

The Application of the Piercing the Corporate Veil Doctrine in Startup Fraud Cases in Indonesia

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Abstract

The rapid development of startups in Indonesia has introduced new dynamics within corporate law. One of the major challenges is the rise of startup fraud the misuse of corporate entities to deceive investors, partners, or the public. In civil law, corporations enjoy the protection of the principles of separate legal entity and limited liability. However, these principles can be disregarded through the doctrine of piercing the corporate veil, which applies when shareholders or directors exploit the corporation as a façade for fraudulent acts. This research employs a normative legal method with both statute and conceptual approaches, analyzing relevant legislation, doctrines, and case law. The findings indicate that the application of the piercing the corporate veil doctrine in Indonesia remains limited but is increasingly relevant in protecting investors in the startup ecosystem. This doctrine aligns with the principles of good faith and civil liability as regulated in the Indonesian Civil Code and Law No. 40 of 2007 on Limited Liability Companies.

keywords: *piercing the corporate veil, corporate law, startup, fraud, civil liability.*

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A. Introduction

The development of Indonesia's digital economy over the past decade has shown a remarkable surge, both in terms of the number of business actors, the variety of innovations, and the amount of investment flowing into the

technology sector.¹ This phenomenon has given rise to numerous startups across various fields such as financial technology (fintech), logistics, education, healthcare, and lifestyle.² The government has even positioned this sector as one of the driving forces of national economic growth, as it is believed to create new jobs, enhance competitiveness, and accelerate digital transformation.³

However, behind this rapid growth, the startup ecosystem also brings about complex legal challenges. The highly digital nature of business structures often involves cross-jurisdictional relationships, unconventional investment models, and forms of cooperation that are not yet fully accommodated by Indonesia's positive legal system. In the context of corporate and civil law, startups generally take the form of a *limited liability company* (Perseroan Terbatas, or PT), as this legal form provides clarity regarding the distribution of responsibilities, capital, and legal status recognized by the state.⁴

The existence of the PT as a legal entity serves as an essential instrument in modern business. Normatively, Article 1 paragraph (1) of Law No. 40 of 2007 concerning Limited Liability Companies (the "Company Law") stipulates that a company is a legal entity that constitutes a capital partnership, established by an agreement, and conducting business activities with authorized capital divided into shares. This provision affirms that a company possesses an independent legal standing (*legal personality*), meaning it holds its own rights and obligations separate from those of its shareholders and directors.

The principles of *separate legal entity* and *limited liability* form the cornerstone of corporate law. Under these principles, shareholders are not personally liable for the debts or obligations of the company beyond the

¹ Munir Fuady, *Doktrin-Doktrin Modern dalam Corporate Law & Eksistensinya dalam Hukum Indonesia*, Bandung: PT Citra Aditya Bakti, (2014), p. 112.

² Pujiyono Abdurrahman, "Politik Hukum Doktrin Piercing The Corporate Veil pada Pengelolaan Perseroan Terbatas di Indonesia," *Jurnal Hukum dan Pembangunan Ekonomi* 7, No. 2 (2019): 142–159.

³ Asep N. Mulyana, *Piercing The Corporate Veil: Dinamika Regulasi dan Praktik Peradilan*, Jakarta: Rajagrafindo Persada, (2023), p. 89.

⁴ Irawati, "Penerapan Piercing The Corporate Veil dalam Menilai Tanggung Jawab Pribadi Pendiri Perseroan Terbatas Perorangan," *Lex Jurnalica* 19, No. 1 (2022): 33–49.

amount of capital they have invested. This concept aligns with the principles of economic efficiency and investment protection, as it enables entrepreneurs to invest without fear of personal risk for business losses.⁵ Thus, the *limited liability* principle functions as a mechanism that promotes business growth, accelerates capital flow, and strengthens the sustainability of the digital economy.

