Piercing The Corporate Veil: Effectiveness Of Alter Ego And Instrumentality Legal Test

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Abstract

Limited liability is a principle where the shareholders are considered separated from the assets of the company, and their losses are only limited to the shares owned. Limited liability can result in moral hazard and irresponsible domination. To prevent such a situation, many countries have adopted the doctrine of Piercing the Corporate Veil, which makes the veil that limits legal entities with their shareholders can be torn so that this doctrine allows shareholders in certain cases to be responsible for their personal assets. In determining the applicability of Piercing the Corporate Veil, courts in the United States have developed some legal tests, namely, alter ego and instrumentality rules. However, this doctrine is not as easy and simple as it seems because its application is determined based on a case-by-case basis and the courts have great freedom to make judgments. Thus, it become generally recognized that Piercing the Corporate Veil is lost in a fog of metaphor. Due to such a reality, one of the purposes of law as stated by Gustav Radbruch (justice) is not fulfilled, where it makes third parties rarely get compensation, and does not provide a deterrent so the actions against the law of the company organs will continue. Therefore, this research will be conducted through a normative juridical research method using a statutory approach and a of comparative law approach. This paper will present comprehensive theories regarding piercing the corporate veil, as well as the case law from United States and Indonesia.

Keywords
Piercing the Corporate Veil, Alter Ego, Instrumentality, Legal Liability, Legal Test

1. Introduction
Based on the theory of fiction, a company is an artificial person whose characteristics are that it has no form (abstract), will, and reality of substance (Adolf A. 1947). This means that the company should be a legal person, has a legal position, rights, and responsibilities, but on the other hand, the company is also a separate legal entity from the directors and shareholders. As an artificial person, the limited company cannot carry out legal actions alone and must be represented by humans as a bridge, namely the Board of Directors, the Board of Commissioners, and the General Meeting of Shareholders.

According to Article 3 paragraph (1) of Law No. 40 of 2007 concerning Limited Liability Companies, the status of an independent legal entity makes the owners or shareholders not personally responsible for the company's losses exceeding the shares owned. This limited liability of shareholders can cause a moral hazard, especially if its applied absolutely, since the limited liability principle can be misused by company organs that have bad faith, where they can look for loopholes in the legal construction of the company, namely through domination without responsibility.

To prevent such a situation, it is necessary to have the Doctrine of Piercing the Corporate Veil which according to Friedman is defined as (Friedman 1987):

"Process of imposing liability for corporate activity, in disregard of corporate activity, on a person or entity other than the offending corporation itself. There are times when the court will ignore the corporate entity and strip the organizers and managers of the corporation of the limited liability that they usually enjoy. In doing so, the court is said to pierce the corporate veil".

In certain cases, the Piercing the Corporate Veil Doctrine is recognized in Indonesia through Article 3 paragraph (2), Article 97 paragraph (3), and Article 114 paragraph (3) of Law No. 40 of 2007 so that the burden of personal responsibility is extended to shareholders, directors, and commissioners.

Unfortunately, although the Piercing the Corporate Veil Doctrine has been adopted in Indonesia, in practice there are quite a number of cases which in their decisions do not heed the doctrine, such as the Century Bank case. This idea is supported by Sulistiowati's research that Indonesia did not have a decision based on the provisions of Article 3 paragraph (2) of the Company Law until 2012. Meanwhile, one of the reasons why the Piercing the Corporate Veil Doctrine is rarely used by Indonesian judges is because the courts are difficult to obtain evidence that the company's organs use his position to carry out legal actions for his personal gain.

