JUSTISI
e-ISSN. 2686-0821 p-ISSN. 1979-7532
Fakultas Hukum
Universitas Muhammadiyah Sorong

Vol. 10, No. 1
Januari 2024

Article History
Received: 16/05/2023
Revised: 20/12/2023
Accepted: 27/12/2023

Juridical Review of Actio Pauliana Against Bankrupt Boedal Becoming The Object Of Liability

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Abstract: The Bankruptcy and Postponement of Debt Payment Obligations Act of 2004 regulates the bankruptcy process, which involves the conversion of a debtor's personal assets into bankrupt assets. The court appoints a curator and a supervising judge to oversee all of the insolvent estate's assets. The curator may come across legal measures initiated by the debtor against the bankrupt assets during this procedure that might be harmful to creditors. Paulina's action is what the curator can do in these circumstances to ask the court to dismiss these legal actions. The purpose of this study is to comprehend how Paulina's intervention supports the rights of creditors, particularly with regard to mortgage rights.The study used normative legal research and conducted descriptive and qualitative analyses of both primary and secondary data. The findings revealed that Paulina's action can be used to protect the mortgage rights of creditors, provided that certain dejure elements are met. The study highlights the importance of consistency and synchronization of decisions based on the principles and norms of bankruptcy law to achieve legal harmonization.In conclusion, Paulina's action plays a critical role in safeguarding the interests of creditors in bankruptcy cases, particularly regarding mortgage rights. It empowers the curator to cancel legal actions that could harm the creditors and promotes legal harmonization. This study underscores the need for consistent and coherent application of bankruptcy laws to ensure the equitable treatment of all parties involved.

Keywords : Actio Paulina, Legal Action, Bankruptcy Law

INTRODUCTION

Bankruptcy law is one of the topics of business law studies that began to be intensely discussed since the bankruptcy donation order Failliseements Verodening (Stb.1905 Number 217 junction Year 1906 Number348) which was later amended by Perpu Number 1 of 1998 concerning Amendments to the Law on Bankruptcy and stipulated into Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUKPKPU). Normatively, the definition of bankruptcy (bankruptcy) according to the Indonesian legal system which is historically cognate withcivil lawis not synonymous with the state of inability to pay (insolvency/insolvency) as commonly practiced in bankruptcy law in the common law system countries. The difference lies in the way and when determining

the state of the debtor's assets has been insolvent. In common law countriesin general, bankruptcy decisions are handed down by courts based on an economic approach by making insolvency a condition of insolvency as the main condition for a person or legal entity to be declared bankrupt withall legal consequences. In this case, the debtor filed for bankruptcy to the court has been in a state ofde facto bankruptcy, before being declared bankrupt by the court de jure. Thus, in common lawlegal system countries the application to be declared bankrupt in court is for administrative, management, and settlement of bankruptcy assets.

The concept of insolvency in Indonesian bankruptcy law is different from countries that adopt the common law system[1]. In Indonesia, commercial court rulings declaring debtors bankrupt do not consider the debtor's financial condition such as liquidity, profitability, leverage, and solvency, or the results of the debtor's financial audit[2]. The bankruptcy ruling does not determine the debtor's solvency; it merely imposes a broad seizure on their estate. Law No. 37 of 2004's Article 2 paragraph (1) regulates the conditions for filing bankruptcy, but it does not specify the minimum amount of debt that must be owed in order to do so. As a result, debtors who are still able to pay their bills might face bankruptcy judgements[3].

Actio Paulina is a legal instrument used by creditors to cancel transactions made by debtors before the bankruptcy judge is declared[4]. However, the implementation of actionPaulina in bankruptcy judgment cases in Indonesia is still limited and has not been studied in depth. Therefore, this study will discuss the role and implementation of actio pauliana in bankruptcy decision cases in Indonesia, as well as the obstacles faced in practice. This research is expected to contribute to the development of bankruptcy law in Indonesia, especially in terms of protecting creditors' rights.

This study discusses Actio Pauliana Actio Pauliana in the context of Indonesian law, where Actio Pauliana is a means for creditors (in this case represented by the curator) to apply for cancellation of legal actions that harm creditors committed by debtors. However, in its implementation, Actio Pauliana gets obstacles when objects that include bankruptcy assets are being burdened with security rights such as Liens, Mortgages, Fiduciaries, and Liens. The right of responsibility, a sort of security right given to some creditors, prioritizes the recovery of some debts and allows such creditors to exercise their legal rights as if the bankruptcy had never happened. Due to the difficulty of the Actio Pauliana proof process and the robust legal protection for third parties who transact with debtors, this study will focus on how these issues affect the management of bankruptcy assets and debt payments to creditors, particularly with regard to objects that are burdened with dependent rights[5].

