

Implications of the Debtor's Reverse Evidence in the Actio Pauliana Case In Bankruptcy Law Based on Efforts to Protect The Creditor's Interests

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Abstract. *The growth of the business community in Indonesia, driven by technological advances and globalization, has facilitated international business but also created challenges, especially during financial crises such as the one that occurred in 1997. In the context of bankruptcy, the concept of Actio Pauliana is important to protect creditors from detrimental transactions made by debtors before the declaration of bankruptcy. This study analyzes the application of Actio Pauliana in bankruptcy law in Indonesia with a focus on the debtor's reverse burden of proof, which requires the debtor to prove that the transactions made do not harm the creditor. Normative legal research methods are used to understand the related regulations, with a statutory, conceptual, and case study approach. The results of the study indicate that Actio Pauliana and reverse burden of proof play an important role in protecting creditors' rights and mitigating the negative impacts of detrimental transactions. Suggestions for improvement include explaining the role of the curator, strengthening the supervision mechanism, and adding reverse burden of evidence rules to the Civil Code to strengthen legal certainty and third party protection.*

Keywords: Bankruptcy; Justice; Pauliana; Restorative.

1. Introduction

The growth of the business community in Indonesia, driven by private companies and technological advances, has made it easier for international businesses to enter. However, globalization also brings challenges, such as recurring negative impacts, especially during financial crises such as the 1997 financial crisis that hit the banking sector and caused many companies to go bankrupt. . In the context of business, solvable business actors are those who are able to pay their debts, while those who go bankrupt are called bankrupt. Islam itself has rules related to debts,

such as the importance of recording and the prohibition of usury, which is emphasized in the Al-Baqarah Letter. Bankruptcy in Indonesian positive law is regulated by Law No. 37 of 2004, where debtors who are unable to pay their debts can be declared bankrupt by the court.

Actio Pauliana is a legal action that allows creditors to cancel transactions made by debtors if the transaction is detrimental to the creditor and is carried out before the declaration of bankruptcy. Article 1341 of the Civil Code stipulates that the action must be valid and the creditor who is harmed can request cancellation. . However, legal actions that are not carried out due to legal obligations or agreements cannot be canceled. The conditions for Actio Pauliana include that the legal act carried out by the debtor must be valid, and the creditor who is harmed has the right to request cancellation. In addition, both the debtor and the third party involved must be aware that the action will harm the creditor. This shows the importance of vigilance in business transactions to prevent losses on the part of the creditor r.

In the context of bankruptcy, globalization and financial crises, such as those that occurred in 1997, have worsened the economic situation in Indonesia, causing many companies to go bankrupt and the banking sector to be shaken. In this case, the concept of Actio Pauliana becomes relevant to protect the interests of creditors from actions by debtors that are detrimental to them. Actio Pauliana allows creditors to cancel transactions made by the debtor before the bankruptcy declaration if the transaction is proven to be detrimental to the creditor. . Bankruptcy Law No. 37 of 2004 together with Article 1341 BW regulates the implementation of Actio Pauliana, which requires that the debtor's legal actions must be valid and carried out before the declaration of bankruptcy. Creditors who are harmed can request cancellation, provided that it can be proven that at the time the action was carried out, the debtor or a related third party knew or should have known that the action would harm the creditor. However, this proof is often difficult to do, especially if the debtor is not aware of the negative impact of his actions or if the transaction is carried out in the context of ordinary business. .

Proof is a process that aims to show or provide evidence to prove the truth of a claim in court. According to R. Subekti, proof involves convincing the judge of the truth of the argument put forward in a legal dispute. In criminal law, proof is the basis for determining the truth of a crime, while in civil law, evidence is needed to resolve a dispute. Proof includes the collection, presentation, and evaluation of evidence in court. . There are four main theories of evidence. First, the statutory evidentiary system, which requires judges to follow the rules of positive law regarding evidence without subjective judgment. Second, the positive legal evidentiary system, which provides strict standards for evidence but still maintains the role of the judge in determining belief in the facts. Third, the free evidentiary system, which allows judges to decide guilt based on personal conviction, even

though the evidence may be insufficient. Fourth, the judge's belief evidentiary system, which allows judges to make decisions based on personal opinion as long as it is supported by relevant evidence and rules. .

