



Implementation of limited liability principles and doctrine of piercing the corporate veil in management of local liability companies

ABDUL HALIM BARKATULLAH*

Faculty of Law, Lambung Mangkurat University, Banjarmasin, Indonesia

Abstract

Aim: This research aims to analyze how limited liability in the Piercing the Corporate Veil doctrine is used by BUMD administration in the form of Local Liability Companies.

Methodology: The normative law method was employed in this study; this is the process of looking for the rule of law, legal principles, or legal doctrines to provide a solution to a legal problem, followed by an analysis of that problem using inductive reasoning.

Findings: Due to these studies' findings, a company is considered a separate entity from its founders, members, or investors when recognized as a legal entity under the law. Important to the company's legitimacy is the idea of the Perseroan (company) as a separate legal entity whose assets are kept separate from those of its shareholders and for whom there is limited personal liability. Second, the current regulations on UUPT also apply to the administration of BUMDs structured as Local Liability Companies.

Novelty/Implications: As a result of the limited liability of shareholders, this doctrine safeguards the interests of vulnerable outsiders.

Key Words: BUMD, Company, Liability

Received: 21 September 2017 / **Accepted:** 18 October 2017 / **Published:** 26 December 2017

INTRODUCTION

The Presence of Locally and Regionally Owned Businesses Because of the legal ramifications brought about by the passing of Law No. 23 the Year 2014 on Local Government, BUMD, which was previously structured as a combination of Local Companies and Limited Liability Companies, has now taken the form of Regional Public Companies and Local Liability Companies. Because of the differences between the old and new legal structures, BUMD's legal change has changed.

The Local Government Law states in Article 331:3 that "BUMD consists of Regional Public Companies and Local Liability Companies," and that BUMD's goals are to (1) contribute to the general economic development of the Region, and (2) "conduct public benefit in the form of providing quality goods and/or services for the fulfillment of the livelihood of the people according to the condition, characteristics, and potential of the relevant Regions based on good corporate governance."

Considering the two options, the Local Liability Company is the more efficient choice if we consider the BUMD goal of monetary gain. Article 331 paragraphs (1), (2), and (3) read, in relevant part: "The establishment of a BUMD is by a Local Regulation and, if it is in the form of Local Liability Companies, it should follow the provisions of the Limited Liability Company Law." This provision is based on Law No. 40 of 2007 on the Limited Liability Companies (UUPT).

Indonesia's "Perseroan" (Company) corporate structure is crucial to the country's economy. Over the past 150 years, the Company has contributed to unprecedented development and economic expansion (Harahap 2011; Yoo, Lee, and Lee 2016). The Company's substantial fundraising potential means it can contribute to economic growth. In the case of a company, the shareholder's liability is limited to the value of the shares actually held. Article 3 of the UUPT states, "the shareholders of the company shall not be personally liable for any engagement made on behalf of the company and shall not be liable for losses of the company above the shares held." As a

* Corresponding author: Abdul Halim Barkatullah

† Email: halim.ulmbjm@gmail.com

separate company from its employees, the Company has been given the legal status of "persona standi in judicial" (Endang and Risal 2017; Harahap 2011).

Limited liability protects the Company's shareholders from financial loss should the Company fail. This is a key selling point for potential investors. Certain conditions make it impossible to preserve this "limited" quality. Corporate life in the modern era has given rise to a legal doctrine known as "piercing the corporate veil," which can be used to break down the "corporate curtain" of limited liability. Third parties may be at a disadvantage due to the "limited" liability of shareholders, so this doctrine was created to protect them. Because of this, the author is curious about how the Piercing the Corporate Veil doctrine, which applies the principle of limited liability to corporations, is used by BUMD's management in the form of Local Liability Companies.

LITERATURE REVIEW

The General Review on Perseroan Terbatas (Limited Liability Company)

The term Perseroan Terbatas (Limited Liability Company) consists of two words, namely the company and limited. The Company refers to the company's capital consisting of sero-sero or shares. The word limited refers to the responsibility of shareholders whose breadth is limited to the nominal value of all shares held (Purwosutjipto 1978).

