

## The Comparison of Regulation and Implementation of The Piercing The Corporate Veil Doctrine To Directors in Corporate Law

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**Abstract.** The implementation of the doctrine of piercing the corporate veil, especially against directors, by the courts in Indonesia is still inconsistent. This is partly due to the absence of guidelines for judges. In contrast, there are clear arrangements and guidelines for judges in the UK in applying the doctrine of piercing the corporate veil, especially against directors. This research aims to compare the regulation and application of the doctrine of piercing the corporate veil against directors in Indonesia and the UK and find the substance of the regulation and application in the UK that can be applied in Indonesia. This research uses normative juridical research methods. The results show that the regulation regarding piercing the corporate veil for directors in Indonesia is still general and there are no application guidelines for judges. In contrast, the UK has guidelines and precedents that can assist judges. The existence of guidelines for applying the doctrine of piercing the corporate veil, especially for directors, is a regulatory substance needed in Indonesian Company law. Such guidelines can also avoid inconsistencies in judges' decisions in similar cases.

**Keywords:** Piercing the corporate veil, Director, Indonesia, United Kingdom

**Abstrak.** Penerapan doktrin piercing the corporate veil khususnya terhadap direksi oleh pengadilan di Indonesia masih belum konsisten. Hal ini antara lain disebabkan karena pengaturan yang bersifat umum dan ketiadaan pedoman bagi hakim. Sebaliknya, terdapat pengaturan dan pedoman yang jelas bagi para hakim di Inggris dalam menerapkan doktrin piercing the corporate veil termasuk penerapan terhadap direksi. Penelitian ini bertujuan untuk menganalisis perbandingan pengaturan dan penerapan doktrin piercing the corporate veil terhadap direksi di Indonesia dan Inggris serta menemukan substansi pengaturan dan penerapan di Inggris yang dapat diterapkan di Indonesia. Penelitian ini menggunakan metode penelitian yuridis normatif. Hasil penelitian menunjukkan bahwa pengaturan terhadap doktrin piercing the corporate veil khususnya terhadap direksi di Indonesia masih bersifat umum dan belum tersedia pedoman penerapan bagi hakim. Hal ini dapat berakibat pada terjadinya inkonsistensi hakim. Sebaliknya, Inggris telah mengatur doktrin piercing the corporate veil melalui pengaturan yang lebih rinci dan telah memiliki pedoman penerapan yang dapat membantu para hakim. Keberadaan pedoman penerapan terhadap doktrin piercing the corporate veil khususnya bagi direksi menjadi substansi pengaturan yang dibutuhkan dalam hukum Perseroan Indonesia. Pedoman dimaksud juga dapat menghindari terjadinya inkonsistensi putusan hakim dalam perkara-perkara serupa.

**Kata Kunci:** Piercing the corporate veil, Direksi, Indonesia, Inggris

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## INTRODUCTION

A Limited Liability Company (hereinafter referred to as the Company) is a business entity in the form of a legal entity. The Company has rights and obligations similar to those of a natural person (*naturlijke person*). The Company possesses its own assets, separate from those of its founders, and can perform legal acts in its own name. The Company's status as a legal entity also applies the principle of limited liability for shareholders.<sup>1</sup> However, this principle of limited liability is not absolute. Under certain conditions, this principle can be excluded, making shareholders personally liable. Such exceptions are known as the doctrine of "piercing the corporate veil." In its development, this doctrine has evolved to apply not only to shareholders but also to directors. Directors can be held personally liable for their mismanagement of the Company.<sup>2</sup>

Black's Law Dictionary defines Piercing the Corporate Veil as a judicial process where courts disregard the immunity of corporate officers, directors, or entities from liability for misconduct or violations in corporate activities, therefore imposing personal responsibility on shareholders, directors, and corporate officers. As the organ is directly involved in the company's operations, directors face risks and have the potential to deviate from their duties and authorities, thus they can also be held liable.<sup>3</sup>

The substance of the doctrine of piercing the corporate veil has been accommodated in Indonesian corporate law since the enactment of Law Number 1 of 1995 (the old Company Law) until the enactment of Law Number 40 of 2007 (the current Company Law). The application of this doctrine has also been expanded. Research indicates that the interpretation of this doctrine now includes directors and even the board of

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<sup>1</sup> Ridwan Khairady, *Hukum Perseroan Terbatas*, Yogyakarta, FH UII Press 2014, hlm. 6

