



THE APPLICATION OF THE PIERCING THE CORPORATE VEIL DOCTRINE TO CORPORATE BREACH OF CONTRACT DISPUTES THROUGH THE ALTER EGO DOCTRINE

Prajna Enggar Prakoso^{1a*}, Adi Sulistiyono^{2b}, Hari Puwardi^{3c}

^{1,2,3} Master Of Notary Study Program, Faculty of Law, Sebelas Maret University, Surakarta, Indonesia

^a prajnaenggar12_3@student.uns.ac.id

^b adisulistiyono@staff.uns.ac.id

^c hpurwadie@staff.uns.ac.id

(*) Corresponding Author

prajnaenggar12_3@student.uns.ac.id

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ABSTRACT

A Limited Liability Company (*Perseroan Terbatas*) is a legal entity with a legal personality separate from its shareholders and corporate organs; therefore, it is generally governed by the principle of limited liability. However, under certain circumstances, this principle may be set aside through the *piercing the corporate veil* doctrine when the corporate entity is used to evade legal obligations or to commit abuses that cause harm to other parties. This study aims to analyze the application of the *piercing the corporate veil* doctrine in corporate breach of contract disputes through the *alter ego* doctrine, as well as to examine the construction of personal liability and the juridical parameters for imposing joint and several liability on corporate organs. This research employs a prescriptive doctrinal legal method using statutory, conceptual, and case approaches. The case approach examines Indonesian court decisions, namely Decision Number 96/Pdt.G/2017/PN.Jkt.Sel. and Decision Number 47/Pdt.G/2021/PN.Mtr. Legal materials were collected through library and document research, encompassing primary, secondary, and tertiary legal sources, and were analyzed qualitatively. The findings indicate that The *alter ego* doctrine may serve as an indicator in identifying the control and relationship between corporate organs and the company in determining personal liability. However, control over a company alone does not constitute sufficient grounds for applying the *piercing the corporate veil* doctrine.

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INTRODUCTION

Agreements in the Indonesian civil law system constitute a primary source of legal relationships between parties and are normatively binding under the principle of *pacta sunt servanda*, as reflected in Article 1338 of the Indonesian Civil Code (Khairandy, 2009:81). The principle of *pacta sunt servanda* affirms that any agreement lawfully entered into shall be binding upon the parties as law and must be performed in good faith (Khairandy, 2009:81). Within the context of contract law, a breach of contractual obligations constitutes a breach of contract (*wanprestasi*), which gives rise to legal consequences in the form of damages, specific performance, or annulment of the agreement (Subekti, 1984:26). In modern business practice, agreements are frequently entered into by limited liability companies as independent legal subjects. Consequently, any liability arising from a breach of contract is, in principle, attributed to the company as a separate legal entity, distinct from its shareholders and corporate officers (Sjahdeini, 2007:7).

Companies, based on their legal form, may be classified into two categories: legal entities and non-legal entities. A legal entity refers to an entity recognized and established by law whose existence is legally necessary, and is therefore

regarded as a legal entity (Abdallah et al., 2023:19). As a legal subject, a legal entity possesses the capacity to perform legal acts in a manner comparable to an individual. However, such legal capacity is generally limited to matters concerning proprietary rights and obligations, given that a legal entity exists in the form of an organization or institution (Abdallah et al., 2023:19). Consequently, in carrying out its activities, a legal entity acts through its organs, including a limited liability company. One of the principal characteristics of a legal entity is the separation between the assets of the legal entity and the personal assets of its corporate organs, such that the corporate organs are not personally liable for losses incurred by the legal entity (Abdallah et al., 2023:19).

A Limited Liability Company is a form of legal entity possessing a legal identity separate from its founders, management, and shareholders. Embedded within the corporate structure is the principle of the separate legal entity, which arises upon the acquisition of legal-entity status. The essence of this principle is that the company possesses a legal identity distinct from that of its founders, management, and shareholders (Abdallah et al., 2023:19). As a consequence of this principle, shareholders are generally liable only to the extent of the value of their shares contributed to the capital of the legal entity. Furthermore, the principle establishes that the company's rights and obligations are separate from the personal rights and obligations of its shareholders and organs when the company incurs losses (Abdallah et al., 2023:19). The separate legal entity doctrine affirms that a company possesses its own legal personality, distinct from its organs and owners (Khairandy, 2008:15). The logical consequence of such separation is the application of the principle of limited liability, under which shareholders' liability is limited to the value of the shares they hold (Khairandy, 2008:15). Nevertheless, this principle is not absolute, as a legal entity may, under certain circumstances, be abused as an instrument to evade legal obligations or conceal conduct that causes harm to other parties (Fuady, 2007:25).