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[1] Lili Naily Hidayah, "Indikator Insolvensi Sebagai Syarat Kepailitan Menurut Hukum Kepailitan Indonesia," *FAKULTAS HUKUM UNIVERSITAS JAMBI* (2017).

[2] Rodion Poliakov and Ivan Zayukov, "OF THE RELATIONSHIP BETWEEN LIquIDITY AND UNPROFITABILITY OF COMPANIES IN PREVENTING THEIR BANKRuPTCY" (2023).

[3] Arumi Riezky Sari and Iwan Erar Joesoef, "Peran Kurator Dalam Penanganan Kepailitian: Studi Lambatnya Pelaksanaan Putusan Kepailitan," in *National Conference on Law Studies (NCOLS)*, vol. 2, 2020, 233–254.

[4] Ruth Irene Saurmauli, "Legal Certainty of Actio Pauliana Decision in Bankruptcy Cases," *Locus Journal of Academic Literature Review* (2022): 386–393.

[5] Anggi Hamonangan Siahaan, Besty Habeahan, and Jinner Sidauruk, "Analisis Yuridis Upaya Hukum Actio Pauliana Terhadap Debitor Yang Menghibahkan Harta Kekayaannya Sebelum Pailit Berdasarkan Uu No 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," *Nommensen Journal of Private Law* 1,

The problem addressed in this study is the legal issue concerning the applicability of actio pauliana in determining the subject of a dependent right. Specifically, the objective is to analyze and evaluate the factors considered by the judge in the decision 212K/Pdt.Sus/Bankruptcy/2019 related to the utilization of actio pauliana for determining the subject of a dependent right.

RESEARCH METHODS

This is normative legal research (juridical legal research) that studies the effectiveness of laws and laws applicable in society to know and understand how actio pauliana seeks to protect the rights of each creditor. Descriptive analysis was used in this study, where primary and secondary data were analyzed, including the content and structure of positive laws. The data were analyzed using descriptive-qualitative methods. Researchers analyze and describe data qualitatively and systematically before being articulated based on phenomena, variables, and conditions obtained from the collected data. Both primary and secondary sources are obtained from legal cases and legal rules relatedto their respective actio pauliana to obtain inductive conclusions to find inconcrete laws that are suitable for use in solving a particular case. Supporting references in writing this article are obtained from various reliable literature such as books, journals, law, Google Scholar, and news that specifically discuss the study of actio pauliana (law black provision or cancellation of preferential transfers).

DISCUSSION

1. Actio Pauliana on the Object of Indemnity

Bankruptcy occurs when a debtor is unable to fulfill their obligation to pay off debts to creditors, typically due to financial difficulties in their business. The court declares bankruptcy and all of the debtor's assets become subject to general confiscation. According to Algramen, bankruptcy is a court-ordered seizure of all of a debtor's assets for the benefit of creditors, while Henry Campbell's definition in Black's Law Dictionary defines a bankrupt as someone who is unable to pay debts when they become due or when they are supposed to be paid. In both definitions, the end result is that the debtor's assets are used to repay their debts to creditors[6].

is to ensure equal treatment of creditors and the efficient settlement of the debtor's obligations. J.B. Huizink provides a clear definition of bankruptcy as the general confiscation of the debtor's assets for the benefit of creditors. This definition is explicitly stated in Article 1, point 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt

no. 1 (2022): 10–16.

[6] Ruth Yohana Siburian, Etty Susilowati, and Budi Ispriyarso, "Tanggung Jawab Kurator Terhadap Pemenuhan Hak Negara Atas Utang Pajak Perseroan Terbatas Pada Kepailitan," *Diponegoro Law Journal* 6, no. 1 (2017): 1–17.

Payment Obligations (UUK-PKPU)[7]. The management and settlement of these assets are overseen by the receivership and a supervisory judge. Bankruptcy is generally considered a failure due to the debtor's inability to pay off their debts, and is associated with debt evasion or embezzlement. The principles of creditorium parity and paripassu prorata parte in the property law regime are applied in insolvency proceedings to ensure equal treatment of creditors and proportional distribution of proceeds. The goal of bankruptcy, as stated in the law, is to promote fair treatment of creditors and efficient settlement of the debtor's obligations[8].

If many creditors are collecting the debtors' receivables at the same time, refrain from seizing their assets. Avoid creditors that sell the debtors' assets to satisfy their obligations under property security agreements without taking into account the interests of the borrowers or other creditors. prevent the debtor from taking any activities that would jeopardize the interests of creditors, or limit the advantages the debtor receives from particular creditors, Protect concurrent creditors so they can exercise their rights in relation to the implementation of the guarantee principle, give borrowers and creditors the chance to bargain and reach debt restructuring arrangements; and Ensure that the assets of the debitor are distributed equally among its creditors[9].