<sup>2</sup> Putri Sari Harahap & Tumanggor, Penerapan Asas Piercing The Corporate Veil: Perspektif Tanggung Jawab Direksi Perseroan Terbatas, *Jurnal Nuansa Kenotabiatan*, Vol.1 I No.1, 2015, Hlm 46

<sup>3</sup> Wayan Bimanda Panalaga, Penerapan Asas Fiduciary Duty dan Piercing The Corporate Veil Terhadap Tanggungjawab Terbatas Direksi Suatu Perseroan Terbatas di Indonesia dan Amerika, *Unnes Law Review*, Vol. 6, No. 1, September 2023. Hlm 1972

commissioners.<sup>4</sup> This development is particularly linked to Articles 97 paragraph (2) and 97 paragraph (3) of the Company Law.

The expanded application of the piercing the corporate veil doctrine in Indonesian court practices can be analyzed through the court decision of Karen Agustiawan, former President Director of PT Pertamina. Karen was accused of abusing her authority in making an investment decision regarding the Participating Interest in the Basker Manta Gummy (BMG) block in Australia.<sup>5</sup> The court found Karen guilty of violating Article 97 paragraph (1) and paragraph (2) of the Company Law. The abuse of authority was classified as a breach of fiduciary duty and causing losses to the Company.<sup>6</sup> However, at the cassation level, the judges ruled differently, acquitting Karen of all charges. The court argued that the Company's losses were a business risk.<sup>7</sup> Theoretically, the different rulings highlight the inconsistencies among judges in interpreting and applying the expanded doctrine of piercing the corporate veil, particularly against directors.

In the United Kingdom, the doctrine of piercing the corporate veil is perceived as a doctrine developed within the common law tradition since 122 years ago.<sup>8</sup> Compared to other countries, the UK has a long history of applying this doctrine. UK courts have classified circumstances under which shareholders and directors can be held personally liable (piercing the corporate veil). These circumstances include acts of facade, fraud, agency, or sham.<sup>9</sup> The application of the doctrine in the UK has become clearer and more structured through available guidelines for judges.<sup>10</sup> The judges in the UK tend to have a more cautious, consistent, and measured approach. This can

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<sup>4</sup> Sulistiowati dan Veri Antoni, Konsistensi Penerapan Doktrin *Piercing The Corporate Veil* Pada Perseroan Terbatas di Indonesia, *Yustisia jurnal universitas sebelas maret*, Vol.2 No.3, 2013. Hlm 29-30

<sup>5</sup> Dhaifina Fitriani, Perlindungan Direksi Melalui Business Judgment Rule (Studi Analisis Kasus Karen Agustiawan Mantan Dirut Pertamina), *Al-Muamalat: Jurnal Hukum & Ekonomi Syariah*, Vol. 5 No. 2, Desember 2020, hal. 70-87

<sup>6</sup> Ridwan Khairandy, et.al., *Business Judgement Rule Dalam Kasus PT Pertamina Hulu Energi*, FH UII Press, Yogyakarta, 2023. Hlm 75-76

<sup>7</sup> Dian Erika & Diamanty Meiliana <https://nasional.kompas.com> diakses pada 29 Februari 2024 Pukul 12:11 Wib.

<sup>8</sup> Ananda Rizky Suharto, Prinsip *The Corporate Veil* Pada Perseroan Terbatas Sebagai Badan Hukum, *Yustisia Merdeka : Jurnal Ilmiah Hukum*, Vol. 6, No. 2, 2020, hlm. 102.

<sup>9</sup> <https://ivypanada.com/essays/piercing-the-corporate-veil-england-and-wales/> diakses pada Selasa 4 Juni 2024 pukul 11:59

<sup>10</sup> Liton Chandra Biswas, Approach of The UK Court in Piercing The Corporate Veil, *SSRN Electronic Journal*, 2011. Hlm 16

minimize judicial errors in applying the piercing the corporate veil doctrine to corporate cases.<sup>11</sup>

Based on the above introduction, the problem statement of this research is as follows:

1. How does the regulation and application of the doctrine of piercing the corporate veil for directors compare between the Indonesian and UK corporate law?
2. Are there elements of the regulation and application of the doctrine of piercing the corporate veil for directors in the UK that can be adopted in Indonesia?

