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The *Actio Pauliana* Principle in Indonesian Business Law

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ABSTRACT

In reality, the debtor who will be sentenced to bankruptcy, often avoids the legal consequences of the decision by transferring his assets to another party to ensure the creditor does not fully get his rights back. Therefore, in the bankruptcy law regulation, it is stated that the legal instrument for the Creditor (through the Curator) who feels aggrieved by the Debtor's legal actions is to file a lawsuit in the form of canceling the transaction. Such legal instruments are known as actio pauliana. Previously, actio pauliana was regulated in various legal rules, such as the Civil Code, Faillissements-Verordening, and Law no. 4 of 1998 concerning Bankruptcy. But nowadays, actio pauliana is regulated in Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payments. Actio pauliana can be carried out against the debtor's legal actions that harm the creditor in relation to affiliation, grants, and debt payment. In its journey, actio pauliana did not run effectively, because not all creditors (cq. curators) used this instrument to reclaim their rights that had been harmed by the debtor. problem is the difficulty of proving the actio pauliana and legal protection for third parties who transact with the debtor.

1. Introduction

What is meant by *actio pauliana* (claw-back or annulment of preferential transfer) is a legal effort to cancel a transaction made by the Debtor for the interest of the Debtor, which may harm the interests of its Creditors. For example, selling the goods so that the goods cannot be confiscated-guaranteed by the creditor.

In general, *actio pauliana* is regulated by the provisions of the Civil Code. The principle of privacy of contract is contained in Article 1340 paragraph (1) of the Civil Code, which reads as follows: "An agreement is only valid between the parties who make it". As a

principle, the privity of contract does not apply rigidly, in the sense that it is still possible to be excluded. Article 1341 regulates *actio pauliana* which reads as follows:[1]

> "(1) However, any person who owes debts may file for cancellation of all acts that are not required by the debtor under whatever name, which is detrimental to the debtor, as long as it is proven, that when the deed is done, both the debtor and the person with or for whom the debtor acts, knowing that the deed has a detrimental effect on the people who owe the debt.
>
> (2) The rights acquired in good faith by third parties to the goods which are the subject of the void act are protected.
>
> (3) In order to apply for the cancellation of the actions that were done free of charge by the debtor, it is sufficient for the debtor to prove that the debtor at the time of committing the act knew that by doing so, he harmed the people who owed him the debt, regardless of whether the debtor did so. the person who receives the benefit also knows it or not".

Actio pauliana is a means provided by law to each *creditor* to file for cancellation of all non-obligatory actions carried out by the *debtor* where the act has harmed the *creditor*. There is one important element that becomes the benchmark in regulating *actio pauliana* in Article 1341 of the Civil Code, namely the element of good *faith*. Proof of the presence or absence of an element of good faith becomes the basis for determining the act, including actions that are not required or required.[2]

The *actio pauliana* in Article 1341 of the Civil Code relates to the provisions of Article 1131 of the Civil Code, which regulates the principle of *creditorium parity*. This is because Article 1131 of the Civil Code stipulates that all Debtor assets are legally guaranteed for the debts of the Debtor. Thus, the debtor is not actually free from his assets when he has debts to other parties, in this case, to creditors.

Actio pauliana, also known as the claw-back action or annulment of preferential transfer, is a legal remedy designed to protect the interests of creditors. It allows a creditor to challenge and potentially annul transactions made by a debtor if those transactions were not necessary and have the effect of harming the creditor's ability to collect the debt. Common scenarios where *actio pauliana* might be invoked include instances where a debtor sells or transfers assets to evade the claims of creditors.

In the context of Indonesian law, *actio pauliana* is regulated by the Civil Code, particularly Article 1341. This article outlines the conditions under which a debtor's actions can be canceled, emphasizing the importance of proving that both the debtor and the party involved in the transaction were aware of its detrimental impact on the creditor at the

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1 Andriani Nurdin, "Masalah Seputar Actio Pauliana," in *Kepailitan Dan Transfer Aset Secara Melawan Hukum: Prosiding Rangkaian Lokakarya Terbatas Masalah-Masalah Kepailitan Dan Wawasan Hukum Bisnis Lainnya*, ed. Emmy Yuhassarie (Jakarta: Pusat Pengkajian Hukum, 2004).

