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Revolution of Piercing the Corporate Veil Doctrine In England: A Common Law Perspective On VTB Capital v. Nutritek

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Article	Abstract
Keywords: Revolution; Piercing The Corporate Veil; Doctrine; Common Law; Law Perspective. **Article History** Received: Nov 22, 2024; Reviewed: Apr 21, 2025; Accepted: Apr 23, 2025; Published: Apr 24, 2025.	The doctrine of piercing the corporate veil serves as a mechanism of justice and policy aimed at protecting third parties from the actions of a company. This legal concept is applied in common law jurisdictions, including the UK, and is exemplified by the case of VTB Capital PLC v. NutritekInternational Corp. This research aims to analyze the developmental stages of the doctrine of piercing the corporate veil, particularly in the UK and in the context of VTB Capital PLC v. Nutritek International Corp. The methodology employed in this study is normative juridical research. The results indicate that shareholder liability is generally limited to their capital contribution; however, the doctrine of piercing the corporate veil can be applied if a legitimate shareholder uses the company for illegal purposes, particularly in cases where there are indications of fraud. Additionally, the court possesses common law jurisdiction to lift the corporate veil, but this authority is typically exercised only under special circumstances. Justice ought to serve as a guiding principle, though it may sometimes appear obscured by the complexities involved in attempts to penetrate the corporate veil. Such attempts, whether initiated by the plaintiff or the defendant, reveal the challenges of balancing corporate protections with accountability. The application of the Piercing the Corporate Veil (PCV) doctrine can be evaluated from

multiple perspectivesboth in terms of its legal basis or more into common way.

Introduction

The doctrine of piercing the corporate veil is a concept that grants the court the authority to disregard the separation between a corporation and its owner under certain conditions.[1] This doctrine allows the court to hold the owner of a company personally accountable for all of the company's actions, even though the company is typically regarded as a separate legal entity from its owner.[2] The concept of piercing the corporate veil originated in England, which operates under a common law system, and it has undergone various significant procedural changes over time.[3] Initially, this doctrine served as the sole mechanism for maintaining the separation between owners and their companies. However, English courts have since relaxed these rules, applying the doctrine more flexibly for other purposes.[4] Consequently, it can serve as a legitimate legal basis except where there is evidence of abuse by the owner of the corporation.[5]

The application of the doctrine of piercing the corporate veil is influenced by the adoption of the common law legal system, a framework that developed in England and is now prevalent in most

1 Yafet Yosafet W. Rissy, "Doktrin Piercing the Corporate Veil: Ketentuan Dan Penerapannya Di Inggris, Australia dan Indonesia" *RefleksiHukum: Jurnal Ilmu Hukum* 4, 1 (2019): 1–20, https://doi.org/10.24246/jrh.2019.v4.i1.p1-20.

2 Catharina, & Kusuma, N, "Comparative Study of The Implementation of Piercing the Corporate Veil Doctrine in Indonesia, United States, and United Kingdom", *Reaching Wa'y*, (2020): 28–43. https://doi.org/10.1515/9783112208854-005

3 Izaz Ilham & Irna Nurhayati, *A Comparative Analysis between Indonesia and Singapore regarding the Implementation of Piercing the Corporate Veil Doctrine towards Shareholders*, 2021, UniversitasDadjahMada]. https://etd.repository.ugm.ac.id/penelitian/detail/204220

4 Isabella Efendi, How to Conduct Due Diligence for Company Characteristics in Indonesian Corporate Law (Bagaimana Melakukan Uji Tuntas Karakteristik Perusahaan dalam Hukum Korporasi Indonesia), *Umsida*, *1*, (2023): 31–41. http://eprints.umsida.ac.id/11790/1/Artikel 14.pdf

5 Siti Nur Intihani, "Piercing the Corporate Veil Doctrine Implementation in Limited Stockholders Activities", *Jurnal Hukum Jurisdictie 4,* 1 (2022):101–124, https://journalfhuia.ac.id/Jurisdictie/article/view/95/70.

Commonwealth countries.[6] This legal system relies on judicial decisions in previously adjudicated cases, based on statutory law enacted by legislative bodies.[7] Within the common law system, past judicial decisions serve as precedents for similar cases in the future. When a case is presented in court, judges refer to rulings in analogous cases to guide their judgment.[8] This approach enables the law to evolve flexibly and adapt to societal changes over time. In countries that follow common law, judicial rulings hold the authority of law and provide a basis for resolving subsequent cases.[9]

The development of the application of the piercing corporate veil doctrine has been shaped by English court decisions, which demonstrate a proactive approach to applying this doctrine in legitimate.[10] Courts consider cases involving piercing the corporate veil by applying principles of justice and policy, aiming to protect both corporate owners and the corporation itself.[11] This approach reflects judicial consideration for allowing corporate owners to evade personal liability toward affected parties, such as creditors and individuals filing claims against the corporation.[12] The enforcement of this doctrine also reflects the complexity of business in England, driving legal changes to adapt to evolving societal dynamics.

