate veil can provide certainty and legal protection for the sustainability of the business world, especially for Limited Liability Companies as legal entities. This legal certainty is not only for Limited Liability Companies as legal subjects, but also for parties within the company and third parties who have an interest in the company. So, the doctrine of piercing the corporate veil is expected to control the behaviour of business actors who want to take advantage of or arbitrarily run a Limited Liability Company, including shareholders and Directors of the company. The existence of piercing the corporate veil in the doctrine of Limited Liability Companies is an answer to the rigidity of the rules regarding Limited Liability Companies, that with this doctrine, limited liability in Limited Liability Companies can be penetrated in order to find out the truth of the existence of a legal event that harms and uses the name of the company, even though the loss may be caused by negligence and unlawful acts of irresponsible parties within the company.

Comparison of the Imposition of the Doctrine of Piercing the Corporate Veil in Limited Liability Companies Between Directors and Shareholders in Review of Law Number 40 Year 2007 on Limited Liability Companies

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30 Zainal Asikin dan L. Wira Priya Suhartana., p. 226
31 Agus Sardjono; et.all., p. 91.
The doctrine of piercing the corporate veil can be said to be an antidote to the immunity of Limited Liability Company organs, especially the Board of Directors and shareholders of the company, against those who do not carry out their duties and responsibilities properly as stipulated in the company's articles of association and the Company Law. This is specifically addressed to the Board of Directors and shareholders of the company, who can be held accountable up to their respective personal assets. Indonesia through the Company Law has included the doctrine of piercing the corporate veil in several articles in it, which was previously based on Law Number 1 Year 1995 concerning Limited Liability Companies and has been maintained after the enactment of the Company Law.

Furthermore, Cheng argued that the doctrine of piercing the corporate veil should apply to shareholders who have committed fraud, including giving untrue and/or misleading statements to the Limited Liability Company, and creditors (parties harmed by the company's actions) rely on their statements, then as a form of punishment, the doctrine of piercing the corporate veil can be applied to the shareholders of the company. This is in line with the inevitability that when referring to Article 3 paragraph (2) letter c and letter d of the Company Law, in practice and reality in the field, Article 3 paragraph (2) letter c and letter d of the Company Law is used against dominant shareholders who usually give orders to the Board of Directors of the company to carry out certain interests based on the wishes of the dominant shareholder. However, it cannot be denied that such shareholders may also play a role and hold positions as Directors of the company, who sometimes commit acts on behalf of the Limited Liability Company for their personal purposes. That's where piercing the corporate veil comes in, with the assistance of the courts, in order to prove if there has been fraud committed by shareholders and/or other organs of the Limited Liability Company.

Article 3 paragraph (2) letter c and letter d of the Company Law states that a shareholder of a company can be held liable if the shareholder is involved in illegal acts committed by the company and uses the company's assets, which results in the company having debts and being unable to repay them, either directly or indirectly. The Company Law has adopted the doctrine of piercing the corporate veil, including in Article 3 and Article 138 paragraph (1) of UUPT. In addition to these articles, there are also other articles in the Company Law regarding personal liability by the Board of Directors of a Limited Liability Company if it is proven to harm the company, including regarding bankruptcy. These articles are Article 97 paragraph (3) and paragraph (4), and Article 104 paragraph (2) UUPT.

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32 Sulistiowati dan Veri Antoni., p. 24
33 Sulistiowati dan Veri Antoni., p. 25.
34 Agus Sardjono; et.al., p. 92.
Munir Fuady in his book entitled 'Corporate Law in the Paradigm of Business Law' states that there are several criteria that are general (universal) so that piercing the corporate veil can be applied, including proven fraud, injustice, oppression, illegality, too broad control by dominant shareholders, and the company is an alter ego of the majority shareholder. Departing from this understanding, the doctrine of piercing the corporate veil according to the author can be considered as a double-edged knife, considering that with the doctrine of piercing the corporate veil, it can be a form of protection and justice for parties within the company and parties outside the company such as third parties who have an interest in the company, from arbitrary actions that harm the company including related parties in it, on the one hand, it can also be an obstacle for the corporate world, or let's call it the same thing, considering that in the business activities of a company, it has a varying level of risk adjusted to the type of business activity of the company.