2 Jono, *Hukum Kepailitian* (Jakarta: Sinar Grafika, 2008).

time the transaction occurred. Good faith is a key element in determining the validity of the act, and third parties who acquire rights in good faith are protected.

The principle of privacy of contract, as stated in Article 1340 of the Civil Code, acknowledges the validity of agreements between parties. However, *actio pauliana* provides an exception to this principle, allowing creditors to challenge actions that harm their interests.

To contextualize the discussion, it is beneficial to reference previous studies related to the topic. A review of the "state of the art" in the literature on *actio pauliana* can provide insights into how the legal remedy has been interpreted, applied, and evolved over time. This may involve examining case studies, legal analyses, and scholarly articles that delve into the practical and theoretical aspects of *actio pauliana*.

By incorporating relevant findings from previous studies, the article can build on existing knowledge and contribute to a more comprehensive understanding of *actio pauliana* within the legal framework of Indonesia. This approach demonstrates the writer's awareness of the broader legal discourse surrounding the topic and helps establish the significance of the current study within the context of existing scholarship.

If viewed from Article 1341 paragraph (1) and paragraph (2) of the Civil Code above, there are 2 (two) kinds of legal actions that are not required, including the following:

1. Reciprocal legal actions (see Article 1341 paragraph (1) Civil Code). A reciprocal legal action is a legal action where there are two parties who excel over each other. For example, sale and purchase agreements, lease agreements, and others;
2. Sided legal actions (see Article 1341 paragraph (3) of the Civil Code). A unilateral legal act is a legal act in which only one party has an obligation for the performance of another party. For example, Grants.

From the description of the problems above, there are two problems that will be discussed regarding how the *actio pauliana* principle applies in Indonesian law, and what problems arise in implementing the *actio pauliana* principle.

2. Method

The research methodology employed in crafting this paper is predominantly normative, drawing upon literature reviews and normative legal approaches. This methodological choice is underpinned by a desire to comprehensively analyze and interpret legal principles, doctrines, and concepts by delving into existing scholarly works and legal frameworks.

The normative approach is fundamental in understanding the theoretical underpinnings of the legal subject matter under consideration. In this context, literature studies serve as a primary source of information, offering insights into various perspectives, historical developments, and academic discourses related to the legal topic at hand. By synthesizing information from books, scholarly articles, and other written works, this research aims to

establish a robust theoretical foundation upon which legal analyses and arguments can be constructed.

Furthermore, the normative legal approach involves a meticulous examination of applicable laws and regulations. By scrutinizing statutory provisions, legal doctrines, and precedents, the research seeks to derive a nuanced understanding of the legal landscape surrounding the chosen subject. This involves a thorough review of primary legal sources to elucidate the governing principles and rules that shape the legal framework.

The normative methodology employed here is particularly pertinent when exploring legal doctrines, principles, or issues where a deep understanding of the theoretical and doctrinal aspects is crucial. This approach allows for a critical evaluation of legal norms and theoretical frameworks, facilitating a comprehensive and systematic analysis.

It is important to note that the normative research methodology does not rely on empirical data but instead concentrates on the theoretical and conceptual aspects of law. This approach is well-suited for the current research, which focuses on legal principles and their application within the context of existing laws and regulations.

In conclusion, the normative research methodology adopted in this paper, which combines literature studies and normative legal approaches, provides a robust framework for a comprehensive and in-depth exploration of the chosen legal subject matter. Through an extensive review of legal literature and relevant legal sources, the research aims to contribute valuable insights and interpretations to the existing legal discourse.

3. Discussion

Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payments (hereinafter referred to as UUKPPU) comprehensively regulates this *actio pauliana*, starting from Article 41 to Article 49. This is certainly more comprehensive than the provisions in the Civil Code and in the Bankruptcy Regulations, which are old (S. 1905 – 217 *jo*. S. 1906 – 348).

