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## Veil-Piercing: Corporate Criminal Liability, Governance and Reform in Indonesia and The UK

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### ABSTRACT

*This article examines the doctrine of piercing the corporate veil in criminal law through a comparative study of Indonesia and the United Kingdom. The study employs a doctrinal methodology, analyzing statutes, case law, and regulatory frameworks to evaluate how each jurisdiction balances corporate governance with legal accountability. The comparative analysis highlights key differences in legal enforcement and procedural thresholds, revealing the evolving nature of corporate criminal liability and corporate responsibility in both jurisdictions. Key findings suggest that recent legislative initiatives and judicial developments have strengthened mechanisms for holding corporate actors accountable, though significant variations in enforcement persist. The study proposes targeted corporate governance and legal reforms to improve accountability and deter misconduct, underscoring the value of comparative insights for policy Development. These findings offer practical recommendations to strengthen corporate governance and prevent wrongdoing in both jurisdictions. By bridging the gap between Indonesian and UK legal perspectives, this research serves as a strategic roadmap for policymakers seeking to refine legal sanctions and promote a culture of corporate integrity.*

**Keywords:** *piercing the corporate veil, corporate criminal liability, corporate governance, legal reform*

### ABSTRAK

*Artikel ini mengkaji doktrin piercing the corporate veil (pengoyakan tirai perusahaan) dalam ranah hukum pidana melalui studi komparatif antara Indonesia dan Inggris Raya. Dengan menggunakan metodologi doktrinal, penelitian ini menganalisis berbagai undang-undang, yurisprudensi, serta kerangka regulasi untuk mengevaluasi bagaimana masing-masing yurisdiksi menyeimbangkan prinsip tata kelola perusahaan dengan akuntabilitas hukum. Analisis komparatif ini menyoroti perbedaan mendasar dalam penegakan hukum dan ambang batas prosedural, yang sekaligus mengungkap evolusi pertanggungjawaban pidana korporasi di kedua negara. Temuan utama menunjukkan bahwa inisiatif legislatif dan perkembangan yudisial terbaru telah memperkuat mekanisme untuk menjerat aktor korporasi, meskipun variasi yang signifikan dalam efektivitas penegakannya masih tetap ada. Studi ini mengusulkan reformasi tata kelola perusahaan dan hukum yang lebih sasar, guna meningkatkan transparansi dan mencegah praktik menyimpang, seraya menggarisbawahi pentingnya wawasan komparatif bagi pengembangan kebijakan. Temuan ini menawarkan rekomendasi praktis untuk memperkokoh integritas korporasi dan mencegah pelanggaran hukum di kedua yurisdiksi. Dengan menjembatani perspektif hukum antara Indonesia dan Inggris Raya, penelitian ini diharapkan dapat menjadi peta jalan*

*strategis bagi para pembuat kebijakan dalam menyempurnakan sanksi hukum serta menumbuhkan budaya integritas dalam dunia usaha.*

**Kata Kunci:** *Piercing the corporate veil, corporate criminal liability, corporate governance, legal reform*

## INTRODUCTION

The conceptualisation of the corporation as a distinct legal subject, capable of bearing rights and obligations independently of its human constituents, represents the cornerstone of modern global commerce. This "legal abstraction" or "myth and fiction" facilitates capital pooling and risk management by limiting shareholders' liability to the value of their investment (Horder, 2025). The genesis of this doctrine in the common law tradition is found in the seminal nineteenth-century case of *Salomon v A Salomon & Co Ltd*, which established that a company is a separate legal person regardless of its ownership structure (Kamaluddin, 2025). This separation creates a "corporate veil" that shields internal actors from the firm's debts and liabilities, thereby encouraging entrepreneurship and investment in emerging markets like Indonesia. The corporate veil doctrine, originating in *Salomon v Salomon & Co Ltd [1897] AC 22*, establishes separate legal personality and limited liability, thereby catalyzing economic investment. Yet, this shield facilitates evasion of criminal accountability, prompting veil-piercing to hold shareholders or directors liable for corporate malfeasance. In criminal contexts, piercing addresses the fiction of corporate mens rea by linking human agency to entity acts through governance failures (Kamaluddin, 2025)

