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Research Article

History and Application of Piercing the Corporate Veil Doctrine: A Study Between the United Kingdom and Indonesia

Muhammad Aqil Kamaluddin *
The University of Edinburgh, Scotland.

ABSTRACT: Separate legal entity doctrine is a foundation in corporation law, and courts had generally resisted deviations from it, save in specific instances involving doctrine of piercing of the corporate veil (PCV). PCV doctrine permits a party to circumvent the separate legal personality and hold the company's "controller" liable. This essay will explain the evolution and future of PCV in UK and Indonesian law. Research methods that will be used are normative and comparative law methods. UK cases have developed PCV doctrine, such as the Rossendale case, which the court argues that not every case requires the doctrine. While Indonesia's law system implicitly regulated the doctrine under Art. 3 (2) Law Number 40 of 2007 and no major cases. For the future of the doctrine, the UK judges maintained a firm commitment to limited liability and separate legal personality, which means the doctrine's future looks uncertain. While in Indonesia, there is a lack of highlighting and balancing the separate legal entity with piercing the corporate veil.
KEYWORDS: Company; Indonesia; Piercing; United Kingdom; Veil.

I. INTRODUCTION

Under the perspective of fiction theory that revolves around the concept of legal personality entities other than human being is the result of a fiction, a company is an artificial person that is intangible, does not have a will, and does not have a substantial reality and is solely born because of law.[1] Despite the drawbacks, a company still can be categorised as a legal person. Therefore, a company has its own legal status, rights and responsibilities as a natural person.[2] However, what makes it special compared to a natural legal person is that the most fundamental feature of a company is its separate legal personality.[3] This legal framework establishes that the company can own property, enter contracts, and be liable for debts independently of its members, thus facilitating efficient business operations and limited liability for investors. Shareholders possess limited liability, which means they do not own the corporation itself; rather, they own

[1] Ben Pettet, *Company Law* (Pearson Education Limited 2005).[68].
[2] Adolf A. Berle Jr, 'The Theory of Enterprise Entity' (1947) 47 (3) Columbia Law Review.[343].
[3] Paul L. Davies, Sarah Worthington, and Christopher Hare, *Gower: Principles of Modern Company Law* (Sweet & Maxwell 2021).[7-001].

*Corresponding author, email: m.aqilkamaluddin@gmail.com

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shares and the rights associated with them as stipulated in the articles of association and applicable legislation.[4] Directors bear the duty for the administration and oversight of a corporation, whereas shareholders retain the ultimate authority to oversee and influence both the management and the corporation itself.

The notion of separate legal entity is a foundational premise in corporate law, and courts have typically refrained from deviating from it, save in specific instances concerning piercing the corporate veil. This is because the doctrine of piercing the corporate veil allows a party to bypass the principle of separate legal personality of a company and hold the company's "controller" accountable under specific circumstances. This doctrine profoundly contests the essential notion of a corporation as a separate legal body distinct from its members. The nature doctrine may be employed by company owners to circumvent existing liabilities, thereby assigning all responsibility to the company.

This article will provide a brief background regarding the nature of piercing the corporate veil under the UK law system as well as discuss important developments made by the UK for this doctrine. This is because as a country that adopts the common law system, the development of the doctrine's usage can be seen throughout several cases, and in those cases, the debate regarding the usage of this doctrine and the principle of separate legal entity continues to exist. Meanwhile, as a civil law-based country, application of the doctrine can be seen most throughout regulations; on the contrary, not a lot of cases can show the development of the doctrine. This article will address the nature and development of piercing the corporate veil under Indonesian law. Lastly, because of the different legal system, the approach, implementation, and development of this doctrine will also be quite different. This discussion will address the future developments in UK and Indonesian law concerning the application of the doctrine, in hopes that the developments of the doctrine in one country can be applied to another.

[4] Muhammad Zubair Abbasi, 'Legal Analysis of Agency Theory: an Inquiry into the nature of Corporation (2009) 51 International Journal of Law and Management.[407].

