

State Liabilities as *Persero* Shareholders Related with Corporate Veil's Piercing Doctrine in Law Number 40 of 2007 Concerning the Limited Company

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Abstract: *This paper seeks to examine the position of the State as a shareholder of Persero related to the doctrine of corporate veils. The position of the government as a regulator who has a strong interest in protecting State capital that is always faced with the interests of state creditor raises its own problems. Persero which is subject to Republic of Indonesia Law No. 40 of 2007 concerning Limited Liability Companies (UUPT), Republic of Indonesia Law No. 1 of 2004 concerning State Treasury (UUPN), Republic of Indonesia Law No. 17 of 2003 concerning State Finance (UUK) creates collisions that are arising to be resolved. Article 3 of the Company Law as a basis for limited liability as well as being the basis for the unlimited liability of shareholders still raises problems in its implementation. Article 50 UUPN and Article 2 section (5) Law No. 37 of 2004 concerning Bankruptcy and Postponement of Obligations to Pay Debt (Bankruptcy Law and PKPU), become an obstacle for Persero creditors to get their rights. If the Persero creditor does not get the right of state goals as a means to realize social justice and humanity that is fair and against not fulfilled. If the state treats the state as an alter ego then the doctrine of piercing corporate veil is applied so that the liability of the state as a shareholder is not limited to the value of shares owned.*

Keywords: Responsibility, *Persero*, Shareholders.

1. Background

The law was created as a means to regulate the rights and obligations of legal subjects, so that legal subjects can carry out their obligations and obtain their rights appropriately.¹

In carrying out obligations or obtaining their rights, legal subjects should be protected by law but due to the limitations of the law itself, sometimes the law is unable to protect the legal subjects.

The salary payments of former employees from PT Dirgantara Indonesia that dragged on even though it was finally paid also PT Merpati Nusantara salary payments were not yet realized. That can't be underestimated. The employees of PT Dirgantara Indonesia and PT Merpati Nusantara are legal subjects that must be protected. These issues were important considering that PT Dirgantara Indonesia and PT Merpati Nusantara are state-owned enterprises in which the shareholders are the State.

Law of The Republic of Indonesia Number 17 of 2003 concerning State Finance (UUK), precisely in Article 1 number 1,² Article 2 letter g,³ Article 2 letter h,⁴ Article 2

letter i,⁵ and Explanation of Article 2 letter i⁶ states that separated state assets include state finances. This norm can be interpreted that the wealth of the *Persero* is the state wealth.

Article 1 number 1 of the Republic of Indonesia Law Number 1 of 2004 concerning State Treasury (UUPN) provides definition of state treasury.⁷ The definition of state treasury in the UUPN stated that investments and wealth that are separated as part of the state finances. The terms investment and wealth that are separated actually still require a more detailed explanation. This is needed because investment and wealth are separated not only for the *Persero* but also for State-Owned Enterprises (BUMN) in the form of Public Companies (*Perum*). Even though it requires more explanation, it can lead to an interpretation that *Persero's* wealth is state wealth.

³ State wealth / regional wealth managed by themselves or by other parties in the form of money, securities, accounts receivable, goods, and other rights that can be valued with money, including assets separated from state / regional companies.

⁴ The wealth of other parties that are controlled by the government in the context of carrying out government duties and / or public interests.

⁵ Wealth of other parties obtained by using facilities provided by the government.

⁶ The wealth of the other party as referred to in letter i includes wealth managed by another person or entity based on government policy, foundations in the state / agency ministry, or state / regional company.

⁷ The state treasury is the management and accountability of state finances, including investments and separated assets determined in the APBN and APBD.

¹ Iwan Permadi, *Perlindungan Hukum Terhadap Pembeli Tanah Bersertifikat Ganda Dengan Cara Itikad Baik Demi Kepastian Hukum*, *Yustisia Vol. 5 No.2* (Mei –Agustus 2016), p. 448

² State Finance is all state rights and obligations that can be valued with money, as well as everything in the form of money or in the form of goods that can be used as state property in connection with the implementation of these rights and obligations.

Article 1 number 1, Article 2 letter g, Article 2 letter h, Article 2 letter i UUK and Explanation of Article 2 letter i and Article 1 number 1 UUPN allow many parties to interpret that the assets of *Persero* are state assets.