For example, each business activity listed in the Online Single Submission (OSS) has a written risk level, From low to high, so that with the doctrine of piercing the corporate veil, for example, the parties who will put their shares in the company have known that the responsibility of a Limited Liability Company is not absolute, meaning that limited liability in the company can be penetrated if it is proven that an action in the company is indeed proven to be detrimental to the company. So that the court can open the curtain of the company's cover, this makes investors think twice about investing in companies that have high-risk business activities, or even dominant shareholders are reluctant to trust other organs in the company when it comes to policy direction for a company. This is in line with what is expressed by Sulistiowati and Veri Antoni, that the doctrine of piercing the corporate veil can break through limited liability as a characteristic of a Limited Liability Company, so that unlimited liability is a form of disincentive for investors' desire to invest in the company.35

As one of the organs in a Limited Liability Company, the Board of Directors is a representative of the company, moreover, it has the authorisation to act outside and inside the company, as well as a representative of the company itself, by following the provisions in the articles of association, UUPT and UUPPCK. In the UUPT, the organ of the Board of Directors is specifically regulated in Article 92 to Article 107 of the UUPT. In relation to the doctrine of piercing the corporate veil, Article 97 paragraph (3) of the UUPT states that each member of the Board of Directors is personally liable if the company's losses are caused by his fault or negligence in carrying out his duties, so it can be seen that the doctrine of piercing the corporate veil is present there, although in reality the article is also related to the doctrine of fiduciary duty or what is known as

35 Sulistiowati dan Veri Antoni., p. 95.
good faith and full responsibility. Thus, the imposition of the doctrine of piercing the corporate veil on the Board of Directors is an unavoidable necessity.

Furthermore, it is also emphasised that if a company becomes bankrupt due to the fault of the Board of Directors, then if the company’s assets are not sufficient to cover the costs incurred, the members of the Board of Directors can be held liable for it. It is inevitable that the characteristics of limited liability in a Limited Liability Company are not absolute. However, proof of this doctrine still requires assistance from the court, considering that it is not easy to determine the presence of the doctrine of piercing the corporate veil in a case. The court at least needs to see the files or documents belonging to the company in order to determine the error that arises.

Tabel 1. Comparison of the application of the doctrine of piercing the corporate veil between Directors and Shareholders under the Company Law (UUPT)

<table>
<thead>
<tr>
<th>No.</th>
<th>The Legal Basis</th>
<th>Board of Directors</th>
<th>Shareholders</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Article 3</td>
<td>-</td>
<td>Article 3 of the Company Law specifically addresses its imposition on the shareholders of the company. Article 3 paragraph (2) of the Company Law states that shareholders can be held personally liable if they are proven to utilise the company for personal interests, engage in illegal acts, and use the company's assets for a specific purpose.</td>
</tr>
<tr>
<td>2.</td>
<td>Article 138 paragraph (1) UUPT</td>
<td>Enforced against the Board of Directors. This section is the basis of the court's authority to determine whether or not the doctrine of piercing the corporate veil is present in a case.</td>
<td>It also applies to shareholders. In addition to being directed against the Board of Directors, shareholders can also be examined by the court to determine the</td>
</tr>
</tbody>
</table>

| 36 Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas., Pasal 104 ayat (2) |  |  |
### presence of the doctrine of piercing the corporate veil.

| 3. | Article 97 paragraph (3) and paragraph (4) of the Company Law | Article 97 paragraph (3) and paragraph (4) of the Company Law also relates to the doctrine of fiduciary duty. This means that if the Board of Directors does not carry out its obligations, it can be held liable up to its personal assets. | - |

| 4. | Article 104 paragraph (2) of the Company Law | In the event of bankruptcy of the company, if the bankruptcy is caused by the negligence of the Board of Directors, the Board of Directors can be held liable up to their personal assets. | - |

