

IMPLEMENTATION OF THE LIMITED LIABILITY COMPANY LEGAL DOCTRINE IN THE LIABILITY OF DIRECTORS IN INDONESIA

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Abstract

Keywords:

Corporate Law
Doctrine; Limited
Liability
Company;
Directors' Liability

This study examines the implementation of key doctrines in corporate law related to directors' liability in limited liability companies in Indonesia. The doctrines analyzed include Piercing the Corporate Veil, Business Judgment Rule, Ultra Vires, and Fiduciary Duty. This research employs a normative legal method with statute, conceptual, and case approaches. Legal materials were collected through literature studies and analyzed qualitatively to understand the application of these doctrines in corporate legal practice in Indonesia. The findings indicate that these doctrines play an important role in determining the limits of directors' responsibilities in corporate management. The doctrine of Piercing the Corporate Veil allows courts to impose personal liability when the corporate entity is misused, as illustrated in the case involving PT Effem Foods Inc. The Business Judgment Rule provides legal protection for directors in making business decisions in good faith, as reflected in the case of PT Merpati Nusantara Airlines. The Ultra Vires doctrine emphasizes that corporate actions must remain within the scope of the company's objectives, as shown in the PT Condato Grup Indonesia case. In addition, the Fiduciary Duty doctrine highlights directors' obligations to act with due care and loyalty in managing the company, as seen in the PT Bakara Bumi Energi case.

Abstrak

Kata kunci:
Doktrin Hukum
Perseroan;
Perseroan
Terbatas;
Pertanggungjawab
an Direksi

Penelitian ini bertujuan untuk menganalisis implementasi doktrin-doktrin utama dalam hukum perseroan terbatas yang berkaitan dengan pertanggungjawaban direksi di Indonesia. Doktrin yang dikaji meliputi Piercing the Corporate Veil, Business Judgment Rule, Ultra Vires, dan Fiduciary Duty. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan kasus. Bahan hukum diperoleh melalui studi kepustakaan dan dianalisis secara kualitatif untuk memahami penerapan doktrin-doktrin tersebut dalam praktik hukum perusahaan di Indonesia. Hasil penelitian menunjukkan bahwa keempat doktrin tersebut memiliki peran penting dalam menentukan batas tanggung jawab direksi dalam pengelolaan perusahaan. Doktrin Piercing the Corporate Veil memungkinkan pengadilan menembus prinsip tanggung jawab terbatas ketika badan hukum perseroan disalahgunakan, sebagaimana terlihat dalam kasus PT Effem Foods Inc. Doktrin Business Judgment Rule memberikan perlindungan hukum kepada direksi atas keputusan bisnis yang diambil dengan itikad baik, seperti pada kasus PT Merpati Nusantara Airlines. Doktrin Ultra Vires menegaskan bahwa tindakan organ perseroan harus sesuai dengan tujuan perusahaan, sebagaimana tercermin dalam kasus PT Condato Grup Indonesia. Sementara itu, doktrin Fiduciary Duty menekankan kewajiban direksi untuk bertindak dengan kehati-hatian dan loyalitas dalam mengelola perusahaan, sebagaimana terlihat dalam kasus PT Bakara Bumi

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INTRODUCTION

In legal science, a doctrine essentially refers to the views or scholarly thoughts developed by legal experts as a conceptual foundation for understanding and interpreting legal rules. Doctrine also functions as a guideline for the application of law in practice, particularly when statutory regulations have not yet regulated a legal issue in detail. In the context of corporate law, doctrine plays an important role in explaining the legal relationships between the company, shareholders, and corporate organs such as the board of directors and the board of commissioners (Agustinus Haryono, 2019).

In the development of limited liability company law, several important doctrines are used to determine the limits of authority and responsibility of corporate organs. Some of the main doctrines commonly applied in corporate law practice include Piercing the Corporate Veil, the Business Judgment Rule, Ultra Vires, and Fiduciary Duty (Cheng-Han, Wang, & Hofmann, 2019; Sánchez, 2021; Spercel, 2024; Tingle & Spackman, 2019). These four doctrines function as legal instruments that regulate the balance between the protection afforded to the corporate legal entity and the individual accountability of those who manage the company.

