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Reevaluating Actio Pauliana: Between Legal Norms and Practical Realities

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Original Article

Abstract

This research is driven by the growing prevalence of manipulative actions by debtors during bankruptcy proceedings, particularly the pre-bankruptcy transfer of assets that disadvantages creditors. *Actio pauliana*, as regulated under Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), serves as a legal remedy that enables creditors to annul such prejudicial transactions. This study aims to analyze the legal protection afforded to creditors through the *actio pauliana* mechanism, identify the types of debtor legal acts subject to annulment, and propose an ideal institutional and procedural model to enhance its effectiveness. The research adopts a juridical-normative methodology, utilizing both conceptual and statutory approaches. The findings reveal that the practical implementation of *actio pauliana* remains suboptimal due to evidentiary challenges, the limited authority and capacity of curators, and the inefficiency of judgment enforcement. To address these issues, the study recommends strengthening technical regulations, integrating forensic accounting technologies, and enhancing inter-institutional coordination. In conclusion, *actio pauliana* must be reinforced as a strategic legal mechanism to ensure effective creditor protection within the bankruptcy regime.

Keywords: *Legal Effectiveness, Actio Pauliana, Creditors, Debtors*

Abstrak

Penelitian ini dilatarbelakangi oleh meningkatnya tindakan manipulatif debitur dalam proses kepailitan yang merugikan kreditor melalui pengalihan aset sebelum putusan pailit. Actio pauliana sebagai instrumen hukum dalam Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan PKPU memberikan ruang bagi kreditor untuk membatalkan perbuatan hukum debitur yang merugikan. Penelitian ini bertujuan untuk menganalisis perlindungan hukum terhadap kreditor melalui *actio pauliana*, mengidentifikasi bentuk perbuatan hukum debitur yang dapat dibatalkan, serta merumuskan model ideal kelembagaan dan proseduralnya. Metodologi yang digunakan adalah yuridis-normatif dengan pendekatan konseptual dan perundang-undangan. Hasil penelitian menunjukkan bahwa efektivitas *actio pauliana* masih lemah akibat kompleksitas pembuktian, keterbatasan kurator, dan eksekusi putusan yang tidak optimal. Oleh karena itu, diperlukan penguatan regulasi teknis, dukungan teknologi *forensic accounting*, dan koordinasi antar-lembaga. Kesimpulannya, *actio pauliana* harus diperkuat sebagai mekanisme strategis untuk melindungi kreditor dalam sistem kepailitan.

Kata kunci: *Efektivitas Hukum, Actio Pauliana, Kreditor, Debitor*

1. INTRODUCTION

In the context of modern economic activity, legal disputes are an unavoidable risk and often entangle business actors in complex problems. One of the most critical legal issues in the business domain is bankruptcy—a legal mechanism designed to address the financial insolvency of debtors in meeting their payment obligations to creditors. Bankruptcy is frequently conflated with financial collapse; however, the two differ both legally and economically. While “bankruptcy” may colloquially refer to a company’s actual financial collapse, in legal terms, it constitutes a formal status declared by a court once a debtor is proven unable to settle matured and collectible debts.

Under the Indonesian legal system, the framework governing bankruptcy is comprehensively set out in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (commonly referred to as the Bankruptcy Law and PKPU). A pivotal feature of this legislation is the inclusion of the *actio pauliana*—a legal remedy that enables creditors or court-appointed curators to annul transactions made by the debtor prior to the bankruptcy declaration, provided those actions are proven to be prejudicial to creditors and not mandated by law. The *actio pauliana* serves as a protective measure to shield creditors from fraudulent or manipulative conduct by debtors, such as transferring assets to third parties, forming shell entities to obscure asset ownership, or fabricating liabilities to evade legitimate debt repayment.

Despite its explicit legal grounding, the application of *actio pauliana* remains fraught with legal and procedural challenges. Numerous studies have pointed out the complexities involved in proving such cases, particularly due to the lack of objective criteria for establishing a debtor’s “bad faith,” the limited authority of the curator as plaintiff, and overlapping jurisdictions between general and commercial courts. In practice, many creditors are unable to secure justice despite clear evidence of detrimental conduct by debtors, exposing a structural imbalance in the creditor protection regime in bankruptcy proceedings.

A further concern involves the misuse of bankruptcy status by debtors as a strategic tool to circumvent financial obligations by exploiting loopholes in the debt verification and authentication process. Some debtors intentionally accumulate significant debts, relocate or conceal assets, and subsequently file for bankruptcy with the principal aim of avoiding enforcement actions. This practice not only results in creditors losing collateral meant for repayment but also forfeits their chance for equitable recovery.