After seeing the explanation of table 1 above, there are differences in the imposition of the doctrine of piercing the corporate veil on the Board of Directors and shareholders. Against the Board of Directors, even though the Board of Directors does not have shares in the company, unlimited liability can also be imposed, as stated in Article 97 paragraph (3) and paragraph (4) jo. Article 104 paragraph (2) of the Company Law. The imposition on the Board of Directors also needs to see its relationship with the good faith of the Board of Directors or the doctrine of fiduciary duty. As for shareholders, the article that clearly and explicitly regulates the imposition of unlimited liability is contained in Article 3 of the Company Law. Based on the comparison of the above imposition, it can be seen that the Company Law regulates the imposition of the doctrine of piercing the corporate veil in general and not in detail. This is answered in Article 138 paragraph (1) UUPT that in order to determine the presence of this doctrine, including the potential penalties that arise, further proof is required in the flow of proceedings in court.

*Piercing the corporate veil* as a doctrine in Limited Liability Companies had its first origins in the English court judgements in *the cases of Apthorpe v Peter Schoenhofen Brewing and gilford Motor v Horne*37. Especially in the beginning,

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37 Sulistiowati, *Aspek Hukum Dan Realitas Bisnis Perusahaan Grup Di Indonesia* (Jakarta: Erlangga, 2010).
many creditors of insolvent companies asked the court to pierce the corporate veil and hold the company's shareholders personally liable for the company's obligations. Opening the corporate veil will certainly intersect with one of the distinctive characteristics of Limited Liability Companies, namely limited liability, so it is appropriate that limited liability is limited to situations where the shareholders have managed and managed the company properly, with the hope of minimising the presence of losses or errors that can arise there, or in other words, pierce *the corporate veil* plays its role so that shareholders do not take advantage of the company arbitrarily, so that, if a company is bankrupt or in a state of bankruptcy, the shield called *limited liability* can protect them, of course with concrete evidence that they have carried out their duties and obligations to the fullest. Based on this inevitability, the court is expected to look carefully at whether limited liability is present or pierce *the corporate veil* in a case.\(^{38}\)

Tabel 2. Examples of cases in *civil law* and *common law* countries relating to the doctrine of piercing *the corporate veil*

<table>
<thead>
<tr>
<th>Civil Law</th>
<th>Common Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court Review Decision Number 89 PK/PDT/2010.(^{39})</td>
<td>Third Court of Appeal of the State of Florida Number 3D21-89.(^{41})</td>
</tr>
<tr>
<td>Country From: Indonesia</td>
<td>Country of origin: United States</td>
</tr>
<tr>
<td>Parties: Parent Company and Subsidiary</td>
<td>Parties: <em>Limited Liability Company (LLC)</em> owner investor against LLC.</td>
</tr>
<tr>
<td>Result: The Parent Company as a shareholder in the Subsidiary is subject to personal liability, namely joint and several liability due to its Subsidiary becoming bankrupt, considering that the Parent Company has a share in controlling the Subsidiary, including the discovery of losses to third parties and the existence of unlawful acts, not to</td>
<td>Results: The Florida State Court of Appeal in establishing the doctrine of piercing the corporate veil is at least similar to the United States. In this case, the Third Court of Appeal of the State of Florida determined that the LLC did not fulfil the elements to be subject to the doctrine of piercing the corporate veil. Given that it was not</td>
</tr>
</tbody>
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The responsibility of a Limited Liability Company still falls on the company itself as a separate entity recognised as a legal entity, not on shareholders, company organs or employees who work in it, but with the doctrine of piercing the corporate veil, it can be an effort so that Limited Liability Companies as legal entities that aim to make a profit continue to run according to the corridor and do not deviate from the intent and purpose of the company's establishment, and are not used arbitrarily by the Board of Directors of the company or shareholders in it, as mandated in Article 138 paragraph (1) of the Company Law, that Limited Liability Companies can be examined if there are indications of unlawful acts that cause harm to third parties and to the company itself, so that limited liability cannot apply if it is proven that the wrong and detrimental actions were carried out by the organs of the Limited Liability Company, that's where piercing the corporate veil comes in to open the curtain of the company's cover, so that it becomes evident that whether what was done was true or false, whether limited liability applies or unlimited liability applies.

