

OTHER LAWSUITS AND ACTIO PAULIANA IN BANKRUPTCY LAW AS AN IMPLEMENTATION OF INDONESIAN CIVIL PROCEDURE LAW

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OTHER LAWSUITS AND ACTIO PAULIANA IN BANKRUPTCY LAW AS AN IMPLEMENTATION OF **INDONESIAN CIVIL PROCEDURE LAW**

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ABSTRACT

Bankruptcy law is an important part of the legal system that regulates the process of resolving corporate bankruptcy. In Indonesian civil procedural law, there are two aspects that have a significant role in bankruptcy law, namely other lawsuits and actio Pauliana. This study aims to analyze and understand other lawsuits and actio Pauliana in the context of bankruptcy law in Indonesia. This research uses normative research methods. The data collection technique in this research is carried out by the literature study method by exploring journals, books, laws and information relevant to the research obtained through Google Scholar. The data that has been collected is then analyzed in three stages, namely data reduction, data presentation and conclusion drawing. The results showed that other lawsuits in bankruptcy law as an implementation of civil procedural law refer to the KPKPU Law including lawsuit requirements, filing a lawsuit, court hearings and court decisions. Meanwhile, the implementation of actio pauliana refers to 1341 of the Civil Code, namely that the creditor must prove the existence of important elements, namely the existence of legal acts that are detrimental to the rights of creditors, the existence of losses incurred, the existence of malicious intent of the debtor to harm creditors, and the existence of a causal relationship between these legal acts and the losses suffered by creditors.

Keywords: Other Lawsuits, Actio Pauliana, Bankruptcy Law, Civil Procedure Law

INTRODUCTION

Every individual or legal entity faces financial difficulties that may lead to an inability to fulfill payment obligations to creditors. For example, an entrepreneur who experiences financial losses in his business may not be able to fulfill debt payment obligations to suppliers or banks. This situation can be the start of more serious financial problems and even lead to bankruptcy proceedings if not handled properly. Bankruptcy is a state in which a debtor is unable to pay its creditors. The inability to pay is usually caused by financial difficulties or financial crisis experienced by the debtor company (Subhan, 2014).

This difficult bankruptcy issue is governed by bankruptcy law. Bankruptcy law is a branch of law that governs the legal processes and mechanisms associated with an individual's or legal entity's bankruptcy or insolvency (Ginting, 2018). According to Irma in (Sinaga & Sulisrudatin, 2018) bankruptcy law is needed to regulate the settlement of debt and credit disputes between debtors and their creditors. The legal basis for bankruptcy refers to Law Number 34 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (State Gazette of the Republic of Indonesia Year 2004 Number 131 Supplement to State Gazette Number 4443).

Bankruptcy law is an important part of the legal system that regulates the process of resolving corporate bankruptcy. In Indonesian civil procedure law, there are two aspects that have a significant role in bankruptcy law, namely other lawsuits and actio Pauliana. Other lawsuit is a lawsuit that is included in the realm of civil procedural law, which is the legal basis for other lawsuits is Article 3 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations ("KPKPU Law") which reads:

"Decisions on bankruptcy petitions and other matters related to and/or regulated in this Law shall be decided by the Court whose jurisdiction covers the area of the Debtor's legal domicile."

If the article is read carefully, it clearly regulates the lawsuit of other matters. The phrase "other matters" is explained in the Explanation of Article 3 paragraph (1) of the KPKPU Law. The meaning of "other matters" is, among others, actio pauliana, third party resistance to confiscation, or cases

where the debtor, creditor, curator, or administrator is a party to a case relating to bankruptcy assets, including a curator's lawsuit against the directors who caused the company to be declared bankrupt due to their negligence or fault. The procedural law applicable in adjudicating cases that include "other matters" is the same as the Civil Procedure Law applicable to bankruptcy petition cases, including regarding restrictions on the period of completion (Batu, 2021). Meanwhile, Actio pauliana is a legal remedy for requesting the annulment of a debtor's legal acts that are damaging to his creditors, or the legal right granted to every creditor to request the annulment of all actions taken by the debtor that are not required (Setyaji, 2022).

