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Reconstruction of the Piercing the Corporate Veil Concept from a Restorative Justice Perspective on the Environmental Impact of Monopolistic Practices

Tri Andika Syam¹, Faisal Santiago²

¹Universitas Borobudur, Jakarta, Indonesia, triandikasyam@gmail.com

²Universitas Borobudur, Jakarta, Indonesia, faisalsantiago@borobudur.ac.id

Corresponding Author: triandikasyam@gmail.com¹

Abstract: Business monopoly practices often cause significant environmental impacts, while multi-layered corporate structures are exploited to avoid legal liability. The doctrine of piercing the corporate veil allows for the breach of the legal personality of a company, allowing shareholders, directors, or controllers to be held personally liable. This study examines the reconstruction of this concept from a restorative justice perspective to ensure environmental restoration and compensation for affected communities. A juridical normative approach is used through an analysis of laws and regulations, legal doctrine, and court decisions, including Law No. 40 of 2007 concerning Limited Liability Companies, Law No. 32 of 2009 concerning Environmental Protection and Management, and Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices, along with restorative justice guidelines. The study results show that this doctrine effectively penetrates legal entity protection when corporations are used to shift responsibility for environmental damage, while the integration of restorative justice principles broadens the focus from mere criminalization to ecosystem restoration, socio-economic recovery of victims, and prevention of recurrence of violations. This study recommends strengthening regulations with clear veil-piercing criteria in environmental and monopoly cases, restorative-based compensation mechanisms, and collaboration between law enforcement agencies and the community, so that a balance between legal certainty, environmental protection, and a sense of justice for victims can be achieved.

Keywords: Piercing The Corporate Veil, Restorative Justice, Environmental Impact, Monopolistic Practices, Corporate Accountability

INTRODUCTION

Business monopoly is a form of economic activity that often creates unfair competition and has serious impacts on environmental sustainability (Maduwu, 2024). Companies with monopoly power tend to exploit natural resources without considering ecosystem sustainability (Lumbantoruan, 2025). Such activities cause ecological harm in the form of

pollution, deforestation, and land degradation (Ramadhan, 2025). Social harm also arises when communities lose access to the natural resources that sustain their lives (Hermanto, 2021). This phenomenon demonstrates the close relationship between business monopoly practices and environmental damage.

Limited liability companies are often used as legal vehicles to carry out monopolistic activities that have the potential to damage the environment (Assah, 2023). Legal entity status provides protection in the form of a separate legal entity (Yonanda, 2023). Based on this principle, companies are viewed as independent legal entities with their own rights and obligations (Nurjanah, 2017). While this protection provides certainty for business activities, it is often misused to shield shareholders and controllers from direct liability. When significant losses occur to society and the environment, responsibility often rests solely with the corporate entity.

The principle of limited liability for shareholders is the primary foundation of limited liability companies (Nianzah, 2024). Shareholders only bear the risk of their invested capital (Zahra, 2024). This concept benefits investment growth by minimizing individual risk in running a business. However, its application often opens up opportunities for abuse. Shareholders and controllers can easily avoid compensation obligations for environmental losses by relying on the principle of limited liability (Yanuarsih, 2024).

The doctrine of piercing the corporate veil exists as a legal instrument to penetrate the protection afforded by the principle of separate legal personality (Dewi, 2018). This concept allows judges to determine whether there is sufficient reason to ignore the dividing veil between the company and its owners or controllers. Thus, personal liability can be imposed when there is evidence of misuse of a legal entity for purposes detrimental to another party (Supriyatin, 2020). In cases of environmental damage caused by a monopoly, this doctrine opens the door to accountability not only for the corporation but also for those behind the corporation's control (Budiman, 2020). This effort provides a basis for justice for victims who suffer significant losses.

The development of the corporate veil doctrine in various countries demonstrates the flexibility of its application in accordance with the need for legal protection (Dewi P. M., 2025). In common law countries, this doctrine develops through court decisions that assess the appropriateness of ignoring a corporation's legal personality based on specific cases (Sugandi, 2024). In Indonesia, Article 3, paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies provides a normative basis for the application of this principle. This article emphasizes that shareholders are not always exempt from liability if they use the corporation for unlawful purposes (Siregar, 2023). This regulation serves as the basis for linking environmental damage caused by monopolies to the personal responsibility of shareholders or controllers.

