SASI

Volume 31 Issue 3, September 2025: p. 231-245
P-ISSN: 1693-0061, E-ISSN: 2614-2961
https://fhukum.unpatti.ac.id/jurnal/sasi
: 10.47268/sasi.v31i3.3010

SASI

The Responsibility of Limited Liability Company Organs in Group Company (Holding) of State-Owned Enterprises

Thomas Nanda Dahana[1*], Budi Santoso[2], Paramita Prananingtyas[3]

[1,2,3] Faculty of Law, Universitas Diponegoro, Semarang, Indonesia.

: thomasnandadahana@gmail.com
Corresponding Author[*]

Abstract

Introduction: *This article examines the legal challenges in the absence of specific regulations governing group companies (holding) in Indonesia, especially within State-Owned Enterprises (SOEs). The core issue lies in determining the liability of the parent company for losses incurred by its subsidiaries due to unclear corporate accountability structures and control relationships in the SOE holding framework.*

Purposes of the Research: *The purpose of this study is to analyze the legal framework that governs the relationship between a parent company and its subsidiaries in SOE holding structures, with particular attention to the responsibility of corporate organs in addressing subsidiary business risks.*

Methods of the Research: *This study applies normative juridical research using a statutory and case-based approach. The analysis is based on secondary legal materials and is supported by comparative law methods from other jurisdictions to evaluate the application of doctrines such as piercing the corporate veil and business judgment rule.*

Results of the Research: *The findings show that the doctrine of piercing the corporate veil may apply when the parent company's actions result in harm to subsidiaries. However, corporate organs remain protected under the business judgment rule if acting in good faith. This study contributes by offering a legal framework for parent-subsidiary accountability in SOE holdings and comparing it with international practices.*

Keywords: SOE Holding; Group Company; Responsibility.

Submitted: 2025-04-22 *Revised: 2025-09-27* *Accepted: 2025-09-27* *Published: 2025-09-30*

How To Cite: Thomas Nanda Dahana, Budi Santoso, and Paramita Prananingtyas. "The Responsibility of Limited Liability Company Organs in Group Company (Holding) of State-Owned Enterprises." *SASI* 31 no. 3 (2025): 231-245. https://doi.org/10.47268/sasi.v31i3.3010

Copyright © 2025 Author(s) Creative Commons Attribution-NonCommercial 4.0 Internasional License

INTRODUCTION

In achieving public welfare, the national economy must be based on the principles of economic democracy, which include integrity, efficiency, justice, sustainability, environmentally friendly policies, independence, and maintaining the balance and unity of the national economy. This requires solid economic institutions to support it. The implementation of this national economy is in line with Article 33 of the 1945 Constitution of the Republic of Indonesia, which affirms the need to regulate the economy as a shared effort based on family principles, control of strategic production sectors by the state, and optimization of the use of natural resources to increase people's welfare.

By the provisions of the prevailing laws and regulations in Indonesia, various business entities exist. The limited liability company is Indonesia's most commonly used and well-developed business entity. This is because a limited liability company is an association between funds and independent business entities. Compared to other companies, a limited liability company makes it easier to raise capital, especially for investors who tend to be cautious of risk and want to minimize costs in making investments.[1] According to the provision of Article 1 number (1) of Law Number 40 of 2007 concerning Limited Liability Companies (LLCs), a limited liability company is a legal entity that is a capital alliance established by virtue of an agreement, conducting business activities with the company's authorized capital divided into shares and which satisfies the requirements as stated in the Company Law, and its implementation regulations. This indicates that a limited liability company is a form of legal entity that allows ownership and acquisition of shares by shareholders through the capital contributions they make.[2] Limited liability companies have specific characteristics, including being a joint funding entity, separation of assets and liabilities from shareholders, limited liability for shareholders, separation of functions between shareholders and management, supervisory role performed by commissioners, and supreme power in the General Meeting of Shareholders (GMS).[3]

A limited liability company can form a group of companies, or a conglomerate of businesses owned by a single individual, family, or multiple shareholders. These individual companies remain owned by the same owner, with control centred around one pre-existing company, which acts as a parent company or the company that started the limited liability company.[4] The efficiency and effectiveness of implementing the role of State-Owned Enterprises (SOEs) in supporting national economic growth and public welfare can still be improved. In considering letters a, b, c, and d of Law Number 19 of 2003 concerning State-Owned Enterprises, it is essential to manage and supervise their operations with a strict professional approach to optimize the performance of SOEs. One of the strategies the government uses is establishing parent companies of SOEs by injecting state capital from existing SOEs and/or limited liability companies into other SOEs and/or limited liability companies as part of the initiative.

In its concept, the state's ownership of the capital injected into the company through State Equity Participation (PMN) will change into shareholding by the state in the company. Consequently, the capital will become the company's wealth as an independent legal entity. Nevertheless, until now, there have still been discrepancies or ambiguities in the regulations regarding the status of PMN due to the dual interpretation between Law Number 19 of 2003 on State-Owned Enterprises and Law Number 17 of 2003 on State Finances. [5]

In addition to the issues related to the corporate legal structure between the parent company and subsidiary companies in the group company structure (holding company) that have been stated, there are also aspects related to the responsibility of the board of directors for the business risks of the subsidiary company, which refers to Article 1 number (5) of the Company Law. By the provisions of the company, limited liability companies adhere to the principle of independence, indicating that the board of directors in a company runs its business without influence or intervention from parties other than shareholders and other stakeholders. Shareholders only act as capital providers by the principle of trust (fiduciary duty) to be managed by the board of directors based on the principle of business

---

[1] Chatamarrasjid., *Menyingkap Tabir Perseroan (Piercing The Corporate Veil): Kapita Selekta Hukum Perusahaan.* (Bandung: Citra Aditya Bakti, 2000).

[2] Bonifasius Aji. Kuswiratmo, *Keuntungan Dan Risiko Menjadi Direktur, Komisari, Dan Pemegang Saham.* (Jakarta: Visimedia Pustaka, 2016).

[3] I.G. Ray. Widjaya, *Hukum Perusahaan. Jakarta: Kasaint Blanc* (Jakarta: Kasaint Blanc, 2000).