However, the proliferation of white-collar crime, which accounts for global losses exceeding \$5 trillion annually, has necessitated a critical re-evaluation of this insulation (Fadli & Rasyid, 2025). When the corporate form is utilized as a "cloak," "dummy," or "alter ego" to commit fraud or evade existing legal obligations, the judiciary must exercise the power of "piercing the corporate veil" (PCV) to hold the accurate controllers accountable (Kamaluddin, 2025). In the United Kingdom, the application of PCV has evolved over centuries of case law, recently reaching a point of cautious restraint in which the veil is pierced only as a remedy of last resort (Judijanto et al., 2025). In contrast, Indonesia, as a civil law jurisdiction, has attempted to codify these principles through statutory provisions, yet implementation remains inconsistent due to the absence of standardized judicial guidelines (Kamaluddin, 2025).

The challenge of corporate accountability is further complicated by the difficulty of attributing mens *rea* (guilty mind) to an artificial entity. Traditional "identification doctrines" required finding a "directing mind and will" within the corporation, a task that has become increasingly impossible in large, decentralized global enterprises (Suhariyanto & Mustafa, 2023). This has led to the emergence of "failure to prevent" models and "senior manager" liability tests in the UK, while Indonesia has introduced a National Criminal Code that recognizes corporations as subjects capable of criminal intent through their management (McConvey, 2024).

As Indonesia seeks to strengthen its investment climate following the financial crisis of the late 1990s, integrating sustainable governance principles, transparency,

accountability, and ethical compliance has become a priority (Kusumo & Rustambekov, 2025). The persistent issue of corruption, categorized as an "extraordinary crime" in Indonesia, requires extraordinary legal mechanisms that can reach beyond individual perpetrators to the corporate entities that benefit from systemic bribery. This report analyzes these legal structures, comparing the sophisticated common law precedents of the UK with Indonesia's evolving statutory landscape to provide a roadmap for corporate legal reform.

Indonesia's framework contrasts sharply with the UK's. Under Company Law No. 40/2007, veil-piercing requires a proven abuse of legal personality, rarely invoked due to civil law formalism, even after the 2023 Criminal Code's expansion of corporate liability. The UK integrates common law piercing with statutory innovations, including the evolution of the identification doctrine (Tesco Supermarkets Ltd v Nattrass, AC 153) and the development of failure-to-prevent offences. Governance exacerbates disparities: Indonesia's OJK Good Corporate Governance (GCG) principles lack an enforcement link, while the UK's Corporate Governance Code (2024) mandates director duties under the Companies Act 2006 s.172.

The perspective of international law on transboundary haze pollution based on the Law of State Responsibility?

## METHODS

We follow the *normative juridical* methodology common in comparative legal studies (Wardhana & Dwiyantama, 2023). The normative juridical approach is employed to examine primary legal materials, including Indonesia's Law No. 40 of 2007 (Limited Liability Company Law), Law No. 1 of 2023 (New Criminal Code), and the UK's Economic Crime and Corporate Transparency Act 2023 and Bribery Act 2010 (Kamaluddin, 2025).

The comparative dimension of the study focuses on functional legal comparison, which assesses how different legal systems address identical social problems, such as corporate fraud and corruption (Kadir et al., 2024). This involves analyzing the divergence between the "evasion principle" in UK jurisprudence and the "bad faith" standards in Indonesian statutory law (Utomo, n.d.). The research also integrates qualitative analysis of secondary data, including academic journals, Indonesian Supreme Court decisions (e.g.,)

## RESULTS AND DISCUSSION

This section is the most crucial section of your article. The analysis and results of the research should be clear and concise. The results should summarize (scientific) findings rather than providing data in great detail. Please highlight the differences between your results or findings and the previous publications by other researchers.

