

Legal Protection for Third Parties Against Actio Pauliana Lawsuits in Bankruptcy Cases in Indonesia

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Abstract

This research pertains to the legal protection of third parties against lawsuits of Actio Pauliana resulting from losses due to the annulment of legal acts regarding debt payment transfer transactions settled by PT. SINAR MAS MULTIFINANCE. However, it turned out that the assets already paid entered into the bankruptcy estate. The author of this research employs a normative juridical method utilizing the Civil Code and Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations connected with the case under examination, with the aim of understanding the legal protection of third parties as bona fide purchasers according to the legal sources used to analyze Case Number 02/Pdt.Sus/Actio Pauliana/2017/PN.Niaga.Jkt.Pst. The research findings indicate that the resolution has fulfilled the elements within the provisions to settle Actio Pauliana cases in bankruptcy scenarios; however, the execution of the bankruptcy estate cannot be carried out by the commercial court as it falls within the jurisdiction of the District Court. The third-party fulfills the element of being a bona fide purchaser by making payment according to market value, unaware that the purchased goods were assets of the bankruptcy estate. Therefore, legal remedies that can be pursued include filing for Cassation and Judicial Review (PK). Suppose the third party fails in these legal processes. In that case, compensation shall be awarded in accordance with Article 49 paragraph (4) of Law Number 37 of 2004 concerning bankruptcy and PKPU becoming part of the creditors of PT. SUMBER URIP SEJATI UTAMA as concurrent creditors.

1. Introduction

Business operators, in fulfilling the mandate of the Constitution, acknowledge the possibility of economic supporting actors encountering crises. However, on the other hand, management plays a crucial role in the sustainability of the company itself. This is because there are instances where a company does not perform well due to the incompetence of management in devising business strategy planning [1], one of them being bankruptcy. Bankruptcy is a condition in which a debtor is unable to make payments on debts owed to its creditors. Bankruptcy can occur when the debtor company is experiencing setbacks that result in difficulties in repaying the debts it owes. Bankruptcy is one of the commercial resolution efforts aimed at resolving urgent debt issues faced by the debtor. Bankruptcy, as determined by a court decision, has legal consequences. Legal consequences of bankruptcy declared by the commercial court include total seizure, commonly referred to as general attachment, of all assets belonging to the bankrupt debtor, whether currently existing or arising in the future [2]. The curator will conduct the administration and liquidation of bankruptcy assets in accordance with the order of the commercial court, overseen by a supervising judge, with the objective of liquidating the bankrupt estate in order to facilitate the repayment of debts owed by the bankrupt debtor to its creditors [3].

The bankrupt estate encompasses all assets of the bankrupt debtor, whether acquired prior to the declaration of bankruptcy, at the time of the bankruptcy declaration, or subsequent to the declaration of bankruptcy. A bankruptcy order may result in a general seizure of the debtor's assets, effectively freezing the debtor's wealth. The legal basis for the general seizure in bankruptcy is Articles 1131 and 1132 of the Civil Code, which render all of the debtor's assets liable for any agreements entered into by the debtor [4]. The safeguarding of bankruptcy assets is the primary duty imposed upon the curator in bankruptcy proceedings. Safeguarding bankruptcy assets involves actions whereby the curator endeavors, within the bounds of the law, to take control over all documents, money, jewelry, securities,

and other valuable instruments pertaining to the bankrupt estate [5]. Actio Pauliana is an effort undertaken to preserve the bankrupt estate, as stipulated in Article 41 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU:

"For the benefit of the bankrupt assets, the court may be petitioned for the annulment of all legal acts of the debtor declared bankrupt that prejudice the interests of creditors, conducted prior to the pronouncement of the bankruptcy declaration." [6].

This provision grants the right to reclaim bankruptcy assets that have fallen under the ownership of third parties with the aim of annulling legal acts that have occurred, thereby preventing the debtor from engaging in actions detrimental to the interests of creditors. One of the actions permitted by bankruptcy law as a means of creditor protection is Actio Pauliana. Actio Pauliana is already regulated in Article 1341 of the Civil Code but is reintegrated through adoption in Article 41 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU, with the intention of avoiding losses due to irresponsible actions by the debtor. Creditors and curators can undertake this effort, provided that it can be proven that at the time of the act, all parties involved were aware of the potential loss to their creditors [7]. Therefore, such transactions conducted prior to the bankruptcy declaration can be determined and deemed detrimental to creditors.

The regulation of Actio Pauliana in Article 47 of Law Number 37 of 2004 concerning Bankruptcy and PKPU specifies that it is the curator who is authorized to file Actio Pauliana after the Commercial Court pronounces the bankruptcy declaration. This differs from the provision in Article 1341 of the Civil Code, which allows any creditor to petition for the annulment of all acts not required by the debtor before the District Court [8]. The Actio Pauliana lawsuit in the bankruptcy case of PT. Sumber Urip Sejati Utama involving a third party, PT. Sinar Mas Multifinance, with Case Number 02/Pdt.sus/Actio Pauliana/2017/PN.Niaga.Jkt.Pst. In this case, the curator team filed a lawsuit on the grounds of the occurrence of a loan agreement made by the debtor with Bank ICBC Indonesia on November 26, 2015. Then, Bank ICBC Indonesia engaged in a legal act in the form of a sale and purchase agreement with PT. Bank Sinar Mas concerning the collateral of debt, namely the assets of PT. Sumber Urip Sejati Utama, on December 21, 2015. This legal action was taken approximately 1 (one) month before the bankruptcy decision was announced.