In response to the potential abuse of the corporate form, the piercing the corporate veil doctrine has developed as a legal mechanism enabling courts to disregard the separate legal personality of a company and impose personal liability upon its shareholders or corporate officers where abuse of the corporate form or an alter ego relationship has been established (Fuady, 2007:25). The doctrine is understood as a corrective mechanism intended to maintain a balance between the protection of creditors and the continued application of the principle of limited liability (Fuady, 2007:25). Although the piercing the corporate veil doctrine has become widely recognized in the development of modern corporate law as a mechanism for preventing the abuse of legal entities, its application cannot be undertaken arbitrarily, since the fundamental principles governing corporations continue to place the liability of shareholders and corporate officers within defined legal limits.

The piercing the corporate veil doctrine constitutes a legal mechanism that permits the disregard of the principle of limited liability where the separate legal personality of a company has been abused. The development of modern law demonstrates that this doctrine is not confined to corporate law but has also evolved in the fields of competition law, international investment, and environmental, social, and governance (ESG) as an instrument for ensuring legal accountability. A distinction exists between true veil piercing, which directly disregards the separate legal personality of a company on the basis of an abuse of legal personality, and indirect veil piercing, which establishes liability on the basis of unlawful acts or abuse of authority committed by a party controlling the company. Mere control or an alter ego relationship is insufficient, in itself, to justify the application of the doctrine without proof of abuse of the corporate form. A further distinction exists between entity liability and enterprise liability, emphasizing that extending liability to another entity must have a clear legal basis so as not to undermine legal certainty, which constitutes an essential element of the principle of limited liability. This perspective reinforces the argument of this research that the application of the piercing the corporate veil doctrine to shareholders or directors must be based on proof of abuse of the corporate form and fulfillment of the requirements stipulated in Article 3 paragraph (2) of the Indonesian Company Law (Strik, 2025:26).

Conceptually, the application of the *piercing the corporate veil* doctrine in this research is constructed through a sequential relationship between the principles of *separate legal entity* and *limited liability*, the *alter ego* doctrine, *abuse of corporate form*, and personal liability. The principle of *separate legal entity* establishes the legal separation between the company and its shareholders and corporate organs, while the principle of *limited liability* constitutes the legal consequence of such separation. Accordingly, the company's contractual obligations arising from a breach of contract are, in principle, attributable to the company as an independent legal subject and do not automatically create personal liability for its shareholders or corporate organs.

Within this framework, the *alter ego* doctrine functions as an analytical instrument for identifying effective control and the relationship between the company and the relevant individual. However, the existence of control or an *alter ego* relationship alone is insufficient to justify the application of the *piercing the corporate veil* doctrine. Such control must be examined together with evidence of *abuse of corporate form* and a causal relationship between the misuse of the corporate structure and the legal harm suffered by the opposing party. Where these juridical elements are established, the

piercing the corporate veil doctrine may operate as an exceptional basis for disregarding the company's separate legal personality and imposing personal, including joint and several, liability upon the relevant corporate organ.

According to M. Yahya Harahap, the principle of limited liability constitutes a consequence of the separation of the company's legal personality from that of its corporate organs. Accordingly, shareholders and corporate officers generally cannot be held personally liable for the company's obligations (Harahap, 2016:59). Nevertheless, under certain circumstances, a legal entity may be abused as a means of avoiding legal liability or undertaking acts that cause harm to other parties, thereby creating the possibility of applying the *piercing the corporate veil* doctrine. Several studies in the field of corporate law have also demonstrated that the application of this doctrine in judicial practice frequently depends upon judicial consideration of the specific facts of each case. Research conducted by Munir Fuady explains that the disregard of limited liability in a limited liability company generally occurs where there are indications of abuse of the corporate form, such as the use of the company as an alter ego or as a vehicle for committing unlawful acts (Fuady, 2014:84). Therefore, the application of the *piercing the corporate veil* doctrine in judicial practice warrants further examination, particularly in disputes involving a company's breach of contract against third parties.

Previous research on the *piercing the corporate veil* doctrine has been conducted by Indrawan in their study entitled "The Application of the *Piercing the Corporate Veil* Doctrine to the Board of Commissioners of PT Pertamina (Persero)." The study focuses on the application of the *piercing the corporate veil* doctrine to the Board of Commissioners of PT Pertamina (Persero) in relation to losses suffered by the company. The findings indicate that the Board of Commissioners performed its duties within the scope of its authority based on the principles of *fiduciary duty* and prudence. Therefore, losses suffered by the company cannot automatically serve as a basis for imposing personal liability on the commissioners. The study demonstrates that the application of the *piercing the corporate veil* doctrine to corporate organs must take into account the actions, authority, and duties of the relevant corporate organs in accordance with the applicable legal provisions (Indrawan, 2025:12).

A subsequent study by Saka Triawan examines the application of the *piercing the corporate veil* doctrine in judicial practice, particularly in bankruptcy and Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang* or PKPU) proceedings. The findings indicate that the application of the doctrine requires complex evidentiary assessment, particularly in establishing bad faith and negligence. The study also emphasizes that not every loss suffered by a company may automatically be imposed as the personal liability of its directors. These findings demonstrate that the application of the *piercing the corporate veil* doctrine requires an adequate legal basis and sufficient evidence before the separation between the company and its corporate organs may be disregarded (Triawan, 2023:20).