### *Theoretical Framework and the Evolution of Corporate Personality*

The separate legal entity doctrine is a fundamental premise in corporation law, and courts have generally resisted deviations from it except in specific instances

involving the doctrine of piercing of the corporate veil (Kamaluddin, 2025). In the UK, the Salomon principle affirmed that a corporation is not an agent or trustee of its members, but a distinct persona. This "formality" serves as a barrier to personal liability, yet it creates a moral hazard where controllers might externalize risks while internalizing profits.

Agency theory provides a lens through which to view this problem as a conflict of interest between owners (principals) and managers (agents), in which agents may act against the interests of stakeholders or the state for personal gain (Fadli & Rasyid, 2025). In emerging markets like Indonesia, these conflicts are exacerbated by concentrated ownership and weak protection for minority shareholders. Effective corporate governance serves as the primary mechanism to align these interests, but when governance fails, the law must rely on attribution doctrines to hold the corporation criminally (Fadilah & Kirani, 2025)

**Table 1. Comparative Evolution of Corporate Personality and Veil Piercing**

Dimension	United Kingdom (Common Law)	Indonesia (Civil Law)
Foundational Case	Salomon v A Salomon & Co Ltd	Adhered through Commercial Code and Law No. 1 of 1995
Current Primary Statute	Companies Act 2006	Law No. 40 of 2007 (Company Law)
Veil Piercing Trigger	Evasion of existing legal obligation	Bad faith, personal gain, or illegality
Judicial Approach	Cautious, measured, and precedent-based	General statutory nature, inconsistent application
Identification Doctrine	Shifted from "Directing Mind" to "Senior Manager"	Functional structural approach via PERMA 13/2016

Nevertheless, UK courts remain cautious about piercing the veil. The Supreme Court in *Prest v Petrodel* reiterated that piercing is a remedy of last resort and not a means of avoiding statutory corporate liability rules. In practice, instead of piercing, UK law tends to prosecute individuals through direct liability or through statutory offences (e.g., corporate manslaughter or regulatory offences) when piercing the corporate veil would be too extreme. As Clark notes, the identification doctrine and new offences are intended to ensure accountability without undermining corporate personality (Horder, 2025) In short, corporate criminal liability in the UK now relies on expanding the class of accountable officers rather than disregarding the corporate form.

### ***Piercing the Corporate Veil in the United Kingdom: The Evasion Principle and The Identification Doctrine and Recent UK Reforms***

In the UK, the doctrine of piercing the corporate veil has transitioned from a broad "facade" test to the highly specific "evasion principle" established in *Prest v Petrodel Resources Ltd* (Kamaluddin, 2025). Lord Sumption distinguished between

two principles: the "concealment principle," in which the court looks behind the corporate structure to identify the facts, and the "piercing" or "evasion principle," under which a person is under an existing legal obligation that they deliberately evade by interposing a company. UK courts have maintained a firm commitment to separate legal personality, viewing PCV as a "remedy of last resort".

This restrictive approach aims to provide legal certainty for investors. For instance, in *Rossendale*, the court argued that not every case of corporate misuse requires the doctrine, especially when other legal remedies, such as agency or tort, are available. This ensures that the veil remains an effective tool for capital formation while providing a narrow, structured pathway for justice in cases of blatant misuse.

The attribution of criminal responsibility to corporations has traditionally relied on the identification doctrine, which holds that the actions and mens rea of "directing minds" are the corporation's own (Suhariyanto & Mustafa, 2023). However, this doctrine was historically easier to apply to small companies than to large organizations, where senior management could insulate themselves from operational misconduct (Ferdinan et al., 2024).

The UK's Economic Crime and Corporate Transparency Act 2023 (ECCTA) marks a paradigm shift by expanding this doctrine (Horder, 2025). Under Section 196, a company can now be identified with fault-based criminal acts committed by "senior managers" who have a significant role in decision-making or in managing the whole or a substantial part of the organization. This "senior manager offence" ensures that corporate liability cannot be avoided by delegating tasks to levels just below the board of directors.