The reverse burden of proof requires the accused to prove their innocence of the charges imposed, which can violate the principle of presumption of innocence and the right not to incriminate oneself. In Indonesia, this principle is applied to corruption crimes through the Criminal Procedure Code and Law No. 31 of 1999 in conjunction with Law No. 20 of 2001. In limited reverse burden of proof, the prosecutor still has the obligation to prove the charges in court, even if the accused fails to prove the origin of the suspicious wealth. .

Creditors, according to Law No. 37 of 2004 concerning Bankruptcy, are parties who have receivables that can be collected through the courts. Creditors are divided into several categories. Concurrent creditors, according to Article 1132 of the Civil Code, receive payment evenly from the debtor's assets without priority. Preferred creditors have the right to receive payment first because of the special nature of their receivables, as regulated in Articles 1139 and 1149 of the Civil Code. Separatist creditors hold property security rights that allow them to execute collateral objects directly without a court decision, as regulated in the Civil Code. Overall, reverse evidence and regulations regarding creditors are important components in the legal system that aims to ensure justice and protection of creditors' rights in bankruptcy proceedings and other legal disputes.

The applicable legal provisions do not provide a clear time limit for debtors to file for bankruptcy and file *Actio Pauliana*, so only general law that regulates the termination of a lawsuit can be used as a reference. *Actio Pauliana* is carried out in the interests of the bankrupt estate and only applies to legal acts that are detrimental to the interests of creditors and are carried out before the declaration of bankruptcy. This study aims to analyze *Actio Pauliana* cases in bankruptcy law in Indonesia, especially in proving that certain transactions are not intended to harm creditors. This study will also examine the impact of the debtor's reverse proof on the bankruptcy process, especially in terms of protecting the interests of creditors and recovering debtor assets that may have been transferred. In addition, this study aims to identify alternative options or changes that may be applied to the debtor's reverse proof mechanism to be more effective in protecting the interests of creditors, including efforts to improve existing legal regulations or practices.

2. Research Methods

This study uses a normative legal research method that views law as a normative framework including legal principles, norms, laws and regulations, court decisions, agreements, and doctrines. The type of research applied is normative legal research, which focuses on the analysis of legal regulations and norms related to

Actio Pauliana in the context of bankruptcy in Indonesia. The research approaches used include the statutory approach, conceptual approach, and case study approach. The statutory approach involves an in-depth review of the laws governing Actio Pauliana, such as the 1945 Constitution, Article 1341 of the Civil Code, and Bankruptcy Law No. 37 of 2004. The conceptual approach aims to clarify and justify the concept of law based on legal principles, with a focus on the efficiency and realization of bankruptcy law and its implications for the parties involved. The case study approach analyzes various legal cases related to Actio Pauliana to reveal problems contextually and practically.

The sources of legal materials in this study are divided into three categories: primary, secondary, and tertiary legal materials. Primary legal materials include the constitution, bankruptcy laws, and relevant articles in the Civil Code and the UUK. Secondary legal materials include books, literature, theses, and journals related to civil law, bankruptcy, and Actio Pauliana. Meanwhile, tertiary legal materials consist of dictionaries, encyclopedias, and theories related to Actio Pauliana that provide additional explanations to primary and secondary legal materials. Data collection techniques are carried out through library research, by collecting regulations, guidelines, notebooks, diaries, and compositions that are relevant to the research problem. The data collected comes from legitimate sources and is directly related to bankruptcy and Actio Pauliana. Data analysis uses a qualitative legal analysis method, which is based on legal reasoning and the application of legal theory in a theoretical framework. The final step in the analysis is to conduct an in-depth study regarding the debtor's reverse evidence against Actio Pauliana in bankruptcy law, to provide answers to research problems systematically and consistently.

