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Actio Pauliana in Bankruptcy Cases Related to The Provision of Credit Facilities with Fiduciary Guarantees (Case Study of Decision Number 17/Pdt.Sus-Actio Pauliana/2023/PN. Niaga.Smg. Jo. No.20/Pdt.Sus.Pailit/2022/PN Niaga Smg.)

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Abstract. *Actio pauliana is a right granted by law to submit a request to the court to cancel all legal actions that are not required to be carried out by the debtor against his assets which the debtor knows that the legal action is detrimental to the creditor, but of course the holder of the liquidus guarantee also has the right to be prioritized when the debtor is declared bankrupt. The type of research in this study is a normative juridical approach method with research data sources using secondary data. The approach method in this study is a statute approach. Data collection techniques use literature studies in journals, books and digital documents. Data analysis techniques used in this study use prescriptive methods. Problems are analyzed using legal protection theory and legal certainty theory. The results of this study indicate that legal protection for fiduciary guarantee holders when a debtor is declared bankrupt is that the guarantee holders of objects have the right to sell the collateral themselves. They seem not to interfere in bankruptcy matters. Take what is their right from the sales income as payment of their receivables, and if there is still a remainder, this remainder is handed over to the inheritance hall. And the judge's consideration in handing down the decision Number 17 / Pdt.Sus-Actio Pauliana / 2023 / PN. Niaga. Smg. Jo. No. 20 / Pdt.Sus.Pailit / 2022 / PN Niaga Smg. which stated that it rejected the Plaintiffs' lawsuit in its entirety because the actions of Defendant I were an exercise of his right to close/pay off his receivables received from the debtor PT Mitra Bersama Realty incasu Abdul Haris (as director), therefore the actions of the debtor PT Mitra Bersama Realty incasu Abdul Haris (as director) and Defendant I were in order to fulfill their respective obligations arising from the agreement, therefore they did not meet the requirements for an actio pauliana lawsuit.*

Keywords: *Actio Pauliana; Bankruptcy; Fiduciary Guarantee.*

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1. Introduction

A fundamental principle in the business world is the existence of an agreement between business actors who have mutual interests. An agreement is a consensus between parties that regulates rights and obligations carried out in good faith accompanied by responsibility so that the desired goals can be achieved. However, along the way, the parties may fail to fulfill the contents of the agreement, resulting in a dispute that will inevitably harm the contracted party. Failure to fulfill the agreement can occur due to a breach of contract (default) or the interests of the opposing party.[1]

In the business world, a company or business actor cannot always run smoothly and often experiences problems in carrying out its business activities, one of which is problems with debts and receivables. There needs to be a legal protection mechanism for the parties if problems arise in carrying out their business activities. In analyzing legal protection for the Indonesian people, Philipus M. Hadjon said that there are two types of legal protection for the people, namely preventive legal protection aimed at preventing disputes and repressive legal protection aimed at resolving disputes. In essence, legal protection is related to how the law provides justice, namely providing or regulating the rights of legal subjects, in addition to how the law provides justice to legal subjects whose rights have been violated.[2]

Creditors and debtors are parties who are bound by legal relations in contract law in particular and in legal traffic in general.[3]In this legal relationship, the creditor has the right to demand fulfillment of obligations from the debtor. Conversely, this legal relationship imposes an obligation on the debtor to fulfill these obligations. However, situations where debtors fail to fulfill their obligations frequently occur in practice. Default is the term used to describe a debtor's inability to fulfill these obligations.[4] In commerce and the business world, if the debtor is in a state of inability to fulfill the achievements and obligations that he has, namely to pay debts to creditors caused by various things including difficult economic situations / conditions or other circumstances, then in relation to this there has been an "emergency door" to resolve the problem, namely known as the institution of "bankruptcy" and "postponement of obligations". Referring to Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, creditors can file for bankruptcy to the Commercial Court if the debtor has two or