[4] K. Dhaniswara. Harjono, *Problematika Hukum Bisnis Dan Korporasi.* (Jakarta: PPHBI (Pusat Pengembangan Hukum dan Bisnis Indonesia), 2010).

[5] Enggi Syefira. Salsabila, "Analisis Yuridis Kewenangan Bumn Untuk Melakukan Monopoli Dan Atau Pemusatan Kegiatan Dalam Perspektif Kepastian Hukum Dan Kesejahteraan Audito Comparative Law," *Journal (ACLJ)*, n.d., 40.

SASI, 31 (3) September 2025: 231 - 245
P-ISSN: 1693-0061, E-ISSN: 2614-2961
Published by: Faculty of Law, Universitas Pattimura

judgment.[6] Referring to this provision, it can be concluded that the company's board of directors has two leading roles: management and representation.[7] The fiduciary relationship between the company and the directors, which arises due to the dependence of the legal entity on the directors, refers to the obligation to act for the profit of others, with the subordination of personal concerns. This doctrine signifies the highest standard of duty in law, providing essential protection for shareholders and the company. [8] According to the descriptions and conditions that have been elaborated, this is the background for conducting research on the Responsibility of Limited Liability Company Organs in Group Companies (Holding) of State-Owned Enterprises.

METHODS OF THE RESEARCH

This research employs a normative juridical method, which focuses on examining legal norms, doctrines, and principles relevant to the subject of study. As a doctrinal legal research, this approach relies heavily on secondary data, including statutes, legal theories, legal concepts, and relevant case law.[9] The normative juridical method is ideal for analyzing legal relationships, such as the accountability of company organs within the structure of a State-Owned Enterprises (SOEs) holding company, by systematically evaluating legal materials through a legal reasoning process.[10] In this study, the researcher adopts both statutory and case approaches, enabling a comprehensive understanding of the legal framework that governs the corporate relationship between parent companies and subsidiaries in a holding company. Legal materials used include the 1945 Constitution, Law Number 40 of 2007 on Limited Liability Companies, Law Number 19 of 2003 on State-Owned Enterprises, as well as relevant judicial precedents and legal commentaries. The main focus is on evaluating the legal liability of company organs specifically, shareholders, directors, and commissioners within group companies when actions lead to financial losses or legal violations. This method also integrates comparative legal analysis, particularly by examining legal practices in jurisdictions such as Germany, the Netherlands, Malaysia, and the United Kingdom, to contextualize how the doctrine of piercing the corporate veil and the principle of limited liability are applied in different legal systems.

RESULTS AND DISCUSSION

A. The Building of the Corporate Law Model Between Parent Company and Subsidiaries in SOE Holding Companies

Limited liability companies have the authority to manage assets, accuse, and execute other authorities in accordance with applicable law. Types of limited liability companies include limited liability companies whose shares have not been traded to the public, public companies with partially traded shares, companies in the context of Domestic Investment (PMDN) in various sectors such as agriculture, fisheries, and tourism, limited liability companies in the context of Foreign Investment (PMA) such as PT Freeport and PT Newmont Nusa Tenggara, as well as PT Persero (State-Owned Enterprises, Regional-

[6] Sulistiowati, *Aspek Hukum Dan Realita Bisnis Perusahaan Grup Di Indonesia.* (Jakarta: Erlangga, 2010).

[7] Ridwan Khairandy, *Perseroan Terbatas Doktrin, Peraturan Perundang-Undangan, Dan Yurisprudensi.* (Yogyakarta: Total Media, 2018).

[8] Augustinus. Simanjuntak, *Hukum Bisnis, Sebuah Pemahaman Integratif Antara Hukum Dan Praktik Bisnis.* (Depok: Rajagrafindo Persada., 2018).

[9] Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: RajaGrafindo Persada, 2006).

[10] Laurensius P. Matheus dan Hary Gunadi, *Metodologi Penelitian Hukum: Pendekatan Normatif Dan Pengembangan Hukum Nasional* (Jakarta: Prenada Media Group, 2024).

SASI, 31 (3) September 2025: 231 - 245
P-ISSN: 1693-0061, E-ISSN: 2614-2961
Published by: Faculty of Law, Universitas Pattimura

Owned Enterprises). [11] In the corporate law framework, group companies (holding company) can be classified into two main categories: investment holding company and managerial holding company. An investment holding company is a company that is formed with the primary objective of earning profits through shareholdings in the subsidiary company, while the managerial holding company is actively involved in supervising and intervening in transactions involving a subsidiary company.[12] This classification distinguishes two different approaches to subsidiary company ownership. An investment holding company emphasizes passive investment and capitalizes on the benefits of securities ownership; in contrast, a managerial holding company is actively involved in managing and making decisions related to the subsidiary company. The choices between these two forms of group companies (holding company) can be affected by the business objective, strategy, and policy of the company that has established it.

The parent company has two methods of making a positive contribution to the subsidiary company. [9] The first is by direct means (vertical added value), where the parent company actively influences and supports each subsidiary company's operations. The second method is by achieving integration and promoting harmonization (horizontal added value) between subsidiary company. Regulations governing group company (holding company) in Indonesia have not been specifically explained, so there is no consistent juridical recognition regarding the status of group company (holding company). A group company (holding company) can be explained as a construction that reflects the plurality among the members of the overall group company (holding company)[13], or as an arrangement of companies that have their legal autonomy, they are closely interrelated and united to form an economic entity managed by parent company.[14] The cooperation between companies in a concern or group company can be defined as an arrangement of legally independent companies that form an economic entity led by a parent company.[15] The interrelated relationship between shareholder entities and subsidiary companies within a group company (holding company) can be caused by various factors. [16]The first factor is the majority shareholding of the subsidiary company with the parent company, which gives the parent company the authority as the ultimate controlling party that manages the subsidiary company. The second factor is majority shareholding, which gives the parent company ultimate voting control in the subsidiary company's GMS. This allows the parent company to control the subsidiary company's strategic plan-making process. Moreover, a related relationship may occur because the parent company has the power to appoint directors and/or commissioners who also serve as the subsidiary company's directors and/or commissioners. Another influential aspect is the existence of a voting rights agreement entered into by the founding shareholders, which authorizes one of the founding shareholders to appoint directors and/or commissioners. Additionally, a company may hand over management to an entity through a company management agreement.