According to Hartono (1985) Limited Liability Company is a partnership to run a certain company by using an authorized capital divided into certain shares or sero, each containing a certain amount of money in a nominal amount, as stipulated in notarial deed of establishment of Limited Liability Company, deed which is required for approval by the Minister of Justice, whereas to become an alliance, it is required to place full and deposit the nominal amount of a share or more.

Based on the provisions of Article 1 number 1 UUPT, it is stated: "Limited Liability Company hereinafter called the Company is a legal entity which is a partnership of capital, established under the agreement, conducting business with the authorized share capital wholly divided into shares, and fulfilling the requirements stipulated in this law and the implementing regulation". The term of the limited liability for the shareholders can be seen from Article 3 of the UUPT which states: "The shareholders of the company are not personally liable for the engagement made on behalf of the company and are not liable for the loss of the company beyond the value of their shares".

In English Law the term of Perseroan is known as a Limited Company. Company means that the business institution held is not alone, but consists of several people who are members of a body. Limited indicates the limited liability of shareholders, in the sense of being responsible not more than and solely for the assets collected within the entity. In other words, English law is more emphasized on its liability (Ambikai and Ishan 2016; Prasetya 1996). Unlike the German law, the company is known as Aktien Gesellschaft. Aktien is a share. Gesellschaft is the set. This means that German law is more in terms of shares that characterize this form of business. According to Prasetya (1996), the term Perseroan used by Indonesia is actually a mixed between the designation used by British law and German law. On one hand, it is displayed in terms of sero or shares, but on the other side, it is also displayed as the limited liability.

The Organs of Perseroan Terbatas (Limited Liability Company)

General meeting of shareholders

It is the organ of the company which holds the highest authority in the company and the holder of any authority not submitted to the Board of Directors or Commissioners. The General Meeting of Shareholders (GMS) is set forth in Part VI article 75 up to Article 91 UUPT. GMS is the highest power holder, and held either annually or at any time (extraordinary) as needed. Although UUPT has provided a strong foundation for the development of independence and professionalism on the part of the board of directors in organizing the management of the company (Article 1 point (4) UUPT). That means, the GMS has all the powers that are not granted to directors or commissioners within the limits specified in the UUPT or the Articles of Association. The consideration is, for the owners of fixed capital by the board, although it is done indirectly through the GMS.

Based on UUPT, there are two types of GMS namely Annual General Meeting of Shareholders and other GMS, well known as the Extraordinary GMS. The Annual General Meeting of Shareholders shall be held no more

than six months after the closing of the fiscal year, while the other GMS may be held at any time based on need. Basically UUPT grants freedom to the company to self-regulate the decision-making requirements of the GMS, but in substantial matters such as the amendment of the Articles of Association, merger, consolidation, acquisition, bankruptcy and dissolution of the company, UUPT sets the minimum foundation for decision making in the GMS. Kesowo (1995) for implementation of the GMS, referred to in Article 76, GMS may also be conducted through teleconference media, video conferencing or other electronic media to enable all GMS participants to see and hear directly and participate in meetings.

The board of directors

It is the organ of the company that is fully responsible for the management of the company for the interests and purposes of the company and represents the company either inside or outside the court in accordance with the provisions of the Articles of Association. The Board of Directors of Limited Liability Companies is regulated as in Chapter VII Article 92 up to Article 107 UUPT.

The definition of the Board of Directors in Article 1 point (5) of the UUPT stipulates that the Board of Directors is the organ of the company that is fully responsible for the management of the company for the interests and purposes of the company and has a company either inside or outside the court in accordance with the provisions of the Articles of Association. So UUPT stipulates that the management of the company is done by the Board of Directors, and the "management" here is widely understood, including legal action to bind the company.

The responsibilities of the directors are regulated in detail with an emphasis on the protection of minority shareholders and creditors. The Board of Directors basically is responsible for the company and not the shareholders of the company. They are fully responsible for the management of the company for the interests and purposes of the company (Article 92 and 97 paragraph (1) UUPT).

Between the board of directors and the company, there is naturally a fiduciary duties relationship which includes the obligation for each member of the Board of Directors to perform their duties carefully, thoroughly and responsibly (duty of care and skill), must perform the interests of the company above the personal interest (duty of loyalty), and shall provide information concerning the implementation of the duty of disclosure. Among these types of liabilities, UUPT already regulates a portion of the duty of disclosure, which includes the obligation to submit annual reports to the GMS and the obligation to allow shareholders to check the books of the company.