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6 Irma Sylviyani Herdian & Yeti Sumiyati "Penerapan Piercing the corporate veil Terhadap Direksi Perusahaan Asuransi Dalam Investasi Beresiko Tinggi Yang Mengandung Conflict of Interest, *Justicia Sains: Jurnal Ilmu Hukum 5*, 2 (2021): 243–267, https://doi.org/https://doi.org/10.24967/jcs.v5i2.1288.

7 Sandi Nugroho, et.al., "Implementation of Shareholder' S Alter Ego And Its Accountability According to Piercing The Corporate, 2022, *PJAEE*. https://archives.palarch.nl/index.php/jae/article/view/1566

8 Doli Witro, "Legal Basis for Conventional and Sharia Investments in the Indonesian Capital Market", *Journal of Economicate Studies 5,* 1 (2021): 7–14. http://journal.islamicateinstitute.co.id/index.php/joes/article/view/659

9 Andrew Preston Moore, et.al., "Insider theft of intellectual property for business advantage: A preliminary model". *CEUR Workshop Proceedings*, (2009): 1–21. https://insights.sei.cmu.edu/documents/286/2009_019_001_51658.pdf

10 *Ibid.*

11 Ian Ramsay & David B. Noakes, "Piercing the Corporate Veil in Australia", *Company and Securities Law Journal*, (2001): 250–271. https://law.unimelb.edu.au/__data/assets/pdf_file/0008/1710089/122-Piercing_the_Corporate_Veil1.pdf

12 Dian Purnama Sari, Else Suhaimi, and Mahendra Kusuma. "Penerapan Denda Keterlambatan Iuran Peserta Jaminan Kesehatan Nasional Menurut Perpres No. 82 Tahun 2018", *Law Dewantara: Jurnal Hukum* 1, 1 (2021): 1–11. http://www.ejournal.unitaspalembang.ac.id/index.php/ld/article/view/301

Additionally, it addresses the challenges faced in a globally interconnected business environment.[13]

In his research, Abdul Rahman Praja Negara states that the doctrine of Piercing the Corporate Veil (PCV) is not only applied to shareholders but may also implicate other corporate organs, including the board of directors and commissioners, in bearing losses incurred by the company. However, when linked to Law No. 47 of 2007 concerning Limited Liability Companies, specifically Article 3 paragraph (1), it stipulates that the shareholders of a corporation shall not be personally liable, acting solely based on the shares owned by each party. This indicates a discrepancy between the Indonesian Company Law and the doctrine itself.[14]

Ng Catharina Enggar Kusuma, in her research, confirms that Indonesia has yet to implement explicit regulations for the PCV doctrine to be applied domestically. The Indonesian Company Law provides certain provisions regarding the responsibilities of directors, commissioners, and shareholders in resolving matters that may arise due to the actions of subsidiaries. Indonesia still recognizes that the parent company and its subsidiaries are separate, independent entities with different economic units and distinct liabilities.[15]

Therefore, this research contributes a novel perspective by expanding upon previous studies, which have mostly addressed the doctrine in normative regulation and application. This paper aims to provide a comprehensive overview of general regulations as well as a specific discussion of a case in the UK. Consequently, readers will gain an understanding of this doctrine both in terms of normative academic theory and practical application in real-world scenarios.[16]

The development ofcommon law in England, especially through such legal revolutions, represents an adaptation of the legal

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13 Eduardus Bayo Sili, Kurniawan, and Widodo Dwi putro. "The Position of the Principle of Piercing the Corporate Veil in Company Law in Indonesia", *International Journal of Multicurtural and Multireligious Understanding* 9, 3 (2022). https://ijmmu.com/index.php/ijmmu/article/view/3664

14 Anna Trianingsih, "Pengadilan Sebagai Lembaga Penegakan Hukum (Perspektif Civil Law dan Common Law", *Jurnal Konstitusi* 12, 1 (2016):134. https://doi.org/https://doi.org/10.31078/jk1218

15 Yanto Sufriadi, "Penerapan Hukum Progresif Dalam Penegakan Hukum Di Tengah Krisis Demokrasi", *Jurnal Hukum Ius Quia Iustum* 1, 2 (2010): 233–248. https://doi.org/https://doi.org/10.20885/iustum.vol17.iss2.art3

16 Helen Anderson, "Piercing The Veil on Corporate Groups In Australia: The Case For Reform" *Melbourne University Law Review* 33, 2 (2009): 33. https://www5.austlii.edu.au/au/journals/MelbULawRw/2009/13.html

system to modern global demands. This evolution carefully considers emerging cases, balancing fair competition and legitimate business practices to ensure that those potentially harmed receive adequate protection from the government.[17] The application of the PCV doctrine represents a legal concept employed by common law countries, including England. An example of this is seen in the case of VTB Capital PLC v. Nutritek International Corp., where an English company applied the doctrine in a corporate fraud dispute to pierce the corporate veil.[18] Courts thus employ this doctrine to resolve various issues, including commercial contracts, legal aspects of business entities, employment relations, and intellectual property rights, which frequently serve as grounds for plaintiffs to bring cases to court.[19]

