INSPIRING LAW JOURNAL
VOL. 4 NUMBER 2

IMPLEMENTATION OF PIERCING THE CORPORATE VEIL IN THE PROTECTION OF MINORITY SHAREHOLDERSIN HODING COMPANIES

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ABSTRACT

Progress of the company is one indicator of a country's economic progress, which means that the company has a major role in supporting the progress of the country, especially in the areas of taxation, which in turn is useful for the welfare of the community. By realizing the importance of meaning and existence of companies, we need a legal order or regulations regarding the company (law firm) including how to order the establishment of a company until the company has a legal status (legal entity) and the rights and obligations of organ-organs, including the provision of legal protection for minority shareholders from majority shareholders.

This study uses normative research method with presceptive analytical, refers to the values and legal norms contained in the legislation. As the primary legal materials used in this study is the Act No.40 Year 2007 regarding Limit. Liability Company.

The conclusion from this study show Piercing the corporate veil should be done in the protection of minority shares demonstrated that a limited liability company often can not be separated or removed from the will of the parties and become a shareholder of the Limited Liability Company. In the process of implementation of the coporate veil piercing in a limited liability company must meet the elements of shareholders' equity between the majority and minority shareholder

Keywords: Implementation, Protection, Minority Shareholders, the Company Limited, Holding.

A. Introduction

In the development of business law in Indonesia, there are a number of cases related to the doctrine of piercing the corporate veil. A number of cases have been filed in court and the courts have uncovered the company's veil. Even so, the principle of limited liability to shareholders remains strong and unshakable. In general, lawsuits are aimed at the Board of Directors or controlling shareholders, the court tears the company's veil, on the basis that the company is only used as a mask or agent of the shareholders.[1]

In responding to or tearing the company's veil (doctrine piercing the corporate veil), the court pays attention to the substance or practical circumstances of the formal form of the limited liability company. The court unveils the company's veil if the shareholders intentionally or otherwise use the company as a tool to obtain certain profits or to avoid obligations. In this case, there is a possibility of misuse of the company's form, the court may consider the

[1] Chatamarrasjid Ais, *Penetration of Actual Sheets and Actual Questions, Corporate Law*, (Bandung: PT. Cipta Aditya Bakti, Cet 1, 2004), page 1.

company only or solely a cloak or sham and the court will reveal the company's veil. It is hoped that the corporate veil piercing needs to be carried out in the protection of minority shares, so that the implementation of corporate veil piercing in a company can protect minority shareholders in the holding company. Therefore, corporate veil piercing needs to be carried out in the context of minority shareholder protection, so that its implementation can be beneficial for all elements related to a company's account as well as the protection of minority shares in the holding company.

The interests of minority shareholders in a company are often ignored or even harmed. This is due to the strong perception that the most meritorious in enlarging the company's financial coffers is the majority shareholder. The control of the percentage of share volume or capital income to the company, provides strong support or conclusive evidence of this perception. This perception is further strengthened by the adherence of the principle of one share one vote in the company's law. So that in every GMS, minority shareholders will never be able to win the decision taken through voting. At the operational level, the composition of the board of directors or commissioners is always controlled or controlled by the majority shareholders.

Ownership of shares by the parent company against the shares of the subsidiary company and against the shares of other companies is allowed if the ownership is in the form of group ownership and pyramid ownership and is prohibited if the form of ownership is own ownership by the company, ownership by subsidiaries, cross-ownership. Because in own ownership by the company, ownership by subsidiaries and cross-ownership can cause a concentration of power by the company's leader or the majority shareholder, so that later there will be arbitrariness in the limited company because in running the company there is no control and supervision. This happens because the ownership and management of the company are under one control. Namely the directors as representatives of the company, as owners and at the same time as organs that perform management and representative functions.

Based on the description mentioned above, the researcher is interested in conducting research in the form of a scientific paper with the focus of the title being "The Application of Piercing the Corporate Veil in the Protection of Minority Shares in Holding Companies".

B. Research Methods

A study cannot be called research if it does not have a research method.[2] Research methods are one of the factors of a problem that will be discussed. The study was conducted

[2] Hanifah, I., Hariyanto, H., Ginting, L., Koto, I., & Syafriana, R. (2026). Legal Protection of Indonesia's Fisheries from Foreign Investment: A Social-State Approach. *IUS Journal of Law and Justice Studies*, *14*(1).

using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from research results, studies, and reviews of several writings which are then summarized into a scientific paper.[3]

C. Discussion

1. The Need to *Piercing The Corporate Veil* in Minority Stock Protection

Piercing the corporate viel is sometimes also referred to as "*lifting the corporate veil*". The application of this principle has a main mission, which is to achieve "justice", especially for minority shareholders and third parties who have certain ties with the company. The term "*Piercing the corporate viel*" literally means to reveal the curtain / veil of the company. [4] *Piercing the corporate viel* is a principle that is interpreted as a process to shift responsibility to the shoulders of other people or companies, for legal acts committed by a perpetrator company (legal entity), without looking at the fact that the act in question was actually carried out by the company and not the perpetrator personally. In such a case, the court will ignore the legal entity status of the company, and impose responsibility on the perpetrator by ignoring the principle of limited liability from the company as a legal entity that is usually enjoyed by them. In doing so, it is usually said that the court has *pierced the corporate veil*.[5]