Sutan Remy Sjahdeini said that the provisions of Article 41 to Article 51 of Law Number 4 of 1998 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 1998 concerning Amendments to the Bankruptcy Law into Law (hereinafter referred to as UUK) are the implementation of the provisions of *actio pauliana* Article 1341 of the Civil Code. This can be understood because *actio pauliana* in the Civil Code generally applies to all agreements, while those contained in Article 41 to Article 51 of the UUK or Article 41 of the UUKPPU up to Article 49 of the UUKPPU are special provisions for *actio pauliana* for bankruptcy issues. That the provisions of *actio pauliana* Article 1341 of the Civil Code apply to all agreements, it appears because the provisions are in Book III of the Civil Code concerning Engagement, Third Part Concerning the Effects of an Agreement.

In UUKPPU, there are several articles that regulate *actio pauliana*, among others:

Article 30 UUKPPU stipulates that:[3]

"In the event that a case is proceeded by the Curator against the opposing party, the Curator may apply for the cancellation of all actions committed by the Debtor before the person concerned is declared bankruptcy, if it can be proven that the Debtor's actions were carried out with the intention of harming the Creditor and this is known by the opposing party".

In Article 41 UUKPPU, it is regulated as follows:

(1) For the sake of bankruptcy estate, the Court may request the cancellation of all legal actions of the Debtor who have been declared bankrupt which harm the interests of the Creditor, which was carried out before the decision on the declaration of bankruptcy was pronounced.
(2) The cancellation as referred to in paragraph (1) can only be made if it can be proven that at the time the legal action was taken, the Debtor and the party with whom the legal action was carried out knew or should have known that the legal action would result in a loss to the Creditor;
(3) Exceptions from the provisions as referred to in paragraph (1) are legal actions of the Debtor which must be carried out based on an agreement and/or because of the law."

UUKPPU stipulates that for the sake of bankruptcy assets, cancellation of all legal actions of the Debtor that have been declared bankrupt that have harmed the interests of the Creditor, which was carried out before the declaration of bankruptcy was stipulated.

The conditions for *actio pauliana* according to UUKPPU are as follows:

1. is *actio pauliana* carried out for the benefit of the bankruptcy estate;
2. The existence of legal actions from the Debtor;
3. The debtor has been declared bankrupt, so it is not sufficient, for example, if the debtor is only imposed with a suspension of obligation to pay the debt;
4. Such legal action is detrimental to the interests (*prejudice*) of the Creditor;
5. The legal action is carried out before the declaration of bankruptcy is determined;
6. Except in cases where reverse evidence applies, it can be proven that at the time the legal action was taken, the Debtor knew or should have known that the legal action would result in a loss to the Creditor;
7. Except in cases where reverse evidence applies, it can be proven that at the time the legal action was committed, the party with whom the legal action was carried out knew or should have known that the legal action would result in a loss to the Creditor;
8. The legal action is not an obligatory legal act, that is, it is not required by agreement or law, such as paying taxes.

As already mentioned, one of the conditions so that *actio pauliana* can be carried out is the existence of a "legal act" carried out by the debtor. What is meant by legal action is every action of the debtor that has legal consequences. for example, the debtor sells and makes

[3] M. Hadi Shubhan, "Hukum Kepailitan, Prinsip, Norma, Dan Praktik Di Peradilan" (Jakarta: Kencana Prenada Media Group, 2009).

a grant on his property, whether the act is reciprocal (such as buying and selling) or unilateral (such as a grant or *waiver*).[4]

Thus, there are at least 2 (two) elements that must be met so that the act can be called a legal act, namely as follows:

1. Doing something; and
2. Have legal consequences.

Thus, doing something that does not have legal consequences or does not do something, but has legal consequences is not considered a legal action, so it is not subject to *actio pauliana*.

Some of the examples below are actions considered "not obligatory" so that they can be requested for their cancellation based on the *actio pauliana*. Examples of these can be found in the legal doctrines in the Netherlands, which are as follows:

1. Providing guarantees to creditors that are not required;
2. Paying outstanding debts;
3. Selling goods to its creditors followed by compensation (*set off*) on the price of the goods;
4. Paying debts (due or not) not in cash, for example being paid in kind.

In addition, another condition for an *actio pauliana* to be submitted is that the legal action is detrimental to creditor. So, there is a *detrimental effect* on the creditor due to the debtor's actions. Acts that harm the Creditor, among others:

1. Sales of goods whose price is below the market price;
2. Giving an item as a gift or gift;
3. Doing something that can increase the obligation or burden on the bankrupt assets. For example, providing a guarantee (by a subsidiary) to debts taken by a *holding*).
4. Doing something that can cause a loss to the creditor's ranking. For example, providing debt payments or debt guarantees to certain creditors.