Nevertheless, in practice, this separation of liability often becomes a double-edged sword. On one hand, it protects investors and encourages innovation; on the other, it opens opportunities for abuse by individuals acting in *bad faith*. In several cases, corporate officers or shareholders have used the company's legal entity status as a shield to avoid personal responsibility, or even to commit fraudulent acts. Such phenomena have become increasingly prevalent within the startup ecosystem, where inflated company valuations, manipulated financial reports, and misused investment funds are often found.⁶

These cases expose weaknesses in the application of the *limited liability* principle. When the legal entity status is used to conceal fraudulent behavior, the company's role as an independent legal entity transforms into an instrument of legal evasion (*abuse of legal entity*). In such circumstances, the *piercing the corporate veil* doctrine becomes relevant. This doctrine serves as a legal mechanism that allows the court to "pierce" the corporate veil holding the individuals behind the company, whether shareholders, directors, or commissioners, personally accountable when they are proven to have abused the corporate entity for personal gain or acted with fraudulent intent.⁷

The application of the *piercing the corporate veil* doctrine is especially crucial in Indonesia's ongoing transition toward a digital economy. The

⁵ LegalMondo, "Piercing the Corporate Veil in Indonesia Guide Praktis," Available online: <https://www.legalmondo.com/es/producto/piercing-the-corporate-veil-indonesia/>

⁶ Okky Arvian James; Anwar Budiman; Saefullah, "Kajian Asas Piercing The Corporate Veil untuk Menarik Pertanggungjawaban Holding Company atas Kerugian Distributor Tunggal," *Yustisia* 12, No. 2 (2022): 125–140.

⁷ The Jakarta Post, "Governance gaps, lax oversight hurt Indonesia's start-up scene," Feb 7 2025, Available online: <https://www.thejakartapost.com/business/2025/02/07/governance-gaps-lax-oversight-hurt-indonesias-start-up-scene.html>

proliferation of startups funded by diverse venture capital sources creates vast opportunities for economic expansion, yet simultaneously heightens the risk of *startup fraud*. Technology-based business models are frequently unaccompanied by adequate corporate governance mechanisms, while legal instruments for overseeing the relationship between investors and corporate management remain limited. Consequently, when misconduct occurs, traditional corporate law mechanisms often fail to penetrate the complex layers of digital corporate relationships.⁸

From a civil law perspective, this situation raises important questions: to what extent can classical civil law principles such as *good faith*, *unlawful act* (*onrechtmatige daad*), and personal liability be applied in the context of digital corporate law? Furthermore, how can Indonesian law balance the protection of shareholders with the protection of investors against corporate misconduct?

This research seeks to address these questions through a normative legal approach, focusing on the analysis of statutory provisions, legal doctrines, and relevant jurisprudence.⁹ The primary objective is to examine the application of the *piercing the corporate veil* doctrine as a legal instrument to address *startup fraud* cases in Indonesia and to assess how this doctrine aligns with the fundamental principles of national civil law.¹⁰

Through this approach, this study aims to provide a theoretical contribution to the development of Indonesian corporate law while offering practical recommendations for strengthening legal accountability within the startup ecosystem. Moreover, it seeks to highlight a novel aspect of legal scholarship the application of a classical corporate doctrine in the context of the modern digital economy an area that remains underexplored in Indonesian legal literature.

⁸ Integrity-Asia, “eFishery fraud: a unicorn entangled in financial reporting,” May 22 2025, Available online: <https://integrity-asia.com/blog/the-efishery-fraud-an-indonesian-unicorn-entangled-in-financial-reporting-fraud/>

⁹ Purwaningsih, *Buku Ajar Hukum Perusahaan*, Sidoarjo: Umsida Press, (2024), p. 67.

¹⁰ Dhoni Martien, *Hukum Perusahaan*, Jakarta: Rajagrafindo Persada, (2023), p. 143.

B. Discussion

1. The Principle of Separation of Liability in Limited Liability Companies

In modern corporate law, the separation of liability between the company and its shareholders constitutes a fundamental principle that underpins the existence of a limited liability company (*Perseroan Terbatas* or *PT*).¹¹ This principle establishes that a corporation is an independent legal entity possessing its own rights and obligations, separate from the individuals who founded it. Consequently, business risks are confined to the company's assets, thereby protecting shareholders from personal liability for the company's debts or obligations.