In an effort to improve the quality of the management of the company, UUPT stipulates the requirements that must be fulfilled by a person to serve as a member of the board of directors of a company. The requirement to become a board of directors, among others, is a person capable of committing a legal act, not subject to bankruptcy, or a person convicted of a criminal offense against the state finances within 5 (five) years before his appointment as a director (Article 93 of the UUPT). Also it regulates the matters relating to the appointment and dismissal of directors, as well as the obligation to carry out the management of the company (Articles 95, 105 and 106 UUPT).

Board of commissioners

It is the organ of the company which is in charge of supervising in general and or special and giving advice to the Board of Directors in running the company. Commissioners are regulated in Chapter VII, Article 108 to Article 121 of UUPT. Unlike the KUHD (Indonesian Book of Trade Code), the existence of Commissioners in UUPT is an obligation. Even an public company, or a company that issues letter of debt recognition, or performs a fiduciary function, is required to have at least two commissioners.

There is a function of the Board of Commissioners as the supervisor of the Board of Directors' policy, in running the company and as advisor to the Board of Directors (Article 1 point (6) UUPT). In order to enable the effectiveness of the commissioner's function, the same requirements are applied to the board of directors and commissioners (Article 110 and 111 of UUPT). The provisions on the liabilities of the Board of Directors shall also apply to the Board of Commissioners, especially if they are in a position to conduct the Company's management in certain matters or fiduciary duties (Article 114 UUPT). And must report about their share ownership to the company. With the submission of the ownership report, it can prevent the occurrence of actions that contain conflict of interest causing disadvantage to the company (Article 116 UUPT).

BUMD (Regional-Owned Company) Regulations in Indonesia

The Development of Regional-Owned Enterprise in Indonesia, prior to the enactment of Law No. 23 Year 2014 on Local Government has gone through a long history and different terms used, as the rules below:

1. In the Law No. 5 Year 1962 on Local Company, the term used is Local Company.
2. Minister of Home Affairs Instruction No. 5 Year 1990 on the Change of Shape of BUMD into Two Forms Perumda and Perseroda, changed the term of Local Company to BUMD (Regional-Owned Enterprises), but this instruction is not followed by the other implementing regulation.
3. Minister of Home Affairs Regulation No. 3 Year 1998 on Legal Entities of BUMD, BUMD in this rule is divided into two, namely Local Company and Limited Liability Company.
4. From Law No. 23 Year 2014 on Local Government, with the existence of this Act the Law No. 5 Year 1962 on Local Company shall become invalid, but the implementing regulations as long as they are not contradictory to the Local Government Law are still valid, as Article 342 paragraph (2) of Law No. 23 Year 2014.

In Article 331 Paragraph (3) of the Local Government Law, it is stated: "BUMD consists of Regional Public Companies and Local Liability Companies" so that the form of legal entity is different from before and that there is a change in provision of legal form of BUMD which was originally Regional Company and Limited Liability Company became Regional Public Companies and Local Liability Company.

Article 402 of the Local Government Law (2): states "(2) BUMDs that have existed before this Law is in force shall be obliged to comply with the provisions of this Law within a period of no more than 3 (three) years from the date of the enactment of this Law.

METHODOLOGY

The method used in this research is normative law method, which is a process to find a rule of law, legal principles, and legal doctrines to answer the legal problem faced. Normative legal research is conducted to generate new arguments, theories or concepts as prescriptions in solving the problems faced (Peter 2005). The type of research used in this study is the type of research on systematic laws and legal concepts. Research was conducted using primary legal materials and secondary and tertiary materials. The analytical technique used in the writing of this research is the legal analysis techniques, which is the analysis that prioritizes the depth/quality of legal materials, not from the large amount of legal materials. Analytical methods use deductive thinking logic.

RESULTS AND DISCUSSION

The Concept of Limited Liability on Companies as Legal Entity

Basically a legal entity is an entity that can have the rights and duties to commit an act like a human being, has his own wealth, and is sued before the court. This legal entity is human engineering to form a body having the same status, position, and authority as humans. Because this body is the result of human engineering, then this body is called as an artificial person. In law, the term person (person) includes a personal being, i.e., man (natuurlijk persoon) and legal person (persona moralis, legal person, legal entity, rechtspersoon). Both of them are the subject of law, so that they both have rights and legal obligations. In other words, Satrio (1999) said, they have legal rights and/or obligations recognized by law.

