


## The Role of The Curator in Managing Bankrupt Assets in Relation to Actio Pauliana Lawsuits

a,\* Candoro Tua Manik, b.Sunarmi, c.Dedi Harianto, d,Detania Sukarja.

a.b.c.d.Universitas Sumatera Utara.

\*corresponding author, email: [candorotua\\_manik@yahoo.com](mailto:candorotua_manik@yahoo.com)

 <https://doi.org/10.56128/jkih.v4i3.400>

ABSTRACT	ABSTRAK
<p>The management of bankrupt assets is entrusted to a curator appointed by the court and supervised by a supervising judge. The curator's duties include the management and settlement of bankrupt assets, including filing an Actio pauliana lawsuit for assets transferred before the bankruptcy ruling. The research questions include: 1) The compatibility of the curator's duties with Law Number 37 of 2004; 2) The evidence that can be presented by the curator; 3) The obstacles faced by the curator in presenting evidence. The research method employs a normative approach and field interviews. The findings indicate that curators encounter legal substance, structural, and cultural challenges, necessitating their active search for solutions to address issues in carrying out their responsibilities.</p> <p>Kata Kunci: Actio pauliana, Bankruptcy, Curator.</p>	<p><i>Pengelolaan harta pailit dipercayakan kepada kurator yang ditunjuk oleh pengadilan dan diawasi oleh hakim pengawas. Tugas kurator mencakup pengelolaan dan penyelesaian harta pailit, termasuk mengajukan gugatan Actio Pauliana terhadap aset yang dialihkan sebelum putusan pailit. Pertanyaan penelitian yang dikaji meliputi: 1) Kesesuaian tugas kurator dengan Undang-Undang Nomor 37 Tahun 2004; 2) Alat bukti yang dapat diajukan oleh kurator; 3) Hambatan yang dihadapi kurator dalam mengajukan alat bukti. Metode penelitian yang digunakan adalah pendekatan normatif serta wawancara lapangan. Hasil penelitian menunjukkan bahwa kurator menghadapi tantangan dalam aspek substansi hukum, struktur, dan budaya hukum, sehingga diperlukan upaya aktif dalam mencari solusi untuk mengatasi permasalahan dalam pelaksanaan tugasnya.</i></p> <p><i>Keywords: Actio Pauliana, Kurator, Kepailitan.</i></p>
<p style="text-align: center;"><b>Article History</b> Received: December 20, 2024 --- Revised: December 27, 2024 --- Accepted: December 28, 2024</p>	

### 1. Introduction

Bankruptcy, according to the Memorie Van Toelichting (General Explanation), is defined as “a legal seizure of all the debtor's assets for the collective benefit of all creditors.” Subekti, as quoted by Victor Situmorang, argues that bankruptcy is “a collective effort to achieve fair payment to all creditors.” Article 2, paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations states the conditions for declaring bankruptcy: “A debtor who has two or more creditors and fails to pay off at least one due and collectible debt shall be declared bankrupt by a court decision, either upon the petition of one or more of its creditors.”The provision above stipulates that in order to be declared bankrupt, a debtor must have two or more creditors and must fail to pay off at least one debt that is due and collectible (Situmorang, 1994).

A debtor who is declared bankrupt loses their reputation, both in the general community and specifically among entrepreneurs within their business environment. From a material standpoint, this results in a loss of trust in obtaining credit. After the bankruptcy decision is issued, the management and the bankrupt party still have the authority to perform actions concerning their assets, as long as those actions benefit the estate, while actions that do not provide benefits to the estate do not bind it. All legal actions taken by the debtor prior to the declaration of bankruptcy that are detrimental may be subject to annulment for the benefit of the bankrupt estate. Such annulment can only be pursued if it can be proven that the debtor and the party with whom the legal action was conducted were aware that the action was detrimental to the creditors (Situmorang, 1994).

The curator is the sole party in bankruptcy who can request the annulment of legal actions carried out by the bankrupt debtor based on the concept of *Actio Pauliana*. This is a logical consequence of the curator's position as the party responsible for protecting and managing the bankrupt estate for the benefit of all parties with an interest in the estate. If there are numerous legal actions by the bankrupt debtor that meet the criteria for annulment under *Actio Pauliana*, the curator must be able to determine which actions to seek annulment for (Muryati et al., 2017).