As stipulated in Article 3 paragraph (1) of Law No. 40 of 2007 concerning Limited Liability Companies (*Company Law*), shareholders are not personally liable for obligations entered into on behalf of the company and shall not suffer losses exceeding the value of their shares. This concept, known as the *limited liability principle*, provides legal certainty and assurance for investors to invest their capital without the fear of excessive personal risk.¹²

Nevertheless, this protection is not absolute. Article 3 paragraph (2) of the same law provides that such limited liability may be disregarded if a shareholder uses the company for personal interests, acts in *bad faith*, or causes harm to third parties. This provision serves as the normative foundation for the application of the *piercing the corporate veil* doctrine in Indonesia allowing the court to "pierce" the corporate veil and impose personal liability on shareholders or directors who abuse the company's legal status. Therefore, the principle of separation of liability should not be used as a shield for fraudulent conduct, but rather be exercised in *good faith* to preserve justice and the integrity of the corporate legal system.¹³

¹¹ Novalia Jambormias, "Implementasi Teori Piercing The Corporate Veil dalam Tatanan Hukum Perseroan Indonesia," *Syntax Literate: Jurnal Ilmiah Indonesia* 9, No. 8 (2024): 780–798.

¹² M. Pasha Arifin Nusantara, "Kajian Penerapan Doktrin Piercing The Corporate Veil pada Perseroan Perorangan," *Jurnal Ilmu Hukum, Humaniora dan Politik* 5, No. 4 (2023/2024): 3082–3090.

¹³ Henry Aspan, *Hukum Perusahaan: Aspek Hukum Badan Usaha di Indonesia*, Payakumbuh: Serasi Media Teknologi, (2024), p. 102.

2. The Concept and Origins of the Piercing the Corporate Veil Doctrine

The *piercing the corporate veil* doctrine is one of the most significant concepts in modern corporate law, functioning as a corrective mechanism to balance legal protection for shareholders with the enforcement of personal accountability for those who misuse the corporate form. This doctrine first developed within the *common law* system, notably through the landmark English case *Salomon v. A. Salomon & Co. Ltd.* (1897). The court in that case affirmed the principle of *separate legal personality*, meaning that a company possesses its own legal identity, distinct from its founders or shareholders. Consequently, the corporation may hold rights, bear obligations, and incur debts in its own name.

This principle subsequently became the foundation of the *limited liability* concept, whereby a shareholder's liability is restricted to the amount of capital invested. The concept played a vital role in the advancement of modern business, as it encouraged investment by ensuring that shareholders were not personally responsible for the company's losses. Thus, the *limited liability* principle serves as a cornerstone of economic growth and efficiency in the corporate world.¹⁴

However, as corporate practices evolved, courts began to recognize that this principle could be exploited for personal gain. Many individuals established corporations not for legitimate business purposes, but to conceal personal assets, evade legal obligations, or commit fraud against third parties. In such circumstances, the company no longer functioned as a lawful business entity but rather as a *legal shield* for wrongful acts.¹⁵

To address this misuse, courts within the *common law* jurisdictions developed the doctrine of *piercing the corporate veil*, granting authority to "look behind" the corporate structure and identify the individuals truly responsible. When it is proven that a company was used to perpetrate

Irfan Ardiansyah, *Pertanggungjawaban Pidana Korporasi*, Jakarta: Hawa & AHWA, (2024), p. 51.

¹⁴ Mochammad Tanzil Multazam; Noor Fatimah Mediawati; Sri Budi Purwaningsih, *Buku Ajar Hukum Perusahaan*, Sidoarjo: Umsida Press, (2024), p. 67.

¹⁵ Sandra Dewi, "Prinsip Piercing The Corporate Veil dalam Perseroan Terbatas Dihubungkan dengan Good Corporate Governance," *Jurnal Hukum Respublica* 16, No. 2 (2022): 201–220.

fraud, *abuse of rights*, or *bad faith conduct*, the court may disregard the principle of limited liability and hold the perpetrators personally accountable.

This doctrine has since been widely adopted in *Anglo-Saxon* jurisdictions such as the United States, Canada, and Australia, where courts apply the principle of *equity* to ensure that substantive justice prevails over mere legal formalities. In essence, while the corporate entity is recognized as a separate legal person, its status cannot be used as a vehicle for deception or evasion of legal norms.