The novelty of this research places the *alter ego* doctrine at the center of the analysis in determining the relationship between the company and the party who effectively controls the company. The *alter ego* doctrine is employed to examine whether the company has functioned as an extension or instrument of the controlling party, particularly in breach of contract disputes. However, the existence of an *alter ego* relationship is not positioned as a ground that automatically gives rise to personal liability. Rather, the existence of such a relationship constitutes an initial basis for examining whether the identified control was accompanied by an abuse of the corporate form and whether such abuse had a causal relationship with the resulting loss. Accordingly, this research seeks to construct juridical parameters for determining when an *alter ego* relationship may constitute a basis for applying the *piercing the corporate veil* doctrine and subsequently give rise to personal or joint and several liability of corporate organs in breach of contract disputes. Based on the foregoing background, the research questions are formulated as follows:

How is the *alter ego* doctrine constructed as a basis for applying the *piercing the corporate veil* doctrine in corporate breach of contract disputes?

How is the *alter ego* doctrine applied as a basis for applying the *piercing the corporate veil* doctrine in Indonesian court decisions?

METHOD

This research constitutes a doctrinal legal research with a prescriptive character, aimed at examining and providing legal arguments concerning the application of the *piercing the corporate veil* doctrine through the *alter ego* doctrine in cases of corporate breach of contract. The research employs a statutory approach (statute approach), a conceptual approach (conceptual approach), and a case approach (case approach) to analyze legal norms, legal principles, doctrines, and judicial considerations relevant to the issues under examination. Particular attention is given to the legal framework governing the limited liability of shareholders under Article 3 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies, as well as the statutory provisions governing the personal liability of directors and

commissioners under Articles 97 and 114 of the same Law. The case approach is employed to examine the application and judicial construction of the *alter ego* and *piercing the corporate veil* doctrines in the selected Indonesian court decisions. Legal materials were obtained through library research and document analysis, comprising primary, secondary, and tertiary legal materials. These materials were analyzed qualitatively through legal interpretation and legal reasoning to identify the applicable juridical parameters and formulate legal prescriptions concerning the imposition of personal liability in corporate breach of contract disputes.

RESULT AND DISCUSSION

Alter Ego as the Basis for Applying the Piercing the Corporate Veil Doctrine in Corporate Breach of Contract Disputes

All matters concerning the management of a limited liability company are highly dominated by the defendants (Widjaja, 2008:32). Under such circumstances, the piercing the corporate veil or alter ego doctrine requires that shareholders may no longer shield themselves behind the company's legal-entity status, but may instead be held personally liable for losses arising from acts of the company (Widjaja, 2008:32). Directors and commissioners, in performing their duties, are bound by the principle of fiduciary duty. Fiduciary duty constitutes a legal obligation imposed upon corporate organs to act in good faith, with full responsibility, and to prioritize the interests of the company over their personal interests or those of other parties. In performing their duties, corporate organs are required to act based on two fundamental principles, namely fiduciary duty and the duty of skill and care. These principles require corporate organs to act in good faith and with due care in pursuing the interests and objectives of the company. Violations of these principles may give rise to liability on the part of directors and commissioners, as provided under Articles 97 and 104 of Law Number 40 of 2007 concerning Limited Liability Companies.

In France, the piercing the corporate veil doctrine is recognized through the concept of *Théorie de l'Abus de Droit*, which allows courts to disregard the legal personality of a company where the legal entity is used unlawfully or in bad faith. Nevertheless, its application is limited and continues to uphold the principles of separate legal personality and limited liability, such that personal liability may only be imposed after abuse of the corporate form has been established. In Germany, this doctrine is known as *Durchgriffshaftung*. German corporate law is based on the principles of *Trennungsprinzip* and *Rechtsträgerprinzip*, which affirm the separation of liability between the company and its shareholders. Accordingly, courts apply the doctrine only in exceptional circumstances, such as fraud, abuse of the corporate form, or unlawful acts causing harm to third parties (Sugandi, 2024:12–13).

In England, the Piercing the Corporate Veil doctrine developed through common law while maintaining the principle of limited liability, as affirmed in *Salomon v Salomon & Co Ltd* (1897). Courts disregard the principle of separate legal personality only where a company is used as a vehicle for fraud, evasion of existing legal obligations, or as a mere façade or sham company, as reaffirmed in *Prest v Petrodel Resources Ltd* (2013). These three jurisdictions similarly recognize that the principles of separate legal personality and limited liability are not absolute. Disregarding these principles may only be justified where abuse of the corporate form, fraud, or bad faith has been established. Mere control, therefore, is insufficient to impose personal liability upon shareholders or corporate organs (Rissy, 2019:7).

The application of the Piercing the Corporate Veil doctrine may be established through several indicators, one of which is the alter ego doctrine. This doctrine describes a situation in which a shareholder or controlling party no longer distinguishes his or her personal interests from those of the company, thereby treating the company as an extension of himself or herself. As a result, the separation between the company's legal entity and its shareholders becomes blurred, allowing the protection afforded by the principle of limited liability to be disregarded. According to Clark, in determining whether the alter ego doctrine has been satisfied, courts generally consider the following criteria: (Clark, 1986:37).