Article 50 of the UUPN states that state assets cannot be confiscated. If the *Persero's* assets include State assets, the assets of the *Persero* cannot be confiscated as collateral for the engagement or tort of the Company.

Article 2 section (5) Law Number 37 of 2004 concerning Bankruptcy and Postponement of Obligations of Debt Payment (*Bankruptcy and PKPU Law*) describes In the event that a Debtor is an Insurance Company, Reinsurance Company, Pension Fund, or State-Owned Enterprise engaged in the public interest, the application for bankruptcy statements can only be submitted by the Minister Finance.

Article 223 of the Bankruptcy and PKPU Law describes in the case of Debtors are Banks, Securities Companies, Stock Exchanges, Clearing and Guarantee Institutions, Settlement and Settlement Institutions, Insurance Companies, Reinsurance Companies, Pension Funds, and State-Owned Enterprises engaged in public interest who can submit a request for postponement of the obligation to pay debt is an institution as referred to in Article 2 section (3), section (4), and section (5).

Decision of the Supreme Court of the Republic of Indonesia No. 075 K/Pdt.Sus/2007 dated October 22nd, 2007 against the case between PT. DI (*Persero*) against Heryono, Nugroho, Sayudi (former worker of PT. DI (*Persero*) who nullified the Central Jakarta District Court's bankruptcy decision Number 41/Pailit/2007/P.NiagaJktPusat which granted PT DI (Dirgantara Indonesia) bankruptcy request due to a request bankruptcy was not submitted by the finance minister, the Supreme Court's Verdict Number 447 K/Pdt.Sus-Pailit/2016 between Sudyarto and PT Merpati Nusantara Airlines (*Persero*) which declared PT MNA's bankruptcy application rejected with consideration of Article 2 section (5) Bankruptcy Law (*UU Kepailitandan PKPU*) states that in the event that the debtor is a State-Owned Enterprise engaged in the field of public interest, then the request for bankruptcy statement can only be submitted by the finance minister.

Some state or government actions carried out through the establishment of legislation such as Article 1 number 1 UUPN, Article 1 number 1, Article 2 letter g and explanation of Article 2 letter g UUK, Explanation of Law Number 31 of 1999 concerning Eradication of Corruption Crime in the general section paragraph 4, Explanation of the Law, in the general section number 3 the desire of the government / state to make state assets not only belongs to the *Persero* but also to the state.

Judges' decisions and statutory regulations described above make the assets of the two state-owned companies cannot be used as collateral for debt either through bankruptcy legal procedures or through the tort and default procedures suit.

Article 50 UUPN and Article 2 section (5) Law No. 37 of 2004 concerning Bankruptcy and Postponement of

Obligations to Pay Debt becomes an obstacle for *Persero* creditors to obtain their rights. If the company is unable to pay its obligations or debts while its assets cannot be confiscated to be auctioned to be used to pay its obligations or debts. Likewise, if the company is unable to pay its obligations or debt, it cannot be bankrupted by the creditor while the finance minister does not make a bankrupt application, the creditor will not get his rights from the sale of the remaining assets from the company.

Laws and judges' decisions make the situation uncertain. This uncertainty is in the form of *Persero's* creditors' rights arising from an agreement between creditors and the company not being paid.

This uncertainty illustrates that the law is unable to make a way how creditors get their rights. Fulfilling the rights of state-owned creditors is a measure to determine whether a legal product can create justice. Legal actions carried out by legal subjects with legal subjects regulated by law have not received legal protection, if the legal subject makes an agreement with another legal subject. The agreement has been carried out based on the applicable law but because a certain legal rule does not get its rights, there is a problem in making or compiling the legal system. In making or compiling in the legal system injustice occurs.

The problem that will be discussed in this journal is what is the standard corporate veil piercing in the Company Law? Is the standard piercing corporate veil in the Company Law related to the liability of the state as a shareholder able to protect *Persero* creditors? What is the liability of the state as a shareholder if it is associated with corporate veil piercing?