In Indonesia which adheres to a *civil law* tradition the *piercing the corporate veil* doctrine is not explicitly codified in legislation but is implicitly recognized through academic doctrines, general legal principles, and judicial precedents. Prominent corporate law scholars, such as Munir Fuady, argue that limited liability cannot be invoked to protect wrongful acts; under certain circumstances, shareholders may be personally liable if the corporation is used as a tool for legal manipulation or fraud. Similarly, Gunawan Widjaja emphasizes that corporate entities must be managed in *good faith* and moral responsibility; when directors act beyond their authority or cause harm through abuse of power, personal liability should ensue.¹⁶

Hence, the doctrine of *piercing the corporate veil* functions as a corrective instrument ensuring that limited liability remains a safeguard for legitimate business conduct not a means of perpetrating fraud. Strengthening its application in Indonesia is essential, particularly in the digital economy era, where complex ownership structures often obscure accountability.¹⁷

3. Startup Fraud and Its Relevance to the Doctrine

The phenomenon of startup fraud poses one of the most pressing challenges in contemporary corporate law, especially within the context of the digital economy. The term refers to fraudulent acts committed by founders or

¹⁶ Rivaldo Malau; Fransisko Bryan Mosa; Gloria Lestari Sitanggang; Arita Novalia Jambormias, “Implementasi Teori Piercing The Corporate Veil dalam Tatanan Hukum Perseroan Indonesia,” *Syntax Literate: Jurnal Ilmiah Indonesia* 9, No. 8 (2024): 780–798.

¹⁷ Gideon Paskha Wardhana & Associates, “Pertanggungjawaban Pemegang Saham Perseroan Terbatas melalui Indikator Alter Ego dalam Penerapan Doktrin PCV di Indonesia,” *Refleksi Hukum: Jurnal Ilmu Hukum* 6, No. 1 (2021): 19–36.

executives of startups against investors, creditors, or consumers. Such acts may include manipulation of financial statements, inflated company valuations, or misappropriation of investment funds often executed through intricate financial and technological schemes that hinder detection.

Due to their innovation driven and venture capital based nature, startups often rely on non-traditional contractual arrangements. Agreements between founders and investors may be grounded more on trust and projected business growth than on tangible guarantees. In many instances, founders exploit the corporate entity as a shield for unethical practices such as misusing company funds for personal benefit, fabricating records, or presenting misleading data to attract further investment.¹⁸

From a normative standpoint, these behaviors contravene the principle of good faith as stipulated in Article 1338 of the Indonesian Civil Code (KUHPerdata), which requires all agreements to be executed honestly and lawfully. Moreover, such actions may constitute an unlawful act (*onrechtmatige daad*) under Article 1365 of the Civil Code, as they cause harm to others through the abuse of authority and intent to deceive.¹⁹

Within corporate law, these practices represent a deviation from the true function of a legal entity. A corporation intended as a transparent and legitimate business vehicle becomes an instrument of personal enrichment and evasion of responsibility. In these circumstances, the application of the piercing the corporate veil doctrine becomes vital, as it empowers courts to disregard the company's separate legal personality and impose direct personal liability on individuals proven to have acted fraudulently or in bad faith.

Importantly, the purpose of this doctrine is not to undermine the limited liability principle but to ensure that it is not misused as a means of legal fraud. By allowing personal accountability for fraudulent corporate officers, the doctrine reinforces justice and corporate integrity within Indonesia's digital economy. In the long term, consistent implementation of this principle will enhance investor confidence and strengthen the ethical foundation of Indonesia's startup ecosystem.

¹⁸ Sulistiowati & Veri Antoni, "Konsistensi Penerapan Doktrin Piercing the Corporate Veil pada Perseroan Terbatas di Indonesia," *Yustisia* 2, No. 3 (2013): 112–128.

¹⁹ Titik Tri Sulistyawati, "Eksistensi Doktrin 'Piercing The Corporate Veil' Atas Pelaksanaan Sentralisasi Procurement Anak Perusahaan oleh Induk Perusahaan," *Notaire* 1, No. 1 (2018): 44–57.

