

REGULATION OF THE TIME LIMITATION FOR ACTS THAT MAY BE SUBJECT TO *ACTIO PAULIANA* UNDER INDONESIAN BANKRUPTCY LAWSafina Elita Aliyah
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Abstract

Law Number 37 of 2004 provides the *actio pauliana* mechanism as a form of protection for creditors against legal acts of debtors who deliberately transfer their assets so that they are excluded from the bankruptcy estate, thereby causing potential losses to creditors. However, the regulation concerning the time frame for legal acts that may be challenged through *actio pauliana* has given rise to misinterpretation in the practice of the Commercial Court. The phrase “one (1) year” in Article 42 is intended to function as a mechanism for shifting the burden of proof from the curator to the debtor, based on the presumption that the debtor had knowledge when the legal act was carried out within one year prior to the declaration of bankruptcy. This study aims to analyze the characteristics of legal acts that may be subject to *actio pauliana* under bankruptcy law and to examine the legal consequences of regulating the time limitation for acts that may be challenged through an *actio pauliana* claim. This research employs a statutory approach, a case approach, and a comparative approach by examining the bankruptcy laws of the United States, the United Kingdom, and Italy. The findings indicate that the lack of clarity in the regulation results in legal uncertainty, leads to inconsistent practices in the Commercial Court, and has the potential to prejudice good-faith third parties. This study emphasizes the urgency of clearly determining the applicable time period as a manifestation of legal certainty, justice, and utility for all parties.

Keywords: *actio pauliana*; burden of proof; creditor protection; time limitation

Article History

Received: Januari 2026
Reviewed: Januari 2026
Published: Januari 2026

Plagiarism checker no 615

Doi : prefix doi :
10.8734/causa.v1i2.365

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Publish by : causa



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Introduction

Pursuant to Article 1(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (“Bankruptcy Law”), bankruptcy constitutes a general attachment over all assets of the bankrupt debtor, the administration and liquidation of which are carried out by a Curator under judicial supervision. A general attachment covers all assets owned by the debtor, both present and future, so that the proceeds may be distributed fairly and proportionally among creditors in accordance with the amount of their respective claims, except for claims that are legally entitled to priority.¹

¹ Siti Hapsah Isfardiyana, “Sita Umum Kepailitan Mendahului Sita Pidana Dalam Pemberesan Harta Pailit,” *Padjadjadjaran Jurnal Ilmu Hukum*, Vol. 3, No. 3, 2016 (hereinafter, “Siti Hapsah Isfardiyana”), p. 635.

Furthermore, Article 3(1) of the Bankruptcy Law provides that decisions on bankruptcy petitions and other matters regulated under this Law fall within the jurisdiction of the court covering the debtor's legal domicile. As clarified in the explanation of Article 3(1), the term "other matters" includes *actio pauliana*, namely legal actions involving third-party opposition to attachment or disputes in which the debtor, creditor, curator, or administrator is a party in connection with bankruptcy proceedings.

Actio pauliana allows creditors to safeguard their interests in bankruptcy law by halting the debtor's asset-related legal activities that are not required by statute and may could harm creditors.² This privilege protects creditors from debtor actions that harm them. *Actio pauliana* protects creditors from debtor conduct that may generate damages. In this context, *actio pauliana* allows the court to invalidate debtor legal activities over their assets if a creditor or curator in bankruptcy proceedings applies and the debtor knew such acts would damage creditors.

However, the Bankruptcy Law has not yet specifically regulated the time limit for filing an *actio pauliana* claim. This differs from several other countries, such as England, the United States, and Italy, which have established specific limitation periods for the submission of *actio pauliana* as an application to annul legal acts that are detrimental to creditors. It is important to note that Article 42 of the Bankruptcy Law is a special provision on *actio pauliana* that grants a relaxation of the burden of proof for creditors, provided that the debtor's legal acts were carried out within one year before the bankruptcy judgment was rendered and meet one of the requirements stipulated in points (a) to (g) of the article.