In general, bankruptcy law aims to ensure equal distribution of assets of debitsoramong creditors, deterring borrowers from doing acts that might hurt creditors' interests and protecting debtors who are acting honestly from creditors. Bankruptcy results in the loss of all debtors' rights to manage all their assets, including the bankrupt assets (boedel). A bankruptcy ruling only affects the debtor's capacity to transmit and transfer his property, but necessarily his general ability to engage in legal proceedings (volkomen handelingsbevoegd). This provision is effective from the pronouncement of the bankruptcy decree. Therefore, the curator has the duty and responsibility to take care of the settlement of hartapailit.

In practice, it is possible that before the bankruptcy declaration, the debtor harms creditors in bad faith to transfer assets to other parties. Actiopaulina is the legal term for the cancellation of such transactions provided that the requirements outlined in the law are met. Actio pauli a na (claw back provisionor annulment of prefential transfer) is a legal term that refers to a legal mechanism orlegal remedy in canceling a legal act that results in the cancellation of a transfer of property rights from one subject to another. In other words, Actio pauliana is a right granted by law to creditors in the form of prosecution for cancellation of all debtor actions because these actions are not required and are found to be detrimental to the creditor[10].

Actio pauliana can only be performed and executed based on the decision of the

[7] Rahmi Zubaedah, Imanudin Affandi, and Meiline Maria M Panjaitan, "PENGALIHAN HARTA KEKAYAAN DEBITOR PAILIT TANPA SEPENGETAHUAN KURATOR DAN AKIBAT HUKUMNYA," *Jurnal Meta-Yuridis* 5, no. 2 (2022): 15–29.
[8] Nirjhar Nigam and Afef Boughanmi, "Can Innovative Reforms and Practices Efficiently Resolve Financial Distress?," *Journal of cleaner production* 140 (2017): 1860–1871.
[9] Salvian Salmon and Chritsine S T Kansil, "Analisis Actio Pauliana Dalam Kepailitan Terkait Pemberian Fasilitas Kredit Terhadap Perusahaan Dengan Jaminan Atas Nama Direksi," *Jurnal Hukum Adigama* 1 (2018): 1–25.
[10] David Ramos Muñoz and Montserrat Rodríguez Riu, "Reconciling Legal Certainty in Corporate Divisions with Respect for Civil Law Remedies: Case C-394/18 IGI Srl v. Maria Grazia Cicenia," *Maastricht Journal of European and Comparative Law* 27, no. 3 (2020): 358–378.

trial judge. Thus, it meansthat any cancellation of the agreement regardless of the reason or any Party who submits it, is still the authority of the court. With a judgment that cancels the agreement or actions that harm the interests of creditors, all property is returned as before. Another opinion was expressed by Kartini Muljadi, who considered that actio pauliana issometimes questioned because there is no need for a lawsuit or lawsuit to cancel an action paulina[11]. After all, the legal action is indeed void (nietig) and not irrevocable (vernietigbaar).

Thus, there is no need to file a lawsuit to declare an act void, but simply the curator declares (intropen) that the action is void, provided that the curator can prove that at the time the debtor commits the act, the curator and the party with whom the debtor committed the act knew or should have known that the act would harm the creditor.

Nevertheless, according to Article 1341 of the Civil Code, a creditor may request that any non-obligatory action taken by the debtor under a name that is harmful to the creditor be declared invalid, so long as it can be demonstrated that both the debtor and the person with whom or for whom the debtor acted knew that the action would cause losses to creditors. Rights acquired by third parties in good faith over goods that are objects and unauthorized actions must be protected[12]. To apply for the nullity of a free action by the debtor, so that the creditor simply shows that at the time of doing so the debtor knew that in doing so he would harm the creditors, regardless of whether the person who benefited also knew the right or not.

The basis for deciding the conduct, including activities that are not necessary or required, is the element of good faith in the evidence. The actio pauliana rules outlined in Article 1341 of the Civil Code are consistent with the rules outlined in Article 1131 of the Civil Code, which governs the creditorium parity concept. Legally, all of the debtor's assets are deemed to constitute security for the debts of the debtor. The debtor is therefore not truly free from his riches when he owes money to other people.