3. Results and Discussion

3.1. Actio Pauliana Cases in Bankruptcy Law in Indonesia

Actio Pauliana is a legal remedy used by creditors to protect their rights against the actions of debtors that are detrimental, regulated in Article 1367 of the Indonesian Civil Code. The reverse burden of proof mechanism in Actio Pauliana allows the burden of proof not only on the creditor, but also the debtor. Debtors who benefit from suspicious transactions must prove that the action was carried out in good faith and did not harm the creditor. If the debtor fails to prove this, the judge can burden the debtor with proof. An example of the application of this mechanism is seen in the case of First Travel, where the company was accused of committing fraud against hajj and umrah pilgrims. The victims, as creditors, can use Actio Pauliana to sue First Travel to prove that their transactions were carried out in good faith. In this case, the burden of proof is not entirely borne by the victim, but also by First Travel, which is accused of harming the creditor. .

Another relevant case is the dispute between PT Bank Pan Indonesia, Tbk, and PT Jabatex in bankruptcy. In this case, the Supreme Court rejected the petition for judicial review from PT Bank Panin regarding the bankruptcy dispute and Actio Pauliana. This dispute involved hundreds of former employees of PT Jabatex who lost their rights after being unilaterally laid off. They accused PT Jabatex of transferring its assets to Bank Panin to avoid payment, which then prompted the curator to file an Actio Pauliana lawsuit which was won.

Case number 26 PK/Pdt.Sus-Pailit/2020 involved PT Bank Pan Indonesia, Tbk (PT Bank Panin, Tbk) which filed a petition for judicial review after its cassation petition was rejected. This petition was related to a bankruptcy dispute and Actio Pauliana against Domu Wellin, SH, and Anna Lydia Yusuf, SE, SH, as the Curator Team of PT Jabatex which was in the process of going bankrupt. The Supreme Court rejected PT Bank Panin's judicial review petition and ordered them to pay court costs of Rp10,000,000.00. This case involved hundreds of former employees of PT Jabatex who had fought for almost seven years to obtain their rights after being laid off without compensation. Although they won the lawsuit at the Industrial Relations Court (PHI) to the cassation and judicial review levels, the execution of the verdict was hampered because PT Jabatex allegedly transferred assets to Bank Panin to avoid payments to employees. The curator team then filed an Actio Pauliana lawsuit and won the case. However, the execution of asset sealing in Tangerang by the Tangerang District Court was delayed, even though several coordination meetings had been held. This caused former employees, most of whom were elderly and some had died, to continue waiting for their rights to be fulfilled.

In Actio Pauliana disputes, the cancellation of the agreement often occurs if it is found that the obligation was made by a minor or under pardon, as regulated in Article 1446 of the Civil Code. This emphasizes the importance of creditor protection and justice in the legal relationship between creditors and debtors. This mechanism, with the reverse burden of proof, aims to prevent fraud and ensure that transactions are carried out in good faith, safeguarding the rights of creditors from being harmed by the actions of the debtor. .

3.2. Implications of Debtor's Reverse Proof in Actio Pauliana Cases Bankruptcy and Protection of Creditors' Interests

Article 1865 of the Civil Code states that anyone who claims to have rights or wants to prove an event must be able to provide adequate evidence. Proof in law aims to convince the judge regarding the facts stated by the parties. The basic principle in the law of evidence is "actori incumbit probatio," which means that the party filing a claim is obliged to prove it. In cases where the claim is denied, the party who denies it must be able to provide evidence that confirms its denial. However, in the context of civil law, especially in the case of Actio Pauliana, the burden of proof can shift to the debtor. Actio Pauliana, as stipulated in Article 1341 of the

Civil Code, allows creditors to cancel legal actions of debtors that are considered detrimental to them, especially when the debtor is approaching bankruptcy. The First Travel case, involving Siti Nuraida Hasibuan, illustrates the importance of this mechanism. In this case, Hasibuan had to prove that the assets she owned did not come from criminal acts, such as fraud and money laundering. This provides additional protection for creditors by allowing the court to cancel transactions that are detrimental to creditors.

In the First Travel bankruptcy case, many creditors suffered losses because the funds deposited for the Umrah and Hajj trips were not used properly. Actio Pauliana provides a way for creditors to demand the cancellation of transactions made by the debtor before the bankruptcy declaration, especially transactions that significantly reduce the debtor's assets and harm the creditor. . With this mechanism, creditors can ensure that the debtor's assets remain available to meet their obligations, providing stronger protection for creditors' rights. This case emphasizes the importance of Actio Pauliana in maintaining a balance between creditors' rights and debtors' obligations in a bankruptcy situation.