The doctrine of Piercing the Corporate Veil is a legal concept that allows courts to penetrate the principle of limited liability held by shareholders and corporate managers. Under certain circumstances, such as the misuse of the corporate legal entity or actions that cause harm to other parties, courts may impose personal liability on shareholders or company managers, extending even to their personal assets. (Dewi, 2018). This doctrine aims to prevent the misuse of the corporate legal entity as a means of avoiding legal responsibility and to protect the interests of third parties who suffer losses (Nugroho, Nasution, & Sitompul, 2020).

In contrast, the Business Judgment Rule doctrine serves as a legal safeguard for directors in the process of making corporate business decisions. Under this principle, directors are generally not subject to personal liability for decisions taken in the course of managing the company, provided that such decisions are made in good faith, supported by sufficient information, and aimed at advancing the best interests of the company. Consequently, even if the decision later leads to financial losses for the company, the directors should not automatically be held personally responsible (Gurrea-Martínez, 2018). This principle is important in providing directors with the necessary discretion to carry out their managerial functions without excessive fear of legal risk.

In addition, the Ultra Vires doctrine relates to the limits of the authority of corporate organs in carrying out legal acts on behalf of the company. This doctrine emphasizes that actions taken by the board of directors must fall within the scope of

the company's purposes and objectives as stipulated in the articles of association. If such actions exceed the authority granted, they may be considered invalid or not binding on the company (Salim & Prisdani, 2022) (Salim & Prisdani, 2022).

Meanwhile, the Fiduciary Duty doctrine emphasizes the fiduciary obligations that directors must uphold in managing the company. Directors are required to act with due care, loyalty, and prioritize the interests of the company in every decision they make. A breach of these fiduciary duties may result in directors being held personally liable if their actions are proven to have caused losses to the company (Gerner-Beuerle, 2021).

Although various studies have discussed these doctrines within the context of corporate law, most research still treats them separately as theoretical concepts. Studies that comprehensively analyze the relationship between the doctrines of Piercing the Corporate Veil, the Business Judgment Rule, Ultra Vires, and Fiduciary Duty in determining the liability of directors in the practice of limited liability company law in Indonesia remain relatively limited. Therefore, this research seeks to examine the integrated implementation of these four doctrines in Indonesian corporate law practice in order to understand how these doctrines are applied in determining the limits of directors' liability in the management of a company (Jatna, Amir Firmansyah, Hasbullah, & Muhammad Umar Bin Abdul Razak, 2025).

Based on the foregoing, this study aims to analyze the implementation of the main doctrines in limited liability company law, particularly Piercing the Corporate Veil, the Business Judgment Rule, Ultra Vires, and Fiduciary Duty, in determining directors' liability in legal practice in Indonesia.

RESEARCH METHOD

This research adopts a normative legal research method that focuses on examining legal norms related to the application of doctrines in limited liability company law, particularly those concerning the accountability of directors. Normative legal research is carried out through the study of various legal sources, including statutory provisions, legal doctrines, and court decisions that are relevant to the issues being examined (Negara, 2023; Taekema, 2018). The study applies several analytical approaches, namely the statutory approach, conceptual approach, and case approach. The statutory approach involves reviewing legislation governing limited liability companies, especially Law Number 40 of 2007 concerning Limited Liability Companies. The conceptual approach is used to explore and analyze key doctrines in corporate law, including Piercing the Corporate Veil, the Business Judgment Rule, Ultra Vires, and Fiduciary Duty. Meanwhile, the case approach is implemented by examining several court decisions related to the application of these doctrines within the practice of corporate law in Indonesia.

The legal sources utilized in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations and court decisions that are directly relevant to the topic of the study. Secondary legal materials

comprise books, academic journal articles, and other scholarly publications that discuss corporate law and the doctrines governing corporate legal responsibility. Meanwhile, tertiary legal materials consist of legal dictionaries and additional reference materials that assist in clarifying and understanding the legal terminology used in this research. The collection of legal materials was carried out through library research, which involved examining various relevant legal sources and academic literature. After the materials were gathered, they were analyzed using a qualitative approach through methods of legal interpretation in order to examine how doctrines in limited liability company law are applied in determining the liability of directors within Indonesian legal practice.