2. Discussion

A. *Persero* Subject to the Company Law

The Government Regulation Number 12 of 1998 concerning *Persero* in Article 1 number 2 stipulates, the State-Owned Company, hereinafter referred to as *PERSERO*, is a State-Owned Enterprise formed based on Republic of Indonesia Law Number 9 of 1969 in the form of Limited Liability Companies as referred to in Law No. 1 of 1995 which is in whole or in part where at least 51% of shares issued are owned by the State through direct capital participation.

The Republic of Indonesia Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN Law Article 1 number 2 stipulates *Persero*, is a BUMN with a limited liability company in which the capital is divided into shares owned by the State. Furthermore, Article 11 of the BUMN Law stipulates that all provisions and principles that apply for limited liability companies as stipulated in the Company Law.

B. Condition of Piercing Corporate Veil in the Company Law

Article 3 of the Company Law which reads:

Section (1) The Company's shareholders are not personally liable for the agreements made on behalf of the Company and are not liable for the Company's losses exceeding the shares held.

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

- a) The requirements of the Company as a legal entity have not or have not been fulfilled;
- b) The relevant shareholders, directly or indirectly in bad faith, use the Company for personal gain;
- c) The shareholders concerned are involved in illegal acts committed by the Company; or
- d) The relevant shareholders either directly or indirectly against the law use the Company's assets, which results in the Company's assets becoming insufficient to pay off the Company's debt.

Explanation of Article 3 Section (1) of the Company Law reads: The provisions in this paragraph reinforce the characteristics of the Company that shareholders are only liable for the deposit of all shares owned and do not cover their personal assets.

Article 3 Section 1 of the Company Law distinguish between the liabilities of the shareholders personally and the company's liability for the engagement on behalf of the company. The shareholders are not responsible for the company's losses more than the value of the shares they have, because those who must be responsible for the company's losses are the limited liability companies themselves.

The principle of limited liability of shareholders is the principle that distinguishes a limited liability company from other business entities. The principle of limited liability applies to commitments and losses that occur as a result of Persero's legal actions. The shareholders are only responsible for the deposit of all the shares they have. The liability of the shareholders does not cover his personal assets. The shareholders are not responsible for more than the amount of the deposit for all the shares they have in the legal actions of the Limited Liability Company.

The term liability in Article 3 section (1) The Company Law is defined as the liability arising from an agreement made or issued in the name of the Company and liability for the loss of a third party as a result of the Company's actions. Article 1233 of the Civil Code stated that an agreement arises because of contract and the law.

Explanation of Article 3 section (2) The Company Law reads in certain cases it is possible to remove the limited liability if proven matters mentioned in this paragraph occur. The liability of the shareholders in the amount of the deposit of all the shares owned is likely to be deleted if proven, among others, the mixing of the shareholders' personal assets with the assets of the limited company so that the limited liability company is established as a tool used by shareholders to fulfill their personal objectives as referred to in letter b and letter d.

The term mixing which is related to corporate veil piercing is known as Commingling, a mixture in the form of mixing assets (Commingling of assets), Mixing funds (Commingling of funds).

In the case of Kingsman Enterprises, Inc. v. Bakerfield Electric Company considers:

"The courts may say that there is a share of corporate funds, but commingling suggests more than they were reviewed. It contributes directly to the plaintiff's inability to collect claims from the corporation and, as a result, may justify the piercing veil."⁸

Kent Bickham Payne explains:

"A shareholder's payment of personal expenses is also discussed in some cases. This feature is closely related to commingling of assets. While objectionable to some, it may not be particularly 'useful test for piercing veils if actual commingling does not occur. Although the payment of personal expenses from corporate funds might render a corporation insurance, the shareholder may simply circumvent this problem by declaring dividends and paying expenses with those dividends."⁹

Elizabeth S. Fenton, Esquire and Kyle Anne Midkiff, CPA, CFF, CFE said:

"Commitment of funds may also occur between related entities and need not to involve the personal accounts of the dominant shareholders. In performing analysis of commingling, the forensic account should analyze the frequency and nature of transfers between related parties accounts (both personal and corporate). The forensic accountant."¹⁰

"Commingling can also occur when dominant shareholders are paid by the corporation. An entertaining and persuasive trial exhibit might be paid for by the corporation on behalf of the dominant shareholder (s) —especially if those payments list payees such as "Victoria's Secret" or "Tiffany's." The documents required for this undertaking include, but are not limited to, check registers, cash disbursement journals, general ledger expense details, original canceled checks, corporate credit card statements, and receipts and expense reports. Courts tend to place great emphasis on the forensic accountant regarding his findings for training to commingling, so this is a natural area of focus."¹¹

In contrast, commingling of assets may present a risk of an inappropriate alter ego relationship.¹² Where the assets of a

⁸ Kent Bickham Payne, "Piercing the Corporate Veil in Louisiana Absent Fraud or Deceit", Louisiana Law Review, Volume 48 [Number 5, (Mei 1988), p. 1240.