In the First Travel case, reversed burden of proof and Actio Pauliana played a significant role. Reverse burden of proof requires the defendant to prove that the assets owned are not the proceeds of crime, helping to identify and seize related assets. Actio Pauliana allows creditors to cancel transactions that are detrimental to them, opening up legal avenues for First Travel creditors to recover their losses. Based on Article 41 of the Bankruptcy Law (UUK), Article 1341 of the Civil Code (BW), and Article 24 paragraph (1) of Bankruptcy Law Number 37 of 2004, reverse burden of proof increases the debtor's responsibility to prove the origin of his assets, ensuring transparency in the management of company assets. . Article 1341 BW gives creditors the right to cancel legal acts that are detrimental to them, and Article 24 paragraph (1) of Bankruptcy Law Number 37 of 2004 allows for the cancellation of pre-bankruptcy transactions that are detrimental to creditors. In the context of First Travel, these provisions provide significant legal protection for creditors, helping them demand the cancellation of transactions and recover some of the lost funds.

In the case of First Travel, creditors have a strong legal basis to demand the cancellation of transactions that are detrimental to them, supported by Article 41 of the Bankruptcy Law (UUK), Article 1341 of the Civil Code (BW), and Article 24 paragraph (1) of the Bankruptcy Law. Reverse proof becomes an important tool, placing the burden on debtors to prove that their assets do not come from the proceeds of crime. This protects the interests of creditors and ensures that the assets used to fulfill obligations are legitimate.

In Islamic law, the concepts of justice ('adl) and responsibility ('amanah) are highly emphasized, relevant to the reverse burden of proof and the protection of creditors. The principle of "al-bayyinah 'ala man idda'a wal-yamin 'ala man

Ankara” emphasizes that the accused party must prove their claim, in line with the reverse burden of proof. . In addition, the Qur'an in Surah Al-Baqarah verse 282 emphasizes the importance of recording debt fairly, supporting creditor protection. Actio Pauliana, which allows the cancellation of detrimental transactions, is in accordance with sharia principles such as the prohibition of gharar (uncertainty) and maisir (speculation). The principle of al-maslahah (public interest) supports creditor protection, and reverse proof by the debtor is a way to ensure that the assets owned were obtained legally. . In addition, the concept of hisbah in Islam, which aims to supervise and regulate economic behavior for the sake of social justice, supports the cancellation of transactions that are unfair and detrimental to creditors.

The First Travel case highlights the importance of reversed burden of proof and Actio Pauliana in protecting the interests of creditors. Reverse burden of proof allows tracing the origin of assets suspected of being derived from criminal acts, while Actio Pauliana gives creditors the right to cancel transactions that are detrimental to them. Both mechanisms serve to ensure that creditors, including thousands of prospective Umrah and Hajj pilgrims, receive fair legal protection. In the legal context, the principle of Pancasila justice which emphasizes the balance between rights and obligations as well as distributive and retributive justice is very relevant. . The reverse burden of proof places the burden on the defendant, Siti Nuraida Hasibuan, to prove that her assets did not originate from criminal acts, thereby supporting justice for the victims.

The theory of legal protection that emphasizes the guarantee of fair law is applied through Actio Pauliana, which ensures that debtors cannot avoid responsibility by transferring assets. In addition, the theory of proof in civil law emphasizes the importance of proof to establish the truth. In Actio Pauliana, creditors must prove that the transaction is detrimental to them, while the defendant must prove the legality of his assets. . The principles of justice and trustworthiness in Islamic law are also in line with this mechanism, supporting the protection of the rights of the aggrieved individual. However, if the debtor succeeds in proving his inability to know the detrimental impact of the transaction, cancellation through Actio Pauliana can be difficult to prove, especially since the rights of a good-faith third party remain protected by law.