II. RESEARCH METHOD

The research type that will be used in this article is a doctrinal research type. Hutchison Terry defined doctrinal research as research that offers a methodical elucidation of the regulations regulating a certain legal category, evaluates the interrelations among rules, clarifies areas of complexity, and potentially forecasts future developments.[5] This type of doctrinal legal research is also referred to as a normative legal research type. In this case, the focus of legal research is to conduct an inventory of positive law, legal principles and legal doctrines, legal discovery in concrete cases, legal systematics, the level of legal synchronisation, legal comparisons, and legal history.[6]

Furthermore, the methodologies employed in this legal research include the statutory approach, case approach, and comparative approach. The statutory method involves evaluating each regulation and law pertinent to the situation at hand.[7] This method is employed to assess the relevance of legal provisions concerning the application of piercing the corporate veil in legislation in the UK and Indonesia. The case approach will examine instances in the UK and Indonesia concerning the application of the doctrine of penetrating the corporate veil. This is done to give an outline of the practice of the doctrine, which exists in 2 countries in specific cases and legal cases that have been resolved. Cases such as *Prest v. Petrodel Ltd., Woolfson v. Strathclyde,* VTB *Capital plc v. Nutritek International Corp,* and so on will be discussed . The comparative approach will elucidate the disparities in the application and evolution of this ideology between the UK and Indonesia.

III. HISTORY OF PIERCING THE CORPORATE VEIL UNDER THE UK LAW

The concept of piercing the corporate veil defies the principle of separate legal entity, which is fundamental to UK company law, as established in the *Salomon v. A Salomon & Co Ltd.* The Salomon case was about how Salomon established a limited

[5] Hutchinson Terry, 'Critique and comment developing legal research skills: Expanding the paradigm' (2008) 32 Melbourne University Law Review.[307].

[6] Abdulkadir Muhammad, *Hukum dan Penelitian Hukum* (Citra Aditya Bakti 2004).[52].

[7] Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana Prenada Media 2016).[136].

company and transferred ownership of his leather business to it.[8] To meet the stipulation of the Companies Act 1862, which mandates a minimum of seven shareholders, six family members were allocated one share each.[9] All requirements of the act were met. The company ultimately entered liquidation, and after fulfilling the debenture obligations, insufficient funds remained to compensate the ordinary creditors.[10] The liquidator asserted that the establishment of the company constituted a fraud against its creditors.[11]

The case indicated that the court recognised the company to be a legal entity apart from Salomon and its members, therefore affirming its status as a properly created corporation.[12] However, the concept of piercing the corporate veil was majorly discussed under the *Prest v. Petrodel* Resources case. The case had the woman filing a claim for compensation under Section 23 of the Matrimonial Causes Act 1973 against her husband, the sole proprietor of several intricately organised offshore corporations.[13] The wife claimed that her partner utilised the firms to possess legal title to properties that were beneficially his.[14] The spouse neglected to follow directives for the full and truthful revelation of his financial status and the companies involved in the proceedings, neglecting to present a defence or adhere to disclosure rules.[15] Under *Prest v. Petrodel Resources Ltd*., Lord Sumption stated that the concept of piercing means ignoring the concept of separate legal personality of the company.[16] It can be said that "piercing the corporate veil" is a circumstance in which, ignoring the fundamental idea of a separate legal organisation, the rights, obligations, or acts of a corporation are handled as those of owner controllers behind the company, or vice versa.[17]

Even though *Prest v. Petrodel Resources Ltd*. is a much more famous case regarding the piercing the corporate veil doctrine, the development regarding this principle's usage

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[8] *Salomon v. A Salomon & Co Ltd.* [1897] AC 22.[23].
[9] *ibid*.
[10] *Salomon v. A Salomon & Co Ltd.* [1897] AC 22, [24].
[11] *ibid.*
[12] *Salomon v. A Salomon & Co Ltd.* [1897] AC 22, [42].
[13] *Prest v. Petrodel Resources Ltd.* [2013] 2 AC 415, [1].
[14] *ibid.*
[15] *ibid.*
[16] *Prest v. Petrodel Resources Ltd.* [2013] 2 AC 415, [16].
[17] Stefan H.C. Lo, 'Nature of Corporate Veil-Piercing and Revitalization of the Evasion Principle' (2023) 139 Law Quarterly Review.[3].