[1]Heru Sugiyono & Rosalia Dika Agustanti, "Legal Certainty In Arbitration Awaards That Are Final And Binding", *Jurnal Indonesia Law Review*, Vol.10 No.3 Article 6, (2020), p. 361.
[2]Heru Sugiyono, "Perlindungan Hukum Terhadap Pihak Ketiga Sebagai Pemilik Jaminan Ketika Tidak Dilaksanakannya Prinsip Kehati-Hatian Oleh Bank Dalam Perjanjian Kredit Dengan Memakai Jaminan", *Jurnal Yuridis* Vol. 4 No. 1, (2017), p. 102.
[3]Zainal Asikin, (2003), "*Hukum Kepailitan dan Penundaan Pembayaran di Indonesia*", Jakarta : PT. Raja Grafindo, p. 23.
[4]Kartini Muljadi dan Gunawan Widjaja, (2003), *"Perikatan Pada Umumnya*", Jakarta : PT. Raja Grafindo Persada, p.69.

more creditors, has debts that have matured and does not pay at least one debt that has matured.

Bankruptcy legal procedures refer to the Republic of Indonesia Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (abbreviated as Law 37/2004). In accordance with Law 37/2004, since the Debtor is declared bankrupt, Creditors holding fiduciary security rights are required to submit claims according to a predetermined schedule. Article 115 Paragraph 1 of Law 37/2004 stipulates that all Creditors are required to submit their respective receivables to the Curator accompanied by calculations or other written statements showing the nature and amount of the receivables, accompanied by evidence or copies thereof, and a statement whether or not the Creditor has a privilege, lien, fiduciary security, security right, mortgage, collateral rights on other objects, or the right to retain objects. By submitting claims, Creditors will ensure their right to receive a distribution of the proceeds from the liquidation of the bankrupt estate carried out by the Curator in the future.[5]

In accordance with Law Number 37 of 2004, Creditors holding fiduciary security rights may execute the assets used as fiduciary security from the time the Debtor's assets are in a state of inability to pay (insolvency). Article 55 paragraph 1 of Law Number 37 of 2004 stipulates that by continuing to pay the provisions referred to in Article 56, Article 57, and Article 58, every Creditor holding a pledge, fiduciary security, mortgage, or other collateral rights on assets may execute their rights as if bankruptcy had not occurred. From the date of insolvency, Creditors holding property rights may execute the assets bound by fiduciary security, within a maximum period of 2 (two) months. If the 2 (two) months have passed, the Creditor must hand over the assets used as fiduciary security to the Curator, whereupon the Curator will execute the assets in accordance with the provisions of Law 37/2004.[6] One of the cases involved a fiduciary guarantee holder whose debtor was then declared bankrupt occurred in the commercial court at the Semarang District Court based on bankruptcy decision No. 20 / Pdt.Sus.Pailit / 2022 / PN Niaga Smg, which was then followed by an actio pauliaana lawsuit against the fiduciary guarantee object which had been auctioned because the debtor was late in paying his debt obligations based on decision Number: 17 / Pdt.Sus-Actio Pauliaana / 2023 / PN. Niaga.Smg.

2. Research Methods

The approach used in this research is a statute approach. This means that the researcher uses statutory regulations as the initial basis for the analysis.[7]This

[5]Andika Wijaya & Wida Peace Ananta, (2018), *Hukum Acara Pengadilan Niaga*, Jakarta : Sinar Grafika, p.54
[6]*Ibid,* p. 94.
[7]*Ibid*., p. 185

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Legislative Approach is carried out by examining all Legislation related to the legal issue being studied.[8]Furthermore, in this research, the author also employed a conceptual approach. This conceptual approach is intended to analyze legal materials to understand the meanings contained within legal terms. This is done in an effort to derive new meanings from the terms studied, or to test these legal terms in theory and practice.[9]With this approach, it is hoped that it will be possible to complete and thoroughly examine the actio pauliana in bankruptcy cases related to the provision of credit facilities with fiduciary guarantees.

