

LEGAL PROTECTION FOR CREDITORS THROUGH THE ACTIO PAULIANA INSTITUTION IN CONNECTION WITH BANKRUPT ASSETS

Danila Elfayet^{1*}, Richard C. Adam².

^{1,2}Universitas Tarumanagara, Jakarta

Corresponding E-mail: danitia.205210082@stu.untar.ac.id^{1*}, Richard.adm@srslawyers.com²

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Abstract

Actio Pauliana is an important legal instrument in the bankruptcy system, aimed at protecting the interests of creditors from the actions of debtors with bad intentions, such as the transfer of assets conducted before a bankruptcy declaration is made. This instrument allows creditors to annul legal acts of the debtor that could harm their rights, with the main principle being good faith. This article aims to analyze the application of actio pauliana in Indonesian bankruptcy law, focusing on the protection given to creditors in dealing with harmful transfers of debtor assets. This research uses a normative juridical approach, analyzing the legal provisions in the Bankruptcy and Suspension of Debt Payment Obligation Law (UU Bankruptcy and PKPU) and its application in practice. The results of the research show that actio pauliana can be an effective tool in maintaining fairness and transparency in debt settlement; however, its application still requires improvements in terms of oversight and coordination between relevant parties such as commercial courts, curators, and creditors. The recommendation is to update the regulations related to actio pauliana to address new challenges in bankruptcy practice and ensure the continuation of legal protection for creditors.

Keywords: *Actio Pauliana, Bankruptcy, Legal Protection.*

INTRODUCTION

In the implementation of economic activities, the potential for disputes or legal issues to arise is almost inevitable and often drags business actors. One of the legal issues that can arise is a bankruptcy case. This term is often equated with bankruptcy, even though the two have quite fundamental differences. Bankruptcy is a situation where the debtor is unable to pay off his debts to creditors and can only be declared bankrupt after a court decision. Meanwhile, bankruptcy refers more to a worsening financial condition due to continuous losses experienced by a company, which ultimately makes the company no longer able to run its operations and is forced to close its business.¹ One of the legal protection instruments provided to creditors in the Bankruptcy Law is to anticipate and prevent fraudulent acts committed by debtors. Such fraudulent acts can appear in various forms, one of which is when a debtor with bad intentions deliberately creates a large amount of debt, then files a bankruptcy petition with the main aim of avoiding the obligation to pay off his debt. In this scheme, the debtor usually first hides or transfers most of his assets so that they cannot be executed by creditors in the bankruptcy process. In addition, there is another mode in the form of utilizing bankruptcy status as a camouflage tool to cover up the debtor's bad intentions, such as by transferring assets or capital to a new business entity formed by himself, or transferring it to a third party, with the intention that the assets cannot be reached in the process of settling the bankrupt estate.²

Bankruptcy refers to everything related to a bankrupt situation, which is a condition in which the debtor is not making payments on his debts. However, this does not mean that the debtor has completely stopped paying, but rather that at the time the bankruptcy petition is filed, the debtor is in a state of being unable to make payments on the debts he has.³ The dualism of bankruptcy law that was in effect at that time created various obstacles in its

¹ Suryanata, Aji and Muryanto, Yudho Taruno, "Analysis of Actio Pauliana as a Form of Legal Protection for Bankruptcy Creditors (Study of Decision Number 06/Pdt.Sus.Other Lawsuits Ap/2020/Pn.Niaga.Jkt.Pst. Jo. Number 27/Pdt-Sus Pkpu/2015/Pn.Niaga.Jkt.Pst.)", Journal of Law, Education and Social Humanities 1, No. 2 (2024), Pages 63-72

² Situmorang, Victor & Soekarso, Hendri, Introduction to Bankruptcy Law in Indonesia (Jakarta, Rineka Cipta, 1994) 13.