was laid down first by the House of Lords in the *Woolfson v. Strathclyde* case. The case was about a limited corporation ("Campbell") sold bridal garments in five premises with Woolfson owned three [18] [19] Campbell's finances showed that Campbell paid rent to Solfred for the half.[20] Profits were taxed under Schedule D;[21] Campbell was listed as the occupier on the valuation roll. However, Lord Keith of Kinkel in this case said that 'the corporate veil could only be pierced where special circumstances exist indicating that it is a mere facade concealing the true facts'.[22] Further development of veil-piercing was explained by Lord Sumption JSC in the *Prest v. Petrodel case*, which comprises two tests whereby "the mastermind" might be accountable for firm activities or omissions depending on:

a. Concealment Principle;

   This test involves the insertion of companies or enterprises to conceal the real essence of an agreement.[23] In this case, the court is examining the underlying realities obscured by the corporate structure and implementing common law to those facts.[24] The Rossendale court feels the concealment concept is legally banal and has no bearing on the corporate veil at all.[25]

   One of the cases that tried to implement this test is the *Gilford Motor v. Horne* case. The case was about the plaintiff company purchasing auto parts from suppliers, building them on site, and selling them as Gilford Motor Vehicles.[26] The defendant was designated managing director for the plaintiff's company over a duration of six years.[27] Clause 9 of the deal said, "The managing director shall not at any time while he shall hold the office of a managing director or afterwards solicit, interfere with or endeavour to entice away from the company any person, firm or company who at any time during or at the date of the determination of the employment of the

[18] *Woolfson v. Strathclyde Regional Council* (1978) SC HL 90, 1.
[19] *ibid.*
[20] *ibid*.
[21] *ibid.*
[22] *Woolfson v. Strathclyde Regional Council* (1978) SC HL 90, 96.
[23] *Prest v. Petrodel Resources Ltd.* [2013] 2 AC 415, [28].
[24] *ibid*.
[25] *Hurstwood Properties (A) Ltd v. Rossendale BC* [2022] AC 690, [65].
[26] *Gilford Motor Company, Limited v. Horne* [1933] 1 Ch 935.
[27] *ibid*.

managing director were customers of or in the habit of dealing with the company."[28] The plaintiff was named managing director in November 1931, agreeing to receive a predetermined remuneration in installments; however, the defendant subsequently initiated a Gilford vehicle replacement parts enterprise.[29] The Court of Appeal ruled that Horne could not utilise a company to bypass a restrictive covenant in his employment contract with Gilford Motor Co Ltd, thereby preventing him from competing with the company. Lord Hanworth ruled that 'the company was a mere cloak or sham because the business was really being carried on by Mr Horne'.[30]

b. Evasion Principle:

This notion includes a restricted remaining group of cases where the abuse of the corporate veil to avoid legal responsibilities can solely be addressed by nullifying the company's legal personality.[31] This principle is applicable just when an individual, bound by a legal obligation, intentionally obstructs it by utilising a firm under their control.[32] The court may subsequently pierce the corporate veil solely to deprive the company or its controller of the benefits they would otherwise derive from the company's separate legal personality.[33]

An example of the application of this doctrine is the VTB *Capital plc v. Nutritek International Corp* case. In this case, VTB had lent money to a Russian company (Russagroprom LLC (RAP)) to fund RAP's acquisition of Russian companies from Nutritek.[34] RAP defaulted, and Nutritek's false misrepresentations allegedly encouraged VTB to sign the deal.[35] Konstantin Malofeev was the owner and controller of Nutritek and RAP.[36] VTB's case was pleaded in unlawful means conspiracy, and it was amended to add claims in contract by requesting that the court break RAP's

[28] *ibid*.
[29] *ibid*.
[30] *ibid*.
[31] *Prest v. Petrodel Resources Ltd.* [2013] 2 AC 415, [35] (Sumption).
[32] *Prest v. Petrodel Resources Ltd.* [2013] 2 AC 415, 416.
[33] *ibid*.
[34] *VTB Capital plc v. Nutritek International Corp* [2013] 2 AC 337.
[35] *ibid*.
[36] *ibid*.

> corporate veil to make the respondents liable under the facility agreement.[37] The court dismissed the plea, asserting that the distinct legal identity of a company could be overlooked, thereby equating the company with its owners and controllers; it further maintained that any principle allowing the court to pierce the corporate veil must be confined to instances involving pertinent impropriety.[38]

Recently, the development of the use of veil-piercing as a doctrine is also being discussed in the *Rossendale Borough Council v. Hurstwood Properties* case. The case was about the Hurstwood Properties since the defendants owned commercial buildings and sought to reduce their liability for business rates through one of two methods. Both schemes required the formation of an SPV, which was a corporation without assets or commercial operations and managed by a different individual. The respondents granted the SPV a limited lease of the property, after which it gained the status of "owner" for the purposes of business rates. After that, they either put the SPV into members' voluntary liquidation or disbanded it.