Then, another problem is that the Piercing the Corporate Veil Doctrine is not as easy and simple as it seems because its application is determined based on the facts themselves on a case-by-case basis and the courts have great freedom to make judgments, this is as illustrated by the opinion of Australian legal experts quoted from the book. written by Chatamarrasjid with the title "*Menyingkap Tabir Perusahaan*" (Chatamarrasjid 2000):

"it is very difficult to give a satisfactory analysis or classification of types of case in which the court will lift the veil of corporate. Someone cannot predict with certainly whether or not the court will do so in a particular case".
As a result, the courts did not stop producing the Piercing the Corporate Veil factor test and this became the basis for the development of the "State of Totality" Doctrine. This doctrine states that the court conducts an analysis of all the facts and is balanced with limited liability so that it creates a compilation of factors to penetrate the corporate veil, for example, mix of assets, low capitalization, and others. However, this approach does not deserve to be called a doctrine because it is too broad and of course, this doctrine will never finish developing where the court will continue to give birth to new factors based on the facts of a particular case (endless metaphor). Moreover, this doctrine is simply a restatement of what courts generally do.

Therefore, the author wants to analyze the implementation of the Doctrine of Piercing the Corporate Veil in Indonesia, and compare it with the United States, where according to a survey in 1990-1991 it was shown that there were at least 2000 cases in which the United States courts decided to penetrate the corporate veil. Unlike Indonesia, the United States has succeeded in implementing the doctrine of piercing the corporate veil through two legal tests, namely Alter Ego and Instrumentality. Although these two legal tests have received some criticism from legal experts, the author believes that the legal tests comprehensively can be used in all cases that require personal accountability from the company's organs.

Based on the problems in the background above, the authors raise the main issues in this journal as follows: (1) How is the PCV doctrine applied in Indonesia? (2) What if the legal test of alter ego and instrumentality becomes an alternative in enforcing the personal responsibility of corporate organs in Indonesia?

1.1 Objectives

This research is generally aimed at the public regarding matters relating to the Piercing the Corporate Veil Doctrine and the importance of applying the Piercing the Corporate Veil Doctrine to the responsibility of shareholders, the Board of Directors, and the Board of Commissioners to protect the interests of stakeholders. This is important considering that Limited Liability Companies have become a commonly used business model for entrepreneurs, but regarding the Piercing the Corporate Veil Doctrine itself, it is regulated very simply and limitedly, and in practice it is rarely applied by judges in their considerations. While the specific objectives of this writing are:

1. To explain the Piercing the Corporate Veil Doctrine in order to hold the shareholders, the Board of Directors, and the Board responsible for the losses of the stakeholders due to negligence or bad deeds committed on behalf of the company;
2. To explain how the Piercing the Corporate Veil Doctrine is applied in the Company Law.

This research was conducted with the hope of providing benefits in the form of additional literature and sources of information for science in the field of law, it is hoped that this study can be input for the Legislature to improve the Company Law and other existing regulations related to corporations. In addition, it can be used as a guide for courts to apply the Piercing the Corporate Veil Doctrine so that third parties receive compensation.

2. Literature Review

PCV is one of the doctrines originating from common law countries, which consists of the word "pierce" which means to tear / tear / penetrate, "veil" means curtain cloth or veil, and "corporate" means company. Under certain conditions, the limited liability becomes invalid, and the legal “screen” that separates shareholders or directors from the company will be “revealed”. With such disclosure, other people or companies may be held responsible for legal actions committed by legal entities, regardless of the fact that these acts were actually committed by legal entities. The PCV doctrine is based on the recognition that rigid adherence to the limited liability of shareholders will sometimes lead to injustice. As a consequence, the court may ignore the limited liability principle of a legal entity in order to ask the shareholders/ directors/ board of commissioners of the company to be personally responsible for the actions and debts of the company.

Courts in applying the PCV doctrine are based on the “totality of circumstances” rule, in which the court will handle each case based on its own facts. Unfortunately, the court failed to provide clear guidelines on the criteria for the PCV doctrine for employers. For this matter, Munir Fuady has formulated 6 basic criteria in general to apply PCV, namely the existence of fraud, injustice, oppression, not fulfilling legal elements, shareholders who are too dominant, and the company becoming an alter ego.