2. Methodology

The method employed by the author in conducting this thesis research is the juridical normative research method. Juridical normative research involves analyzing data through the collection of legal sources, including primary sources such as the Civil Code and Law No. 37 of 2004 concerning bankruptcy and PKPU, which serve as the main references for this study, as well as examining other legal sources such as secondary and tertiary sources that are relevant to the issues studied by the author. This explains that juridical normative research will use an approach to legislation (statute approach) as the primary legal source in this study. This method emphasizes textual research on legal texts. Additionally, as normative legal research, this study encompasses research on legal principles, synchronization of legislation both vertically and horizontally, legal systematics, inventory of positive law, and efforts to discover inconcrete law. The author examines legal materials obtained from literature studies using the descriptive analysis method. This method involves a deeper understanding of the law and several related laws, which are then linked to theories and applications regarding Actio Pauliana lawsuits concerning the issues studied by the author. This method aligns with the main topic of the author's research as it aims to elucidate the theories of justice and legal certainty in Actio Pauliana lawsuits in bankruptcy cases in Indonesia.

3. Results and discussions

Bankruptcy is a loss resulting from a debtor's negligence in carrying out business activities, leading to an inability to repay debts. Bankruptcy literally stems from the word "pailit," which denotes a condition wherein the debtor cannot fulfill its debts, influenced by financial management difficulties or instability

within the debtor company. Meanwhile, bankruptcy is a court decision resulting in the seizure (general attachment) of the debtor's assets, applicable to both existing and future assets [9]. Principles are the essence or substance of law that gives rise to the existence and reality of a particular legal system. The principles of bankruptcy law cannot be detached from the principles existing within civil law in Indonesia, as bankruptcy law constitutes a subsystem of norms originating from civil law itself. In the general explanation provided within the Bankruptcy and Postponement of Debt Payment Obligation Law (UU K-PPU), the principles of bankruptcy include [10]:

1. The principle of balance

The principle of prevention against abuse of bankruptcy institutions and arrangements by debtors or creditors with malicious intent. It also protects debtors or creditors affected by the actions of debtors and creditors with malicious intent by upholding justice and prioritizing their interests while considering important factors to create debt settlement based on principles of justice, transparency, and effectiveness.

2. The principle of business continuity

The principle that allows a bankrupt company to continue its business activities is that a bankruptcy petition can only be filed by creditors against insolvent debtors, those who fail to make payments to the majority of creditors.

3. The principle of justice

The continuity of the bankruptcy resolution process needs to be based on a sense of justice, prioritizing the interests of the parties involved in the bankruptcy resolution process. This principle serves as a preventive measure against creditor abuse without considering other creditors within a bankrupt company.

4. The principle of integrity

The principle of integrity explains that the formal legal system and material law are considered cohesive units originating from the civil law system, and the civil procedural law system is recognized nationally.

3.1. Parties in Bankruptcy

In the phenomenon of bankruptcy, the parties involved in bankruptcy proceedings can be involved due to their interests in the bankrupt company. The parties with interests in the bankruptcy process include Creditors, Debtors, Curators, and Supervisory Judges. These parties will be explained as follows:

- a. Creditors

Creditors are individuals or groups who enter into debt agreements by providing a sum of money and thereby obtain the subjective right to demand payment for debtor claims, as well as the right to demand payment from debtor assets. Creditors have subjective rights, and to protect these rights, the Bankruptcy Law grants them the right to file a bankruptcy petition provided that the specified requirements are met. In bankruptcy, there are three types of creditors, such as:

1. Preferential Creditors

Preferential creditors are creditors whose debt repayment rights are prioritized over other creditors. This pertains to the position of preferential creditors in bankruptcy. Examples include Employee salaries and Taxes.

2. Secured Creditors

Secured creditors are creditors who have collateral rights over the debtor's assets. These creditors have the right to act independently, which often results in them being minimally or not affected by the consequences of the bankruptcy declaration itself. This means that this type of creditor can execute without hindrance with the seized bankrupt assets because their assets are separated from the debtor's bankrupt assets. Examples: Loan Providers such as banks.

3. Concurrent Creditors

Concurrent creditors are creditors who are not granted rights to debt repayment claims because other creditors are prioritized in the bankruptcy process. Therefore,

concurrent creditors are not guaranteed to receive their debts when a company undergoes bankruptcy proceedings. Examples: First Travel customers.

b. Debtors

“Debtors are individuals who have debts arising from agreements or laws, the repayment of which can be demanded before a court.” [13]. Debtors are parties who owe debts to creditors. Debtors can be declared bankrupt if they meet the requirements stipulated in the Bankruptcy Law, including [14] having 2 (two) or more creditors.

1. Failing to make full payment for at least one debt past the agreement date (due date) and is subject to demand.
2. Being declared bankrupt in a court decision filed by one or more creditors or by the debtor themselves.

Bankrupt debtors are divided into several types, including [15]:

- a. Individuals with criteria of male or female, whether they own a company or not, and whether they are married or unmarried.
- b. Inheritance or legacy assets inherited from a deceased individual can be declared bankrupt if the individual ceased paying their debts during their lifetime or if, at the time of inheritance distribution, the deceased's assets are insufficient to inherit their debts, thereby leading to bankruptcy. Even though the debtor has passed away, the relevant creditor can file for bankruptcy so that a curator can manage their assets.
- c. Association of Companies or holding company: The Bankruptcy Law does not require that bankruptcy petitions against holding companies and their subsidiary companies be filed in the same set of documents. Petitions can be filed together in one application or separately in two separate applications.
- d. Guarantor, a third-party agreement for the benefit of creditors where the guarantor binds themselves to fulfill the debtor's obligations provided the debtor, who has a connection with the creditor, fails to meet their obligations.
- e. Legal Entity, often referred to as a legal entity, juristic person, or artificial person in Common Law dictionaries. The meaning of a legal entity in Common Law is a condition where a legal subject, but not a living being like a human, can still be held legally accountable through an intermediary (natural persons). It is emphasized that this intermediary does not act on their behalf but performs all legal acts for the benefit of the legal entity. In a legal entity, there is always someone appointed to represent all the actions of the legal entity's organs if their legal actions are still recognized within the limits and authority granted by the legal entity through ADRT.
- f. Unincorporated Association, a group that conducts business activities based on agreements among its members, but this group does not meet the criteria of a legal entity. There is no separation between the company's assets and personal assets. Example::
 - 1) Maatscapen;
 - 2) Partnership;
 - 3) Limited Partnership.