In addition, for an act committed by a Debtor which is later declared bankrupt to be canceled based on the *actio pauliana*, it must also meet the requirements so that the act is (1) known, or (2) it is reasonably suspected by the Debtor and a third party that the act is detrimental. (*prejudicial*) against the creditor. Meanwhile, if what is done is an act of giving gifts or grants, to third parties who receive gifts or grants, to third parties who receive gifts or grants are not required to have the element of "knowing or reasonably suspecting" that the act of giving grants or giving gifts is detrimental to the creditor. In this case, the act of knowing or reasonably suspecting is only required for the party giving the grant or gift. and if done within 1 (one) year, the burden of proof is reversed. If the act is committed within 1 (one) year, by law it is assumed that the act is known or should be known to harm

[4] Jono, *Hukum Kepailitian*.

the creditor if the act is carried out by fulfilling the elements in the presumption of knowing.[5]

Furthermore, Sutan Remy Sjahdeini, quoting Fred BG Tumbuan, said that in Article 41 of the UUKPPU there are five requirements that must be met to *actio pauliana*, among others:

1. The debtor has committed a legal act;
2. The legal action is not obliged to be carried out by the Debtor;
3. The said legal action has harmed the Creditor;
4. At the time of carrying out a legal action, the Debtor knows or should know that the legal action will harm the Creditor; and
5. At the time of carrying out the legal action, the party with whom the legal action was carried out knew or should have known that the legal action would result in a loss to the Creditor.

Then furthermore, Fred BG Tumbuan believes that it is the duty of the Curator to prove that the five requirements have been fulfilled.

Hadi Shubhan also affirmed a similar opinion, which stated that the *actio pauliana* in bankruptcy requires that the debtor and the party with whom the act was committed are deemed to have known or should have known that the act would result in a loss to the creditor. The lawsuit *against actio pauliana* in bankruptcy must meet the following criteria:

1. The legal action that is being sued by *actio pauliana* in bankruptcy is an act that is detrimental to the creditor, which was carried out within one year prior to the bankruptcy decision;
2. The legal action that is being sued by *actio pauliana* in the bankruptcy is an act that is detrimental to the creditor which is not obliged to be carried out by the bankrupt debtor;
3. The legal action that is being sued by *actio pauliana* in the bankruptcy is an act that is detrimental to the creditor, which is an agreement where the debtor's obligations far exceed the obligations of the party with whom the agreement was made;
4. The legal action that is being sued by *actio pauliana* in the bankruptcy is an act that is detrimental to the creditor, which is the payment of, or the provision of guarantees for debts that have not yet matured and/or have not been or cannot be collected; or
5. The legal action that is being sued by *actio pauliana* in the bankruptcy is an act that is detrimental to the creditor committed against an affiliated party. Affiliated parties are determined as stipulated in Article 42 of the KPPU Law.

In Article 42, it is determined as follows:

If a legal action that is detrimental to the Creditor is carried out within 1 (one) year before the bankruptcy declaration decision is pronounced, while the act is not obliged to be

[5] Man S. Sastrawidjaja, *Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Hutang* (Bandung: Alumni, 2006).

carried out by the Debtor, unless it can be proven otherwise, the Debtor and the party with whom the act was committed are deemed to be knows or should know that the act will result in a loss to the Creditor as referred to in Article 41 paragraph (2) of the UUKPPU, in the event that the act:

a. An agreement where the debtor's obligations far exceed the obligations of the party with whom the agreement was made;
b. Is the payment of, or the provision of guarantees for debts that have not yet matured and/or have not been or cannot be collected;
c. Performed by individual debtors, with or for the benefit of:
    1) husband or wife, adopted children, or their families up to the third degree;
    2) A legal entity where the Debtor or party, as referred to in number (1) is a member of the board of directors or management or if the party, either individually or jointly, participates directly or indirectly in the ownership of the legal entity more than 50% (fifty percent) of the paid-up capital or under the control of the legal entity.
d. Performed by the Debtor, who is a legal entity, with or for the benefit of:
    1) Members of the board of directors or management of the *Debtor*, his husband or wife, adopted children, or their families up to the third degree of the member of the board of directors or management;
    2) A legal entity where the Debtor or party, as referred to in number (1), is a member of the board of directors or management or if the party, either individually or jointly, participates directly or indirectly in the ownership of the legal entity more than 50% (fifty percent) of the paid-up capital or under the control of the legal entity;
    3) Individuals whose husband or wife, adopted children, or their families up to the third degree, participate directly or indirectly in ownership of the Debtor more than 50% (fifty percent) of the paid-up capital or in the control of the legal entity.
e. Performed by a Debtor who is a legal entity with or for the benefit of another legal entity, if:[6]
    1) Individual members of the board of directors or management in the two business entities are the same person;
    2) Husband or wife, adopted child, or family up to the third degree of an individual member of the board of directors or management of the Debtor who is also a member of the board of directors or management of another legal entity, or vice versa;
    3) Individual members of the board of directors or management, or members of the supervisory board of the Debtor, or husband or wife, adopted children, or family to the third degree, either individually or jointly, participate directly or indirectly in the ownership of other legal entities for more than 50% (fifty percent) of the paid-up capital or under the control of the legal entity, or vice versa;

[6] Munir Fuady, *Hukum Pailit Dalam Teori Dan Praktek (Edisi Revisi Disesuaikan Dengan UU No. 37 Tahun 2004)* (Bandung: Citra Aditya Bakti, 2005).

4) Debtor is a member of the board of directors or management of another legal entity, or vice versa;
5) The same legal entity, or the same individual, whether jointly or not with their husband or wife, and/or their adopted children and their families up to the third degree, participate directly or indirectly in the two legal entities at least 50% (fifty percent) of the paid-up capital.

f. Performed by the Debtor who is a legal entity with or against other legal entities in a group of which the Debtor is a member;
g. The provisions in letter c, letter d, letter e, and letter f apply *mutatis mutandis* if it is carried out by the Debtor with or for the benefit of:
   1) Management member of a legal entity, husband, or wife, adopted child, or family up to the third degree of member the administrator;
   2) Individuals, either alone or together with their husband or wife, adopted children, or families up to the third degree who participate directly or indirectly in the control of the legal entity.

Actio pauliana concerning Grants is regulated in Article 43 of the UUKPPU stipulates:

> "Grants made by the Debtor can be requested for cancellation to the Court, if the Curator can prove that at the time the grant was made, the Debtor knew or should have known that such action would result in a loss to the Creditor."

From the sound of the article, the burden of proof rests with the Curator where the Curator is obliged to prove that at the time the grant was made, the Debtor knew or should have known that such action would result in a loss to the Creditor (Ordinary Hills).

Article 44 UUKPPU stipulates:

> "Unless it can be proven otherwise, the Debtor is deemed to know or deserve to know that the grant is detrimental to the Creditor, if the grant is made within 1 (one) year before the bankruptcy declaration decision is pronounced."

This means that if the grant is made within 1 (one) year before the bankruptcy declaration decision is pronounced, the Curator does not need to prove it and the Debtor is deemed to have known or should have known that the relationship was detrimental to the Creditor (reverse burden of proof).

Actio pauliana in relation to payment of a debt regulated in Article 45 of the UUKPPU stipulates that the payment of a debt that has been collected can only be canceled if it is proven that the recipient of the payment knows that the application for a declaration of bankruptcy from the Debtor has been registered, or if the payment is the result of a conspiracy. between the Debtor and the Creditor with the intention of benefiting the Creditor over other Creditors. According to Article 45 of the KPPU Law, to determine whether a payment for a debt that has been invoiced can be canceled or not, it must:[7]

[7] Sutan Remy Sjahdeini, *Hukum Kepailitan Memahami Failisementsverordering Juncto UU No. 4 Tahun 1998* (Jakarta: Pustaka Utama Grafiti, 2004).

a. It is proved that the payee knows that the petition for declaration of bankruptcy of the Debtor has been registered; or
b. That the payment is the result of a conspiracy between the Debtor and the Creditor with the intention of benefiting the Creditor more than the other Creditors.