Since the legal entity is the subject, it is an independent body of the founder, member, or investor of the agency. This entity can conduct business activities on its own behalf like human beings. Business runs, property ridden, contracts made all on behalf of itself. The entity is like a human being having legal obligations, such as paying taxes and applying for business licenses on behalf of himself (Hamilton 1996).

Pramono (2006), Hartono (1985) states that the philosophy of incorporation of legal entities is that with the death of its founder, the assets of the legal entity are still expected to be useful for others. Therefore, the law creates a creation of "something" which by law is then considered or acknowledged as an independent subject just like a person (natuurlijk persoon or natural person). Then "something" is by the science of law referred to as legal entities (rechtspersoon or legal person). In order for the legal entity to act as a natural person, it is necessary for the organs

as a tool for the legal entity to establish a legal relationship with a third party.

Theoretically, both in common law and civil law countries are known some doctrines which became the theoretical basis of the existence of legal entity. There are several notable concepts of legal personality, namely (Zimmer 2005).

Legal personality as legal person

According to this concept, legal entity is a creation or human engineering, and the body is the result of a human fiction. The legal capacity of this entity is based on positive law. Because the personality of this legal entity is based on positive law, the state recognizes and guarantees the entity's legal personality. Legal entities that have the rights and obligations are treated the same as humans or "real" person.

Corporate realism

According to this concept the legal personality of a legal entity is derived from a reality and not created by the incorporation process, namely the establishment of a legal entity based on legislation. A legal entity does not have its own state-recognized personality. This legal personality is not based on fiction, but is based on the natural reality of a human being.

Theory of the zweckvermogen

According to this concept a legal entity consists of a certain amount of wealth used for a particular purpose. This theory can be traced to a decisive legal system - such as German law - that institutions in public law (Anstalten) and endowment in civil law (Stiftungen) are legal entities determined by an object and purpose, and not determined by the individual members.

Aggregation theory

This aggregation theory is also called the "symbolist" theory or "bracker" theory, and in the modern version known as "corporate nominalism" theoretically related to the theory of fiction. This individualistic view holds that a human being can be a subject or a person with rights and obligations arising or born out of a legal relationship and, thereby become a legal entity. According to the concept of corporate personality, this legal entity is merely a collective name or a symbol for the members of the corporation.

Modern views on legal personality

Today's modern national law combines realist and fictionist theories in managing domestic and international business relations, on one hand acknowledging the social realities behind the legal personality, and on the other hand, treating the legal entity in some aspects as a fiction.

The concept of a company as a legal entity whose wealth is separate from its shareholders is a trait that is considered important for corporate status as a legal entity that distinguishes it from other forms of enterprise. The limited nature of liability is a statement of the principle that shareholders are not personally liable for the obligations of the company as a legal entity whose wealth is separate from its shareholders. The principle of "continuity of existence" affirms the separation of corporate wealth from its owners. The legal entity itself is not affected by death or bankruptcy of shareholders. Legal entities are also not affected by changes in corporate ownership structures. As a result, company shares are traded freely.

Purwosutjipto (1978) put forward several conditions for an agency to be categorized as a legal entity. The requirement that a body be considered a legal entity shall include: The existence of property (rights) with a

specific purpose separate from the personal wealth of the allies or founders of the agency. Strictly speaking there is a separation of the company's wealth from the personal wealth of the allies;

- a. The purpose of interest is mutual interest.
- b. The existence of some people as a board members.

These three elements are material (substantive) elements for a legal entity. Then another requirement is a formal requirement, namely the recognition of the state that recognizes a body as a legal entity.