3. Results and Discussion

3.1. Legal Protection for Fiduciary Guarantee Holders If a Debtor is Declared Bankrupt.

As is known, material collateral is institutionalized in the form of mortgages, mortgages, fiduciaries, and pledges. Material collateral itself is a form of guarantee by a creditor to a debtor to fulfill the debtor's obligations.[10]The provision of such guarantee can be in the form of setting aside a portion of a person's wealth, the guarantor, and providing it for the fulfillment (payment) of a debtor's obligations (debts). This wealth can be the debtor's own wealth or the wealth of a third party.18 The guarantee here functions as a means or guarantee of the fulfillment of the guarantee for the debtor's debt in the event of default before the loan matures or the debt ends.[11]

Only with material collateral does the creditor have the right to precedence so that he is in the position of a preferred creditor, which means he will have privileges that concurrent creditors do not have (1132 BW), so that the preferred creditor is able to take payment first from the collateral without paying attention to other creditors. In material collateral, which occurs due to an agreement between the creditor and the debtor, the law grants special rights to certain creditors based on the nature of their receivables, called special rights or privileges as stated in Article 1134 paragraph (1) BW.[12]

Since fiduciary was known by the Romans until now it has experienced developments, although at the time of the emergence of fiduciary there were conflicting opinions among legal experts, but in reality fiduciary is still recognized by jurisprudence and continues to develop. The term fiduciary itself has been

[8]*Ibid.,* p. 186
[9]Hajar M, (2015), *Model-Model Pendekatan Dalam Penelitian Hukum dan Fiqh*, Pekanbaru : UIN Suska Riau, p. 4
[10]Abdul R. Saliman, (2012), *Hukum Bisnis Untuk Perusahaan Teori dan Contoh Kasus*, Jakarta : Kencana, p. 22
[11]*Ibid*
[12]Oey Hoey Tiong, (1984), *Fiducia sebagai Jaminan Unsur-Unsur Perikatan*, Jakarta Timur : Ghalia Indonesia, p. 16-17

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regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees which means "transfer of ownership rights in trust". In Dutch terminology it is often referred to as Fiduciare Eigendom Overdracht or in English Fiduciary Transfer of Ownership.[13]

In this fiduciary guarantee agreement, there is no full ownership right for the creditor, this is because the fiduciary guarantee adheres to the submission of constitutum possessorium, namely the submission of ownership rights from the debtor to the creditor where the object submitted remains in the real control of the debtor.[14]This is not a pawn nor a transfer of property rights, but a reciprocal bond based on trust.

According to Dr. A. Hamzah SH and Senjun Manullang SH, the transfer of contitutum possessorium is a method of transferring ownership rights from the owner (debtor), based on the existence of a principal agreement (debt agreement) to the creditor, however, only the rights are transferred in a juridical-leveraging manner and are only owned by the creditor in a trust manner, while the goods remain in the control of the debtor, but no longer as an eigenaar or bezitter, but only as a dentetor or houder for and on behalf of the creditor-eigenaar.[15]And according to J. Satrio SH, he explains that the transfer in a contitutum possessorium manner means that the economic ownership rights remain with the fiduciary giver, while the legal ownership rights remain with the creditor receiving the fiduciary.

In essence, the constitutum possessorium in fiduciary is carried out in three phases, namely:[16]

1. The obligatoir agreement phase (obligatoir overeenskomst) is a debt recognition agreement with fiduciary guarantee;

2. The material agreement phase (zakerlijke overeenskomst) transfer of ownership rights without physically handing over the collateral object constitutum possessorium; and;

3. In the loan agreement phase, the collateral is the basis for control and its benefits are enjoyed by the debtor.

[13]Munir Fuady, (2005), *Pengantar Hukum Bisnis Menata Bisnis Modern Era Global*, Bandung : Citra Aditya Bakti, p. 151
[14] John Salindeho, (1994), *Sistem Jaminan Kredit Dalam Era Pembangunan Hukum*, Jakarta : Sinar Grafika, p.4
[15]*Ibid*
[16]Andreas Albertus Andi Prajitno, (2010), *Hukum Fidusia*, Malang : Selaras Malang, p. 59

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So that the creditor only has authority over the object in accordance with the agreed purpose, namely as collateral.