Additionally, the ECCTA introduces a "failure to prevent fraud" offence for large organizations. Similar to the Bribery Act 2010, this is a strict liability offence, with the only defense requiring the corporation to prove it had "reasonable procedures" in place to prevent fraud by its associates. This shifts the focus from identifying specific individuals to assessing the adequacy of the corporate system (Horder, 2025).

### *Piercing the Corporate Veil in Indonesia: Statutory Codification and Corporate Criminal Liability*

Indonesia has incorporated the piercing the corporate veil doctrine into Law No. 40 of 2007, specifically in Article 3, paragraph (2), which provides that a shareholder is personally liable if the company's legal entity status is used for bad-faith purposes or as a vehicle for personal gain. Furthermore, Articles 97 and 114 address the personal liability of directors and commissioners for negligence or breach of fiduciary duty (Fairuzia & Rahadian, 2024).

Despite these provisions, the implementation of PCV against directors in Indonesia remains inconsistent (Fairuzia & Rahadian, 2024). The landmark Supreme Court acquittal of Karen Agustiawan, which ruled that a failed investment constituted a "business risk" rather than a criminal breach of fiduciary duty, highlights the tension between judicial oversight and the Business Judgment Rule (BJR). The BJR protects directors who act in good faith and with due care, yet in

Indonesia, the lack of standardized guidelines for judges leads to divergent interpretations of what constitutes "bad faith" in corporate decision-making (Irawan et al., 2022).

**Table 2. Triggers for Personal Liability of Directors in Indonesia (Law No. 40/2007)**

Triggering Article	Description of Conduct	Liability Consequence
Article 97 (2)	Failure to carry out management duties in good faith and with full responsibility.	Personal liability for company losses.
Article 69 (3)	Provision of inaccurate or misleading financial statements or annual reports.	Joint and several liability of the BOD and BOC.
Article 104 (2)	Bankruptcy caused by management negligence within five years prior to declaration.	Joint and several liability for unsatisfied debts.
Article 3 (2)	Use of corporate assets for personal interest or bad faith engagement in illegal acts.	Piercing of the corporate veil.

In Indonesia, corporate criminal liability was historically fragmented across sectoral laws like the Corruption Law and the Environment Law (Suhariyanto & Mustafa, 2023). The lack of a clear procedural mechanism led the Supreme Court to enact PERMA No. 13 of 2016, which provided law enforcement with guidelines for prosecuting corporations (Tarigan & Saragih, 2024). PERMA 13/2016 specifies that a corporation can be held liable if it obtains benefits from a crime, allows the crime to occur, or fails to take the necessary steps to prevent or mitigate its impact (Abidin et al., 2023).

The New Criminal Code (Law No. 1 of 2023) further evolves this concept by formally including corporations as legal subjects (Ferdinan et al., 2024). It distinguishes between "management" liability and "corporate" liability, allowing for cumulative or alternative sentencing (Heyder, 2023). A significant development is the introduction of vicarious liability, where a corporation may be held accountable for the actions of its employees or agents if a causal link is established between the act (e.g., bribery) and the corporation's interest (Suhariyanto & Mustafa, 2023).

Despite the progressive trend in legislation, the prosecution of corporate crime in Indonesia faces significant "structural, cultural, and legal obstacles" (Kusumo & Rustambekov, 2025). Between 1999 and 2019, only a handful of corporate corruption cases reached sentencing, often with inconsistent outcomes: corporations were convicted after management was acquitted, or vice versa. This inconsistency creates a reputation for "tolerating corporate crime" (Wayne, 2020). One landmark success was the conviction of PT Mahkota Ulfa Sejahtera, the first recruitment agency successfully prosecuted for human trafficking in Indonesia (Wayne, 2020). The case demonstrated that an institutional drive to punish corporate involvement in economic crimes can provide the procedural systems

needed to tackle other offenses, such as trafficking. However, law enforcement units still report practical difficulties in establishing "corporate intent" and proving that a crime was committed for the corporation's benefit rather than for a rogue employee's personal gain.