## METHODOLOGY

This study employed normative research methods, using legislative, conceptual, and comparative law approaches. The used legal materials include primary sources such as relevant legislation, secondary sources like scholarly works and related literature, and tertiary sources such as legal dictionaries. The collected data are analyzed qualitatively in order to interpret and deeply understand legal norms, resulting in a comprehensive and relevant analysis with the research object.

## RESULT AND DISCUSSION

### Comparison of Regulation and Implementation of the Piercing the Corporate Veil Doctrine to Directors in Indonesia and England

#### a. Regulation and Implementation of the Piercing the Corporate Veil Doctrine to Directors in Indonesia

Munir Fuady, in his book, argues that piercing the corporate veil is essentially a doctrine that transfers the company's liability to its managers, including directors, commissioners, or shareholders, and is applied when there are third-party claims against the corporation. In corporate law, the piercing the corporate veil doctrine is

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<sup>11</sup> Yafet Y. W. Rissy, Doktrin *Piercing The Corporate Veil*: ketentuan dan penerapannya di Inggris, Australia dan Indonesia, *Jurnal Ilmu Hukum*, Vol 4 No 1, 2019, Hlm 10

interpreted as a process to shift liability from a company to individuals based on corporate actions committed by the company, without acknowledging the fact that those actions were undertaken by the said company.<sup>12</sup>

In Law Number 1 of 1995, the regulation of piercing the corporate veil doctrine has existed through Article 3 paragraph (2), which states that there are exceptions to the principle of limited shareholder liability. Moreover, Article 85 paragraph (2) and Article 90 paragraph (2) of Law Number 1 of 1995 also addressed directors' responsibilities, even though they have not explicitly regulated the piercing the corporate veil doctrine.<sup>13</sup> However, after about 12 years of implementation, Law Number 1 of 1995 was deemed inadequate to address the rapid changes that were happening. The said Law was considered insufficient in order to respond to the rapidly developing legal and societal landscape in the globalization era. This led to the enactment of the Law Number. 40 of 2007 to better accommodate these needs.

In Law Number 40 of 2007, the scope of piercing the corporate veil doctrine was expanded to include directors' personal liability.<sup>14</sup> The Law Number 40 of 2007 stated that there are specific conditions where directors can be held personally liable, such as:

1. Article 97 paragraph (3): Directors are personally liable if they neglect their duties in good faith or breach their fiduciary duty.
2. Article 69 paragraph (3): Directors are jointly liable for inaccurate annual financial statements
3. Article 104 paragraph (2): Bankruptcy caused by directors' errors or negligence.
4. Article 1 paragraph (5), 97 paragraph (5)(b), and 104 paragraph (4)(b): Directors can be held personally liable for acting beyond their authority (*ultra vires*), violating corporate objectives, or breaching laws and the company's articles of association.<sup>15</sup>

From the explanation above, it can be seen that under UUPT 2007, the regulation of the doctrine of piercing the corporate veil in Indonesia has started to gain recognition, although it remains very minimal. The fiduciary duty of directors is stipulated in

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<sup>12</sup> Munir Fuady, *Perseroan Terbatas Paradigma Baru*, PT Citra Aditya Bakti, 2003.Hlm 87

<sup>13</sup> Abdurrahman, Politik Hukum Doktrin *Piercing The Corporate Veil* Pada Pengelolaan Perseroan Terbatas di Indonesia, *Jurnal Pasca Sarjana Hukum UNS* Volume VII Nomor 2, 2019. hlm 185

<sup>14</sup> Sulistiowati dan Veri Antoni, *Op.Cit.*, hlm 31

<sup>15</sup> Yafet Y. W. Rissy, *Op.Cit.* Hlm 11

Article 97 paragraph (2) of UUPT 2007, which states that each member of the board of directors is obligated to perform their duties in good faith and with full responsibility for the interests and business of the company.<sup>16</sup> This means that if directors, in carrying out their duties for the company's interests and business, deliberately act in bad faith or commit actions for personal gain that result in losses to the company, they can be held accountable under the doctrine of piercing the corporate veil.<sup>17</sup> In such cases, the court will disregard the company's legal entity status and impose liability on the directors, overriding the principle of limited liability, if it is proven that the directors personally committed wrongful acts that caused losses to the company. This ensures there is no room for directors, as corporate managers, to engage in conduct that could harm the company.<sup>18</sup>

Despite this recognition, the application of the piercing the corporate veil doctrine in Indonesia remains minimal and challenging. Indonesian courts tend to rely on a civil law system focused on legal positivism, which is different from the doctrine's Anglo-Saxon common law origins.<sup>19</sup>