In this context, Article 42 of the Bankruptcy Law does not regulate the limitation period for filing an *actio pauliana* claim. However, in practice, the majority of *actio pauliana* filed by curators in Indonesia are directed against legal acts carried out within one year prior to the issuance of the bankruptcy declaration. This condition arises because the phrase in Article 42 of the Bankruptcy Law stating "carried out within a period of one year" creates the impression that there is a time limit for curators to file an *actio pauliana* claim, as reflected in, among others, the following decisions:

1. Supreme Court Decision No. 18 PK/Pdt.Sus/2007.
2. Surabaya Commercial Court Decision No. 13/PKPU/2015.
3. Supreme Court Decision No. 118 K/Pdt.Sus-Pailit/2015.
4. Central Jakarta Commercial Court Decision No. 20/Pdt.Sus-Other Lawsuit-Ap/2019/PN.Niaga.Jkt.Pst.
5. Decision No. 3/Pdt.Sus-Other Matters/2021/PN Commercial Court Medan in conjunction with Decision No. 7/Pdt.Sus-PKPU/2018/PN Commercial Court Medan.

This misconception is also caused by misinterpretation or erroneous construction by judges who consider that Article 42 of the Bankruptcy Law constitutes a provision regulating the limitation period for filing an *actio pauliana* claim.

In the context of time limits, the term "time limit" in the civil law regime refers to a specific period stipulated by statutory regulations within which a legal action must be undertaken. By way of example, Law Number 20 of 2016 on Trademarks and Geographical Indications (hereinafter referred to as "Law 20/2016") stipulates a time limit of five years from the date of registration for filing an application for the cancellation of a trademark registration,

² Sutan Remy Sjahdeini, *Sejarah, Asas, dan Teori Hukum Kepailitan (Memahami Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang)*, Kencana, Jakarta, 2016, pp. 362-363.

except where such registration was made in bad faith or is contrary to public morality.³ Furthermore, Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (hereinafter referred to as “Law 30/1999”) provides that an application for the annulment of an arbitral award must be submitted in writing to the District Court no later than thirty days from the date of the delivery and registration of the arbitral award.⁴

Accordingly, this research emphasizes the urgency of regulating the time limit for filing *actio pauliana* claims under the Bankruptcy Law. Provisions on such “time limits” are essential to ensure that curators have clear and definite boundaries for initiating annulment actions against asset transfers or other legal acts that are detrimental to creditors. Therefore, the regulation of a limitation period for *actio pauliana* is crucial to provide legal certainty and protection for interested parties, including creditors, in addressing various modes of asset transfers undertaken by debtors.

Charateristics of Legal Acts Subject to *Actio Pauliana* in Bankruptcy Law

In legal literature, Sutan Remy Sjahdeini explains that *actio pauliana* is a right granted by law to creditors to request the court to annul a debtor’s actions concerning their assets that are not obligatory, where such actions may cause losses to creditors and are carried out with awareness of the potential harm.⁵ Meanwhile, Munir Fuady views *actio pauliana* as a legal mechanism or remedy available to creditors to invalidate debtor actions that clearly prejudice the creditors’ position, particularly where such actions result in a reduction of assets that should serve as security for the fulfillment of debts.⁶ Accordingly, the concept of *actio pauliana* constitutes a legal remedy that enables creditors to file a claim before the court seeking the annulment of debtor actions that are detrimental to their interests.

There are two types of *actio pauliana*, namely those under civil law and those under bankruptcy law.

1. *Actio Pauliana* under Civil Law

a. *Actio pauliana* under Article 1341 of the *Burgerlijk Wetboek*

The *actio pauliana* mechanism provides legal protection to creditors who are not parties to a contractual relationship with the debtor, yet are still entitled to seek the annulment of the debtor’s legal acts that prejudice their interests.⁷ This protection is regulated under Article 1341 of the BW. There are two essential elements of *actio pauliana*: (i) a legal act that is not obligatory or is voluntary in nature, and (ii) a legal act that causes loss to creditors. Accordingly, creditors may demand the annulment of any non-obligatory legal act carried out by the debtor that results in losses to creditors, insofar as it can be proven that the debtor and the other party involved in the act were aware of the potential prejudice.

In this regard, legal acts under Article 1341 of the BW are distinguished into two types: (i) reciprocal acts and (ii) gratuitous acts. Examples of reciprocal acts include situations where both parties perform their respective obligations, such as sale and purchase agreements or lease agreements, whereas gratuitous acts are acts in which only one party performs an obligation, such as grants or debt releases. Furthermore, a crucial element governing *actio pauliana* under

³ Law No. 20/2016, Art. 77(1).

⁴ Law No. 3/1999, Art. 71.

⁵ Sutan Remmy Sjahdeini, *Hukum Kepailitan: Memahami Undang-undang No. 37 Tahun 2004 Tentang Kepailitan*, Pustaka Utama Grafiti, Jakarta, 2009, p. 248.

