Principles Of Actio Paulina In Bankruptcy Regarding The Deed Of Transfer Of Rights Made In Front Land Titles Registrar

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<td>The legal principle of actio pauliana is the right given to creditors to request the cancellation of all acts of transfer of rights carried out by the debtor. The curator is the only party who can cancel legal actions carried out by the bankruptcy debtor based on the legal principle of actio pauliana through the Court, so that the deed of transfer of rights made by PPAT can be canceled using the legal principle of actio pauliana through a court decision. The aim of this research is to analyze the concept of the actio pauliana principle in the legal system in Indonesia and find out the legal position of the deed of transfer of rights made before the PPAT which is submitted for actio pauliana legal action in bankruptcy in Indonesia. The method used in research is normative juridical. Based on the research results, it is concluded that the concept of the actio pauliana principle in the legal system in Indonesia has been regulated in Article 1341 of the Civil Code and Articles 41 to Article 49 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations with the aim of protecting interests of creditors from bad actions carried out by debtors. This must go through a process by filing a lawsuit with the Commercial Court to obtain a decision to cancel the transfer of property or assets to a third party. A lawsuit for the transfer of property or assets can only be directed against a party who within 1 year before the bankruptcy occurred transferred their assets. The legal status of the deed of transfer of rights made before the PPAT which is submitted for actio pauliana legal action in bankruptcy in Indonesia is binding for both parties when the transfer of rights is carried out in good faith in accordance with the provisions required in the Law.</td>
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I. Introduction

The legal principle in the state aims to guarantee certainty, order and legal protection which has truth and justice as its core. As a legal country, Indonesia certainly needs reliable legal experts. The legal profession is not only about trust that concerns individual interests (private trust), but also concerns public interests (public trust).

In Indonesia, bankruptcy is a process where a debtor who cannot pay his debts to two or more creditors can be declared bankrupt by the Commercial Court, because the debtor cannot pay his debts. Debtor assets can be distributed to creditors in accordance with statutory provisions. In the event that a debtor only has one creditor and the debtor cannot pay the debt voluntarily, the creditor will sue the debtor civilly to the competent District Court and all of the debtor’s assets will become the source of repayment of the debt to the creditor.

However, in fact, when bankruptcy occurs, it is found that the debtor is not in good faith by attempting to transfer his assets before being declared bankrupt by the Commercial Court, whose transfer of rights is carried out before a Notary through a deed of release of rights or sale and purchase. With the aim of continuing to make a profit or at least reducing some of the assets that should be included in the bankruptcy filing, which in turn will actually have a detrimental impact on creditors. In connection with this, bankruptcy law in Indonesia has regulated several ways to protect creditors from debtors who have bad intentions as regulated in Article 1341 of the Civil Code, and Articles 41 to Article 49 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations or often called actio pauliana.

The legal principle of actio pauliana is the right given to a creditor to request the annulment of all actions involving the transfer of rights carried out by the debtor. And the Curator is the only party who can cancel legal actions carried out by the bankruptcy debtor based on the legal principle of actio pauliana through the Court Institution, so that in the deed of transfer of rights made by a Notary which is the basis for the transfer of rights with the actio pauliana action, then the deeds made before a Notary can be canceled according to the legal principle of actio pauliana through a court decision.

Certainty, order and legal protection greatly influence economic development in the life of the nation and state. Legal actions regarding rights transfer transactions give rise to legal relations that occur in society between one party and another party, of course requiring legal protection for both parties. Therefore, the actual role of the Land Deed Drafting Officer (PPAT) is as an Authentic Deed Drafting Official who has been given the task by the state based on the law to carry out his authority.

Land Deed Drafting Officials (PPAT) as public officials who carry out the legal profession have a very important role in society. This role can be seen in the function of the Notary's position to create legal certainty, relating to his authority to make authentic deeds. This is as outlined in Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Land Deed Making Officials, Article 1 number 1 of Government Regulation Number 24 of 2016, states that Land Deed Making Officials, hereinafter referred to as PPAT, are
officials general who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to apartment units.

Land Deed Drafting Officials (PPAT) have a very important role in people’s lives, especially in relation to civil law issues, considering that many modern societies today are burdened with civil law administration matters which must be documented in the form of authentic deeds so that these legal actions have legality and strong evidentiary power. Making authentic legal documents or deeds requires careful, skilled and professional Notary services.