With that understanding, what can be bankrupted by creditors are its members only, not the company itself. The identities in the form of names and domiciles of each partner who is jointly liable for all debts of the Partnership must be specified in the bankruptcy petition against the Partnership and Limited Partnership.

- a. Banks: Bankruptcy petitions can only be filed by Bank Indonesia. This is because there is a public interest involved where the public places their money in the respective banks.
- b. Securities Companies: Only the Capital Market Supervisory Agency is authorized to file bankruptcy petitions against Securities Companies, Stock Exchanges, Clearing and Guarantee Institutions, and Securities Depository and Settlement Institutions. This authority is exempted by law because these institutions are responsible for managing public funds. Article 55, paragraph (1) of Law No. 21 of 2011 concerning the Financial Services Authority (OJK) stipulates that since December 31, 2012, this authority has been transferred to the OJK.

c. Only the Minister of Finance is entitled to file bankruptcy petitions against companies operating in the mentioned sectors, such as insurance companies, reinsurance companies, pension funds, or state-owned enterprises operating in the public interest sector. In accordance with the provisions of Article 50 paragraph (1) of Law No. 40 of 2014 concerning Insurance, for Insurance Companies, Sharia Insurance Companies, reinsurance companies, or Sharia reinsurance companies, bankruptcy petitions can only be filed by the OJK [16].

c. Curator

The curator is a party appointed by the Commercial Court when declaring bankruptcy on a bankrupt company. The primary purpose of appointing a curator is to manage and liquidate the bankrupt estate of the respective company in accordance with the laws and regulations, under the supervision of a supervisory judge also appointed by the commercial court. Curators need to meet several requirements to be appointed as responsible individuals in the liquidation of bankrupt assets: they must be individuals domiciled in Indonesia, possess the capabilities relevant to the case being handled, namely bankruptcy, to fulfill the task of liquidating the assets of the bankrupt debtor, and be registered with the relevant ministry [17].

d. Supervisory Judge

The supervisory judge is a judge appointed by the Commercial Court to adjudicate bankruptcy or PKPU cases and is tasked with overseeing the curator in the management and liquidation of the bankrupt estate [18].

3.2. Boedel

The Bankruptcy Decision results in a general seizure of the assets of the debtor declared bankrupt, including all the wealth of the debtor that existed at the time the bankruptcy declaration was made, as well as the debtor's wealth that will exist after the court declares the bankruptcy decision. The general seizure is carried out with the aim that is in line with the principle of (*paritas creditorum*), where all creditors have equal standing rights in the bankrupt company related to assets as creditors in a bankruptcy, with the exception of creditors prioritized by certain laws [19] "All the belongings of the debtor, whether movable or immovable, whether existing or to be, become a liability for all his contracts" [20]. In this article, it is intended that the wealth of the debtor is now the rightful property of the legally valid debtor. Ownership is the highest form of property rights, where ownership guarantees the complete possession for the holder of that right, ensuring the ability to take any action regarding their property and to resist and defend against anything that violates that ownership [21].

3.3. General Review of Other Lawsuits

D. In the process of liquidating assets in bankruptcy cases, it is not uncommon for issues referred to as "Other Matters" to arise. However, because they are still in dispute and/or have problems, their resolution involves using the lawsuit system. Other Lawsuits are lawsuits filed with the commercial court by one of the parties involved in the bankruptcy process, where the party filing the other lawsuit believes that their rights have been denied, resulting in harm to them [22]. Other Lawsuits under Article 3 Paragraph (1) of Law No. 37 of 2004 on Bankruptcy and PKPU explain that; "Decisions on applications for bankruptcy declarations and other matters related to and/or regulated in this Law, are decided by the Court whose jurisdiction covers the area where the debtor's legal domicile is located."

Dalam penjelasan pasal 3 ayat (1) Undang-Undang Nomor 37 tahun 2004 Kepailitan dan PKPU yang dimaksud dengan "hal lain-lain adalah;

1. Actio Pauliana lawsuit
2. Third Party Opposition Lawsuit Against Seizure
3. Lawsuit in which the Debtor, Creditor, Curator, and/or Administrator are one of the Parties in a Case related to Bankrupt Assets, including the Curator's Lawsuit against the board of directors that leads to a company being declared bankrupt due to its fault

3.4. Actio Pauliana

Actio Pauliana is regulated in Article 1341 of the Civil Code, which explains that creditors are allowed to file for the annulment of legal actions taken by debtors that could potentially harm the creditors during the debtor's bankruptcy period, provided that it can be proven that the debtor's legal actions clearly harm the creditors during the bankruptcy period [23]. Actio Pauliana, according to Law Number 37 of 2004 on Bankruptcy and PKPU, is a legal remedy provided by the law to parties in the bankruptcy process to request the annulment of all legal actions taken by the debtor that are considered not required by any condition before the declaration of bankruptcy by the court [24]. With the condition that it can be proven that the debtor's actions can harm its creditors, Actio Pauliana is introduced to protect creditors against actions that may harm them by canceling legal transactions conducted by the debtor with third parties within one year before the declaration of bankruptcy [25]. If the debtor is proven to have engaged in legal actions that could harm creditors in their bankruptcy by selling, transferring, or alienating the debtor's assets, then all such actions need to be annulled. The criteria for debtor actions that an Actio Pauliana lawsuit can annul are [26]:

1. The debtor's actions are not required by law, statute, or agreement.
2. The debtor's actions harm the creditors involved during the bankruptcy proceedings.
3. When the debtor's actions are deemed harmful to the creditors, both the debtor and the third party participating in the actions should be aware of the legal consequences impacting the creditors' losses during the bankruptcy proceedings.
4. The actions classified meet the criteria as specified in Article 42 letters a-g of the Bankruptcy Law and PKPU (Prevention of Bankruptcy Laws).