⁶ Munir Fuady, 2005, *Hukum Pailit dalam Teori dan Praktek*, Bandung: PT. Citra Aditya Bakti, p. 85.

⁷ Jono, *Hukum Kepailitan*, Jakarta: Sinar Grafika, 2008, p. 134.

Article 1341 of the BW is good faith. Good faith serves as a condition that prevents annulment where the debtor can demonstrate that they were unaware that their actions would be detrimental to creditors.

According to Kartini Muljadi and Gunawan Widjaja, *actio pauliana* may only be exercised if the requirements set forth in Article 1341 of the BW are fulfilled, namely:

- 1) The creditor must be able to prove that the debtor's act was not obligatory.
- 2) The creditor must be able to prove that the act caused losses to the creditor.
- 3) In the case of reciprocal acts, the creditor must prove that both the debtor and the counterparty were aware that the act would result in losses to creditors.
- 4) In the case of gratuitous acts, the creditor only needs to prove that the debtor was aware that the act would prejudice creditors, regardless of whether the benefiting party was aware of such prejudice.⁸

b. Actio pauliana under Article 1061 of the Burgerlijk Wetboek

In the context of inheritance law, *actio pauliana* may be applied where a debtor's actions, including the rejection of an inheritance, result in losses to creditors. Although an heir may deviate from statutory inheritance provisions through a will, the debtor remains legally competent insofar as the will was made prior to bankruptcy. As reflected in the principle of *paritas creditorium*, creditors are entitled not only to the debtor's existing assets but also to assets that may be acquired in the future.

In this respect, Article 1065 of the BW provides a mechanism for creditors where a debtor rejects an inheritance in order to evade debt repayment. Under this provision, creditors may substitute the debtor's position in relation to the rejection of the inheritance, thereby allowing the inherited assets to remain accessible as objects for debt satisfaction. However, such substitution is limited to the value of the creditor's claim. This means that if the value of the inheritance exceeds the amount of the debt, the remaining balance must be returned to the other heirs. Accordingly, the principle of *actio pauliana* continues to operate within inheritance law through the proportional limitation of the annulment of inheritance rejection.

2. Actio Pauliana under Bankruptcy Law

Before further discussing the concept of *actio pauliana* in bankruptcy law, it is first necessary to explain the concept of bankruptcy itself. As stipulated in Article 2 of the Bankruptcy Law, a debtor who has two or more creditors and fails to fully pay at least one debt that has fallen due and is collectible may be declared bankrupt by a court decision, either upon the debtor's own petition or upon the petition of one or more creditors.

In this regard, Sutan Remy Sjadeini further elaborates on the objectives of bankruptcy law, namely:

- 1) Protecting concurrent creditors. This protection is intended to ensure that concurrent creditors obtain their rights in accordance with the principle of general security, which provides that "all assets of the debtor, whether movable or immovable, whether existing at present or to be acquired in the future, constitute security for the fulfillment of the debtor's obligations." Through this mechanism, creditors are provided with an orderly procedure for satisfying their claims and to prevent competition or seizure of the debtor's assets among creditors.
- 2) Ensuring proportional distribution of the debtor's assets. This mechanism aims to ensure that the distribution of the debtor's assets is carried out in accordance with the principle

⁸ Gunawan Widjaja dan Kartini Muljadi, *Hapusnya Perikatan*, Raja Grafindo Persada, 2003, p. 196.

of *pari passu pro rata parte*, namely proportional distribution to concurrent creditors based on the amount of each claim, as regulated in Article 1132 of the *Burgerlijk Wetboek*.

- 3) Preventing detrimental actions by the debtor. This protection also functions to prevent the debtor from committing acts or actions that may prejudice the interests of creditors, whether before or during the process of debt settlement.⁹

In the context of bankruptcy, *actio pauliana* serves as a form of legal protection for bankruptcy creditors against a bankrupt debtor who acts in bad faith by transferring assets in advance to third parties, thereby causing creditors to face difficulties in obtaining repayment from the debtor's estate because such assets have already been transferred to third parties.¹⁰