To complement the understanding of this limited liability, note the positive and negative side of this limited liability. The benefits or positive side of the mechanism of limited liability are as follows: (Vandekerckhove 2007).

a. Give confidence to passive investors. These are investors who do not participate in management and they are involved in the company to invest the money only. Passive investors like them are generally not going to invest their money into a company that includes unlimited attributes of responsibility. For example, a business entity in the form of associations (maatschap), Firm, and CV (commanditaire vennootschap).

b. Open opportunities for large-scale enterprise, where shareholders will not be able to assume risk and where it is possible to involve thousands of investors in corporate management.

c. In order to increase the amount of investment, capital accumulation, and portfolio diversification that encourage more economically beneficial risk taking.

d. Encourage the transfer of shares more freely.

e. Strongly considered as something that is needed by the capital market in a country.

f. From the shareholders' side, this limited liability avoids them of contractual costs involving unlimited liability, especially in the case of cash transactions conducted by the company.

g. Save the insurance costs that should be paid by shareholders if their liability is unlimited (liability insurance).

Despite of the complete benefits or the positive side of limited liability, we can still not escape from the negative side, like the following: (Vandekerckhove 2007).

a. Contains the potential moral hazard that may arise as a risk of failure of shareholders against its creditors.

b. Limited liability also does not necessarily reduce information and monitoring costs as previously described, just the opposite may increase the costs.

In accordance with Article 7 paragraph (4) of the UUPT, the status of legal entity obtained since the establishment deed was approved by the Minister of Law and Human Rights of the Republic of Indonesia. This means that in principle shareholders are not personally liable for all engagements made by and on behalf of the company with third parties, and therefore are not liable for any losses suffered by the company. The shareholders are solely responsible for the full deposit of the value of shares that have been taken part by it (Chidir 1987).

UUPT affirms, "The shareholders of the Company shall not be personally liable for any commitments made on behalf of the Company and shall not be liable for losses of the Company that exceed the shares held." (UUPT Article 3 Paragraph (1) As explained in the Elucidation, such limited liability is an important feature of the Company that limits its shareholder liability to the amount of share deposit it owns and does not cover its personal property.

Principle of Limited Liability Tanggung and Doctrine (Piercing the Corporate Veil) in BUMD in the Form of Local Liability Companies as a Legal Entity

BUMD in the form of local liability companies

Before the birth of the Regional Government Law, the Regulation of the Minister of Home Affairs Number 3 of 1998 on Legal Entities of BUMN is the regulation of the form of BUMD Law. Article 2 of the Minister of Home Affairs Regulation No. 3 Year 1998 on Legal Entities of BUMD states that the legal forms of BUMD may be Perseroan Daerah (Local Company) or Perseroan Terbatas (Limited Liability Company).

Regulation of Local Company is based on Law No. 5 Year 1962 on Local Companies and Limited Liability Company is based on Law No.40 Year 2007 on Limited Liability Companies. Then after the birth of the Law of the

Local Government we apply the principle of *lex superior derogat legi inferior* which means that the higher

status of law override the lower.

The regulation of Regional-Owned Enterprise in the Minister of Home Affairs Regulation No. 3 Year 1998 on Legal Entity of BUMD is ruled out by Law of Local Government which equally give arrangement about BUMD but the hierarchy is higher. This Local Government Law, specifically regulates the BUMD in Chapter XII consists of 12 articles, starting from Articles 331 to 343 and spread in several chapters, such as Chapter I General Provisions Article 1 point 40, which provides an understanding of BUMD, as well as some articles that become very important to be observed in relation to the existence of BUMD, such as Article 134 paragraph (1) letter c, 188 paragraph (1) letter c, 298 paragraph (5) letter c, 304 paragraph (1) and (2), 320 paragraph (2) letter g, 402 paragraph (2), 405 and Article 409.

With the enactment of the Local Government Law in accordance with Article 409 expressly states that: With the coming into effect of the Local Government Law revoking and declaring Law Number 5 Year 1962 on Local Company not applicable, which is before the enactment of the Local Government Law, the two laws become the legal basis of the existence of BUMD in Indonesia, so that existing enterprises that have existed before the new Local Government Law apply, all BUMDs in Indonesia must adjust to the provisions of the new law within a period of no more than 3 (three) years from the Local Governance Law.