Comparisons with international practice show that the doctrine of piercing the corporate veil is often invoked when fraud, abuse, or gross injustice occurs (Rissy, 2019). Some jurisdictions establish stricter criteria for when the corporate veil can be pierced. For example, when the company is merely an alter ego of its owner or is used for illegitimate purposes. This comparison is important for broadening legal understanding in Indonesia, ensuring that the application of this doctrine is not merely formal but also substantive. This way, legal responsibility for the environmental impacts of monopolies can be enforced more effectively.

Business monopolies are fundamentally prohibited in the Indonesian legal system, as stipulated in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Imron, 2024). The primary objective of this regulation is to create a healthy, competitive climate while protecting public interests. However, monopolistic practices remain common, particularly in strategic sectors such as mining,

plantations, and energy (Larassati, 2024). These sectors are directly linked to the exploitation of natural resources, which has significant environmental impacts. When monopolies occur, excessive control over resources exacerbates the risk of uncontrolled exploitation.

The environmental damage resulting from monopolistic practices often exceeds the natural recovery capacity of ecosystems. Companies that dominate the market tend to ignore environmental standards in order to maximize profits. These practices result in the loss of biodiversity, the destruction of land and water resources, and the threat to the lives of local communities. Case studies from various regions demonstrate a similar pattern, where excessive economic power leads to environmental degradation. This phenomenon reinforces the urgency of linking monopoly prohibitions with stronger corporate accountability mechanisms.

One example is the case study of oligarchic practices in nickel mining in South Halmahera, which affected the indigenous Sawai community. This study demonstrates how the dominance of large corporations has caused serious ecosystem damage. The expansion of the nickel industry has triggered water pollution, a decline in fish populations, and disrupted the ecological balance that has supported local livelihoods. Residents' dependence on traditional natural resources such as rivers and the sea has exacerbated the impacts of the damage, both in terms of health and socioeconomic aspects. The weak bargaining position of communities facing the power of capital demonstrates how resource monopolization leads to ecological injustice (Putri, 2025). This case emphasizes the importance of implementing strict corporate accountability to prevent repeated environmental and societal harm.

Restorative justice offers an alternative dispute resolution approach that focuses on restoration, rather than solely on punishment. This principle emphasizes the active involvement of perpetrators, victims, and communities in achieving just solutions (Yogie, 2025). Within the framework of environmental law, restorative justice demands that the harm that has occurred be repaired to the extent possible. Reparation can take the form of environmental rehabilitation, community compensation, or preventative measures to prevent recurrence. This approach addresses the need for justice that is often unmet through formal litigation alone.

The integration of the corporate veil doctrine and restorative justice creates synergy to strengthen corporate accountability mechanisms. This doctrine ensures that company controllers or owners cannot hide behind legal entities to avoid personal responsibility. Restorative justice, meanwhile, provides a space for victims and communities to obtain real redress for the harm they have suffered. This synergy positions the law not only as a formal enforcement tool but also as a means of social and ecological recovery. This new direction is expected to balance legal certainty, environmental protection, and a sense of justice for all parties.

METHOD

This research uses a normative legal research method that relies on a literature review through a review of primary, secondary, and tertiary legal materials. The approaches used are the statute approach and the conceptual approach. The statutory approach is done by reviewing relevant positive legal provisions, such as Article 3 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies, Article 116 of Law Number 32 of 2009 concerning Environmental Protection and Management, and provisions in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, to see the extent to which legal norms open up space for the application of piercing the corporate veil in cases of monopoly that have an impact on environmental damage. The conceptual approach is used to examine legal doctrines, theories, and principles, particularly regarding restorative justice and corporate responsibility, so that it can provide a theoretical

basis in reconstructing the veil-piercing concept to be more relevant to the needs of environmental restoration. The analysis was conducted qualitatively by linking the applicable legal norms with academic concepts and developing judicial practices, so that this research is able to offer a more just, comprehensive law enforcement model that supports the protection of ecosystems and the rights of affected communities.