In a group company (holding company) context, it is possible to exhibit opportunistic behaviour by exploiting legal loopholes. Opportunism is seeking personal gain by using

[11] Simanjuntak, *Hukum Bisnis, Sebuah Pemahaman Integratif Antara Hukum Dan Praktik Bisnis.*

[12] A. P. Utoyo, B., Marimin, Fahmi, I. & Murdanoto, "Apakah Pembentukan Holding Meningkatkan Kinerja Perusahaan? Analisis Perbandingan Kinerja Anak Perusahaan ABC BUMN Holding Sebelum Dan Setelah Holdingisasi Dan Faktor Yang Mempengaruhinya.," *Jurnal Ilmiah Manajemen* 9, no. 2 (2019): 260.

[13] Sulistiowati., *Aspek Hukum Dan Realitas Bisnis Perusahaan Grup Di Indonesia.* (Jakarta: Erlangga, 2010).

[14] Emmy Pangaribuan Simanjuntak, *Perusahaan Kelompok (Seri Hukum Dagang).* (Yogyakarta: Fakultas Hukum Gadjah Mada, 1994).

[15] Raaijmakers, *Joint Venture. Kluwer Deventer*, 1976.

[16] Sulistiowati, *Aspek Hukum Dan Realitas Bisnis Perusahaan Grup Di Indonesia.* (Jakarta: Erlangga, 2010).

SASI, 31 (3) September 2025: 231 - 245
P-ISSN: 1693-0061, E-ISSN: 2614-2961
Published by: Faculty of Law, Universitas Pattimura

deceit. The opportunistic behaviour of the parent company in the concept of a group company (holding company) includes various actions: [17] 1) A holding company has the option to distribute risky business activities into subsidiaries or great-grandchildren, which can be legally responsible for the risks associated with those activities. This provides the parent company with limited liability protection, even to a lesser extent, due to its role as a shareholder of a subsidiary that also holds shares in other subsidiaries; 2) A holding company can utilize the debt provided by one subsidiary in supporting the activities of another subsidiary without the lender's knowledge of the subsidiary, who is its creditor; 3) A holding company can transfer assets from a subsidiary in distress to another subsidiary without the knowledge of the minority shareholders or creditors of the subsidiary at risk of insolvency. This has made prosecuting the transferred assets more difficult as the ownership of the assets has changed.

The doctrine of piercing the corporate veil is a concept relating to the waiver of limited liability granted to shareholders in a company. This principle encourages shareholders to bear personal liability, including through personal assets, when the company faces losses and cannot pay its debts. [18]In legally applying the doctrine of piercing the corporate veil, several basic universal criteria need to be fulfilled, such as the existence of acts of fraud, injustice, oppression, non-fulfillment of legal elements, excessive domination by shareholders, and the company can become the incarnation of the majority shareholder. [19]In accordance with what has been explained previously, the provisions in Article 3 paragraph (2) of the Company Law, the doctrine of piercing the corporate veil is valuable to overcome the difference in legal interests between the holding company and the legal actions carried out by its subsidiaries.[20]

B. The Responsibility of Holding Company Organs for Subsidiary Business Risks in SOE Holding Companies

General Meeting of Shareholders

In accordance with the provisions in Article 31 paragraph (1) and Article 34 paragraph (1) of the Company Law, the authorized capital of a company may consist of all nominal shares that can be paid up in the form of money or other forms. When there is a legal obligation that a limited liability company must fulfill, the obligation will be covered by the assets owned by the limited liability company. Personal legal actions taken by the limited company's shareholders with third parties will not have legal consequences on the assets isolated in the limited company.[21] In the business reality between a parent company and a subsidiary company in constructing a group company (holding company), the cooperation relationship is often the main factor. Therefore, any action resulting in a loss should force the party at fault to compensate.[22]

In a general sense, limited liability companies, following the provisions of Company Law, follow the principle of independence. It is understood that the board of directors of a limited

[17] Sulistiowati, "Doktrin-Doktrin Hukum Mengenai Tanggung Jawab Hukum Dalam Perusahaan Grup," *Jurnal Hukum Bisnis*, 2012, 9.

[18] Sulistiowati, *Tanggung Jawab Hukum Pada Perusahaan Grup Di Indonesia.* (Jakarta: Erlangga, 2013).

[19] Munir Fuady, *Hukum Perusahaan Dalam Paradigma Hukum Bisnis.* (Bandung: Citra Aditya Bakti, 1999).

[20] Muhammad Syafi'I, "Piercing The Corporate Veil Terhadap Holding Company Dalam Tindakan Hukum Anak Perusahaan," *Prosiding Interdisciplinary Postgraduate Student Conference 2nd*, 2016, 129.

[21] Harjono. Dhaniswara K., *Pembaruan Hukum Perseroan Terbatas, Tinjauan Terhadap Undang-Undang No. 40 Tahun 2007 Tentang Perseroan Terbatas.* (Jakarta: PPHBI (Pusat Pengembangan Hukum dan Bisnis Indonesia), 2008).

[22] Sulistiowati., *Tanggung Jawab Hukum Pada Perusahaan Grup Di Indonesia.* (Jakarta: Erlangga, 2013).

SASI, 31 (3) September 2025: 231 - 245
P-ISSN: 1693-0061, E-ISSN: 2614-2961
Published by: Faculty of Law, Universitas Pattimura

liability company conducts its business operations without influence or intervention from any party other than the shareholders and other interested parties. Shareholders only provide their capital to the company based on the principle of fiduciary duty to be managed by the board of directors based on the principle of business judgment. In this case, the board of directors is expected to make good and meaningful decisions in managing the business of a limited liability company, considering the interests of shareholders and the company as a whole. [23]In a fierce global competitive environment, the board of directors' efforts in carrying out its business operations often face risks that not only mean potential profits but also possible losses.[24]

According to legal sciences, a doctrine known as the "instrumental doctrine" exists that facilitates the application of the theory of piercing the corporate veil. According to this doctrine, shareholders in a group company (holding company), especially a parent company, can be legally liable apart from the legal entity that performs certain legal acts. This doctrine allows the court to look beyond the legal entity and assess whether the shareholders or owners of the legal entity should be liable for the action. This occurs when the following elements are established, including express agency, estoppel, direct tort, or the presence of the essential elements of control of the subsidiary by the parent company, authority by the group company to carry out acts such as fraud or dishonesty and the occurrence of loss due to breach of duty by the group (holding company).[25] This doctrine provides a legal basis for recognizing shareholder liability for the actions of the group company under the law.