Control, namely the existence of substantial domination by a shareholder or controlling party over the company, not only in terms of share ownership but also with respect to financial management, policy-making, and business practices. Such domination results in the company no longer acting independently, but merely carrying out the will of the party exercising control.

Abuse of Control, namely a situation in which the control exercised over the company is used to commit unlawful acts, abuse the corporate form, engage in dishonest conduct, or undertake other acts that result in injustice and prejudice the rights of other parties, particularly the plaintiff.

Causal Relationship, namely the existence of a clear causal relationship between control over, and abuse of control over, the company and the losses suffered by the plaintiff. Accordingly, such losses must constitute a direct consequence of the abusive conduct committed by the party controlling the company.

According to Clark, the second element is the most determinative in applying the alter ego doctrine because it focuses on the abuse of control over the company. In Indonesia, the principle of Piercing the Corporate Veil has been incorporated into Article 3 of Law Number 40 of 2007 concerning Limited Liability Companies as an exception to the principle of limited liability. Under this provision, shareholders may be held personally liable for the company's obligations where the statutory requirements are satisfied.

A breach of contract (*wanprestasi*) occurs when one party to an agreement fails to perform an agreed obligation due to its fault or negligence, in the absence of *force majeure* (Dermina, 2017:21). According to Subekti, a breach of contract may take four forms: failure to perform the obligation at all; performing the obligation late; performing the obligation in a manner inconsistent with the agreement; or performing an act that is prohibited under the agreement (Ramadhani & Aryanti, 2012:134). Against a party in breach, the injured party is entitled to claim reimbursement of costs, damages, and interest after the debtor has been declared in default through a formal notice of default (*somasi*), as regulated under Article 1238 of the Indonesian Civil Code.

Breach of contract and unlawful acts (*perbuatan melawan hukum*) constitute two distinct grounds of civil liability. The distinction primarily lies in their legal sources (Yolanda, 2021:222). A breach of contract arises from a contractual relationship validly established in accordance with Article 1320 of the Indonesian Civil Code, whereas an unlawful act does not depend upon the existence of an agreement but arises from a violation of legal provisions, another person's rights, morality, or standards of propriety applicable within society (Nurpatricia et al., 2016:4). From a procedural perspective, an action for breach of contract generally requires a prior notice of default as regulated under Article 1238 of the Indonesian Civil Code, whereas an action based on an unlawful act does not require such notice because its legal basis is the existence of loss caused by an act contrary to law. Furthermore, the purpose of damages under the two causes of action also differs. In a breach of contract claim, damages are intended to place the creditor in the position in which the creditor would have been had the agreement been performed, including compensation for lost profits. Conversely, in an unlawful act claim, damages are intended to restore the victim to the condition existing before the harmful act occurred, with emphasis on compensation for the actual loss suffered (Suharnoko, 2004:30).

In the context of liability for conduct not based on a contractual relationship, the most relevant provision is Article 1365 of the Indonesian Civil Code concerning unlawful acts. The provision stipulates that any person who, through an unlawful act, causes loss to another person is obliged to compensate for the resulting loss. An unlawful act essentially constitutes conduct carried out beyond the authority granted to the actor or contrary to the legal obligations imposed upon the actor.

Analysis of the Application of the Alter Ego Doctrine as the Basis for Applying the Piercing the Corporate Veil Doctrine in Indonesian Court Decisions

Indonesian judicial practice demonstrates that the piercing the corporate veil doctrine is not only applicable to shareholders but may also be imposed upon members of the board of directors and commissioners where they are proven to have abused their authority or used the company for personal interests. The following judicial decisions are presented as comparative examples of the application of the piercing the corporate veil doctrine in Indonesia.

To ensure a consistent analysis of the two court decisions, this research applies the same juridical indicators to examine the application of the *alter ego* and *piercing the corporate veil* doctrines. The analysis proceeds by examining the existence of effective control as an indicator of an *alter ego* relationship, followed by an assessment of whether such control was accompanied by an abuse of the corporate form and whether a causal relationship existed between the alleged abuse and the loss suffered by the third party. The analysis then considers whether the established circumstances provide sufficient grounds for applying the *piercing the corporate veil* doctrine and imposing personal liability, with due regard to the specific statutory basis applicable to the relevant corporate organ or shareholder.

Parameter	Juridical Indicators	Analytical Function
Alter Ego/Control	Dominant control over corporate policies or affairs; simultaneous position as shareholder and corporate organ; ability to determine or substantially influence the company's decisions; circumstances indicating that the company's will is closely identified with the controlling party	To determine whether the company functions as an extension or instrument of the controlling party

Abuse of Corporate Form	Use of the company for personal interests; misuse of corporate assets; commingling of personal and corporate interests or assets; use of the corporate form to evade legal obligations or cause harm to third parties	To determine whether the control relationship has been abused
Causal Relationship	A demonstrable connection between the abuse of the corporate form and the breach of contract or loss suffered by the third party	To determine whether the alleged abuse is legally connected to the resulting harm
Piercing the Corporate Veil	Fulfillment of the statutory circumstances permitting the disregard of limited liability and separate legal personality	To determine whether the corporate veil may be disregarded
Personal Liability	Applicable statutory basis according to the capacity of the person concerned, including Article 3 paragraph (2) for shareholders and Articles 97 and 114 for directors and commissioners	To determine whether personal or joint and several liability may legally be imposed

Decision Number 96/Pdt.G/2017/PN.Jkt.Sel.