Legal services by Land Deed Making Officials (PPAT) can be provided in the form of making authentic deeds, validating and registering deeds under their own hands or other authority. Regarding the legal product produced by a Notary is in the form of an authentic deed. Authentic deeds themselves in statutory regulations are regulated in Article 1868 of the Civil Code which states that an authentic deed is a deed made in the form determined by law by or in the presence of a public official authorized to do so in the place where the deed was made.

Humans as Social creatures will always enter into legal relations to fulfill their life needs. There are times when an individual or legal entity does not have enough money, then binds themselves to a debt and receivable agreement with another party. The debt and receivable agreement that is made then gives rise to an agreement which also regulates the rights and obligations of the parties. In this case, the party who has debts due to an agreement or law which can be collected before the court is called a creditor, while the party who has debts due to an agreement or law whose repayment can be collected before the court is called a debtor.

There are several methods that can be used to resolve a problem of debts and receivables and bills that are legally due, including alternative dispute resolution, conciliation, and postponing debt payment obligations and bankruptcy. Of these methods, one of the most common and quite widely used in resolving debts and receivables is postponing debt payment obligations and bankruptcy. Bankruptcy is one of the most widely used methods of resolving debt and receivable disputes because it better guarantees the security and interests of the parties concerned. This is because the bankruptcy institution involves agencies that carry out official duties from the government, such as the Commercial Court, Supervisory Judge and Curator.

In Article 1 number 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, it is stated that bankruptcy is a general confiscation of the assets of a bankrupt debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law.

Bankruptcy is a process where a debtor who has financial difficulties in paying his debts is declared bankrupt by a court, in this case the Commercial Court, because the debtor cannot pay his debts. Debtor assets can be distributed to creditors in accordance with statutory provisions. In the event that a debtor only has one creditor and the debtor does not pay the debt voluntarily, the creditor will sue the debtor civilly to the competent District Court and all of the debtor’s assets will become the source of repayment of the debt to the creditor.

A debtor can only be declared bankrupt if it is based on a court decision, in this
case the Commercial Court. The conditions for a debtor to be declared bankrupt are contained in Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, namely that the debtor has two or more creditors and does not pay in full at least one debt that has matured and can charged, declared bankrupt by a court decision, either at his own request or at the request of one or more of his creditors. After being declared bankrupt by the court, the debtor's legal status regarding his ability to control and manage his assets is transferred to the Curator. Furthermore, Article 16 explains the authority of the Curator, namely carrying out the task of managing and/or settling bankruptcy assets from the date the bankruptcy decision is pronounced even if the decision is submitted for cassation or judicial review.

Apart from that, Article 1131 of the Civil Code explains that all movable and immovable property belonging to the debtor, both existing and future, shall be collateral for the debtor's individual obligations. And in Article 1132 it is explained that the goods are a joint guarantee for all creditors against whom the proceeds from the sale of the goods are divided according to the proportion of their respective receivables, unless there are valid reasons for priority among the creditors.

Based on the explanation of the background above, the author will provide a definition of the problem, namely regarding the concept of actio pauliana principles in the legal system in Indonesia and the legal position of deeds of transfer of rights made before the Land Deed Making Officer (PPAT) for which legal action is filed for actio pauliana in bankruptcy in Indonesia.

2. Research Method

The approach method used in this research is a normative juridical approach. Normative juridical is a research method that refers to legal norms contained in laws and regulations as well as norms that apply and bind society or also relate to customs that apply in society. Normative juridical conceptualizes what is written in statutory regulations (law in books) or law is conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate. This approach is also known as the bibliographic approach, namely by studying books, laws and regulations and other documents related to this research.

The research in preparing this thesis is descriptive analytical, namely by analyzing the principle of actio pauliana in bankruptcy regarding the deed of transfer of rights made before the Land Deed Making Officer (PPAT), then it will be researched to find out the legal arrangements that regulate these matters. This thesis uses primarily a statutory approach, but also adds a conceptual approach. The conceptual approach is used in relation to juridical concepts related to the principle of actio pauliana in bankruptcy regarding deeds of transfer of rights made before the Land Deed Making Officer (PPAT).