Liability for losses caused by the parent company's policies towards subsidiaries within a group company structure usually considers the principle of fault liability or liability stemming from fault. This means that the shareholders or owners of the holding company can be liable for legal actions if it is proven that they acted negligently or committed a mistake that caused the loss. In some cases, this principle of liability is used in the context of the doctrine of piercing the corporate veil in assessing whether the owners of a holding company should be liable for the actions of a subsidiary that harms a third party. The principle of liability based on fault is elaborated in Article 1367 of the Civil Code. This principle applies when a loss occurs due to a defect or negligence.

The Civil Code Article 1367 states that an individual is liable not only for losses caused by his actions but also for losses caused by the actions of individuals who are his dependents or by objects included in his supervision. This can be applied in the context of a group company (holding company), where a parent company can be liable for losses incurred by a subsidiary if it is proven that the parent company participated in decision-making related to management, finance, or business policies that caused losses to the subsidiary company.

The charter of the corporate relationship between a parent company and its subsidiaries within the framework of a group company (holding company) can be used to control the division of tasks, authority, synergy, and coordination. The implementation of this charter emphasizes that the company's articles of association are a crucial component of a company's deed of establishment that regulates the rules related to the internal relationship

[23] Sulistiowati, *Aspek Hukum Dan Realita Bisnis Perusahaan Grup Di Indonesia.* (Jakarta: Erlangga, 2010).

[24] U. Nurhasanah, S. R. P. & Afwa, "Pertanggungjawaban Hukum Direksi Induk Terhadap Risiko Bisnis Anak Perusahaan Pada Holding Company BUMN.," *Indonesia Law Reform Journal* 1, no. 3 (2021): 310.

[25] Munir Fuady, *Doktrin-Doktrin Modern Dalam Corporate Law Dan Eksistensinya Dalam Hukum Indonesia.* (Bandung: Citra Aditya Bakti., 2010).

between the founders, including the shareholders, the board of directors, the board of commissioners, and their members. However, upon approval by the Minister of Law and Human Rights of the Republic of Indonesia, the company's articles of association have binding force and serve as internal regulations for the parties involved.[26] In the context of the parent company's responsibility towards third parties related to its subsidiary, it adheres to the concept of a separate legal entity, which means that both the group company (holding company) and the subsidiary are legal entities that stand independently and have distinct legal responsibilities. [27] Thus, the liability towards third parties, for the group company (holding company) as the owner of the subsidiary's shares, can only be held liable for the company's losses that do not exceed the value of the shares it owns, by Article 3 paragraph (1) of the Company Law. In the case of failures, the subsidiary will bear the risk independently, as they are independent legal entities and are responsible for their obligations to third parties.

Directors

The Board of Directors has the authority to manage the limited liability company in accordance with policies deemed appropriate in accordance with the provisions of the law and/or the articles of association. The relationship between the board of directors and the limited liability company is based on an employment relationship but also includes a fiduciary relationship with the limited liability company. In this context, directors hold a fiduciary position within the limited liability company, which requires them to act in good faith in carrying out their responsibilities with integrity and in the best interests of the limited liability company. [28] The fiduciary duties of directors include the following principles: [29] 1) Directors are prohibited from having to act in their personal or third-party interests without the agreement or knowledge of the limited liability company; 2) Directors are prohibited from utilizing their managerial position for personal or third-party benefit without the approval of the limited liability company; 3) Directors are not permitted to utilize or pervert the assets of a limited company for personal advantage or that of a third entity.

Regarding the provisions of Article 97 paragraph (5) of the Company Law, the directors are not liable for the losses of the limited liability company if they can show the following evidence: 1) The loss does not arise from their wrongful action or negligence; 2) The Board of Directors has managed the company in good faith and carefully, in the company's interests and accordance with the company's purpose; 3) There is no conflict of interest, either directly or indirectly, related to the management decision that caused the loss; 4) Have taken the necessary steps to prevent the loss from occurring or continuing.

The legal protection provided by the board of directors to carry out the company's management, such as the neglect of obligations in accordance with the business judgment rule doctrine in the scope of corporate law. Basically, the doctrine contains the principle that business actions/decisions cannot be penalised, including by the courts. In this context, business decisions may contain the risk of possible losses. Still, on the other hand, opportunities are equivalent to the potential profits that a limited liability company can

---

[26] Widjaja. Gunawan, *150 Tanya Jawab Tentang Perseroan Terbatas.* (Jakarta: Forum Sahabat, 2008).

[27] R. Diani, "Tanggung Jawab Holding Company Terhadap Pihak Ketiga Yang Terikat Hubungan Hukum Dengan Anak Perusahaan.," *Simbur Cahaya* 24, no. 1 (2017): 4385.

[28] Khairandy. Ridwan., *Hukum Perseroan Terbatas.* (Yogyakarta: FH UII Press, 2014).

[29] Ais. Chatamarrasjid., *Penerobosan Cadar Perseroan Dan Soal-Soal Aktual Hukum Perusahaan.* (Bandung: Citra Aditya Bakti, 2004).

obtain. However, suppose the board of directors is proven not to comply with the provisions of Article 97 paragraph (5) of the Company Law. In that case, the directors will be personally liable for the company's losses if it is proven that they are guilty or careless in carrying out their obligations in managing the company. This principle may also apply to State-Owned Companies.

Board of Commissioners

The board of commissioners has responsibilities that include supervision of general and/or special management in accordance with the articles of association of a limited liability company, as well as providing advice to the board of directors in accordance with the provisions of Article 1 number 6 of the Company Law. The board of commissioners should supervise management policies and the implementation of management in general, including those relating to limited liability companies and businesses, and provide advice to the board of directors. The supervision and provision of advice must be carried out in the interests of the limited liability company in accordance with the purposes and objectives of the limited liability company, in accordance with the provisions of Article 108 paragraph (1) and paragraph (2) of the Company Law. The company's interests in accordance with its purposes and objectives refer to the fact that the supervision and provision of advice carried out by the board of commissioners must not be for the benefit of certain individuals or groups. Such supervision and provision of advice must be in the company's general interest and in accordance with the objectives and purposes as determined by the company.