Usually, the theory *of piercing the corporate veil* appears and is applied when there is a loss or lawsuit from a third party against the company. The principle of *piercing the corporate veil* can legally be enforced between if the following things occur:

1. Fraud occurs.
2. An injustice was obtained.
3. The occurrence of *oppression*.
4. Not meeting the elements of the law
5. Excessive shareholder dominance.
6. The company is the *alter ego* of its majority shareholders.[6]

The Limited Liability Company Law Number 40 of 2007 recognizes the theory *of piercing the corporate veil* by imposing responsibility on the parties to the company's organs,

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[3] Simatupang, R. S. A., Hanifah, I., & Mansar, A. (2025). The Concept of Restitution as Legal Accountability in the Crime of Human Trafficking. Pena Justisia: Media Communication and Legal Studies, 24(1), 3554-3462.

[4] Chaidir Ali, *Legal Entity*, (Alumni: Bandung., 1999, p.27.

[5] *Ibid,* p.29

[6] *Ibid,* p.35

including the burden of responsibility transferred to the shareholders, as explained that in the Indonesian legal system the principle of the independence of the legal entity of a limited liability company is expressly recognized by the Limited Liability Company Law Number I of 1995, through Pasa1 3 paragraph (1). Article 3 paragraph (1) reads as follows: The company's shareholders are not personally responsible for the engagement made on behalf of the company and are not responsible for the company's losses exceeding the value of the shares that have been taken.[7]

As has also been explained, the explanation of PasaI 3 paragraph (2) of the Limited Liability Company Law Number 40 of 2007, mentions the provisions regarding the separation of legal responsibilities between the company and the individual shareholders as intended in Article 3 paragraph (2) further emphasizes the characteristics of only being responsible for the value of the shares taken and does not include his personal property.

This provision does not apply absolutely, because there are many exceptions. These exceptions indicate that indeed the Limited Liability Company Law Number 40 of 2007 recognizes the doctrine of *piercing the corporate viel*. In particular, those who impose responsibilities on shareholders can be categorized as follows:[8]

a) Provisions in Article 3 paragraph (2) of the Limited Liability Company Law Number 40 of 2007

Pasa1 3 paragraph (2) of the Limited Liability Company Law Number 40 of 2007 *introduces the* responsibilities of shareholders of a limited liability company in the following 4 (four) things:

1. The requirements of the company as a legal entity have not been fulfilled or are not met. In this case, the sham holder (in his appearance as the founder/promoter) of the company is responsible until the legalization of the company's legal entity by the Minister of Justice. After that, the responsibility shifts to the board of directors until registration and announcement. After registration and announcement, the responsible person is only the company concerned, unless there is a reason to apply the theory *of piercing the corporate viel* karma for other reasons.
2. The shareholders concerned, either directly or indirectly in bad faith use the company solely for personal interests.

[7] *Ibid*, p. 73
[8] Gatot Sapramono, *Bottas Company Law*. (Jakarta :D Bridge, 2004). p.364.

3. The shareholders concerned are involved in unlawful acts committed by the company.
4. The shareholders concerned, either directly or indirectly, illegally use the company's wealth, which results in the company's wealth being insufficient to pay off the company's debts.

b) Provisions in Article 7 paragraph (5) of the Limited Liability Company Law Number 40 of 2007

A limited liability company must have at least 2 (two) shareholders, from a total of 2 (two) people from this shareholder until any time must be maintained by the company. Article 7 paragraph (1) of the Limited Liability Company Law Number 40 of 2007. Provisions that require a limited liability company to have a minimum of 2 (two) shareholders. If in its course, a limited liability company for any reason ends up only having 1 (one) shareholder. In this case, after 6 (six) months from the time of the start of the transfer of 1 (one) shareholder, it is enough. If after the 6 months have passed, the shareholders are still only 1 (one) person. In such a case, the *piercing the corporate veil* theory applies, meaning that the third party is responsible not only the company, but also the individual shareholder. Even in this case, at the request of the interested party, the district court can dissolve the company. Such a provision is contained in Article 7 paragraph (1), the shareholders of a limited liability company must be more than 1 (one) person because the company is in principle a contract between shareholders, and a contract must be at least 2 (two) people, as mentioned in the official explanation of Article 7 paragraph (1) of the Company Law Number I of 1995.[9]

Provisions in other articles of the Limited Liability Company Law Number 40 of 2007. Apart from the articles mentioned above, there are still things that result in the consequences of being placed on the shoulders of the shareholders, even though the liability is the result of actions taken by the limited liability company, which *nota bene* is a legal *entity*. For example, if the capital that must be paid up turns out to be not paid. In this case, the shareholders do not carry out their duty to deposit capital, even though each share must be fully paid up by its shareholders at the time of ratification by the Minister of Justice, or at the time of further issuance. Article 56 paragraph (4) of the Limited Liability Company Law Number 40 Tabun 2007. If the action is detrimental to the company or a third party, then *the doctrine of piercing the corporate veil* is worth applying.[10]

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[9] *Ibid*, p. 273
[10] *Ibid*, p. 280

The burden of responsibility is transferred to the board of directors in principle and classically, with the application of *the piercing the corporate veil* theory, the shareholders who are usually asked to be responsible for the losses incurred by the company. However, in the development of the application of the *piercing the corporate veil theory* , the burden of responsibility is also transferred from the company to other parties other than the shareholders and the burden of responsibility is transferred to the shoulders of the directors or commissioners.[11]

The responsibility of the board of directors due to the application of *the piercing the corporate veil theory*, from another point of view, can also be seen as a result of the application *of the fiduciary duty doctrine* of the directors concerned. Limited Liability Company Law Number 40 of 2007, the *piercing the corporate veil* theory can be applied which can cause the board of directors to be responsible for the activities carried out by the company.