Article 1 paragraph 2 of Law Number 37 of 2004 states that a creditor is a person who has receivables due to an agreement or law that can be collected in court. In the case of bankruptcy, the presence or existence of a creditor has an important function as stated in Article 2 paragraph 1, namely as a party who can submit a bankruptcy application to a debtor who does not fulfill his debt or obligation to submit a certain amount of money at a certain time that has been determined.

As is known, the division and grouping of creditors in general civil law is regulated in the Civil Code. In general civil law, creditors are divided into two types, namely:

a. Preferred creditors who arise due to agreements (Articles 1133, 1134 BW) and preferred creditors who arise due to laws are called privileges (Articles 1139, 1149 BW)

b. Concurrent creditors. (Articles 1131, 1132 BW)

Meanwhile, the classification and grouping of creditors in bankruptcy law contains the principle of structured creditors. The principle of structured creditors clarifies and groups various types of creditors according to their respective classes. The division of creditors in bankruptcy divides creditors into three types:

a. Separatist Creditors, namely holders of mortgages, pledges and other collateral;
b. Preferred Creditors, namely based on Article 1139 and Article 1149 of the Civil Code;
c. Concurrent creditors or competing creditors.

The difference between creditors according to the UUK-PKPU and creditors according to the Civil Code is that in general civil law, there are preferred creditors who have the right to guarantee property (pledges and mortgages) both as regulated in Article 1133 and Article 1134 of the Civil Code and outside the Civil Code (fiduciary, mortgage rights) and privileged creditors whose receivables must be paid in priority by law.[17]However, in bankruptcy, the term preferred creditors refers to only those creditors whose debts must be paid in priority by law, such as privilege holders, retention rights holders, and so on. Meanwhile, creditors who have material collateral, in bankruptcy law, are classified as separatist creditors. Based on these types of creditors, a priority order has been determined for

[17]Ivida Dewi Amrih & Herowati Poesoko, (2011), *Hak Kreditor Separatis dalam Mengeksekusi Benda Jaminan Debitor Pailit,* Yogyakarta : LaksBang PRESSindo, p.101

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creditors in bankruptcy. That the holder of material collateral has a higher position compared to other creditors. As per Article 1134 paragraph (2) of the Civil Code, it is stated that "pledges and mortgages are higher than privileged rights except in cases where the law determines otherwise." Therefore, based on this explanation, separatist creditors in this case receive priority in paying off their debts from the proceeds of the sale of bankrupt assets based on the nature of their debts. The three principles above are very important both in terms of contract law and guarantee law as well as bankruptcy law.

Without this principle, the bankruptcy institution becomes meaningless because the philosophy of bankruptcy is as an institution to liquidate the assets of a debtor who has many debtors where without bankruptcy, the debtors will fight over each other, both legally and illegally, thus creating a state of injustice both for the debtor himself and for the creditors, especially creditors who come in later so that they do not get a share of the debtor's assets to pay the debtor's debts.

Creditors who have material collateral in bankruptcy law are qualified as separatist creditors. Basically, the position of creditors is equal (Paritas Creditorium) and therefore they have the same rights to the results of the execution of the bankruptcy estate according to the size of their respective claims (pari passu pro rata parte). However, this principle recognizes exceptions, namely the group of creditors who hold collateral rights to material and the group of creditors whose rights are prioritized based on the Bankruptcy Law and other laws and regulations. Thus, the principle of paritas creditorium applies to concurrent creditors only.

The position of a secured creditor under fiduciary security law is as a creditor holding a security interest in a tangible asset, which is given priority over other creditors for the expansion of its receivables. This right to priority arises upon registration of the fiduciary security. Therefore, unless registered with the fiduciary registration office, the fiduciary creditor does not have priority status but rather serves only as a concurrent creditor.[18]The position of separatist creditors is higher than other privileged creditors as regulated in Article 1139 and Article 1149 of the Civil Code. This is as stated in Article 1134 paragraph (2) of the Civil Code that the position of separatist creditors is the highest compared to other creditors, unless the law determines otherwise.