In the framework of the responsibility of the board of commissioners, there are two relevant legal concepts, namely piercing the corporate veil and limited liability. The concept of piercing the corporate veil of the Board of Commissioners as contained in Article 114 paragraph (1), paragraph (2) and paragraph (3) of the Company Law confirms that each member of the Board of Commissioners has personal liability for the company's losses if proven to have committed errors or negligence in carrying out their supervisory duties. The board of commissioners is expected to supervise the company in good faith and carefully and fulfil its supervisory duties accurately.

On the other hand, the concept of limited liability in Article 114 paragraph (5) of the Company Law provides legal protection to members of the board of commissioners if they can prove that they have conducted supervision in good faith and carefully and have no personal interests that conflict with the management actions of the board of directors that could result in losses. In addition, the board of commissioners is expected to advise the board of directors appropriately to prevent losses.

These two concepts reinforce the importance of the board's responsibility to perform its supervisory duties in good faith and carefully for the benefit of the limited liability company while providing reasonable legal protection to board members who perform their duties in accordance with these principles. In all, board responsibilities are a key element in maintaining good corporate governance and mitigating potential legal risks.

The active role of the board of commissioners can be seen from its characteristics, such as board size, board independence, and leadership structure. [30]Apart from monitoring the company, the board of commissioners also supports company management to manage the

[30] Alpha Alan Darma Saputra and Ratna Wardhani, "Pengaruh Efektivitas Dewan Komisaris, Komite Audit Dan Kepemilikan Institusional Terhadap Efisiensi Investasi," *Jurnal Akuntansi & Auditing Indonesia* 21, no. 1 (2017): 24–36, doi:10.20885/jaai.vol21.iss1.art3.

company efficiently. [31] The level of company efficiency is very important in achieving the company's success goals. Efficient performance can increase profitability and company growth. Therefore, the board of commissioners' role in supporting efficiency significantly impacts company performance.

One of the characteristics of the board of commissioners that affects efficiency is the size of the board of commissioners. An appropriate board size can ensure a diverse range of skills and experience in decision-making, which can support better decision-making. Board independence is also important, as independent boards tend to be more objective in evaluating management plans and decisions. Leadership structure also ensures that the board can effectively contribute to the company's efficiency. An effective leadership structure can help formulate appropriate strategies, while a busy board can ensure that its members can focus on their duties and responsibilities.

In this whole context, the board of commissioners is a supervisory institution and a management partner in achieving corporate efficiency. The right combination of characteristics of the board of commissioners can contribute positively to the company's management performance. Therefore, companies should pay attention to the active role of the board of commissioners and ensure that the board of commissioners has characteristics that support corporate efficiency.

C. The Legal Model Governing the Relationship Between Parent Companies and Subsidiaries Within State-Owned Holding Company Structures, and a Comparison with Practices in Other Countries

Parent companies have two primary methods for generating added value for their subsidiaries. The first is through a vertical added value approach, where the parent company directly influences and supports the operations of each subsidiary. The second method involves achieving horizontal added value, which is realized by fostering synergy and coordination among subsidiaries. In Indonesia, there is currently no specific legal framework that comprehensively regulates the structure and operations of holding companies. As a result, legal recognition of the group company or holding company status remains ambiguous in Indonesian corporate law.

According to Sulistiowati[32], several factors contribute to the establishment of legal and operational ties between parent companies and subsidiaries in a holding company structure: 1) Majority ownership of shares in the subsidiary by the parent company grants the parent authority to act as the control center and exercise significant influence over the subsidiary; 2) Majority voting rights held by the parent company in the subsidiary's General Meeting of Shareholders (GMS) allow it to influence strategic decision-making processes and corporate planning; 3) The parent company possesses the authority to appoint members of the Board of Directors and/or the Board of Commissioners from its own structure to serve concurrently in the subsidiary; 4) Shareholder agreements on voting rights may be established between founding shareholders, allowing one party to be granted the power to appoint members of the Board of Directors and/or the Board of Commissioners; 5) Through management agreements, a company may delegate managerial control to another company, thereby establishing a formalized relationship of oversight and influence.

---

[31] V. Febrina, "Pengaruh Dewan Komisaris, Dewan Direksi, Komite Audit, Dan Kepemilikan Manajerial Terhadap Kinerja Keuangan.," *Jurnal Informasi Akuntans* 1, no. 1 (2022): 80.

[32] Sulistiowati., *Aspek Hukum Dan Realitas Bisnis Perusahaan Grup Di Indonesia.* (Jakarta: Erlangga, 2010).

SASI, 31 (3) September 2025: 231 - 245
P-ISSN: 1693-0061, E-ISSN: 2614-2961
Published by: Faculty of Law, Universitas Pattimura

In corporate law scholarship, two primary approaches influence the construction and regulation of corporate groups: the Entity Law approach and the Enterprise Law approach. The Entity Law approach views each entity within a corporate group as an independent legal body, with separate and non-overlapping rights and obligations between the parent and its subsidiaries. In contrast, the Enterprise Law approach regards the business group as a single economic and legal unit, whereby the parent company may be held liable for the actions of its subsidiaries particularly when there is de facto operational control and dominant influence.[33]

These theoretical foundations give rise to two distinct models of governance within holding company structures: the centralized model and the decentralized model. In the centralized model, strategic decision-making, financial control, and oversight are executed directly by the parent company. This centralization creates legal implications, potentially expanding corporate liability across the group. Conversely, the decentralized model grants greater autonomy to subsidiaries in operational and managerial matters, thereby reinforcing the legal separation of responsibility between individual corporate entities.[34]

In the practical application of holding company structures, Malaysia provides a notable example. The Insolvency Act 1986 outlines civil sanctions that support the implementation of the piercing the corporate veil doctrine. Section 213 of the Insolvency Act 1986 stipulates that: 1) If, during the winding-up of a company, it appears that the company's business has been carried on with the intent to defraud creditors or for any fraudulent purpose, the following shall apply; 2) The court, upon application by the liquidator, may declare that any person who was knowingly a party to the fraudulent conduct of business shall be personally liable to contribute (where applicable) to the assets of the company, as the court deems appropriate.[35]

In practice, challenges often arise in enforcing the provisions of Section 213 of the UK Insolvency Act 1986, particularly when indications of criminal misconduct are involved. As a response, Section 214 of the Insolvency Act introduces the concept of wrongful trading, which refers to negligent conduct combined with the misuse of corporate identity and the abuse of the limited liability principle.[36]

In Malaysia, for instance, Islamic banking institutions are established under the Companies Act 1965, which recognizes them as legal entities separate from their members and shareholders.[37] This is grounded in the corporate law principle that a company possesses a legal identity distinct from the individuals or entities that own it. As such, Islamic banks operate independently, holding their own assets, managing internal operations, and making decisions without interference from shareholders or members. This separation provides legal protection by limiting the liability of shareholders and members against the company's obligations. Furthermore, as independent legal entities, Islamic banking institutions carry unique legal obligations, limited to their operational domain.