In previous research conducted by (Patricia, 2022) only outlines aspects of other claims in bankruptcy law. Meanwhile, another study conducted by (Mantili, 2021) elaborated on the aspect of actio pauliana in bankruptcy law. The novelty of this research is the combination of two variables from the aspects of other lawsuits and actio pauliana in bankruptcy law that have never been studied before. This study seeks to evaluate and understand other lawsuits and actio pauliana in the context of bankruptcy law in Indonesia.

METHOD

10

This study employs normative research approaches. The normative legal research method is a procedure for locating legal rules, legal principles, and legal doctrines in order to answer legal questions (Marzuki, 2017). The data collection technique in this study was carried out using the literature study method by exploring journals, books, laws and other information relevant to the research obtained through Google Scholar. The acquired data is subsequently processed in three stages: data reduction, data presentation, and conclusion drawing.

DISCUSSION

The most important reference in bankruptcy law is the provisions of Article 1131 of the Civil Code. It explains all of the debtor's property, after which it will be used as collateral by each of the debtors concerned. The primary goal of bankruptcy is to divide the proceeds of the sale of all assets of the debtor's fortune to all creditors in a just and equitable manner (Selamet, 2022). Article 3 paragraph (1) of Law Number 37 Year 2004 on Bankruptcy and Suspension of Debt Payment Obligations ("KPKPU Law") reads:

"The decision on the application for bankruptcy declaration and other matters related to and/or regulated in this Law, shall be decided by the Court whose jurisdiction covers the area of the Debtor's legal domicile."

Bankruptcy and PKPU cases that are decided by the judge, it is possible for other lawsuits to arise as stipulated in Article 3 paragraph (1) of the Bankruptcy and PKPU Law above, so that when one of the parties files other lawsuits in connection with bankruptcy and PKPU disputes that have been decided. The requirements of the lawsuit include the process of filing a lawsuit, trial, and court decision. In the case of other lawsuits, the party filing the lawsuit must meet the requirements specified by the KPKPU Law, such as having a legitimate legal interest and there is an adequate legal basis for filing the lawsuit. According to Simbolon & Sinaga (2022) in examining other claims in bankruptcy cases, judges need to examine the following matters.

1. Relative and Absolute Authority of the Court

Relative authority and absolute authority are often raised in the answer of the defendant or respondent in a miscellaneous lawsuit. Many of them deny that the commercial court in a District Court has the authority to resolve other lawsuits. Relative competence/authority relates to the authority of a court to hear a case in accordance with its jurisdiction. The lawsuit is filed with the court where the defendant/respondent resides. The legal basis is Article 118 HIR / 142 RB which states "In principle, the lawsuit must be submitted to the District Court where the defendant / applicant lives" (actor sequitur forum rei). So relative competence aims to determine which District Court is authorized to hear a particular case.

2. Exception of error in persona

The respondent may file an error in persona exception in the event that the lawsuit contains a defect of error in persona or exception in persona. In the process of criminal law proceedings, things like misapprehension or Error In Persona often occur, which results in losses to the victims of the misapprehension (Efendi et al, 2021).

3. Obscure Libel Exception

Obscure libel is a plaintiff's / applicant's lawsuit that is not clear or its contents are dark (onduidelijk), the formulation of the lawsuit is unclear. Whereas for a lawsuit to be considered to meet the formal requirements, the arguments of the lawsuit must be clear and clear or firm. In addition, a lawsuit is said to be obscure libel if, in the letter of claim is not equipped with *petitum*, namely things that are desired or requested by the plaintiff / applicant to be decided, determined and ordered by the judge.

4. The Subject Matter of Other Lawsuits

In principle, judges have the authority to decide other lawsuits as long as the case fulfills the elements of other lawsuits as regulated in the Bankruptcy and PKPU Law. Regulations regarding other lawsuits in bankruptcy and PKPU are regulated in Article 3 paragraph (1).