Law K-PKPU, specifically Articles 41-49, provides a more comprehensive regulation of actio pauliana compared to the Civil Code and the old Bankruptcy Regulations (S.1905-217 jo. S.1906-348). According to Sutan Remy Sjahdeini, the provisions in Articles 41-51 of Law No. 4 of 1998, which stipulates the Government Regulations instead of Law No. 1 of 1998 concerning Amendments to the Bankruptcy Law, are an implementation of Article 1341 of the Civil Code on actio pauliana. This is because actio pauliana in the Civil Code is generally applicable to all agreements, whereas the provisions in Articles 41-51 or Article 41 of Law K-PKPU to Article 49 of Law K-PKPU are specific provisions on actio pauliana for bankruptcy matters. The provision on actio pauliana in the Civil Code applies to all agreements as it is located in Book III of the Civil Code, which covers Engagement Part Three About the Effects of an Agreement. Further, in contrast to actio pauli a na in theCivil Code filed by creditors, actio pauli a nain bankruptcy filed by the receivership and the curator can only filean actio pauliana suitwith the approval of the supervising judge.

In other words, the actio pauliana litigation as specified in Article 1341 of the Civil Code is in essence comparable to the actio pauliana lawsuit particularly governed in the K-

[11] Kartini Mulyadi and Gunawan Widjaja, "Hak Istimewa," *Gadai, dan Hipotik, Seri HukumHarta Kekayaan, Kencana, Jakarta* (2005).
[12] Puja Dwi Pangestu, "Actio Pauliana as the Rights Protection Efforts for Creditors in the Bankruptcy Case," *J. Priv. & Com. L.* 3 (2019): 26.

PKPU Law. The Actio Pauliana lawsuit, however, gives the estate hall or receivership contained in the commercial administration jurisdiction unlimited authority. All of the debtor's creditors have the right to file an actio pauliana lawsuit in accordance with Article 1341 of the Civil Code, and this action must be filed at the district court located in the debtor's place of business or residence[13].

In accordance with Article 41 of the K-PKPU Law, it is possible for the court to nullify any legal actions taken by a bankrupt debtor prior to the bankruptcy declaration that have caused harm to the creditors' interests. This can only be done if it can be proven that at the time of the legal action, both the debtor and the other party involved were aware or should have been aware that it would cause losses to the creditor. However, there are certain legal acts of the debtor that are exempt from the provisions of Article 41, such as tax obligations that must be fulfilled in accordance with agreements or the law.

Fred B.G. Tumbuan by considering Article 41 of Law No. 4 of 1998 groups five elements so that actio paulina can apply. The elements are as follows[14]:

1. The debtor has committed a legal act;
2. The legal act is not mandatory for the debtor;
3. The legal action in question has harmed creditors;
4. When committing such legal acts, the debtor knows or should know that such legal acts will harm creditors; and
5. The person that brought the lawsuit knew or should have known, at the time it was filed, that doing so would cause damages to creditors.

We should know that all assets of the bankrupt debtor (boedel) are actually in a state of general attachment, where all debtors' bankruptcy assets are in power and for the benefit of creditors jointly under the supervision judge as this has been regulated in Article 1 paragraph (1) of the PKPU Law. The delinquent actions of debtors who transfer bankruptcy assets to other parties can be requested for cancellation by creditors which are expressly regulated in Article 41 paragraphs (1) and (2) of the K-PKPU Law. So, the task of the curator here is to prove the fulfillment of these five elements[15].

Article 1131 and Article 1132 of the Civil Code regulate the general confiscation of assets belonging to debtors who have been declared bankrupt. This means that all movable and immovable property owned by the debtor, present or future, serves as collateral for their obligations. The goods are considered as a common guarantee for all creditors, with the proceeds from the sale of the goods distributed according to the ratio of their respective receivables. However, certain creditors may have precedence under legitimate reasons. These provisions indicate that all assets owned by the debtor are shared collateral for all

[13] M Alvi Syahrin, "Actio Pauliana: Konsep Hukum Dan Problematikanya," *Lex Librum: Jurnal Ilmu Hukum* 4, no. 1 (2017).

[14] Susanti Adi Nugroho and M H SH, *Hukum Kepailitan Di Indonesia: Dalam Teori Dan Praktik Serta Penerapan Hukumnya* (Kencana, 2018).

[15] Ivan Hamonangan Sianipar et al., "Makna Sumir Dalam Putusan Permohonan Pailit Menurut Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (Studi Kasus Putusan Mahkamah Agung Nomor 125 Pk/Pdt. Sus-Pailit/2015)," *Syntax Literate; Jurnal Ilmiah Indonesia* 8, no. 1 (2023): 131–140.

creditors, and therefore any court confiscations or executions of the bankrupt property that occurred prior to this law are rendered invalid[16].

In terms of the right of liability for land and objects related to land (also known as the right of dependent), Article 1 point 1 of Law Number 4 of 1996 concerning the Right of Liability on Land and Objects Related to Land (UUHT) explains that the right of dependent is a security right imposed on the right to land as referenced in Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles, here or not along with other objects to[17]. The right of obligation accords its creditors a higher priority (preferential position), follows its purpose wherever it may be (droit desuite), complies with the norms of specialization and publicity, and is simple and certain to be carried out. Additionally, the right of dependents is indivisible, which means that it affects the entire entity and every component of it. According to Article 2 of the Law, repayment of a portion of the guaranteed debt does not relieve all of the objects of the dependent rights of the burden of the rights of dependents; rather, the rights of dependents continue to burden all of their objects with respect to the outstanding debts that have not been returned.