The doctrine of piercing the corporate veil in Indonesia is applied by judges as part of their legal considerations when there is evidence that corporate directors have acted in bad faith or committed breaches of duty due to poor corporate governance. However, greater efforts are needed to develop jurisprudence and a deeper understanding among judges and legal practitioners, as there are still very few Supreme Court (Mahkamah Agung) rulings in Indonesia that explicitly apply the piercing the corporate veil doctrine to directors.<sup>20</sup>

The lack of comprehensive regulation regarding piercing the corporate veil in Indonesia has led to inconsistencies in its application, as seen in the case of former President Director of PT Pertamina, Karen Galaila Agustiawan. She was accused of

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<sup>16</sup> Sandra Dewi, *Perkembangan Penerapan Prinsip Piercing The Corporate Veil Dalam Pelanggaran Fiduciary Duty Yang dilakukan Direksi Perseroan Terbatas*, Jurnal Aktualita, Vol.1 No.2, 2018 Hlm 356

<sup>17</sup> Ardison Asri, *Doktrin Piercing The Corporate Veil Dalam Pertanggung Jawaban Direksi Perseroan Terbatas*, Jurnal Ilmiah Hukum Dirgantara, Vol 8 No 1, 2017. Hlm 82

<sup>18</sup> Sandra dewi, *Op.Cit.* hlm 362

<sup>19</sup> Hirman, Yuni Purwati, Sigit Sapto, *Hukum Perseroan Terbatas ((Prinsip Good Corporate Governance dan Doktrin Piercing The Corporate Veil*, Pustaka Iltizam, Solo, 2017. Hlm 119

<sup>20</sup> Yafet Y. W. Rissy, *Op.Cit.* hlm 12

abusing her authority when deciding to invest in a Participating Interest (PI) in the Basker Manta Gummy (BMG) block in Australia.<sup>21</sup> Karen was found guilty of violating Article 97 paragraphs (1) and (2), which pertains to abuse of authority at PT Pertamina, resulting in losses to the company (a breach of fiduciary duty).<sup>22</sup> In the Central Jakarta District Court, Karen was convicted.<sup>23</sup> However, after being found guilty, Karen Galaila Agustiawan filed a cassation appeal to the Supreme Court. The Supreme Court judges ultimately ruled that Karen Galaila Agustiawan was acquitted of all charges. According to Kompas.com, the Supreme Court panel of judges stated that their reasoning for acquitting the defendant was based on the consideration that Karen's actions were part of business risk rather than criminal misconduct.<sup>24</sup>

This case illustrates that Indonesia's legal system and judiciary remain inconsistent in applying the principle of piercing the corporate veil in legal cases. In practice, piercing the corporate veil is only recognized to a limited extent and is not explicitly regulated under Indonesian law. This lack of clarity has left the application of the doctrine in Indonesia without adequate mechanisms for assessment.<sup>25</sup> Furthermore, the statutory regulations on limited liability companies fail to provide detailed materials or specific forms of violations related to piercing the corporate veil for directors.<sup>26</sup> As a result, courts face significant challenges in applying this doctrine due to the strong and rigid principle of limited liability corporations, which is not easy to rule out.<sup>27</sup>

## **b. Regulation and Implementation of the Piercing the Corporate Veil Doctrine to Directors in England**

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<sup>21</sup> Dhaifina Fitriani, Perlindungan Direksi Melalui Business Judgment Rule (Studi Analisis Kasus Karen Agustiawan Mantan Dirut Pertamina), *Al-Muamalat: Jurnal Hukum & Ekonomi Syariah*, Vol. 5 No. 2, Desember 2020, hal. 70-87

<sup>22</sup> Ridwan Khairandy, et.al., *Business Judgement Rule Dalam Kasus PT Pertamina Hulu Energi*, *Loc.Cit.*

<sup>23</sup> Arthur Gideon, [liputan6.com/kronologi-kasus-eks-dirut-pertamina-karen-agustiawan](https://liputan6.com/kronologi-kasus-eks-dirut-pertamina-karen-agustiawan) diakses pada 20 Februari 2024 Pukul 10:11 Wib

<sup>24</sup> Dian Erika & Diamanty Meiliana <https://nasional.kompas.com> diakses pada 29 Februari 2024 Pukul 12:11 Wib.