Generally, the PCV doctrine can be applied to 5 things. First, that the PCV doctrine applies when the company does not follow certain formalities regulated by law. Second, the PCV doctrine is applied to legal entities that are only artificially separated. Third, the PCV doctrine is applied to the contractual relationship between the company and a third party, which if it is not implemented, the third party will suffer an insurmountable loss. Fourth, the PCV doctrine is applied on the grounds of acts against criminal and civil law. Finally, that the PCV doctrine applies to the relationship between group companies and subsidiaries.

3. Methods

This paper is based on research that is descriptive in nature, namely research that seeks to describe the object or subject that is studied in depth, broadly, and in detail. The research method used in this research is a normative juridical research method. This study uses a prawn approach, a comparative approach, and a conceptual approach. The law approach is used in this research because one of the discussions of this discussion is to examine Law no. 40 of 2007 concerning Limited Liability Companies, especially those that regulate the Piercing the Corporate Veil Doctrine. A comparative approach is used in this study because it is to find out the similarities and differences in regulations for piercing the corporate veil. Meanwhile, a conceptual approach will also be used because it will discuss various fields and doctrines that develop in corporate law.

The study uses two types of data, namely secondary data, where data obtained from library materials such as books, results in the form of reports, diaries, and others. Meanwhile, the legal materials that I will use are primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials to be used are statutory regulations and jurisprudence. Meanwhile, the secondary legal materials that the author uses are textbooks, legal dictionaries, legal journals, and comments on court decisions. Then, the tertiary legal materials used are dictionaries, encyclopedias, indexes, and other materials that provide explanatory instructions for secondary legal materials. The library technique in this writing is literature study and interviews.

4. Data Collection

There are 3 legal materials that the author uses to obtain data, namely:
Main legal materials:

1. Law Number 40 of 2007 concerning Limited Liability Companies;
2. Government Regulation Number 23 of 2022;
3. Milwaukee Toy Co. Ltd. v. Wisconsin Industrial Commission;
4. Lowendahl v. Baltimore & Ohio R.R.

Secondary legal materials:
1. Textbooks written by legal experts;
2. Journals, articles, papers;
3. internet network;
4. The results of scientific works and other research results.

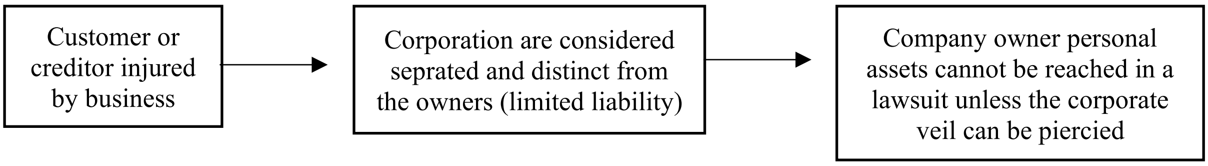
Tertiary legal materials:

1. Black Law Dictionary;
2. Big Indonesian Dictionary.

5. Results and Discussion

The Piercing the Corporate Veil Doctrine is a doctrine adopted from the common law country, which was first used by Maurice Wormser in 1912 to analyze the circumstances in which a fictional theory (legal personality as legal person) in a company should be ignored. Wormser generalized that "when the concept of a corporate legal entity is used to deceive creditors in order to avoid existing obligations, the Act, and/or to protect against crime, the courts will override the nature of the corporation's legal entity. Also, it will regard the corporation as an association of shareholders and will provide justice among real people" (Wormser, 1912). As for making it easier for readers to understand the Doctrine of Piercing the Corporate Veil, it can be seen from the following flowchart: (Table 1)

Table 1. Piercing the corporate veil doctrine



In certain cases, the Doctrine of Piercing the Corporate Veil has been recognized in Indonesia through Law no. 1 of 1995 concerning Limited Liability Companies which was later refined by Law no. 40 of 2007. The following are the details of regulations relating to piercing the corporate veil: (Table 2)