3.5. Third Party

As previously explained, Actio Pauliana has the right to cancel any actions by the debtor deemed harmful to the creditors. It should be noted that the debtor's actions considered detrimental to the creditors include the sale, transfer, or donation of assets of a bankrupt company. When discussing sales, transfers, or donations, there must be a buyer or recipient. Buyers and recipients in bankruptcy and Actio Pauliana are referred to as Third Parties, namely those who purchase or receive (if donated) assets of a company under specific agreements. The topic of third parties in Actio Pauliana is always associated with buyers acting in good faith. The principle of good faith in contract law aims to uphold balance and protect all rights held by the parties before the contract becomes binding [27]. Therefore, the Civil Code has established several general principles that serve as guidelines or references for regulating and forming agreements. One of these principles is good faith, and this provision is regulated in Article 1338, paragraph (3) of the Civil Code, which states that agreements are executed in good faith. Good faith is one of the principles in agreements, as explained in Article 1338 paragraph (3) of the Civil Code, which stipulates that agreements must be formed based on the principle of good faith.

3.6. The Burden of Proof of Actio Pauliana Lawsuits

Article 41 paragraph (2) of Law Number 37 of 2004 on Bankruptcy and PKPU states that the annulment, as described in paragraph (1), can only be executed if it can be proven that at the time the legal action was carried out, the debtor and the third party already knew or should have known that the action would harm the creditors. Meanwhile, Article 42 of Law Number 37 of 2004 on Bankruptcy and PKPU asserts that if the legal action that harms the creditors is carried out within one year before the declaration of bankruptcy is pronounced. The action is not obligatory for the debtor unless proven otherwise. The debtor and the involved parties are deemed to know or should have known that the action would harm the creditors, as regulated in Article 41 paragraph (2). The elements of Actio Pauliana in the context of bankruptcy, as described in Article 42, can be outlined as follows: Legal actions that harm the creditors' interests must occur within one year before the pronouncement of the bankruptcy decision. This event forms a legal certainty that facilitates the curator filing an Actio Pauliana lawsuit in the Commercial Court. Suppose the legal action occurs within one year before the pronouncement of the bankruptcy decision. In that case, the bankrupt debtor is considered to know or should have known that the action harms the creditors' interests.

However, suppose the legal action occurs more than one year before the pronouncement of the bankruptcy decision. In that case, the curator must prove that the legal action between the debtor and

the third party has harmed the creditors' interests. The proof in Article 43 focuses on the donation made by the debtor and the third party, that if a donation occurs, it can automatically request the annulment of the legal action. Unless stated otherwise, namely done within 1 year before the decision is pronounced, this is stipulated in Article 44. Article 45 explains that legal actions taken by the debtor under the pretext of debts that are already due can only be annulled if it can be proven that there is collusion between the debtor and the creditor, knowing that the debtor's bankruptcy petition has been filed with the aim of benefiting that creditor. Article 46 explains payments received by the holder of substitute securities where in paragraph (2), it is stated that a person who benefits from the issuance of substitute securities or securities on demand is obliged to return the amount of money paid by the debtor, provided that it can be proven that at the time the securities were issued, the person knew that the debtor's bankruptcy petition had been filed or the issuance of the securities occurred as a result of collusion between the debtor and the first party unless the creditor can raise objections.

The lawsuit of the curator of PT. Sumber Urip Sejati Utama against the third party in the decision Number: 02/Pdt.Sus/Actio Pauliana/2017/PN. Niaga.Jkt.Pst.

The curator's lawsuit against the third party in the bankruptcy case of PT. Sumber Urip Sejati is based on the sale transaction of land certificates conducted by Defendant I, Defendant II, and Defendant III. The credit agreement made by Sugiarto with ICBC bank on August 16, 2015, with a nominal value of 120,000,000,000.00 (twelve billion Indonesian Rupiah), aimed to purchase warehouse assets. This agreement pledged the purchased warehouse as collateral for the debtor's debt to the creditor. However, due to the debtor's inability to repay the debt, the debt settlement was transferred to a third party, namely PT. SINAR MAS MULTI FINANCE, with a payment of 70,000,000,000.00 (seventy billion Indonesian Rupiah). Problems arose when the debtor filed for PKPU (Suspension of Debt Payment Obligations) on January 13, 2016, followed by the bankruptcy declaration by the court on February 26, 2016.

The issue related to the bankruptcy estate of PT Sumber Urip Sejati Utama (In Bankruptcy) arises from legal acts between Defendant I, Defendant II, and Defendant III that harm the interests of the Creditors of PT Sumber Urip Sejati Utama (In Bankruptcy) within 1 (one) year before the bankruptcy declaration. The parties involved in the case are:

1. ALI VITALI, S.H., and IVAN M.P. TAMPUBOLON, S.H., M.H., (Plaintiffs)
2. SUGIARTO HADI (Defendant I)
3. PT SINAR MAS MULTIFINACE (Defendant II)
4. PT BANK ICBC INDONESIA (Defendant III)
5. Rr. YULIANA TUTIEK SETIA MURNI, S.H., M.H (Notary/PPAT)
6. EVITA EKA PRASETYANINGTYAS, S.H., M.Kn. (Notary/PPAT)

The curator's evidence presents the agreement between Defendant I and Defendant III regarding the bankruptcy estate of PT Sumber Urip Sejati Utama (In Bankruptcy), as mentioned above, showing the deliberate action of Defendant I and Defendant III, which was later approved by Defendant II to transfer the assets of PT Sumber Urip Sejati Utama (In Bankruptcy) with bad intentions to benefit themselves, causing harm to other creditors. The chronology can be described as follows: On November 26, 2015, Defendant I and Defendant III entered into a Receivable Assignment Agreement, followed by transactions of Sales and Purchase Agreements for the bankruptcy estate of PT Sumber Urip Sejati Utama (In Bankruptcy) on December 10, 2015, and December 21, 2015, respectively, financed by Defendant II. On January 11, 2016, Defendant I filed a Suspension of Debt Payment Obligations (PKPU) application against PT Sumber Urip Sejati Utama (In Bankruptcy) in the Commercial Court at the Central Jakarta District Court, and on January 13, 2016, PT Sumber Urip Sejati Utama was declared to be under Temporary PKPU status. On February 26, 2016, PT Sumber Urip Sejati Utama was declared bankrupt with all legal consequences.