RESULTS AND DISCUSSION

Implementation of the Piercing the Corporate Veil Doctrine

The doctrine of Piercing the Corporate Veil is one of the important doctrines in corporate law used to penetrate the principle of limited liability in a limited liability company. In principle, this doctrine states that under certain circumstances, legal responsibility for an act committed by a legal entity is not solely imposed on the company as a legal entity, but may also be extended to other parties such as shareholders, directors, or corporate managers. This doctrine was developed to prevent the misuse of the corporate legal entity as a means of carrying out actions that are contrary to the law or that cause harm to other parties (Setyowati, 2024).

Within the framework of Indonesian corporate law, the concept of Piercing the Corporate Veil is implicitly reflected in Law Number 40 of 2007 concerning Limited Liability Companies. The possibility of holding shareholders personally accountable is regulated in several provisions, including Article 3, Article 7 paragraph (4), and Article 26 paragraphs (3) and (4). Article 3 provides that shareholders may be personally liable in certain circumstances, such as when the company is used in bad faith to pursue personal interests, when shareholders participate in unlawful acts carried out by the company, or when shareholders improperly utilize corporate assets in a way that results in the company being unable to fulfill its obligations to third parties. In addition, Article 7 paragraph (4) addresses situations in which a company is owned by a single shareholder for a specific period of time. Meanwhile, Article 26 paragraphs (3) and (4) regulate the obligation of shareholders to fully pay for the shares they have subscribed to (Setyowati, 2024). These provisions illustrate that Indonesian corporate law has opened the possibility for the application of the Piercing the Corporate Veil doctrine as a legal instrument to prevent the misuse of the corporate legal entity.

An illustration of the application of the Piercing the Corporate Veil doctrine in Indonesian corporate law practice can be found in the dispute involving PT Effem Foods Inc. and PT Smak Snak. The case stemmed from a distribution agreement between the two companies that had been established since 1988. Through this cooperation, PT Smak Snak was appointed as the exclusive distributor of PT Effem Foods Inc.'s products within the Indonesian market. Later on, PT Effem Foods Inc. formed a subsidiary in Indonesia known as PT Effem Indonesia. In this corporate

structure, the majority of the shares were held by PT Effem Foods Inc. as the parent company, while the remaining shares were owned by several affiliated entities (Darmawan, 2025; Kasmastuti, 2023).

In such a corporate structure, the principle of limited liability applies. This principle states that shareholders are only liable to the extent of the value of the shares they own in a company. Therefore, in general, a parent company is not responsible for legal acts committed by its subsidiary (Dewi, 2018). This principle is one of the main characteristics of a limited liability company as a legal entity, intended to provide legal protection to shareholders. However, the principle of limited liability is not absolute. Under certain circumstances, courts may pierce this limitation of liability if there is evidence of misuse of the corporate legal entity or actions that cause harm to other parties. This concept is known as the Piercing the Corporate Veil doctrine, which allows courts to impose liability directly on shareholders or corporate managers when the legal entity is used as an instrument to commit unlawful acts (Nugroho et al., 2020).

In the case involving PT Effem Foods Inc., the dispute arose when PT Effem Indonesia changed its product distribution system, resulting in the position of PT Smak Snak as the sole distributor being converted into a multi-distributor arrangement and its distribution territory being reduced. In addition, PT Effem Indonesia took over several of PT Smak Snak's main customers and unilaterally terminated the supply of products. These actions were later considered by the court as unlawful acts that caused losses to PT Smak Snak. In its decision, the South Jakarta District Court did not only impose liability on PT Effem Indonesia as the subsidiary but also on PT Effem Foods Inc. as the parent company. The decision indicates that the court applied the Piercing the Corporate Veil doctrine by assessing that the parent company had direct involvement in actions that caused harm to another party. Consequently, legal liability did not stop at the subsidiary entity but was extended to the parent company that exercised control over the company's activities (Said Hendri Darmawan, 2025, p. hlm. 57-58).

The application of this doctrine demonstrates that the corporate legal entity cannot be used as a tool to evade legal responsibility. In modern corporate law practice, the Piercing the Corporate Veil doctrine serves as an important mechanism to prevent the misuse of corporate structures and to protect the interests of third parties who suffer losses as a result of corporate actions.