3.3. Alternatives Or Changes That Can Be Applied In Debtor's Reverse Proof To Increase Its Effectiveness In Protecting Creditors' Interests

Actio Pauliana is a legal remedy that allows creditors to cancel legal actions of debtors that are considered detrimental, especially when the debtor is in a state of insolvency or heading towards bankruptcy. An example of the success of Actio Pauliana can be seen in the case of PT Asuransi Jiwa Manulife Indonesia (AJMI) vs PT Dharmala Sakti Sejahtera (2003), where the court canceled the transaction carried out by the debtor because it was proven to be detrimental to the creditor.

Conversely. In the case of PT Asuransi Jiwa Manulife Indonesia (AJMI) vs PT Dharmala Sakti Sejahtera (2003), the court decided to cancel the transaction carried out by PT Dharmala Sakti Sejahtera . This decision was taken because the transaction was carried out in a state of insolvency, which was detrimental to the creditor. The court found that there was an intention from PT Dharmala Sakti Sejahtera to avoid assets from the reach of creditors. Based on this finding, Actio Pauliana was applied to cancel the transaction and return the assets to the creditor, as a form of protection for creditor rights in a bankruptcy situation.

In the case of PT Bank Central Asia (BCA) vs Freedy, Actio Pauliana was unsuccessful because there was no strong evidence that the transaction was carried out with the intention of harming the creditor. In the case of BCA's bankruptcy lawsuit against PT Harumsari Surya Ampuh owned by Freddy Santoso, Actio Pauliana was unsuccessful or not filed because the bankruptcy lawsuit itself was rejected by the court .

The court rejected BCA's bankruptcy lawsuit because one of the requirements in the Bankruptcy Law was not met, namely the existence of more than one creditor. In this case, BCA could not prove that PT Harumsari had other creditors besides BCA. Because the basic requirements for bankruptcy were not met, the issue of Actio Pauliana is not relevant to be discussed further in this case. In other words, the court did not need to enter into considerations regarding Actio Pauliana because it had already rejected the bankruptcy lawsuit based on more fundamental reasons related to creditor requirements.

The success of Actio Pauliana depends heavily on the creditor's ability to prove that there was malicious intent or fraud in the debtor's actions. The court will consider whether the debtor deliberately tried to avoid responsibility to the creditor. If this element is not proven, as in the BCA case, Actio Pauliana is unlikely to succeed. In bankruptcy law, protection for creditors is regulated in Law Number 37 of 2004, which provides a mechanism to prevent debtors from taking actions that are detrimental to creditors, such as filing a bankruptcy petition, seizing collateral, or appointing a temporary curator. . Actio Pauliana allows creditors to cancel the debtor's detrimental actions, if they are carried out within one year before the bankruptcy declaration. This is an important legal protection for creditors to ensure they obtain their rights in accordance with the provisions of the law.

To improve the effectiveness of reverse proof in protecting creditors, several steps can be taken. First, stricter regulations and standards of proof need to be implemented, ensuring that debtor transactions are legitimate and do not harm creditors. Second, more intensive supervision and auditing, especially through forensic audits, can help detect and prevent asset concealment by debtors. . Third, heavier sanctions for debtors who commit fraud can provide a deterrent effect. Fourth, increasing creditors' rights in the legal process, including access to debtors'

financial information, will strengthen their position. Finally, collaboration between courts, auditors, and creditors needs to be improved to ensure that unauthorized actions by debtors are identified and handled appropriately.

From the discussion above, the implications of reversed burden of proof in the Actio Pauliana case in Indonesian bankruptcy law have a significant impact on creditor protection. Reversed burden of proof shifts the burden of proof to the debtor to prove that the assets owned did not originate from actions that were detrimental to the creditor. This strengthens the position of creditors by giving them the right to demand the cancellation of transactions made by the debtor before the bankruptcy declaration, which could be detrimental to their interests. For example, in the First Travel case, reversed burden of proof allows creditors to claim that the debtor's detrimental transactions must be canceled if the debtor cannot prove that the transactions were made in good faith.

Another implication of this mechanism is increased transparency in the management of debtor assets. With the obligation for debtors to prove the origin of their assets, the practice of hiding assets can be minimized, which in turn protects the rights of creditors. However, the success of Actio Pauliana is highly dependent on the ability of creditors to prove the existence of malicious intent or fraud in the debtor's actions. Therefore, strengthening regulations and standards of proof, as well as stricter supervision, are needed to increase the effectiveness of this mechanism. .