Elements of *Actio Pauliana* under the Bankruptcy Law

First, legal act. Kartini Muljadi states that the requirements for *actio pauliana* in bankruptcy include the existence of a legal act (*rechtshandeling*) carried out by the debtor prior to the declaration of bankruptcy, the debtor's knowledge or constructive knowledge that such act would cause losses to creditors, and the performance of such act despite the absence of a legal obligation to do so (*overplicht*).¹¹ Furthermore, according to Soeroso, a legal act refers to any act performed by a legal subject, whether an individual or a legal entity, the consequences of which are governed by law. Soeroso emphasizes that an act may only be classified as a legal act if it is accompanied by a declaration of intent, namely an expression of will to give rise to specific legal consequences. Such a declaration of intent does not always need to be expressed in a particular form and may also be implied, for example, by the absence of objection in a meeting, which may be construed as consent.¹² Legal acts are further classified into two types based on the parties involved: (i) unilateral legal acts, namely acts performed by one party that give rise to legal consequences only for that party, such as the making of a will or the granting of a gift; (ii) bilateral legal acts, namely acts involving two parties that mutually create rights and obligations, as in sale and purchase agreements or lease agreements.¹³ In the relationship between creditors and debtors, legal acts may be carried out by one or both parties and must give rise to legal consequences. Acts that do not produce legal consequences cannot be categorized as legal acts. Accordingly, an act may be regarded as a legal act only if it fulfills two elements, namely the existence of an act and the emergence of legal consequences.¹⁴

Second, the legal acts subject to annulment are those that are not legally mandatory (*voluntarily undertaken*). The debtor has no legal obligation to perform such acts under applicable law or under a contractual obligation.¹⁵ Examples of legally mandatory acts include the payment of taxes, while acts required by contract include the payment of debts that have fallen due. Such mandatory acts cannot be annulled, even if they reduce the debtor's assets and prejudice other creditors.¹⁶ Accordingly, non-mandatory legal acts may be challenged through

⁹ Sutan Remmy Sjahdeini, *Hukum Kepailitan: Memahami Faillissementsverordening Juncto Undang-undang No.4 Tahun 1998*, Pustaka Utama Grafiti, Jakarta, 2002, pp. 38-40.

¹⁰ M. Ikhfal Khaqiqi, Rosalinda Elsina L. 'Actio pauliana Sebagai Bentuk Perlindungan Hukum Bagi Kreditur Kepailitan', *Journal Evidence Of Law*, Vol 3 No 2 Mei-Agustus 2024, p. 239.

¹¹ M. Hadi Shubhan, *Hukum Kepailitan*, Kencana: Jakarta, 2008, p. 178.

¹² R. Soeroso, *Pengantar ilmu Hukum*, Sinar Grafika, Jakarta, 2023, pp. 291-292.

¹³ BW, Art. 1457.

¹⁴ Munir Fuady, 2005, *Hukum Pailit dalam Teori dan Praktek*, Bandung: PT. Citra Aditya Bakti, p. 87.

¹⁵ *Ibid.*

¹⁶ Insyirah Fatimah Hidayat, "Actio Pauliana dalam Kepailitan dan PKPU," <https://www.kinilegal.com/actio-pauliana-dalam-kepailitan-dan-pkpu#:~:text=Secara%20terminologi%2C%20actio%20pauliana%20dapat,tindakan%20seperti%20hibah%2C%20penjualan>, accessed on 14 November 2025.

actio pauliana. For example, under Dutch law, non-mandatory acts include granting security to a creditor without obligation, paying debts that are not yet due, settling debts in kind rather than in cash (whether due or not), or transferring assets to creditors by way of set-off or compensation in satisfaction of debts.

Third, in order to grant an *actio pauliana* claim, the court must establish not only the existence of a legal act, but also that such act caused prejudice to creditors.¹⁷ The act must have been carried out consciously and intentionally to produce specific legal consequences. Through this intention and the resulting legal effects, it is evident that the debtor's conduct constitutes not merely a factual act, but a legal act that has consequences for other parties.¹⁸ Such prejudice may take the form of the loss of a creditor's opportunity to recover its claim, due to the transfer of assets that should have remained available for the satisfaction of the debtor's obligations. For example, transactions such as sales or gifts deliberately made by the debtor to third parties prior to a bankruptcy ruling, which reduce the debtor's ability to fulfill its payment obligations to creditors, may be deemed prejudicial. Munir Fuady also identifies several examples of acts that cause prejudice and have a detrimental effect on creditors, including:

1. The sale of assets at below-market value;
2. The transfer of assets by way of gifts or donations;
3. Acts that increase liabilities or burdens on the bankruptcy estate, such as a subsidiary providing guarantees for debts incurred by a holding company;
4. Acts that adversely affect the ranking of creditors, such as preferential payments or the granting of security to specific creditors only.¹⁹