Based on this background, the research questions for this study are as follows: How is the Piercing the Corporate Veil doctrine regulated in England from the perspective of the development of common law? And what is the practical application of the doctrine in the case study of VTB Capital PLC v. Nutritek International Corp., viewed through the lens of common law? This research aims to analyze the evolution of the Piercing the Corporate Veil doctrine, particularly in England. Additionally, it seeks to examine whether this doctrine, given the development of common law, can serve as a catalyst for dispute resolution between companies frequently handled in international courts. The study also intends to explore the reality of the doctrine's evolution and to classify the specific role of this doctrine in inter-company case studies, as well as its effectiveness in dispute resolution from a common law perspective.[20]

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17 Abdul Rahman Praja Negara,"The Doctrine of Piercing the Corporate Review in the Court Decision No. 656/Pdt.G/2015/Pn.Mdn" *Indonesian Private Law Review* 2, 2 (2021) :73–84. https://doi.org/https://doi.org/10.25041/iplr.v2i2.2310

18 Moh. Asep Suharna, "Application of the Piercing the Corporate Veil Doctrine in the Accountability of the Board of Directors Linked to Law Number 40 of 2007 concerning Limited Liability Companies", *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*, *1*(1) (2018), https://bircu-journal.com/index.php/birci/article/view/5459

19 Jay Aryaputra Singgih & Hamdan Azhar Siregar, "The Responsibility Of Holding Company Towards Bankruptted Subsidiaries Based On Law No. 40 Of 2007 About Limited Companies" *International Journal of Educational Research & Social Sciences,* (2023). https://pdfs.semanticscholar.org/e15a/0d920554e4806aa26ae8698e2960beb93f5a.pdf

20 Ian Ramsay & David B. Noakes, *Loc.Cit.*

Method

This study employs a normative juridical research approach, focusing on examining legal norms, principles, and doctrines relevant to the subject matter. The case study in this research is classified as an instrumental study, in which the researcher selects a pertinent case to illustrate perspectives on key issues, as well as to propose theoretical improvements. This approach allows the researcher to explore and critique the chosen case from a specific analytical perspective, providing insight into potential enhancements in legal theory and the author's own viewpoint on the events discussed. For data sources, this research relies on secondary data gathered through comprehensive literature review.

The data analysis method used in this study is deductive logic, which is closely aligned with qualitative normative analysis. Deductive reasoning is employed to draw general conclusions from specific observations within the legal framework, while the normative analysis is directed at interpreting legal principles, theories, and doctrines that serve as the foundation for addressing the research’s primary issues. This study further incorporates systematic interpretation, aiming to integrate various legal provisions into a cohesive system that encompasses international standards as well as the relevant regulations in Indonesia. This systematic approach facilitates a holistic understanding of the legal context surrounding the doctrine under examination.

The theoretical framework for this research is based on John Rawls’s theory of justice, which introduces a foundational concept of justice in the legal domain. According to Rawls, justice is grounded in the “original position”, a hypothetical scenario in which all individuals are assumed to be equal, without any one party holding an inherent advantage over another. This setting ensures that agreements are reached fairly, as all participants operate on an equal footing, free from social or economic biases.

In this “original position” Rawls argues that rational individuals would agree upon two fundamental principles of justice. First, every individual would have an equal right to the most extensive set of basic liberties compatible with similar rights for others. Second, social and economic inequalities should be structured in a way that maximizes benefits for the least advantaged members of society, and positions of power or responsibility should be accessible to all under conditions of fair equality of opportunity.

These principles are encapsulated in what Rawls describes as the "equal liberty principle," which includes political freedom, freedom of speech and expression, and freedom of religion, among other essential rights. This theoretical basis underlines the importance of ensuring that all members of society, especially those who are disadvantaged, are given fair opportunities and protections within the legal system.

Result and Discussion

A. Regulations Concerning the Doctrine of Piercing the Corporate Veil in England: Insights from The Evolution of Common Law

The doctrine of piercing the corporate veil (PCV) has a rich history in the common law tradition of England, evolving over the past 122 years. In this context, the fundamental principle is that shareholders of a corporation are typically shielded from personal liability for the debts and obligations incurred by the corporation. This protective barrier, commonly referred to as the corporate veil, serves as a legal safeguard for individuals who invest in or own shares of a corporation. Nevertheless, there are specific circumstances under which this veil can be pierced, allowing for shareholders to be held accountable for the debts and liabilities of the corporation, along with any corresponding legal repercussions.[21]

The framework surrounding the PCV doctrine in England encompasses several critical elements. First and foremost, it is important to understand the concept of limited liability and shareholder responsibility. According to the most recent well as similar legislation enacted in 1995, shareholders' liability is strictly confined to the extent of their capital contributions, which may be in the form of shares or other assets.[22] Within the English corporate structure, there exist two primary types of limited companies: those that are limited by shares and those that are limited by guarantee.