Considering the timeline above, it is evident that the legal relationship established by Defendant I and Defendant III was a deliberate act by Defendant 1 and Defendant III, approved by Defendant II, for the benefit of settling Defendant I's obligations. The verdict of decision 02/Pdt.Sus/Actio Pauliana/2017/PN

Niaga Jkt. Pst is accepted based on the judge's belief that the transactions conducted by Defendant I, Defendant II, and Defendant III were done in bad faith. The decision of the panel of judges was also influenced by the fact that the sale transaction was conducted within 1 year before the bankruptcy decision, thus requiring cancellation according to the provisions of Article 42 of Law Number 37 of 2004 concerning Bankruptcy and PKPU.

3.7. The Burden of Proof in Actio Pauliana Lawsuits

PT. Sumber Urip Sejati Utama was declared bankrupt by the court on February 26, 2016, with Decision Number. The transfer of company assets took place on November 21, 2015. Therefore, the debtor falls into the category eligible for Actio Pauliana to be executed against them because the transfer of company assets was carried out within four months before the bankruptcy declaration by the Commercial Court, meeting the provisions of Article 41 Jo. 42 of Law Number 37 of 2004 concerning Bankruptcy and PKPU, which stipulate that the debtor has been declared bankrupt, the debtor's legal action was taken within one year before the debtor's bankruptcy, and it is not an action required by law or agreement on another day and potentially harms the creditors.

3.8. "Know" and "Tough to Know" in Actio Pauliana Lawsuits

Article 42 of Law Number 37 of 2004 on Bankruptcy and PKPU states that legal actions harming creditors must occur within one year before the announcement of the bankruptcy declaration decision. These actions are not obligatory for the debtor unless proven otherwise. In this context, both the debtor and the parties involved in such actions are deemed to know or should reasonably know that these actions would cause harm to the creditors. Therefore, the element of "knowing or should reasonably know" becomes a crucial aspect of establishing the existence of harm. The provision of "should reasonably know" becomes the main basis for judges to accept Actio Pauliana lawsuits, in line with Article 41 paragraph (2) of Law Number 37 of 2004 on Bankruptcy and PKPU, which explains that debtors and transaction parties (third parties) must know that their actions could harm creditors. From the observations made by the author, it is found that the bankruptcy occurred on February 26, 2016, four months after the asset transfer to the third party. Therefore, the parties involved in the asset transfer should reasonably know about the potential losses suffered by creditors due to the transfer of assets amounting to 70 billion to the third party. Because legal certainty pertains to the rights and obligations of every legal entity, it is only fair that when a legal entity fulfills its obligations, its rights should also be upheld. The credit agreement entered into by Sugiarto with BANK ICBC on August 16, 2015, amounting to 120,000,000,000.00 IDR (twelve billion Indonesian Rupiah), aimed at purchasing assets in the form of a warehouse. This agreement pledged the purchased warehouse as collateral for the debtor's debt to the creditor.

Issues arose when the debtor was declared bankrupt by the court on February 26, 2016. In this lawsuit, the judge issued a consideration based on the evidence presented by the curator and statements from Sugiarto as the authorized representative of the company to perform legal acts, confirming that, indeed, the disputed objects, namely, HGBU and SHM under Sugiarto's name, are assets of the company included in the bankrupt estate. It was true that Sugiarto (Defendant I) entered into a credit agreement with BANK ICBC on behalf of the company. It was also true that PT. SUMBER URIP SEJATI UTAMA was unable to pay its debts, leading to the decision to transfer the debt repayment to a third party, PT. SINAR MAS MULTIFINANCE. It was confirmed that the legal acts performed by Defendants I, II, and III were executed within one (1) year before bankruptcy, thus enabling the cancellation of these legal acts. Therefore, in accordance with Articles 41 and 42 of the Bankruptcy and PKPU Law, the plaintiff's lawsuit should be granted.

Sugiarto, as Defendant I, is not a bankrupt debtor. This is because Sugiarto does not meet the requirements to be declared a bankrupt debtor, namely, having 2 (two) or more creditors, not making full payment of at least one debt past the agreement date (maturity date) that is due and payable, and being declared bankrupt by the court upon application by a creditor or the debtor themselves. Sugiarto is not subject to bankruptcy because he does not have debts that are due and payable and can be petitioned for bankruptcy by a commercial court. In this case, the bankrupt debtor is PT. SUMBER

URIP SEJATI UTAMA, as explained in Chapter II regarding bankrupt debtors, wherein the position of the bankrupt debtor in the case is a legal entity, commonly referred to as a legal entity that in the execution of legal acts of a legal entity needs to be represented by an intermediary, as emphasized in common law dictionaries that intermediaries (Natural persons) do not act on personal desires but rather on behalf of the company's interests. The intermediary receives authority from the Legal Entity ADRT, in this case, the bankrupt debtor (PT. SUMBER URIP SEJATI UTAMA).