Implementation of the Business Judgment Rule Doctrine

The Business Judgment Rule doctrine represents a key principle in corporate law that protects directors in the process of making business decisions on behalf of the company. According to this principle, directors should not be personally liable for business decisions they take, provided that those decisions are made in good faith, supported by sufficient and reliable information, and directed toward advancing the company's best interests (Gurrea-Martínez, 2018).

In Indonesian positive law, the concept of the Business Judgment Rule is reflected in Law Number 40 of 2007 concerning Limited Liability Companies, particularly in Article 97 paragraph (5). This provision stipulates that members of the board of directors cannot be held responsible for losses incurred by the company if they are able to demonstrate several conditions. These include that the losses did not arise from their fault or negligence, that the management of the company was carried out in good faith and with due care in accordance with the company's purposes and objectives, that no conflict of interest was involved in the actions taken, and that the directors had made efforts to prevent the occurrence or continuation of the losses. This regulation illustrates that Indonesian corporate law offers legal safeguards for directors, allowing them to carry out their managerial duties in a professional manner without undue concern about liability arising from business decisions that were made reasonably and in good faith (Setyowati, 2024).

A case frequently referred to in discussions of this doctrine in Indonesia is the one involving Hotasi Nababan, the President Director of PT Merpati Nusantara Airlines (MNA) (Suastuti, 2018). In this case, Hotasi Nababan authorized the payment of a USD 1 million security deposit to the aircraft leasing company Thirdstone Aircraft Leasing Group (TALG) as part of a plan to procure two Boeing 737 aircraft. The decision was made based on business considerations and had also received approval from the company's board of directors. In reality, however, TALG did not fulfill its obligation to deliver the promised aircraft and also failed to return the deposit that had been paid. As a result, PT Merpati Nusantara Airlines suffered financial losses, which later led to legal proceedings against Hotasi Nababan on the allegation that his decision had caused losses to the state.

Although the court of first instance stated that Hotasi Nababan did not possess mens rea or criminal intent in making the decision, he was ultimately still sentenced to criminal punishment. This decision generated debate among legal scholars because it was considered not to have fully taken into account the principle of the Business Judgment Rule. Under this doctrine, business decisions made rationally and based on reasonable business considerations should not automatically result in criminal liability for directors (Muhamad Hafizh Akram & Nisriina Primadani Fanaro, 2019, p. hlm. 83-86). In this case, the loss that occurred was not caused by negligence or abuse of authority by the directors, but rather by fraudulent actions committed by TALG. Therefore, the application of the Business Judgment Rule doctrine becomes important to protect directors from the risk of criminalization for business decisions taken professionally and within the framework of the company's interests (Jatna et al., 2025).

Implementation of the Ultra Vires Doctrine

The Ultra Vires doctrine concerns the limitations on the authority of corporate organs when performing legal acts on behalf of the company. Under this doctrine, actions undertaken by the board of directors must remain within the scope of the company's purposes and objectives as set out in the articles of association. When a

director's actions go beyond the authority granted by these provisions, such acts may be considered invalid or deemed not legally binding on the company (Salim & Prisantani, 2022).

In Indonesian positive law, the concept of Ultra Vires can be identified in several provisions of Law Number 40 of 2007 concerning Limited Liability Companies. Relevant provisions include Article 1 points (4), (5), and (6), Article 92 paragraph (1), and Article 108 paragraph (2). Article 1 point (4) defines the General Meeting of Shareholders (GMS) as a corporate organ that holds authority not granted to the board of directors or the board of commissioners, within the limits established by law and the company's articles of association. Article 1 point (5) further explains that the board of directors is the organ authorized and fully responsible for managing the company in accordance with its purposes and objectives, and for representing the company both inside and outside the court as regulated in the articles of association. Moreover, Article 1 point (6) states that the board of commissioners functions as the organ responsible for carrying out general and specific supervision and providing advice to the board of directors in relation to the management of the company. These roles are reaffirmed in Article 92 paragraph (1), which emphasizes that the directors must manage the company for its interests and in line with its stated objectives. Likewise, Article 108 paragraph (2) provides that the board of commissioners performs supervisory duties and offers advice to the directors in the interests of the company and in accordance with its purposes and objectives (Setyowati, 2024).