³ CSTKansil and Christine ST Kansil, Basic Principles of Knowledge of Indonesian Commercial Law, Jakarta: Sinar Grafika, 2002, p. 169.

implementation in practice. Some of the obstacles that emerged included procedures that were too formal and complicated, high costs, minimal participation from creditors in the bankruptcy process, and the length of time required to complete the process.⁴ As a result of these problems, it is necessary to establish regulations in the field of bankruptcy itself, with the aim of establishing regulations in the field of bankruptcy being to provide regulations regarding the rights and obligations of debtors who are unable to pay off their debts, as well as to regulate the rights and obligations of creditors who are interested in the process.⁵

The actions taken by the debtor as explained above, in the context of bankruptcy law in Indonesia, are categorized as *actio pauliana*. Provisions regarding *actio pauliana* are contained in various regulations, including *Faillissementsverordening*, Law Number 4 of 1998, and Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Through this mechanism, creditors are given the legal right to file a request for cancellation to the Court against legal actions taken by the debtor before the bankruptcy decision. This request can be submitted if the action is not included in the debtor's legal obligations, and the debtor at that time knew that his actions had the potential or were actually detrimental to the interests of the creditors.⁶ *Actio Pauliana* refers to a legal action taken by a debtor before a bankruptcy decision is issued, which is not mandatory, and is known by the debtor to be detrimental to the interests of the creditor. In this case, the creditor has the right to file a request for cancellation to the Court against the legal action taken by the debtor which resulted in losses to the creditor before the debtor was declared bankrupt. However, both the debtor and the parties involved in the legal action have room to provide evidence to the contrary, namely that they did not know or should not have known that the action would be detrimental to the creditor. This request for cancellation is submitted as part of the process of settling the bankrupt estate, with the aim of expanding or adding assets in the bankruptcy estate, so that creditors can receive optimal repayment of receivables in accordance with the proportion of the amount of bills they have.⁷

Actio Pauliana is a form of legal remedy provided by the Indonesian bankruptcy system to protect creditors from the actions of debtors who are not in good faith. This protection is relevant when the debtor intentionally transfers his property rights to a third party before the debts in question are due, with the aim of avoiding debt repayment. Such actions have a direct impact on creditors due to the reduction of assets that can be executed in the bankruptcy estate, so that creditors face difficulties in obtaining the fulfillment of their rights to repayment of receivables.

In this context, the curator, who is the party legally authorized to represent the interests of all creditors in the process of settling the bankrupt estate, has the authority to file a lawsuit to annul the legal action taken by the debtor with the third party. This lawsuit is filed through the *actio pauliana* mechanism, as explicitly regulated in Article 47 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and PKPU Law). This provision provides a legal basis for the curator to annul the legal action taken by the debtor before being declared bankrupt, if the action is proven to be detrimental to the creditor and is not legally mandatory. The main purpose of filing an *actio pauliana* by the curator is to return or reinsert assets that have been fraudulently transferred into the bankruptcy estate, so that they can be used to fulfill the creditors' rights proportionally. Thus, *actio pauliana* functions as a means to maintain the integrity of the bankruptcy process and ensure that the debtor's assets, which should be general collateral for creditors, are not transferred manipulatively to other parties.⁸

In addition to being a mechanism for canceling fraudulent actions by debtors, *actio pauliana* is also used in bankruptcy to prevent conflicts between creditors, especially when there are creditors who try to take unilateral settlement without considering the rights of other creditors. Although everyone is basically free to make agreements, bankruptcy law provides restrictions so that debtors do not use agreements to transfer assets to third parties unfairly, which can reduce bankrupt assets and harm other creditors in obtaining fair settlement.

FORMULATION OF THE PROBLEM

1. How is the Legal Protection for Creditors Through the *Actio Pauliana* Institution in Relation to Bankrupt Estate?
2. What is the ideal model of the *Actio Pauliana* Institution in protecting bankrupt assets?

⁴Adrian Sutedi, "Bankruptcy Law", Bogor: Ghalia Indonesia, 2009, p.1

⁵Sianturi, Agustina Ria Retta Imelda, "Protection of Bankruptcy Creditors Through *Actio Pauliana*", (2013), p. 5

⁶Anisah, Siti, "Protection of Creditors' Interests Through *Actio Pauliana*", *Jurnal Hukum* 16 No.2 (2009), pp. 205-221

⁷Ibid

⁸Hasanah, Aida Nur, "Legal Protection for Creditors in *Actio Pauliana* Lawsuits". *Journal of Constitutional Law and Islamic Politics* IX No. 2, pp. 26-37

RESEARCH PURPOSE

This study aims to analyze the form of legal protection provided to creditors in bankruptcy cases through the actio pauliana mechanism. Specifically, this study examines how actio pauliana is used to cancel the debtor's legal actions carried out before being declared bankrupt, which are detrimental to creditors and are not required by law. In addition, this study aims to understand the role of the curator in filing an actio pauliana lawsuit as an effort to return assets to the bankruptcy estate in order to ensure a fair and proportional distribution of debt repayment to all creditors. This study also describes the importance of actio pauliana in preventing the practice of abuse of agreements and potential conflicts between creditors in the process of settling bankrupt assets.