Based on the legal considerations in Decision Number 96/Pdt.G/2017/PN.Jkt.Sel., the Panel of Judges essentially applied the Piercing the Corporate Veil doctrine by employing the alter ego approach as the basis for imposing personal liability upon Defendant II and Defendant III. This is reflected in the judges' consideration citing Article 3 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies. The Court expressly considered that Defendant II and Defendant III, as shareholders and corporate organs of PT Karunia Pratama Mandiri, occupied a dominant position in determining the company's policies and controlling and supervising its affairs. However, in its application, the court placed greater emphasis on the control relationship without systematically identifying which specific exception under Article 3 paragraph (2) was satisfied and what evidence established the relevant statutory exception.

The Panel of Judges' reasoning was based the dual positions held by that Defendant II and Defendant III as shareholders and corporate organs, together with their dominant role in controlling the company. According to the Panel of Judges, their positions enabled both defendants to effectively determine the policies and management of the company, such that the will of the company was considered closely connected with the will of the parties controlling it. Accordingly, both defendants were considered unable to shield themselves behind the principle of limited liability and were required to be jointly and severally liable together with the company for obligations owed to the Plaintiff. The Court further considered that the defendants' dominant control was connected with the company's failure to perform its contractual obligations, and therefore concluded that their responsibility could not be separated from the company's failure to fulfill its obligations.

This reasoning demonstrates that the Panel of Judges employed the alter ego theory as articulated by Gunawan Widjaja (Widjaja, 2008:32). According to this theory, where a shareholder or corporate organ exercises such dominant control that the company no longer possesses an independent will, the company merely functions as an extension of the controlling party. In this case, the element of control was essentially satisfied because Defendant II served simultaneously as a director and shareholder, while Defendant III served simultaneously as a commissioner and shareholder. Consequently, both possessed the ability to control the direction of the company's policies and operations. In addition, the judge considered there to be a unity of interests between the company and the two defendants because the will of the company was regarded as identical to the will of its controlling shareholders.

Although the Panel of Judges employed the alter ego theory as the basis for applying the Piercing the Corporate Veil doctrine, the reasoning was not entirely consistent with Article 3 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies. Dominant control constitutes merely an initial indicator that must be followed by proof of abuse of the corporate form and therefore cannot automatically justify disregarding the principle of limited liability. The existence of control may establish an *alter ego* relationship as an analytical starting point, but it does not by itself establish the statutory circumstances necessary to disregard the separate legal personality of the company.

In this decision, the judge did not adequately explain the fulfillment of the elements of Article 3 paragraph (2) of the Company Law, such as the use of the company for personal interests, commingling of assets, misuse of corporate assets, or other forms of abuse of the corporate form. Although the Court referred to the concept of *alter ego* and to Article

3 paragraph (2), it did not systematically identify which specific statutory exception was fulfilled by the defendants' conduct. The Court therefore established the existence of dominant control more clearly than it established the specific abuse of the corporate form required to disregard limited liability. Furthermore, the court's reasoning did not specifically **explain** the basis of liability arising from the defendants' respective capacities as shareholders, director, and commissioner. The Court did not clearly distinguish the exception to shareholder limited liability under Article 3 paragraph (2) from the statutory regimes governing the personal liability of directors and commissioners under Articles 97 and 114 of the Company Law. The Court also did not expressly formulate the causal relationship between the alleged abuse of the corporate form and the loss suffered by the Plaintiff.

Accordingly, Decision Number 96/Pdt.G/2017/PN.Jkt.Sel. demonstrates that the application of the Piercing the Corporate Veil doctrine was based more heavily on dominant and the defendants' relationship with the company than on a systematically established finding of abuse of the corporate form as required under Article 3 paragraph (2) of the Company Law. Such an approach potentially creates legal uncertainty because the existence of share ownership, corporate position, or dominant control does not, in itself, eliminate the principle of limited liability in the absence of proof of abuse of the corporate form. From the perspective of the doctrinal test proposed in this research, the Court established the element of control and recognized an *alter ego* relationship, but did not articulate in a sufficiently structured manner the subsequent elements of abuse of the corporate form and the causal relationship between such abuse and the Plaintiff's loss.

Based on the juridical indicators established in this research, the control element may be regarded as satisfied because Defendant II and Defendant III simultaneously held positions as shareholders and corporate organs and were considered by the Court to exercise dominant influence over the company's policies and affairs. This circumstance supports the identification of an *alter ego* relationship. However, the establishment of control does not by itself establish an abuse of the corporate form. The Court therefore needed to identify specific conduct demonstrating that such control was exercised to misuse the corporate entity and to establish a causal relationship between the alleged abuse and the Plaintiff's loss.