The fact that the rights of dependents are a bond (accessoir) of the primary agreement, which is the contract that establishes the legal connection of accounts receivable, is another feature of the right of dependents. The existence, expiration, and elimination of dependent rights by itself depend on the debt guaranteed for repayment. Adrian Sutedi distinguishes guarantees into two, namely guarantees born from the law, namely general guarantees, and guarantees born by agreement. A general guarantee is a guarantee for which the existence of which has been prescribed by law. Special guarantees, on the other hand, are assurances that result from a prior agreement, namely an arrangement between the debtor and the bank or other entity that is responsible for the debtor's obligations. A debt-receivable or credit agreement between creditors and debtors often takes the form of the primary agreement, which is strengthened by the encumbrance agreement. The agreement is also called a guarantee agreement or zekerheidsovereenkomsten. Such agreements are intended to give rise to security rights and in particular, property security rights.

Article 3, paragraph (1) of the law addresses debts that are guaranteed for repayment with the right of dependents. This type of debt can either be an existing debt with a specified amount or a debt whose amount can be determined at the time of the application for execution of the rights of dependents. This is based on a debt agreement or another agreement that establishes the relationship between the debts involved. Additionally, Article 4, paragraph (4) of the law stipulates that the right of dependency can also be attached to the right to land, including any buildings, plants, and works that are an integral part of the land, and which belong to the holder of the right to land. Such encumbrance should be expressly stated in the Deed of Encumbrance of the dependent rights concerned.

The Right of Liability gives priority to certain creditors over other creditors, in connection with debts guaranteed for repayment with the right of dependents in the form

[16] Hotdita Marpaung, "Kedudukan Kreditur Selaku Penerima Jaminan Fidusia Dalam Hal Debitur Pailit Menurut Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan" (2021).
[17] Ibid.

of[18]:

1. Debts that have been,
2. Debt that has been agreed with a certain amount,
3. The amount of the debt at the time the application for execution of the Dependent Rights is submitted can be determined based on the debt-receivable agreement,
4. Debts whose amount is determined under another agreement give rise to the debt-receivable relationship concerned.

In summary, actio pauliana is the annulment of legal actions taken by a debtor through a court application from a creditor or a receiver in bankruptcy. In regards to assets placed in the right of dependents, actio pauliana can be carried out if the creditor can prove that the debtor knew that their actions were harmful to creditors or if both parties involved in the legal action knew or should have known that the action would cause losses to creditors. Actio pauliana can be carried out within one year before the declaration of bankruptcy decision if the legal actions harm creditors. However, if the legal actions are guarantees for debts that are not yet due or cannot be collected, actio pauliana is not mandatory for debtors. Even if the grantor of a dependent is declared bankrupt, the holder of the dependent still has the right to exercise all obtained rights, as long as the legal act does not contradict the law's provisions and does not meet the elements of actio pauliana, according to Article 21.

2. Analysis of the judge's consideration on the decision 212 K/Pdt.Sus/Bankruptcy/2019 on Actio Paulina on the object of Dependent Rights

That on October 12, 2011 Dayu Handoko was declared bankrupt by the Semarang Commercial Court as per Decision Number 07/Pdt.Sus-Pailit/2011/PN.Smg Jo Supervisory Judge Determination Number 07/Bankruptcy/2010/PN. Trade. Smg dated October 17, 2011. On 7 May 2012 Dayo Handoko married Rosalya Sri Wulandari. Rosalya is an entrepreneur withher first husband, several businesses are run including restaurants, buyingantiques and also renting wedding equipment and catering. Between Rosalya and Dayu Handoko a Prenuptial Agreement was made on May 7, 2012 and registered at dukcapil. On January 30, 2015 Rosalya purchased land from a third party (Poniyem) with AJB No. 03/2015 and reversed the name of the certificate to be in Rosalya's name as SHM No. 13793/Purwomartani/2014 Surat Ukur dated 05-08-2014 No. 00567/Purwomartani/2014. That the land is encumbered with FirstRank Dependent Rights No. 03655/2017 on behalf of PT. Bank Perkreditan Rakyat Bhakti Oaya Ekonomi is domiciled in Sleman, based on the Deed of Granting Rights No.150/2017 date. 18105/2017 made by and before Suwasti Yudani, SH., M.Kn., as PPAT Sleman Regency; furthermore, on 06/09/2018, the Dependent Rights have been removed (Roya) based on Roya letter No. 018/BOE Bantu lNI 2018 date. 21105/2018 from PT. BPR Bhakti Oaya Economisti.