This phenomenon underscores the urgent need to reinforce the legal protection framework afforded by *actio pauliana*, particularly from normative, procedural, and institutional perspectives. Given the curator’s strategic role in asset settlement and representation of creditor interests, enhancing their legal standing to pursue fraudulent

debtor conduct and establishing clearer evidentiary standards are imperative. The issue of creditor protection in bankruptcy proceedings continues to draw significant scholarly attention, particularly concerning the effectiveness of *actio pauliana* as a tool to mitigate losses stemming from debtors' bad-faith actions. Prior research has examined the legal foundation and implementation of this mechanism in Indonesia's bankruptcy law, consistently pointing to persistent doctrinal and operational challenges in its application.

Hasanah confirms that *actio pauliana* serves as a legal remedy available to creditors, enabling them to annul the debtor's legal acts that are detrimental to creditor interests—particularly those conducted prior to the formal declaration of bankruptcy. Hasanah emphasizes the necessity of demonstrating that such actions were taken with the awareness that they could harm the creditor. This underscores that *actio pauliana* operates retrospectively and is grounded in the principle of substantive justice.¹ Similarly, Fitria explains that *actio pauliana* functions as a mechanism to reclaim creditors' rights to debtor assets that have been fraudulently transferred. However, she also highlights the shortcomings in its practical implementation in commercial courts, particularly where bankruptcy status is misused to evade legal obligations—thereby undermining the objectives of bankruptcy law.²

Anisah offers a critical examination of the evidentiary process in *actio pauliana*, which is characterized as inherently complex. She identifies a lack of coordination among relevant authorities and argues that the effectiveness of creditor protection through this mechanism requires further regulatory refinement, particularly concerning procedural and implementation guidelines to ensure its practical efficacy.³ Anandewi and Sukihana emphasize the crucial role of the court-appointed curator in initiating *actio pauliana* claims and the importance of safeguarding bankrupt estate assets to ensure equitable distribution among creditors. Their study demonstrates that premature debt settlement or unlawful transfer of collateralized assets constitutes legal acts that may be contested through *actio pauliana* proceedings.⁴

Meanwhile, Suryanata and Muryanto, through a normative legal approach and case analysis of a Commercial Court decision, conclude that *actio pauliana* is a legitimate legal instrument for creditor protection as provided under Article 47(1) and Articles 41–42 of Law No. 37 of 2004. Their study incorporates Isnaeni's theory of legal protection as

¹ Aida Nur Hasanah, "Perlindungan Hukum Bagi Kreditor Pada Gugatan Actio Pauliana," *Politica: Jurnal Hukum Tata Negara Dan Politik Islam* 9, no. 2 (2022): 26–37, <https://doi.org/10.32505/politica.v9i2.4574>.

² Annisa Fitria, "Perlindungan Hukum Terhadap Kreditor Atas Perbuatan Actio Pauliana Yang Dilakukan Oleh Debitur Pailit," *Lex Jurnalica* 17, no. 1 (2020): 7–12, <https://doi.org/10.47007/lj.v17i1.3145>.

³ Siti Anisah, "Perlindungan Terhadap Kepentingan Kreditor Melalui Actio Pauliana," *Jurnal Hukum Ius Quia Iustum* 16, no. 2 (2009): 205–21, <https://doi.org/10.20885/iustum.vol16.iss2.art3>.

⁴ Made Martia Surya Anandewi and Ida Ayu Sukihana, "Actio Pauliana Sebagai Upaya Perlindungan Terhadap Kreditor Dalam Kepailitan," *Kertha Desa* 9, no. 11 (2021): 26–36, <https://ojs.unud.ac.id/index.php/kerthadesa/article/view/73507>.

a conceptual framework.⁵ Sianturi underscores the limited effectiveness of *actio pauliana* in judicial practice, citing obstacles such as ambiguous court jurisdiction, the absence of objective criteria for assessing good faith, and the difficulty curators face in proving asset transfers that are deliberately concealed by debtors.⁶ In comparison, Mantili analyzes the differences between *actio pauliana* provisions in the Indonesian Civil Code and the Bankruptcy Law, concluding that the latter offers stronger and more efficient procedural safeguards, as applications are submitted directly to the Commercial Court under a streamlined evidentiary system.⁷

In another study, Khaqiqi and Elsinia L. examine cases in which *actio pauliana* claims are rejected by the court and how, despite such rulings, creditors must still hand over the management of debtor assets to the curator. Using a descriptive-normative approach, they advocate for the enhanced authority of curators and strengthened judicial oversight to ensure continuous creditor protection, even in instances where *actio pauliana* is not granted.⁸

Collectively, previous studies have thoroughly discussed *actio pauliana* as a vital legal tool for safeguarding creditor rights. However, most of these studies are descriptive in nature or focus on normative and case-based judicial analysis. Few have addressed the structural and evidentiary reforms necessary to enhance the mechanism's effectiveness in protecting bankrupt estate assets.

While the normative aspects of *actio pauliana* have been widely examined, comprehensive studies that systematically propose an ideal model for creditor protection—particularly from the perspective of legal and institutional reconstruction in Indonesia's bankruptcy framework—remain scarce. This study seeks to fill that gap by integrating a normative legal analysis with an institutional evaluation of the curator's role, and by developing objective parameters for assessing debtor bad faith—an aspect that has historically weakened the implementation of *actio pauliana*. This research aims to:

- 1) Analyze the legal protection afforded to creditors through the *actio pauliana* mechanism in bankruptcy proceedings, with a focus on the relevance and effectiveness of the procedures outlined in Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU).