### *Comparative Doctrinal Differences*

A significant gap in Indonesia's legal system is the absence of Deferred Prosecution Agreements (DPAs). In the UK and US, DPAs are effective tools for addressing corporate crime without sacrificing a company's financial stability or causing mass layoffs (Wayne, 2020). Under a DPA, a corporation agrees to pay fines and implement structural reforms in exchange for a suspended trial. This "forward-looking" responsibility encourages companies to cooperate with investigations and adopt robust compliance programs (Ibrahim et al., 2024).

Indonesia has begun exploring mechanisms with characteristics similar to DPAs, such as restorative justice and fines payment, but a formal legislative framework is lacking (Ibrahim et al., 2024). Integrating such a model would help close the "responsibility gap" for corporate crime, where the law currently struggles between ineffective deterrence and destructive retribution (Pratama, 2023). Furthermore, the shift toward "sustainable governance" and the integration of environmental and social indicators into legal enforcement frameworks is becoming a necessary reform priority (Kusumo & Rustambekov, 2025). For Indonesia, this means reinforcing corporate integrity through ethical leadership – the "tone at the top" – which shapes the organizational ethos and sets the standard for conduct across all levels (Juhandi, 2022).

Table 3. Comparison of Corporate Prosecution Models (Indonesia vs. UK)

Feature	Indonesia (New Criminal Code/PERMA 13)	UK (ECCTA 2023 / Bribery Act)
Primary Attribution	Functional management and employment relations	Senior manager and identification doctrine
Strict Liability	Emerging in environmental and systemic failure cases	"Failure to prevent" fraud and bribery
Sentencing Options	Fines, dissolution, deprivation of profit, asset seizure	Unlimited fines and regulatory debarment
Procedural Clarity	Guided by PERMA 13/2016 to address legislative gaps	Governed by statutory tests and Companies House gatekeeping
Compliance Defense	Recognized as a mitigating factor or defense	Statutory defense of "reasonable/adequate procedures"

Both jurisdictions maintain corporate personhood in principle. The UK relies on common law identity (directing mind) and gradually layers statutory offences (e.g., corporate manslaughter, anti-bribery). Indonesia now embeds corporate

liability directly in statute. (Suharto, 2020), observes that, in doctrine, both systems broadly accept limited liability, but Indonesia's new code explicitly enumerates corporate liability, while UK law modifies common law liability through statutes such as the ECCTA.

In the UK, piercing the veil remains almost exclusively a civil remedy and is seldom invoked in criminal cases. UK courts avoid using veil doctrines to attribute criminal acts to private individuals behind a corporation. Instead, as (Ma & Ryder, 2025) note, reforms focus on expanding who counts as the company's mind. In Indonesia, by contrast, the company law principle (UUPT) does recognize that shareholders and directors can lose immunity if they hide behind the corporate form. However, academic accounts show Indonesian courts rarely employ veil-piercing even in civil suits (Darmawan, 2025). Consequently, in criminal cases, Indonesia too tends to prosecute the company itself or its identified organs rather than piercing the veil. As (Khalifah & Sari, 2023) note, both the Criminal Code and the UUPT can make companies liable for a range of crimes, but "the legal framework is still relatively new and untested."

Another difference lies in the regulatory approach. The UK is moving towards a "failure to prevent" culture, imposing strict duties on large companies to put in place controls against economic crime. This reflects a policy of corporate compliance rather than veil-piercing. In Indonesia, there is no equivalent "failure to prevent" offence (yet). Instead, the focus is on clarifying who can be liable under company law and then testing that in courts. Indonesia also relies on administrative sanctions (e.g., revoking licenses for corporate misconduct) alongside criminal penalties. Thus, UK policy leans on expanding corporate duties, while Indonesia is grappling with aligning its broad new statutes with existing sector laws.