The responsibility of the board of directors due to the application of *the piercing the corporate veil* theory is carried out in the following matters:

a) The Board of Directors does not carry out *fiduciary duties* to the company
b) The company has not yet made a registration and announcement.
c) The annual calculation document is incorrect.
d) The board of directors was wrong and caused the company to go bankrupt.
e) Unsuitable capital. The Company operates inappropriately.

Several things that apply to the *piercing the corporate* theory also apply to commissioners. In certain cases, the commissioner can also be personally asked to be responsible for the activities actually carried out by the company. It's just that compared to the shareholder and the board of directors, the commissioner is the party that is least pursued by the *piercing the corporate veil theory*. This is because the position and authority of the commissioner in the company is only as a supervisor. On the other hand, the board of directors, for example, who has the task of representing and carrying out the company's activities, or the shareholders as the owner of the company/investor, so that their responsibility becomes greater. Limited Liability Company Law Number 40 of 2007 imposes the principles of *piercing the corporate veil* on commissioners, namely in the following matters:[12]

a. The Commissioner does not perform *fiduciary duty* to the company

[11] Dean Novel, *Op.Cit*, p.78.
[12] Abdul R. Saliman, *Business Law for Companies* (Jakarta: Kencana, 2010, p. 125.

Just like the board of directors, the commissioner in accordance with the scope of his duties as a supervisory body, is also subject *to fiduciary duty*. The principle *of fiduciary duty* for int commissioners is derived from Article 108 paragraph (1) of the Limited Liability Company Law Number 40 of 2007. Article 108 paragraph (1) states as follows: "The Commissioner is obliged in good faith and full responsibility to carry out his duties for the interests and business of the company". If the commissioner is guilty (intentionally) or negligent in carrying out *the fiduciary duty* obligation , namely not in good faith and responsible for carrying out his duties for the benefit of his company, then the commissioner is personally responsible.

b. Incorrect annual calculation documents

Just like the provisions for the board of directors, the provisions for commissioners also justify the application of *the piercing the corporate veil* theory to the commissioners, meaning that in certain cases, the commissioners can collectively be held accountable for the activities that are actually carried out by the company. In the case of activities related to incorrect annual calculations.

If the annual report turns out to be incorrect, with ordinary proof, then the board of directors turns out to be incorrect, the commissioner is also responsible for the sequential procedure, based on *the doctrine of piercing the corporate veil* as stipulated in Article 61 and Article 62 of the Limited Liability Company Law Number 40 of 2007. In this case, the Limited Liability Company Law Number 40 of 2007, provides reverse proof for the members of the board of directors or commissioners concerned. Because according to Article 97 paragraph (5) and Pasa1 114 paragraph (5) of the Limited Liability Company Law Number 40 of 2007. The members of the Board of Directors or Commissioners are exempt from their responsibilities, if it is proven that the circumstances in question are not due to their fault. Thus. There may be members of the Board of Directors or the Board of Commissioners who must be legally responsible, but the Board of Commissioners or other members of the Board of Directors can prove their innocence so that they are not responsible.[13]

Shares are *stocks* , namely proof of ownership or share of the capital of a limited liability company that can be traded both inside and outside the capital market which is a *claim* on the company's income and assets and gives the right to cleviden in accordance with the share of capital in the sector as determined in the company's articles of association according to article 15 paragraph (1) of the PT Law No. 40 of 2007. The majority shareholder is *the majority*

[13] *Ibid*, p. 173.

stockholder where the shareholder has an interest in supervising a company, *the percentage* of ownership is more than 50% of the shares with the aim of keeping the company stable in the stock exchange (*go public*), where the most shares can be obtained by combining minority shareholders so that it reaches more than 50%.[14]

Minority shareholders as described above are if a legal entity or individual shareholder representing shareholding is at least 10 (ten) percent of the total number of shares of a company, then the legal entity or individual shareholder can be categorized as a minority shareholder.[15] Like shareholders in general, minority shareholders also have the same rights as other shareholders (majority shareholders, namely:[16]

a) The right to attend and vote at the GMS based on the principle of one share one vote.
b) The right to obtain information about the company on a regular and regular basis that allows a shareholder to make an appropriate and useful decision.

In order for the minority shareholders to be elevated to their status, especially for companies with many minority shareholders, it is necessary to have some kind of bond between fellow minority shareholders. For example, it is made in the form of *an association* of minority shareholders or independent shareholders in the company and the association is given certain rights and powers at the discretion of the company, although of course the rights and powers are not as great as those owned by the majority shareholders.[17]

Minority shareholders have a right called the right to give a *dissenting opinion*, which is the right to differ opinions, including to disapprove of certain actions taken by the board of directors. These certain actions must be actions that are substantial for the shareholders or for the company as a whole, such as *mergers*, *acquisitions* and others. Therefore, for the ordinary actions of the board of directors, there is no right to give such *dissenting opinions*. After giving the *dissenting opinion*, and the majority shareholder remains in the sense of still disagreeing with the minority shareholder, the minority shareholder can use *his appraisal right*, or what is often referred to as *dissenters right* or *right of dissents*, which is the right to exit the company with the obligation of the company or other shareholders to purchase the shares of the outgoing shareholder with shares *appraised* at an appropriate price *Appraisal right which is "the right to*

[14]*Ibid*, p. 176

[15]Anisitus, Amanat, . Hanel, *Discussion of the Limited Liability Company Law, and its Application in Notary Deeds*, (Jakarta: Rajawali Press, 1996), p.57.