---

[33] Reuven S. Avi-Yonah, "'National Regulation of Multinational Enterprises: An Essay on Comity, Extraterritoriality, and Harmonization,'" *Columbia Journal of Transnational Law* 42, no. 1 (2003): 21.

[34] J. Robert Creighton, "'Corporate Law Departments Adjust to Corporate Decentralization,'" *The Business Lawyer* 16, no. 4 (1961): 19.

[35] I. S. Herdian dan Y. Sumiyati, "'Penerapan Piercing the Corporate Veil Terhadap Direksi Perusahaan Asuransi Dalam Investasi Berisiko Tinggi Yang Mengandung Conflict of Interest,'" *Justicia Sains: Jurnal Ilmu Hukum* 5, no. 2 (2020): 15.

[36] dan N. M. Alomran F. Tawakol, W. E. Ibrahim, "'The Legal Basis for a Holding Company's Liability for Its Subsidiary's Debt: Comparative Analysis of the UAE and the Egyptian Legal Systems,'" *Journal of Legal, Ethical and Regulatory* 2, no. 24 (2021): 12.

[37] Zainal Amin Ayub, Zuryati Mohamed Yusoff, and Ahmad Nasyran Azrae, "Separate Legal Entity Under Syariah Law and Its Application on Islamic Banking in Malaysia: A Note," *International Journal of Banking and Finance* 6 (2020), doi:10.32890/ijbf.6.2.2009.8394.

These obligations include responsibilities toward customers, shareholders, and other parties involved in financial transactions. The legal autonomy of Islamic banking institutions also allows them to adhere fully to Shariah principles, including in asset management, investment decisions, and the design of financial products. This framework ensures both operational continuity and legal certainty for all stakeholders involved in Malaysia's Islamic banking sector.

In German corporate law, the liability of company organs within a corporate group has undergone significant evolution, especially concerning the relationship between parent companies and subsidiaries. Although each legal entity, such as a Gesellschaft mit beschränkter Haftung (GmbH), is formally regarded as independent and responsible for its own obligations, case law has shown that parent company executives may bear liability for damages incurred by subsidiaries. A pivotal case is the Bremer Vulkan decision by the Federal Court of Justice (Bundesgerichtshof, BGH), which held that parent company management has a legal duty to protect the financial interests of its subsidiary particularly when directing the subsidiary's funds for group liquidity purposes without regard to the subsidiary's debt obligations. Negligence in fulfilling this duty can lead to both civil and criminal liability, including violations of Section 266 of the German Criminal Code concerning breach of trust.[38]

Moreover, in the case Jabir and Others v KiK, German tort law was cited to argue that a parent company may incur liability if it directly participates in or exercises active control over the operations of a subsidiary, particularly in matters involving workplace safety and human rights violations. Under Sections 823 and 31 of the German Civil Code (BGB), a parent company can be held liable if it breaches safety duties and fails to prevent harm, thereby justifying a damages claim.[39] These precedents illustrate how liability in German corporate group structures can extend beyond formal legal separations when parent companies engage in substantive operational control.

In the Dutch legal context, entities such as the Besloten Vennootschap (BV), equivalent to the Indonesian Perseroan Terbatas (PT), are recognized as separate legal persons with limited liability. However, within corporate group structures, the legal exposure of directors is not automatically shielded, especially when they exercise substantial control over subsidiary operations. Although Dutch law adheres to the principle that each group member is a distinct legal subject, courts may apply the piercing the corporate veil doctrine in cases involving misuse of the group structure to commit fraud or circumvent legal obligations.[40]

Dutch directors may also face direct liability if it is proven that they played an active role in decisions detrimental to the subsidiary or third parties. Directors are expected to exercise a duty of care, ensuring compliance with legal and governance standards. Failure to do so particularly where it results in human rights abuses or environmental harm can trigger legal accountability. Recent discourse on Dutch corporate law reform has focused on balancing business flexibility with creditor protection, including regulations on unlawful distributions

---

[38] Peer Zumbansen, "'Liability within Corporate Groups (Bremer Vulkan) – Federal Court of Justice Attempts the Overhaul,'" *German Law Journal* 3, no. 12 (2002): 3.

[39] M. Wesche, P., & Saage-Maaß, "Holding Companies Liable for Human Rights Abuses Related to Foreign Subsidiaries and Suppliers before German Civil Courts: Lessons from Jabir and Others v. KiK.," *Human Rights Law Review* 16, no. 2 (2016): 378.

[40] A. G. Castermans dan J. A. van der Weide, *The Legal Liability of Dutch Parent Companies for Subsidiaries' Involvement in Violations of Fundamental, Internationally Recognised Rights* (Leiden: Eigen Beheer, 2010).

and recovery mechanisms in insolvency.[41] Accordingly, directors of parent companies must understand and fulfill their legal obligations carefully to avoid future liabilities within group structures.

In UK company law, limited companies are governed comprehensively by the Companies Act 2006, particularly Sections 171 to 177, which outline directors' legal duties. These include acting within powers, promoting the success of the company, exercising independent judgment, using reasonable care, avoiding conflicts of interest, refraining from third-party benefits, and declaring interests in company transactions.[42] Such duties become especially significant when group structures are used to evade liability or obscure responsibility. Legal scholarship suggests that parent company directors should uphold transparency, integrity, and inter-entity corporate accountability within group arrangements. For example, Chiu[43] advocates for a normative approach that aligns group objectives with the interests of subsidiary stakeholders.