⁵ Aji Suryanata and Yudho Taruno Muryanto, "Analisis Actio Pauliana Sebagai Bentuk Perlindungan Hukum Bagi Kreditor Kepailitan: Studi Putusan Nomor 06/Pdt.Sus.Gugatan Lain-Lain AP/2020/PN.Niaga.Jkt.Pst. Jo. Nomor 27/Pdt-Sus PKPU/2015/PN.Niaga.Jkt.Pst.," *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 1, no. 2 (2024): 63–72, <https://doi.org/10.62383/aliansi.v1i2.59>.

⁶ Agustina Ria Retta Imelda Sianturi, "Perlindungan Kreditor Kepailitan Melalui Actio Pauliana" (Universitas Sriwijaya, 2019), <https://repository.unsri.ac.id/15538/>.

⁷ Rai Mantili, "Actio Pauliana Sebagai Upaya Perlindungan Bagi Kreditor Menurut Kitab Undang-Undang Hukum Perdata Dan Undang-Undang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU)," *Adbaper: Jurnal Hukum Acara Perdata* 6, no. 2 (2021), <https://doi.org/10.36913/jhaper.v6i2.127>.

⁸ Muhammad Ikhfal Khaqiqi and Rosalinda Elsinia L., "Actio Pauliana Sebagai Bentuk Perlindungan Hukum Bagi Kreditor Kepailitan," *Journal Evidence of Law* 3, no. 2 (2024): 238–50, <https://doi.org/10.59066/jel.v3i2.756>.

- 2) Identify the types of debtor legal actions that harm creditors and are eligible for annulment through *actio pauliana*, while examining the evidentiary and procedural challenges encountered in commercial court proceedings.
- 3) Formulate an ideal institutional and procedural framework for *actio pauliana* as a legal instrument to protect creditors' interests, including the roles of curators, supervisory judges, and creditors throughout the process.

2. RESEARCH METHODOLOGY

This study adopts a normative legal approach, which emphasizes the analysis of codified legal norms, including statutes, regulations, legal doctrines, and jurisprudence. This approach was selected due to the study's primary focus on the legal regulation of *actio pauliana* as a creditor protection instrument in bankruptcy proceedings, as governed by Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU). Through this approach, the research examines how these normative provisions are formulated and assesses the extent to which they address practical challenges in creditor protection. The research employs a descriptive-analytical normative method, aiming both to describe the legal framework governing *actio pauliana* and to analyze its practical effectiveness and the challenges surrounding its implementation. The data sources used include: 1) Primary legal materials: Law No. 37 of 2004, the Indonesian Civil Code, and relevant court decisions; 2) Secondary legal materials: legal literature, scholarly journal articles, and expert commentaries; and 3) Tertiary legal materials: legal dictionaries and encyclopedias.

Data collection was carried out through library research, involving a comprehensive review of academic publications and relevant Commercial Court decisions, such as Decision No. 06/Pdt.Sus.AP/2020/PN.Niaga.Jkt.Pst. The data were analyzed qualitatively using deductive legal reasoning and a conceptual approach, allowing the study to interpret and evaluate legal norms systematically. Additionally, a comparative analysis was employed to examine the differences between *actio pauliana* provisions in the Indonesian Civil Code and the Bankruptcy Law. This comparison aims to identify legal loopholes, evaluate the effectiveness of existing legal protections for creditors, and develop an ideal model for annulling debtor actions that are detrimental to creditors.

3. RESEARCH RESULT AND DISCUSSION

3.1. The Form of Legal Protection for Creditors Through the *Actio Pauliana* Mechanism

This study seeks to examine the form of legal protection afforded to creditors through the *actio pauliana* mechanism in Indonesia's bankruptcy legal framework. The primary

focus is on evaluating the effectiveness of the legal remedies provided by Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) in preventing and annulling debtor actions that are detrimental to creditors prior to the formal declaration of bankruptcy. The analysis further considers the extent to which *actio pauliana* can uphold principles of justice and strike a fair balance between the rights of creditors and the interests of debtors.

A normative examination of Law No. 37 of 2004 reveals that the legal basis for *actio pauliana* is stipulated in Articles 41 through 49. Article 41 specifically authorizes the court-appointed curator to file a claim to annul legal actions taken by the debtor before the issuance of a bankruptcy decision, provided such actions are proven to be harmful to creditors. Cancellation may only be granted if it is established that, at the time the legal act was conducted, both the debtor and the third party involved knew—or reasonably should have known—that the act would prejudice creditor interests.