As stated in Decision Number 212 K/Pdt.Sus-Bankruptcy/2019, the judge takes into account all pertinent facts and documentation while reviewing the actio paulina case at the

[18] Muhammad Alif Prayuta Akbar, "Wanprestasi Dalam Akta Pengikatan Jual Beli Tanah Dan Bangunan Yang Masuk Dalam Boedel Pailit (Studi Putusan Mahkamah Agung Nomor 687 PK/Pdt/2016)," *Indonesian Notary* 4, no. 1 (2022).

cassation level. Through their attorney with a Special Power of Attorney dated July 30, 2018, the Cassation Applicant filed a cassation application and judicial review memory at the Commercial Court Registrar at the Semarang District Court on November 21, 2018, in advance of the Commercial Court's decision there. The Cassation Respondents then filed their counter-memorials on December 6 and 11, 2018, and the application for cassation was notified to the opposite party within the grace period and in the manner prescribed by the law. Therefore, the judge concludes that the application for judicial review is formally acceptable.

The judge was of the view that the objection of the Cassation Applicant was justified because after reading and examining the objection of the Cassation Judex Facti's decision was incorrect in how it applied the law because it did not sufficiently take into account the source of the funds used by Respondent Cassation I to purchase the land at issue, according to the applicant in the memory of cassation and the response of the Cassation Respondent in the counter-memory of cassation. Furthermore, the land of the object of dispute registered in the name of Respondent Cassation I was purchased by Respondent Cassation I when it was bound by marriage with Dayu Handoko (bankrupt debtor) with money received by Respondent Cassation I from Dayu Handoko (bankrupt debtor) following the confession of Respondent Cassation I in the counter-memorikasi received on December 6, 2018, so that the object of dispute was bankruptcy property.

Based on these factors, the Judge determined that there were enough justifications to grant the cassation application submitted by the cassation applicant, Sardjana Orba Manullang S.H., M.H., M.Kn, and to vacate the Commercial Court Decision at the Semarang District Court Number 14/Pdt.Sus Actio Pauliana/2018/PN.Smg. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the second amendment by Law Number 3 of 2009, as well as other pertinent laws and regulations are discussed in Jo Decision Number 07/Pdt.Sus-Bankruptcy/2011/PN.Smg dated November 12, 2018.

When referring to bankruptcy law which has a very important juridical instrument as the purpose of actio pauliana is to protect concurrent creditors from actions taken by insolvent debtors that harm bankruptcy assets.Actio pauli a na in a quo case is as a legal remedy made by the curator to cancel legal actions committed by the bankrupt debtor committed before being declared bankrupt. This is in line with Kartini Muljadi's view, that one of the requirements for actio paulina in bankruptcy is that the debtor must have committed a rechtshandeling or legal action before the bankruptcy statement is pronounced.

That according to the author of the Supreme Court Decision of Cassation Number 212 K/Pdt.Sus-Pailit/2019 does nothave a strong basis and does not meet the requirementsfor actio pauliana asstipulated in article 41 of the Bankruptcy Law and PKPU because SHM No. 13793/Purwomartani/2014 Measuring Letter dated 05-08-2014 No. 00567/Purwomartani/2014 belongs to Rosalya as evidence AJB No. 03/2015.

If related to the action taken by Rosalya as Handok o's wife(in bankruptcy) who carried out the restoration of FirstRank Dependent Rights No. 03655/2017 on behalf of PT. Bank Perkreditan Rakyat Bhakti Oaya Ekonomi is domiciled in Sleman, based on the Deed of

Granting Rights No.150/2017 date. 18105/2017 made by and before Suwasti Yudani, SH., M.Kn., as PPAT Sleman Regency; furthermore, on 06/09/2018, the Dependent Rights have been removed (Roya) based on Roya letter No. 018/BOE Bantu lNI 2018 date. 21105/2018 from PT. BPR Bhakti Oaya Economisti. Rosalya's actions carried out in 2015 or during the bankruptcy boedel management process did not meet the five conditions for filing a Pauliana action as stipulated in article 41 of the K-PKPU Law. The submission ofaction pauliana made by curator Sardjana Orba Manullang did not consider the existence of a separate harta agreement(marriageagreement) between Handoko and Rosalya. Referring toarticle 139 of the Civil Code (KUH Percivil), namely the agreement to separate property in marriage [19].

