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ACTIO PAULIANA IN BANKRUPTCY: EFFORTS TO CANCEL DEBTOR'S LEGAL ACTS

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Abstract

Actio pauliana is a fundamental legal instrument in the Indonesian bankruptcy system to protect creditors' interests from debtor's detrimental legal acts. This research aims to analyze the application of actio pauliana based on Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), focusing on filing requirements, burden of proof, and practical challenges in court proceedings. The research method used is normative juridical with statutory, conceptual, and case study approaches. The results show that actio pauliana as an effort to annul debtor's legal acts has a strategic role in maximizing the bankruptcy estate (boedel pailit) for creditor debt settlement. However, the effectiveness of actio pauliana implementation still faces various obstacles, particularly regarding the heavy burden of proof on curators, differing judicial perceptions in assessing debtor fraud elements, and legal protection for good faith third parties. This research recommends the need for reformulating actio pauliana provisions to provide better legal certainty for all parties involved in bankruptcy proceedings.

Keywords: Actio Pauliana; Bankruptcy; Annulment of Legal Acts; Creditor; Curator

INTRODUCTION

Bankruptcy constitutes a legal state in which a debtor experiences financial difficulties resulting in an inability to pay debts to creditors. In the Indonesian legal context, bankruptcy is comprehensively regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), which replaced Law Number 4 of 1998. This regulation provides a systematic legal framework for resolving debt-credit issues between debtors and creditors while considering the balance of interests among parties. In bankruptcy practice, situations are frequently encountered where debtors perform legal acts that harm creditor interests before a bankruptcy decision is rendered. Such legal acts may take the form of asset transfers, grants, or other transactions resulting in the reduction of the debtor's assets that should serve as security for debt repayment to creditors. This condition is certainly highly detrimental to creditors because the bankruptcy estate (boedel pailit) available for debt payment becomes reduced or even nil.

To anticipate and address these problems, bankruptcy law provides a legal instrument known as actio pauliana. Etymologically, the term actio pauliana derives from the name of a Roman jurist named Paulus who first introduced this concept. Actio pauliana grants creditors the right to file for cancellation of all non-obligatory legal acts performed by debtors, provided the debtor knew that such acts would harm creditors. In the Indonesian legal system, actio pauliana is regulated in several provisions, namely: First, general actio pauliana as regulated in Article 1341 of the Civil Code (KUHPerdata); Second, actio pauliana regarding inheritance as regulated in Article 1061 of the Civil Code; and Third, actio pauliana in bankruptcy as regulated in Articles 41 through 50 of the UUK-PKPU. This research specifically focuses the discussion on actio pauliana in bankruptcy. Based on this background, this study examines two principal issues: First, how are the regulation and requirements for filing actio pauliana in bankruptcy based on the UUK-PKPU? Second, what are the problems in actio pauliana application in Indonesian judicial practice and what are the resolution efforts?

METHOD

This study employs a normative legal research method (doctrinal legal research) with a statutory approach, conceptual approach, and case approach. Legal materials used include primary legal materials in the form of legislation, particularly the UUK-PKPU and the Civil Code, as well as relevant court decisions. Secondary legal materials include literature, scholarly journals, and legal doctrines from experts. Analysis is conducted qualitatively using legal interpretation methods to address the research problems. The research location is focused on the legal jurisdiction of the Medan Commercial Court, considering that Medan, as the largest metropolitan city in western Indonesia, has high economic and business activity dynamics, thereby generating various bankruptcy cases relevant for examination.

RESULTS AND DISCUSSION

1. Concept and History of Actio Pauliana

Actio pauliana constitutes a legal concept originating from Roman Law and named after its creator, a Roman jurist named Paulus. In modern legal development, this concept has been adopted into various legal systems worldwide, including the Continental European civil law system, which subsequently influenced Indonesian law. In Anglo-Saxon legal terminology, a similar concept is known as fraudulent conveyance or fraudulent transfer, which essentially serves the same purpose: providing protection to creditors from fraudulent debtor actions. Substantively, actio pauliana can be understood as a right granted by law to creditors to file for cancellation of all non-obligatory legal acts performed by debtors, where the debtor and the party engaging in such legal acts knew or should have known that such acts would result in harm to creditors. Thus, actio pauliana functions as both a preventive and repressive legal protection mechanism for creditors.