Thus, startup fraud should not be viewed merely as an economic or ethical issue, but as a fundamental civil and corporate law problem requiring normative legal intervention. The piercing the corporate veil doctrine in this context serves as a juridical corrective mechanism restoring the legal entity's function in accordance with principles of justice, good faith, and legal responsibility.

4. Normative Basis and Jurisprudence in Indonesia

Although the *piercing the corporate veil* doctrine is not expressly codified within Indonesian statutory law, its application has been implicitly recognized through judicial practice, legal scholarship, and general principles of civil law. This recognition demonstrates that the Indonesian legal system despite its *civil law* foundation remains receptive to modern corporate doctrines derived from *common law*, insofar as they align with national legal principles.²⁰

A significant judicial precedent supporting the doctrine is Supreme Court Decision No. 1531 K/Pdt/2006, in which the Court affirmed that shareholders may bear personal liability if they utilize the corporate entity for dishonest or *bad faith* purposes. This decision marked an important step in acknowledging the possibility of “piercing” corporate personality to uphold justice and legal accountability. It established that the corporate entity cannot serve as a refuge for individuals seeking to evade legal obligations or perpetrate fraud.²¹

Beyond jurisprudence, the doctrine is also rooted in the general principles of Indonesian civil law, particularly the doctrines of *abuse of rights* and *good faith* embodied in Article 1338 of the Civil Code. The *good faith* principle requires every legal actor to exercise rights and obligations with honesty, fairness, and respect for others' interests, while the *abuse of rights* doctrine allows courts to deny legal protection to those who exercise their rights contrary to the law's intended purpose. Both principles highlight the moral

²⁰ Kartika Cahyaningtyas & Muh. Isra Bil Ali, “Implementasi Sistem Piercing the Corporate Veil pada Chatterly v Omnico selaku Perusahaan Induk dari Interface Computer,” *Jurnal Hukum: Sumber Hukum* 2, No. 1 (2024): 88–104.

²¹ Sudaryat, *Hukum Perusahaan Indonesia: Pendirian, Tata Kelola, dan Pembubaran*, Jakarta: Kencana, (2025), p. 214.

dimension of Indonesian law, functioning as safeguards against manipulative or unjust conduct.

In the realm of corporate law, the doctrine also resonates with the concept of *fiduciary duty* owed by directors, commissioners, and other corporate organs. These actors are obliged to act with loyalty, prudence, and diligence (*duty of loyalty and care*) in the best interests of the company. When directors exceed their authority or exploit their positions for personal benefit causing harm to the company or third parties they may be held personally liable based on equity and accountability principles.

Prominent Indonesian corporate law scholars such as Munir Fuady and Asep N. Mulyana underscore that applying this doctrine is an expression of moral enforcement within corporate law. Fuady asserts that limited liability must not shield fraudulent acts, while Mulyana views *piercing the corporate veil* as a means to balance legal protection between shareholders and third parties harmed by corporate abuse.

Hence, even in the absence of explicit codification, the *piercing the corporate veil* doctrine in Indonesia possesses strong normative and juridical legitimacy, grounded in judicial decisions, general civil law principles, and academic doctrine. Its proper implementation ensures that substantive justice prevails beyond corporate formalities, reinforcing both integrity and public trust in Indonesia's corporate legal system.

5. Normative Analysis on the Implementation of the Doctrine in Startup Fraud Cases

In the context of *startup fraud*, the application of the *piercing the corporate veil* doctrine plays a crucial role as both a preventive and corrective legal mechanism designed to deter the emergence of *moral hazard* among company founders and executives²². This principle is particularly relevant because, in practice, many instances of corporate abuse arise from the mistaken belief that the legal status of a *limited liability company* (*Perseeroan Terbatas* or *PT*) serves as an absolute shield against personal accountability. Such a misconception fosters an environment in which individuals behind the corporation feel free to

²² Ines Prasheila Kusmastuti, "Piercing the Corporate Veil toward Holding Company Responsibility in the Perspective of Islamic Justice," *KASBANA: Jurnal Hukum Ekonomi Syariah* 4, No. 2 (2024): 51–63.

engage in fraudulent, manipulative, or speculative conduct without fear of personal legal consequences.