⁹ *Ibid.*

¹⁰ Elizabeth S. Fenton, Esquire and Kyle Anne Midkiff, CPA, CFF, CFE, "Piercing the Corporate Veil: A Guide for the Forensic Accountant", *Litigation National Consultant's review Information, guidance, and resources from the nation's leading financial forensics experts*, (May 2010), p. 2.

¹¹ *Ibid.*

¹² FLETCHER, *supra* note 5, § 41.50 ("Evidence that shareholders used corporate funds for personal purposes, mixed corporate and personal accounts, or commingled assets so that the ownership interests were indistinguishable will be weighed, along with other factors, when a disregard of corporate separateness surges."). through Douglas G. Smith, "Piercing The Corporate Veil In Regulated Industries". *George Mason University School of*

corporation and its shareholders are commingled, it tends to demonstrate that the corporation is not separate and distinct from the shareholders. Such commingling is distinct from typical corporate transactions, such as where it gives a subsidiary financing to conduct its business operations.¹³

The description above shows that mixed wealth occurs because shareholders pay shareholders' bills or personal expenses paid with PT funds, failure to separate shareholder accounts with PT accounts where it is difficult to distinguish shareholders' finances from PT's finances or find it difficult to separate PT trusts from shareholders' wealth.

The shareholders liability in the amount of deposits for all shares held by shareholders is likely to change if it is proven that the assets of the shareholders' personal property are mixed with the Company's assets. This situation can be interpreted that the Company was established solely as a tool used by shareholders to achieve their personal goals.

Article 3 section (2) and the explanation of Article 3 Section (2) The Company Law establish the criteria for the actions of shareholders who can change the limited liabilities of shareholders to become unlimited liability. The criteria are:

- a) The requirements of the Company as a legal entity have not or have not been fulfilled;
- b) The relevant shareholders, directly or indirectly in bad faith, use the Company for personal gain;
- c) The shareholders concerned are involved in illegal acts committed by the Company; or
- d) The relevant shareholders either directly or indirectly against the law use the Company's assets, which results in the Company's assets becoming insufficient to pay off the Company's debt.
- e) There is a mixing of the shareholders' personal assets with the assets of a limited liability company so that a limited liability company is established as a tool used by shareholders to fulfill their personal goals.
- f) There has been a mixing of the shareholders' personal assets with the assets of a limited liability company so that the limited liability company was established as a tool used by shareholders to fulfill their personal goals directly or indirectly against the Company using the Company's assets, which resulted in insufficient assets to pay off Company debt

C. The State's responsibility as a *Persero's* shareholder is related to the Corporate Veil Piercing Doctrine

Article 3 section (2) of the Company Law is a test or measurement tool to determine whether shareholders can be held liable for more than the value of their shares or that the corporate veil piercing doctrine can be applied.

If it is associated with the position of the state as a shareholder of a limited liability company in general or the position of the state as a shareholder with the position of the

regulator as a regulator, the question arises whether the test or measure in Article 3 section (2) is sufficient to make all parties those who carry out legal actions or all party who must come into contact with state legal actions as subjects of civil law can feel justice.

Article 7 section (7) The Company Law regulates the difference in terms of the number of parties that can establish a Limited Liability Company. Article 7 section (1) of the Company Law which requires the Company to be established by 2 (two) or more and the provisions in section(5), and section (6) do not apply to *Persero* which all shares are owned by the state. This article is a sign that the position of the state as a regulator has made special regulations for itself as the founder or shareholder compared to the shareholders or founders of other limited liability companies.