Fourth, knowing or reasonably should have known. The element of "knowing or reasonably should have known" arises from the debtor's conduct and constitutes a key element that must be proven to determine whether creditors have suffered prejudice.²⁰ The assessment of whether the debtor knew that its actions were detrimental to creditors must be conducted objectively.²¹ This means that both the debtor and the counterparty to the legal act must clearly or reasonably have understood that such act had the potential to harm creditors. In the context of Article 41 of the Bankruptcy Law, proof that the debtor knew or should have known that a legal act was prejudicial must be preceded by proof of attributable fault. This includes the following elements: (i) The existence of an act that prejudices creditors; (ii) The act was carried out prior to the declaration of bankruptcy; and (iii) The act was not required by contract or by law.²² In practice, a number of facts may support the finding of bad faith, including: (i) the debtor knowingly selling assets below market value without a clear justification; (ii) the debtor transferring assets to parties affiliated with the debtor; or (iii) the debtor entering into transactions at a time when its financial condition was unstable or approaching insolvency.²³

¹⁷ Surya Ulies Resky dan Dedi Harianto, "Perlindungan Hukum Terhadap Kepentingan Para Kreditur yang Dirugikan oleh Perbuatan Debitur Dalam Bentuk Upaya hukum *Actio pauliana*," *Rio Law Jurnal*, Vol. 1, No.2, 2025, p. 545.

¹⁸ Kevin Noble Effendi, "Tinjauan yuridis pembatalan perbuatan hukum Debitur yang merugikan Kreditur," *Jurnal ilmu hukum, Humaniora, dan Politik*, Vol. 5, No.2, 2024, p. 1031

¹⁹ Munir Fuady, 2005, *Hukum Pailit dalam Teori dan Praktek*, Bandung: PT. Citra Aditya Bakti, pp. 88-89.

²⁰ Abd Jalil Hamzah, "Pembuktian Debitur terhadap *actio pauliana* dalam Kepailitan," *De Jure*, Vol. 1, No.1, 2017, p. 7.

²¹ Elisabeth Nurhaini Butarbutar, 'Pembuktian terhadap perbuatan Debitur yang merugikan Kreditur dalam tuntutan *Actio pauliana* ', *Jurnal Yudisial*, Vol. 12, No.2, 2019, pp. 223.

²² *Ibid*.

²³ Kevin Noble Effendi, "Tinjauan yuridis pembatalan perbuatan hukum Debitur yang merugikan Kreditur," *Jurnal ilmu hukum, Humaniora, dan Politik*, Vol. 5, No.2, 2024, p. 1034.

Legal Consequences of the Regulation of the Time Limitation for Filing *Actio Pauliana* Claims under Bankruptcy Law

In practice before the Commercial Court, there is a misunderstanding regarding the true meaning of the phrase “one year prior to the declaration of bankruptcy” in Article 42 of the Bankruptcy Law. This phrase is often misconstrued as a “maximum time limit” for filing an *actio pauliana* against legal acts performed by the debtor. In practice, there is a tendency for curators to interpret the one-year period referred to in Article 42 of the Bankruptcy Law inconsistently. This tendency is reflected in several court decisions, which reveal certain patterns of interpretation in the application of the relevant provision.

Supreme Court Decision No. 18 PK/Pdt.Sus/2007

In this case, Popy Indrajati, acting as Curator of the debtor Soeharsono (represented by the Semarang Heritage Hall), filed an *actio pauliana* claim against a sale and purchase agreement between the debtor and Defendant I, executed before Defendant IV (a Notary/Land Deed Official) on 16 January 2006. The plaintiff argued that the transaction was unreasonable because the sale price was far below market value and because the transaction was conducted with Defendant I, who was also a creditor of the debtor, thereby causing prejudice to other creditors.

However, the claim was dismissed because the object of the dispute (Ownership Certificate No. 1664) was not entirely owned by the debtor, but was jointly owned with Defendant II and Defendant III. In addition, Defendant I was deemed a good-faith purchaser, as the transaction was carried out before a Land Deed Official. Upon filing a Judicial Review (PK), the plaintiff again emphasized that the sale and purchase occurred within one year prior to the declaration of bankruptcy, arguing that Article 42 had therefore been satisfied. The plaintiff contended that the sale took place on 16 January 2006, while the bankruptcy decision against Soeharsono was rendered on 13 June 2006, thus meeting the one-year period required under Article 42 of Law No. 37 of 2004, and that the lower courts’ decisions therefore violated the Bankruptcy Law.