4. Conclusion

The presence of the doctrine of piercing the corporate veil is something that is needed as a form of legal protection for the Limited Liability Company entity as a legal entity. This legal protection not only covers the Limited Liability Company entity, but also the parties in it, including third parties related to the company. The presence of the doctrine in a Limited Liability Company is to find out the truth about the existence of unlawful acts in a legal event that creates losses for the parties involved. Piercing the corporate veil can penetrate the curtain covering the company in order to protect the company from unlawful acts as well as arbitrary and irresponsible acts that harm the company. The presence of the doctrine of piercing the corporate veil in a Limited Liability Company is an answer to the limited liability of the company which can be used as an excuse by parties who have harmed the Limited Liability Company so as not to be held accountable. This doctrine is a form of legal certainty and protection for the sustainability of Limited Liability Companies. Although the determination of the presence of this doctrine still requires in-depth examination by the court.

The doctrine of piercing the corporate veil is an antidote to the immunity of organs and shareholders of a Limited Liability Company, which is supported by

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40 Rio Christiawan.
42 Gassman.
the distinctive nature of a Limited Liability Company, namely limited liability. The doctrine of piercing the corporate veil can be imposed on the Board of Directors and shareholders of the company, who can be held accountable up to their respective personal assets, by piercing the curtain of the company's cover or limited liability becomes unlimited. The imposition of the doctrine of piercing the corporate veil in the Company Law has been regulated in Article 3 of the Company Law for shareholders, Article 97 paragraph (3) and paragraph (4) jo. Article 104 paragraph (2) of the Company Law for the Board of Directors, as well as Article 138 paragraph (1) of the Company Law as the basis for the court to determine the presence of the doctrine of piercing the corporate veil. The difference in the imposition between the Board of Directors and the shareholders of the company is that the Board of Directors requires another article in relation to its good faith in running the company (fiduciary duty), while the shareholders of the company are expressly regulated in Article 3 of the Company Law. Determination of the imposition of the doctrine of piercing the corporate veil both on the Board of Directors and shareholders still requires assistance from the court. Given that there are no definite parameters that can be used as a reference in the Company Law, the imposition of this doctrine requires evidentiary assistance from the court.

References

Ali Ridho, Badan Hukum Dan Kedudukan Badan Hukum Perseroan, Perkumpulan, Koperasi, Yayasan, Dan Wakaf (Badung: Alumni, 1999)
Arasy Pradana A. Azis, ‘Proses Pembentukan Omnibus Law Berikut 5 Tahapannya’, Hukum Online, 2022
<https://www.hukumonline.com/klinik/a/proses-pembentukan-omnibus-ilaw-i-berikut-5-tahapannya-lt5dfb391ead1ef/>
Dewi, Sandra, ‘Prinsip Piercing the Corporate Veil Dalam Perseroan Terbatas Dihubungkan Dengan Good Corporate Governance’, Jurnal Hukum Respublica, 16.2 (2017), 266
Gassman, Alan, ‘Florida Court Sheds Light On Piercing the Corporate Veil’, Forbes, 2021
Kusumawardani, Shinta Ikayani, ‘Pengaturan Kewenangan, Dan Tanggung Jawab Direksi Dalam Perseroan Terbatas (Studi Perbandingan Indonesia Dan Australia)’, Udayana Master Law Journal, 2.1 (2013), 4
Marzuki, Peter Mahmud, ‘Penelitian Hukum Edisi Revisi’, in Cetakan XII (Jakarta: Prenada Media Group, 2016)
Sulistiowati, Aspek Hukum Dan Realitas Bisnis Perusahaan Grup Di Indonesia (Jakarta: Erlangga, 2010)
Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas (Indonesia)
Undang-Undang Nomor 6 Tahun 2023 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja
Zainal Asikin dan L. Wira Pria Suhartana, Pengantar Hukum Perusahaan (Jakarta: Kencana, 2016)