Table 2. Regulation based on piercing the corporate veil in Indonesia

Recognition of the PCV Doctrine in Law No. 40 of 2007		
	Articles	**Descriptions**
Shareholder	Article 3 paragraph (2)	Shareholders are personally responsible if: 1) Non-fulfillment of the company's requirements as a legal entity; 2) Have bad faith in using the company for personal gain; 3) Engage in unlawful acts committed by the company; or 4) Using the company's wealth unlawfully so that its assets cannot pay off the company's debts.
	Article 7 paragraph (6)	Within a maximum of 6 months, if the shareholders remain only 1 person since the company obtained legal entity status, the shareholders are personally responsible for all agreements and losses of the company, and the district court can dissolve the PT on the application of interested parties.
Management	Article 37 paragraph (3)	The Board of Directors is liable for shareholder losses (good faith) incurred because the share repurchase was void due to law.
	Article 95 paragraph (4)	All legal actions committed by the Board of Directors (whose appointment is void) for and on behalf of the company become invalid and are his personal responsibility.
	Article 97 paragraph (3)	The Board of Directors is personally responsible if it neglects to carry out its fiduciary duty to the company.
	Article 101 paragraph (2)	The Board of Directors is responsible if it does not report to the company about the shares owned by it and/or its family to be recorded in a special list and make losses to the company.
	Article 104 paragraph (2)	The Board of Directors is liable if he is negligent so that the company goes bankrupt and its wealth does not pay off enough obligations.
Board of Commissioners	Article 114 paragraph (3)	The Commissioner is personally responsible if he neglects to carry out his fiduciary duty to the company.
Board of Directors and Board of Commissioners	Article 69 paragraph (3)	The Board of Directors and Commissioners are jointly responsible if the financial statements are incorrect.
	Article 72 paragraph (6)	The Board of Directors and Commissioners are jointly responsible for the company's losses caused by shareholders being unable to return interim dividends.

	Article 115 paragraph (1)	Jointly responsible for the insolvency of the company due to the negligence of the Commissioners in supervising the management of the Board of Directors.
Recognition of the PCV Doctrine in Government Regulations No. 23 of 2022		
	Articles	**Descriptions**
Management	Article 27 paragraph (2)	The Board of Directors is personally responsible if they neglect to carry out fiduciary duty to SOEs.
Commissioners & Board of Trustees	Article 59 paragraph (2)	The Commissioner and the Supervisory Board are personally responsible if they neglect to carry out fiduciary duties to SOEs.

Based on the articles in Table 1, Law no. 40 of 2007 explicitly applies the Piercing the Corporate Veil Doctrine, but the doctrine is regulated in a very simple and limited manner, where shareholders are still responsible for the actions taken by the company but are limited to four things (Article 3 paragraph (2) Law No. 40 of 2007), namely the requirements of the company as a legal entity are not met; shareholders have bad faith; and shareholders are involved in unlawful acts that make the company unable to pay off the company's debts. Personal responsibility for shareholders is quite important because it is remembered that shareholders with share ownership of more than half (50%) can control the company and feel more entitled to take part in the company's activities. Under these conditions, it is possible for shareholders to abuse their power for personal gain through General Meeting of Shareholders.

Meanwhile, the Board of Directors (Article 97 paragraph (3) Law No. 40 of 2007) and the Board of Commissioners (Article 114 paragraph (3) Law No. 40 of 2007) can also be personally liable if the company's losses are caused by mistakes or negligence of the Directors and Commissioners in carrying out their duties. For them bth, this personal responsibility arises because in carrying out their duties they must be responsible according to the principle of fiduciary duty, which is based on good faith, proper purpose, ability to oppose the intrusion of shareholders who encourage them to take policies for personal interests (unfettered discretion), and has no conflict of interest. A fiduciary must prioritize the interests and goals of the company, and may not take advantage of his position in the company. The following are two main principles in fiduciary duty, namely:

1) Act carefully in formulating decisions and policies, which must take into account all information held properly and fairly (duty of care);
2) Responsible for the interests of shareholders and the company (duty of loyalty).