METHOD

This study uses a normative legal method, which is an approach that relies on the study of legal norms written in relevant laws and legal doctrines. This approach is used to examine how the provisions of actio pauliana in Indonesian bankruptcy law provide legal protection to creditors against fraudulent actions by debtors before being declared bankrupt. This normative legal method allows the author to compile legal arguments based on interpretations of applicable legal norms, principles, and theories, resulting in deductive and logical conclusions in accordance with the structure of the positive legal system in Indonesia.

RESULTS AND DISCUSSION

Subsection 1 Forms of Legal Protection for Creditors through Actio Pauliana

Satjipto Rahardjo stated that legal protection is an effort to provide guarantees and protection for human rights that are harmed by other parties. This protection aims for the community to be able to feel and enjoy all the rights guaranteed by law.⁹ Philipus M. Hadjon also believes that legal protection is an effort or action aimed at providing assistance and protection to legal subjects through the use of available legal instruments.¹⁰

As stipulated in the terms and conditions of the actio pauliana, this lawsuit can only be filed if there is a legal act carried out by the debtor. One example is when a creditor makes an agreement with the debtor to obtain payment of his debt in advance, before a bankruptcy decision is made. The payment can be canceled through the actio pauliana if it meets certain conditions, namely:¹¹

- a) It can be proven that at the time the payment was made, the creditor was aware that a bankruptcy petition had been filed against the debtor; and
- b) There are indications of collusion between debtors and creditors which results in the creditor gaining disproportionate profits compared to other creditors.

Basically, bankruptcy concerns the legal status of a legal subject, either an individual or a legal entity, which can only be declared bankrupt through a court decision after fulfilling certain requirements and procedures. A debtor can be declared bankrupt if he fulfills the provisions of Article 2 paragraph (1) of Law Number 37 of 2004, and the application for a statement is submitted to the commercial court in accordance with the provisions of Article 3. The main objective of bankruptcy regulation is to create a fast, fair, open and effective debt settlement. In this context, the law functions to provide protection, both preventively by providing room for objections before a decision is made, and repressively through a dispute resolution mechanism.¹² The provisions regarding actio pauliana have been fully regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, specifically starting from Article 41 to Article 49. Article 41 explains that for the benefit of the bankrupt estate, the curator may submit a request for cancellation of any legal act carried out by the debtor before the bankruptcy decision is pronounced, if the act is detrimental to the creditor. The cancellation can only be made if it is proven that at the time the legal act was carried out, the debtor and the related parties knew or should have known that the act had the potential to harm the creditor. However, legal acts that are required to be carried out by the debtor based on an agreement or statutory provisions are not included in this provision.¹³

Paulian Actionis is a legal right owned by a creditor to cancel a legal act carried out by a debtor with a third party, even though the creditor is not a direct party to the agreement. This right arises because of the interests of the

⁹ Satjipto Rahardjo, Legal Studies, Bandung: PT. Citra Aditya Bakti, 2000, p.54.

¹⁰ Philipus M. Hadjon, Introduction to Indonesian Administrative Law, Yogyakarta: Gajah Mada University Press: 2011, p. 10.

¹¹ Ibid

¹² Khaqiqi, M. Ikhfal, and L, Rosalinda Elsina, "Actio Pauliana as a Form of Legal Protection for Bankruptcy Creditors". Journal of Evidence of Law 3, No. 2 (2024), pp. 238-250

¹³ Anandewi, Made Maria Surya, "Actio Pauliana as an Effort to Protect Creditors in Bankruptcy". Kertha Desa Journal 9, No. 11, pp. 26-36

creditor that are harmed by the debtor's actions. In the Roman legal tradition, actio pauliana includes all forms of legal efforts to cancel a debtor's actions aimed at avoiding fulfilling obligations to creditors, including efforts to transfer part of the assets to another party when the debtor knows that he will be declared bankrupt, which is contrary to the general principles of Article 1131 of the Civil Code.¹⁴