Secondly, when examining the legal responsibilities of directors, it is vital to note that, under English law, directors have specific duties to uphold. These duties are derived from common law principles, including the duty of care, which mandates that directors

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21 Milton Bordwin, "Piercing the corporate veil", *Management Review* 84, 8 (1995):37

22 Acts, U. P. G. (2006). *Companies Act 2006*. https://www.legislation.gov.uk/ukpga/2006/46/contents

act with a requisite level of diligence, prudence, and expert.[23] Additionally, there is a fiduciary duty that obligates directors to operate in good faith and prioritize the best interests of the corporation. Directors are generally insulated from personal liability unless there is compelling evidence of negligence, failure, or breach of their duties. Consequently, while the PCV doctrine provides a measure of protection for directors, this shield can be removed if it is proven that a director acted with malice, negligence, insufficient information, dishonesty, or self-interest.

The third component involves the application of the PCVdoctrine by courts in England. A seminal case that exemplifies the protection afforded to shareholders is Salomon v Salomon & Co from 1897. This landmark case revolved around Salomon, a leather merchant and shoemaker who established a company in 1892, with himself, his wife, and three of his children as shareholders.[24] When the company faced liquidation due to financial difficulties, a critical question emerged: Should Salomon be held personally liable to the unsecured creditors? The initial ruling by the lower court classified the company as a one-man operation, leading to the conclusion that Salomon should bear personal liability. The Court of Appeal affirmed this decision, arguing that the law was never intended to support a corporate structure comprising "one important person and six fools." However, the House of Lords, in a unanimous decision, overturned this ruling, asserting that there was no statutory prohibition against Salomon's corporate design, thereby absolving him of personal liability.

The House of Lords further clarified that the corporate veil would only be pierced in exceptional circumstances. The discretion to lift this veil enables courts to ensure justice is served and allows for the resolution of individual cases in a manner that is both equitable

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23 John Karoli Mrema, *Piercing the Corporate Veil of Group Companies: A Critical Legal Analysis Under The Companies Act Of Tanzania*, 2021, The Open University Of Tanzania, Https://Repository.Out.Ac.Tz/2956/

24 Sandra Dewi "Application of the Principle of Piercing the Corporate Veil in Resolving Corporate Responsibility Cases in Indonesia". *International Journal of Law and Public Policy* 2, 2 (2020):65–71. https://doi.org/https://doi.org/10.36079/lamintang.ijlapp-0202.147

and fair. In their rulings, English courts have cited various justifications for piercing the corporate shield.[25]

First, instances of fraud can prompt the courts to lift the veil, particularly when equitable remedies are necessary. A pertinent example is the case of Gilford Motor Co Ltd v Horne, in which the defendant, who had served as a managing director for the plaintiffs, created a new company intended to siphon off the plaintiffs customers, despite a contractual clause prohibiting such actions. The Court of Appeal ruled that the new company was merely a "sham" designed solely as a means to facilitate this wrongful conduct.

Second, the courts may address situations where a company is utilized as an agent or nominee. This often occurs within the context of a parent-subsidiary relationship, where the parent company acts as the principal while the subsidiary operates as its agent. In the case of Stone and Knight Ltd v Birmingham Corporation, Justice Atkinson determined that the parent company could seek compensation for disturbances, even when the subsidiary was the entity conducting business operations, as the parent company effectively controlled and benefited from the subsidiary's activities.

Third, in corporate groups, the distinction between the parent and subsidiary may become blurred, leading to circumstances where the subsidiary is not regarded as an independent entity. This principle was illustrated in Littlewoods Mail Order Stores Ltd v IRC, where the court pierced the veil between the parent and subsidiary in a tax-related case. The court concluded that the subsidiary acted merely as a facade to conceal wrongdoing, paralleling the reasons provided in the aforementioned agency case.

Fourth, quasi-partnership situations can also lead to the veil being lifted. The Companies Act establishes that once a company is formed, it should be treated consistently. However, if the conduct prior to litigation is found to be unfairly prejudicial, the court may impose penalties on shareholders as dictated by law. In such cases, the court examines whether the formation and management of the company reflect a mutual trust relationship or whether it resembles a quasi-partnership. If the latter is established, shareholders can petition the court for relief from liability. This allows shareholders

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25 Sulistiowati, & Veri Antoni, "Konsistensi Penerapan Doktrin Piercing the Corporate Veil Pada Perseroan Terbatas di Indonesia", *Yustisia Jurnal Hukum* 2, 3 (2013), https://doi.org/https://doi.org/10.20961/yustisia.v2i3.10152

who have invested in a sham company to seek judicial protection if the company is engaged in criminal activities.

Moreover, under English law, the PCV doctrine can be applied in instances where the corporate veil shielding shareholders or directors can be lifted by the court if two primary conditions are met[26] (1) Shareholders have exercised dominant control over the company; and (2) There is clear evidence of intentional fraud or improper conduct. Therefore, the courts in England may disregard the corporate veil protecting shareholders and directors in cases where controlling shareholders have misused the company for illegal or inappropriate purposes, or if directors have established and operated a fictitious company to engage in fraudulent or illicit activities.

In conclusion, the protective mechanism provided by the corporate veil for directors and shareholders in England is not absolute. The courts reserve the right to lift this veil if it is demonstrated that controlling shareholders have improperly exploited their positions for illegal or fraudulent purposes, or if directors have formed and managed a sham corporation with the intent to perpetrate deceitful or unlawful acts.