Payments that have been received by the holder of a replacement letter or letter of appointment which due to a legal relationship with the previous holder are required to receive payment, such payment cannot be requested back. If the payment is non-refundable, the person who benefits because of the issuance of a replacement letter or a letter of appointment must return to the bankruptcy estate the amount of money that has been paid by the Debtor if:

a. It can be proven that at the time the letter was issued, the person concerned knew that the petition for a declaration of bankruptcy from the Debtor had been registered; or
b. The issuance of the letter was the result of a conspiracy between the Debtor and the first holder.

Thus, the Curator is obliged to prove the good faith of the issuance of the letter.

In UUKPPU, there is no time limit when a debtor's legal action is carried out so that it can be canceled through the *actio pauliana*. Therefore, the law governing it is only a general law regarding the expiration of a lawsuit. In this case, a lawsuit against *actio pauliana* can be made against acts committed by the debtor that have not exceeded a period of 30 (thirty) years.

In addition, in certain cases, the assumption applies with the right of reverse proof that at the time of committing certain actions that harm the bankrupt property the debtor and except for grant acts, the party with whom the particular act was committed is "considered by law" that they knew or should know that the particular act resulted in a loss to the creditor, unless it can be proven otherwise (reverse proof), that is, it can be proven that the debtor or (except for grant acts) the party with whom the particular act is committed is not in a state of knowing or ought to know that the particular act results in losses for creditors. If the act is in the form of a grant, by law, the element of knowing or “needing to know” only applies to the Debtor and does not apply to the party with whom the Debtor committed the act. In the case of a grant, it is not required that there are elements that must be known/needed to know by the recipient of the grant. So, the element of knowledge or ought to know in the case of a grant only applies to the grantor.

The conditions for the application of the principle of reverse proof (proof that the elements of "knowing" or "need to know") can be applied in a bankruptcy case are as follows:

1. So, in bankruptcy law, this is known as the "Anti-Last Minute Grab Rule" (*Anti-Last Minute Grab Rule*); and
2. the act is not obliged to be carried out;
3. by the Debtor; and
4. Only applies to certain actions or actions in certain cases.

What can be done about an action that can be classified as *actio pauliana*? In this case, Article 41 of the UUKPPU expressly states that the act can be requested to be canceled, in this case of course, by the Curator of the bankrupt debtor.

The following are some of the legal consequences of the occurrence of *actio pauliana*:

1. If the debtor sells an item that can be subject to *actio pauliana*, the sale and purchase is canceled and therefore the item must be returned to the bankrupt debtor. If the goods for some reason cannot be returned, according to Article 49 paragraph (2) UUKPPU, the buyer is obliged to provide compensation to the Curator;
2. What about the price of the goods received by the Bankrupt Debtor? The price of the goods will be returned by the Curator with the following conditions:
    a. If and to the extent that the price of the goods has benefited the bankruptcy estate; and
    b. If there is available the price of the item.
2. If the price of the goods is not available or is not sufficiently available anymore, the third party (the buyer) will only become a Concurrent Creditor and will get his rights later when the bankruptcy estate is settled and distributed, see Article 49 paragraph (4) UUKPPU;
3. What if, before the cancellation of the sale and purchase with *actio pauliana*, the buyer has transferred the goods to another party? In this case, the following factors must be considered:
    a. Whether the transfer of the goods by the buyer to another third party is carried out by reciprocal actions, such as buying and selling. If, for example, the recipient of the new right only receives the right by grant or gift, there is no reason to protect the party receiving the grant or gift. If what is being done is buying and selling (so it is a second sale and purchase), it must be seen in the following two points;
    b. Is the second sale and purchase (from the first buyer to the second buyer) carried out in good faith (e.g. carried out at the market price). If it is done in good faith, the buyer in good faith must be protected by law. there is no reason to hedge at a below-market price.
6. However, even if by the first buyer the goods have been resold to another buyer (second buyer) who has good intentions, it does not mean that the first buyer is released from his obligations under *actio pauliana*. This is because, if the first buyer is unable to return the goods to the bankruptcy estate, he must provide compensation in the form of money or in any other form acceptable to the Curator (see Article 49 or (2) UUKPPU);
7. What if the *actio pauliana* is committed against actions in the form of providing debt guarantees to certain creditors. In this case, if *actio pauliana* is accepted by the judge, consequently, the bank that was given the right of guarantee will lose/cancel the guarantee right. This is similar to the prohibition in the "*Anti-Secret Lien Rule*" in bankruptcy law in some other countries;