<sup>25</sup> Yessy Kusumadewi, Pelaksanaan prinsip *Piercing The Corporate Veil* Dalam Perseroan Terbatas Menurut Undang-undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, *Jurnal Binamulia Hukum*, Vol. 8 No. 1, 2019. Hlm 90

<sup>26</sup> Sulistiowati dan Veri Antoni, *Op.Cit.*, hlm 32

<sup>27</sup> Sandra Dewi, *Op., Cit.* hlm 359

England, rooted in the common law tradition, has been developing the doctrine of piercing the corporate veil for 122 years.<sup>28</sup> The concept originated from the landmark decision of the House of Lords in *Salomon v A. Salomon and Co Ltd* [1897] AC 22, which established the legal separation between a company and its shareholders.<sup>29</sup> Various legal scholars and practitioners in England adopt varying approaches to explain piercing the corporate veil. Some legal scholars interpret the term narrowly, while others adopt broader or more flexible perspectives. From the narrowest standpoint, piercing the corporate veil refers to disregarding or setting aside the corporate veil of a company to hold its shareholders or directors accountable for wrongful actions committed in the company's name. A broader definition suggests that piercing the corporate veil occurs when courts examine what happens within the corporate entity to make judgments regarding the behavior or relationships of the company's management, rather than solely presuming the company is separate from its owners and controllers.<sup>30</sup>

Courts in England distinguish between two types of piercing the corporate veil: statutory and judicial. Statutory piercing of the corporate veil occurs when exceptions to limited liability are established by law, which include:

1. Types of Directors' Liabilities

Section 232(1) of the **UK Companies Act 2006** explains the legal and personal responsibilities of directors. If a director performs their duties, whether under common law (duty of care, which requires diligence, caution, and expertise) or fiduciary duty (acting in good faith for the best interests of the company), they cannot be held legally accountable unless negligence, failure, or breaches of duty are proven. This means directors may be personally liable if they act with bad faith, recklessness, insufficient information, dishonesty, or prioritize personal interests over the company's.<sup>31</sup>

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<sup>28</sup> Yafet Y. W. Rissy, *Op.Cit*, Hlm 2.

<sup>29</sup> James Wibberley et.al., Lifting, piercing and sidestepping the corporate veil, <https://www.guildhallchambers.co.uk>, diakses pada Kamis 30 Mei 2024 pukul 18:21

<sup>30</sup> Liton Chandra Biswas, Approach of the UK Court in Piercing Corporate Veil, University of Leicester, 2014. Hlm 3

<sup>31</sup> Yafet Y. W. Rissy, *Op.Cit*, Hlm 5

## 2. Fraudulent and Wrongful Trading

Sections 213–215 of the UK Insolvency Act 1986 regulate fraudulent and wrongful trading. These provisions state that if it is proven a director knew or should have known the company could not avoid insolvency but failed to take steps to minimize creditor losses, the court, upon the request of a liquidator, may declare the director personally liable for part of the company's financial losses.

## 3. Abuse of Company Name

Sections 216–217 of the UK Insolvency Act 1986 stipulate that if a company undergoes insolvent liquidation, its directors are prohibited from using the same or a similar name to the liquidated company for five years, or from using a name that suggests a connection to the liquidated company. If this provision is violated, Section 217 allows directors to be held personally liable for any debts arising from the business under that name.

Judicial Piercing of the Corporate Veil occurs when judges exercise their discretion to apply the doctrine.<sup>32</sup> In England, courts typically rely on five principles to implement piercing the corporate veil in a case:<sup>33</sup>

1. Fraud, Sham, or Façade, a situation when a company is used as a tool for fraud or as a cover for illegal or improper activities by its directors.
2. Alter Ego, a condition when directors treat and regard the company as an extension of themselves rather than as a separate legal entity.
3. Unity of Interest, when directors use the company as a channel to conduct personal business rather than operating it as an independent business entity.
4. Abuse of Power
5. Agency, a condition when a company acts as an agent for another party.