Meanwhile, in Indonesia itself, there are several cases that do not heed the Doctrine of Piercing the Corporate Veil, such as the Century Bank case. A brief chronology of the Century Bank case will be explained through the following description:

1) Robert Tantular (RT) as shareholder in PT Antaboga Deltasekuritas Indonesia (PT ADI) and PT Bank Century (PT BC); Hendro Wiyanto (HW) as President Director of PT ADI; Hartawan Aluwi (HA) as the same holder and manager of PT ADI; and Anton Tantular (AT) as a shareholder of PT ADI.
2) RT ordered PT BC to work together with PT ADI to sell PT ADI fund investment product with a promise that PT BC would receive an interest rate and marketing fee for those who successfully sold the invenstment product.
3) RT also instigated other parties to place funds in PT ADI mutual funds by promising higher interest rates than deposits, guaranteed safe by PT BC because the owner of PT ADI is also PT BC, whereas each maturity of the funds will be paid in cash and not axable. However, customers are not given clear information about mutual fund products and are only provided with investment confirmation evidence.
4) With these words, RT succeeded in making the branch leadership of PT BC feels confident and trusted to sell PT ADI fund investment products.
5) Whereas although the sub-sales agent agreement between PT ADI and PT BC ended in 2005, the regional coordination office and PT BC branch still market PT ADI fund investment products. In fact, since December 2007 they have started marketing discretionary fund products to the public and those who are successful in marketing will receive a fee.
6) That the investment funds received by PT BC will be temporarily accommodated and then transferred to PT ADI account. The funds should have been deposited into the Custodian bank account by HW as the President Director of PT ADI, but in fact, only a few funds were successfully placed. The funds were actually used in stages by RT, HA, AT, and other parties through book-entry into accounts in the form of billet giro or checks, and were used to pay fees to Regional Heads and Branch Managers of PT BC who successfully marketed investment products from PT ADI.

7) RT with HA permission ordered Esterlita Widjaja as Accounting and Finance Manager of PT ADI to prepare a bbilletgiro or check for a certain amount. Then, the billet giro or check was signed by HW and Estertita to be submitted to the RT.
8) Because public funds are used for personal interests, when the customer's investment funds due date is coming, it is known that around Rp. 1,455,262,800,000 cannot be disbursed by the owner.
9) The Supreme Court has sentenced RT to nine years in prison for violating the banking law by interfering in bank operations and embezzlement, but until now PT ADI's customers have not received their savings.

The author is of the opinion that the case can not only be resolved from a criminal law perspective but the Piercing the Corporate Veil doctrine can also be applied. Why is that? (Table 3)

Table 3. Fulfillment of the elements of Article 3 Paragraph (2) Letter B and Article 97 Paragraph (3) Limited Liability Company Law in the case of Century Bank