B. The Development of the Piercing the Corporate Veil Doctrine in the Case of VTB Capital plc v NutritekInternational Corp from a Common Law Perspective

VTB Capital PLC v Nutritek International Corp represents a pivotal corporate law case in England that examines the doctrine of piercing the corporate veil in the context of fraud. In this case, VTB Capital PLC alleged that Nutritek, along with its parent company and its director, Konstantin Malofeev, had engaged in deceptive practices by misrepresenting the value of a dairy company being sold by Nutritek to Russagroprom LLC. VTB Capital provided a substantial loan of $225 million to Russagroprom for the acquisition of the dairy company. However, VTB claimed it had been misled into believing that Russagroprom was not under the same control

[26] Haryanto Gunawan, *Analisis Hukum Doktrin Alter Ego and Piercing the Corporate Veil Yang Dianut Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas*, 2009, Universitas Indonesia, https://lib.ui.ac.id/file?file=digital/old7/122010-T 25986-Analisis hukum-HA.pdf

as Nutritek. Consequently, VTB sought to hold the owner of Nutritek, Marshall Capital Holdings, along with its affiliates and Malofeev, jointly liable for the control they exerted over Nutritek (Wikipedia, 2024).

VTB Capital operates as a subsidiary of the Russian state-owned bank, JSC VTB Bank, but the loan facility agreement was governed by English law. After Russagroprom defaulted on its loan, VTB was only able to recover $40 million. VTB aimed to amend its claim to include a request for the court to pierce the corporate veil of Russagroprom to make the defendants accountable under the loan agreement.

Background Facts VTB has lent $225,050,000 to the Russian company Russagroprom LLC (RAP) based on a Facility Agreement, primarily to facilitate RAP's purchase of six Russian dairy companies and three affiliated companies from Nutritek International Corp.[27] After RAP defaulted on the loan, VTB alleged that it had been misled into signing the Facility Agreement and the accompanying interest rate swap agreement because of erroneous interpretations presented by Nutritek, which implied that RAP and Nutritekwere not under common control and that the dairy company's valuation was significantly higher than its true worth. VTB contended that this misrepresentation constituted fraud. Consequently, VTB sought to initiate claims against Nutritekand other parties, including individuals believed to be behind the corporate veil, such as Mr. Malofeev, for both tort and contractual breaches.

To bring a claim under contract law, particularly relying on the English jurisdiction clause within the Facility Agreement, VTB asserted that the court should pierce the corporate veil of RAP based on the alleged fraudulent conduct, thereby rendering Nutritek and other parties jointly liable under the Facility Agreement. However, the issue of piercing the corporate veil was not the only matter for the court to address; a key preliminary issue pertained to jurisdiction. VTB had initially obtained ex parte permission to serve the respondents outside the jurisdiction. At that stage, their claims were limited to one tortious action. The respondents applied to set aside the service permission, while simultaneously, VTB sought to amend

27 Stuart Shepherd, "VTB v. Nutritek: Supreme Court confirms corporate veil cannot be pierced to make a puppeteer party to his puppet's contract", *Lexology*, 2013, https://www.lexology.com/library/detail.aspx?g=cb0148bb-db26-4f3c-a7ab-7b2fb3790f42

its case to pursue a contractual claim against the respondents, arguing that the corporate veil of RAP could be pierced as previously described.

Initially, Justice Arnold dismissed the application for service and denied VTB the opportunity to amend its claims. VTB's appeal to the Court of Appeal regarding both issues was rejected, although they were subsequently granted permission to appeal both matters to the Supreme Court.

Supreme Court Ruling:[28]

1. Jurisdictional Issues

Concerning the jurisdictional matter, the Supreme Court had a differing viewpoint compared to Justice Arnold and the Court of Appeal regarding the governing law applicable to VTB's tortious claims. The Supreme Court concluded that the claims fell under English law, rather than Russian law. Nonetheless, the Supreme Court upheld the lower court's ruling on jurisdiction by a majority of 3:2, with Lords Clarke and Reed dissenting from the decision of Lords Mance, Neuberger, and Wilson.

2. Corporate Veil Issues

In relation to VTB's attempts to pierce the corporate veil concerning RAP, the Supreme Court unanimously dismissed their appeal. Thus, the Supreme Court delivered its final judgment regarding Justice Burton's decision in Antonio Gramsci and Others v. Stepanovs. Lord Neuberger presented the leading judgment regarding the corporate veil issue, considering the respondents' assertion that no circumstances existed warranting the piercing of the corporate veil. The core argument from the respondents was that previous cases that appeared to involve piercing the corporate veil were fundamentally different and had been decided on different grounds. Essentially, they argued that piercing the corporate veil contradicts established authority, lacks alignment with principles of law, and is unnecessary for the pursuit of justice.