[18]H Tan Kamello, (2014), *Hukum Jaminan Fidusia Suatu Kebutuhan Yang Didambakan*, Bandung : Alumni, p.324

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In the fiduciary guarantee law, provisions regarding separatist creditors are also regulated in Article 27 of the UUJF:

(1) Fiduciary recipients have priority rights over other creditors

(2) The priority right as referred to in paragraph (1) is the right of the fiduciary recipient to take payment of his receivables from the results of the execution of the object which is the object of the fiduciary guarantee.

(3) The priority rights of the fiduciary recipient are not removed due to bankruptcy and/or liquidation of the fiduciary giver.

The provisions in Article 27 paragraphs 1 and 2 of the UUJF confirm that the creditor holding the fiduciary security rights has the right to precedence over the settlement of his receivables. The right to precedence over other creditors means that if the creditor has the right to material security in this case is a fiduciary security and the debtor as the fiduciary provider experiences bankruptcy as stated in Article 27 paragraph (3) of the UUJF so that the submission of the constitutum possessorium on this fiduciary security will not affect the interests of the separatist creditor in terms of being the holder of the security rights to obtain priority in taking payment from the results of the execution of the collateral object. The execution includes the sale or auction of the fiduciary security object, the proceeds of which are then distributed to the holder of the fiduciary security and privileges first, then the remainder of the proceeds are distributed to concurrent creditors.

The position of separatist creditors in the provisions of bankruptcy law based on the UUK-PKPU includes:

1. Article 55 paragraph (1) of the UUK-PKPU.

Stating that every creditor holding a pledge, fiduciary guarantee, security right, mortgage on other objects, can execute his rights as if there was no bankruptcy, so that the separatist creditor's receivables have a position outside the bankruptcy of the debtor or more precisely, his receivables are set aside or separated from the bankrupt estate. This provision is also explained by what has been emphasized in Article 27 paragraph (3) of the UUJF which states that the rights of the fiduciary recipient creditor are not removed due to bankruptcy, or liquidation of the fiduciary giver. In its explanation, it also states that fiduciary guarantees are collateral rights to objects for debt repayment. In addition, the provisions in the Law on Bankruptcy determine that objects that are the object of fiduciary guarantees are outside bankruptcy and/or liquidation.

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2. Article 56 of the UUK-PKPU.

In this provision, a suspension applies to creditors in exercising their rights. This suspension (stay) requires that the debtor's assets be under the control of the curator and is suspended for a maximum of 90 (ninety) days from the date the bankruptcy declaration decision is pronounced. The purpose of this suspension period is as outlined in the explanation of Article 56 paragraph (1), namely:

- Suspensionexecution is intended to increase the possibility of achieving peace
- Suspension of executionintended to increase the possibility of optimizing bankrupt assets;
- The suspension of execution is intended to enable the curator to carry out his duties optimally.

The validity of the suspension period is imposed on holders of collateral rights, lien rights, mortgages and fiduciaries, as well as holders of other material guarantees, such as:

a. Owner of leasing goods
b. Owner of retention of title;
c. The lessor; and
d. Holder of advertising rights (Article 1145 BW)

3. Article 60 paragraph (3) Jo. Article 138 UUK-PKPU Jo. Article 189 paragraph (5) UUK-PKPU.

In the event that the proceeds from the sale of the debtor's collateral are insufficient to pay off the debts of the secured creditors, the secured creditors may submit a claim for payment of the shortfall by merging into concurrent creditors after submitting a request for reconciliation of the receivables. Where the secured creditors, if they can prove that part of the receivables may not be paid off from the proceeds from the sale of the collateral, may request that the concurrent creditors be granted the rights of the secured creditors over that portion of the receivables without reducing the right to priority over the collateral for their receivables.

4. Article 149 paragraph (1) in conjunction with Article 128 of the UUK-PKPU.
Separatist creditors whose rights have been denied by the debtor are prohibited from voting on the reconciliation plan in the verification meeting. If a separatist

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creditor acts in this way (votes), the consequence is that the separatist creditor must relinquish his rights and become a concurrent creditor. This is because a reconciliation in bankruptcy does not affect secured and privileged creditors, regardless of whether they apply (require parties) in the bankruptcy process or not. Therefore, separatist creditors are not permitted to participate in the vote count in the reconciliation without eliminating the rights of secured and privileged creditors to claim their rights as concurrent creditors if and to the extent that the collateral is insufficient to pay their debts.