Paulian Action is a legal mechanism that provides protection to creditors against fraudulent actions by debtors that can harm their rights. Although creditors are not direct parties to legal actions carried out by debtors with third parties, creditors have an interest in such actions if they are proven to be detrimental to their interests. In the context of bankruptcy law, actio pauliana allows curators or creditors to file for cancellation of legal actions by debtors carried out before the bankruptcy decision is pronounced, as long as it can be proven that the debtor and third parties knew, or should have known, that such actions would harm creditors. Mandatory legal actions based on agreements or laws are exempt from this cancellation. This provision shows that the law does not only act as a dispute resolution tool, but also as a preventive instrument that protects creditors from potential abuse of rights by debtors. Thus, actio pauliana plays an important role in maintaining justice and balance between the interests of creditors and debtors in the process of settling bankrupt estates

Subsection 2 The Role of Actio Pauliana in Protecting Bankrupt Assets

Bankruptcy is a condition in which a debtor is unable to fulfill his obligations to pay off debts to creditors, which is generally caused by a decline in the financial condition of the business. Bankruptcy is also marked by a court decision that determines the general seizure of all of the debtor's assets, both those currently owned and in the future. In the bankruptcy process, the curator is tasked with managing and settling the bankrupt's assets under the supervision of a supervising judge. Both are officially appointed together with the issuance of the bankruptcy statement decision.¹⁵ Actio Pauliana is one of the legal remedies regulated in laws and regulations to give creditors the right to cancel debtor's actions that are not mandatory and have the potential to harm the interests of creditors. In this case, Article 1341 of the Civil Code is an important basis in regulating actio pauliana, especially because it contains an element of good faith. The existence or absence of an element of good faith is the main consideration in determining whether a debtor's action is included in the category that can be canceled or not.¹⁶

Article 10 of the Bankruptcy and PKPU Law provides legal protection to creditors by allowing the filing of collateral seizure. In this case, the creditor can authorize a temporary curator to manage the debtor's assets, either in part or in full, as a temporary preventive measure. This step aims to prevent the debtor from committing acts that could harm the creditor and hinder the debt repayment process. In addition, Article 10 paragraph (3) also stipulates that if the application for collateral seizure is approved, the Commercial Court can require the creditor to provide collateral in accordance with a reasonable amount in order to maintain a balance between the interests of the debtor and the creditor.¹⁷

The ideal form of the actio pauliana institution in the context of bankruptcy law is a mechanism that allows creditors to cancel the debtor's legal actions that are detrimental to their interests, especially related to the transfer of assets before the bankruptcy declaration is issued. In an ideal system, the actio pauliana functions as a tool that protects bankrupt assets from being reduced unlawfully due to the debtor's actions that are not in good faith. This protection can be implemented by considering the principle of good faith, which is a crucial element in determining whether the debtor's actions can be canceled or not. Ideally, the actio pauliana allows creditors to file for cancellation of the debtor's legal actions in a fair manner, through supervision by the curator and the supervising judge. In addition, the law provides space for creditors to file a request for seizure of collateral against the debtor's assets that have the potential to reduce the amount of debt payments. Thus, the actio pauliana institution becomes a very important instrument in maintaining a balance between the interests of debtors and creditors, ensuring that the bankruptcy process is carried out fairly and the debtor's assets are not lost or misused before debt obligations can be settled.

CONCLUSION

¹⁴Sjahdeini, Sutan Remy. History, Principles, and Theory of Bankruptcy Law (Understanding Law No. 37 of 2004 concerning Bankruptcy and Suspension of Payment Obligations). (Jakarta, Kencana, 2016), p. 362

¹⁵Hartono, Dedy Tri. "Legal Protection of Creditors Based on Bankruptcy Law." PhD diss., Tadulako University, (2016) Page 2.

¹⁶Mantili, Rai. "Actio Pauliana as an Effort to Protect Creditors According to the Civil Code and the Bankruptcy and Suspension of Debt Payment Obligations (PKPU) Law." ADHAPER: Journal of Civil Procedure Law 6, no. 2 (2021), p. 23.

¹⁷Astiti, Sriti Hesti. "Seizure of Collateral in Bankruptcy." Yuridika 29, no. 1 (2014), p. 64.