Lord Neuberger found the arguments regarding this matter to be notably balanced, concluding that it was neither necessary nor appropriate to resolve whether the corporate veil should be pierced unless specific statutory provisions explicitly or implicitly provided for such action. He noted that it would be inappropriate to make a

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[28] Thomas G. Heinztman, & Brandon Kain, "Through the Looking Glass: Recent Developments in Piercing the Corporate Veil", *Banking & Finance Law Review* 28, 3 (2013). https://doi.org/https://doi.org/10.24967/jcs.v5i2.1288

determination on a matter of public interest unless it was essential to do so. Furthermore, Lord Neuberger examined and explicitly rejected VTB's attempts to pierce the corporate veil in this case. In his review, he remarked that the notion that the principle of piercing the corporate veil, if it indeed exists, could be extended as proposed by VTB was unsupported by any case law, except for Justice Burton's ruling in this instance.

He noted that the concept of joint contractual liability between mere puppets and their puppeteers contradicted the reasoning and rulings established in Salomon v. Salomon. Lord Neuberger argued that Mr. Malofeev should be treated as though he were a party to the agreement under circumstances where (i) at the time the agreement was made, none of the actual parties intended to contract with him, nor did he intend to enter into a contract with them; and (ii) thereafter, Mr. Malofeev never behaved in a manner that would suggest he was liable under the agreement or led the other party to believe he was responsible under it.

This approach aligns with a fundamental principle underlying contractual obligations and rights: the expectations of a reasonable and objective observer regarding the consequences of the parties' actions in forming the contract or the perceived contract communicated through their words and actions in context. Therefore, in concluding his judgment, Lord Neuberger stated that, even assuming there was jurisdiction to pierce the corporate veil based on the precise facts, VTB's defensive case did not provide a disputable reason to assert that such jurisdiction could be exercised in this case.

Throughout this process, the validity of the application of the PCV doctrine by the courts faced scrutiny due to the absence of statutory obligations, as highlighted by the UK Supreme Court in the case of VTB Capital Inc. v NutritekInternational Corp in 2013. However, four months following this ruling, the UK Supreme Court reaffirmed in Perst v Petrodel Resources Limited that courts possess common law jurisdiction to lift the corporate veil, at least in specific exceptional circumstances where such action is warranted.

In analyzing the rationale from a general perspective, it becomes evident in the case of VTB Capital plc v NutritekInternational Corp that the bank, having a background in executing procedures related to transactions, ought to have conducted thorough checks before entering into agreements with other parties. It is essential for banks to ensure that they protect themselves as creditors against potential losses. In this particular case, it is clear that the bank exhibited negligence in lending a substantial amount of money, which is significant even for a financial institution. Although rumors of fraudulent activity originated internally from the debtor, this was insufficient to classify the situation as an "extraordinary case" warranting the piercing of the corporate veil.

The judge's decision to reject the application of the doctrine had significant implications for maintaining the integrity of the corporation. It underscored the principle that the roles of corporate organs are fully protected to avoid imposing unlimited liability on them. Directors indeed serve as representatives of the corporation in general dealings, and this has led to the emergence of the piercing the corporate veil doctrine. While directors can be held accountable for transactions conducted by the corporation, the judgment offered the bank a sense of assurance, indicating an overlap between the subsidiary and its parent company.

The large sum of money lent by the bank raises significant questions regarding whether this was purely a case of negligence or if there were underlying issues influencing such a substantial transaction. However, from an economic standpoint, is a loan of $225 million to Russagroprom considered a large sum? This cannot be conclusively determined, as there is no guarantee that this amount would necessarily result in substantial losses. This assertion can be substantiated by comparing the sum to the amounts that larger banks may have lent in the past.

Overall, it is crucial to further observe that if the plaintiff (the bank) were granted the opportunity by the judge to pierce the corporate veil, it would create a gap in modern economics that could hinder its functionality both now and in the future. Modern economics aims to facilitate business profitability by leveraging technology and adopting a mindset focused on maximizing gains while limiting initial capital expenditures. This framework allows businesses to restrict losses to only the capital invested at the start of their operations. Such a model is anticipated by the government, as it provides certainty and alleviates the fears of new entrepreneurs starting their careers.

This decision clearly illustrates that the separation of corporate entities is a fundamental principle, and exceptions to this regulation are viewed as rare occurrences. The corporate structure can be effectively managed based on simple legal principles, ensuring that shareholders and directors are only personally liable up to their private assets, under the clear condition of extraordinary circumstances. This principle reinforces the need for clarity and fairness in corporate governance, providing a safeguard against unjust claims that could undermine the foundational tenets of corporate law.

However, when viewed from a general legal perspective, according to Indonesian regulations on limited liability companies as outlined in Law No. 40 of 2007 regarding Limited Liability Companies, there are various provisions regarding the accountability of directors as representatives of the company itself. According to Article 97, paragraph 2 of Law No. 40 of 2007, the Board of Directors may be held personally liable if found negligent in carrying out their duties within the company. The position of a director is quite high-risk within a company's organizational structure, as directors are directly involved in all transactions undertaken by the company, creating an opportunity for abuse of authority.