Nevertheless, the application for judicial review was rejected because the plaintiff failed to prove the core elements of Articles 41 and 42 of the Bankruptcy Law, namely that the debtor and/or the purchaser knew or should have known that the transaction would prejudice creditors. This decision illustrates that the curator mistakenly interpreted the one-year period as being sufficient on its own to justify the granting of an *actio pauliana*, assuming that compliance with the one-year timeframe alone mandates its approval.

Decision of the Central Jakarta Commercial Court No. 20/Pdt.Sus-Other Claims-Ap/2019/PN.Niaga.Jkt.Pst

In this decision, Domu Wellin and Anna Lydia Yusuf, acting as Curators of PT Jabatex, filed an *actio pauliana* claim concerning the transfer of land carried out by the debtor on 10 September 2018 to PT Bank Pan Indonesia as Defendant II, before Ari Soesanto, a Notary/Land Deed Official, as Co-Defendant, and Thomas Wio, a Notary/Land Deed Official, as Co-Defendant II. The debtor was declared bankrupt on 25 October 2018.

In their claim, the curators argued that because the transfer was made within one year prior to the declaration of bankruptcy, the element of a debtor’s act prejudicing creditors was automatically fulfilled. This is reflected in one of their arguments stating that the act of Defendant I in transferring its assets was carried out within the one-year period preceding the bankruptcy decision, and therefore the requirement of a debtor’s act prejudicing creditors had been satisfied.

This argument demonstrates the same pattern of reasoning, namely that the curators treated the “one-year” period as the sole benchmark for establishing the elements of *actio pauliana*, without proving the subjective elements as required under Articles 41 and 42 of the Bankruptcy Law.

Supreme Court Decision No. 118 K/Pdt.Sus-Pailit/2015

In this case, the curator filed an *actio pauliana* in relation to the transfer of assets of the debtor, Herry, basing the claim on Article 42 of the Bankruptcy Law. The curator argued that all transfers occurring one year before and after the declaration of bankruptcy automatically constituted unlawful acts. This is reflected in the argument stating that the transfer of the bankruptcy estate from Defendant I to Defendants II through XVII, carried out one year before and after the debtor Herry was declared bankrupt, was therefore legally a violation and/or an unlawful act under Article 42 of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations.

In this context, there are two fundamental errors. First, Article 42 does not apply to legal acts performed after the debtor has been declared bankrupt. Second, the curator interpreted the phrase “one year” as an automatic indicator that the act constituted a violation of law.

Decision No. 3/Pdt.Sus-Other Matters/2021/Commercial Court of Medan in conjunction with Decision No. 7/Pdt.Sus-PKPU/2018/Commercial Court of Medan

PT Anggrek was declared bankrupt on 2 August 2018. The curator subsequently filed an *actio pauliana* claim against a series of loan agreements initiated in 2016 and later amended in 2017, which increased the loan amount from SGD 12,000,000 to SGD 15,000,000. As a result of this amendment, legal acts were carried out in the form of the execution of a Mortgage Deed and a Fiduciary Security Deed over the bankruptcy assets of PT Anggrek Hitam, executed before a Notary and Land Deed Official. The curator argued that these acts prejudiced other creditors and relied on Article 42 of the Bankruptcy Law as the legal basis.

However, the claim was dismissed on the grounds that the granting of security constituted an inseparable part of the original loan agreement concluded in 2016. The court further emphasized that the relevant time frame should be calculated from the date of the original agreement, the interval between which and the bankruptcy declaration exceeded two years, and therefore fell outside the scope of *actio pauliana* under Article 42 of the Bankruptcy Law. This decision once again demonstrates the misinterpretation of the one-year period as a “maximum time limit” for filing claims, whereas Article 42 does not position this period as the sole benchmark.

Based on the foregoing analysis of court decisions, it can be concluded that curators tend to rely on Article 42 of the Bankruptcy Law as the basis for their claims and to emphasize the phrase “one year” through various interpretations that are in fact inaccurate. In reality, *actio pauliana* is not limited solely to legal acts carried out within one year prior to the bankruptcy declaration.

Furthermore, the interpretation of the phrase “one year” in these decisions, particularly in Supreme Court Decision No. 118 K/Pdt.Sus-Pailit/2015, has also been misconstrued as rendering an act automatically unlawful. In fact, this time period does not by itself determine the existence of an unlawful act. Rather, the requirements under Article 1365 of the Indonesian Civil Code must be satisfied, namely: the existence of an unlawful act, the occurrence of damage, fault, and a causal relationship between the act and the damage. Accordingly, the benchmark for

determining an unlawful act is not the one-year period stipulated in Article 42 of the Bankruptcy Law, but the fulfillment of the elements under Article 1365 of the Civil Code.