"Prospective spouses with a marriage agreement may deviate from the laws and regulations concerning joint property provided that they do not contradict good decency or with general order and the following provisions are observed"

The juridical consequences of the existence of a separation of property agreement (marriage agreement) between husband and wife are as follows:

1. The agreement is automatically binding on both the husband and the wife
2. The Agreement is automatically binding on interested third parties
3. The agreement can only be amended with the consent of both parties and is not harmed by the interests of third parties and must be ratified by the marriage registrar

The property separation agreement must be made by notarial deed and registered or recorded at the local Dukcapil. If it has been recorded, it will be binding as law for the parties. After the existence of a marriage agreement , it also applies to third parties related to him as stipulated in article 152 of the Civil Code which reads:

"The provisions contained in the marriage agreement, which contain a deviation from the union in whole or in part, shall not apply to any third party, before the day on which they are recorded in a general register, which shall be held therefor in the registrar of the district court, in whose jurisdiction the marriage has taken place or, if the marriage took place abroad,at the registrar where the marriage certificate is recorded"

Theoretically, actio paulina in bankruptcy is indeed doneto protect creditors from insolvent debtors who do not have good faith, as well as to prevent arbitrary actions from debtors. The law outlines that such legal acts can be canceled if they meet the following conditions:

1. Such acts are not required by law or under a contract. This means that the bankrupt debtor takes legal action on his initiative; and
2. At the time the legal action is committed, the debtor and the party with whom it was committed knew or should have known that the act will harm other creditors.

With these considerations, it also considers a plot of land and a building that stands on it with a Certificate of Ownership (SHM) Number 13793/Purwomartani covering an area of 315m² as described in the Measuring Letter dated August 5, 2014 Number 00567/Purwomartani/2014 which in the name of Defendant I is a bankrupt property that can

[19] Elyta Ras Ginting, "Hukum Kepailitan (Rapat-Rapat Kreditor)," *Jakarta: Sinar Grafika* (2018).

be included in the register of assets (boedel) bankruptcy Number 07/Bankruptcy/2011/PN. There is no proof of bad faith committed by the debtor who should have known or should have known that the legal action would result in the loss of the bankrupt's property, which would be harmful to the creditors, according to Trade. Smg and the legal facts outlined in the judgment.Debtor Handoko did not take any legal action against the bankrupt boedal as stated in the ruling. The party who did by Rosalya as the ownerof the Certificate of Property Rights (SHM) Number 13793/Purwomartani covering an area of 315m² at PT. BPR Bhakti Oaya Economisti.As a result, the requirements of Actio Pauliana are not met. As in this instance, UUK-PKPU specifies that cancellation of all debtor legal actions taken before the bankruptcy declaration is established that harm the interests of creditors may be demanded for the benefit of bankruptcy assets. The actio pauliana, also known as Paulina's action, has certain conditions that must be met in a quo case. Firstly, the action must benefit the bankrupt's estate. Secondly, there must be legal acts committed by the debtor. Third, the debtor has to be officially declared bankrupt. Fourth, the legal action must be detrimental to creditors' interests. Fifth, the legal action had to be completed before the bankruptcy was declared. In addition, it must be demonstrated that the debtor knewor should have knownat the time the legal action was taken that it would cause damages to the creditor. In addition, the person with whom the legal action was carried out must have known or should have known that the action would hurt the creditor, unless reverse proof applies. Finally, the legal action in question cannot be a necessary legal action, which means that neither a contract nor a law must necessitate it.

The debtor's legal action in the case a quo tis not proven and conclusively harms the interests of creditors because the debtor'swife's assets are in the form of aplot of land and buildings standing on it with a Certificate of Ownership (SHM) Number 13793/Pur womartani covering an area of 315 m² as described in the Measuring Letter dated August 5, 2014 Number 00567/Purwomartani/2014 whichin the name of Rosalya (Defendant I or the debtor's wife) who is the object of liability so that it does not meet the requirementsof actio pauliana.

According to Hadi Shubhan, in order to file an actio pauliana case in bankruptcy, the debtor and the party with whom the act was performed must be presumed to have knowledge or a reasonable expectation of knowledge that the act will result in damages to creditors. According to Article 41 of the Law on Bankruptcy and Suspension of Debt Payment Obligations, Actio Pauliana must satisfy five prerequisites [20]:

1. First, the debtor has committed alegalact;

   Handoko as debitur bankruptcy as decisionNo.07/Pdt.Sus-Pailit/2011/PN.Smg and in 2015 Handoko marriedRosalya with a marriage agreement(property separationagreement) made before notaries and recorded at thelocaldukcapil.

   Rosalya bought land from a third party (Poniyem) with AJB No. 03/2015 and reversed the name of the certificate to Rosalya's name as SHM No. 13793/Purwomartani/2014 Surat Ukur dated 05-08-2014 No.