Pauline actionis is a very important legal instrument in the bankruptcy system because it provides significant protection for creditors in dealing with debtor actions that have the potential to harm their rights. One form of protection provided is the ability to cancel the transfer of debtor assets that was carried out before the bankruptcy statement was issued, thus preventing the debtor from avoiding his debt obligations by transferring his assets to a third party. The validity of this cancellation is very dependent on the principle of good faith, which is the basis for assessing the debtor's actions. In this case, if it is proven that the debtor intentionally took an action that was detrimental to the creditor with the knowledge or should have known that the action would have a negative impact on the debt repayment process, then the action can be canceled in the interests of the creditor. The suggestion that can be given is the need to improve understanding and more consistent application of *actio pauliana* in bankruptcy practice, both from creditors, debtors, and law enforcement. It is important to strengthen supervision of debtor actions that have the potential to harm the interests of creditors, as well as improve coordination between commercial courts, curators, and creditors so that the debt settlement process can run more transparently, efficiently, and fairly. In addition, considering the dynamics of the business and economic world that continue to develop, it is very important to update the legal regulations related to *actio pauliana*, so that this instrument remains relevant and effective in dealing with new practices that can harm creditors, and maintain fairness in debt settlement.

REFERENCES

Book

- Astiti, Hesti Sriti, Sita Jaminan Dalam Kepailitan, *Yuridika* 29, No. 1, 2014.
- Handjon Philipus M., Pengantar Hukum Administrasi Indonesia, Yogyakarta: Gajah Mada University Press, 2011.
- Hartono, Tri Dedy, Perlindungan Hukum Kreditor Berdasarkan Undang-Undang Kepailitan, PhD diss., Tadulako University, 2016.
- Kansil C.S.T. dan Kansil Christine S.T. Kansil, Pokok-Pokok Pengetahuan Hukum Dagang Indonesia, Jakarta: Sinar Grafika, 2002.
- Rahardjo Satjipto, Ilmu Hukum, Bandung: PT. Citra Aditya Bakti, 2000.
- Sianturi, Imelda Agustina Ria Retta, Perlindungan Kreditor Kepailitan Melalui Actio Paulina, 2013.
- Situmorang, Victor & Soekarso, Hendri, Pengantar Hukum Kepailitan di Indonesia, Jakarta: Rineka Cipta, 1994.
- Sjahdeini, Remy Sutan, Sejarah, Asas, dan Teori Hukum Kepailitan (Memahami undangundang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran).
- Sutedi Andrian, Hukum Kepailitan, Bogor: Ghalia Indonesia, 2009.

Journal

- Anandewi, Surya Made Maria, "Actio Pauliana Sebagai Upaya Perlindungan Terhadap Kreditor Dalam Kepailitan." *Jurnal Kertha Desa* 9, No. 11.
- Anisah, Siti, "Perlindungan Terhadap Kepentingan Kreditor Melalui Actio Pauliana." *Jurnal Hukum* 16 No.2 (2009).
- Hasanah, Nur Aida, "Perlindungan Hukum Bagi Kreditor Pada Gugatan Actio Pauliana." *Jurnal Hukum Tata Negara dan Politik Islam* IX No. 2.
- Khaqiqi, Ikhfal M., dan L, Rosalinda Elsina, "Actio Pauliana Sebagai Bentuk Perlindungan Hukum Bagi Kreditor Kepailitan." *Jurnal Evidence of Law* 3, No. 2 (2024).
- Mantili, Rai. "Actio Pauliana Sebagai Upaya Perlindungan Bagi Kreditor Menurut Kitab Undang-Undang Hukum Perdata Dan Undang-Undang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU)." *ADHAPER: Jurnal Hukum Acara Perdata* 6, no. 2 (2021).
- Suryanata, Aji dan Muryanto, Taruno Yudho, "Analisis Actio Pauliana Sebagai Bentuk Perlindungan Hukum Bagi Kreditor Kepailitan (Studi Putusan Nomor 06/Pdt.Sus.Gugatan Lain-Lain Ap/2020/Pn.Niaga.Jkt.Pst. Jo. Nomor 27/Pdt-Sus Pkpu/2015/Pn.Niaga.Jkt.Pst.)" *Jurnal Hukum, Pendidikan dan Sosial Humaniora* 1, No. 2 (2024).