[16] *Ibid*, p. 69.

[17] R. Subekti, The Law of Bookkeeping. (Jakarta, Pradnya Paramita Publisher, 1997), p.69.

him bought out by the company at a price reflecting the value of his share as determined in a judicial proceeding".[18]

If justice is one of the highest values, this value of justice cannot be set aside, except for the sake of a higher value of justice. In the field of corporate law, the value of fairness *(fairnes*) is in fact the most important goal, so the legal apparatus on the protection of minority shareholders must also focus on efforts to achieve this justice, which in this case is carried out by applying the principle of *majority rule minority protection*. The effort to achieve justice to protect minority shareholders is one of the goals of the application of the element of *fairness* contained in the principles of *Good Corporate Governance*.[19]

If the achievement of justice between majority shareholders and minority shareholders is carried out with various legal instruments, then the realization of the element of *fairness* between shareholders, especially between shareholders in the same classification, by the limited liability company law is regulated quite firmly and directly. This can be seen in Article 46 paragraph (2), by stating that every share in the same classification gives the same rights to its holders.

The provisions in Article 46 paragraph (2) only indicate the same treatment between fellow shareholders in the same class in the sense that between shareholders in the same class may not be discriminated against, but it cannot touch the element of *fairness* between shareholders if:

1. Its shareholders are not in the same classification.
2. One shareholder is a minority while the other is a majority.

Article 46 paragraph (2) of the Limited Liability Company Law cannot be used to protect minority shareholders in a limited liability company. As is known, often the interests of majority shareholders and minority shareholders are in conflict with each other. For this reason, in order to fulfill the element of justice, a balance is needed so that the majority shareholders can still enjoy their rights as the majority, including regulating the company. On the other hand, minority shareholders also need to be considered for their interests and not just lose their rights. To protect the interests of both parties, in the company's legal science, the principle of *majority Rule Minority Protection* is known. According to this principle, the *ruler* in the company is still the majority party, but the power of the majority party must always be exercised by always protecting the minority.[20]

[18]Ronny H. Soemitro, Legal Research Methodology, (Jakarta Ghalia Publisher 1982, p.47.
[19]Gatot Supramono, p.109.
[20]*Ibid*, p. 112.

Given the various interests of the majority shareholders that are in conflict with the minority shareholders, the law needs to find an *equilibrium*, which then appears in the principle of *majority rule minority protection*. In this case, the minority shareholders need to be lifted from their downturns so that the element of *fairness* is achieved, as hinted at by the principle of *Good Corporate Governance*. Indeed, the minority shareholders are generally in a weak position due to one or more of the following factors:

a. The lack of legal provisions governing the protection of minority shareholders in a limited liability company.
b. The attitude and behavior of the majority shareholders. Arbitrary directors and commissioners.
c. Minority shareholders are generally in a weak position due to a lack of capital, knowledge, skills, and the ability to manage the company.[21]

The urgency of the interests of minority shareholders so that the element of *fairness* as a condition for the realization of *the principle of Good Corporate Governance* is also due to the power possessed by the majority shareholders to monopolize the company's business. The power of the majority shareholders is obtained through the following ways:

1. By a majority vote of the general public.
2. Through the appointment of a board of directors who are in his favor.
3. Through the appointment of a commissioner who is also on his side.

As already mentioned, given the position of the majority shareholders in such a dominant company, special protection is needed for minority shareholders to achieve an *equalibery* between the shareholders. An *equalibery* is indeed necessary in a community, no matter how small the community may be. If *the equalibery* can be achieved, in turn justice for all parties can be fulfilled.

Efforts to achieve *effirnes* for shareholders in a limited liability company are carried out, among other things, by granting certain rights to minority shareholders.

2. The Implementation Process of *Piercing The Corporate Veil* in a Limited Liability Company

Although the UUPT has provided protection to minority shareholders based on personal *rights* and *derivative rights*, in practice it is not always easy to hold the company's organs accountable, either directly or to the executors of the organ and the company. This is because the company's data is in the hands of the company's organs and they are often reluctant to

[21]*Ibid*. p. 13.

disclose it, either because of the principle of confidentiality or the interests of the company or for the interests of the individuals who perform the organs. Generally, the pretext used is the reason for confidentiality and to carry out *fiduciary duties*.[22]

The above is exacerbated by the fact that minority shareholders do not have a decisive role in appointing directors or cornisaris and do not have a decisive role in appointing directors or commissioners and cannot control the company's management. This dominance can also be seen when the majority shareholders become directors or commissioners of the company, which can cause minority shareholders to become more powerless. It will be a different problem if the directors or commissioners who are also majority shareholders adhere to the principles of *good faith* and moral *hazard*.[23]

