CHAPTER V
CONCLUSION, LIMITATIONS AND RECOMMENDATIONS

A. Conclusion

1. The Implementation of Piercing the Corporate Veil Doctrine in Indonesia, US, and UK

To begin with, the corporate veil could actually be pierced although the doctrine itself was not specifically regulated in the Indonesian company law. In fact, when the Supreme Court judges used the doctrine in their legal considerations in the case of PT BPA against PT Djaya in 1991, the doctrine was only regulated implicitly in the Indonesia Commercial Law Code. However, the lack of explicit regulation in Indonesia did not mean that the doctrine could not be implemented in the cases that happened in the country as proven by the cases of PT BPA against PT Djaya and Su Meng Liang against Bank CIMB. The doctrine was implemented in those two cases on the basis that there were elements of fraudulent and bad faith as well as breach of contracts or agreements that caused damages to the other party or a third party.

In the US, there are two tests tried by the judges to determine whether piercing the corporate veil doctrine could be used, which are the Laya test in Kinney Shoe Corp. v Polan (1991) and the three-part test in Radaszewski v Telecom Corp. (1992). Although the corporate veil was successfully pierced in Kinney Shoe Corp. v Polan (1991) and unsuccessfully in Radaszewski v Telecom Corp. (1992), the implementation of the doctrine could be seen to have been based on grounds that there might be fraudulent intent by establishing corporates as alter egos and breach of rights that caused injuries to the other party.

On the other hand, there are three grounds to pierce the corporate veil established and used in the cases in UK mentioned previously in Chapter IV. The first doctrine is the fraud doctrine established in Gilford v Horne (1993) and Jones v Lipman (1962), the second one is single economic unity doctrine established in DHN Food Distributors Ltd v Tower Hamlets London Borough Council (1976), and the third one is the agency doctrine used in Adams v Cape Industries plc (1990).

2. The Similarities and Differences of the Implementation of Piercing the Corporate Veil Doctrine in Indonesia, US, and UK

The implementation of piercing the corporate veil in these three countries, when looked at closely, is quite similar. First and foremost, the regulations regarding the doctrine are very implicit in Indonesia, US, and UK. In their written law, the doctrine is only regulated in the form of exceptions to the limited liability enjoyed by the shareholders, Directors, and Commissioners of a corporate. In addition, when the doctrine is used in courts as the legal basis for the judges to pass judgements, the grounds that the judges used to determine whether to pierce the corporate veil or not are common. For instance, the Supreme Court judges in Indonesia had used the doctrine in their legal considerations to pass judgements in cases regarding bad faith and fraudulent intent as well as breach of contracts. Similarly, in the US, the most used ground to pierce the corporate veil is probably the alter ego doctrine, which is also often used with fraudulent intent. The alter ego doctrine is very similar to the fraudulent doctrine used as one of the grounds to pierce the corporate veil in UK. Essentially, both doctrines explained that the corporate veil could be pierced if the corporate is established as a façade or as a puppet company to commit fraud or other acts that could caused damages to the other party or a third party.

However, even though the grounds to pierce the corporate veil in the three countries are quite similar, the applications of the doctrine in both the US and UK have created doctrines as the guideline for judges to pierce the corporate veil, whereas in Indonesia, the judgment of the Supreme Court judges that used the doctrine in 1991 only influence the addition of Articles in the amendment of the Limited Liability Companies Law in 1995. This shows that, the results of the implementation of the doctrine in US and UK established precedents that could be used in proceedings cases with similar circumstances, while the result of the implementation in Indonesia remains unclear as the exceptions added into the Limited Liability Companies Law in 1995 were very implicit, thus do not give any clear guideline or standard for judges to pierce the corporate veil.

3. The Explicit Regulation of Piercing the Corporate Veil in Indonesia

As mentioned and explained in previous Chapters, the company law in Indonesia through the 2007 Limited Liability Companies Law does not regulate regarding corporate groups, hence the practice of using the corporate group form for large-scale businesses has been relied upon the business world reality. The company law in Indonesia recognised a holding company and its subsidiary as two separate, independent legal entities and different economic units. However, according to the organ theory by Otto von Gierke, the relationship of a parent company and its subsidiary could be established in such a way, whereby the organs of a holding company are its subsidiaries, hence the subsidiaries' actions could be seen as the will of the parent company. This is further supported by the President's Decree 13/2018, which stated that a company must have stakeholder that holds all or most of the company's shares and has decisive influence over the operations of the company. The explanation of a stakeholder in the President's Decree 13/2018 is confirming that a holding company and its subsidiaries should be treated as a single economic unity, hence further affirming the relationship between a holding company and its subsidiaries.

In addition, according to piercing the corporate veil theory, the organs of the corporate, such as the directors and the shareholders, could be held liable by the law. Piercing the corporate veil could also be applied towards a group company, whereby based on Instrumentality Doctrine, holding company could also be held liable for the acts done by its subsidiary, given the condition that one of the elements is satisfied, such as express agency, estoppel, direct tort, or could be proven that there are control over subsidiary by holding company, the use of control over subsidiary by holding company to commit fraud, dishonesty, or other unfair actions, and there are damages as a result of the breach of duty from the holding company.

Indonesia has not regulated explicitly regarding piercing the corporate veil, particularly in the liabilities of corporate groups. According to the legal development theory put forward by Mochtar, the essence of development is a change in society and the role of law in the development is that law has to guarantee that the change would be carried out smoothly. This shows that according to the legal development theory by Mochtar, to achieve order in the change of business

practices, whereby large-scale businessed has been usingthe form of corporate group to opearte and to avoid uncertainty as well as unpredictability in the implementation of piercing the corporate veil doctrine, there should be a regulation that explicitly regulates on corporate groups and their liabilities through piercing the corporate veil doctrine.

B. Limitations

This research paper has faced some limitations, which amongst those limitations are:

1. The limitations on the source of data for the implementation of piercing the corporate veil in Indonesia, as there are not a lot of cases whereby piercing the corporate veil, especially in corporate groups, could be implemented clearly. Therefore, the cases that are used in this paper are mainly cases in Indonesia, in which piercing the corporate veil doctrine could be implemented in accordance to the 2007 Limited Liability Companies Law.
2. The limitation in the amount of time given as this research paper is a comparative study of the implementation of piercing the corporate veil in three countries. Hence, this paper must look into the prevailing written and unwritten laws applied in Indonesia, US, and UK in the limited amount of time given.

C. Recommendations

There are several recommendations put forward by this paper based on the research done, which are:

1. The recommendation that the Indonesian government could reassess the implementation of the piercing the corporate veil doctrine in the Indonesian company law

2. The recommendation that the piercing the corporate veil doctrine should be explicitly regulated in order to reaffirm the regulations regarding piercing the corporate veil doctrine and corporate groups' liabilities.