The curator is tasked with proving the fulfillment of the elements carried out by the debtor as stipulated in Article 41 of the Bankruptcy Law and the Suspension of Debt Payment Obligations. In carrying out this task, the curator must consider the interests of both the debtor and the creditors, including when filing a claim based on *Actio Pauliana* in court. The submission of *Actio Pauliana* by the curator can be made if several conditions have been met, including: the debtor has engaged in a legal action; the legal action taken is not obligatory; the debtor has harmed the creditors through that legal action; the debtor is aware that the legal action is detrimental to the creditors; and the party with whom the debtor engaged in the legal action is aware that the action is harmful to the creditors (Mantili, 2020).

*Actio Pauliana* in the Civil Code is regulated in Article 1341 of the Civil Code, which states that “creditors may request the annulment of actions taken by the debtor by proving the absence of good faith on the part of the debtor.” The provisions of *Actio Pauliana* in Article 1341 of the Civil Code are related to the provisions of Article 1131 of the Civil Code, which governs the principle of *pari passu creditorium*. This is because Article 1131 of the Civil Code stipulates that “all the debtor's assets are, by law, collateral for the debtor's debts.” Thus, the debtor is not truly free concerning their assets when they owe debts to others, in this case, to the creditors (Syahrin, 2017).

*Actio Pauliana* has a level of proof that is considered quite challenging to establish. This difficulty is related to proving the presence or absence of good faith on the part of the debtor at the time of the legal action. The right to annul through *Actio Pauliana* is accompanied by a burden of proof (*bewijslast*) on the creditor to demonstrate that the event

of the legal action, which was not obligatory, resulted in harm to the creditor (Butarbutar, 2019).

In addition to the Civil Code, the provisions of Actio Pauliana in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations are regulated in Article 30, which states: “In cases where a lawsuit is continued by the curator against the opposing party, the curator may request the annulment of any actions taken by the debtor prior to the declaration of bankruptcy, provided it can be proven that the debtor's actions were undertaken with the intent to harm the creditors and that this was known by the opposing party.”

Based on this, it is necessary to conduct research with the title the role of the curator in the management and settlement of bankrupt assets in relation to the submission of actio pauliana claims. Based on the description in the background above, the research questions to be addressed are: how can the curator prove the claims related to Actio Pauliana for the bankrupt estate; and what challenges does the curator face in presenting evidence for the Actio Pauliana claims concerning the bankrupt estate.

## 2. Method

This research is a normative juridical study with a descriptive analytical nature. The research approach employs both a statutory approach and a case approach. The data utilized in this study includes primary, secondary, and tertiary legal materials, comprising official documents, books, reports, research findings, and other relevant materials collected through library research methods. Data collection techniques include documentary studies and in-depth interviews. Once the data is collected, it is analyzed qualitatively, employing deductive reasoning for conclusions.

## 3. Result & Discussion

### A. Proof of Actio Pauliana by the Curator Regarding the Transfer of Bankrupt Assets by the Debtor

Actio Pauliana has a level of proof that is considered quite challenging to establish. The proof in question primarily concerns demonstrating the presence or absence of good faith at the time the legal action was taken by the debtor during the bankruptcy process. The purpose of proof is to provide the judge with confidence regarding the events or arguments presented by the parties, thereby establishing the occurrence of actual events. The issues in evidentiary law involve the burden of proof and the assessment of that proof. The doctrine of the burden of proof addresses the question of who is responsible for providing evidence (Butarbutar, 2019).

In accordance with the principle of *actori incumbit probatio*, which is contained in Article 163 of the HIR/Article 283 of the Rbg and Article 1865 of the Civil Code, the party that is required to provide evidence is “the one who presents a fact or right, and if that fact or right is contested, that party is obligated to prove their rebuttal.” In the process of proof,

what must be established is the disputed fact, which relates to the principle of *ius curia novit*, meaning that “the judge is presumed to know all the law, so what needs to be understood by the judge through the trial is the fact of the case to later apply the law.”

The proof utilized in *Actio Pauliana* claims within bankruptcy generally follows civil procedural law; however, in addition to the proof according to civil procedural law, *Actio Pauliana* in bankruptcy also employs a reversed burden of proof, particularly concerning reciprocal legal actions (such as obligations/sales). The reversed burden of proof is emphasized on the legal actions of the debtor that are not obligatory, as stated in Articles 42 and 44 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. This reversed burden of proof is a form of *lex specialis* in procedural law as contained in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, as mentioned in Article 299 (Tambunan et al., 2017).

The burden of proof on the curator, according to Article 42 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, states that “the curator is sufficient to prove and assert that the legal action in question was taken within one year prior to the declaration of bankruptcy, that the action was not obligatory, and that this legal action harmed the creditors as it affected the value of the bankrupt estate in maximizing the payment of the debtor's debts or obligations to the creditors, particularly those classified as concurrent creditors.