It is true that a debtor's acts of transferring assets after a declaration of bankruptcy may constitute an unlawful act, as a debtor should no longer dispose of its assets once declared bankrupt. However, categorically labeling acts carried out within one year prior to the bankruptcy declaration as unlawful is inappropriate. This is particularly relevant where the debtor, acting as a property developer, had not yet fully paid for land that had been developed into a residential complex, and where such acts were reasonably undertaken to increase sales in order to satisfy its debts to creditors. Therefore, acts carried out within the one-year period should not automatically be deemed unlawful, as other elements must be assessed to determine whether the debtor knew or should have known that its actions would prejudice creditors. If such misinterpretation persists, there is a risk that all acts performed within the one-year period, even those that do not cause prejudice, will nonetheless be deemed unlawful.

Regulation of the Time Period That Should Be Formulated in Article 42 of the Bankruptcy Law

A time period refers to a defined span within which an action must be taken or an obligation fulfilled, serving to provide certainty regarding the limits of a right or obligation. Clear regulation of time limits is therefore a crucial element that should be expressly formulated in Indonesia's Bankruptcy Law as part of the principle of legal certainty.²⁴ By reference to other legislation, as well as to the laws of other jurisdictions, explicit time limits for actions seeking the annulment of legal acts are commonly prescribed in order to ensure predictability for all parties involved.

Comparative Formulation of Time Limits in Other Countries

1. United States

The regulation concerning the avoidance of asset transfers under United States bankruptcy law is governed by Section 548 of the United States Bankruptcy Code:

“(1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily.”²⁵

These provisions authorize a trustee to bring an avoidance action against any transfer of assets that prejudices creditors, provided that the transfer was made within two (2) years prior to the filing date of the bankruptcy petition and was carried out with the intent to hinder, delay, or defraud any entity. Such circumstances include, among others, transfers for less than reasonably equivalent value; transfers made when the debtor was insolvent or became insolvent as a result thereof; transactions undertaken when the debtor was engaged or about to engage in business with unreasonably small capital; the incurrence of debts beyond the debtor's ability to pay; or transfers made to or for the benefit of insiders under employment contracts and not in the ordinary course of business.²⁶

²⁴ “Jangka waktu: pengertian, masalah yang sering terjadi, dan contohnya”, <https://pekerja.com/info/jangka-waktu-pengertian-masalah-yang-sering-terjadi-dan-contohnya/#:~:text=Jangka%20waktu%20adalah%20rentang%20waktu,hukum%20untuk%20memberikan%20kepastian%20mengenai>, accessed on 17 November 2025.

²⁵ Legal Information Institute, “11 U.S. Code § 548 - Fraudulent Transfers and Obligations”, <https://www.law.cornell.edu/uscode/text/11/548#>, accessed on 23 November 2025.

²⁶ *Ibid.*

This limitation on the trustee's authority reflects the balancing of interconnected yet potentially competing objectives of bankruptcy law.²⁷ The look-back period cannot be extended, as it constitutes a substantive element of Section 548; consequently, transfers made outside the two-year period are no longer subject to avoidance.²⁸ On the one hand, a longer look-back period enhances creditor protection and safeguards the debtor's assets.²⁹ On the other hand, an excessively long period may increase litigation risk and hinder legitimate business activities, such as mergers, acquisitions, or other corporate actions, that may increase enterprise value and help prevent bankruptcy. The two-year period represents an expansion from the previous one-year limit, adopted to strengthen creditor protection and preserve the integrity and value of the bankruptcy estate without obstructing legitimate business activities.

2. United Kingdom

Under English law, particularly as regulated in Sections 238 to 240 of the United Kingdom Insolvency Act 1986, there are provisions governing a debtor's pre-insolvency acts that may prejudice creditors.³⁰ Section 238 addresses transactions at an undervalue, which occur when a company provides consideration for no value or receives consideration significantly less than the true value of what is given. This provision aims to prevent debtors from disproportionately transferring assets in a manner that diminishes the value available to satisfy creditors' claims.³¹