Article 3 paragraph (2) letter b of the Law No. 40 of 2007	
Elements	**Descriptions**
Thestake of the shares in question is either direct or indirect	RT has a control right of 20.04% over PT BC, and through the nominee shareholders it is calculated that there is a share ownership control right of 19.54%, so that the control rights of the RT family are 39.58% and this makes the RT family the majority shareholder of PT BC. Meanwhile, it is known that RT is also the controlling shareholder of PT ADI.
In bad faith taking advantage of the company	RT did something that contained bad intentions and objectives, namely he used his position as a shareholder in PT BC and PT ADI so that PT BC could market mutual fund investment product owned by PT ADI. In addition, RT also deceives customers through persuasion to place their funds in PT ADI with guaranteed security and high interest.
For personal gain	Rt's action, which utilizes its position as the majority shareholder, was carried out so that the investment funds of PT ADI customers could enter RT's personal accounts, and this resulted in many customers being unable to disburse their funds even though they were due.
Article 97 paragraph (3) of the Law No. 40 of 2007	
Elements	**Descriptions**
Every member of the Board of Directors is guilty	The Board of Directors of PT ADI had made a mistake because the investment funds transferred by PT BC to PT ADI were supposed to be put into the Custodian's bank account, but HW actually only managed to put in a small number of funds. In addition, HW knew clearly that the funds would be used by RT for embezzlement, but instead of dismissing RT, HW and HA actually supported RT's actions by granting permission and signing a billet giro or cheque for transfer to RT.
Every member of the Board of Directors is negligent in carrying out their duties	PT BC is still marketing mutual fund investment products owned by PT ADI, although the sub-sales agent agreement between PT ADI and PT BC expired on December 22, 2005, Bank Indonesia Circular Letter No. 7/19/DPNP dated June 14, 2005 concerning the implementation of risk management in banks that carry out activities related to mutual funds, and the existence of an Internal Memo from the Board of Directors of PT BC No. 102/IM/D/V/06 dated May 28, 2006 concerning the reaffirmation of the end of the mutual fund sales sub-agent. The sale should not be allowed to be made because it is not legally based. The sale of mutual funds owned by PT ADI is of course also known by the Board of Directors of PT ADI, but the Board of Directors of PT ADI did not make any efforts to dismiss the regional coordination office and branch offices of PT BC to market mutual fund investment products owned by PT ADI. In fact, the Board of Directors of PT ADI strongly supports the sale by PT BC while still providing fees to Regional Heads and Branch Leaders of PT BC who have succeeded in marketing investment products from PT ADI. This shows that the Board of Directors of PT ADI does not carry out their duties

	to take care of the company responsibly. The Directors of PT ADI have been negligent because they know of the possible consequences that harm others.

If we look at PT ADI customers, there are still many of them who have not received their savings. This happened because of the non-use of Article 3 paragraph (2) and Article 97 paragraph (3) of Law No. 40 of 2007 to make shareholders and directors personally liable to aggrieved customers. Unfortunately, this case was only brought from the side of criminal law and was not sued in a civil manner. Therefore, this shows that the articles in Law no. 40 of 2007 which adopted the doctrine of piercing the corporate veil is just empty article that is rarely used in practice by the court.

Unlike Indonesia, the United States does not yet have strict rules regarding the PCV doctrine, but through jurisprudence, qualifications have been determined in the disclosure of corporate veils. The United States itself is one country that does not hesitate to penetrate the corporate veil, where the Court in its proof has tools through legal tests of Alter Ego and Instrumentality. The Alter Ego legal test, according to Fletcher, generally describes the case of one or more shareholders using the corporation as a "shell" to conduct personal transactions. The view of the Alter Ego is believed to be based on Wormser's opinion that the fiction of law is a privilege given by the state which can only be used for legitimate purposes in its reasons and policies. Alter ego was first applied in the United States in 1931 through the Wisconsin Supreme Court in the Milwaukee Toy Co. Ltd. v. Industrial Commission of Wisconsin, where the judge in his deliberations formulated two branch tests, namely:

1) That there is a unity of interest and ownership in such a way that the separate personality of the company and the individual (shareholder) no longer exists;
2) That if the actions that are opposed by the creditors are only treated as acts of the company, unfair consequences will arise.

The first branch is often called the “formality requirement,” and the second branch of the test may be called the “fairness requirement.” To establish an Alter Ego, it must be shown that shareholders ignore the corporate entity, making corporations merely a conduit for their own private business transactions and that the individuality separate from the corporation and its shareholders actually ceases to exist. For this matter, the company will become another self for unreasonable purposes if the shareholders have dominance that exceeds their role in the company. Thus, the Alter Ego legal test focuses on evaluating the independent existence of a company.