Before examining the authority of the directors, based on related case law decisions, several points should be considered as a basis for analyzing the case from a general legal standpoint. The main focus in the judgment is the "loss" and "fraud" committed by the parent company and subsidiary in conducting a substantial transaction, which was evidenced by the involvement of a third party, namely a bank, to facilitate their business expansion plans, which included purchasing a farm. Essentially, in any transaction between one or more parties, there is typically a contractual relationship involved—a contract containing terms agreed upon by both parties, which holds legal force.[29]

Good corporate governance is essential for the future implementation of proper company management, promoting a balanced application of "Good Corporate Governance" principles. Issues with holding companies are also a significant threat in the corporate world, where holding companies are expected to bring positive impacts for the company itself, both legally and in creating

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[29] Hari Sutra Disemadi, "Lensa Penelitian Hukum : Esai Deskriptif tentang Metodologi Penelitian Hukum", *Journal of Judicial Review* 24, 2 (2022): 289–304. https://www.researchgate.net/publication/367395687_Lenses_of_Legal_Research_A_Descriptive_Essay_on_Legal_Research_Methodologies

an advanced economic unit. However, within holding companies, there are various shareholders, known as "ultimate shareholders," whose responsibilities may be overly concentrated compared to the balanced responsibilities that should ideally exist between the parent company and its subsidiaries. This issue highlights the need for balanced legal oversight, particularly in the contracts involved. Referring to Article 1338 of the Indonesian Civil Code (BW), it states that agreements made in accordance with the law are binding on those who make them.[30] This provision applies in the context of the VTB Capital PLC v. Nutritek case, where the agreement is considered binding as it was made based on applicable law. Fairness is no longer relevant in a binding agreement, as the nominal amount involved is no longer the focus, given that what is provided and guaranteed carries equal legal force within it. This provision establishes that the bank should receive accountability for the incident.[31]

From the contextual perspective of the contract, the bank is the sole party disadvantaged by this transaction, aside from any negligence on the bank's part regarding the guarantees promised by Nutritek's subsidiary. Speaking of a contract interpreted with the element of good faith, according to Subekti, this principle is one of the most important foundations in contract law (Subekti, 1993). The ruling will have significant long-term implications for the bank itself, as the bank-company relationship is generally expected to be profitable in certain relevant sectors. Thus, the principle of good faith is seen as the most central solution for resolving the above dispute, considering the legal elements embedded within the agreement.

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30 Caleb McConnell, "Prest v. Petrodel Resources Ltd: A Cautious Approach Required for Future Application", *SSRN Electronic Journal,* (2016), https://doi.org/https://doi.org/10.2139/ssrn.2739451

31 David Tan, "Metode penelitian Hukum: Mengupas dan Mengulas Metodologi Dalam Menyelenggarakan penelitian Hukum". *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, 5 (2021): 1332–1336. http://jurnal.um-tapsel.ac.id/index.php/nusantara/article/download/5601/3191

C. The Urgency of Explicit Regulation of the Piercing the Corporate Veil Doctrine in Indonesian Company Law

The doctrine of piercing the corporate veil (PCV) can be classified as a guiding principle in Indonesian corporate law to address numerous cases of fraud and abuse of power by company management. Fundamentally, this doctrine serves as an exception to the principle of separation between the corporate entity and its shareholders—an essential foundation of modern corporate law. In various common law countries, such as the United States and the United Kingdom, the doctrine has evolved through jurisprudential precedents and has become an important instrument in preventing the misuse of the corporate form for personal gain at the expense of third parties.[32] In Indonesia, the PCV doctrine is not explicitly regulated. However, Law Number 40 of 2007 concerning Limited Liability Companies does provide provisions regarding the authority and limited responsibilities of corporate organs—namely, shareholders, members of the board of directors, and members of the board of commissioners—as stipulated in Articles 3, 97, and 114.

Legally, the board of directors represents the company in conducting all transactions on its behalf. In practice, members of the board of directors carry out duties and authorize actions under the supervision of the board of commissioners. This mechanism is designed to minimize actions that may later harm the company, with accountability considered as an alternative dispute resolution tool.

According to Article 97, paragraph 3 of Law No. 40 of 2007, members of the board of directors may be held personally liable for losses suffered by the company if they are deemed negligent in carrying out their duties. However, this liability can be nullified under paragraph 5 of the same article if the director in question can prove that their actions were not conducted in bad faith and did not constitute criminal acts such as fraud or embezzlement for personal benefit.

The following is an example of a case in Indonesia that involves elements of the application of the PCV doctrine Case of Su Meng Liang v. PT Bank CIMB Niaga, Tbk (Supreme Court Decision No. 1311/K/Pdt/2012). PT Gunung Bintan Abadi (PT GBA), led by

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32 Stephen M. Bainbridge, *Corporate Law* (3rd ed., Foundation Press, 2015), p. 143–150

Su Meng Liang as President Director, entered into a legal relationship with PT Bank Lippo Tbk, which later merged with PT Bank CIMB Niaga Tbk, through a credit agreement. The agreement was signed by Su Meng Liang on behalf of PT GBA and was also approved by the company's President Commissioner. Although Su Meng Liang did not provide a written personal guarantee in the agreement, he was directly involved in the signing and execution of the credit arrangement. This involvement formed the basis for the bank's legal action seeking to hold him personally liable.