Explanation of Article 3 paragraph (1): "What is meant by "other matters", are, among others, *actio pauliana*, third party resistance to confiscation, or cases where the Debtor, Creditor, Curator, or management is a party in a case relating to bankruptcy assets, including the Curator's lawsuit against the Board of Directors which caused the company to be declared bankrupt due to their negligence or fault. The procedural law applicable in adjudicating cases that include "other matters" is the same as the Civil Procedure Law applicable to bankruptcy petition cases, including limitations on the period of completion." Based on this explanation, it can be seen that the important thing regarding the handling of other cases in bankruptcy disputes uses the same procedural law as the bankruptcy petition and the filing of other cases is filed in the debtor's jurisdiction.

Referring to the explanation above, other lawsuits or other matters consist of several types, one of which is *actio pauliana*. *Actio pauliana* is a type of creditor protection for lawful acts undertaken by debtors with third parties that cause creditors harm (Panatagama, 2020). *Actio pauliana* is one of the efforts that can be made by the curator to increase the quantity and quality of bankruptcy assets. The curator is empowered by Bankruptcy Law No. 37 of 2004 and the PKPU to initiate a lawsuit to invalidate legal proceedings taken by the debtor in the past before the debtor was declared bankrupt a Commercial Court ruling (Binarso, 2020).

The *actio pauliana* provision is meant to protect the interests of creditors who have suffered losses as a result of the debtor's legal activity. Generally, *actio pauliana* is intended in the case of debts and receivables between debtors and creditors but does not limit it to other actions. *Actio pauliana* makes the debtor's actions over the control of his wealth limited when the debtor is entering into an agreement with the creditor while the debtor's actions can harm the creditor in terms of repaying the debtor's debt (Tambunan et al., 2017).

The factor of good faith, which becomes a benchmark in the regulation of *actio pauliana* in Article 1341 of the Civil Code. Proof of the presence or absence of the element of good faith serves as the foundation for establishing whether the conduct is included in a non-required or required act (Syahrin, 2017). Article 1341 of the Civil Code reads:

"Nevertheless, a creditor may claim the invalidity of any unauthorized act performed by the debtor, by whatever name, to the detriment of the creditor; provided that it is proved that when the act was performed, the debtor and the person with whom or for whom the debtor acted, knew that the act would result in harm to the creditors.

The rights acquired by third parties in good faith in the goods subject to the unauthorized act shall be respected. In order to invalidate an act freely performed by the debtor, it is sufficient for the creditor to show that at the time of performing the act the debtor knew that in this way he was harming the creditors, regardless of whether the person benefited also knew this or not".

Article 1341 of the Civil Code gives every creditor the right to apply for the cancellation of all non-obligatory acts conducted by the debtor under any identity, including to the creditor's detriment, as long as it can be proven that when the act was carried out, either the debtor or the person with

for whom the debtor acted, knew that the act had an adverse effect on the creditor (Butarbutar, 2019).

According to Aryadi & Laksana (2019) the provisions of Article 1341 of the Criminal Code categorize non-mandatory acts into 2 types of acts, namely: a. Reciprocal legal actions, in which there are two parties who bind themselves to each other to make achievements. b. Unilateral legal actions in which the legal action is carried out by only one party who has the obligation to fulfill achievements against the other party.

Thus, the most important reference in bankruptcy law is Article 1131 of the Civil Code which regulates the use of all debtor's property as collateral. In the context of other lawsuits and actio pauliana Article 3 paragraph (1) of the KPKPU Law underlines that the litigation is decided by the court whose jurisdiction includes the debtor's domicile. Actio pauliana is a type of creditor protection against legal actions taken by the debtor against third parties, and the concept of good faith is vital in actio pauliana regulation. Article 1341 of the Civil Code gives creditors the right to apply for the annulment of actions that harm them, provided that it can be proven that the debtor was aware of the adverse consequences when he committed the action.

CONCLUSION

Other lawsuits in bankruptcy law as an implementation of civil procedural law refer to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (KPKPU Law). The requirements of the lawsuit include the process of filing a lawsuit, trial, and court decision. In the case of other lawsuits, the party filing the lawsuit must meet the requirements specified by the KPKPU Law, such as having a legitimate legal interest and there is an adequate legal basis for filing the lawsuit. Meanwhile, the implementation of actio pauliana refers to Article 1341 of the Civil Code (KUHPerdata). In the scope of bankruptcy law, the implementation of actio pauliana involves creditors who want to cancel or challenge legal actions that are detrimental to the rights of creditors carried out by previous debtors. To file an actio pauliana, the creditor must prove the existence of important elements, such as the existence of legal actions that harm the rights of creditors, the existence of losses incurred, the existence of malicious intent of the debtor to harm creditors, and the existence of a causal relationship between these legal actions and the losses suffered by creditors.