The respondents in the liquidation scheme claimed an exemption under UK Regulation 4(k) of the Non-Domestic Rating (Unoccupied Property) Regulations 2008, which states that properties owned by companies in liquidation are exempt from business rates. Upon the dissolution of the SPV, the lease and any business rate liability are automatically transferred to the Crown as *bona vacantia*. This arrangement allowed respondents to postpone making rate payments until they either terminated the lease for property repurposing or the lease was disclaimed by the liquidator. The Rossendale Borough Council, disputed these arrangements, claiming that the lease to the SPV was ineffective in establishing the SPV as the "owner" under the legislation. They utilised the Ramsay principle to argue that the schemes were designed for tax evasion, that the SPVs were being abused, and that their separate legal personality should be ignored.

Regarding the use of veil-piercing that the Rossendale Borough Council proposed, the court states as follows:[39]

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[37] *VTB Capital plc v. Nutritek International Corp* [2013] 2 AC 337, [128, 145] (Neuberger).
[38] *ibid*.
[39] *Hurstwood Properties (A) Ltd v. Rossendale BC* [2022] AC 690, [66].

> "The defendants are not shareholders of the SPVs. On the agreed facts, each of the SPVs had a single shareholder, who was in each case an individual who was also the company's director. Nonetheless, it is pleaded that the SPVs were "acquired" by the defendants, and we will assume that, as ultimate beneficial owners, they might be shown at trial to have been in control of them, even though this conflicts with the finding in the PAG Management Services [2015] BCC 720 case that the SPVs there under review were controlled by the promoter of the scheme".

Basically, it means that the court stated that the implementation of the evasion principle in this case cannot be used since they did not believe that there exists any genuine potential for applying such a concept conversely to hold an individual who owns or manages a corporation accountable for a breach of a responsibility that has only been assumed by the company.[40] This argument was reinforced by Lord Sumption's statement in the Prest case, which states that it is appropriate to assign legal liability to the company, as it is inherent in the structure of corporations and not the controller's responsibility.[41] While regarding the evasion principle, Lord Sumption also states that the principle was created to create new liability, so if a contract has consensual liability and the contractual parties never meant for others to participate, the principle cannot be used.[42] Implementing these arguments, the court in the Hurstwood Case believes:[43]

> "It is not an abuse of the separate legal personality of the SPV to cause the liability for business rates to be incurred by the SPV by granting it a lease, nor to rely on the fact (if it is a fact) that the liability was not the defendant's because it was the company's. Nor can the evasion principle properly be invoked so as to create a liability on the part of the defendant that would not otherwise exist".

The court asserts that granting a lease to the SPV, so incurring a liability for business rates, does not constitute an abuse of its distinct legal personality, nor can the defendant absolve responsibility by claiming the obligation belonged to the firm. Furthermore, the evasion principle cannot be employed to attribute blame to the defendant that wouldn't otherwise be present. Consequently, the Rossendale Borough Council's use of the evasion principle is erroneous. Moreover, the judgement concluded that the lease neither nullified

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[40] *Hurstwood Properties (A) Ltd v. Rossendale BC* [2022] AC 690, [72].
[41] *Prest v. Petrodel Resources Ltd.* [2013] 2 AC 415, [34].
[42] *ibid*.
[43] *Hurstwood Properties (A) Ltd v. Rossendale BC* [2022] AC 690, [73].

nor sought to nullify the defendant's duty for business expenses incurred.[44] Until the rental agreement received approval, that obligation remained on the defendant in any regard.[45]

IV. HISTORY OF PIERCING THE CORPORATE VEIL UNDER THE INDONESIA LAW

In contrast to the United Kingdom, which adheres to the common law system, during the colonialism era, the Dutch introduced Indonesia to major legislation known as the Dutch law in the form of codified laws that were actually derived from the French laws. By applying Dutch law, the Indonesian legal system adopts the civil law system. Following Indonesia's independence in 1945, the government tried to modify the existing Dutch law and put in some customary law (adat law) as well as Islamic (sharia) law, while still adopting the whole civil law system.