The Bankruptcy and Suspension of Payment Obligations Law does not provide a limit on who is included in the separatist creditors. Based on the provisions of Article 55 paragraph (1) which states that: "With due regard to the provisions as referred to in Article 56, Article 57, and Article 58, every creditor holding a pledge, fiduciary guarantee, security right, mortgage, or collateral right on other property, can execute his rights as if there was no bankruptcy." Based on the provisions of the Article, what is meant by separatist creditors are creditors who can execute their own rights as if there was no bankruptcy. Separatist creditors are included in creditors who have "privileges", as in Article 1134, namely a special position of a collector granted by law based on the nature of the receivable. For the right of "privilege" over movable goods, the development of national law recognizes fiduciary guarantees as regulated in the provisions of Law Number 42 of 1999 concerning Fiduciary Guarantees, Article 1 number 2 of the UUJF states that: "Fiduciary Guarantees are guarantee rights over movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be burdened with mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights which remain in the control of the Fiduciary Provider, as collateral for the repayment of certain debts, which gives the Fiduciary Recipient a priority position over other creditors."

Objects included in the scope of fiduciary guarantees are anything that can be owned and transferred, whether tangible or intangible, registered or unregistered, movable or immovable, which cannot be burdened with a mortgage or mortgage. Article 27 of the UUJF explains that:

1. Fiduciary recipients have priority rights over other creditors
2. The priority right as referred to in paragraph (1) is the right of the Fiduciary Recipient to take payment of his receivables from the results of the execution of the Goods which are the object of the Fiduciary Guarantee.
3. The priority rights of the Fiduciary Recipient are not removed due to bankruptcy and/or liquidation of the Fiduciary Provider.

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Subekti explained that a collateral holder has the right to sell the collateral themselves. They are not involved in bankruptcy proceedings. They can sell the items that are used as collateral for their debts. They can take what is rightfully theirs from the sales proceeds as payment for their debts, and if there is any remaining, this remainder is handed over to the estate office. If the sales proceeds are insufficient to pay off their debts, they can act as concurrent debt collectors, that is, together with other debt collectors, they will receive payment according to the size of their respective debts. People who have debts in this group are called separatists.[19]namely people who can act independently and appear to stand outside of bankruptcy matters.

Legal protection for creditors is provided to protect them against bad faith or errors, whether intentional or negligent, committed by certain parties in the bankruptcy proceeding that could reduce the value of the bankruptcy estate. In bankruptcy cases where the debtor is no longer able to pay their obligations, payment of their debts is prioritized for the secured creditors.

Separatist creditors are creditors who hold collateral rights to property, who can act independently. This group of creditors is not affected by the bankruptcy declaration decision, meaning that their execution rights can still be exercised as if there were no bankruptcy of the Debtor. Creditors holding pledges, fiduciary guarantees, mortgages, and mortgages or rights If the Fiduciary Provider debtor experiences bankruptcy, then according to the legal theory of the guarantee, the fiduciary collateral object is outside the bankruptcy chamber. Based on Article 27 paragraph (3) of the Fiduciary Law, it is determined that the right to priority from the Fiduciary Recipient is not removed due to the bankruptcy and/or liquidation of the Fiduciary Provider. collateral on other property is a characteristic of separatist creditors.

In credit practice, inventory and movable goods belonging to debtors who obtain credit are almost always burdened with Fiduciary Security Rights. Fiduciary Security Rights legally grant the creditor ownership rights over the goods burdened with Fiduciary Security Rights, but control over the goods rests with the debtor. Therefore, for objects burdened with Fiduciary Security Rights, the curator

[19]Subekti, (2002). *Pokok-Pokok Hukum* Perdata, Jakarta, p. 87-88

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does not have the authority to sell these objects. Aren't the objects burdened with Fiduciary Security Rights legally the property of the creditor and not the debtor?[20]

In line with the theory of legal protection according to Lili Rasjidi and IB Wyasa Putra, they argue that the law can be used to realize adaptive, flexible, predictive and anticipatory protection, legal protection for fiduciary guarantee holders if there are debtors who are declared bankrupt with concrete steps if they can sell the goods that are used as collateral for their receivables, take what is their right from the sales income as payment of their receivables, and if there is still a remainder, this remainder is handed over to the inheritance hall is one form of protection that is adaptive, flexible, predictive and anticipatory to prevent further losses because the debtor has been declared bankrupt.