The application of this doctrine can be seen in Decision Number 352/Pdt.G/2021/PN Jkt.Pst, which involved PT Condato Grup Indonesia (CGI). In this case, a commissioner of PT CGI was alleged to have abused his position by diverting payments from consumers to a supplier company that he personally owned, rather than directing the payments to PT CGI as the party entitled to receive them. This action caused losses to PT CGI because profits that should have constituted company revenue were instead diverted to another company owned by the commissioner. In addition to the direct financial losses, the action also resulted in indirect losses in the form of lost opportunities for the company to manage those funds productively.

Based on the legal analysis in the decision, the commissioner's actions were considered an unlawful act that had a direct causal relationship with the losses suffered by the company. Using the condition sine qua non theory approach, it can be concluded that the losses would not have occurred if the ultra vires act had not been committed (Muhammad Dafi Tanjung, Mahmud Siregar, & Robert, 2025, p. hlm. 87-89). Thus, the Ultra Vires doctrine functions as a legal mechanism to ensure that every corporate organ exercises its authority within the limits stipulated in the company's articles of association. If such authority is abused, the responsible party may be held personally liable for the losses incurred.

Implementation of the Fiduciary Duty Doctrine

The Fiduciary Duty doctrine constitutes a core principle in corporate law that highlights the trust-based responsibilities carried by directors in managing a company. In performing their duties, directors are expected to uphold the duty of care and the duty of loyalty, ensuring that their actions prioritize the interests of the company. This principle is also reflected in Article 97 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies, which states that directors are responsible for managing the company in good faith and with a full sense of responsibility.

One example of a violation of this principle can be seen in the case involving Ir. Don Ardner Mahjuddin, the President Director of PT Bakara Bumi Energi (Silvana & Wicaksana, 2022). In this case, the President Director failed to provide financial reports or management information to the board of commissioners and shareholders. In addition, he did not transparently present the company's work plan or the allocation of the company's budget. These actions indicate violations of two key elements of fiduciary duty, namely the duty of loyalty and the duty of care. The director was considered to have failed to fulfill his professional obligations in managing the company in a transparent and accountable manner. This situation caused losses to the company and hindered the supervisory function that should have been carried out by the board of commissioners. In such circumstances, the Piercing the Corporate Veil doctrine may be used as a legal mechanism to penetrate the protection of the corporate legal entity and impose liability directly on the individual corporate manager. This aligns with the view that serious violations of fiduciary duty principles may serve as a basis for holding directors personally liable for losses incurred by the company (Yessira Dianita, 2025, p. hlm 75-78).

Thus, the application of the Fiduciary Duty doctrine is not only intended to maintain the integrity of corporate management, but also to ensure that directors exercise their authority in a professional, transparent, and accountable manner. If these obligations are violated, directors may be held personally liable as a consequence of the abuse of authority in the management of the company.

CONCLUSION

Based on the analysis of the principal doctrines in limited liability company law, it can be concluded that Piercing the Corporate Veil, the Business Judgment Rule, Ultra Vires, and Fiduciary Duty each play a significant role in defining the scope of responsibility of directors and other corporate organs in the management of a company. The Piercing the Corporate Veil doctrine shows that the concept of limited liability does not apply without exception. In certain situations, personal liability may extend to shareholders or corporate managers, as illustrated in the dispute involving PT Effem Foods Inc., where the parent company was found to have been involved in actions that caused harm to other parties. In contrast, the Business Judgment Rule provides legal protection for directors when making business decisions in good faith and based on reasonable business considerations. Nevertheless, its implementation continues to generate debate, as reflected in the case of PT Merpati Nusantara Airlines

involving Hotasi Nababan. Furthermore, the Ultra Vires doctrine underscores that actions undertaken by corporate organs must remain consistent with the company's objectives and purposes. This principle can be seen in the case involving PT Condato Grup Indonesia, which demonstrated the misuse of authority by a corporate organ. Meanwhile, the Fiduciary Duty doctrine stresses the responsibility of directors to act with diligence, loyalty, and good faith in managing the company, as illustrated in the case of PT Bakara Bumi Energi, which highlights the importance of transparency and accountability in corporate governance. Overall, these four doctrines function in a complementary manner in shaping the framework of directors' liability. At the same time, they serve as legal instruments to prevent the misuse of the corporate legal entity and to encourage the development of sound corporate governance practices within Indonesian corporate law.

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