3.9. Analysis of the Disputed Object of Bankrupt Estate Assets

In this case, referring to Sugiarto's statement that the assets transferred to the third party through debt repayment to BANK ICBC were assets acquired when Sugiarto represented PT. SUMBER URIP SEJATI UTAMA in purchasing goods for the company in the form of a Warehouse. Therefore, if referring to the Fiduciary Duty doctrine, the disputed object of the case's bankrupt estate assets is the bankrupt estate assets of the company and not Sugiarto's assets because Sugiarto made the debt agreement with the intention of representing the company rather than personal gain. The curator is entitled to provide input on assets held by third parties to be included in the bankrupt estate for liquidation in accordance with Article 42 of Law No. 37 of 2004 on Bankruptcy and PKPU, where the legal acts performed by Defendant I, II, and III have harmed creditors due to the reduction of the bankrupt estate if the disputed objects are not returned to the bankrupt estate. The return of the bankrupt estate to the curator is also based on the transfer agreement agreed upon by Defendant I and Defendant III, wherein both parties agree that if the disputed objects are not bought back by Defendant I by the end of the specified deadline, November 26, 2016, then those assets will become the property of Defendant III.

In fact, PT. SUMBER URIP SEJATI UTAMA was declared bankrupt on February 26, 2016, along with its legal consequences in accordance with Article 24 of Law No. 37 of 2004 on Bankruptcy and PKPU, "The debtor, by law, loses the right to control and manage its assets included in the bankrupt estate, from the date the bankruptcy declaration is pronounced." This means that on February 26, 2016, when the court pronounced the bankruptcy decision, all assets held by third parties need to be returned to the curator, considering that the "Buy-Back" period is limited until November 26, 2016. Cancellation of Legal Acts (*Actio Pauliana*). In this case, the transfer of assets originating from the credit agreement between Sugiarto, representing PT. SUMBER URIP SEJATI UTAMA, with PT. BANK ICBC to a third party, PT. SINAR MAS MULTI FINANCE was executed on November 10, 2015, and executed on December 21, 2015, while the bankruptcy decision was made on February 26, 2016. In the *Actio Pauliana* lawsuit, there are two criteria, namely, those carried out within 1 (one) year before the bankruptcy decision and those carried out more than 1 (one) year before the bankruptcy decision is pronounced. Considering the timeframe of the asset transfer through debt repayment, it is evident that the transfer of debt payment obligations was made within 1 (one) year before the bankruptcy decision, where cancellation is automatic under the law, and there is no burden of proof placed on the curator to prove his lawsuit. The judge's considerations in deciding the case are deemed to be in line with the provisions contained in the Bankruptcy and PKPU Law;

Article 41

"For the benefit of the bankrupt estate, the Court may be requested to cancel all legal acts of the Debtor that have been declared bankrupt and harm the interests of Creditors, carried out before the bankruptcy declaration is pronounced."

Article 42

"If the legal act that harms the Creditors is carried out within 1 (one) year before the bankruptcy declaration is pronounced, while such act is not required to be carried out by the Debtor unless proven otherwise, the Debtor and the party with whom such act was carried out are deemed to be aware or should have been aware that such act will cause losses to the Creditors as referred to in paragraph (2) of Article 41."

Regarding the plaintiff's request to the panel of judges, In points No. 4 and 5, namely:

"The Court orders DEFENDANT III to surrender all original documents, including all assets transferred to the third party, and declares that this decision can be executed in advance even if there are objections or cassations (uitvoerbaar bij voorraad)."

The plaintiff's request is based on the third party's lack of good faith in surrendering all documents of the bankrupt estate assets to the curator. The curator has also made efforts to request the third party to provide these documents promptly, but to no avail, as the third party argued that the ownership of the assets is in Sugiarto's name (stated in all documents). Based on this, the curator filed a request for the cancellation of legal acts and a request for direct execution of the cancellation of legal acts by imposing a penalty on the third party to surrender all documents of the bankrupt estate assets held by the third party. The decision of the Panel of Judges regarding the plaintiff's request is partially granted, where the request for the cancellation of legal acts is granted, and it is stated that the assets held by the third party are the bankrupt estate assets of PT. SUMBER URIP SEJATI UTAMA needs to be liquidated by the curator.

The Panel of Judges rejects the plaintiff's request in point 5 (five), which requests for the immediate direct execution of the related documents to be returned to the curator. Considering that the execution of the cancellation of legal acts is the absolute authority of the District Court, the Commercial Court cannot grant the plaintiff's request in point 5 (five). In this analysis, the author argues that in accordance with the provisions contained in the considerations of the judges in the decision of case number 02/Pdt.sus/Actio Pauliana/2017/PN. Niaga.Jkt.Pst for the settlement of Actio Pauliana lawsuits, it is in line with the provisions of Law No. 37 of 2004 on Bankruptcy and PKPU, which serves as the basis of procedural law for the settlement of Actio Pauliana cases in bankruptcy.

3.10. The Liability of Defendant I as an Instrument of the Company

The authority of a director in a company, as regulated in Article 92 paragraph (1) of the Company Law, where a director is granted authority based on a mandate to carry out the administration or management of the company for the benefit of the company in line with the company's vision-mission. The authority given to the director is certainly recorded in the Company's Articles of Association. In this case, Sugiarto (Defendant I) can be categorized as a director who has the authority to represent the company, as evidenced by the credit agreement he signed with BANK ICBC. Therefore, Sugiarto is a director who has the authority to carry out legal acts on behalf of PT. SUMBER URIP SEJATI UTAMA. This analysis strengthens the author's argument that Sugiarto is not a bankrupt debtor in the case under review. The application of the principle of Piercing the corporate veil, namely the theory of shifting responsibility to shareholders for losses arising from legal actions taken by the legal entity. Therefore, accountability for losses, if seen from the fact that the director is performing legal acts in this case, should be held accountable to the company.