Through the application of the *piercing the corporate veil* doctrine, the law gains the capacity to “pierce” the company’s separate legal personality and ensure that personal responsibility can still be imposed when fraud, abuse of power, or bad faith management is proven. This aligns with the fundamental principles of civil law, which require every individual to exercise rights and fulfill obligations with honesty and integrity, and not to use legal forms as instruments to harm others. Normatively, the implementation of this doctrine is justified when several core elements are fulfilled, namely:

- a. The misuse of a legal entity for personal interests or as an instrument to evade legal obligations that should rightfully be borne by individuals;
- b. The presence of *bad faith* or *fraudulent intent* on the part of shareholders, directors, or corporate officers in conducting business activities, including in fundraising or investment management processes; and
- c. The existence of actual harm suffered by third parties such as investors, creditors, or service users as a direct result of such abuse.

Once these elements are established, the court is vested with the authority to pierce the corporate veil and impose personal liability upon those individuals responsible for the wrongful acts. This measure not only ensures justice for the injured parties but also provides a deterrent effect against future misconduct within the digital corporate environment.

Furthermore, the application of this doctrine does not aim to abolish the *limited liability* principle but rather to ensure that it is not exploited as a *shield for fraud*. The principle of limited liability must continue to function as a legal safeguard for shareholders acting in *good faith*; however, such protection cannot be extended to those who use the corporate form for purposes contrary to its legitimate objectives.²³

²³ DealStreetAsia, “Why governance is now critical for Indonesian startups,” Aug 26 2025, Available online: <https://www.dealstreetasia.com/partner-content/from-scandals-to-standards-why-governance-is-now-critical-for-indonesian-startups>

The enforcement of the *piercing the corporate veil* doctrine also reflects a broader legal effort to balance *economic efficiency* and *legal justice*. In the startup ecosystem, achieving this balance is essential because digital businesses often operate through complex, multi-jurisdictional legal relationships. Consistent application of this doctrine would strengthen corporate accountability and enhance investor confidence both domestic and international in Indonesia's regulatory environment.²⁴

Ultimately, the proper implementation of the *piercing the corporate veil* doctrine will foster a more transparent, ethical, and equitable digital business climate. It serves as a reminder that the corporate form cannot be exploited as a refuge from moral or legal responsibility. A firm and consistent application of this doctrine demonstrates that Indonesia's legal system is prepared to confront new challenges of the digital economy era without compromising the foundational principles of justice and legal certainty.

C. Conclusion

The *piercing the corporate veil* doctrine holds substantial relevance in the context of modern corporate law, particularly in addressing the phenomenon of *startup fraud* in Indonesia.²⁵ The principle of separation of corporate and personal liability remains a cornerstone of the modern corporate system, as it provides legal protection for shareholders and fosters an environment conducive to investment. However, such protection must not be interpreted as absolute. In practice, this principle must be balanced with legal mechanisms capable of preventing the misuse of corporate entities as instruments to evade responsibility or perpetrate fraudulent acts.

Through a normative legal approach, this study demonstrates that the foundation for applying the *piercing the corporate veil* doctrine has been accommodated under Article 3 paragraph (2) of Law No. 40 of 2007 concerning Limited Liability Companies, which allows for personal liability when a company is utilized for dishonest purposes. In addition,

²⁴ Yessy Kusumadewi, "Pelaksanaan Prinsip Piercing the Corporate Veil dalam Perseroan Terbatas Menurut Undang-Undang Nomor 40 Tahun 2007," *Binamulia Hukum* 8, No. 1 (2023): 97–115.

²⁵ Zul Fadli; Ady Purwoto; Mahlil Adriaman et al., *Hukum Perusahaan*, Padang: Get Press Indonesia, (2024), p. 75.

the *good faith* principle enshrined in Article 1338 of the Indonesian Civil Code (*KUHPerdata*), along with various national court decisions, further strengthens the legitimacy of this doctrine's application within Indonesia's legal practice.

By reinforcing the application of the *piercing the corporate veil* doctrine, Indonesia's legal system can not only maintain a balance between business interests and legal justice but also enhance the integrity of the national digital ecosystem. Consistent implementation of this principle will provide greater legal certainty for investors, reduce the potential for corporate misconduct in the digital sector, and support the creation of a transparent, accountable, and equitable business environment.

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