Hamid S Attamimi's opinion, which states that the definition of state finance is not only things that are regulated by the State Budget, but also broadly includes regional finances, BUMNs, and BUMDs.¹⁴ Definition of state finances which, according to this definition, include the definition of state finances which are broadened by the object and the source of origin of the country's finances. Arifin P. Soeria Atmadja's opinion, which states that the definition of state finance is plastic, depends on the point of view, so that when speaking of state finances from the government's point of view, the state budget refers to state finances while talking about state finances in the regional government what is meant by regional finance is APBD, and so on with *Perjan*, State Enterprises, and Public Corporation or in other words the definition of state finance in the broad sense includes the state budget, regional budget, state finance in *Perjan*, *Perum PN-PN*. While in the narrow meaning, only includes legal entities that are authorized to manage and account for them.¹⁵

Explanation of Law Number 17 of 2003 concerning State Finance, in the general section number 3 reads: Understanding and Scope of State Finance. The approaching used in formulating State Finance is in terms of objects, subjects, processes, and objectives. **In terms of the object referred to as State Finance, it covers all state rights and obligations that can be valued with money, including policies and activities in the fiscal, monetary and segregated management of state assets, as well as everything in the form of money, as well as property country in connection with the implementation of these rights and obligations.** From the subject matter referred to as State Finance, it covers all objects as mentioned above which are owned by the state, and / or controlled by the Central Government, Regional Government, State / Regional Companies, and other bodies that are related to state finance. **From the process side, State Finance covers the whole set of activities related to object management as mentioned above, starting from policy formulation and decision**

Law, Brigham Young University Law Review, Forthcoming, George Mason University Law and Economics Research Paper Series, (August 2008), p.11.

¹³*Ibid.* ("In the parent/subsidiary context, a court will not pierce the corporate veil merely because the parent and subsidiary issued consolidated financial statements, or because the parent provided financing to the subsidiary.")

¹⁴ Lihat A. Hamid STamimi, "Pengertian Keuangan Negara", *Jurnal Hukum Dan Pembangunan*, (Mei 1981) jhp.ui.ac.id: 237.

¹⁵ Arifin P. Soeria Atmadja, *Keuangan Publik Dalam Perspektif Hukum : Teori, Praktik, dan Kritik*, (Jakarta : PT Rajawali Pers, 2009), .hlm 70.

making to accountability. In terms of objectives, State Finance covers all policies, activities and legal relations relating to ownership and / or mastery of objects as mentioned above in the framework of administering state government. Such a broad field of State Finance management can be grouped into sub-sectors of fiscal management, monetary management sub-sector, and separated sub-sectors of state wealth management.

Article 1 number 1 UUPN, Article 1 number 1, Article 2 letter g and explanation of Article 2 letter g of Law Number 17 of 2003 concerning State Finance, Explanation of Law of the Republic of Indonesia No. 31 of 1999 concerning the Eradication of Corruption Crime (UUTPK) in the general part of paragraph 4 can be interpreted as the actions of the government / state to make *persero* assets as state assets. The actions of the government / state treats *persero* assets as state wealth are interpreted as an attempt to mix the assets of the *persero* assets with state assets.

The actions of the government / state that mixed *persero* assets with state assets through legislation were supported by several opinions, including: Hamid S Attamimi, Arifin P. Soeria Atmadja,. This support reinforces legislation such as Article 1 number 1 UUPN, Article 1 number 1, Article 2 letter g and explanation of Article 2 letter g UUK, Explanation (UUTPK) in general section paragraph 4, Explanation of UUK, in general section number 3 government wishes / country to make *persero* assets not only owned by *persero* but also state property. Legislation and opinions that supported it prove the existence of a mixture of assets between limited liability companies and shareholders.

Decision of the Supreme Court of the Republic of Indonesia No. 075 K / Pdt.Sus / 2007 dated October 22, 2007 against the case between PT. DI (*Persero*) against Heryono, Nugroho, Sayudi (former worker of PT. DI (*Persero*)). Decision of the Supreme Court of the Republic of Indonesia No. 075 K / Pdt.Sus / 2007 void the Central Jakarta PN bankruptcy decision Number 41 / Bankrupt / 2007 / P.Niaga The Central Jkt granted the bankruptcy request of PT DI (Dirgantara Indonesia) because the bankruptcy application was not submitted by the finance minister. PT DI (*Persero*) said that it was a state-owned company where the shareholders were the Minister of BUMN qq Republic of Indonesia and the Minister of Finance qq industrial objects that concern the lives of many people, the interests of the state and / or sources of strategic state income. "Decision of the Supreme Court of the Republic of Indonesia No. 075 K / Pdt.Sus / 2007 uses Article 2 section (5) Law No. 37 Year 2004 states that in the event that the debtor is a State-Owned Enterprise engaged in the field of public interest, then the application for bankruptcy statement can only be submitted by the Minister of Finance and explanation of Article 2 section(5) of the Bankruptcy Act and PKPU, is a state-owned enterprise whose entire capital is owned by the state and is not divided into shares to cancel the bankruptcy decision of the Central Jakarta District Court.