Concerning the historical development of corporate law in Indonesia, there used to be a dualism problem regarding the regulation of company law. Before the year 1995, the company law was regulated by the *Wetboek van Koophandel, Staatsblad 1847:23* and *Ordonnantie op de Indonesische Maatschapij op Aandeelen, Staatsblad 1939:569 jo.717*. The Indonesian government noticed the dualism of law and the fact that these regulations were not enough to accommodate the country's economic conditions at that time; the government decided to issue a new regulation for company law, which was Law Number 1 of 1995 concerning limited liability companies.

Law Number 1 of 1995 remained in effect until 2007, when government officials acknowledged that it had become no longer aligned with legal advancements and societal needs. Consequently, a new law was deemed necessary to enhance national economic development while establishing a robust foundation for the business sector, ensuring a conducive business environment amidst global economic changes and technological progress in the era of globalisation. The Indonesian government resolved to amend Law Number 1 of 1995 into Law Number 40 of 2007 on limited

[44] *Hurstwood Properties (A) Ltd v. Rossendale BC* [2022] AC 690, [75].
[45] *ibid*.

liability companies.

Regarding the doctrine of separate legal entity, Law Number 40 of 2007 on limited liability companies somewhat explained it under Art. 3(1) that states:[46]

> "The Company's Shareholders are not personally liable for agreements made on behalf of the Company and are not liable for the Company's losses in excess of their prospective shareholding".

Inside of this article, it is implied that Indonesia confirms the existence of a separate legal entity doctrine, which is shown by the fact that the shareholders do not interfere with all agreements made on behalf of the company. It states that the company is not an extension of the shareholders but rather a separate legal entity. Moreover, the fact that the shareholders shall not be accountable for the company's losses beyond their anticipated shareholding shows that the regulation also implicitly confirms the existence of limited liability doctrine.

For the application of the doctrine of piercing the corporate veil, the regulation also managed to indirectly accommodate it through Art. 3 (2) of Law Number 40 of 2007, which mentions that the company's shareholders can be made personally liable for the company's losses if:[47]

a. The prerequisites for the Company as a legal entity have not been accomplished;
b. The pertinent shareholders, both directly or indirectly, take advantage of the Company with bad faith for private gain;
c. The relevant shareholders are involved in illegal actions committed by the Company; or
d. The pertinent shareholders, in two ways directly or indirectly, unlawfully utilise the Company's resources, leading to an insufficiency of resources to satisfy the Company's debts.

The article discusses that shareholders, including directors, may be held personally accountable if they use the company for personal benefit or act in bad faith. This aligns well with the notion of piercing the corporate veil, which is a doctrine that can only be applied under particular circumstances that reveal it as a mere facade obscuring the underlying facts. Furthermore, Art. 7 (5) and (6) also manage to give a "solution" regarding

[46] Art 3 (1) Law Number 40 of 2007 concerning Limited Liability Companies.
[47] Art 3 (2) Law Number 40 of 2007 concerning Limited Liability Companies.

the doctrine of piercing the veil[48] The article indicates that the government endeavoured to "simplify" the application of the separate legal entity for companies in Indonesia. It stipulates that if a company attains legal entity status and the number of shareholders decreases to fewer than two, the shareholders will become held accountable personally for all agreements, legal relationships, and the company's losses incurred during the subsequent six-month period. The District Court can additionally dissolve the firm at the motion of a party with an interest.

Meanwhile, from the perspective of legal cases, unlike the UK, which has a lot of cases regarding the application of the piercing the corporate veil doctrine, Indonesian courts only have a couple of cases regarding the development of the application of piercing the corporate veil doctrine, such as the case of PT. Bank Pembangunan Asia v. PT. Djaya Tunggal in 1991.[49] The case was about the plaintiff (PT. Bank Pembangunan Asia) suing the defendants because the defendants committed a malicious conspiracy when applying for a loan from the plaintiff, which then harmed the plaintiff. The defendants applied for a loan from the plaintiff, and it was approved. Along the way, defendant 1 (PT Djaja Tunggal) went bankrupt and was unable to repay its debt to the plaintiff. The doctrine of piercing the corporate veil has been used by the judge in his legal considerations; however, because it happened in 1991, there is no legal basis for it normatively, except in the *Wetboek van Koophandel, Staatsblad 1847:23,* which is regulated in a limited manner. In his legal considerations, the Supreme Court Judge has applied the theory or piercing the corporate veil, namely, the act of collusion between the directors and commissioners, which causes losses to the company, can be held accountable for the directors and commissioners who collude.