[20] Herman Yusup, "Kedudukan Perlindungan Hukum Debitor Atas Kepailitan Kreditur Separatis Ditinjau Dari Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penanggungan Kewajiban Pembayaran Utang" (Universitas Islam Sultan Agung, 2021).

00567/Purwomartani/2014.In2017 Rosalya pledged the land at PT. BPR Bhakti Oaya Economisti as the Deed of Granting Rights of Dependents No.150/2017 dated 18105/2017 made by and before Suwasti Yudani, SH., M.Kn., as PPAT Sleman Regency.

So this requirement is not met for actio pauliana efforts.

2. Second, the act of hukum is not mandatory for the debtor;

   As explained inpoint one above,the debtor does nottake any legal action related tothe bankrupt property (boedel) so that thissecond condition is not met.

3. Third, the legal act in question has harmed the creditor;
4. Fourth, when doing the legal act knew or should have known that the legal action would harm the creditor;
5. Fifth, when doing the legal act is done the party with whom the legal act is done knows or should know that the legal act willcause harm to thecreditor.

That the imposition of Rosalya'scertificatewas carried outbyRosalya herself, not by the bankrupt debtor. If analyzed from the HT Law, where the main agreement has not been completed, it requires the debtor who owns the collateral to pay off the debt or at least submit several guarantees in the form of collateral to the creditors holding the material guarantee. The transfer of sets in the case aquo isan engagement that is not mandatory, so as decided by the Judge that the bankruptcy property is a collateralthat is a guarantee for the right to repay the inviolable receivables of creditors holding property security. In addition, it is also noted, the nature ofaccessoirand droit de suiteof dependent rights as material rights, namely the rights of creditors following their objects into the hands of anyone transfer andtransfer of their collection rights, which is followed by the transfer of rights. The right of liability is given to guarantee the repayment of debtors to creditors, therefore the right of liability isan accesoiragreement to an agreement that gives rise to a legal relationship between debts and receivables as the principal agreement.

Referring to Article 21 of Law Number 4 of 1996 concerning Dependent Rights ("UUHT") and Article 27 paragraph (3) of Law Number 42 of 1999 concerning Fiduciary Guarantees ("Fiduciary Law"), it can be concluded from these two provisions that theholder of the dependent rights and/or fiduciary guarantees has a secure position in the bankruptcy process orThe birth, existence, transition, execution, expiration and removal of the dependent rights are automatically determined by the transfer and write-off of receivables guaranteed by therepayment of the owner of the collateral rights. The release of the bankrupt debtor from the bankruptcy asset from fulfilling payment obligations only applies as long as the fulfillment of payment obligations received by the bankrupt debtor can benefit the bankrupt asset as stipulated in Article 50 paragraph (3) of the UUK-PKPU.

In general, decisions regarding actio pauliana are often found to be inconsistencies in rulings against the principles and norms of bankruptcy law, so that there is also a synchronization between one decision andanother. This inconsistency and synchronization occurs due to deviations from the principles and norms of bankruptcy law in bankruptcy decisions in commercial courts, both against existing laws and regulations anddeviations from the principle of bankruptcy in general.

Actio pauliana allows the interests of all parties to be restored, hence the need for

consistency and synchronization of principles and norms in bankruptcy law. Given that in the case of bankruptcy, the cancellation is intended so that there is no reduction in the debtor's assets. Thus, all assets after bankruptcy or bankrupt estate can be used as debt payments to related parties. Confiscation and freezing are carried out to meet debt payment obligations. However, in the process of filing actio pauliana theCurator must prove whether the asset does indeed belong to the bankrupt debtor or belongs to a third party who in this case is the wife. Where between Dandoyo and Rosalya have a separation agreement before marriage so that the property between the two parties is separated. Decision No. 212 K/Pdt. Sus-Pailit/2019 doesnot meet the requirements for filing an actio pauliana lawsuitso the court should not grant the lawsuit from curator Sardjana Orba Manullang.

CONCLUSION

The case 212K/Pdt.Sus/Pailit/2019 pertains to the use of actio pauliana to determine the subject of a mortgage right. Actio pauliana is a legal remedy that allows the cancellation of a transfer of property rights if it harms the interests of creditors. In the context of the case, the use of actio pauliana is contingent upon the debtor's knowledge of the detrimental impact of their actions on the creditors. The decision emphasizes the need for consistency and synchronization of decisions to ensure legal harmonization based on justice, legal certainty, and utility. The search results did not provide the specific analysis and evaluation of the judge's considerations in the case 212K/Pdt.Sus/Pailit/2019. Therefore, based on the existing knowledge, the details of the judge's analysis and evaluation in the specific case are not available. For a comprehensive understanding of the judge's considerations in the mentioned case, it is recommended to refer to the official legal documents, court records, or legal commentaries related to the case.

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