The intervention of the majority shareholders in the management of the PT or what can be called *piereing the corporate veil* in modern corporate doctrine can cause minority shareholders to be harmed. With this doctrine, in fact, minority shareholders or aggrieved third parties can hold the majority shareholders accountable. *Another doctrine* that can be used by minority shareholders to protect their interests is the *ultra vires doctrine*. This *doctrine* teaches that directors in carrying out their management duties cannot carry out activities outside the purpose and objectives of the company are carried out in accordance with its intentions and objectives in accordance with the articles of association which are essentially an agreement between majority shareholders and minority shareholders. Ultra *vires must* be distinguished from actions that violate the articles of association or abuse of authority by the board of directors (*abuse of power*). If the board of directors takes legal action beyond its power and authority as specified in the articles of association and causes losses to the PT, then the board of directors is collegial liable consecutively.[24]

Another circumstance that is detrimental to minority shareholders is that there is no disclosure (*disciosure*) from the board of directors on the state and running of the company. This non-transparent situation in managing the company is actually also very detrimental to the company, shareholders including minority shareholders and interested third parties.[25]

There are several efforts and mechanisms for the legal protection of minority shareholders that can be carried out before the liquidation process other than using *derivative rights* or *personal rights*, as follows:[26]

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[22] *Ibid, p. 59*
[23] Shubhan, Hadi, *Bankruptcy Law*, (Jakarta: Putra Gratika, 2007), p.44.
[24] *Ibid*, p. 50.
[25] Sudjana, *Labor Law dt Indonesia*, (Bandung, Alumni, 2004), p. 79.
[26] Viktor Situmorang. *Op.Cit*, p. 45.

a. Before the GMS was held in the context of the dissolution of PT:

1. The shareholders or founders can make agreements in the form of *shareholder agreemem* and *voting right agreements*. Guided by the provisions of the principle of freedom of contract which basically states that the agreement is made by the parties who make it, the shareholders can make an agreement that expands on more detailed provisions regarding several matters that have been regulated in the articles of association. For example, a *shareholder agreement* for example regarding the provisions for the appointment and dismissal of directors or commissioners, where the GMS in question must be attended by shareholders representing 2/3 of the number of shares and the decision must be approved by all minority shareholders or regarding the appointment of members of the board of directors and independent commissioners proposed by minority shareholders as well as regarding the distribution of dividends related to the classification of shares in a PT or regarding *voting rights agreement* where the quota of votes that can be issued by shareholders is determined, even though voting by means of deliberation for consensus is a fair decision based on the principle of kinship and if deliberation for consensus is not reached, then voting with the majority of votes is a resolution that reflects democratic principles. This agreement between shareholders is a protection of minority shareholders from the arbitrariness of majority shareholders because the purpose of making this agreement is to balance the relationship between majority shareholders and minority shareholders. In this regard, minority shareholders are required to indirectly supervise the state and running of the company and to obtain appropriate protection so that they are not harmed. This is in line with the explanation from the UUPT that shareholders must obey the principles of good faith, propriety and propriety in the running of PT.

2. Another protection that can be given to minority shareholders is the implementation of *good corporate governance*. *Corporate governance* is a process and structure used to direct and manage the company's business and affairs in order to increase business prosperity and corporate accountability with the main goal of realizing shareholder value in the long term while still paying attention to *stakeholders*. Another definition states that *corporate governance* is a set of regulations that establish the relationship between shareholders, management, creditors, government, employees and other internal and external stakeholders, in relation to their rights and obligations or in other words the system that directs and controls the company.

The guidelines for implementing *good corporate governance* initiated by the *Organization for Economic Corporate Development* (OECD) in April 1998 are in the form of the following main principles of *Good Corporate Governance*:[27]

a. *Transparency* , which is an element of openness that must be applied in every aspect of the company related to the public interest and shareholders.
b. *Accountability* , which is a form of accountability from the company's management.
c. *Fairness* , which is the principle of fair treatment for all shareholders, including legal protection for minority shareholders.
d. *Responsibility* , which is a principle related to the fulfillment of corporate social obligations as part of society, the fulfillment of which obligations must be in accordance with the provisions of applicable laws.

Then the GCG principles from the OECD and international principles regarding *corporate governance* that emerged and developed were then accepted by the *Forum For Corporate Governance in Indonesia* (FCGI) which is an open forum of business associations with the aim of promoting the implementation of the best possible standards in the field of *corporate governance* in Indonesia, whose current members include *the Emitem Association* Indonesia (AEI), the Indonesian Institute of Accountants-Management Accountant Compartment (IAIKAM) and subsequently the Coordinating Minister for Economy, Finance and Industry handed over the creation of guidelines for good corporate management to a national committee, namely the National Committee for Good Corporate Management which is a non-governmental institution based on Decree Number. Kep-10/M.EKUIN08/1999 dated August 19, 1999. This committee has succeeded in drafting guidelines for GCG in 1ndonesia on May 1, 2000, namely the *Code For Good Corporate Governance*.[28]

Protection of minority shareholders both based on the principles of *fairness* of the OECD and of the National Committee for Good Corporate Governance basically contains provisions for equality or balance of shareholders, including legal protection for majority shareholders or minority shareholders. Majority shareholders who hold a controlling position must bear in mind their responsibilities as shareholders when they take actions that affect the management of the company, either by voting or otherwise, and minority shareholders must have corresponding responsibilities so as not to abuse their rights.[29]

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[27] Mulhadi, *Company Law and Forms of Business Entities in Indonesia* (Bogor: (Ghalia, Indonesia, 2010), p.32.