The causal chain in this case can therefore be examined through the relationship between the defendants' control and the company's contractual performance. Defendant II and Defendant III, through their positions as shareholders and corporate organs, exercised dominant influence over the policies and affairs of PT Karunia Pratama Mandiri. This control affected the company's conduct in performing its contractual obligations, particularly its failure to fulfill the obligation owed to the Plaintiff. The company's failure to perform constituted a breach of contract and resulted in the Plaintiff's loss arising from the non-fulfillment of the contractual obligation. However, the Court did not sufficiently identify the specific act or decision of Defendant II and Defendant III that, through their exercise of control, directly caused the company's failure to perform. Consequently, although the sequence of control, corporate conduct, breach of contract, and loss can be identified, the judgment does not clearly establish whether the defendants' conduct constituted an abuse of the corporate form and whether such abuse was the direct cause of the Plaintiff's loss.

Decision Number 47/Pdt.G/2021/PN.Mtr

Although the Panel of Judges expressly considered the *alter ego* and *Piercing the Corporate Veil* doctrines in its reasoning, the Court ultimately did not impose personal liability upon Defendant II and Defendant III. The court's reasoning focused on the principle of privity of contract as regulated under Article 1340 of the Indonesian Civil Code, which provides that an agreement binds only the parties who entered into it. In this case, the Construction Agreement was entered into and signed only by PT Amanah Group International (PT AGI) and the Plaintiff, while Defendant II and Defendant III acted solely as corporate organs representing PT AGI. Therefore, according to the Panel of Judges, the breach of contract arising from the performance of the agreement could only be attributed to PT AGI as a party to the contract, and not personally to Defendant II and Defendant III. The Court further reasoned that the acts of the director and commissioner were performed in their capacities as corporate organs, while the contractual obligations arising from the agreement remained obligations of PT AGI as the contracting party.

On the basis of this reasoning, the Panel of Judges emphasized that the actions of Defendant II and Defendant III in signing the Construction Agreement were performed in their capacity as representatives of the company, rather than as legal subjects personally binding themselves to the agreement. Accordingly, the legal relationship arising from the agreement created rights and obligations only between PT AGI and the Plaintiff. This approach demonstrates that the court maintained the principle of separate legal personality between the company and its corporate organs, as well as the principle of limited liability as a fundamental characteristic of a limited liability company.

Nevertheless, the Court had previously considered circumstances relevant to an *alter ego* analysis, particularly the defendants' simultaneous positions as shareholders and corporate organs and their relationship with the company. The Court therefore did not entirely disregard the *alter ego* issue; rather, it ultimately declined to translate that relationship into personal liability. In its reasoning, the Panel of Judges also did not apply Article 3 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies as the basis for piercing the corporate veil. Although Defendant II and Defendant III were also shareholders of PT AGI, the judge found insufficient evidence demonstrating circumstances constituting exceptions to the principle of limited liability as stipulated in Article 3 paragraph (2) of the Company Law. Accordingly, their status as shareholders did not automatically eliminate the separation of liability between the company and its shareholders. This approach is consistent with the principle that control or shareholder status alone cannot constitute sufficient grounds for disregarding the company's separate legal personality.

Based on this analysis, Decision Number 47/Pdt.G/2021/PN.Mtr demonstrates that the Panel of Judges adopted a restrictive approach to the application of the Piercing the Corporate Veil doctrine. The court adhered to the principles of separate legal personality and privity of contract, and consequently imposed liability for the breach of contract solely upon PT Amanah Group International as the party to the contract. However, the reasoning remains incomplete from the perspective of the *alter ego* doctrine because, after identifying circumstances potentially relevant to corporate control, the Court did not expressly examine whether such control constituted an abuse of the corporate form or whether such abuse had a causal relationship with the Plaintiff's loss. Defendant II and Defendant III acted not only as directors and commissioners but also as shareholders of the company. Their dual status could therefore have justified a more structured examination of whether the circumstances fell within the exceptions under Article 3 paragraph (2) in their capacity as shareholders. Nevertheless, the court's reasoning did not analyze these elements and instead focused **primarily** on the contractual relationship between the Plaintiff and the company. Therefore, although dominant control or the position of a director, commissioner, and shareholder cannot automatically justify disregarding the principle of limited liability, the Court should have expressly distinguished between the existence of control, the existence of abuse of the corporate form, and the causal relationship between such abuse and the Plaintiff's loss.