2. Regulation of Actio Pauliana in Bankruptcy

In the Indonesian bankruptcy context, actio pauliana is specifically regulated in Articles 41 through 50 of the UUK-PKPU. This provision constitutes lex specialis from the general actio pauliana provision regulated in Article 1341 of the Civil Code. The fundamental difference between the two lies in the entitled subject to file and the resolution forum. In bankruptcy, actio pauliana claims can only be filed by the curator for the benefit of the bankruptcy estate through the Commercial Court. Article 41 paragraph (1) of the UUK-PKPU states that for the benefit of the bankruptcy estate, the Court may be requested to cancel all legal acts of the debtor who has been declared bankrupt that harm creditor interests, performed before the bankruptcy declaration decision is pronounced. Furthermore, paragraph (2) regulates that such cancellation can only be effected if it can be proven that at the time the legal act was performed, the debtor and the party with whom the legal act was performed knew or should have known that such legal act would result in harm to creditors. Based on these provisions, several requirements for filing actio pauliana in bankruptcy can be identified as follows: First, the existence of a legal act by the debtor. This legal act must be performed by the debtor before the bankruptcy declaration decision is pronounced. Second, the legal act harms creditor interests. This harm may take the form of reduction in the debtor's assets that serve as security for debt repayment. Third, the legal act does not constitute an act required by law or agreement. Fourth, the debtor and the party with whom the legal act was performed knew or should have known that such act would harm creditors.

3. Legal Presumptions in Actio Pauliana

The UUK-PKPU regulates legal presumptions that can lighten the curator's evidentiary burden in filing actio pauliana. Article 42 of the UUK-PKPU stipulates that if a legal act harming creditors was performed within 1 (one) year before the bankruptcy declaration decision is pronounced, and such act was not obligatory for the debtor, then unless proven otherwise, the debtor and the party with whom such act was performed are deemed to know or should have known that such act would result in harm to creditors. This legal presumption applies under several conditions as regulated in Article 42 of the UUK-PKPU, namely: (a) the act constitutes an agreement in which the debtor's obligations far exceed the obligations of the party with whom the agreement was made; (b) the act constitutes payment for, or provision of security for, debt that has not yet matured and/or has not or cannot be collected; (c) the act was performed by an individual debtor with or for the benefit of an affiliated party. The existence of this legal presumption aims to provide stronger protection to creditors, particularly in situations where debtors perform legal acts indicating fraud in the period preceding bankruptcy.

4. Grants as Objects of Actio Pauliana

Articles 43 and 44 of the UUK-PKPU specifically regulate grants made by debtors. Grants constitute one form of legal act most vulnerable to use by debtors to transfer their assets before bankruptcy. Article 43 of the UUK-PKPU states that grants made by debtors may be requested for cancellation from the Court if the curator can prove

that at the time such grant was made, the debtor knew or should have known that such action would result in harm to creditors. Furthermore, Article 44 of the UUK-PKPU regulates that unless proven otherwise, the debtor is deemed to know or should have known that such grant harms creditors, if the grant was made within 1 (one) year before the bankruptcy declaration decision is pronounced. This provision provides a strong legal presumption regarding grants made within the one-year period before the bankruptcy decision, thereby facilitating the curator in proving the scienter element (knowledge) of the debtor.

5. Curator's Authority in Filing Actio Pauliana

Article 47 paragraph (1) of the UUK-PKPU explicitly states that claims based on the provisions of Articles 41, 42, 43, 44, 45, and 46 are filed by the curator to the Court. This provision affirms that in bankruptcy, the authority to file actio pauliana claims constitutes the curator's exclusive authority, not that of individual creditors. This differs from general actio pauliana based on Article 1341 of the Civil Code, where each creditor may file cancellation claims. The curator, as the party appointed by the Court to manage and settle the bankruptcy estate, holds a strategic position in protecting the interests of all creditors. In filing actio pauliana claims, the curator acts for the benefit of the bankruptcy estate, not for personal interest or that of particular creditors. If an actio pauliana claim is granted, the cancelled object will re-enter the bankruptcy estate and subsequently be used for debt repayment to all creditors in accordance with applicable provisions.

6. Problems in Actio Pauliana Application in Practice

Although actio pauliana constitutes an important legal instrument in bankruptcy, in practice the application of this legal institution faces various constraints and problems. Empirical data indicate that not many actio pauliana cases have been successfully granted by courts. According to records from Andriani Nurdin, a former Commercial Court Judge at the Central Jakarta District/Commercial Court, between 1998 and 2004 only 6 actio pauliana cases were filed with the Commercial Court, and all were rejected at the Commercial Court level, cassation, and judicial review at the Supreme Court.