Section 240 further explains the concept of relevant time, namely the period within which transactions detrimental to the insolvency practitioner, such as transactions at an undervalue or preferential transactions, may be challenged.³² This period is calculated from the date the transaction was entered into and varies according to the relationship of the parties involved: two years where the transaction involves a connected person, and six months where it involves an unconnected party.³³ However, avoidance cannot be sought solely on the basis of the type of transaction; it may only be pursued where the transaction occurred within the relevant time and the company was insolvent at the time of the transaction or became insolvent as a result thereof.³⁴

The relevant time functions similarly to a limitation period, providing a clear look-back framework from the commencement of insolvency proceedings. Not all transactions may be set aside, as an application can only be made where two conditions are satisfied: (1) the transaction occurred within the prescribed period, and (2) the company was insolvent at that time.³⁵

These provisions seek to strike a balance between capturing avoidable preferences and ensuring commercial certainty for parties dealing legitimately with the company by imposing a

²⁷ *Ibid.*

²⁸ No Equitable Tolling of Section 548 "Look Back" Period, Jones Day Publications, 2012, https://www.jonesday.com/en/insights/2012/04/no-equitable-tolling-of-section-548-look-back-period?utm_source=chatgpt.com, accessed on 25 November 2025.

²⁹ Extraterritorial Avoidance Actions Under The U.S Bankruptcy code, <https://harvardlawreview.org/print/vol-135/extraterritorial-avoidance-actions-under-the-u-s-bankruptcy> accessed on 22 November 2025.

³⁰ "Insolvency Act 1986," <https://www.legislation.gov.uk/ukpga/1986/45/contents>, accessed on 23 November 2025.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ Simon Hill, "Understanding s 239 Preference under insolvency Act 1986", 2014, <https://www.33bedfordrow.co.uk/insights/articles/understanding-s239-preference-under-insolvency-act-1986>

³⁵ *Ibid.*

maximum temporal limit.³⁶ As a result, transactions that were initially vulnerable to challenge may become immune from avoidance once the specified period has elapsed.

The time limits are designed to balance two important interests: first, ensuring that transactions potentially prejudicial to creditors can be identified and set aside; and second, providing legal certainty to third parties engaging in bona fide transactions with the company by establishing that, after a certain period, such transactions are no longer subject to challenge. Consequently, transactions that were initially susceptible to avoidance may become “immune” if the company continues to operate for a sufficient period after the transaction is carried out.

The Urgency of Reformulating the Time-Limit Regulation for Actio Pauliana under the Bankruptcy Law

The annulment of transactions may adversely affect legal certainty.³⁷ Accordingly, an efficient regulatory model governing annulment, particularly with respect to time limits, is required to minimize such uncertainty.³⁸ The regulation of time limits for *actio pauliana* claims plays a crucial role in maintaining a balance between creditor protection and legal certainty for business actor.³⁹

In bankruptcy law, such time limits are often associated with the concept of the twilight period, namely a specific period prior to the declaration of bankruptcy during which a debtor's transactions may be set aside if proven to prejudice creditors. The existence of this period is essential to prevent debtors from engaging in conduct that diminishes the value of the bankruptcy estate.⁴⁰ However, an unbounded twilight period or overly broad *actio pauliana* regulation may itself generate legal uncertainty.

If every transaction carried out by a debtor, regardless of how far in the past, could be annulled, third parties would be reluctant to transact with financially distressed debtors.⁴¹ This could reduce economic activity and hinder growth due to the heightened risk of retrospective transaction avoidance.⁴² Therefore, it is imperative for legislators to reformulate the time limits governing *actio pauliana* so as to strike an appropriate balance between legal certainty and the protection of creditors or good-faith parties against fraudulent or prejudicial acts committed by debtors.

Conclusion

The characteristics of *actio pauliana* in bankruptcy law consist of a non-mandatory legal act carried out by the debtor that causes prejudice to creditors, and which is performed with the knowledge, or at least where it should reasonably be known by both the debtor and the counterparty, that such act results in harm to creditors.

³⁶ *Ibid.*

³⁷ Aurelio Gurrea-Martínez, “The Avoidance of Pre-Bankruptcy Transactions: An Economic and Comparative Approach,” Singapore Management University, 2018, pp. 20-22.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

The legal consequence of regulating the time limit for filing *actio pauliana* claims under the Bankruptcy Law is the emergence of misunderstandings in Commercial Court practice, where the phrase “one year prior to the declaration of bankruptcy” in Article 42 of the Bankruptcy Law is interpreted as the maximum time limit for filing such claims. In fact, this provision relates solely to the mechanism of reversed burden of proof for certain acts or agreements carried out within that period.

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