

ABSTRACT

THE CRIMINAL LIABILITY FOR SHAREHOLDERS BY IMPLEMENTING PRINCIPLE PIERCING THE CORPORATE VEIL

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The purpose of this legal research is to find out the implementation of piercing the corporate veil in Indonesia in several cases of banking crimes. Furthermore, it is known that that shareholders in the banking criminal case of Bank Century, Bank Harapan Santosa and Bank Bali have been sentenced by the Court. The legal research seeks to analyse to what extent shareholders criminal liability can be applied in banking crime cases.

This legal research uses doctrinal legal research method by means of a normative approach. The data contained within this legal research mainly revolves around judicial decisions, laws and regulations, as well as literatures to construct the analysis comprehensively.

This legal research arrives at several conclusions that firstly, the criminal responsibility of shareholders is regulated under the Banking Law in Article 50A and also under the Law of Limited Liability Companies Article 3 paragraph (2). Secondly, Indonesian Courts have successfully implemented the principle of piercing the corporate veil in the criminal responsibility of banking shareholders, however it appears that in applying the principle the application is still rarely found. This certainly has an impact on the court's decision that could have been adopting alter ego and piercing the corporate veil for the basis of shareholder misconduct. There are several crucial things which are improved for the efficiency of applications per deviation of banking shareholders' shares. Nevertheless, there are still several significant key factors that should be reformed and/or added to improve the efficacy of the implementation of piercing the corporate veil towards shareholders in banking crime cases.

Keywords: Piercing the Corporate Veil, Criminal Liability, Shareholders, Banking, Case Study

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INTISARI

TANGGUNG JAWAB PIDANA BAGI PEMEGANG SAHAM DENGAN MENERAPKAN PRINSIP PIERCING CORPORATE VEIL

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Tujuan dari penelitian hukum ini adalah untuk mengetahui implementasi dari doktrin piercing the corporate veil di Indonesia dalam beberapa kasus tindak pidana perbankan. Diketahui bahwa pemegang saham dalam kasus pidana perbankan Bank Century, Bank Harapan Santosa dan Bank Bali telah dihukum oleh Pengadilan. Penelitian hukum ini berupaya menganalisis sejauh mana teori piercing the corporate veil dalam meminta tanggung jawab pidana pemegang saham perbankan dapat di terapkan dalam kasus pidana perbankan.

Penelitian hukum ini menggunakan metode penelitian hukum doktrinal dengan menggunakan pendekatan normatif. Data yang terkandung dalam penelitian hukum ini terutama berkisar pada keputusan pengadilan, undang-undang dan peraturan, serta literatur untuk membangun analisis

Penelitian hukum ini sampai pada beberapa kesimpulan bahwa pertama, tanggung jawab pidana pemegang saham dalam UU Perbankan diatur dalam Pasal 50A dan juga diatur dalam UU Perseroan Terbatas Pasal 3 ayat (2). Kedua, Pengadilan di Indonesia telah berhasil mengadopsi doktrin piercing the corporate veil dalam meminta tanggungjawab pidana perbankan pemegang saham, namun Pengadilan Pidana sampai saat ini terkesan enggan untuk mengakui dan mempergunakan peraturan-peraturan tersebut. Hal ini dapat dilihat dari sedikitnya kasus-kasus kejahatan pemegang saham korporasi di pengadilan dan tentu saja berdampak pada sedikitnya keputusan pengadilan yang dapat menerapkan dan piercing the corporate veil sebagai dasar untuk menentukan kesalahan pemegang saham. Ada beberapa hal yang cukup krusial yang perlu dibenahi guna meningkatkan efisiensi menerapkan pertanggungjawaban pemegang saham perbankan.

Kata Kunci: Piercing the Corporate Veil, Tanggungjawab Pidana, Pemegang Saham, Perbankan, Studi Kasus

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