Several main problems in actio pauliana application can be identified as follows:

First, heavy evidentiary burden. The curator as plaintiff in actio pauliana cases bears a considerable evidentiary burden. The curator must prove that the debtor and the party with whom the legal act was performed knew or should have known that such act would harm creditors. Proving this scienter element (knowledge) is often difficult because it concerns subjective aspects that are not easily proven.

Second, differences in judicial perception. There exist differences in perception among commercial court judges, both at the first instance level and at the Supreme Court level, regarding whether a debtor's legal act constitutes fraud harming creditors. These perceptual differences also encompass issues of court jurisdiction competent to adjudicate actio pauliana cases.

Third, legal protection for good faith third parties. The UUK-PKPU has not yet clearly and comprehensively regulated criteria for legal protection for good faith third parties in transactions with bankrupt debtors. Article 49 paragraph (4) of the UUK-PKPU only regulates that good faith third parties involved in legal acts cancelled through actio pauliana will become concurrent creditors to obtain reimbursement from the bankruptcy estate.

Fourth, time period limitations. Actio pauliana provisions in bankruptcy are limited to legal acts performed within 1 (one) year before the bankruptcy decision is pronounced. This time limitation can become a loophole for debtors who have planned asset transfers far before this period.

7. Legal Consequences of Granted Actio Pauliana

If an actio pauliana claim is granted by the court, several legal consequences arise as follows: First, the legal act that is the object of the claim is declared null and void and legally non-binding. Second, the transferred object must be returned to the bankruptcy estate (boedel pailit). Third, the third party who has received such object loses rights to that object. Fourth, if the third party has provided performance to the debtor (for example, payment of purchase price), then such third party may become a concurrent creditor to obtain reimbursement from the bankruptcy estate. In the case where the third party is a good faith party, then based on Article 49 paragraph (4) of the UUK-PKPU, such third party is protected by being granted status as a concurrent creditor. This legal protection constitutes a form of balance between creditor interests and good faith third party interests, as embodied in principles adopted in the Indonesian civil law system.

8. Recommendations for Reformulation of Actio Pauliana Provisions

Based on analysis of various problems in actio pauliana application in bankruptcy, several recommendations for reformulation of actio pauliana provisions can be formulated as follows:

First, consideration should be given to extending the suspect period from 1 (one) year to 2 (two) years for certain legal acts strongly indicating fraudulent conduct, such as asset transfers to affiliated parties or grants to close family members. Second, clearer criteria need to be formulated regarding legal protection for good faith third parties, including parameters for assessing such good faith. Third, consideration should be given to granting individual creditors the right to file actio pauliana claims if the curator is inactive or there exists a conflict of interest. Fourth, technical guidelines need to be developed for commercial court judges in assessing actio pauliana elements to create uniformity in decisions.

CONCLUSION

Based on the research findings and discussion, the following conclusions can be drawn: First, actio pauliana in bankruptcy constitutes a legal instrument regulated in Articles 41 through 50 of the UUK-PKPU that grants authority to the curator to file for cancellation of debtor's legal acts harming creditors. Requirements for filing actio pauliana include: the existence of a legal act by the debtor performed before the bankruptcy decision; such act harms creditors; such act does not constitute a required act; and the debtor and the counterparty knew or should have known that such act would harm creditors. Second, actio pauliana application in judicial practice continues to face various problems, including: heavy evidentiary burden for the curator, differences in judicial perception in assessing fraud elements, lack of clarity regarding legal protection for good faith third parties, and limitations in the suspect period timeframe. These problems result in a low success rate for actio pauliana claims in courts. Based on these conclusions, the following recommendations can be formulated: First, for legislators, revision of actio pauliana provisions in the UUK-PKPU is necessary by extending the suspect period timeframe and formulating clearer criteria regarding legal protection for good faith third parties. Second, for the Supreme Court, development of a Supreme Court Regulation or Supreme Court Circular Letter providing guidelines for commercial court judges in assessing actio pauliana elements is necessary. Third, for curators, there is a need to enhance proactivity and professionalism in filing actio pauliana claims to protect bankruptcy estate and creditor interests.

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