BUMD establishment for a local is not a necessity, but becomes a consideration for the region as a means in order to provide services to the community. The establishment of a BUMD shall be stipulated by a Local Regulation to provide the legitimacy of BUMDs based on regional needs, and the feasibility of the BUMD business field to be established with the form of BUMD business criteria related to the nature of public services as described in general explanation of Article 331 paragraph (5) namely drinking water, markets and public transport in the region. The aforementioned article has also affirmed the type and legal form of BUMDs, namely Regional Public Companies and Local Liability Companies.

Article 1 point 40 defines BUMD as: "Regional-Owned Enterprises, hereinafter abbreviated as BUMD, is a business entity wholly or largely owned by the Region", and Article 331 paragraph (1), (2), and (3) of the Local Government Law: Establishment of BUMD is by Local Regulation. Then, in the form of Local Liability Company it shall follow the provisions of Limited Liability Company Law". So the arrangement of the way of establishment and management of BUMD in the form of Local Liability Company follow the procedure of establishment and management of Company that exist in UUPT.

The Application of Limited Liability on Local Liability Company

In this section, the authors jointly juxtaposed the discussion of the Limited Liability Principle and the doctrine of Piercing The Corporate Veil. This is because both have interconnected relationships with each other. That is, the limited liability of the shareholders of Limited Liability Company as a principle of responsibility is the lure of investors to choose a business entity in the form of this entity. In certain circumstances, the characteristic of limited can not be maintained anymore. The modern world of corporations has created a mechanism that can tear down the "corporate curtain" of limited liability with the doctrine of Piercing The Corporate Veil. The main purpose of this doctrine is to provide protection for potentially disadvantaged third parties due to the principle of limited shareholder responsibilities.

Limited Liability itself arose with the growth of the nineteenth century and is steadily increasing. (Vandekerckhove 2007). The increasing need for investment and capital structuring became a business trend at that time as a distinct impetus to create bargaining positions for investors as a capital supplier, eventually giving rise to a limited "system" of responsibility from them.

Furthermore, the piercing (or lifting) of the corporate veil or later translated into Indonesian as "the disclosure of the company" is a concept of accountability applicable within the scope of corporate law. In principle, this doctrine is a breakthrough in corporate law, especially for companies in the form of limited liability company, for the limited liability applicable in this form of company. The concepts put forward by this doctrine can not be separated from the discussion of the emergence of the need for limited liability of members or shareholders of a corporation characterized by the separation of legal personality between a corporation and its shareholders.

Compared to other forms of business entities, limited liability company is a form of business entity most

in demand by people who want to invest into a business. The main attraction of this company form is the limited liability of its members. Compared to other business entities, for example a Firm or CV, the responsibility of its members or allies is bear and personal responsibility. This limited liability means that the responsibilities of members or shareholders are limited to the number of shares held. Surely this is more secure for the interests of shareholders, because whatever the circumstances that require the fulfillment of the responsibility of the company to third parties, enough to be filled with corporate assets only. The personal assets of the members of the limited liability company will not be included in the fulfillment of the responsibilities of such third parties given the mechanism of this limited liability. This limited liability not only applies to shareholders, but is also extended to other company organs such as directors and board of commissioners.

Limited Liability Company is a legal entity that becomes a medium or a "vehicle" to conduct a variety of commercial activities and manage the company's wealth. Now, along with the rapid capital traffic, ideas, technology, goods, and services involve the existence of the company as a "vehicle" in various lines. Organization for Economic Co-operation and Development (2001) When the company plays an important role in the global economic arena, this "vehicle" is also in certain circumstances used falsely for the sake of fulfilling illegitimate or illegal purposes. At that time, limited liability in the form of limited liability company becomes a mechanism which, on one hand, creates "protection" for members of the company or shareholders who abuse the limited nature of such liability for their personal interests, while on the other hand, it creates harm to the interests of interested third parties against the company or what is now known as stakeholders. In other words, limited liability has become a "tool" or corporate veil or precisely a shield to protect the interests of members or shareholders of the company.

Black's Law provides an understanding of the doctrine of piercing the corporate veil as follows: "The legal act which results in personal responsibility for unlawful acts committed by employees of the company (equivalent manager of top managers), directors and shareholders of the company). Organization for Economic Co-operation and Development (2001) While the corporate veil itself can be understood as, "The legal assumption that the acts of a corporation are not the actions of its shareholders, so that the shareholders are exempt from liability for the corporation's actions "(The legal presumption that the actions of a company are not the actions of its shareholders, so that its shareholders are exempt from responsibility for actions taken by the company).