The doctrine of piercing the corporate veil in England does not focus solely on directors' liability but has a broader scope. Over the past 80 years, several cases in England have demonstrated that the application of the doctrine is doable.<sup>34</sup> One

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<sup>32</sup> Mirka Balharova, *Loc.Cit.*

<sup>33</sup> Ameera Hasan AlTaan, Piercing the corporate veil comparative perspective to the Bahraini, English and American legislative and judicial practice, Queen Mary, University of London Hlm 18-19

<sup>34</sup> Alanwats, *UK Supreme court confirms corporate veil can be pierced in some circumstance*, <https://www.herbertsmithfreehills.com> dikases pada Kamis 30 Mei 2024 pukul 18:46

notable example is *Trustor AB v Smallbone*, where Smallbone, a director of Trustor AB, transferred funds from the company to another company under his control for personal gain. The court found that his actions constituted fraud and that he used the other company as a tool to conceal his misconduct. Consequently, the court applied the doctrine of piercing the corporate veil, holding Smallbone personally liable for the misappropriated funds.<sup>35</sup>

England has established guidelines (precedents) for judges in applying the Piercing the Corporate Veil doctrine. Case identification forms the foundation of many corporate veil decisions in England, enabling these precedents to be used in similar cases.<sup>36</sup> English courts generally trust existing legal concepts to resolve new issues, reflecting their reliance on these established principles.<sup>37</sup> Moreover, the analytical approach adopted by English courts involves classifying cases into categories based on a combination of the legal concepts applied and the factual circumstances of the case that occurred.<sup>38</sup> These categories include agency, trusts, fraud, and cases based on provisions in the Companies Act and the Insolvency Act 1986.<sup>39</sup>

### **c. Comparison of Regulation and Implementation of the Piercing the Corporate Veil Doctrine to Directors Between Indonesia and England**

This section outlines the orientation, regulation, and application of the Piercing the Corporate Veil doctrine in both Indonesia and England. The results of this comparison are presented in a table to emphasize transparency and mitigate the risks of information loss and fraud due to insufficient information. The table below highlights several points, including: Legal Basis, Consistency and Legal Certainty, Parties Subject to the Doctrine, Development of the Doctrine.

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<sup>35</sup> Cms-lawnow.com, <https://cms-lawnow.com/en/calerts/2001/03/piercing-the-corporate-veil> diakses pada Selasa 4 Juni 2024 pukul 13:30

<sup>36</sup> Catharina Enggar Kusuma. *Loc.Cit*

<sup>37</sup> Thomas K.Cheng, The Corporate Veil Doctrine Revisted: A Comparative Study Of The English And The U.S Corporate Veil Doctrines, *Boston College International & Comparative Law Review* Vol 34:329, hlm 345

<sup>38</sup> *Ibid*, hlm 349

<sup>39</sup> *Ibid*, hlm 348-349

**Table 3.1**

**Comparison of Regulation and Implementation of the Piercing the Corporate Veil  
Doctrine to Directors Between Indonesia and England**

<b>Points of Comparison</b>	<b>England</b>	<b>Indonesia</b>
Legal Basis	<p><i>Companies act</i> 2006</p> <p>Based on common law principle and many precedents ruling on its implementation.</p> <p>Recognized and has created a guideline (precedent) for judges in identifying corporate veil cases in England which can be used to adjudicate similar cases.</p>	<p>Law Number 40 of 2007 on Limited Liability Company</p> <p>Recognized to some extent and has not yet to be regulated firmly within the Indonesian legal system.</p>
Implementation Consistency	The implementation is more consistent due to the existing clear precedents, and the tendency of court decisions to be more predictable because they follow the established principles.	In implementing the doctrine, Indonesia has been inconsistent, this is due to the lack of written law and jurisprudence which caused the absence of a measured approach for a sufficient action in implementing the law.
The Development of the Piercing the Corporate Veil Doctrine	<ol style="list-style-type: none"> <li>1. The doctrine has been established and implemented appropriately for many years.</li> <li>2. Judges have deep and detailed understanding on the implementation of the doctrine.</li> </ol>	<ol style="list-style-type: none"> <li>1. The level of comprehension and implementation of this doctrine is still developing and has not yet to be fully established.</li> <li>2. There needs to be more effort to develop jurisprudence and deeper comprehension among judges and legal practitioners.</li> </ol>
The Reason for the	1. Legally, Piercing the Corporate Veil occurs when there	It is only limited to crimes committed by directors against