Interpretation of the discussion on Actio Pauliana and reversed burden of proof in Indonesian bankruptcy law shows that this mechanism plays a crucial role in protecting creditors' rights and ensuring fairness in the bankruptcy process. Actio Pauliana, by allowing creditors to cancel the debtor's detrimental actions, provides an important legal tool to address abuse of power and unauthorized transfer of assets. Reversed burden of proof adds a layer of protection by shifting the burden of proof to the debtor to show that their transactions are not detrimental to creditors, which minimizes the potential for fraud and asset concealment.

In practice, this mechanism requires debtors to prove that their legal actions were carried out in good faith and did not harm the creditor. This can be seen in cases such as First Travel, where the reverse burden of proof gives creditors the legal power to demand the cancellation of transactions that are considered detrimental. By placing the burden of proof on the debtor, the legal system ensures that creditors have access to justice and the opportunity to recover their losses in the event of an unauthorized transfer of assets. However, the effectiveness of Actio Pauliana and the reverse burden of proof depends heavily on the creditor's ability to prove malicious intent or fraud in the debtor's transactions. This requires strong evidence and strict supervision, including forensic audits and stricter regulation. Without adequate supervision and

enforcement mechanisms, the risk of debtors avoiding responsibility remains, which can harm creditors and reduce confidence in the bankruptcy legal system.

In the context of Islamic law, the concept of *Actio Pauliana* and reverse burden of proof is in line with the principles of justice and accountability that underlie the sharia legal system. The principles of justice ('*adl*) and trustworthiness ('*amanah*) in Islamic law emphasize the need for transparency and honesty in economic transactions. The concept of "*al-bayyinah 'ala man idda'a wal-yamin 'ala man Ankara*" which means the claiming party must prove his claim and the denying party must prove his rebuttal, is in line with the reverse burden of proof mechanism in *Actio Pauliana*. This principle places the burden of proof on the debtor to show that the assets owned were acquired legally and did not harm the creditor.

In addition, *Surah Al-Baqarah* verse 282 in the *Qur'an* emphasizes the importance of recording debts fairly and transparently, which supports the protection of creditors' rights in Islamic law. *Actio Pauliana*, by giving creditors the right to cancel transactions that are detrimental to them, is in line with the sharia principle that prohibits *gharar* (uncertainty) and *maisir* (speculation), and supports *al-maslahah* (public interest) to protect public and individual interests.

The concept of *hisbah* in Islamic law is also relevant, because *hisbah* aims to supervise and ensure social justice, including in economic transactions. Reverse proof and *Actio Pauliana* serve to ensure that the debtor cannot avoid responsibility in an unfair manner, supporting justice and protecting the rights of creditors. Thus, these two mechanisms contribute to the implementation of the principles of justice and responsibility in the Islamic legal system, integrating sharia values in the protection of economic law.

4. Conclusion

Based on the discussion that has been conducted, the main conclusion shows that *Actio Pauliana* in Indonesian civil law, as regulated in Article 1341 of the Civil Code, gives creditors the right to cancel transactions that are detrimental to debtors that are carried out in bad faith. Reverse proof is an important element in this mechanism, where debtors must prove that transactions that benefit them do not harm creditors. The *First Travel* case is a real example where this mechanism is applied, with debtors having to prove the legality of their transactions. Reverse proof also plays an important role in protecting creditors' rights, by shifting the burden of proof to the debtor, especially in suspicious situations. In Islamic law, the principles of justice and responsibility support the implementation of reverse proof, in line with the principle of *al-maslahah* to protect the interests of society, including creditors. Suggestions provided include the need for a more detailed explanation of the curator's role in *Actio Pauliana* lawsuits, as well as strengthening the oversight mechanism to prevent conflicts of interest. The law

should also clarify the types of evidence that can be used and establish a clear burden of proof. In addition, the addition of a reverse burden of proof rule in the Civil Code can strengthen legal certainty. Finally, it is important to ensure legal protection for third parties who act in good faith in transacting with debtors, through clear regulations regarding the criteria for transactions that can be sued and protection procedures.

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