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[48] Art. 7 (5) and (6) Law Number 40 of 2007 concerning Limited Liability Company states that:

5) If after the company obtains its legal entity status and the number of shareholders becomes less than 2 (two) persons, then within the period of not later than 6 (six) months from such condition, the relevant shareholders are obliged to transfer part of their shares to other persons or the company shall issue new shares to other persons.

6) In the event that the time period as referred to in paragraph (5) has exceeded, and there are still less than 2 (two) shareholders, the shareholders shall be personally liable for all agreements/legal relationships and the company's loss, and upon the request of the interested party, the District Court may wind up the company.

[49] *PT Bank Pembangunan Asia v. PT Djaja Tunggal* No.136/Pdt.G/1987/PN.Bgr and No. 431/P/1989/PT. Bdg.

Furthermore, another case that was mentioning piercing the corporate veil is PT. Perusahaan Pelayaran Samudera "Gesuri Lloyd" case in 1973, where the Supreme Court made its own judgement based on piercing the corporate veil.[50] This substance of the judgement was adopted in Article 7 Paragraph (4) of Law No. 1 of 1995 and adopted again in Article 7 Paragraph (5) of Law No. 40 of 2007, that states if the company obtains legal entity status and the number of shareholders falls below two, the shareholders must transfer a fraction of their ownership to other individuals within six months of the specified condition, or the company must issue new shares to other persons.

V. FUTURE OF PIERCING THE CORPORATE VEIL DOCTRINE FOR BOTH COUNTRIES

The advancement of piercing the corporate veil under the UK doctrine has been suboptimal. The condition of development of this doctrine was already further discussed in the Salomon case until the Prest case, in which the courts have clearly maintained a firm commitment to the doctrine of separate legal personality of companies and the limited liability of shareholders.[51] The Rossendale case also reaffirmed the doubts that are being cast upon the piercing the corporate veil doctrine. For instance, the judge consider the statement by Lord Walker in the Prest case, questioning 'whether "piercing the corporate veil" is a coherent principle or rule of law at all, as opposed to simply a label used to describe the disparate occasions on which some rule of law produces apparent exceptions to the principle of the separate juristic personality of a corporate body.'[52] Under the Rossendale case, Baroness Hale articulated the perspective that, in the Rossendale case, it is preferable to utilise the principles of agency and the notion of "direct mind" rather than veil-piercing to resolve the matter.[53] Based on these arguments, it seems that the future of piercing the corporate veil in the UK looks uncertain.

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[50] Sulistiowati dan Veri Antoni, 'Konsistensi Penerapan Doktrin Piercing The Corporate Veil Pada Perseroan Terbatas Di Indonesia' (2013) 2 Yustisia.[31].

[51] Paul L. Davies, Sarah Worthington, and Chrisptopher Hare.*Op.Cit.*[404].

[52] *Prest v. Petrodel Resources Ltd.* [2013] 2 AC 415, [106].

[53] *Hurstwood Properties (A) Ltd v. Rossendale BC* [2022] AC 690.

Even though it looks uncertain, it can be said that the doctrine still exists and is alive in the UK. This is because the doctrine established itself as a main tool to combat the abuse of separate legal entity.[54] In addition, under the Prest case, Lord Sumption already created such a solid foundation for the implementation of this doctrine with the two tests. These tests will act as a guideline and discussion material related to the abuse of the separate legal entity doctrine, such as under the Rossendale case. Even though the Rossendale case did not use these tests, this is because the court under the Rossendale case did not in fact reject the application of the doctrine in the case as such, which means the doctrine still applies under UK common law.[55]

Despite such a solid foundation in the form of two tests created by Lord Sumption, there are still several problems regarding these tests. For the evasion principle, it has been observed that Lord Sumption's formulation of the principle renders the doctrine of piercing the corporate veil little to no room for it to operate.[56] While the concealment principle is pretty narrow since it fails to account for the wide expanse of cases where the corporate being is abused. In addition, under the Gilford Motor case, Lord Sumption mentioned that it can be seen as one of the classic cases of the evasion principle, while Lord Neuberger saw it as a concealment principle; this shows that there is no clear distinction between the two tests.[57] It can be seen that these tests clearly neglect all cases of corporate entity abuse, which greatly complicates victims' quest for compensation.[58] Furthermore, the Prest case, from which the two tests originate, does not adequately consider potential future scenarios in which the doctrine of veil-piercing may be significant.[59] The lack of guidance is further reaffirmed by Lady Hale's statement on the Prest case; she states

[54] Stefan H.C. Lo.*Op.Cit.*[1].