A landmark development in UK law is the case of Chandler v Cape plc (2012), which established that a parent company may be held liable under tort law if it exercises significant operational control and has knowledge of the subsidiary's workplace risks.[44] Thus, although UK corporate law upholds the principle of limited liability, legal doctrines such as direct duty of care create exceptions that permit parent company liability in situations involving negligence or breaches of legal obligations.

CONCLUSION

Referring to what has been discussed, it can be concluded that no legislation in Indonesia specifically regulates group companies (holding company), thus there is no consistent juridical recognition regarding the status of group companies (holding company). In addition, the doctrine of piercing the corporate veil regulated in Article 3 paragraph (2) of the Company Law can be applied to the parent company as the largest shareholder of the subsidiary company in the group company (holding company). This applies if it can be proven that a decision is detrimental to the subsidiary company and fulfils one of the provisions in Article 3, paragraph (2) of the Company Law. The organs of a limited liability company in a group company (holding company), which include the GMS/shareholders, board of directors and board of commissioners, are limitedly liable in accordance with the provisions in the Company Law as stipulated in Article 3 paragraph (1), Article 97 paragraph (5) and Article 114 paragraph (5), respectively. This is in line with the doctrine of limited liability that the GMS/shareholders of a limited liability company are not personally liable for agreements entered into on behalf of the limited liability company and are not liable for losses of the limited liability company over the shares owned. Members of the board of directors and members of the board of commissioners cannot be held liable for the losses of a limited liability company if they can prove the provisions of Article 97 paragraph (5) and Article 114 paragraph (5) of the Company Law. On the other hand, if the GMS/shareholders, the board of directors and the board of commissioners do things as

[41] Martin Petrin and Barnali Choudhury, "Group Company Liability," *European Business Organization Law Review* 19, no. 4 (2018): 771–96, doi:10.1007/s40804-018-0121-7.

[42] David Cabrelli, *Presentation on the Reform of the Law of Directors' Duties in UK Company Law* (University of Edinburgh, 2010).

[43] Iris H.-Y. Chiu, *Unfinished Work in UK Company Law Reforms: A Normative and European Perspective to Addressing the Gaping Holes in Directors' Duties* (London: University College London, 2019).

[44] Chandler v Cape Neville Howorth dan Mark Coxall, *The New Parent Company 'Duty of Care' for Health & Safety Injuries* (Clifford Chance LLP, 2012).

SASI, 31 (3) September 2025: 231 - 245
P-ISSN: 1693-0061, E-ISSN: 2614-2961
Published by: Faculty of Law, Universitas Pattimura

stipulated in Article 3 paragraph (2), Article 97 paragraph (1), paragraph (2), paragraph (3), and Article 114 paragraph (1), paragraph (2), paragraph (3) of the Company Law, the organs of the limited liability company are personally liable for the losses of the limited liability company. The parent company can be liable for losses incurred by the subsidiary if it is proven that the parent company participated in decision-making related to management, finance, or business policies that caused losses to the subsidiary company.

REFERENCES

A. G. Castermans dan J. A. van der Weide. *The Legal Liability of Dutch Parent Companies for Subsidiaries' Involvement in Violations of Fundamental, Internationally Recognised Rights*. Leiden: Eigen Beheer, 2010.

Ais. Chatamarrasjid. *Penerobosan Cadar Perseroan Dan Soal-Soal Aktual Hukum Perusahaan.* Bandung: Citra Aditya Bakti, 2004.

Ayub, Zainal Amin, Zuryati Mohamed Yusoff, and Ahmad Nasyran Azrae. "Separate Legal Entity Under Syariah Law and Its Application on Islamic Banking in Malaysia: A Note." *International Journal of Banking and Finance* 6 (2020). doi:10.32890/ijbf.6.2.2009.8394.

Chatamarrasjid. *Menyingkap Tabir Perseroan (Piercing The Corporate Veil): Kapita Selekta Hukum Perusahaan.* Bandung: Citra Aditya Bakti, 2000.

David Cabrelli. *Presentation on the Reform of the Law of Directors' Duties in UK Company Law*. University of Edinburgh, 2010.

Diani, R. "Tanggung Jawab Holding Company Terhadap Pihak Ketiga Yang Terikat Hubungan Hukum Dengan Anak Perusahaan." *Simbur Cahaya* 24, no. 1 (2017): 4385.

F. Tawakol, W. E. Ibrahim, dan N. M. Alomran. "'The Legal Basis for a Holding Company's Liability for Its Subsidiary's Debt: Comparative Analysis of the UAE and the Egyptian Legal Systems,.'" *Journal of Legal, Ethical and Regulatory* 2, no. 24 (2021): 12.

Febrina, V. "Pengaruh Dewan Komisaris, Dewan Direksi, Komite Audit, Dan Kepemilikan Manajerial Terhadap Kinerja Keuangan." *Jurnal Informasi Akuntans* 1, no. 1 (2022): 80.

Fuady, Munir. *Doktrin-Doktrin Modern Dalam Corporate Law Dan Eksistensinya Dalam Hukum Indonesia.* Bandung: Citra Aditya Bakti., 2010.

———. *Hukum Perusahaan Dalam Paradigma Hukum Bisnis.* Bandung: Citra Aditya Bakti, 1999.

Gunawan, Widjaja. *150 Tanya Jawab Tentang Perseroan Terbatas.* Jakarta: Forum Sahabat, 2008.

Harjono. Dhaniswara K. *Pembaruan Hukum Perseroan Terbatas, Tinjauan Terhadap Undang-Undang No. 40 Tahun 2007 Tentang Perseroan Terbatas.* Jakarta: PPHBI (Pusat Pengembangan Hukum dan Bisnis Indonesia), 2008.

Harjono, K. Dhaniswara. *Problematika Hukum Bisnis Dan Korporasi.* Jakarta: PPHBI (Pusat Pengembangan Hukum dan Bisnis Indonesia), 2010.

I. S. Herdian dan Y. Sumiyati. "'Penerapan Piercing the Corporate Veil Terhadap Direksi Perusahaan Asuransi Dalam Investasi Berisiko Tinggi Yang Mengandung Conflict of

SASI, 31 (3) September 2025: 231 - 245
P-ISSN: 1693-0061, E-ISSN: 2614-2961
Published by: Faculty of Law, Universitas Pattimura

Interest,.'" *Justicia Sains: Jurnal Ilmu Hukum* 5, no. 2 (2020): 15.