The comparative analysis reveals that the UK and Indonesia address corporate criminal liability through different doctrinal paths. In England, piercing the corporate veil is so exceptional that criminal prosecutors seldom even consider it; instead, the identity of culpable individuals is found by expanding the notion of "directing mind" and introducing corporate offence categories (Horder, 2025). For example, under UK law a subsidiary's criminal act might be imputed to its parent only through these identification rules, not by disregarding the veil. In Indonesia, while the law technically allows shareholders or directors to be personally liable if the company is abused, in practice, enforcement remains largely corporate-centric. The new penal code bolsters corporate liability with some nods to piercing the corporate veil (e.g., holding "beneficial owners" responsible) (Samad et al., 2025) but it has not fundamentally shifted Indonesia away from treating the company as the primary offender.

Both legal cultures face challenges. UK commentators worry that, even with ECCTA 2023, proving the necessary senior officer "fault" within sprawling corporations may be difficult, so some offenders may still escape justice. This is part of the classic "responsibility gap" problem in corporate crime. Indonesian scholars note that, despite a comprehensive corporate crime framework, uncertainties and overlaps persist; for instance, the criminal code's wording may allow inconsistent application (Samad et al., 2025). Also, developing case law will determine whether

judges will use the veil doctrines (currently underutilized) to reach individual culprits. On both sides, corporate reforms (like encouraging compliance programs) are seen as necessary complements to legal doctrines. For example, Indonesia's anti-corruption agencies increasingly target company executives (e.g., directors of state firms) under traditional statutes, suggesting a gradual extension of personal liability.

Importantly, the function of piercing the veil in criminal law differs conceptually between the systems. In the UK, preserving corporate formalities is generally seen as positive for commerce, so piercing is resisted; criminal law, by contrast, imposes liability through identification. In Indonesia, by contrast, the corporatist tradition and new laws suggest a willingness to hold corporations directly accountable, but the enforcement culture has not yet moved to aggressively pierce the veil in criminal cases. Both jurisdictions aim to deter corporate wrongdoing, but do so through their own legal culture: the UK through expansive definitions of corporate fault (Horder, 2025) and Indonesia through statutory recognition of corporate subjects and selective use of veil doctrines.

## CONCLUSION

The comparison shows that while both the UK and Indonesia treat companies as criminal offenders, they do so under different doctrinal regimes. The UK relies on the identification principle and new statutory offences to catch corporate wrongdoing, rarely piercing the corporate veil (Horder, 2025). Indonesia's new criminal code and sector laws affirm corporations as liable entities, but veil-piercing (as enshrined in company law) plays little role in current criminal practice (Alawiyah & Triadi, 2024). Key case examples (such as PT AGI in Indonesia and ECCTA reforms in the UK) highlight that Indonesian courts remain cautious about lifting the veil (Darmawan, 2025), whereas UK law has broadened liability on the legislative level. Legal reforms in both countries indicate a trend toward greater corporate accountability: the UK is expanding who within a company can trigger liability, and Indonesia is clarifying corporate culpability. Nonetheless, both systems underscore that piercing the corporate veil remains an extraordinary measure.

To bridge this gap, Indonesia should adopt clear judicial guidelines to establish legal unity in the handling of corporate cases, thereby avoiding contradictory sentencing outcomes (Fairuzia & Rahadian, 2024). The integration of Deferred Prosecution Agreements would provide prosecutors with the flexibility to ensure corporate reform while recovering state losses (Suharyanto & Mustafa, 2023). Ultimately, the combination of sustainable governance, regulatory reform, and a structured approach to corporate liability will be key to sustaining Indonesia's economic growth and restoring public trust in its governance institutions (Ibrahim et al., 2024). The "corporate veil" must remain a tool for innovation, but it can no longer be allowed to serve as a shield for misconduct in an era of increasing legal and social transparency.

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