[55] *ibid*.

[56] Cheng Han Tan, Jiangyu Wang and Christian Hofmann, 'Piercing the Corporate Veil: Historical, Theoretical and Comparative Perspectives' (2019) 16 Berkeley Business Law Journal.[204]; Brenda Hannigan, 'Wedded to Salomon: Evasion, Concealment and Confusion on Piercing the Veil of the One-Man Company' (2013) 50 Irish Jurist.[30]; Edwin Mujih, 'Piercing the Corporate Veil as a Remedy of Last Resort After Prest v Petrodel Resources Ltd: Inching Towards Abolition?' (2016) 37 Company Lawyer.[50].

[57] Pui Ting Florence Yiu, 'Piercing the Corporate Veil Post-Prest' (2024) Law and Financial Markets Review.[3].

[58] *ibid*.

[59] Mohamed F. Khimji and Christopher C. Nicholls, 'Piercing the Corporate Veil Reframed as Evasion and Concealment' (2015) 48 UBC Law Review.[434–435].

that 'whether it is possible to classify all of the cases in which the courts have been or should be prepared to disregard the separate legal personality of a company neatly into cases of either concealment or evasion'.[60] Furthermore, the method of improving the two tests is subject to criticism for generating uncertainty, as the discussion surrounding the limitations of exceptions to the separate legal entity doctrine continues; the issue of jurisdictional scope for veil-piercing remains unresolved.[61]

Although a few problems remain within piercing the corporate veil, a few cases, like the Prest case, were indeed a step towards the "redefining" of the doctrine itself.[62] In the future, judges will be able to refuse submissions that seek to invoke the evasion or concealment principle in situations lacking established requirements and restrict the utilisation of the veil-piercing concept as a 'shortcut' where alternative legal remedies are available.[63] The Hurstwood case itself can be a solid example of the judge acting to dismiss the applicant's invocation of the evasion principle in pursuit of alternative legal remedies.

While in Indonesia, despite the current regulation already implicitly accommodating piercing the corporate veil through a distinct part within Law Number 40 of 2007, the implementation of this doctrine itself is less prominent than cases in the UK. Because of this lack of cases discussing piercing the corporate veil, there is a lack of legal findings such as the two tests created by Lord Sumption under the Prest Case. Furthermore, because there are only a few cases that mention piercing the corporate veil and the nature of Indonesian company law regulations that tend to incorporate legal doctrines in their regulations instead of documenting them in writing, there is a lack of highlighting and balancing the separate legal entity doctrine with the doctrine of piercing the corporate veil that the Rossendale case manages to accommodate. The lack of balance also symbolises that, in terms of practical application, Indonesia needs to review (and probably renew) the regulations for company law in order to reach the balance between the separate legal

[60] *Prest v. Petrodel Resources Ltd.* [2013] 2 AC 415, [92] (Hale).

[61] Brenda Hannigan.*Op.Cit.*[35].

[62] Charles Wild and Stuart Weinstein, *Smith and Keenan's Company Law* (Pearson Education Limited, 2019).[82].

[63] Nupur Upadhyay, 'Piercing the Corporate Veil: An Analysis of Lord Sumption's Attempt to Avail a Troubled Doctrine' (2015) 21 Auckland University Law Review.[132].

entity and piercing the corporate veil.