The burden of proof on the debtor requires the debtor to demonstrate the contrary, namely, “that the debtor's legal action was obligatory and must be performed by the debtor in good faith, and not intended to harm the creditors by engaging in fraudulent actions to deceive them.” When linked to the *Actio Pauliana* claim in Article 1341 of the Civil Code in conjunction with Article 41, paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, what must be proven is “the fact of the legal action performed by the debtor and the party with whom that legal action was undertaken, knowing or reasonably expected to know that it would result in harm to the creditors.” (Tambunan et al., 2017)

The reversed burden of proof will only be imposed on the debtor if the action in question is a donation. This is because, in a donation, there is no requirement for proof regarding the party with whom the action was performed. Although *Actio Pauliana* is theoretically and normatively available in bankruptcy, in practice, it is not easy to file an *Actio Pauliana* claim until it is granted by the judge. This difficulty is partly due to the challenges of proving *Actio Pauliana* and the legal protection afforded to third parties who transact with the debtor (Nugroho, 2018).

Therefore, if the curator determines that there is a specific legal action taken by the debtor with a third party within one year prior to the declaration of bankruptcy that may harm the creditors, then the debtor and the third party are obligated to prove that the legal action was mandatory for them and that it did not harm the bankrupt estate. Conversely, if the legal action occurred more than one year prior to the bankruptcy declaration, the

burden of proof rests with the curator. This indicates that the Bankruptcy and Suspension of Debt Payment Obligations Law provides fair rights to both the curator and the creditors to annul legal actions taken before the bankruptcy declaration. Not only creditors but also recipients of assets transferred by the debtor are encompassed under the Bankruptcy and Suspension of Debt Payment Obligations Law, which aims to provide legal certainty for interested parties. This law emphasizes that any legal actions detrimental to creditors undertaken within one year prior to the bankruptcy declaration—provided such actions were not mandatory for the debtor or financially harmful to the interests of the debtor declared bankrupt—are subject to challenge, unless proven otherwise. Article 42 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations details the types of actions that, if conducted within one year before the bankruptcy declaration, are not deemed mandatory. (Nugroho, 2018)

#### B. Challenges Faced by the Curator in Proving the Actio Pauliana Claim on Bankrupt Assets

The challenges arising in the proof of filing an actio pauliana lawsuit were identified through interviews with three curators based in the Medan jurisdiction. The curators include Deni Purba, Iskandar Zulkarnain Lubis, and Irpan Surya Harahap. The challenges they face include:

##### 1) Challenges Related to Legal Substance

According to Deni Purba (May, 2022), the challenges related to legal substance in filing an actio pauliana lawsuit involve the aspect of proof. In terms of evidentiary documentation for the actio pauliana lawsuit, it is necessary to prove that the actions of the debtor concerning the bankrupt assets, which may harm creditors, were conducted within one (1) year prior to the bankruptcy ruling. This is in accordance with the provisions of Article 42, paragraph (1) of Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations. The curator must thoroughly locate documentary evidence that demonstrates that the actions were indeed undertaken within one (1) year before the bankruptcy ruling.

Deni Purba's opinion is largely consistent with that of Iskandar Zulkarnain Lubis (May, 2022) regarding legal substance. The proof of actio pauliana faces challenges in locating documentary evidence that can substantiate that the actions taken by the bankrupt debtor concerning the bankrupt assets occurred within one (1) year prior to the bankruptcy ruling. Irpan Surya Harahap (May, 2022) argues that the legal substance challenge in the actio pauliana lawsuit still pertains to the issue of proof. The evidentiary challenges faced by the curator are similar to those encountered in civil lawsuits. It is essential to first gather the authentic evidence.

The challenge of legal substance regarding the proof of documents in the submission of the actio pauliana lawsuit becomes evident in the decision numbered 3/Pdt.Sus-Lain

lain/2021/PN Niaga Mdn Jo. 7/Pdt.SusPKPU/2018/PN Niaga Mdn. In this case, the curator was unable to demonstrate that the lawsuit filed was part of the *actio pauliana*.

## 2) Legal Structure Constraints

According to Friedman, the legal structure is defined as “The structure of a system is its skeletal framework; ...the permanent shape, the institutional body of the system.” This implies that the structure of a system consists of its frameworks; a permanent form, the institutional body of the system (Hutomo & Soge, 2021).