Decision of the Supreme Court Number 447 K / Pdt.Ss-Pailit / 2016 between Sudiyarto against PT Merpati Nusantara Airlines (*Persero*) which stated that PT MNA's bankruptcy

application was rejected with consideration of Article 2 section (5) of Law No. 37 of 2004 states that in the event that the debtor is a State-Owned Enterprise engaged in the field of public interest, then the application for bankruptcy statement can only be submitted by the finance minister.

Decision of the Supreme Court Number 41 PK / Pid.Sus / 2015 Year 2015 and Decision of the Supreme Court Number 417 K / Pid.Sus / 2014 which sentenced the Managing Director (Director) of Merpati Nusantara Airlines (MNA) to the D.P. Nababan who stated that he was found guilty of corruption and sentenced to 4 years in prison;

The decision of the Jakarta Corruption Criminal Judge which states Libra Widiyanto as the former Head of the Business Division or Operational Director of PT. PANN (*Persero*) sentenced to 2 years imprisonment. This sentence is lower than the prosecutor's demands for 3 years in prison and a fine of IDR 300 million subsidiary 6 months in prison, and the Jakarta Corruption Judge Decision which states Henry Djuhari who is the Managing Director of PT Meranti Maritime was sentenced to 2 years and 8 months imprisonment and a fine IDR 100 million subsidiary USD 19 million and IDR 21 million.¹⁶

The Jakarta Corruption Court's ruling that stated former Finance Director of PT Berdikari (BUMN) SitiMarwa was proven legally and convincingly guilty of committing a criminal act of corruption, imposing a four-year sentence and a fine of IDR 500 million with provisions if not paid was replaced by 3 months imprisonment."¹⁷

Determination and sentencing of commissioners or directors of several *Persero* using anti-corruption laws and court attitudes stating that the bankruptcy petition against the state cannot be done other than by the finance minister shows that the state has treated *Persero* as an instrument used by shareholders to fulfill its objectives his personality.

If it is related with Article 3 section 2 of the Company Law and its explanation, there has been a mixing of the state's personal assets as shareholders with the *persero's* assets so that the *persero* was established as a tool used by shareholders to fulfill their personal goals. This mixture makes the state's assets as the shareholders a guarantee of the *persero* legal actions.

The mixing of assets between the state as a shareholder and *Persero* is not enough to fulfill the corporate veil piercing doctrine test as determined by the explanation of Article 3 section (2) of the Company Law. Because to fulfill the test, it is still necessary to fulfill other requirements contained in Article 3 section (2) letter b, namely the relevant shareholders, either directly or indirectly in bad faith, utilize the Company for personal interests and those contained in

¹⁶Fitri Kumalasari, "Putusan Dua Terdakwa Korupsi Rp 1,3 Trilyun di PT PANN Terlalu Ringan" Gatra .com. 24-11-2017 18:49 WIB.

¹⁷Antara, "MantanDirekturKeuangan PT BerdikariDivonis 4 TahunPenjara", e-paper Media Indonesia, Monday, Des 5th, 2016, 20:55 WIB.

letter d, namely the relevant shareholders either directly or indirectly against the law using the Company's assets, which results in the Company's assets becoming insufficient to repay the Company's debt.

If there is a mixture of assets between the state as a shareholder and *Persero* while the bad faith of utilizing the company does not exist and the state acts illegally using the company's assets, which results in insufficient wealth to pay off the company's debt, whether the country still has limited liability the company still applies?

The mixing of property between *persero* and state if it is related to Article 50 of the Indonesian Company Law gives rise to the consequences that the assets listed as owned by the company cannot be confiscated to be used as collateral for the company's commitment with the *persero's* creditors.