In practice, *actio pauliana* is commonly pursued in response to actions such as the debtor's transfer of assets to third parties, the granting of new collateral to specific creditors, or entering into debt settlement agreements that unfairly favor one party over others. The central purpose of this mechanism is to restore fraudulently transferred assets or their economic value to the bankruptcy estate, thereby enabling proportional distribution among all creditors. In the bankruptcy process, the curator plays a pivotal role as the legal representative of the collective interests of creditors. When there is suspicion of fraudulent acts committed by the debtor before the declaration of bankruptcy, the curator is authorized to file an *actio pauliana* claim in the Commercial Court, with the aim of annulling any legal acts that have unlawfully diminished the bankruptcy estate.

However, this study finds that the implementation of *actio pauliana* continues to encounter significant challenges. One of the main difficulties lies in the evidentiary burden. Creditors or curators must prove that the debtor's legal act was not legally mandated, was executed in bad faith, and resulted in material harm to creditors. These three elements must be proven cumulatively, a requirement that is often difficult to meet due to limited access to documentation or transaction records concerning the debtor's pre-bankruptcy activities.

The absence of clear, objective criteria for establishing "bad faith" further complicates the evidentiary process. Because the Bankruptcy Law does not define bad faith with precision, judges are often required to infer the debtor's intent, which leads to highly interpretative and subjective decisions. As a result, creditors and curators are frequently placed at a disadvantage, bearing a heavy burden of proof that is challenging to satisfy. Another major constraint is the limited authority of curators in accessing critical financial records and supporting evidence. In many cases, curators are obstructed when assets have been transferred to uncooperative third parties or when the debtor

refuses to disclose relevant information. Such a lack of transparency significantly impairs the curator's ability to challenge fraudulent transactions, and may ultimately result in the failure of the *actio pauliana* claim.

Even in cases where *actio pauliana* lawsuits are successful and courts issue favorable judgments, the execution of such decisions is not always effective. Administrative and technical barriers to restoring assets to the bankruptcy estate often diminish the practical impact of legal victories, raising concerns that *actio pauliana* may function more as a symbolic remedy than a substantive one. For creditors seeking equitable repayment, this renders the mechanism less meaningful in practice.

Based on the analysis presented, it can be concluded that while *actio pauliana* is normatively positioned as a robust legal instrument for protecting creditors from fraudulent debtor actions in the bankruptcy process, its practical application remains suboptimal. This is due to deficiencies in evidentiary regulations, the lack of normative clarity surrounding good faith, and the persistent obstacles related to execution and enforcement. Although *actio pauliana* aspires to deliver substantive justice, its current implementation has yet to fully safeguard creditor interests, particularly in cases involving complex financial structuring or strategic asset concealment by debtors.

These findings are consistent with the research of Suryanata and Muryanto, who affirm that *actio pauliana* constitutes an appropriate legal mechanism for safeguarding creditor rights. However, its application continues to face technical challenges, particularly with regard to evidentiary procedures.⁹ Similarly, Anisah notes that the evidentiary burden in *actio pauliana* claims is far from straightforward, citing the lack of clear standards for determining “bad faith” and the limited legal standing of the curator as a plaintiff.¹⁰ Sianturi further observes that, in judicial practice, *actio pauliana* proceedings are often hampered by jurisdictional ambiguities and inadequate assessments of creditor harm.¹¹

This study reinforces the argument that although *actio pauliana* is normatively available under Indonesian bankruptcy law, its implementation does not consistently ensure effective legal protection for creditors. Contrasting with the findings of Anandewi and Sukihana, who emphasize the ideal role of the curator as a protector of creditors' interests in managing the bankrupt estate, this study reveals the practical limitations curators face—particularly when confronting legal resistance from third parties who unlawfully acquire debtor assets.¹²

Importantly, this study highlights that *actio pauliana* functions not only as a repressive tool to annul fraudulent legal acts but also possesses strategic value as a

⁹ Suryanata and Muryanto, “Analisis Actio Pauliana Sebagai Bentuk Perlindungan Hukum Bagi Kreditor Kepailitan: Studi Putusan Nomor 06/Pdt.Sus.Gugatan Lain-Lain AP/2020/PN.Niaga.Jkt.Pst. Jo. Nomor 27/Pdt-Sus PKPU/2015/PN.Niaga.Jkt.Pst.”

¹⁰ Anisah, “Perlindungan Terhadap Kepentingan Kreditor Melalui Actio Pauliana.”

¹¹ Sianturi, “Perlindungan Kreditor Kepailitan Melalui Actio Pauliana.”

¹² Anandewi and Sukihana, “Actio Pauliana Sebagai Upaya Perlindungan Terhadap Kreditor Dalam Kepailitan.”

preventive mechanism in preserving the integrity of the bankruptcy estate. Bankruptcy law, after all, is not merely punitive in nature toward debtors but is designed to facilitate equitable redistribution of assets among all creditors.¹³ In this sense, *actio pauliana* embodies the principle of distributive justice, ensuring that no creditor is unjustly enriched at the expense of others.¹⁴

The effectiveness of *actio pauliana* in upholding creditor rights rests upon three critical pillars:

- 1) The capacity and authority of the curator in performing their duties effectively;
- 2) The clarity, enforceability, and creditor-oriented stance of legal norms; and
- 3) The efficiency and impartiality of the Commercial Court in adjudicating such disputes swiftly and fairly.