Implementation of legal doctrine as mentioned above is stated in Article 3. UUPT:

(1) The shareholders of the Company shall not be personally liable for any engagement made on behalf of the Company and shall not be liable for any loss to the Company over its shares.

(2) The provisions referred to in paragraph (1) shall not apply if:

- a. The requirements of the company as a legal entity have not been complete.
- b. The shareholders concerned either directly or indirectly in bad faith utilize the Company for personal benefit.
- c. The shareholders concerned are engaged in unlawful acts committed by the Company.
- d. A shareholder directly or indirectly violates the law using the Company's assets, resulting in Company's insufficient wealth to pay off the Company's debt.

Article 114 paragraph (2): "Every member of the Board of Commissioners shall be in good faith, prudent and responsible of carrying out supervisory duties and giving advice to the Board of Directors as referred to in Article 108 paragraph (1) for the benefit of the company and pursuant to the intent and purpose of the company ".

Although the shareholder of the company based on the theory of the legal entity concerned only has the responsibility of the shares owned in the company, but considering that the authority of the shareholders through the GMS may appoint and dismiss members of the Board of Directors and Board of Commissioners, give certain consent to the legal action of the Board of Directors and may provide direction and/or command or policy of the company, if the shareholders in conducting the GMS use its authority to make the company to harm the stakeholders, for example, use the company as vehicle in doing criminal act, then such actions of the shareholders may be held liable not only for the shares held but shall be held liable to the private property concerned and even criminal liability.

The members of the Board of Directors as the party representing the company and the management may take any action against the company that is responsible, but based on this legal doctrine, in managing the

company must run it according to the intent, business and activities as well as corporate objectives set forth in the company's articles of association and - the prevailing law. In the case of one or more of the members of the Board of Directors in violation of the Principles, the members of the Board of Directors concerned may be liable for private liability up to the personal property concerned and criminal liability.

Thus, due to the regulation on the establishment and management of BUMD in the form of a Local Liability Company following the procedures for the establishment and management of the Company in UUPT, it can be said that the application of Piercing the Corporate Veil doctrine in BUMD in the form of a Local Liability Company is in case of an act committed by the person behind the company. As mentioned earlier, this doctrine is a doctrine to open the curtain of the persons behind a legal body, whether shareholders, members of the Board of Directors or members of the Board of Commissioners. The parties who become private organ of the Company which initially have immunity, then based on doctrine of Piercing the Corporate Veil they can be solicited responsibility until their personal property, that is if they do not perform their function as an organ which has duty, authority and responsibility regulated in the Articles of Association and legislation. Implementation of legal doctrine as mentioned above is stated in Article 3 of UUPT.

CONCLUSION, RECOMMENDATIONS AND IMPLICATIONS

1. The concept of a legal entity is a subject, it is an independent entity of the founders, members, or investors. This entity can conduct business activities on its own like human beings. The concept of a company as a legal entity whose wealth is separate from its shareholders is a trait that is considered important for the status of the corporation as a legal entity that distinguishes it from other forms of enterprise. The characteristic of limited liability is a statement of the principle that shareholders are not personally liable for corporate liability as a legal entity whose wealth is separate from its shareholders. Thus, the concept of limited liability in the company is, due to the separation of the company's wealth from the owner. UUPT assert, "The shareholders of the Company are not personally liable for any commitments made on behalf of the Company and shall not be liable for losses of the Company that exceed the shares held.

2. BUMD management at this time must adjust to the settings and terms used in the Local Government Law. The form of BUMD as a Legal Entity can take the form of Regional Public Companies and Local Liability Companies. If the form of a Local Liability Company is used, it must follow the procedures of establishment and management of the Company that exist in UUPT. Article 3 UUPT has adopted the application of Piercing the Corporate Veil doctrine, which unfolds the limited responsibility of a company. This arrangement provides an exception in the event of an act committed by a person who is behind the company. This doctrine opens the curtain of the persons behind a legal body, whether shareholders, members of the Board of Directors or members of the Board of Commissioners. The parties who become private organ of the Company which initially have immunity of liability, then based on Piercing the Corporate Veil doctrine they can be solicited responsibility until their personal property, that is if they do not perform its function as organ which has duty, authority and responsibility regulated in the Articles of Association and legislation.