Accordingly, Decision Number 47/Pdt.G/2021/PN.Mtr. demonstrates that the existence of an *alter ego* relationship does not automatically result in the application of the *Piercing the Corporate Veil* doctrine. The Court's refusal to impose personal liability may be understood as preserving the principle of separate legal personality; however, its reasoning would have been more complete if it had expressly tested the identified control relationship against the elements of abuse of the corporate form and causal relationship. Applying the same juridical indicators to Decision Number 47/Pdt.G/2021/PN.Mtr., the existence of control may also be identified from the defendants' positions as shareholders and corporate organs. However, the existence of such control does not automatically establish an *alter ego* sufficient to justify piercing the corporate veil. The Court did not sufficiently examine whether the control was accompanied by an abuse of the corporate form or whether such abuse had a causal relationship with the Plaintiff's loss. Accordingly, the absence of personal liability may be understood as consistent with the principle of separate legal personality, although the Court's reasoning did not fully articulate the doctrinal test required to determine whether the corporate veil could be pierced.

The causal relationship must likewise be examined in relation to the conduct of Defendant II and Defendant III. Although they occupied positions as shareholders and corporate organs of PT Amanah Group International, the Court did not identify a specific act or decision undertaken by them that directly affected the company's performance of the Construction Agreement. PT AGI, as the contracting party, failed to fulfill its contractual obligations, thereby giving rise to the Plaintiff's alleged loss. However, the judgment does not establish that such failure was caused by an abuse of control by Defendant II and Defendant III. The causal chain therefore stops at the company's breach of contract and does not extend to a demonstrated connection between the individual defendants' conduct, abuse of the corporate form, the breach, and the Plaintiff's loss. This absence of a sufficiently established causal relationship supports the Court's refusal to impose personal liability upon Defendant II and Defendant III.

Comparative Analysis of the Two Decisions

Indicator	Decision No. 96/Pdt.G/2021/PN.Jkt.Sel.	Decision No. 47/Pdt.G/2021/PN.Mtr.
Effective control	Established	Identified
<i>Alter ego</i> relationship	Recognized	Considered
Abuse of corporate form	Not systematically articulated	Not sufficiently examined
Causal relationship	Not expressly established	Not expressly established
Piercing the corporate veil	Applied	Not ultimately applied

Personal liability	Imposed jointly and severally	Not imposed
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Based on the analysis of Decision Number 96/Pdt.G/2017/PN.Jkt.Sel. and Decision Number 47/Pdt.G/2021/PN.Mtr., it can be observed that the application of the Piercing the Corporate Veil doctrine in Indonesia does not yet have uniform juridical parameters. The different outcomes of the two decisions are influenced not only by differences in the underlying legal facts but also by the absence of clear criteria concerning when the principle of limited liability may be disregarded and personal liability imposed upon shareholders or parties controlling the company. In Decision Number 96/Pdt.G/2017/PN.Jkt.Sel., the Panel of Judges essentially applied the Piercing the Corporate Veil doctrine through an alter ego approach. The court's reasoning was based on the dominant control exercised by Defendant II and Defendant III, who simultaneously served as directors, commissioners, and shareholders of the company.. Nevertheless, the reasoning placed greater emphasis on the existence of a control relationship without adequately explaining whether such dominance was accompanied by abuse of the corporate form as required under Article 3 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies. Consequently, the alter ego theory was used as part of the basis for imposing personal liability, but without comprehensive proof of the elements constituting abuse of the corporate form.

Conversely, in Decision Number 47/Pdt.G/2021/PN.Mtr., the Panel of Judges adopted a more restrictive approach by maintaining the principles of separate legal personality and privity of contract. The judge held that a breach of contract arising from a contractual relationship binds only the company as the party to the agreement, and therefore the contractual obligations were attributed to PT Amanah Group International rather than personally to Defendant II and Defendant III. Although the Plaintiff alleged that the company's management had abused the corporate form, the judge found insufficient evidence demonstrating abuse of the corporate form as contemplated by Article 3 paragraph (2) of the Company Law. Accordingly, the Piercing the Corporate Veil doctrine was not ultimately applied to impose personal liability upon Defendant II and Defendant III.

When both decisions are analyzed using Clark's alter ego theory, dominant control cannot constitute the sole basis for disregarding the principle of limited liability. For the purposes of this research, the application of the *Piercing the Corporate Veil* doctrine is assessed through three analytical parameters, namely control, abuse of the corporate form, and causal relationship. The control parameter was essentially satisfied in Decision Number 96/Pdt.G/2017/PN.Jkt.Sel. because the judge found that the defendants controlled the company's policies. Conversely, in Decision Number 47/Pdt.G/2021/PN.Mtr., although the defendants were also shareholders and corporate officers such circumstances were not ultimately considered sufficient to disregard the company's separate legal personality. The abuse of the corporate form parameter was not adequately analyzed in either decision. In Decision Number 96/Pdt.G/2017/PN.Jkt.Sel., the judge did not elaborate on evidence demonstrating abuse of the corporate form, whereas in Decision Number 47/Pdt.G/2021/PN.Mtr., the judge found that the evidence presented was insufficient to establish such abuse of the corporate form. The causal relationship parameter was likewise not comprehensively explained in either decision. Nevertheless, the causal connection between abuse of control and the loss suffered by a third party constitutes an important requirement before the disregard of limited liability and the imposition of personal liability may be justified.