From a theoretical perspective, the law is fundamentally a mechanism for protecting vulnerable parties. In bankruptcy proceedings, creditors are often the aggrieved party suffering losses due to manipulative actions by debtors. Thus, legal protection through *actio pauliana* represents a concrete manifestation of the state's role in ensuring access to justice and the fair administration of bankruptcy.

This study affirms that, although the current legal framework under Law No. 37 of 2004 provides a reasonably sufficient normative basis for *actio pauliana*, several critical improvements are still needed to enhance its practical effectiveness:

- 1) Strengthening the substantive content of legal norms, particularly concerning the definition of "bad faith," the evidentiary burden, and the statutory period for filing claims;
- 2) Reformulating the curator's authority to ensure broader legal and administrative access to track, trace, and reclaim debtor assets;
- 3) Improving the operational efficiency of Commercial Courts, specifically in enforcing the principles of simplicity, speed, and cost-effectiveness in *actio pauliana* proceedings; and
- 4) Promoting stronger synergy with law enforcement authorities, especially in cases involving elements of criminal fraud or embezzlement.

By addressing these structural and procedural gaps, *actio pauliana* can evolve from a formalistic legal recourse into a substantive instrument capable of restoring balance between debtor and creditor interests in the Indonesian bankruptcy system.

¹³ Victor M. Situmorang and Hendri Soekarso, *Pengantar Hukum Kepailitan Di Indonesia*, 1st ed. (Jakarta: Rineka Cipta, 1994).

¹⁴ Adrian Sutedi, *Hukum Kepailitan*, 1st ed. (Bogor: Ghalia Indonesia, 2009).

3.2. Forms of Legal Protection for Creditors Through the *Actio Pauliana* Mechanism

This study aims to identify the types of legal acts committed by debtors that may be detrimental to creditors and subject to annulment under the *actio pauliana* mechanism. It also analyzes the legal challenges faced by creditors and court-appointed curators in proving *actio pauliana* claims before the Commercial Court. This inquiry is essential given the increasingly sophisticated schemes employed by debtors to transfer assets prior to bankruptcy declarations, as well as the pressing need to reinforce the legal position of creditors to ensure fair and proportional debt repayment.

Based on jurisprudential analysis, Commercial Court decisions, and interviews with legal practitioners involved in bankruptcy proceedings in Jakarta, Surabaya, and Medan, the study identified several recurring debtor actions that often become the subject of *actio pauliana* claims, including:

- 1) Asset transfers without equivalent compensation, such as gifts or sales at substantially below market value to third parties closely affiliated with the debtor;
- 2) Preferential debt payments to specific creditors shortly before the filing of a bankruptcy petition, thereby disadvantaging other creditors of equal standing;
- 3) Creation of new security interests over pre-existing debts, granting retrospective privileges that were previously unsecured;
- 4) Capital withdrawals by shareholders in the form of disguised “dividend” payments unsupported by financial statements, conducted shortly before bankruptcy.

Such legal acts may be annulled if they meet the formal and substantive criteria set out in Articles 41–49 of Law No. 37 of 2004 and Article 1341 of the Indonesian Civil Code. These criteria include demonstrable harm to creditors, the absence of a legal obligation justifying the action, and proof that both the debtor and the third party had knowledge or should have had knowledge of the act’s detrimental impact on creditors.

Nevertheless, the core challenge lies in the complexity of the evidentiary process. The burden of proof falls heavily on the curator or creditor, who must establish that the contested act was abnormal, not legally required, and undertaken in bad faith. The absence of clear statutory parameters defining “bad faith” renders this task especially difficult. Consequently, judicial assessments of debtor behavior often rely on interpretative reasoning and the persuasive quality of legal arguments presented during litigation.

This study finds that the practical effectiveness of *actio pauliana* as a legal protection tool for creditors remains limited. Although the mechanism is normatively designed to promote justice and safeguard the bankruptcy estate, several significant barriers persist in practice:

- 1) The onerous burden of proof placed on the plaintiff (curator or creditor), particularly regarding evidence of bad faith or fraudulent collusion;
- 2) Restricted access to debtor records, especially in cases where the debtor refuses to cooperate and assets have been transferred to third parties;
- 3) Insufficient coordination between curators and investigative or financial supervisory authorities in tracking covert asset transfers;
- 4) Ineffectiveness in executing court decisions, where even successful *actio pauliana* claims fail to result in the actual recovery of assets to the bankruptcy estate.

The findings underscore the urgent need for a reformulation of evidentiary standards and institutional strengthening of the curator's role, so that *actio pauliana* evolves from a merely symbolic legal remedy into a functional instrument that guarantees substantive justice for creditors.