Meanwhile, the Instrumentality legal test that is generally applied by courts is the instrumentality test created by Fredrick J. Powell in 1931, which is also known as the Powell Rules. Initially, Powell formulated instrumentality theory by considering the relationship between parent and subsidiary companies. Even so, this rule is also often used by judges in uncovering the veil of ordinary companies. The Powell Rules were adopted for the first time in Lowendahl v. Baltimore & Ohio R.R., for which the Court formulated the following three-pronged trials:

1) Instrumentality, which means that the company is considered only as a tool of the shareholders where the shareholders have full control which is indicated by the fact that the company is run not for the purpose of the company itself but for dominance alone. The ownership of shares belonging to the majority shareholder is not enough for the first branch, but there must be an element of dominance that makes the corporation a mere puppet of the shareholders.
2) The dominating party uses its power to control the company for inappropriate purposes. Powell defines that examples of improper purpose refer to fraud, violation of the law, disarmament of a subsidiary from its assets, misrepresentation, estoppel, torts, and other unfair acts.
3) The direct cause, has a relationship with causality (cause and effect). For this branch, the plaintiff must show that the act of controlling the domination of the company with an unreasonable act has caused him a loss.

This Instrumental legal test has focus on the level of control and influence of shareholders. Undercapitalization, mix of assets, limited decision-making ability of the company are indicators of dominance. To make it easier for readers to distinguish between Alter Ego and Instrumentality, the author has summarized them in the table below: (Table 4)

Table 4. Comparison between alter ego (two prong test) and instrumentality (three prong test)

Alter Ego (two prong test)	Instrumentality (three prong test)
The confinement of interests and ownership so that the separate personalities of the company and the individual cease to exist	Perseroan is considered only as a tool of shareholders in which shareholders have complete control
If the acts opposed by the creditors are only treated as the company's actions alone, there will be unfair consequences.	The dominating party used his power to control the company with improper purposes
	Causality relation (causation)

So that readers can better understand the application of the Alter Ego and Instrumentality legal test, we can see the court decisions that have become precedents in the United States as follows: (Table 5)

Table 5. Victoria Elevator Co. v. Meriden Grain Co. 283 N.W.2d 509 (1979) analysis case by alter ego legal test

Victoria Elevator Co. v. Meriden Grain Co. 283 N.W.2d 509 (1979)	
Parties	1. Victoria Elevator Company and Victoria Grain Company, as Plaintiff; 2. Harold D. Schroeder, Director of Meriden Grain Co., Inc., as Defendant.
Position Case	Between November 1972 and July 1973, Plaintiff signed 14 agreements with defendants' company for the purchase of corn, which would be sent to plaintiffs between May and November 1973. In 1973, a dispute arose regarding the failure to fulfill the agreement so that two meetings were held, in which the Defendant promised to deliver the remaining grain and the Plaintiff would withhold the remaining payment of $28,000. In the end, Defendants continued to not execute the agreement and Plaintiffs sued him for default and sought $391,395.59 in damages. In 1974, defendants held an AGM for the transfer of the company's assets into private property, so that (although the company was not bankrupt) his assets were not sufficient for plaintiff's compensation.
Ratio decidendi of judge	The Supreme Court of Minnesota granted personal liability to Defendants because Defendants did not treat the company as an entity separate from itself, so Defendants were not entitled to personal liability protection: 1) The defendants did not clearly distinguish between private property and those of the company, where there were no documents showing the transfer of capital and individual assets to the corporation. For example, the land used to run a business belongs to the Defendant and has never been transferred to the company. The defendants never demanded that the company pay rent for the use of the land. However, the property is listed as an asset of the company in the financial statements submitted to credit commodity corporation (CCC) to enter into an agreement to store CCC's grain. 2) Not fulfilled certain formalities: the company does not pay dividends. 3) The defendant withdraws funds belonging to the company (even when the company is in financial difficulties), and sometimes the withdrawal of funds is referred to as a "loan" or "asset transfer" which is rarely an official record of the transaction.

