

Gugatan Actio Pauliana dalam kepailitan (Studi Putusan Nomor 61 PK/Pdt.Sus-Pailit/2015 Jo. Nomor 389 K/Pdt.Sus-Pailit/2014 Jo. Nomor 02/Pdt. Sus. ActioPauliana/2014/PN.Niaga.Jkt.Pst) = Actio Pauliana Lawsuit in Bankruptcy (Case Study Number 61 PK/Pdt.Sus-Pailit/2015 Jo. Number 389 K/Pdt.Sus-Pailit/2014 Jo. Number 02/Pdt. Sus. ActioPauliana/2014/PN.Niaga.Jkt.Pst)

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Abstrak

Untuk kepentingan harta pailit, kepada pengadilan niaga dapat dimintakan pembatalan segala perbuatan hukum debitur yang telah dinyatakan pailit yang merugikan kepentingan kreditor, yang dilakukan sebelum putusan pernyataan pailit diucapkan. Gugatan pembatalan ini dikenal dengan nama gugatan actio pauliana. Debitur dan pihak dengan siapa perbuatan hukum itu dilakukan harus terbukti beritikad tidak baik sehingga merugikan kreditor. Tesis ini akan membahas terkait tinjauan umum hukum kepailitan di Indonesia, hukum actio pauliana dalam hukum kepailitan di Indonesia, dan analisis terkait putusan actio pauliana dalam kasus kepailitan PT Metro Batavia (Putusan Nomor 61 PK/Pdt.Sus-Pailit/2015 Jo. Nomor 389 K/Pdt.Sus-Pailit/2014 Jo. Nomor 02/Pdt. Sus. ActioPauliana/2014/PN.Niaga.Jkt.Pst). Tesis ini memakai penelitian hukum normatif dengan pendekatan undang-undang dan pendekatan kasus.

Berdasarkan hasil penelitian, hukum kepailitan di Indonesia diatur dalam Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang ('UU Kepailitan'). Ketentuan actio pauliana diatur dalam Pasal 41 sampai Pasal 49 UU Kepailitan. Putusan pengadilan niaga dan kasasi yang menolak gugatan actio pauliana dari tim kurator PT Metro Batavia (dalam pailit) telah tepat karena aset yang menjadi obyek sengketa bukan milik PT Metro Batavia (dalam pailit). Putusan Peninjauan Kembali (PK) yang mengabulkan gugatan actio pauliana tidak tepat karena novum yang menjadi pertimbangan majelis hakim Peninjauan Kembali (PK) tidak membuktikan kepemilikan suatu aset.

.....In the interest of the bankruptcy assets, annulment may be requested to the commercial court for all legal acts of the debtor who has been declared bankrupt which prejudice the interests of the creditors, which were conducted before the declaration of bankruptcy was rendered. The annulment is known as the actio pauliana lawsuit. The debtor and the party with whom the legal acts was carried out must be proven to have a bad faith that prejudice the creditors. This thesis will discuss about general review of bankruptcy law in Indonesia, actio pauliana in Indonesia's bankruptcy law, and analysis related to actio pauliana decision in Metro Batavia's company (in bankruptcy). This thesis use normative legal research with statute approach and case approach.

Based on research results, bankruptcy law in Indonesia is regulated in Law Number 37 of 2004 on bankruptcy and suspension of obligation for payment of debts ('Bankruptcy Law'). The actio pauliana is regulated in article 41 to article 49 of Bankruptcy Law. The decision of the commercial court and cassation which rejected the actio pauliana lawsuit from the curator team of Metro Batavia's company (in bankruptcy) was appropriate because the assets of the dispute did not belong to Metro Batavia's company (in bankruptcy). The judicial review decision that grants the actio pauliana lawsuit is faulty because the new evidences (novum) that are used for consideration by the panel of judges do not prove the ownership of an

asset.