3. Result and Discussion

In general, a rule of law can be defined as a state where the actions of the government and its people are based on law to prevent arbitrary actions on the part of
the government and actions of the people carried out according to their own wishes.

Of the several theories that explain the concept of the rule of law, namely the rechtsstaat theory and the rule of law. The concept of rechtsstaat relies on a continental legal system called civil law, while the concept of the rule of law relies on a legal system called common law. The characteristics of civil law are administrative, while the characteristics of common law are judicial.

It can be said that a system cannot be separated from the principles that support it. For this reason, law is a system, meaning an orderly arrangement or arrangement of the rules of life, the whole of which consists of parts that are related to each other. It can be concluded that the legal system is a complete unity of orders consisting of parts or elements which are interconnected and closely related to each other. To achieve a unified goal, cooperation between the parts or elements is needed according to a certain plan and pattern.

The legal system in Indonesia adheres to the Continental European legal system or Civil Law. This can be seen from the history and politics of law, legal sources, and the law enforcement system. Where this system has developed in many European countries, such as the Netherlands, France, Italy and Germany. Then in Latin America and Asia. In Asia, one of which was Indonesia during the Dutch colonial period. The important elements in the concept of the rule of law according to Continental Europe are:

a. There is protection of human rights.
b. Division of power.
c. Government based on law.
d. The existence of a State Administrative Court

1. Concept of Actio Pauliana Principles in Indonesia

The term actio pauliana comes from Roman, which means to refer to all legal measures used to declare the debtor's actions null and void in order to negate the meaning of the provisions of Article 1131 of the Civil Code, namely that the debtor feels that he has been declared bankrupt and takes legal action to transfer the rights to some his wealth or other means to harm his creditors.

Actio pauliana is a means provided by law for every creditor to apply for cancellation of all unnecessary actions that have been carried out by the debtor, where these actions have harmed the creditor. Actio pauliana is basically a legal recourse given to the Curator to cancel legal actions carried out by the bankruptcy debtor before the declaration of bankruptcy which is detrimental to the interests of his creditors.

Actio pauliana is the cancellation of all legal actions of the debtor which are detrimental to creditors which were carried out before the decision to declare bankruptcy was pronounced. Actio pauliana or claw back provision applies to debtors who commit acts detrimental to creditors within a period of one year before the decision to declare bankruptcy is pronounced.

Actio Pauliana in bankruptcy cases actually refers to the provisions in Article 1341 of the Civil Code, there are only special provisions in the actio pauliana in bankruptcy cases. The concept of actio pauliana aims to protect concurrent creditors from actions taken by bankrupt debtors or bankrupt creditors and other creditors.
which are detrimental to the bankruptcy assets which in turn will harm the interests of other concurrent creditors. General rules regarding actio pauliana are regulated in Article 1341 of the Civil Code which reads as follows:

a. Every person who owes a debt may apply for the annulment of all acts which are not required to be carried out by the debtor in whatever name, which is detrimental to the person who owes the debt, as long as it is proven when the action is committed, either by the debtor, or by the person with or for whom the debtor acts, knowing that this action will have detrimental consequences for the people who owe money.

b. Rights obtained in good faith by third persons over the goods which are the subject of the action are protected.

c. In the case of filing for cancellation of actions carried out free of charge by the debtor, it is sufficient for the debtor to prove that the debtor at the time of committing the act knew that by doing so it would harm the people who owed him money, no matter whether the person who owed him the debt whether you receive the benefits or not.

In Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, comprehensively regulates actio pauliana, namely in Articles 41 to Article 50. Regarding the interests of bankruptcy assets, the Court can request the annulment of all legal actions of debtors who have been declared bankrupt, which is detrimental to the interests of creditors, which is carried out before the decision to declare bankruptcy is pronounced. Cancellation can only be carried out if it can be proven that at the time the legal action was carried out, the debtor and the party with whom the legal action was carried out knew and should have known that the legal action would result in losses for the creditor. However, excluded from the provisions as intended in Article 41 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, are legal actions by debtors that are obliged to be carried out based on an agreement and/or because of the Law.