Implementation	<p>are statutory exceptions to the limited liability of a company. These include Fraudulent and wrongful trading and Abuse of Company Name.</p> <p>2. Judicially, Piercing the Corporate Veil occurs when judges exercise discretion to apply the doctrine.<sup>40</sup> There are five common situations recognized by English courts in applying the Piercing the Corporate Veil doctrine: (i) Fraud, Sham, or Façade, a situation when a company is used as a tool for fraud or as a cover for illegal or improper activities by its directors. (ii) Alter Ego, a condition when directors treat and regard the company as an extension of themselves rather than as a separate legal entity. (iii) Unity of Interest, when directors use the company as a channel to conduct personal business rather than operating it as an independent business entity. (iv) abuse of power, and (v) Agency, a condition when a company acts as an agent for another party.</p>	<p>fiduciary duty and acting beyond his/her authority, and to bankruptcy due to the errors or negligence of the directors.</p>
Court Decision	<p>There are many court decisions (precedent) which formed the basis for implementing the doctrine.</p>	<p>The number of court decisions that have the doctrine as the basis of the ruling is limited.</p>

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<sup>40</sup> Mirka Balharova, *Loc.Cit.*

## **The Substance of the Regulatory and Implementation of the Piercing the Corporate Veil Doctrine to Directors in England That Can be Applied to Indonesia**

According to the history of the common law system adopted by England, the application of the Piercing the Corporate Veil principle has developed since the early 20th century and subsequently spread to countries influenced by the common law tradition, such as the United States, Ireland, Australia, Canada, New Zealand, and South Africa. To some extent, it has also been adopted in civil law tradition countries like Germany and Indonesia. As a country that adopted the civil law system, Indonesia emphasizes more on written regulations, such as legislation, where the binding power of law is based on systematically codified regulations.<sup>41</sup>

In England, as a common law country, precedents serve as a reference for judges in applying the Piercing the Corporate Veil doctrine. On the other hand, Indonesia has the Pancasila ideology, and lacks detailed regulations on the application of this doctrine. Indonesia also does not follow the principle of *the binding force of precedents*, and there are relatively few Supreme Court decisions in Indonesia that explicitly apply the Piercing the Corporate Veil doctrine.<sup>42</sup> This results in a lack of guidance for judges in considering this doctrine.

According to the theory of legal development proposed by Mochtar, the law must evolve in line with societal changes, and its role in development is to ensure that such changes proceed smoothly. This suggests that, to achieve order amidst the evolving practices of corporate business, clear rules regarding corporate responsibilities and liabilities under the Piercing the Corporate Veil doctrine are needed.<sup>43</sup> Therefore, there is a pressing need for clearer legal codification in applying this doctrine. The goal is to establish legal uniformity and certainty regarding actions deemed appropriate for the application of the Piercing the Corporate Veil doctrine. However, a significant obstacle to adopting the regulations and application of the Piercing the Corporate Veil doctrine from England to Indonesia lies in the difference in legal systems. England, as a

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<sup>41</sup> Tri Bowo Hersandy Febrianto, Peran Civil Law Dalam Sistem Hukum Indonesia, *Jurnal Hukum dan Sosial Politik* Vol.2, No.1, 2024. Hlm 236

<sup>42</sup> Yafet Y. W. Rissy, *Op.Cit*, hlm 12

<sup>43</sup> Ng Catharina Enggar Kusuma, *Op.Cit*, hlm 82

common law country, relies on precedents as a guide for judges in applying the Piercing the Corporate Veil principle. This difference creates challenges in adopting principles reliant on previous cases as legal guidance. Additionally, another barrier is the lack of precedents in Indonesia, as there are few Supreme Court decisions that explicitly apply the Piercing the Corporate Veil doctrine.<sup>44</sup> This results in insufficient references for judges when considering this doctrine.

To formulate policies that are relevant and can be adopted from the practice of implementing the "piercing the corporate veil" doctrine in England into Indonesia's regulatory framework, a thorough analysis is needed on the aspects of the doctrine's application in English law that can be adapted to Indonesia. The following points might be considered:

*First*, England applies the Piercing the Corporate Veil doctrine in several cases, which are classified into categories based on a combination of legal concepts used and the factual circumstances of the cases. These classifications provide a framework for when and how courts can apply the doctrine to directors.<sup>45</sup> The Indonesian Company Law, as the primary source of corporate regulation, could adopt clearer definitions and principles regarding the Piercing the Corporate Veil doctrine. This includes detailed explanations of situations where the separation between corporate entities and their shareholders or management (directors and commissioners) can be disregarded. This framework could be strengthened by incorporating more precise and stringent standards for violations involving the misuse of a director's or commissioner's position. Such measures are expected to provide legal certainty and consistent enforcement related to the application of the Piercing the Corporate Veil doctrine in Indonesia.<sup>46</sup>

Although the Indonesian Company Law acknowledges the application of this principle, its regulations remain relatively simple. Consequently, implementing the doctrine in Indonesia has been challenging, as Indonesia follows a civil law system