Table 6. DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Company (1976) analysis case by instrumentality legal test

DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Company (1976)	
Parties	1. DeWitt Truck Brokers, Inc. as Plaintiff 2. W. Ray Flemming (Board of Directors of Flemming Fruit Company) as Defendant
Position Case	Ray Flemming Fruit Company is a company founded in 1962, a commission agency for fruit growers where the company will sell products in exchange for a sales commission. When fruit is sold, the farmer will receive a selling price minus the commission and minus the cost of transportation from the farmer to the buyer. On such a business scheme, we can find out that the only income that the company receives is from sales commissions and deductions on transportation costs. However, Flemming withdrew funds from the company in large enough quantities that the company became unable to repay its debts. These debts can only be paid by withholding transportation that actually belongs to one of its creditors, namely DeWitt Truk Brokers, Inc. (as Plaintiff). On that fact, Plaintiff filed a lawsuit with the U.S. Court of Appeals, Fourth Circuit on May 13, 1976 to hold Ray Flemming personally liable for his company's debts.

Ratio decidendi of the judge	In practice, Ray Flemming Fruit Company from the beginning was a one-man company, which never held an AGM. In addition, there are no other shareholders or employees of the company other than the Board of Directors, W. Ray Flemming. Rey Flamming became the only person to ever receive a salary, dividend, or any form of pay from the Ray Flemming Fruit Company, and he also had a say in any decision. Thus, only the Board of Directors is the exclusive beneficiary of the existence of his company. Flemming will treat the company like its own cash register, the amount of funds withdrawn annually is limited only by the amount available in the corporation. On that fact, the court justified the abandonment of the corporate entity on the basis of fairness and equality so that the Defendant could be personally liable for the debts of his company.

Meanwhile, the Alter Ego and Instrumentality legal tests are tests applied by most of the courts today in the world and are often seen as interchangeable. Both tests have the same elements of control and fraud (injustice). However, the two also have a slight difference, namely, the rule of instrumentality has a causal element. In the case of William Passalacua Builders, Inc., the Plaintiff in his consideration made two arguments, one of which was to apply alter ego and the other to apply instrumentality. Then, the Court asked the Plaintiffs to change their considerations to only one argument, because Alter Ego and Instrumentality have "almost similar" characteristics. Therefore, the legal test of Alter Ego and Instrumentality are basically the same, so to penetrate the corporate veil it is more effective to use the three-pronged test that has been discussed above. (Table 6)

6. Conclusion

Piercing the Corporate Veil Doctrine has been adopted in Indonesia through Law no. 40 of 2007, which stipulates that shareholders can be personally responsible if the shareholders take the actions that have been formulated in Article 3 paragraph (2). Meanwhile, the Board of Directors (Article 97 paragraph (3)) and the Board of Commissioners (Article 114 paragraph (3)) can also be held responsible if they are negligent or make mistakes in carrying out their duties. This doctrine is important so that shareholders, directors, and the board of commissioners do not abuse the limited liability principle of the company. Unfortunately, the Article a quo is in fact rarely used by judges so that this Article is only empty. As a result, the company's organs are rarely reached for accountability to their personal assets. Based on such facts, the author recommends that Indonesia:

1) Learning from the United States, it becomes urgent for Indonesia to apply the Alter Ego and Instrumentality legal test as an alternative for judges to uncover the corporate veil. These two legal tests are often seen as interchangeable because they have similar properties, so Indonesia is recommended to use three tests that are considered more complete, namely: The existence of perfect control of the company's organs over the company, control for inappropriate purposes, and causality between act of domination with the resulting loss.
2) Consideration is needed for the Indonesian government to revise all laws and regulations which regulate corporations so that they can incorporate the doctrine of piercing the corporate veil, alter ego, and instrumentality into related regulations. This is intended so that corporate organs that act beyond their authority (ultra vires) and use corporations to commit criminal acts can be held personally liable.

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