RESULT AND DISCUSSION

Problems in Law Enforcement

Modern corporate structures are often layered, with holding companies, subsidiaries, and special purpose vehicles (SPVs) designed to shield shareholders from direct liability. This pattern creates legal loopholes when environmental damage occurs due to monopolistic business practices. Parent companies typically outsource high-risk operational activities to subsidiaries or SPVs, while profits remain concentrated at the holding level. This situation means legal liability stops with the weaker and more easily dissolved legal entity. The parent corporation remains safe from legal entanglements, despite reaping the greatest benefits from destructive activities.

Article 3, paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies affirms the principle of limited shareholder liability, which is limited to paid-up capital. However, Article 3 paragraph (2) provides an exception, allowing shareholders to be held personally liable if the company is used in bad faith for personal gain or in violation of the law. This provision should provide a gateway for the application of piercing the corporate veil, but the formulation of the article does not explicitly mention environmental damage or monopolistic practices as grounds for imposing personal liability. It makes law enforcement narrow and difficult to use to prosecute corporate controllers.

The lack of derivative regulations clarifying the application of veil-piercing adds significant obstacles to judicial practice. There are no government regulations or ministerial regulations outlining detailed criteria for when veil-piercing can be applied to companies that damage the environment. As a result, judges are often hesitant to broaden their interpretations for fear of violating the principle of legal certainty. Differences of opinion among judges also frequently arise due to the lack of consistent jurisprudential guidelines. Corporations exploit this gap to continue hiding their responsibilities behind the veneer of legal entity status.

The veil-piercing doctrine has long been recognized in academic literature, both in Anglo-Saxon and civil law. Corporate law scholars in Indonesia emphasize the importance of this doctrine in breaking the boundaries of the legal entity fiction when it is used as a means of abuse. However, judicial practice in Indonesia rarely applies it progressively. Judges tend to rely on the text of the law without broadening their interpretations toward substantive justice. This gap between academic theory and court practice indicates that Indonesian positive law remains conservative regarding corporate liability.

Coordination between law enforcement agencies is also a serious issue when dealing with cases of monopoly that damage the environment. The Commission for the Public Complaints (KPPU) has the authority to handle monopolistic practices under Law No. 5 of 1999, while the Ministry of Environment and Forestry (KLHK) has the authority to prosecute environmental violations under Law No. 32 of 2009. The police and the Prosecutor's Office play a role in the criminal process, but this is often not integrated with administrative and civil proceedings. This situation creates overlapping and fragmented case handling. Cases often end in the administrative realm without adequate criminal or civil follow-up.

The next challenge is proving a causal link between business monopoly and environmental damage. Article 25, paragraph (1) of Law No. 5 of 1999 prohibits the abuse of a dominant position, but this norm does not explicitly mention environmental impacts. Article 88 of Law No. 32 of 2009 stipulates strict liability for business actors for environmental

pollution or damage, but linking a monopoly to environmental damage requires complex scientific evidence. Expert reports, environmental data, and economic analysis must be integrated, which is often difficult to achieve in court.

Differing evidentiary standards also exacerbate the problem. Competition cases at the KPPU (Commission for the Elections and Development Supervisory Agency) place greater emphasis on economic data, market structure, and analysis of business dominance. Environmental cases, on the other hand, require proof of actual damage to the ecosystem, requiring laboratory testing, scientific studies, and field verification. These differing evidentiary methodologies often prevent cases from being comprehensively resolved. Criminal judges require different evidence than civil judges and the KPPU panel, resulting in law enforcement often reaching a dead end.

Synergy in implementing sanctions is still low. Law No. 32 of 2009 actually provides three enforcement channels: administrative, civil, and criminal, as stipulated in Article 95. However, in practice, these three channels are rarely implemented simultaneously. Administrative sanctions in the form of permit revocation are often ineffective because companies can still operate under other legal entities. The criminal channel is limited to imposing fines, while the civil channel is rarely used because the public finds it difficult to sue large corporations. This lack of coordination further strengthens the corporation's position.

The dominant penal approach also shows limitations. Fines or imprisonment for management are often disproportionate to the environmental damage caused. Corporations with large capital can afford to pay fines as a mere operational expense. Criminal penalties against individual directors are rarely imposed due to the difficulty of proving direct involvement. As a result, a deterrent effect is not achieved, and environmental damage continues to recur in the same business sector.