[28] R. Cyssco, Dhanny Hanounun Akuiansi. /Jakarra : Puspa Swara, 2005), p. 85

[29] Muliaman, Hadad, D Wimboh Santoso and Ita Rulina, *Indicators of Bankruptcy in Indonesia: An Additional Early Warning Tools on Financial System Stability*, Jakarta: Bank Indonesia, December 2003), p. 75.

b. After the GMS was held in the context of the dissolution of PT:

The provisions of Article 147 paragraph (1) and paragraph (2) of the UUPT, then within a period of no later than 30 (thirty) days, the liquidator is obliged to register in the company register and submit an application to be announced in the State Gazette as well as an announcement in 2 (two) daily newspapers and a notification to the Minister of Justice about the dissolution of the PT. Failure to carry out the above matters results in the dissolution of the PT not applicable to a third party and the liquidator must be jointly and severally liable for the losses suffered by the third party.[30]

Within the period of 30 (thirty) days, minority shareholders can still seek legal protection of their rights if they feel aggrieved by the decision to dissolve the PT, namely by filing a lawsuit against those who are considered unfair and without reasonable reasons as the decision of the GMS or on their own behalf or on behalf of the company to submit an application to the district court to conduct an examination of the company if there is an allegation that the company or its directors or commissioners have committed unlawful acts that are detrimental to the company. By carrying out this audit, and if it is proven that there is dishonesty, minority shareholders can be avoided.[31]

The issue of the protection of minority shareholders has become difficult to translate properly because of natural misunderstandings about the purpose of the protection. The protection of minority shareholders should be interpreted as something that guarantees *fairness* in the equality of *one share one vote*. It is not to give special *privileges* to minority shareholders as reflected in the common understanding.[32]

The obstacle that greatly affects the implementation of the legal protection of minority shareholders is the lack of knowledge or understanding from shareholders, directors, and commissioners about the UUPT. This understanding does not mean understanding as a professional in the field of law, but at least an understanding of the functions, rights and obligations as shareholders, directors and commissioners. This lack of understanding can have a bad and detrimental impact not only on shareholders. but also on the company and *stalceholders*, including the State and the community.[33]

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[30] Soedradjad, Djiwandono, *Liquidation of Bank Indonesia*, (Bandung: Mandar Maju 2000), p.74.

[31] Zainal Asikin, *Bankruptcy Law and Payment Delay in Indonesia*, (Jakarta: Raja Grafindo Persada, 2002), p. 133.

[32] *Ibid*, p. 132

[33] K, Bertens, *Introduction to Business Ethics Philosophy Series,* Atmajaya 3, (Yogyakarta: Kanisius, 2000), p.101.

Another obstacle that can result in minority shareholders not getting legal protection is the attitude of the directors and commissioners who have no *moral hazard* and do not have good faith in carrying out the company's activities, so that the directors or commissioners and the company are legal entities for personal interests (*alter ego*).[34]

The dominance and *intervention* of the majority shareholders against the directors and commissioners can also cause losses for minority shareholders. The dominance of the majority shareholders by utilizing *the principle of one share one vote* irresponsibly can be seen in the unprofessional appointment or dismissal mechanism so that the position of the directors or commissioners is only symbolic because behind it the majority shareholders control the company's path.[35]

The dominance and intervention of the majority shareholders can hinder legal protection for minority shareholders in the use of *the ultra vires doctrine* or the *doctrine of piercing the corporate veil* by ratifying the actions of the directors into actions that are binding on the company. The existence of majority shareholders who are directors of the company who do not have good faith will also be an obstacle for minority shareholders in obtaining protection. law.[36]

By realizing the very close relationship between a healthy company and the economic progress of the State, it is appropriate for every company to apply and be guided by the *code of good corporate governance*. The application of this guideline can only be carried out by shareholders and directors and commissioners who have high moral integrity and adequate knowledge in carrying out their duties or functions, so that obstacles in the implementation of this *code for good corporate governance* can be overcome. The application of this guideline is very important, meaning in providing legal protection for minority shareholders because of the main principles, namely transparency and accountability. Justice and Accountability are developed other principles which are categorized into:

a. Shareholder rights;
b. Fair treatment for all shareholders;
c. The role of *stakeholders* in *corporate governance*;
d. Disclosure and transparency obligations;
e. Responsibilities of directors and commissioners.

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[34] *Ibid*, p. 115

[35] Victor M. Situniorang & Henri Soekarso, *Introduction to Bankruptcy Law in Indonesia*, (Jakarta: Rieneka Cipta, 1994), p. 120.

[36] *Ibid*, p.125.

How good are the laws and regulations, but if there is no *law enforcement*, it will be useless. Effective law enforcement on savers and corporate crimes will prevent companies from committing violations. The problem of *law enforcement* and also money politics is something that must be tried to be enforced because this is the basis for justice for every citizen. Although it is realized that this is a heavy effort and the protection of minority shareholders is part of the enforcement of the law.