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<sup>44</sup> Yafet Y. W. Rissy, *Op.Cit*, hlm 12

<sup>45</sup> Thomas K.Cheng, *Loc.Cit*

<sup>46</sup> Yafet Y. W. Rissy, *Op.Cit*, hlm 17

that leans toward legal positivism. This is different with the Anglo-Saxon legal system, which has already adopted the Piercing the Corporate Veil doctrine.<sup>47</sup>

*Second*, England has established precedents that serve as guidance for judges in applying the Piercing the Corporate Veil doctrine. Case identification forms a significant part of court decisions related to corporate veil issues in England, which can then be used to handle similar cases. However, unlike precedent in the Anglo-Saxon legal system where prior court decisions bind current rulings, the Indonesian legal system emphasizes detailed statutory regulations and grants judges a more active role in interpreting the law. In comparison with the Anglo-Saxon system, Indonesia's legal framework does not have the tradition of binding precedents. However, judges play an important role in interpreting the law.<sup>48</sup>

In doing so, Indonesian judges rely on at least three key references beyond statutory laws which are the basis for judges to adjudicate a case. *First*, jurisprudence which in Indonesia refers to court decisions that are followed because they share similarities with previously decided cases. *Second*, landmark decisions, selected by the Supreme Court as significant rulings, although these only apply to decisions made by the Supreme Court. *Third*, plenary session summaries of the Supreme Court, which function to unify perspectives among judges and avoid legal uncertainty.<sup>49</sup> Given the limited number of Supreme Court decisions in Indonesia that explicitly apply the Piercing the Corporate Veil doctrine,<sup>50</sup> judges need a deeper understanding of the doctrine and how the doctrine can be adapted to the Indonesian legal system. Judges are encouraged to be more proactive in applying the doctrine and more consistent when ruling on cases where the doctrine could be applied, for which can be supported by sufficient jurisprudence. Furthermore, jurisprudence on Piercing the Corporate Veil cases in Indonesia should be codified in future amendments to the Indonesian

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<sup>47</sup> Ananda Rizky Suharto, Prinsip Piercing The Corporate Veil Pada Perseroan Terbatas Sebagai Badan Hukum, *YUSTISIA MERDEKA: Jurnal Ilmiah Hukum*, Vol 6 No 2, 2020. Hlm 103

<sup>48</sup> Dian Ekawati, Model of the Indonesian Legal System, *Jurnal Kewarganegaraan* Vol. 7 No. 2, 2023. Hlm 2036

<sup>49</sup> Normand Edwin Elnizar, *Ini 3 sumber acuan dalam putusan hakim selain Undang-undang*, <https://www.hukumonline.com>, Diakses pada Kamis 30 Mei Pukul 01:15

<sup>50</sup> Yafet Y. W. Rissy, *Op.Cit*, hlm 12

Company Law. This codification aims to provide legal certainty and consistent enforcement of the doctrine when applied to directors in Indonesia.<sup>51</sup>

By adopting practices from England regarding the application of the piercing the corporate veil doctrine, Indonesia is expected to strengthen its legal framework to prevent misuse of corporate entities and protect the interests of all stakeholders. Future amendments to the Indonesian Company Law should provide more detailed regulations regarding the actions or situations in which directors can be held personally liable.

## CONCLUSION

Regulations concerning the piercing the corporate veil doctrine, particularly as applied to directors in Indonesia, still remain general in nature. Furthermore, the application of the doctrine in Indonesia's legal system has so far been carried out without a clear conceptual basis or standardized criteria. Meanwhile, although not explicitly regulated in any legislation, England has established guidelines and precedents that assist judges. As a common law country that uses court decisions as a legal basis, England has created precedents that judges must follow when applying this doctrine on general cases. The existence of a guideline for applying the piercing the corporate veil doctrine, especially for directors, is a crucial regulatory component needed in Indonesia's corporate law. Such guidelines would also help prevent inconsistent judicial decisions in similar cases.

## COMPETING INTEREST

There is no conflict of interest in the publication of this article. This means that all parties involved in the research, writing, and publication process have ensured that no personal, professional, or institutional interests could affect the objectivity, independence, or integrity of the article's content. In the context of academic

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<sup>51</sup> *Ibid*, 17

publishing, this statement aims to guarantee that the published article is entirely based on analysis, data, and arguments free from external influences that could create bias.

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