LAW AND OTHER REGULATIONS

Kitab Undang-Undang Hukum Dagang (KUHD)

Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas (Lembaran Negara Republik Indonesia Tahun 2007 Nomor 106, Tambahan Lembaran Negara Republik Indonesia Nomor 4756).

Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 244, Tambahan Lembaran Negara Republik Indonesia Nomor 5587), sebagaimana telah diubah dengan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 246, Tambahan Lembaran Negara Republik Indonesia Nomor 5589), sebagaimana telah diubah Undang-Undang Nomor 9 Tahun 2015 Tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah (Lembaran Negara Republik Indonesia Tahun 2015, Nomor 58, Tambahan Lembaran

Negara Republik Indonesia Nomor 5679).

Acknowledgment

Kitab Undang-Undang Hukum Dagang (KUHD) Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas (Lembaran Negara Republik Indonesia Tahun 2007 Nomor 106, Tambahan Lembaran Negara Republik Indonesia Nomor 4756). Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 244, Tambahan Lembaran Negara Republik Indonesia Nomor 5587), sebagaimana telah diubah dengan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 246, Tambahan Lembaran Negara Republik Indonesia Nomor 5589), sebagaimana telah diubah Undang-Undang Nomor 9 Tahun 2015 Tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintah Daerah (Lembaran Negara Republik Indonesia Tahun 2015, Nomor 58, Tambahan Lembaran Negara Republik Indonesia Nomor 5679).

REFERENCES

- Ambikai., and Ishan, Z. 2016. "Comparative Analysis of Law on Tort of Deviant Behaviors in Malaysia and India." *Journal of Advances in Humanities and Social Sciences* 2(4): 243-249.
- Chidir, A. 1987. *Legal Entity*. Bandung, Indonesia: Alumni.
- Endang, K., and Risal. 2017. "The Effect of Investment Decision Financing Decision Dividend Payment Policy and Company Size." *Journal of Administrative and Business Studies* 3(2): 105-113.
- Hamilton, R. W. 1996. *The Law of Corporation*. Saint Paul, MN: West Publishing Company.
- Harahap, M. Y. S. H. 2011. *Company Law Limited*. Jakarta, Indonesia: Sinar Grafika.
- Hartono, S. R. 1985. "*Forms of Co-operation In A Commerce World*." Ph.D. dissertation, Faculty of Law, University of Indonesia, Depok, Indonesia.
- Kesowo, B. 1995. "Some Principles In The Limited Liability Company Law." *Newsletter Magazine*, Retrieved March 24, 2015 (<http://p3i.or.id/>).
- Organisation for Economic Co-operation and Development. 2001. "Behind the Corporate Veil Using Corporate Entities for Illicit Purposes." *OECD Publication*, Retrieved February 11, 2015 (<http://goo.gl/rAo3wK>).
- Peter, M. M. 2005. *Legal Research*. Jakarta, Indonesia: Prenada Media.
- Pramono, N. 2006. "State Property Separated By Law 19 of 2003 on SOEs," in *Problems About Business Law*, edited by S. R. Hartono. Sinar Grafika, Yogyakarta: Indonesia.
- Prasetya, R. 1996. *The Company's Independent Position*. Bandung, Indonesia: PT Citra Aditya Bakti.
- Purwosutjipto, H. M. N. 1978. *Understanding the Principal of Indonesian Trade Law*. Jakarta, Indonesia: Penerbit Djambatan.
- Satrio, J. 1999. *Personal Law Part I Persoon Natural*. Bandung, Indonesia: Citra Aditya Bakti.
- Vandekerckhove. K. 2007. *Piercing the Corporate Veil*. Deventer, Netherlands: Kluwer Law International.
- Yoo, J., Lee, M. K., and Lee, W. S. 2016. "Asymmetrical Corporate Responses to Economic Information: Applying the Firm Size Effect." *Journal of Administrative and Business Studies* 2(1): 29-34.
- Zimmer, D. 2005. "Legal Personality", in *400 Years of Company Law*, edited by E. G. Jager. Deventer, Netherlands: Kluwer Legal Publisher.