8. It should also be emphasized that competence in *actio pauliana* at the discretion of the Curator. For example, if the market price of goods is Rp. 2,000,000,000.00 (two billion rupiah), but sold below the price, namely Rp. 1,500,000,000.00 (one billion five hundred million rupiah), and for that it can be canceled by *actio pauliana*. So, if the buyer is willing to compensate by adding a shortage of Rp. 500,000,000.00 (five hundred million rupiah) again, it is up to the Curator to accept the additional price or not. It may be that in certain cases, the bankruptcy estate is more profitable, or it is more practical if the goods are still sold to the buyer at a reduced price. However, this is certainly not through the *actio pauliana*, because with *actio pauliana*, the emphasis is on the element of "cancelling" the transaction. See Article 41 UUKPPU.

Furthermore, if the *actio pauliana* is granted, then the party against whom the *actio pauliana* granted is obligated to:[8]

1. Return the goods that he obtained from the assets of the debtor before he went bankrupt, returned to the assets; or
2. If the price/value of the goods is reduced, the party is obliged to return the goods plus compensation; or
3. If the goods are not available, he is obliged to compensate for the value of the goods.

What also needs to be considered is related to the meaning of the norms of Article 1341 of the Civil Code and Article 47 of the KPPU Law, which both regulate the parties who have the right to file a claim for rights (*actio pauliana*) to the Court. In Article 1341 of the Civil Code, it is determined that the creditor (person who owes a debt) has the right to cancel the legal action of the debtor, while article 47 of the KPPU Law determines that the curator has the right to file a claim for rights. In the science of legislation, based on the principle *of les specialis derograt lex generalis* and the principle *of lex postiory derograt lex a priori*, what applies by law is the provisions of Article 47 UUKPPU. This is important, because it is related to the *legal standing* of the party who will file a claim for these rights.

Then, related to the proof in *actio pauliana*. There is no difference between the provisions of the Civil Code and UUKPPU. Both rules require that for each party who argues for a claim of rights, it is the party who must first prove it legally. This can be understood from Article 1865 of the Civil Code which has the same meaning as Article 43 UUKPPU.

4. Conclusion

The theoretical and normative availability of *actio pauliana* in bankruptcy may not necessarily translate to its practical ease of filing and subsequent approval by the judge, as challenges in proving *actio pauliana* and legal protections afforded to third parties involved in transactions with the debtor contribute to the complexities faced in practice. The difficulty in successfully filing and obtaining approval for *actio pauliana* is not limited to bankruptcy cases; it extends to instances outside bankruptcy as well. Elijana Tansah,

[8] Undang-Undang tentang Kepailitan (Faillissements-Verordening Staatsblad 1905 No 217 juncto Staatsblad 1906 No. 348)

with 37 years of judicial experience, highlighted the rarity of successful *actio pauliana* cases outside of bankruptcy, where only one such case was acknowledged, and the success was attributed to evident circumstances such as the sale to a close relative (brother), with no changes in ownership records, and clear payment of property taxes by the seller. In conclusion, the existing legal landscape in Indonesia regarding *actio pauliana* raises questions about the underlying principles within the legal system and the practical challenges encountered in its implementation, as the scarcity of successful cases, both within and outside bankruptcy, underscores the need for a deeper examination of the principles governing *actio pauliana* in the Indonesian legal system. Addressing the principles of *actio pauliana* in the Indonesian legal system necessitates a comprehensive analysis of relevant legal provisions, court decisions, and scholarly interpretations. Furthermore, understanding the challenges faced in implementing these principles requires a thorough exploration of the legal processes, evidentiary requirements, and the considerations given to third-party rights. By delving into these aspects, the article can contribute to a clearer understanding of the principles guiding *actio pauliana* and shed light on the practical impediments hindering its effective use in protecting creditors' rights within the Indonesian legal framework.

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