These three parameters are essentially consistent with the development of the Piercing the Corporate Veil doctrine in various jurisdictions. In England, courts do not pierce the corporate veil merely because of the existence of a control relationship, but require abuse of the corporate form under the evasion principle, namely the use of a company to evade an existing legal obligation. In France, the disregard of separate legal personality may occur where abuse of the corporate form (*abus de droit*) or a commingling of interests between the company and its controller (*confusion des patrimoines*) has been established. Meanwhile, in Germany, the application of *Durchgriffshaftung* likewise requires circumstances demonstrating abuse of the company's separate legal personality and resulting harm to a third party. Thus, mere control is insufficient to impose personal liability upon shareholders.

The comparative analysis of these three jurisdictions provides a normative reference for developing the juridical parameters of veil piercing in Indonesian corporate law. Although the specific legal doctrines and statutory frameworks differ among the jurisdictions, their approaches demonstrate a common principle that corporate control should not be treated as an autonomous basis for disregarding separate legal personality. Rather, the exercise of control must be examined in relation to whether the corporate form has been misused and whether such misuse has a sufficient causal connection with the harm suffered by the third party. This comparative perspective is relevant to the Indonesian context because it reinforces the need to distinguish the existence of an *alter ego* relationship from the subsequent determination of abuse of the corporate form and causal relationship under the applicable provisions of Indonesian company law.

Accordingly, the practices of these three jurisdictions demonstrate that control constitutes only the starting point of the analysis. Courts continue to require proof of abuse of the corporate form and a clear causal relationship before the

principle of limited liability may be disregarded. For Indonesian judicial reasoning, this comparative perspective supports a juridical construction in which effective corporate control may serve as an initial indicator of an *alter ego* relationship, but cannot constitute an independent basis for applying the *Piercing the Corporate Veil* doctrine. The application of the doctrine should instead require a demonstrable misuse of the corporate form and a causal nexus between such misuse, the company's breach of contract, and the loss suffered by the third party, subject to the specific statutory basis governing the liability of shareholders, directors, or commissioners. This approach provides a balance between creditor protection and legal certainty for companies and their shareholders. The comparison of the two Indonesian decisions further demonstrates that the principal issue is not merely whether control exists, but whether the control relationship is accompanied by abuse of the corporate form and whether such abuse has a causal relationship with the resulting loss. The absence of a consistently articulated assessment of these elements contributes to different judicial outcomes in determining whether an *alter ego* relationship may justify the application of the *Piercing the Corporate Veil* doctrine.

CONCLUSION

Based on the research findings, it can be concluded that the application of the Piercing the Corporate Veil doctrine in Decision Number 96/Pdt.G/2017/PN.Jkt.Sel. and Decision Number 47/Pdt.G/2021/PN.Mtr. demonstrates the absence of consistent juridical parameters for disregarding the principle of limited liability. The findings indicate that effective control should constitute only an initial indicator of an *alter ego* relationship and cannot, by itself, justify disregarding limited liability. The control relationship must be further examined to determine whether it was accompanied by an abuse of the corporate form and whether such abuse had a causal relationship with the loss suffered by the third party. In Decision Number 96/Pdt.G/2017/PN.Jkt.Sel., the Panel of Judges adopted an *alter ego* approach by emphasizing dominant control, but did not comprehensively establish the existence of abuse of the corporate form as required under Article 3 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies. Conversely, in Decision Number 47/Pdt.G/2021/PN.Mtr., the Panel of Judges ultimately did not impose personal liability upon the corporate organs, maintaining the principle of separate legal personality and finding insufficient grounds to establish abuse of the corporate form.

The research further establishes that personal liability cannot be determined solely from the existence of control or an *alter ego* relationship. The applicable basis of liability must also be distinguished according to the legal capacity of the relevant party, namely as a shareholder, director, or commissioner, including the application of Article 3 paragraph (2), Article 97, and Article 114 of the Company Law, respectively. Accordingly, the juridical assessment should proceed through a staged examination of effective control, abuse of the corporate form, and causal relationship before the application of the *Piercing the Corporate Veil* doctrine and the imposition of personal liability can be considered.

Based on a comparison with practices in England, France, and Germany, this research argues that the application of the Piercing the Corporate Veil doctrine in Indonesia still requires clearer guidelines or parameters to prevent divergent interpretations in judicial practice. The comparative analysis indicates that corporate control should not be treated as an autonomous basis for veil piercing, but should be assessed in conjunction with demonstrable abuse of the corporate form and a causal nexus between such abuse and the loss suffered by the third party. In the Indonesian context, this comparative perspective supports the development of a staged juridical test for determining when an *alter ego* relationship may justify the application of the *Piercing the Corporate Veil* doctrine. Therefore, the legislature is expected to consider refining the regulation concerning the application of the Piercing the Corporate Veil doctrine, particularly with respect to Article 3 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies. With clearer regulation, the application of the Piercing the Corporate Veil doctrine is expected to become more consistent, provide greater legal certainty, and maintain a balance between the protection of injured parties and the principle of limited liability as a fundamental characteristic of limited liability companies.

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