3.2. The judge's considerations in issuing decision Number 17/Pdt.Sus-Actio Pauliana/2023/PN. Niaga.Smg. Jo. No.20/Pdt.Sus.Pailit/2022/PN Niaga Smg.

Other requirements for filing an actio pauliana lawsuit include the following:

a. The lawsuit was filed in the interests of the bankrupt estate;
b. There are legal actions carried out by bankrupt debtors;
c. Legal actions carried out by bankrupt debtors cause losses to their creditors;
d. Legal actions carried out by a bankrupt debtor are carried out before the bankruptcy declaration decision is pronounced;
e. At the time the legal act was carried out, the bankrupt debtor knew or should have known that the legal act would result in losses for the creditor;

f. At the time the legal act was carried out, the party with whom the legal act was carried out knew or should have known that the legal act would result in losses for the creditor; and
g. This legal act is not a legal act required by applicable laws and regulations.
   In general, actio pauliana is regulated in the provisions of the Civil Code. The principle of privity of contract (principle of personalia) is contained in Article 1340 paragraph (1) of the Civil Code which states "an agreement is only valid between the parties who made it."

This means that an agreement only binds the parties listed in the agreement. The principle of privity of contract does not apply rigidly, in the sense that it is still

[20]Yan Apul, *Permasalahan Terhadap Kendala Efektivitas Undang-undang Kepailitan dan Solusinya dari Sudut Pandang Kurator,* Disajikan dalam Seminar Nasional hukum Kepailitan Indonesia, Jakarta, 29 October 2008, p. 85- 89

possible to exclude it. This is proven in Article 1341 which regulates action pauliana which states as follows:

1. However, every person who is in debt may request the cancellation of any act which is not obligatory and which is carried out by the person in debt under whatever name, which is detrimental to the people in debt, as long as it is proven that when the act was carried out, both the person in debt and the person with or for whom the person in debt did it, knew that the act would have consequences which would be detrimental to the people in debt.
2. The rights obtained in good faith by third parties over the goods which are the subject of the void act are protected.
3. To file a case for the annulment of acts done gratuitously by the debtor, it is sufficient for the creditor to prove that the debtor knew at the time of committing the act that he was thereby causing harm to the people who lent him, regardless of whether the person who received the benefit was also aware of it or not.

Based on these provisions, a third party, namely a creditor or a curator, may file an actio pauliana. Although actio pauliana is theoretically and normatively available in bankruptcy, in practice, it is not easy to file an actio pauliana lawsuit until it is granted by the judge. The process of proving an actio pauliana is very difficult and cannot fully protect the rights of creditors. This is due to various reasons. One of them is the difference in meaning between Article 1341 of the Civil Code and Article 47 of Law No. 37 of 2004 concerning Bankruptcy and PKPU, namely regarding the parties who can file an actio pauliana lawsuit.

Article 1341 of the Civil Code explains that creditors may file a claim to invalidate any action not required by agreement or law carried out by the debtor under any name that is detrimental to the creditor or for which the debtor acted knowingly that the action would result in losses for the creditors. This provision can be interpreted to mean that only creditors who have receivables can file a lawsuit for action pauliana. The creditor in this case must show that at the time of carrying out the action, the debtor knew that his actions would be detrimental to the creditors.[21]Meanwhile, in the provisions of Article 30 of the Bankruptcy and PKPU Law, it is stipulated that in a case where the case is continued by the curator against the opposing party, the curator may file for cancellation of all actions carried out by the debtor, if it can be proven that the debtor's actions were carried out with the intention of harming the creditor and this was known to the opposing

[21]Hukumonline, “Perbedaan Actio Pauliana di Pengadilan Niaga dengan di Pengadilan Negeri”. (online), https://www.hukumonline.com/klinik/a/perbedaan-iactio-pauliana-i-di-pengadilan-niaga-dengan-di-pengadilan-negeri-lt4fb481b5dff91.

party. referring to the article, the one who may file the legal action actio pauliana is the curator.