BLIBLIOGRPAHY

- [1] Aryadi, A., & Laksana, I. (2019). *Actio Pauliana Sebagai Jaminan Hukum Kreditur Dalam Proses Kepailitan*. *Jurnal Kertha Negara*. 7(12), 1-15.
- [2] Batu, Pandapotan Pintu. (2021). *Mengenal Gugatan Lain-lain dalam Kepailitan*. <https://www.hukumonline.com/klirik/a/mengenal-gugatan-lain-lain-dalam-kepailitan-1t606db6c175b4e/>. Accessed on July 8, 2023.
- [3] Binarsu, M. (2021). *Actio Pauliana Dalam Kaitannya Dengan Tanggung Jawab Kurator Dalam Perkara Kepailitan*. *Jurnal Mahasiswa*. 1-20.
- [4] Butarbutar, E. (2019). *Pembuktian Terhadap Perbuatan Debitur Yang Merugikan Kreditur Dalam Tuntutan Actio Pauliana*. *Jurnal Yudisial*. 12(2), 215-234.
- [5] Efendi, S. (2021). *Perlindungan Hukum Terhadap Korban Salah Tangkap (Error In Persona)*. *Jurnal Education and development Institut Pendidikan Tapanuli Selatan*. 9(3), 591-598.
- [6] Ginting, E. R. (2018). *Hukum Kepailitan: Teori Kepailitan*. Bumi Aksara.
- [7] Mantili, R. (2021). *Actio Pauliana Sebagai Upaya Perlindungan Bagi Kreditur Menurut Kitab Undang-Undang Hukum Perdata Dan Undang-Undang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU)*. *ADHAPER: Jurnal Hukum Acara Perdata*, 6(2), 21-38.
- [8] zuki, M. (2017). *Penelitian Hukum: Edisi Revisi*. Prenada Media.
- [9] Panatagama, A. (2020). *Actio Pauliana Dalam Kepailitan Yang Melebihi Jangka Waktu Satu Tahun*. *Jurist-Diction*. 3(4), 1249-1264.
- [10] Patricia, Y. A. (2022). *Sistem Pembuktian Gugatan Lain-Lain dalam Kepailitan*. *Jurist-Diction*, 5(6).
- [11] Selamet, I. (2022). *Pengaturan Hukum Acara Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*. *Jurnal Kertha Desa*. 10(7), 574-585.



- [12] Setyaji, I. (2022). *Actio Pauliana Pasal 1341 Kuh Perdata Dan Akibat Hukum Dibataalkannya Suatu Perjanjian (Studi Putusan Ma Nomor 89 K/Pdt. Sus-Pailit/2019) (Doctoral dissertation, Universitas Jendral Soedirman).*
- [13] Shubhan, M. Hadi. (2014). *Hukum Kepailitan Prinsip, Norma, dan Praktik di Peradilan.* Kencana: Jakarta.
- [14] Simbolon, S., & Sinaga, I. (2022). *Penafsiran Hukum Oleh Hakim Terhadap Gugatan Lain-Lain Dalam Kepailitan dan Penundaan Kewajiban Pembayaran Utang.* *Yuriska : Jurnal Ilmu Hukum.* 14(2), 127-145.
- [15] Sinaga, N. A., & Sulisrudatin, N. (2018). *Hukum Kepailitan dan Permasalahannya di Indonesia.* *Jurnal Ilmiah Hukum Dirgantara,* 7(1).
- [16] Syahrin, M. A. (2017). *Actio Pauliana: Konsep Hukum dan Problematikanya.* *Lex Librum: Jurnal Ilmu Hukum,* 4(1). 605-616.
- [17] Tambunan, R., dkk. (2017). *Upaya Hukum Actio Pauliana Dalam Melindungi Kreditor Atas Aset Debitor Dalam Kepailitan Perseroan Terbatas.* *USU Law Journal.* 5(3), 101-107.

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