Iris H.-Y. Chiu. *Unfinished Work in UK Company Law Reforms: A Normative and European Perspective to Addressing the Gaping Holes in Directors' Duties*. London: University College London, 2019.

J. Robert Creighton. "'Corporate Law Departments Adjust to Corporate Decentralization,.'" *The Business Lawyer* 16, no. 4 (1961): 19.

Khairandy. Ridwan. *Hukum Perseroan Terbatas.* Yogyakarta: FH UII Press, 2014.

Khairandy, Ridwan. *Perseroan Terbatas Doktrin, Peraturan Perundang-Undangan, Dan Yurisprudensi.* Yogyakarta: Total Media, 2018.

Kuswiratmo, Bonifasius Aji. *Keuntungan Dan Risiko Menjadi Direktur, Komisari, Dan Pemegang Saham.* Jakarta: PT Visimedia Pustaka, 2016.

Laurensius P. Matheus dan Hary Gunadi. *Metodologi Penelitian Hukum: Pendekatan Normatif Dan Pengembangan Hukum Nasional*. Jakarta: Prenada Media Group, 2024.

Mamudji, Soerjono Soekanto dan Sri. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: RajaGrafindo Persada, 2006.

Muhammad Syafi'I. "Piercing The Corporate Veil Terhadap Holding Company Dalam Tindakan Hukum Anak Perusahaan." *Prosiding Interdisciplinary Postgraduate Student Conference 2nd*, 2016, 129.

Neville Howorth dan Mark Coxall, Chandler v Cape. *The New Parent Company 'Duty of Care' for Health & Safety Injuries*. Clifford Chance LLP, 2012.

Nurhasanah, S. R. P. & Afwa, U. "Pertanggungjawaban Hukum Direksi Induk Terhadap Risiko Bisnis Anak Perusahaan Pada Holding Company BUMN." *Indonesia Law Reform Journal* 1, no. 3 (2021): 310.

Peer Zumbansen. "'Liability within Corporate Groups (Bremer Vulkan) – Federal Court of Justice Attempts the Overhaul,.'" *German Law Journal* 3, no. 12 (2002): 3.

Petrin, Martin, and Barnali Choudhury. "Group Company Liability." *European Business Organization Law Review* 19, no. 4 (2018): 771–96. doi:10.1007/s40804-018-0121-7.

Raaijmakers. *Joint Venture. Kluwer Deventer*, 1976.

Reuven S. Avi-Yonah. "'National Regulation of Multinational Enterprises: An Essay on Comity, Extraterritoriality, and Harmonization,.'" *Columbia Journal of Transnational Law* 42, no. 1 (2003): 21.

Salsabila, Enggi Syefira. "Analisis Yuridis Kewenangan Bumn Untuk Melakukan Monopoli Dan Atau Pemusatan Kegiatan Dalam Perspektif Kepastian Hukum Dan Kesejahteraan Audito Comparative Law." *Journal (ACLJ)*, n.d., 40.

Saputra, Alpha Alan Darma, and Ratna Wardhani. "Pengaruh Efektivitas Dewan Komisaris, Komite Audit Dan Kepemilikan Institusional Terhadap Efisiensi Investasi." *Jurnal Akuntansi & Auditing Indonesia* 21, no. 1 (2017): 24–36. doi:10.20885/jaai.vol21.iss1.art3.

Simanjuntak, Augustinus. *Hukum Bisnis, Sebuah Pemahaman Integratif Antara Hukum Dan Praktik Bisnis.* Depok: Rajagrafindo Persada., 2018.

Simanjuntak, Emmy Pangaribuan. *Perusahaan Kelompok (Seri Hukum Dagang).* Yogyakarta: Fakultas Hukum Gadjah Mada, 1994.

Sulistiowati. *Aspek Hukum Dan Realitas Bisnis Perusahaan Grup Di Indonesia.* Jakarta: Erlangga, 2010.

———. *Aspek Hukum Dan Realitas Bisnis Perusahaan Grup Di Indonesia.* Jakarta: Erlangga, 2010.

———. *Tanggung Jawab Hukum Pada Perusahaan Grup Di Indonesia.* Jakarta: Erlangga, 2013.

Sulistiowati. *Aspek Hukum Dan Realita Bisnis Perusahaan Grup Di Indonesia.* Jakarta: Erlangga, 2010.

———. *Aspek Hukum Dan Realita Bisnis Perusahaan Grup Di Indonesia.* Jakarta: Erlangga, 2010.

———. *Aspek Hukum Dan Realitas Bisnis Perusahaan Grup Di Indonesia.* Jakarta: Erlangga, 2010.

———. "Doktrin-Doktrin Hukum Mengenai Tanggung Jawab Hukum Dalam Perusahaan Grup." *Jurnal Hukum Bisnis*, 2012, 9.

———. *Tanggung Jawab Hukum Pada Perusahaan Grup Di Indonesia.* Jakarta: Erlangga, 2013.

Utoyo, B., Marimin, Fahmi, I. & Murdanoto, A. P. "Apakah Pembentukan Holding Meningkatkan Kinerja Perusahaan? Analisis Perbandingan Kinerja Anak Perusahaan ABC BUMN Holding Sebelum Dan Setelah Holdingisasi Dan Faktor Yang Mempengaruhinya." *Jurnal Ilmiah Manajemen* 9, no. 2 (2019): 260.

Wesche, P., & Saage-Maaß, M. "Holding Companies Liable for Human Rights Abuses Related to Foreign Subsidiaries and Suppliers before German Civil Courts: Lessons from Jabir and Others v. KiK." *Human Rights Law Review* 16, no. 2 (2016): 378.

Widjaya, I.G. Ray. *Hukum Perusahaan. Jakarta: Kasaint Blanc*. Jakarta: Kasaint Blanc, 2000.

Conflict of Interest Statement: The author(s) declares that research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest,

Copyright: © AUTHOR. This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License. (CC-BY NC), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

SASI is an open acces and peer-reviewed journal published by Faculty of Law Universitas Pattimura, Ambon, Indonesia.

OPEN ACCESS