Article 47 of the Bankruptcy and PKPU Law also explains that the actio pauliana lawsuit is filed by the curator as a party related to the interests of the bankrupt estate. Referring to the provisions of Article 1 number 7 of the Bankruptcy and PKPU Law, the intended Court is the Commercial Court within the general court environment. The difference between the norms of Article 1341 of the Civil Code and Article 47 of Law No. 37 of 2004 concerning Bankruptcy and PKPU both regulate who is entitled to file an actio pauliana claim with the Court. In legal science, based on the principle of les specialis derogat lex generalis and the principle of lex pastiory derogat lex a priori, the provisions of the Bankruptcy and PKPU Law are what apply by law. This is important, because it is related to the legal standing of the party who will file the claim for these rights.

Furthermore, regarding the timeframe for legal actions by debtors that are detrimental to creditors, the Civil Code does not explain such provisions. However, Article 42 of Law No. 37 of 2004 concerning Bankruptcy and PKPU stipulates that legal actions that are detrimental to creditors committed within a period of one (1) year before the bankruptcy declaration decision is issued, while the debtor is not obligated to carry out such actions, may be cancelled.

Regarding decision Number 17/Pdt.Sus-Actio Pauliana/2023/PN. Niaga.Smg. Jo. No.20/Pdt.Sus.Pailit/2022/PN Niaga Smg which stated that it rejected the Plaintiffs' lawsuit in its entirety because Defendant I's actions were the implementation of his right to close/pay off his receivables received from the debtor PT Mitra Bersama Realty incasu Abdul Haris (as director), which was also the obligation of the debtor PT Mitra Bersama Realty incasu Abdul Haris (as director) and because the actions of the debtor PT Mitra Bersama Realty incasu A dul Haris (as director) to Defendant I were the implementation and fulfillment of obligations as stated in the loan agreement, and for Defendant I was the implementation and fulfillment of a right (submission of collateral) then the actions of the debtor PT Mitra Bersama Realty incasu Abdul Haris (as director) and Defendant I were in order to fulfill their respective obligations arising from the agreement, therefore they did not meet the requirements for an actio pauliana lawsuit in accordance with the theory of legal certainty according to Gustav Radbruch which in essence legal certainty is a condition in which the law provides clarity, justice, and security for individuals in society, clarity from Defendant I because his party is Defendant I is a legal entity engaged in financing the procurement of motor vehicles where When he has provided financing facilities but the debtor has defaulted since May 2022 and is the party holding the fiduciary guarantee then based on Article 15 of Law No. 42 of 1999 concerning fiduciary

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guarantees determines "If the debtor defaults, the fiduciary recipient has the right to sell the object that is the object of the fiduciary guarantee at his own power" so that what Defendant I does is legal certainty itself in order to protect his rights.

4. Conclusion

Legal protection for fiduciary guarantee holders if a debtor is declared bankrupt is that the guarantee holder for the object has the right to sell the object that is guaranteed himself and the judge's consideration in issuing the decision Number 17/Pdt.Sus-Actio Pauliana/2023/PN. Niaga.Smg. Jo. No.20/Pdt.Sus.Pailit/2022/PN Niaga Smg. which stated that it rejected the Plaintiffs' lawsuit in its entirety because Defendant I's actions were an exercise of his right to close / pay off his receivables received from the debtor PT Mitra Bersama Realty incasu Abdul Haris (as director) the suggestion in this study is that the Curator should be more careful if he is going to file a Paulina action lawsuit related to the fulfillment of the requirements for the Paulina action lawsuit because in the object of the lawsuit there must be rights from other parties whose positions are protected by law and the debtor who is bound by a fiduciary guarantee with the creditor should try not to breach the promise because this action could result in losses for the creditor if the object that is the fiduciary guarantee is made the object of the Paulina action lawsuit.

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