

## INTISARI

### **ANALISIS LARANGAN PENGGABUNGAN GUGATAN WANPRESTASI DAN PERBUATAN MELAWAN HUKUM YANG DIAJUKAN OLEH KREDITUR PERSEROAN BERDASARKAN PRINSIP *PIERCING THE CORPORATE VEIL***

**Akhmad Zaenuddin<sup>1</sup> dan Sulistiowati<sup>2</sup>**

Penelitian ini bertujuan untuk mengkaji penerapan prinsip *piercing the corporate veil* dalam Hukum Perseroan Terbatas yang mengalami benturan dengan ajaran larangan penggabungan antara gugatan perbuatan melawan hukum dan wanprestasi dalam praktek peradilan perdata di Indonesia.

Penelitian ini menggunakan metode penelitian yuridis normatif. Sifat dari penelitian adalah deskriptif analitis. Penelitian menggunakan data sekunder yang dihimpun dari bahan hukum primer dan bahan hukum sekunder. Pendekatan yang digunakan adalah pendekatan peraturan undang-undangan dan pendekatan kasus. Teknik pengumpulan data penelitian yang digunakan adalah melalui studi dokumen.

Hasil penelitian menunjukkan bahwa perkembangan dalam praktik putusan-putusan pengadilan terdapat pergeseran pemikiran hakim yang bermuara pada kesimpulan bahwa larangan penggabungan gugatan wanprestasi dan perbuatan melawan hukum tidak dapat dipertahankan. Putusan hakim yang melarang penggabungan gugatan kreditor perseroan berdasarkan prinsip *piercing the corporate veil* pun tidak sesuai dengan pergeseran pemikiran tersebut. Putusan tersebut mengabaikan adanya hubungan erat objek dan subjek gugatan, mengabaikan asas kemanfaatan dari segi hukum acara dan nilai keadilan, putusan cenderung bersifat kaku dan formalistik, dan ditinjau dari Hukum Perdata pun konstruksi prinsip *piercing the corporate veil* memenuhi unsur perbuatan melawan hukum.

Kata kunci: *piercing the corporate veil*, penggabungan gugatan wanprestasi dan perbuatan melawan hukum, hukum acara perdata.

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## **ABSTRACT**

### **THE ANALYSIS OF PROHIBITION OF BREACHING THE CONTRACT AND TORT SUIT CUMULATION OF THE COMPANY'S CREDITORS BASED ON THE PRINCIPLE OF PIERCING THE CORPORATE VEIL**

**Akhmad Zaenuddin<sup>3</sup> and Sulistiowati<sup>4</sup>**

The research was aimed to examine the application of piercing the corporate veil principle in limited company law. In the practice area, the implementation of this principle has collided with jurisprudence on the prohibition of cumulating tort and breaching the contract that known in the civil procedural law in Indonesia.

The juridical normative method is used to draw the analytical process with the nature of the research is descriptive-analytical. This research applies secondary data collected from primary and secondary legal materials. The approach applied is with the Indonesia National Regulations and case study. Data collection performed in this research is from document and desk study.

The result of this research concluded that the development of court judgment practices shows that there is a shift in the Judge's conviction and argumentation which leads to the conclusion that the cumulating tort and breaching the contract cannot be maintained. The judge's decision which used as the object of this study applied the prohibition on the cumulation of the company's creditors suit based on the principle of piercing the corporate veil in its judgment. This practice was not in accordance with the shift in the judge's conviction as a new paradigm. This aforementioned decision neglects the close relationship between the object and subject of the lawsuit, neglects the advantages of suit cumulation with reference to the procedure and the value of justice, the decision tends to be rigid and formalistic, and in terms of civil law, the construction of the principle of piercing the corporate veil fulfills the element of the tort.

**Key words:** piercing the corporate veil, cumulation of tort and breaching the contract law suit, civil procedural law.

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