3.11. Legal Remedies as a Means of Legal Protection for Third Parties Against the Court Decision in Actio Pauliana Lawsuits Resulting in the Cancellation of Sales Transactions of Bankrupt Estate Assets

In bankruptcy proceedings, legal remedies can be pursued through the Commercial Court. Similarly, the legal remedy for the annulment of a debtor's legal actions is in accordance with Article 42 of the Bankruptcy and PKPU Law. However, the opportunity to pursue legal remedies to protect the rights of the parties as legal subjects is only permitted by directly appealing to the highest level, namely the Supreme Court with Cassation and Judicial Review. PT. SINAR MAS MULTI FINANCE, as a third party, is given the opportunity to pursue legal remedies by filing a cassation petition to the Supreme Court and then can continue legal action as one form of legal protection for third parties involved in Actio Pauliana lawsuits.

3.12. The Legal Protection Analysis Of PT. Sinar Mas Multifinance As A Third Party In The Bankruptcy Case Of PT. Sumber Urip Sejati Utama Reviewed In Terms Of The Principle Of Good Faith And The Principle Of Bona Fide Customer

The application of the principle of good faith to third parties is crucial, especially concerning the provisions of "voidable" and "void ab initio" in Actio Pauliana lawsuits against debtor's legal actions

carried out within one (1) year before or beyond the period before being declared bankrupt. "Void ab initio" is a concept in the realm of contract law where the occurrence of an agreement containing invalid or unlawful content is prohibited because it contradicts the law or the norms adopted. As previously explained by Hadi Shubhan, legal actions carried out within one (1) year are deemed voidable unless proven otherwise by the debtor. Generally, good faith is depicted as the willingness of one party in an agreement to avoid causing harm to the other party involved in the agreement and not to prejudice public interests. Good faith, as found in Article 1338 paragraph (3) of the Civil Code (KUH Perdata), is always linked to Article 1339 of the Civil Code, wherein an agreement, an obligation is not only limited to the provisions explicitly stated therein but also encompasses everything consistent with its nature, an agreement based on decency, custom, or the law. Good faith has a standard of implementation where the standard is assessed objectively. Thus, the behavior of the parties agreeing is evaluated to determine if the agreement was made based on rationality and appropriateness in accordance with the applicable provisions. Legal protection should be provided if it is proven that the party agreed with good intentions (good faith). The principle of good faith is applied in legal provisions, for example, in Article 1338, paragraph (3) of the Civil Code, which states that agreements must be executed in good faith.

Based on the above description, the application of good faith to third parties has several criteria, Such as:

1. The third-party purchases at market price: Purchasing at market price means the buyer engages in a transaction at the nominal price of the item without any deductions.
2. The third party makes payments as promised. The seller or the debtor does not grant the third party the object of the sale (in the context of bankruptcy); the third party buyer makes payments as agreed upon by both parties.
3. The third party is unaware of any defects inherent in the purchased item; "Defects inherent" refers to a situation where the condition of the item does not align with what was promised to be delivered. In the context of bankruptcy, it means the buyer unintentionally engages in a sale transaction involving assets of the bankrupt estate due to the seller's lack of good faith. However, the buyer is completely unaware of this situation.

Based on the explanation above, third-party types with the above criteria need to have their rights protected because they have acted in good faith principles in agreements or commitments according to the agreed provisions. The beginning of the agreement binding the third party with Sugiarto was the fact that Sugiarto obtained credit facilities on behalf of PT. SUMBER URIP SEJATI UTAMA, but within two months, the debtor was unable to make payments on the debt. Therefore, PT BANK ICBC advised to transfer the debt payment (Factoring) to a third party, namely PT. SINAR MAS MULTIFINANCE. The factoring agreed upon by Sugiarto, PT. BANK ICBC, and PT. BANK SINAR MAS MULTI FINANCE was agreed upon with a payment of 70,000,000,000.00 (seventy billion rupiahs) to be paid in two stages, including;

1. Payment amounting to 4,400,184,559.22 (four billion four hundred million one hundred eighty-four thousand five hundred fifty-nine rupiahs) on November 25, 2015, and;
2. 65,599,815,440.78 (sixty-five billion five hundred ninety-nine million eight hundred fifteen thousand four hundred forty rupiahs) on November 27, 2015.

In the Actio Pauliana case brought by the curator against the third party, the curator's team has a basis, namely, that the assets purchased by the third party are part of the bankruptcy estate of PT. SUMBER URIP SEJATI UTAMA, not the property of Sugiarto Hadi as the director who is Defendant I in this case, because, in fact, all the Land Ownership Rights (SHM) and Building Ownership Rights (HGBU) pledged by Sugiarto to PT. BANK ICBC as collateral for the debt on paper under the name of Sugiarto as the legitimate owner. This situation arose due to the provisions of the credit facility agreement made by Sugiarto and PT. BANK ICBC. The basis for the claim that the third party acted in good faith in the sale-purchase transaction is based on the provisions of Article 5 and Article 6 of the Sale and Purchase Agreement. Defendant I (as an individual) has guaranteed that the disputed object is "clear and clean," as quoted below:

1. Article 5 PARTY ONE guarantees that the object of the Sale and Purchase Agreement above is not involved in any dispute, free from seizure, not encumbered as collateral for any unrecorded debt in the certificate, and free from any other burdens whatsoever;
2. Article 6 PARTY ONE guarantees PARTY TWO that all documents and/or letters regarding the identity or documentation of PARTY ONE related to the Land and Buildings are true and originally owned by PARTY ONE. Suppose later it turns out that the documents and/or letters related to the land and buildings are not true or are fake. In that case, PARTY ONE hereby declares willingness to be prosecuted both criminally and civilly and is obliged to bear all resulting losses based on those matters.