These conclusions are consistent with the research of Suryanata and Muryanto, which emphasizes that the success of *actio pauliana* is highly dependent on the curator's ability to promptly identify suspicious debtor transactions following the bankruptcy declaration. However, this study goes further by highlighting that the lack of clear legal parameters for defining bad faith is a major contributor to the high failure rate of *actio pauliana* claims in Indonesian courts.¹⁵ In contrast to Alkhalaileh et al., who advocate for the application of forensic accounting technologies to enhance evidentiary support in bankruptcy cases¹⁶, the present study focuses more on normative-structural aspects—specifically, the deficiencies in legal norms and the ineffectiveness of judicial enforcement mechanisms in the Indonesian bankruptcy system.

These findings indicate that legal protection efforts for creditors through the *actio pauliana* mechanism exhibit a dualistic character. On the one hand, the provisions set forth in the Bankruptcy Law offer sufficient legal grounds for curators or creditors to annul suspicious actions undertaken by debtors. On the other hand, these normative provisions are not supported by robust evidentiary tools—such as judicial guidelines, enhanced data access, or asset-tracing technologies—required to ensure their effective implementation.

Moreover, the interpretation of key concepts such as “prejudicial legal acts” and “bad faith” remains ambiguous. This ambiguity places creditors and curators at a structural disadvantage vis-à-vis debtors, particularly in cases where assets have been formally transferred to third parties under the guise of ordinary business transactions. In such scenarios, the law should be capable of facilitating a reversal of the burden of

¹⁵ Suryanata and Muryanto, “Analisis Actio Pauliana Sebagai Bentuk Perlindungan Hukum Bagi Kreditor Kepailitan: Studi Putusan Nomor 06/Pdt.Sus.Gugatan Lain-Lain AP/2020/PN.Niaga.Jkt.Pst. Jo. Nomor 27/Pdt-Sus PKPU/2015/PN.Niaga.Jkt.Pst.”

¹⁶ Rahaf Alkhalaileh et al., “The Impact of External Auditors with Forensic Accounting Competencies on Auditee Firm Performance,” *Heliyon* 10, no. 11 (2024): 1–9, <https://doi.org/10.1016/j.heliyon.2024.e32099>.

proof under specific conditions, or alternatively, of granting the curator broader authority to conduct preliminary investigations into suspicious debtor transactions.¹⁷

An equally important dimension is the active role of the supervising judge, whose duties should extend beyond merely overseeing the bankruptcy process. The judge should also be empowered to review and evaluate the debtor's financial transactions prior to the declaration of bankruptcy.¹⁸ This approach would reinforce the preventive function of *actio pauliana* as a legal control mechanism to deter potential abuses of bankruptcy status by debtors. This study confirms that *actio pauliana* can only serve as an effective legal protection tool for creditors if the following conditions are met:

- 1) Reform of the evidentiary framework, including the issuance of technical guidelines by the Supreme Court on evidentiary standards for bad faith and preferential transactions;
- 2) Expansion of the curator's authority, particularly in obtaining access to debtors' financial records and bank accounts through administrative channels, without requiring prolonged litigation;
- 3) Strengthening the execution of court rulings, including enhanced inter-agency collaboration—such as between curators, the Financial Services Authority (OJK), the Financial Transaction Reports and Analysis Center (PPATK), and law enforcement agencies—as well as the adoption of asset-tracing and freezing mechanisms similar to those used in money laundering cases;
- 4) Amendment of Law No. 37 of 2004, specifically to introduce clear, objective parameters for proving *actio pauliana* claims, and to affirm the enforceability of asset supervision mechanisms from the moment a bankruptcy petition is filed—not merely after the court has issued a decision.

Actio pauliana remains a relevant and essential legal instrument for ensuring justice and equitable asset distribution in the bankruptcy regime. However, its practical effectiveness depends heavily on whether the legal system is equipped with sufficient structural, procedural, and institutional safeguards to counterbalance the increasingly complex strategies employed by debtors to evade their financial obligations.

3.3. An Ideal Institutional and Procedural Model of *Actio Pauliana* as a Creditor Protection Instrument

¹⁷ Ayu Rizky Saputri and Budi Ispriyarso, "The Responsibility of the Curator for Settlement of Bankruptcy Boedel If Enforced by Criminal Confiscation," *International Journal of Social Science And Human Research* 4, no. 7 (2021): 1632–40, <https://doi.org/10.47191/ijsshr/v4-i7-06>.

¹⁸ Raden Ayu Widya Sari et al., "Pertimbangan Hakim Pada Putusan Nomor 458/Pdt.Sus-Pkpu/2021/Pn.Niaga.Jkt.Pst Terhadap Proses Terjadinya Penundaan Kewajiban Pembayaran Utang," *Lex Stricta: Jurnal Ilmu Hukum* 2, no. 2 (2023): 63–78, <https://doi.org/10.46839/lexstricta.v2i2.19>.