3. Legal Consequences of Piercing The Corporate Veil in Minority Stock Protection in Holding Companies

Its application into the corporate law *piercmg the corporate veil* means that the law does not apply the principle of separation of responsibilities and assets of legal entities with their shareholders, even though de *jure* all the requirements that must be met by a company to be able to become a legal entity have been perfectly carried out. The veil that limits legal entities and their shareholders can be touched and torn. Broadly speaking, it is possible that shareholders in certain matters must be responsible up to their personal property for actions carried out by and on behalf of the company itself.

I.G. Rai Widjaya said that the limited liability of shareholders can be removed or lost in certain matters. These certain things mean, among others, if it is proven that there is a mixing of the shareholders' personal assets with the company's assets, so that the company is established solely as a tool used by shareholders to fulfill their personal goals.[37]

If it is proven that there is a transfer of the shareholders' personal assets and the company's assets, so that the company is established solely as a tool used by shareholders to fulfill their personal goals, then in such circumstances the shareholders, directors and commissioners who have committed such acts, based on the principle of *the corporate veil* must be responsible for their personal assets and responsible for their own personal affairs both criminal and civil.

According to I.G. Rai Widjay, the occurrence of *piercing the corporate veil* or lifting the veil is as follows:

1. The requirements of a PT as a legal entity have not been or are not met.
2. The shareholders concerned, either directly or indirectly in bad faith (*telcwaadetrouw* or *bad faith*) use the company solely for personal interests.
3. The shareholders concerned are involved in unlawful acts committed by the company or.

[37] I.G Rai Widjaya, *Contract Law*, (Bandung: A lumni, 2008), p.76

4. The shareholders concerned, either directly or indirectly, illegally use the company's assets to be insufficient to pay off the debts of the company or PT (Article 3 paragraph (2) of the Constitution).[38]

Thus the shareholder in certain circumstances may lose immunity from his limited liability, or in other words he must be fully personally liable. Some of the things against which the doctrine of piercing *the corporate veil* can be applied are:

1. Improper capital.
2. Personal use of company funds.
3. The absence *of firmness of* the company's existence.
4. There are elements of fraud by abusing legal entities.

In relation to the responsibility of the *holding company*, the doctrine *of piercing the corporate veil* looks at the responsibility of the *holding* company from 2 (two) sides, namely:

1. The responsibility of the controlling company as the parent company in a business group and.
2. The responsibility of the *holding* company as a shareholder.[39]

Applying the *doctrine of piercing the corporate veil*, the responsibility of the *holding* company as the parent company in a business group, can occur in 3 (three) ways, namely if there are misleading facts, if there is fraud/injustice and if it aims to protect minority shareholders.

1. Misleading facts The *holding* company will be liable to the subsidiary if there are facts that mislead the other party. These misleading facts are in the form of failure to clearly separate whether an event is caused by the actions of the subsidiary or the parent company. For example, if there is a mixture of business ventures, employees or assets of the *holding* company with the company.
2. Fraud or injustice

   If there is fraud or injustice in relation to the role of the *holding company*, then the *doctrine of piercing the corporate veil* should be enforced, so that the *holding* company must be held accountable for the acts that benefit it that are done inappropriately by its subsidiaries.
3. Protection of minority shareholders

   In order to protect minority shareholders from the arbitrariness of the majority shareholders, *the doctrine of piercing the corporate veil* in certain cases is feasible. For

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[38] *Ibid*, p. 81.
[39] *Ibid*, p. 81.

example, in the case of the *transfer* of profits obtained by a subsidiary to a *holding* company or to another subsidiary.

Piercing the corporate veil is not only applied specifically to holding companies, but also applied to every shareholder of a company, whether such a shareholder is difficult to enforce if the shareholder is a public investor in a public company. One thing and another considering the status of a public shareholder is only a mere investor. So it is not like a company owner in the true sense. Thus the relationship between public shareholders and the company is relatively tenuous.[40]

The application *of piercing the corporate veil* to shareholders can be carried out in at least 4 (four) cases, namely if certain formalities are not followed, if legal entities are separated only by *aphidism*, if there is a contractual relationship, and if there is an unlawful act or criminal act.

1. *Piercing the corporate veil* does not follow certain formalities

In this case, what is meant is not to follow certain formalities that are actually carried out as a company where the goal of the doctrine of *piercing the corporate veil* is not only to protect the parties or third parties but rather to sanction certain formalities so that certain formalities of the company are followed in practice. The juridical consequence is that in order to be able to apply *piercing the corporate veil* in a case like this, no proof is required about the existence or absence of *misleading* or confusion against third parties.

Among the formalities in the company that are not carried out so that the *doctrine of piercing the corporate veil* can be applied are.[41]

a. The incompleteness of formalities in the business establishment process.
b. Not carrying out *board* elections, meetings and so on.
c. Failure in capital contribution or stock replenishment.
d. Shareholders interfere too much in the company's business and business decision-making.
e. Personal activities and company activities are mixed up such as informal loans.

2. *Piercing the corporate veil against* artificially *separate legal entities*

In this case, what actually happens is that there is a single *business entity*, but it can be divided into several artificially separate legal entities. Although there are several companies

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[40]*Ibid*, p. 87.
[41]*Ibid*, p. 81.

that are interconnected, the business is carried out in such a way that it is no different from being carried out by a single company unit. In such a case, the application of the *principle of piercing the corporate veil* will tend to impose legal responsibility on the entire *business entity*, not on the shareholders individually.

