

ABSTRAK

Doktrin Alter Ego dan Piercing the Corporate Veil merupakan satu doktrin yang berkembang di negara – negara Common Law, Doktrin ini mengajarkan penembusan tabir istimewa perseroan yang menutupi pemegang saham dan organ – organ perseroan lainnya yang mungkin pada kenyataannya telah memanfaatkan perseroan untuk kepentingan sendiri sehingga dengan menutupi dirinya dengan tabir istimewa tersebut, pemegang saham dapat bersembunyi dari tuntutan tanggung jawab melebihi saham yang dimiliki dan organ – organ perseroan lainnya dapat bersembunyi di balik pemenuhan tugas tugas yang dipercayakan kepada mereka. Perseroan selaku badan hukum sekalipun mempunyai kedudukan mandiri dan pemegang saham mempunyai pertanggung jawaban secara terbatas, namun bila pemegang saham menyalahgunakan / memanfaatkan perseroan dengan misalnya memanfaatkan jabatan anggota Direksi dan/atau dewan Komisaris untuk memanfaatkan *Corporate Opportunity* melakukan perbuatan hukum yang dapat menimbulkan *conflict of interest* atau dengan maksud melakukan *self dealing* untuk kepentingan pribadinya, maka tabir yang melindungi keterbatasan tanggung jawab tersebut dapat ditembus atau dikoyak untuk mengetahui apa yang sebenarnya telah terjadi dan siapa tang telah terlibat dalam peristiwa atau perbuatan tersebut dengan maksud bilamana perlu menuntut pemenuhan tanggung jawab baik pemegang saham, anggota Direksi dan dewan Komisaris secara melebihi dari pada apa yang telah digariskan dalam anggaran dasar perseroan maupun undang-undang termasuk tuntutan pertanggung jawaban sampai kekayaan pribadi. Penyalahgunaan kewenangan (*detournement de pouvoir / misbruik van macht*) baik secara langsung

maupun tidak langsung sudah pasti dilakukan dengan itikad tidak baik dan tidak bertanggung jawab memanfaatkan untuk memanfaatkan perseroan semata-mata untuk kepentingan pribadi. Terhadap tindakan pemegang saham, anggota Direksi dan dewan Komisaris yang merugikan pihak lain, Undang-Undang mengatur perlindungan hukum bagi pihak pihak tersebut dan mewajibkan Pengadilan menetapkan Doktrin *Piercing the Corporate Veil* dalam memeriksa perkara gugatan perbuatan melawan hukum yang dilakukan oleh perseroan sebagaimana diamanatkan oleh pasal 3 ayat 2 UUPT.

Berdasarkan pasal 1365 KUHPerdata penerapan Doktrin “*Alter Ego and Piercing the corporate veil*” tidak hanya terbatas pada tindakan – tindakan yang disebut UUPT pasal 3 ayat 2 semata, akan tetapi terhadap berbagai aspek perbuatan hukum yang tidak selaras dengan hukum serta bertentangan dengan maksud dan tujuan perseroan.

Kata Kunci : Alter Ego and Piercing the corporate veil, UUPT

ABSTRACT

The Doctrine Alter Ego and Piercing the Corporate Veil is one of the doctrines that develop in the Common Law jurisdictions. The doctrine allow Judges to pierces the company veil of that cover the shareholders and other corporate organs from exposing themselves to public knowledge that they may have used the company for their own respective benefits, so that by covering themselves with the corporate veil, they would not theoretically be held responsible for more than the shares they hold, in case the shareholders or for more than the fulfillment of their fiduciary duties of Directors and Commissioners. Being a legal entity, a limited liability company enjoys its independent status and, as such the shareholders and each Director and/or commissioners possesses limited responsibility within the limits of their respective duties or obligation. But if a shareholders abuses or misuses the company by utilizing the Board of Director and Board of Commissioners to seize corporate opportunities to take any action which result in conflict of interest or with a view to creating self dealing for his own benefit, then the corporate veil that cover the shareholder can be pierced in order to find out what has actually been going on and whoever are involve in such event or action, be they the shareholders, members of the Board of Director and Board of Commissioners with a view to whenever necessary, demanding or claiming the shareholders, member Board of Director and member Board of Commissioners involved in the action that has been found as being detrimental to the company to be held responsible for more than that mandated by the articles of association of the company or even exceeding the law, including against their personal asset.

Abused of power (*detournement de pouvoir / misbruik van macht*) either directly or indirectly is always committed not in good faith and constitutes irresponsible in utilizing the limited liability company only for their personal advantages the law protect those who suffer from damages caused by misuse of the company by the shareholders, member Board of Director and member Board of Commissioners and obliges the court rely on Doctrine *Alter Ego and Piercing the Corporate Veil* in examining a case brought before it claiming the company for an alleged unlawful act committed thereby in pursuance of Company Law Article 3 paragraph 2.

Under Article 1365 of Indonesian Civil Code, the Doctrine Alter Ego and Piercing the Corporate Veil can be interpreted so widely that is does not cover only acts mentioned in Company Law Article 3 paragraph 2, but to be applied to all acts which are contrary the law and are not in line with the purposes and objectives of the company.

Key Word : Doctrine Alter Ego and Piercing the Corporate Veil, Company Law