According to Deni Purba (May, 2022), the constraints related to the legal structure involve the cassation legal remedy. He states that in the Commercial Court, there are no obstacles as the processes are systematic. However, if there is a cassation effort, it is hindered by time constraints. The cassation ruling on *actio pauliana* may take more than two months, necessitating additional waiting for the cassation decision to be received by the court first. Furthermore, structural constraints arise when there is a change of judges during the *actio pauliana* proceedings, especially if the judge has been reassigned. The new judge must re-familiarize themselves with the case, as they did not handle the matter from the beginning.

Reading regulations solely through the lens of positivistic legal thinking by judges in the Commercial Court when handling bankruptcy cases renders the judges irrelevant in responding to the prevailing phenomena of bankruptcy. The application of a rule from just one aspect—legal certainty—can overlook other critical aspects, namely justice and utility. Bankruptcy rulings should accommodate all three aspects: justice, legal certainty, and utility. This approach should create fairness for both creditors and debtors while also benefiting other stakeholders involved (Zulaeha, 2015).

The role of judges is a crucial element for the functioning of bankruptcy law. According to Charles Himawan, some challenges faced by the judiciary include the fact that as a country adhering to a continental legal system, courts are not bound by jurisprudence. This often results in differing and contradictory rulings for cases that are relatively similar. Additionally, our judges tend to be hesitant to engage in legal interpretation or the discovery of law, despite the fact that not all articles in the legal codification can address every issue presented before them.

## 3) Challenges Related to Legal Culture

Legal culture, according to Friedman, is defined as "the element of social attitude and value. Behavior depends on judgment about which options are useful or correct. Legal culture refers to those parts of general culture—customs, opinions, ways of doing and thinking—that bend social forces toward or away from the law." This means that legal culture is an element of social attitudes and values. Behavior relies on judgments about which options are deemed useful or correct. Legal culture encompasses aspects of general culture, such as customs, opinions, and modes of thinking and acting, which influence social forces in relation to the law, either directing them toward it or away from it (Hutomo & Soge, 2021).

According to Deni Purba (May, 2022), the challenges related to legal culture in the submission of *actio pauliana* lawsuits stem from the good faith of the bankrupt debtor. When it comes to finding evidence for *actio pauliana* claims, bankrupt debtors tend to want to erase any traces of the transferred bankruptcy assets. The bankrupt debtor will conceal all relevant documents and will not hand them over to the curator.

In addition to the good faith of the bankrupt debtor, Deni Purba argues that challenges in legal culture are also related to the intentions of third parties who receive assets or engage in actions with the bankrupt debtor that may harm creditors. Third parties who have received assets may sometimes refuse to return them and may file for cassation. Only after the decision has become final can the matter proceed through the usual process, which requires time. This explains why bankruptcy cases, when contested, tend to take longer compared to cases of Suspension of Debt Repayment. The execution of assets under *actio pauliana* won by the curator will face obstacles because third parties are often unwilling to return them. The curator will need to seek execution from the court through a bailiff.

The measures taken to address the challenges in proving *actio pauliana* claims, according to Deni Purba (May, 2022), involve the curator not solely relying on documents that have been concealed by the debtor. The curator will seek information from sources such as notaries, creditors, or former employees. Employees often have better knowledge of when assets were transferred and when the company was sold. Additionally, the curator can obtain information from audited financial statements, which can reveal whether assets have been transferred. However, the financial reports must be supported by more concrete evidence, such as sales transactions. Furthermore, the curator can inquire with banking institutions about any money transfers and their amounts. Therefore, information can be obtained from third parties in addition to the documents hidden by the debtor.

According to Iskandar Zulkarnain Lubis (May, 2022), the curator must actively pursue information as they have the obligation to protect the assets of the bankruptcy estate. Additionally, the curator should examine the documents available within the company that may relate to the assets that have been transferred.

Irpan Surya Harahap (May, 2022) shares a similar view. In the context of proving an *actio pauliana* lawsuit, the curator plays an active role in substantiating their claims. This is akin to the burden of proof in civil cases, where both parties must demonstrate their respective actions. The curator must convince the judge that the lawsuit they have filed is valid and supported by the available evidence, ensuring that the judge will accept and rule in favor of the curator.

To ensure a unified perspective and actions among judges in addressing lawsuits, it is essential to establish regulations in a Supreme Court Regulation as a guideline for the judges. This Supreme Court Regulation is intended to govern the authority of judges, particularly in adjudicating cases and providing procedural rules for evidence presentation.

Such regulations would allow for an ideal timeframe for all parties involved, including creditors, debtors, and third parties with vested interests (Mantili, 2020).