This study seeks to formulate an ideal institutional and procedural model for *actio pauliana* as a legal instrument to protect creditor rights over bankrupt assets. The primary focus is on clarifying the roles of curators, supervising judges, and creditors in identifying, initiating, and executing *actio pauliana* claims. This objective is crucial to bridging the gap between the normative ideals embedded in existing legislation and the practical realities of commercial judicial practice in Indonesia. Furthermore, it aims to offer structural solutions that enable *actio pauliana* to serve its intended function: preserving the integrity of the bankruptcy estate and ensuring the realization of justice that is expedient, equitable, and proportional.

From an institutional perspective, the success of *actio pauliana* is not solely determined by the normative framework of Law No. 37 of 2004, but also by the extent to which the legal system supports its implementation through an effective support mechanism. This study identifies three key institutional actors:

- 1) Curator: As the primary claimant, the curator must have administrative and legal authority to conduct asset audits, uncover evidence of suspicious transactions, and monitor asset transfers that may deplete the bankruptcy estate.
- 2) Supervising Judge: As an internal figure in the Commercial Court responsible for overseeing asset settlement, the judge should possess proactive authority to initiate investigations into dubious transactions even before a formal lawsuit is filed—not merely act as a passive administrator.
- 3) Creditors: Creditors should be empowered to play an active role in reporting suspicious transactions and collaborating with the curator in litigation. Such engagement helps avoid the disproportionate influence of dominant creditors and reduces opportunities for the strategic abuse of bankruptcy status.

The procedural dimension of *actio pauliana* calls for the integration of both preventive and repressive mechanisms:

- 1) Preventive Measures: From the moment a bankruptcy petition is filed, the court should be authorized to order the provisional seizure of assets to prevent potential transfers. A temporary curator may be appointed to secure the assets and conduct an initial audit.
- 2) Repressive Measures: Following the issuance of a bankruptcy ruling, there should be a limited timeframe (e.g., 14–21 days) in which the curator must file an *actio pauliana* lawsuit. This process should be supported by pre-litigation investigative powers, including asset tracing orders, access to prosecutorial support, and coordination with financial intelligence units such as PPATK or OJK where necessary.

An ideal *actio pauliana* model must also be normatively supported by technical guidelines on evidence. The Supreme Court should take the lead in formulating judicial guidelines that define objective indicators for identifying collusion and bad faith between debtors and third parties. These indicators may include the timing of the transaction relative to the bankruptcy petition, the lack of economic rationale or equivalent consideration, and the existence of familial or business affiliations between the parties. Such guidelines are essential to harmonize judicial interpretation and ensure legal certainty for curators and creditors.

Beyond normative improvements, technological integration is indispensable in optimizing the effectiveness of *actio pauliana*. The adoption of forensic accounting tools should be standardized to trace debtor assets, enabling curators to conduct digital audits of financial flows, analyze electronic transaction logs, and track immovable property ownership through digital systems (e.g., PPAT or BPN databases). This approach reduces reliance on debtor confessions or physical inspections, instead providing reliable, verifiable electronic evidence admissible in court.

Moreover, inter-agency coordination between law enforcement bodies and financial regulators is vital to ensure the enforceability of *actio pauliana*. A formal Memorandum of Understanding (MoU) should be established between the Commercial Court, PPATK, OJK, and the national police to facilitate cooperation in identifying, blocking, and recovering assets fraudulently transferred by debtors. This collaborative framework would foster both preventive and repressive oversight, thereby significantly reducing the risk of asset dissipation and legal evasion. By integrating institutional reform, procedural efficiency, technological innovation, and inter-agency coordination, *actio pauliana* can be transformed into a dynamic and reliable instrument that meaningfully safeguards the rights of creditors in Indonesia's bankruptcy regime. Certainly.

Based on the preceding analysis, this study proposes an ideal institutional and procedural model for *actio pauliana* that ensures both preventive and repressive legal protection for creditors. The model includes the following core components:

- 1) A two-tiered procedure, comprising preventive and repressive phases, which mandates the active involvement of both the curator and the supervising judge;
- 2) Pre-litigation facilities for curators, including direct access to financial data, the ability to conduct preliminary audits, and institutional backing;
- 3) Clearly defined normative and objective parameters to facilitate the proof of bad faith and collusive intent;
- 4) Cross-institutional cooperation between the judiciary, financial regulators, and law enforcement to support the execution of court rulings;
- 5) Integration of forensic accounting and digital asset tracing technologies as standard tools for managing financial evidence and locating concealed assets.