PT GBA defaulted on its obligations, resulting in financial losses for Bank CIMB. As a result, the bank filed a lawsuit not only against PT GBA but also against Su Meng Liang in his personal capacity. The District Court of Tanjungpinang ruled that Su Meng Liang's personal assets could be seized to cover the losses, and this decision was upheld by the Supreme Court in Decision No. 1311/K/Pdt/2012.

This case clearly illustrates the application of the piercing the corporate veil doctrine in Indonesia. The Supreme Court rejected Su Meng Liang's cassation appeal and granted the bank's request to seize his personal assets, treating Su Meng Liangboth in his capacity as President Director and as a representative of PT GBAas indistinguishable from the company itself. The Court found that his actions directly contributed to the losses and thus justified imposing unlimited personal liability, effectively piercing the corporate veil to reach his personal assets.

The Court concluded that Su Meng Liang's direct involvement in the credit arrangement, coupled with his role as President Director, was sufficient to impose personal liability for the damages suffered by the bank, even in the absence of a formal personal guarantee. This decision reflects the implicit application of the piercing the corporate veil principle in Indonesian legal practice.[33]

In the author's view, the doctrine of piercing the corporate veil represents an urgent necessity that should be explicitly regulated outside of the existing Company Law framework. This urgency arises from the rapid growth of Indonesia's industrial sector and the increasing inflow of foreign investment, both of which significantly

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[33] Jeffry Leander, "Penerapan Doktrin *Piercing the Corporate Veil* dalam Praktek Perseroan Terbatas dalam Putusan Mahkamah Agung Republik Indonesia (MARI), (Studi Putusan Perkara Nomor 1916/K/PDT/1991 dan Nomor 1311/K/PDT/2012)", *Premise Law Jurnal*, 22 2017 4–5.

contribute to the nation's economic development. Large-scale business practices must be implemented alongside the evolving corporate environment in order to ensure a stable legal framework. Furthermore, the explicit regulation of this doctrine is essential to prevent widespread breaches of legal obligations, unlawful acts, and various forms of corporate misconduct.

The potential application of this doctrine in Indonesia is highly relevant for strengthening the integrity of the corporate legal system and deterring the misuse of corporate entities as a mere shield from legal liability. In practice, it is not uncommon for company owners or directors to exploit the corporate form to evade legal obligations or conceal assets from creditors. Without an effective legal mechanism to pierce the corporate veil, the protection afforded to third parties remains weak, which in turn undermines public confidence in the legal system.

However, the application of this doctrine in Indonesia also faces several challenges and limitations. One major issue is the lack of normative clarity regarding the circumstances and legal standards under which courts may disregard the separate legal personality of a corporation. In the absence of clear legal guidelines, there is a risk of legal uncertainty that may harm businesses and disrupt the predictability essential for economic transactions. Moreover, given Indonesia's civil law system, legal precedents do not carry the same authoritative weight as in common law jurisdictions, making the development of doctrines like this slower and more dependent on formal statutory recognition.

Therefore, the urgency to discuss and develop the piercing the corporate veil doctrine in the Indonesian context is becoming increasingly critical, in line with the growing complexity of business transactions and the rising demand for equitable legal protection for all parties. A thorough examinationboth academically and normativelyis needed to formulate an approach that aligns with Indonesia's legal system. This approach may include amendments to the Company Law (UUPT), the issuance of Supreme Court guidelines, or the enactment of implementing regulations that clearly define the criteria for applying the doctrine.

By establishing a more coherent and directed legal framework, the application of the piercing the corporate veil doctrine can function as an essential tool to balance legal protections for business entities with accountability for the individuals behind corporate structures. Such a framework would enhance the Indonesian corporate legal system and contribute positively to the creation of a healthy, fair, and responsible business environment.

Conclusion

The liability of shareholders in a corporation is limited to the amount of their capital contribution, which can take the form of shares or other assets. In this context, courts in England assert that the doctrine of *piercing the corporate veil* (PCV) can be applied in specific cases when two main factors are present. First, there must be a situation in which controlling shareholders have lawfully exploited their position to operate the company for illegal purposes or to engage in criminal activities. Second, there should be evidence that the directors who established and managed the company were involved in fraudulent practices or criminal actions.

In the context of the case VTB Capital plc v NutritekInternational Corp, the rejection of the appeal made by VTB regarding its request for the court to pierce the corporate veil of RAP, based on allegations of fraudulent actions, raises questions about the validity of the application of the PCVdoctrine. The rejection was grounded in the argument that such actions contradict high authority, are inconsistent with established legal principles, and are unnecessary for achieving justice. The uncertainty regarding the application of the PCVdoctrine is further compounded by the absence of a clear statutory obligation governing this matter. However, four months after the aforementioned ruling, the UK Supreme Court issued an important statement. They reaffirmed that courts possess common law jurisdiction to pierce the corporate veil, at least in certain circumstances where it is deemed necessary. The purpose of this jurisdiction is to enable the courts to deliver appropriate justice and ensure that individual cases can be decided in a manner that is fair and consistent with prevailing legal considerations. Thus, even though the application of the PCV doctrine faces challenges, the recognition of the court's jurisdiction provides a foundation for the enforcement of justice in cases involving companies engaged in illegal actions or fraud.

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