2. Legal Position of the Deed of Transfer of Rights before the Land Deed Making Official (PPAT)

Transfer of land rights is the transfer of land rights from the old right holder to the new right holder according to the provisions of the applicable laws and regulations. There are 2 (two) ways of transferring land rights, namely transfer and assignment. Transfer indicates the transfer of land rights without any legal action being taken by the owner, for example through inheritance. Meanwhile, transfer refers to the transfer of land rights through legal actions carried out by the owner, for example through buying and selling. In Indonesia, the transfer of land rights is based on Government Regulation Number 10 of 1961 concerning Land Registration as amended by Government Regulation Number 24 of 1997 concerning Land Registration.

The provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration do not actually determine whether or not a transfer of land rights occurs, for example through buying and selling, but regulates the registration of the transfer of rights. This means that whether or not the legal act of transferring rights to land occurs does not depend on the existence or non-existence of
a deed from the Land Deed Making Officer (PPAT), as well as whether it is carried out and/or not carried out in the presence of the Land Deed Making Official (PPAT).

This can be seen in the provisions of Article 37 paragraph (2) which states, that in certain circumstances as determined by the Minister, the Head of the Land Office can register the transfer of rights to land plots of ownership, carried out between individual Indonesian citizens as proven by a deed that is not made by the Land Deed Drafting Officer (PPAT), but which, according to the Head of the Land Office, is deemed to be sufficient to register the transfer of the rights in question.

In Article 1 number 1 of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Making Officials, Land Deed Making Officials (PPAT) are public officials who are given the authority to make authentic deeds regarding legal acts specifically regarding land rights or ownership rights to apartment units. An authentic deed is a deed in the form determined by law, made by or in the presence of a public official authorized to do so in the place where the deed is made.

3. Actio Pauliana in Bankruptcy in the Indonesian Courts

Bankruptcy is a legal institution that was born to minimize problems in a debt and receivable legal relationship. The purpose of the bankruptcy law institution is to avoid conflicts if several creditors at the same time request payment of their receivables from the debtor, to avoid creditors demanding their rights by selling goods. belonging to the debtor without considering the interests of the debtor or other creditors, and avoiding fraud committed by the debtor himself. Bankruptcy in Article 1 Paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, is declared as a general confiscation of all assets of a bankrupt debtor whose management and settlement is carried out by a curator under the supervision of a supervising judge, so that this becomes a problem. In bankruptcy, it is the process of managing and settling the assets of the bankrupt debtor concerned.

Bankruptcy law institutions in Indonesia today are very useful and effective for resolving legal debt-receivable relationships between creditors and debtors, where there is a court that guarantees the protection of the rights and obligations of each party in the manner specified in the bankruptcy law institutions, whereas bankruptcy is effective. because in a bankruptcy there is a party who has control and is independent in carrying out a bankruptcy with the rights, obligations and authority specified in the Bankruptcy Law, namely the curator. In managing and settling bankruptcy assets, all legal actions carried out by the curator are carried out under the supervision of a supervising judge, this becomes a legal institution that proves that there are interests. The interests which are the rights of debtors, creditors and curators in carrying out their duties are protected by law.

In bankruptcy cases, the term actio pauliana is also known, where the use of actio pauliana in bankruptcy cases is a very important institution for curators. Actio pauliana is one of the efforts that can be made by the Curator to increase the quantity and quality of bankruptcy assets. The curator is given the authority by Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations to file a lawsuit for the cancellation of legal actions that have already been carried out by the debtor in the past before the debtor was declared bankrupt through a Commercial
Court decision. This is because many naughty debtors try to divert their assets so that they continue to make a profit or at least reduce the losses they will incur. In Pauliana’s action, the debtor must be in a state of insolvency. Apart from that, the need for an actio pauliana is also to avoid conflict if a creditor appears who wants to obtain certain rights, who is forced to sell the debtor’s goods themselves or take control of the goods themselves without regard to the rights of other creditors.