Article 2 sections (5) of the Judicial Review and PKPU states that in the event that the debtor is a State-Owned Enterprise engaged in the field of public interest, then the application for bankruptcy statement can only be submitted by the Minister of Finance. If the finance minister does not file for bankruptcy, Article 2 paragraph (5) becomes an obstacle for creditors to get their rights.

The prohibition on seizure of state property as stipulated in Article 50 UUPN and the principle of filing bankruptcy against state companies can only be submitted by the finance minister. So that the state as a shareholder of the company, either directly or indirectly against the law, uses the company's wealth, which results in the company's assets becoming insufficient to pay off the company's debt.

Article 50 of UUPN and Article 2 section (5) of the bankruptcy and PKPU Law become obstacles for creditors to obtain their rights. If the company that cannot afford its obligations cannot be seized for auction to pay its debt and cannot be bankrupted by the creditor while the finance minister does not make a bankrupt application, the creditor will not get his rights from the sale of the remaining assets from the company.

If the state's creditors do not get their rights as a result of regulations made by the state to protect their interests, the state's goals as a means to realize just and fair social justice and humanity as written and Preamble the 1945 Constitution and Pancasila cannot be manifested. For that we need a special regulation that can be used to solve this problem.

If the assets of *persero* cannot be confiscated and the company cannot be declared bankrupt by another party other than the finance minister, the State must be responsible for all commitments made by the *persero*. The liability must be borne by the State or there are no bad ties or tort. Article 50 of the UUPN and Article 2 section (5) of the bankruptcy and PKPU rise a condition which results the *persero* creditors are not getting their rights.

If the state treats *persero* as an *alter ego* or other kind of law subjects, the doctrine of piercing corporate veil or the liability of the state as a shareholder is not limited to the value of the shares it has to be applied.

3. Conclusion

After discussing the background and issues in this paper, the conclusions in this paper are:

- 1) The piercing corporate veil criteria in the Company Law, among others:
 - a) The requirements of the company as a legal entity have not or have not been fulfilled;
 - b) The relevant shareholders, directly or indirectly in bad faith, use the company for personal gain;
 - c) The shareholders concerned are involved in illegal acts committed by the company; or
 - d) The relevant shareholders either directly or indirectly against the law use the company's assets, which results in the company's assets becoming insufficient to pay off the company's debt.
- 2) The standard piercing corporate veil in the Company Law relating to the liability of the state as shareholders has not been able to protect *Persero's* creditors.
- 3) The state as a shareholder must be responsible for all commitments made by the *Persero* if Article 50 UUPN, Article 2 section (5), Article 223 UPT and the PKPU are applied to the *Persero*.

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- [18] Law of the Republic of Indonesia Number 1 of 1995 concerning Limited Liability Companies.
- [19] Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption Crime (UUPTPK).
- [20] Law of the Republic of Indonesia Number 17 of 2003 concerning State Finance (UUK).
- [21] Law of the Republic of Indonesia Number 19 of 2003 concerning State-Owned Enterprises (UUBUMN).
- [22] Law of the Republic of Indonesia Number 1 of 2004 concerning State Treasury (UUPN).
- [23] Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Delay of Obligation to Pay Debt (UUK and PKPU).
- [24] Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies (UUPT).
- [25] Government Regulation of the Republic of Indonesia Number 12 of 1998 concerning Company Companies (*Persero*).
- [26] Government Regulation of the Republic of Indonesia Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies.
- [27] Republic of Indonesia Government Regulation Number 45 of 2005 concerning Establishment, Management, Supervision and Dissolution of State-Owned Enterprises.
- [28] Republic of Indonesia Government Regulation Number 51 of 2011 concerning Changes in the Form of Public Corporation (*Perum*) Pawnshop Legal Entity to become a Company (*Persero*). 6. Government Regulation Number 103 of 2000 concerning Public Corporation (*Perum*) Pawnshop, needs to change the form of legal entity Public Company (*Perum*) Pawnshop into a *Persero*;
- [29] Republic of Indonesia Government Regulation Number 27 of 2014 concerning Management of State / Regional Property
- [30] Instruction of the President of the Republic of Indonesia Number 17 of 1967 concerning the Direction and