The third-party engaged in the transaction based on concrete data indicating ownership of the land and building pledged to PT. BANK ICBC. Naturally, the third party, as the buyer of the goods, would not suspect any hidden defects attached to the purchased item that falls into the bankrupt estate and, therefore, becomes "frozen" from challenge except by the curator's will. This forms the basis for the author's study of protecting third parties who transact in good faith, where they purchase according to the price offered by the first party (Sugiarto) and fulfill their obligations as buyers by making payments. The question then arises: does PT SINAR MAS MULTIFINANCE fall under the category of a bona fide purchaser deserving legal protection? The principle of good faith is commonly encountered in the context of agreements, being one of the crucial principles in the execution of agreements. Good faith means being faithful to one who agrees voluntarily, intending to achieve a good purpose. In the case under study, the application of the principle of good faith towards the third party can be seen from;

1. PT. SINAR MAS MULTI FINANCE did not purchase the goods below the market price, as the agreed price of seventy billion was determined by the first party for payment. In relation to the provision in Article 1457 of the Indonesian Civil Code, which states:
"Sale and purchase is an agreement by which one party binds themselves to deliver a certain item, and the other party to pay the agreed price."
2. PT. SINAR MAS MULTI FINANCE fulfilled the payment obligations according to the agreed-upon amount in two installments: 70 billion rupiahs. This is in accordance with Article 1513 of the Indonesian Civil Code, which states, "The primary obligation of the buyer is to pay the purchase price at the time and place stipulated by the agreement."
3. PT. SINAR MAS MULTI FINANCE was unaware of any defects associated with the property (that the property would become part of the bankrupt estate). In this context, the property in question refers to land and buildings with land certificates and building permits still under the name of Sugiarto at the time of the case.

The evidence lies in Articles 5 and 6 of the sale and purchase agreement as outlined above, where the first party (Sugiarto) guarantees the authenticity of the property, which consists of land and buildings, ensuring there are no legal uncertainties regarding the ownership status of the assets. However, in reality, the sold property is a corporate asset registered under the name of the Director authorized in the agreement, and it is an asset that should not have been transferred to a third party. Due to the bad faith of the first party, the third party must bear the risk of losing the assets they have paid for dearly due to the Actio Pauliana lawsuit that annuls all debtor's legal actions and punishes the third party to return the purchased assets at market value. As a consequence of the bad faith, the first party should be subject to Article 1474 of the Civil Code, "The seller has two main obligations, namely to deliver the goods and guarantee them." Then, under Article 1491 of the Civil Code,

"The guarantee that is the seller's obligation to the buyer is to ensure two things: first, the peaceful and secure possession of the sold item; second, no hidden defects in the item, or such that it gives grounds for the buyer to cancel the purchase."

Legal protection for bona fide buyers is also enshrined in Supreme Court Decision No. 251/Sip/1958, "A buyer who has acted in good faith must be protected, and the relevant sale and purchase must be deemed valid." Protection for third parties as bona fide buyers is also explained in Article 49 paragraphs (3) and (4) of Law Number 37 of 2004 concerning Bankruptcy and PKPU "The rights of third parties

over objects as referred to in paragraph (1) obtained in good faith and not gratuitously, must be protected." (paragraph 3) Paragraph (4) "Objects received by the Debtor or their value must be returned by the Curator, as far as the bankruptcy estate benefits, while for its deficiency, the person against whom the annulment is demanded can appear as a concurrent creditor."

PT. SINAR MAS MULTI FINANCE, as a third party, in its exception, defends itself regarding being a bona fide buyer, and based on the author's analysis, the third-party falls into the criteria of a bona fide buyer. Even though the legal action between the debtor and the third party is annulled in the court ruling, if it is proven that the third party entered the transaction not through collusion or with the intention to harm creditors, then protection should be provided according to Article 49 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and PKPU, where the value of the assets must be returned by the curator if returned to the bankruptcy estate benefits, and for its deficiency, the third party is demanded to be a concurrent creditor in PT. SUMBER URIP SEJATI UTAMA.

4. Conclusion

Overall, implementing policies that promote competitiveness and neutrality in the tax system can positively impact investment, economic growth, and government revenue. It is crucial for countries such as Indonesia to continuously evaluate and revise their tax policies to promote a competitive and neutral tax system. Indonesia can learn from the tax systems of OECD member countries, including, to improve the competitiveness and neutrality of its tax system. Adopting and modifying some tax policies of well-rated countries, including and Indonesia, can improve the competitiveness and neutrality of their tax systems. In addition to these strategies, Indonesia may consider implementing measures such as encouraging foreign investment by reducing tax rates and introducing targeted tax incentives. The introduction of targeted tax incentives and exemptions can play an important role in attracting foreign investments and improving economic competitiveness. By providing targeted tax incentives and exemptions in line with policy objectives, Indonesia can create an attractive environment for foreign investors. Implementing a robust tax administration system to improve the efficiency of the tax collection and enforcement processes can also help improve the competitiveness and neutrality of Indonesia's tax system.

Invest tax education and training for taxpayers and tax administrators to ensure a better understanding of tax rules and to encourage taxpayer compliance. Countries with neutral tax rules, efficient tax systems, competitive tax rates, effective incentive programs, and transparent tax administrations tend to rank higher in terms of competitiveness and tax neutrality. Implementing these strategies can attract investments, stimulate economic growth, and improve the overall competitiveness of a country's tax system. Broadening the tax base and digitally strengthening tax administration to collect more revenue rather than changing tax rates is broadly in line with global norms. Focusing on making it easier to set up new businesses and allowing more individuals to work independently are some of the potential measures that can be taken to broaden the tax base and potentially increase its competitiveness. The Indonesian model, a framework that integrates the OECD and UN Models, aims to address tax-related obstacles in international trade and investment. This includes the Model Tax Convention on Income and Capital to mitigate government debt. OECD reforms encourage candidate nations to use tax optimization strategies to increase revenue and reduce government debt to GDP.

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