Regulations regarding actio pauliana have been regulated in the Civil Code and Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. In Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, actio pauliana is regulated in Article 30 and Article 41 – Article 50. It has been clarified in the explanation of Article 3 paragraph (1) of the Bankruptcy and Postponement of Debt Payment Obligations Law which states that what is meant by other matters is, among other things, actio pauliana, third party resistance to confiscation, or cases where the debtor, creditor, or administrator is one of the parties in a case related to bankruptcy assets. The application of the actio pauliana lawsuit in the Bankruptcy Law and Suspension of Debt Payment Obligations is a form of protection for the bankruptcy estate’s assets from fraudulent acts that may be committed by the bankruptcy debtor in order to secure the bankrupt debtor’s assets so that the assets that should be included in the bankruptcy debtor’s assets can be protected or not included in the assessment of the bankruptcy Boedel’s assets. However, an actio pauliana lawsuit cannot only be brought regarding an agreement made by the bankruptcy debtor within 1 (one) year before the bankruptcy decision was pronounced. However, it can also be carried out as long as the bankruptcy execution has not been completed and a legal action has been discovered by the bankruptcy debtor and is considered to increase the value of the bankruptcy debtor’s assets.

Actio pauliana is a means provided by law to each creditor to apply for cancellation of all acts that are not required to be carried out by the debtor where these acts have harmed the creditor. There is one important element that is used as a benchmark in regulating pauliana actions in Article 1341 of the Civil Code, namely the element of good faith. Proving the presence or absence of the element of good faith is the basis for determining whether these actions include actions that are not obligatory or obligatory.

4. Legal Action Principles of Actio Pauliana According to Judicial Activism Regarding the Deed of Transfer of Rights

The provisions of the actio pauliana are intended to protect the interests of creditors who are harmed by legal actions carried out by debtors. The provisions regarding actio pauliana in bankruptcy law are substantially the same as the actio pauliana provisions regulated in the Civil Code. The only difference is in terms of time period, namely that the actio pauliana in bankruptcy is carried out within a period of 1 (one) year, while the actio pauliana in the Civil Code has a period of 4 (four) years.

The actio pauliana in bankruptcy cases actually refers to the provisions in Article 1341 of the Civil Code, there are only special provisions in the actio pauliana in bankruptcy cases. The concept of actio pauliana aims to protect concurrent creditors from actions taken by bankrupt debtors or bankrupt creditors and other creditors.
which are detrimental to the bankruptcy assets which in turn will harm the interests of other concurrent creditors.

The provisions of judicial activism in Indonesia are implemented to realize justice as stated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, namely that as a Judge there is a responsibility inherent in his duties as a Judge to be active in the context of realizing justice for society, and Article 10 paragraph (1) Courts are prohibited from refusing to examine, try and decide a case submitted on the pretext that the law does not exist or does not exist and does not clear, but is obliged to examine and prosecute it according to the principle of Ius Curia Novit which means that the Judge is considered to know all the laws.

According to Prof. Sutan Remy Sjahdeini, quoting from Fred B.G. Tumbuan, said that in Article 41 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, there are five requirements that must be met for the actio pauliana to apply, including:

a. The debtor has committed a legal act.
b. This legal action is not mandatory for the debtor to carry out.
c. The legal action is intended to have harmed creditors.
d. When carrying out a legal action, the debtor knows or should know that the legal action will be detrimental to the creditor.
e. When carrying out the legal action, the party with whom the legal action is carried out knows or should know that the legal action will result in losses for creditors.

4. Conclusion

a. The legal concept of the actio pauliana principle is not generally regulated in the Civil Code system in Indonesia, Article 1341 of the Civil Code implies the existence of the Actio Pauliana concept. Special Regulations on the Actio Pauliana Legal Concept include Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations which is regulated only in several provisions of Articles 41 to Article 49, with the aim of protecting the interests of creditors from bad actions carried out by Debtors. The application of the Actio Pauliana principle can be implemented through a judicial process by filing a lawsuit with the Commercial Court for cancellation of the transfer of property or assets to a third party which must fulfill certain conditions and can be directed against a debtor who within one year before the bankruptcy occurred. his assets.

b. The legal status of the deed of transfer of rights made before the Land Deed Making Officer (PPAT) cannot be used as perfect evidence of the transfer of rights by filing legal action with the legal principle of actio pauliana through a lawsuit process in the Commercial Court carried out by the Curator for legal action. transfer of rights, there is a Judge’s Decision which cancels the transfer of Rights made before the Land Deed Making Officer (PPAT) so that the Transfer Deed has no legal force.
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