According to Deni Purba (May, 2022), efforts to address the challenges related to legal structure involve creating better regulations. The proposed regulation pertains to the timeframe for resolving cases, particularly concerning cassation appeals related to *actio pauliana* lawsuits. The aim is to ensure that cassation decisions do not exceed the legally stipulated period of 60 days. By doing so, the process for *actio pauliana* lawsuits can be expedited, preventing prolonged delays in legal proceedings.

Judges play a crucial role in interpreting good faith, where the meaning and standards of good faith rely heavily on the attitudes and perspectives of the judges themselves. A clearer understanding of good faith must be seen through its interpretation in judicial practice. In reality, the interpretation of good faith varies significantly, depending on the judge's attitude and understanding of the doctrine of good faith itself. In the Netherlands, the interpretation of good faith is conducted according to standards of rationality and propriety. Through financial statements, judges can assess whether the debtor's financial condition is still sound, meaning the debtor's assets substantially exceed their liabilities. Financial statements reflect the results of accounting processes and can serve as a tool for communicating financial data or company activities to interested parties (Zulaeha, 2015).

Based on the above description, the challenges and efforts to overcome these challenges indicate that curators, in carrying out their duties and authorities, face obstacles related to substantive law, legal structure, and legal culture. As one of the parties entitled to file an *actio pauliana* lawsuit in bankruptcy, curators must be responsive to the challenges they encounter. They should not merely wait for the case to be proven but must actively seek solutions to the obstacles faced in executing their tasks. Particularly in terms of proof, curators must be able to substantiate their claims convincingly to persuade the panel of judges to grant the *actio pauliana* lawsuit they have submitted.

#### **4. Conclusion**

In filing an *actio pauliana* lawsuit, as stipulated in the Bankruptcy Law, the primary function is to provide legal protection for bankrupt assets and the rights of creditors. To ensure that the lawsuit is accepted by the judges, the curator must prove the facts and losses suffered by the creditors. However, in practice, curators often encounter various challenges stemming from substantive, structural, and legal cultural aspects. Therefore, there is a need for regulations that can protect curators in carrying out their duties and enhance coordination among relevant agencies to facilitate the trial process. The relationship between the proof that curators must provide and the challenges they face reflects the urgent need for reform within the bankruptcy legal system in Indonesia.

## Reference

- Butarbutar, E. N. (2019). Pembuktian Terhadap Perbuatan Debitur yang Merugikan Kreditor Dalam Tuntutan Actio Pauliana. *Jurnal Yudisial*, 12(2).
- Hutomo, P., & Soge, M. M. (2021). Perspektif Teori Sistem Hukum Dalam Pembaharuan Pengaturan Sistem Pemasyarakatan Militer. *Legacy: Jurnal Hukum Dan Perundang-Undangan*, 1(1), 46–68.
- Interview with Deni Purba, Curator, conducted on May 23, 2022, in Medan.
- Interview with Iskandar Zulkarnain Lubis, Curator, conducted on May 23, 2022, in Medan.
- Interview with Irpan Surya Harahap, Curator and also the curator in the case of Bun Hui (bankrupt debtor), conducted on May 23, 2022, in Medan.
- Mantili, R. (2020). Actio Pauliana Sebagai Upaya Perlindungan Bagi Kreditor Menurut Kitab Undang-Undang Hukum Perdata Dan Undang-Undang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU). *Jurnal Hukum Acara Perdata*, 6(2).
- Muryati, D. T., Septiandani, D., & Yulistyowati, E. (2017). Pengaturan Tanggung Jawab Kurator Terhadap Pengurusan dan Pemberesan Harta Pailit dalam Kaitannya dengan Hak Kreditor Separatis. *Jurnal Dinamika Sosial Budaya*, 19(1), 11–21.
- Nugroho, S. A. (2018). *Hukum kepailitan di Indonesia: dalam teori dan praktik serta penerapan hukumnya*. Kencana.
- Situmorang, V. M. (1994). *Pengantar Hukum Kepailitan di Indonesia*. Rineka Cipta.
- Syahrin, M. A. (2017). Actio Pauliana: Konsep Hukum dan Problematikanya. *Lex Librum: Jurnal Ilmu Hukum*, 4(1).
- Tambunan, R., Sunarmi, S., Harianto, D., & Suhaidi, S. (2017). Upaya Hukum Actio Pauliana Dalam Melindungi Kreditor Atas Aset Debitur Dalam Kepailitan Perseroan Terbatas. *USU Law Journal*. 5 (3), 101, 107.
- Zulaeha, M. (2015). Mengevaluasi pembuktian sederhana dalam kepailitan sebagai perlindungan terhadap dunia usaha di Indonesia. *Jurnal Hukum Acara Perdata*, 1(2), 171–187.

-----