3. *Piercing the corporate veil* based on contractual relationships

In the event that a company is contractually involved with a third party, the doctrine *of piercing the corporate veil* can be applied, namely in the event of unusual circumstances from the activities of a company so that its juridical responsibility should be imposed on the shareholders. Without the presence of the element of unusual circumstances, it will be difficult for a third party to attract shareholders to be personally juridically responsible based on the principle *of piercing the corporate veil*. In this case, it is because the third party who has a contractual relationship can be considered to have assumed risks when conducting transactions with the company concerned. The unusual circumstances in question can occur in the following cases:[42]

Third parties are tricked into transacting with third parties.

Piercing the corporate veil on the basis of unlawful acts or criminal acts

If an unlawful act (*tort*) occurs, even if it is committed by the company, to a certain extent the shareholders should remain liable based on the doctrine of *piercing the corporate veil*. This can happen for example in the following cases:

1) If the company does business on a large scale while the capital is very small.
2) If the company is formed specifically to do dangerous things, for example to carry out certain explosions.

5. *Piercing the corporate veil* in *holding companies* and subsidiaries

In some cases in America, to be able to apply the doctrine of *piercing the corporate veil* so that a company or person can be held accountable by applying the principle of *instrumentality rule*, namely if there is one of the following elements:

a. *Express agency*.
b. *Estoppel*.
c. *Direct tort*.

It can be proven that there are the following 3 (three) elements:

1) Subsidiary control by the parent company.

[42] *Ibid*, p. 109.

2) The use of control by the company to commit *fraud*, dishonesty and other unfair actions .
3) There is a loss caused (*proximate causation*) by *a breach of duty* from the controlling company.

Still in a relationship with the corporate group. The application *of piercing the corporate veil* can be done for example, in the following cases:[43]

a. The existence of misleading facts

If there are misleading facts related to the *holding* company and its subsidiaries, then even if a legal act is carried out by the company, there is a possibility that the *holding* company will also be held legally liable based on the theory of *piercing the corporate veil*. Misleading facts are the indecisiveness between the activities carried out by the parent company and the activities carried out with the subsidiary. An example of such misleading acts/facts is in the event of mixing disputes between the business, employees or from the *holding* company and the subsidiary.

b. Fraud and injustice

If there is fraud and injustice committed by the company so that it benefits the *holding* company , the *holding* company can also be held responsible based on the doctrine of *piercing the corporate veil*.

c. To protect minority shareholders

In relation to a *holding* company, it is very possible to take actions that result in losses for minority shareholders. For minority shareholders, it is necessary to provide legal protection, which in this case is done by applying the theory of *piercing the corporate veil*, which is also by asking for accountability from the *holding* company. For example, actions that are detrimental to minority shareholders are if there is *a transfer* of profits obtained by the subsidiary to the *holding* company or to other subsidiaries.

In addition to the 3 (three) things mentioned above, some facts that can be suspected so that they can cause the imposition of the *piercing the corporate veil theory* against holding companies on the basis of the actions carried out by their subsidiaries are as follows:[44]

a. Holding companies and subsidiaries have the same management, commissioners and employees.
b. The subsidiary has a very small capital.

[43] *Ibid*, p. 123.
[44] *Ibid*, p. 142.

c. The *holding* company pays the salaries, wages, losses and other expenses of the subsidiary.
d. The *holding* company owns all or almost all of the subsidiary's shares as well as the *holding* company finances the subsidiary.
e. Subsidiaries have business only with holding companies.
f. The subsidiary does not have any other assets except the assets transferred from the *holding company*.
g. The *holding* company uses the assets of the subsidiary such as *its own.*
h. The executive of the subsidiary pays more attention to the interests of the *holding* company than the interests of the subsidiary.

D. Conclusion

The Majority Shareholders can influence the policies and running of the company and sometimes the policies taken can lead to the takeover of policies that can harm the company and are against the law, therefore minority shareholders who lose the vote at the General Meeting of Shareholders (GMS) can be given protection by applying *piercing the corporate veil* if it is proven that the majority shareholders are the cause of the company's failure and losses. With the removal of the veil of limitation between the company and shareholders in managing the company, the veil of limited liability is also for the sake of law removed and mixed into one. In the process of implementing the *piercing of the corporate veil* in a limited liability company, it must meet the element of justice between the majority shareholders and the shareholders of the company. Therefore, a balance is needed so that the majority shareholders can still enjoy their rights as the majority, including regulating the company. On the other hand, the minority shareholders also need to be considered for their interests and cannot simply ignore their rights. To protect the interests of both parties, in the company's legal science. It is known as *the Majority Rule Minority Protection* Principle. According to this principle, the *rule* in the company remains the majority party, but the power of the majority party must always be exercised by always protecting the minority. The legal consequences of *piercing the corporate veil* in the legal protection of minority shareholders in relation to *the holding* company. In relation to the responsibility of the *holding company*, the doctrine *of piercing the corporate veil* looks at the responsibility of the *holding* company from 2 (two) sides, namely: The responsibility of the controlling company as the parent company in a business group and the responsibility of the *holding* company as a shareholder. Applying the doctrine *of piercing the corporate veil,* the responsibility of the holding *company* as the parent company in a business group, can occur to 3 (three) things, namely if there are misleading facts, if there is fraud / injustice and if it aims to protect minority shareholders.

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