The author concurs that the evolution of the piercing the corporate veil theory will continue in the future, Judges ought to strike a compromise between the application of the separate legal entity concept and the piercing the corporate veil doctrine. This is due to the inherent opposition of each doctrine. Therefore, the judges must be reasonable enough to not utilise the doctrine of veil-piercing when other solutions are sufficient.[64] Nonetheless, with the current development of the piercing the corporate veil doctrine in the UK through several cases (which Indonesia can take an example from), it establishes legal certainty on the application of the doctrine, signifying an acknowledgement of the sanctity of the separate legal entity doctrine and the protection afforded by limited liability to corporate owners.[65]

VI. CONCLUSION

Piercing the corporate veil is a legal notion that permits a party to circumvent the principle of distinct legal personality and hold the company's "controller" accountable under specific circumstances. This argument significantly undermines the fundamental concept of a company as a separate legal entity independent from its members. Due to the history of this doctrine itself coming from the common law system, the UK already has a few cases that mentioned and developed the application of the piercing the corporate veil doctrine, such as the *Prest v. Petrodel* case, in which Lord Sumption JSC created the two tests. In addition, in the latest case, which is the Rossendale case, the court believes that not every company case has to rely upon piercing the corporate veil doctrine to solve it, especially if the doctrine is being used in circumstances lacking defined criteria and forbids the utilisation of the veil-piercing theory as a means of convenience. A few cases demonstrate that the UK court believes that not all of company cases have to rely upon piercing the corporate veil doctrine as a means of convenience. Moreover, in circumstances in which there is no defined criteria, courts must pay attention to the separate legal entity doctrine.

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[64] Stefan H.C. Lo.*Op.Cit.*[9].
[65] Nupur Upadhyay.*Op.Cit.*[132].

Meanwhile in Indonesia, the Dutch introduced Indonesia to a major piece of legislation known as the Dutch law, making Indonesia adopt the civil law system. In relation to the history of company law in Indonesia, there used to be a dualism problem regarding the company law; the Indonesian government noticed the problem and decided to issue a new regulation for company law, which was Law Number 1 of 1995. However, the government recognised that Law Number 1 of 1995 was not properly aligned with legal advancements and societal necessities, prompting the revision of Law Number 1 of 1995 to Law Number 40 of 2007 regarding limited liability businesses. Piercing the corporate veil is implicitly governed by Article 3(2) of Law Number 40 of 2007. Meanwhile, Indonesian courts only have a couple of cases regarding the development of the application of piercing the corporate veil, such as the case of PT. Bank Pembangunan Asia v. PT. Djaya Tunggal in 1991, in which the Supreme Court Judge has applied the theory or piercing the corporate veil, asserting that collaboration between directors and commissioners resulting in company losses renders them liable. Another case that was mentioning piercing the corporate veil is PT. Perusahaan Pelayaran Samudera "Gesuri Lloyd" case in 1973, where the Supreme Court rendered a judgement based on this doctrine. The essence of this judgement was incorporated into Art. 7 (5) of Law Number 40 of 2007. The explanation shows that piercing the veil doctrine is implicitly regulated under several sections in the Indonesia Company Act, the lack of cases regarding application of this doctrine also further differentiate the usage of this doctrine from The UK courts.

For the future of piercing the corporate veil doctrine, the UK judges clearly maintained a firm commitment to the doctrine of separate legal personality of companies and the limited liability of shareholders which means that piercing the corporate veil doctrine in the UK looks uncertain. However, it can be said that the doctrine still exists and is alive in the UK. This is because the doctrine established itself as a main tool to combat the abuse of separate legal entity. In addition, Lord Sumption already created such a solid foundation for the implementation of this doctrine with the two tests. These tests will act as a guideline and discussion material related to the abuse of the separate legal entity doctrine. While in Indonesia, despite the current regulation already implicitly accommodating piercing the corporate veil through one of its own sections in Law Number

40 of 2007, the implementation of this theory is less prominent than in cases within the UK. Furthermore, because there are only a few cases that mention piercing the corporate veil, there is a lack of highlighting and balancing the separate legal entity with piercing the corporate veil that the UK courts manages to accommodate.

Indonesia clearly can take several notes from the UK in terms of the development of piercing the corporate veil doctrine in the future. Especially regarding the two tests mentioned by Lord Sumption under Prest case and also the fact that judges needs to strike an equilibrium between the application of the separate legal entity and piercing the corporate veil doctrine. This is because the nature of each doctrine is indeed the opposite from each other. Thus, judges must be reasonable enough to avoid veil-piercing when other methods work. However, several UK cases on piercing the corporate veil in which Indonesia can also follow, establish legal certainty on its application, acknowledging the separate legal entity doctrine and corporate owners' limited liability protection.

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