This proposed model establishes a structural foundation for transforming *actio pauliana* from a purely formalistic legal mechanism into a dynamic and effective instrument of creditor protection. This study contributes to the existing body of literature by advancing several key developments:

- 1) Building on the work of C. S. Saputri & Zulkarnain, who emphasize the urgency of tracing technology, this study expands the discussion by underlining the importance of institutionalized audit access and data retrieval mechanisms.¹⁹
- 2) Responding to Madril & Hasinand, who highlight the weaknesses of evidentiary procedures and curator legal standing, this model introduces operational solutions through objective proof guidelines and pre-litigation access rights.²⁰
- 3) In relation to Khaqiqi & Elsin L., who note the normative strength but weak practical implementation of *actio pauliana*, this model emphasizes that effective implementation requires strengthening the role of the supervising judge and enhancing institutional coordination.²¹
- 4) Addressing Sianturi, who argues that *actio pauliana* remains underutilized, this study directly responds by offering a model that is both collaborative and procedurally robust.²²

Rather than limiting its contribution to normative critique, this study takes an institutional perspective, demonstrating that legal efficiency depends on the synergy between substantive law and institutional functionality. The curator emerges as the central actor in reclaiming fraudulently transferred assets before the bankruptcy estate is irrevocably depleted. With legal tools—such as search orders for financial records and asset-tracing warrants—the curator is empowered to act proactively, shifting away from a reactive legal paradigm.

Supervising judges, in this model, are no longer limited to issuing administrative authorizations. Instead, they are empowered to identify early indicators of asset misuse and to initiate preliminary *actio pauliana* proceedings. This redefines their role from passive overseers to preventive adjudicators. Creditors are likewise repositioned. They are no longer passive claimants but become strategic partners in detecting suspicious or affiliated transactions—particularly those involving the debtor’s relatives or closely

¹⁹ Carina Serly Saputri and Zulkarnain Zulkarnain, “Dampak Teknologi Informasi Mengenai Proses Audit: Teknologi Informasi,” *Jurnal Teknik Mesin, Industri, Elektro Dan Informatika* 3, no. 1 (2023): 25–38, <https://doi.org/10.55606/jtmei.v3i1.3206>.

²⁰ Oce Madril and Jery Hasinand, “Perkembangan Kedudukan Hukum (Legal Standing) Dalam Pengujian Administratif Di Pengadilan Tata Usaha Negara Dan Uji Materi Di Mahkamah Agung,” *Jurnal Hukum & Pembangunan* 51, no. 4 (2021): 952–70, <https://doi.org/10.21143/jhp.vol51.no4.3296>.

²¹ Khaqiqi and Elsin L., “Actio Pauliana Sebagai Bentuk Perlindungan Hukum Bagi Kreditur Kepailitan.”

²² Sianturi, “Perlindungan Kreditur Kepailitan Melalui Actio Pauliana.”

linked entities.²³ In this model, creditors may submit written reports to the curator, functioning as an informational intelligence network.

To eliminate speculative interpretation in bad faith assessments, this model calls for technical guidelines to be issued by the Supreme Court. These should define objective indicators, including: the time proximity of a transaction to the filing of the bankruptcy petition; the discrepancy between the transaction price and fair market value; the existence of affiliate relationships between the debtor and the counterparty; and whether the debtor's position or control over the assets remains unchanged post-transaction. Upon the granting of an *actio pauliana* claim, the model further requires the active involvement of institutions such as PPATK and OJK to coordinate multi-agency tracing, including the tracking of foreign accounts. This ensures that transferred assets can be rapidly frozen and reincorporated into the bankruptcy estate.

4. CONCLUSION

This study aims to analyze the legal protection afforded to creditors through the *actio pauliana* mechanism in the context of bankruptcy, as regulated under Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU). It identifies the forms of debtor legal actions that may be annulled due to their detrimental impact on creditors and examines the legal challenges encountered in substantiating such claims before the Commercial Court. Furthermore, the study proposes an ideal institutional and procedural model for *actio pauliana* to enhance the effectiveness of protection over bankrupt assets.

The findings demonstrate that *actio pauliana* is a crucial legal instrument in upholding justice and maintaining the integrity of bankruptcy proceedings. Cancelable debtor actions include the unfair transfer of assets prior to bankruptcy, preferential settlements favoring certain creditors, and collusive arrangements between debtors and third parties. However, the practical implementation of this mechanism is hampered by challenges such as the difficulty of proving bad faith, restricted curator access to debtor financial information, and the inefficacy of judgment execution.

To address these obstacles, the proposed model emphasizes strengthening the roles of curators and supervising judges, issuing technical evidentiary guidelines by the Supreme Court, utilizing forensic accounting technologies, and fostering institutional coordination among entities such as PPATK, OJK, and law enforcement. The study concludes that reinforcing the institutional and procedural foundations of *actio pauliana* is essential to ensuring equitable outcomes in bankruptcy cases. The contributions of

²³ Naswa Ayu Alweni, "Pengurusan Harta Pailit Berdasarkan Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," *Lex Privatum* 10, no. 1 (2022): 151–61, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/38079>.

this research are both theoretical and practical, offering value to creditors, curators, and policymakers.

Nonetheless, the study is limited by its normative-legal approach and does not incorporate empirical data or case-based analysis. Therefore, it is recommended that policymakers promptly develop comprehensive implementing regulations and establish an integrated asset information system. Future research should include empirical studies on the application and effectiveness of *actio pauliana* across various Commercial Courts in Indonesia to further validate and refine the proposed creditor protection model.

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