Environmental restoration and compensation for affected communities remain a low priority in the positive legal system. Law No. 32 of 2009 regulates environmental restoration obligations, including through Article 87, which requires business owners to provide compensation and restoration measures, and Article 13, which emphasizes restoration as part of a control instrument. However, implementation is weak due to the lack of a robust technical mechanism to ensure ecosystem restoration. The focus of law enforcement is more on punishment than restoration. Communities that lose their livelihoods due to environmental damage need real restitution and compensation. This gap undermines public trust in law enforcement.

A deterrent effect on corporations is almost never achieved. Criminal penalties often do not exceed the profits the company earns from environmentally damaging monopolistic practices. Large companies view penalties merely as a cost of business risk, which is still far less than net profits. This situation reinforces the perception that the law lacks sufficient power to control corporations. This structural injustice further widens the gap between corporate interests and the rights of affected communities.

A case study of the oligarchic practices of nickel mining that affected the Sawai Tribe in South Halmahera demonstrates this reality. Mining activities cause water pollution, a decline in fish populations, and the disruption of the ecosystem that is the source of life for local communities. The subsidiaries operating the operations are prosecuted, while the parent company, which enjoys substantial profits, remains immune from liability. This situation demonstrates the weak implementation of the corporate veil and the weak integration between the Limited Liability Company Law, the Environmental Law, and the Monopoly Law. This case also emphasizes how legal problems are still far from providing justice for affected communities.

Legal Impact and Solutions

Ecological damage caused by mining monopolies has resulted in serious pollution of water, air, and land. Water pollution occurs when liquid waste from mining activities is discharged into rivers or the sea without adequate treatment, degrading water quality and becoming toxic to fish and household needs. Air pollution arises from mining dust, heavy vehicle emissions, and coal combustion, increasing the risk of respiratory diseases. Soil pollution triggers a decline in agricultural productivity because heavy metals damage soil structure. Deforestation accompanying mining operations accelerates the loss of biodiversity and disrupts the ecosystem balance that previously supported the lives of local communities.

This ecological loss has a direct impact on the degradation of agricultural land, the mainstay of rural communities' economies. Once fertile land becomes unsuitable for cultivation due to contamination by mining waste, it leads to dependence on imported food from outside the region. The loss of biodiversity not only damages ecosystems but also severs the spiritual connection of indigenous communities to their ancestral lands. Disrupting ecosystem balance increases the risk of flooding, landslides, and drought. Environmental sustainability, which should be preserved for future generations, is ultimately seriously threatened.

The socio-economic losses caused by mining monopolies are enormous. Fishermen are losing their livelihoods due to waste pollution in the seas and rivers, resulting in a drastic decline in fish stocks. Farmers are no longer able to utilize their land due to soil degradation and deforestation. Indigenous communities, such as the Sawai people in South Halmahera, are forced to face forced migration as their customary territories are taken over by mining corporations. Economic inequality is widening as profits are concentrated in the hands of a handful of monopolistic corporations, while ecological losses are borne by the wider community.

Health problems are becoming a serious problem due to air, water, and soil pollution. Skin diseases, diarrhea, and respiratory disorders are increasing in areas around mines. Children and the elderly are the groups most vulnerable to these health impacts. Rising healthcare costs place a further economic burden on communities. Pollution from mining activities not only damages the environment but also robs communities of their fundamental right to a healthy life, as guaranteed by Article 28H paragraph (1) of the 1945 Constitution, which affirms the right to a good and healthy environment.

Mining monopolies encourage overexploitation because there are no fair competition mechanisms to limit corporate behavior. Monopolistic companies have dominant market power, allowing them to determine their own production and distribution schemes without considering environmental sustainability. As a result, resource exploitation is carried out massively to maximize profits, while environmental sustainability is neglected. Fair business competition should create natural oversight mechanisms, but monopolies actually eliminate these.

Personal accountability becomes crucial when corporations are used as a tool for committing illegal acts or causing environmental damage. Shareholders, directors, and controllers can be held personally liable if they are proven to have abused the principle of limited liability to avoid legal obligations. Article 3, paragraph (2) of Law No. 40 of 2007 concerning Limited Liability Companies stipulates that limited liability does not apply if the company is used for unlawful purposes or involves the shareholder's personal assets. This provision provides the entry point for the application of the corporate veil doctrine in environmental cases.

Article 116 of Law No. 32 of 2009 concerning Environmental Protection and Management stipulates that if an environmental crime is committed by a legal entity, criminal responsibility can be imposed on the management, the person giving the order, or any party

with control over the legal entity. This norm emphasizes that environmental crimes are not solely the abstract responsibility of the company as a legal entity but can also be directed at the individuals behind the company. Thus, corporate control holders cannot hide behind a legal entity.

The synchronization of Article 3 paragraph (2) of the Limited Liability Company Law and Article 116 of the Environmental Management and Management Law provides a stronger legal basis for the application of the corporate veil principle in environmental cases. The Limited Liability Company Law provides a basis for exceptions to limited liability, while the Environmental Management and Management Law emphasizes that controlling individuals can be held liable. If these two regulations are read in conjunction, corporate managers and control holders can be directly prosecuted if a business monopoly is proven to cause environmental damage. This combination has the potential to strengthen veil-piercing practices in Indonesia.

Community-based environmental restoration is key to implementing restorative justice. Affected local communities must be actively involved in formulating ecosystem rehabilitation programs. Participatory mechanisms can take the form of village deliberations, public consultation forums, or joint supervision of recovery projects. This model ensures that programs are not only oriented towards corporate or government interests, but also accommodate the real needs of local communities.

Victim compensation and restoration-based compensation must go beyond monetary payments alone. Compensation can take the form of returning indigenous peoples' land rights, repairing damaged public facilities, and providing economic empowerment for affected communities. This scheme is fairer because it addresses the root of the problem, rather than simply compensating for financial losses. The principles of restorative justice emphasize the restoration of social relationships, enabling victims to obtain more substantive justice.

Environmental penal mediation can be an important instrument for achieving faster recovery. Corporations are required to negotiate with affected communities to agree on a recovery program, but without eliminating criminal liability. This concept allows for a balance between law enforcement and actual recovery on the ground. The penal mediation model has begun to be adopted in several jurisdictions as an alternative for complex environmental cases.

Regulatory reconstruction needs to clarify the veil-piercing criteria in cases of monopoly and environmental damage. The Limited Liability Company Law and the Environmental Management Law could be strengthened with detailed explanations of the conditions that justify breaching limited liability, such as major damage, the existence of a method of evading responsibility, or widespread social harm. Regulations also need to add restorative dispute resolution mechanisms, including environmental arbitration or multi-party forums. Strengthening the synergistic role of institutions, from the KPPU (Commission for Public Works and Housing), the Ministry of Environment and Forestry (KLHK), the Police, the Attorney General's Office, to the Supreme Court, is urgently needed to avoid overlapping legal obligations. Civil society must be given greater space to monitor, challenge, and participate in environmental restoration so that ecological justice can truly be realized.

CONCLUSION

The reconstruction of the corporate veil-piercing doctrine from a restorative justice perspective demonstrates that Indonesian positive law already has a basis that allows for the application of personal liability for shareholders, directors, and corporate controllers. Article 3, paragraph (2) of Law No. 40 of 2007 concerning Limited Liability Companies provides room for exceptions to the principle of limited liability, while Article 116 of Law No. 32 of

2009 concerning Environmental Protection and Management affirms that directors, those giving orders, or those holding control of a corporation can be held criminally liable. Synchronizing these two provisions opens up opportunities for fairer law enforcement, particularly in cases of business monopolies that seriously impact environmental damage. The effectiveness of this model lies not only in its repressive aspect but also in strengthening the law's function as a means of ecological restoration, protecting affected communities, and creating a more substantive deterrent effect on corporations.

Strengthening veil-piercing regulations needs to be accompanied by clear technical guidelines so that they can be consistently applied by law enforcement and the judiciary. A restorative approach must be integrated into the environmental legal framework, emphasizing not only criminal sanctions and fines but also ecosystem restoration, fair compensation, and empowerment of affected communities. The role of law enforcement officials must be strengthened with adequate investigative capacity, while civil society and independent institutions should be given greater space to monitor and oversee the law enforcement process. Collaboration between institutions such as the KPPU (Commission for Public Works and Public Housing), the Ministry of Environment and Forestry (KLHK), the Police, and the Prosecutor's Office must also be strengthened to avoid overlapping case handling. The integration of regulation, law enforcement, and public participation is expected to create a legal system that not only punishes but also restores ecological justice comprehensively.

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