

THE PROTECTION OF CREDITOR'S RIGHT AND ACTIO PAULIANA

Siti Anisah
Indonesia Islamic University Faculty of Law
nisa@fh.uii.ac.id

Abstract

In general, the proving of actio pauliana is not simple, and the process itself is not organized well. For the reasons, in order to make the protection of creditors' right through actio pauliana is applicable, then we need implementative procedure provision concerning to actio pauliana.

Keywords: Creditors' Right; Actio Pauliana.

Introduction

One of remedies in our Bankruptcy Law is to protect creditor's right which is intended to avoid the debtor's fraud.¹ There are some situations that can be seen as fraud conduct of debtors toward creditors such as indebted debtor file discharge but already hide his assets before, or transfer his assets to the third party as a gift or transfer to a new firm.²

In Indonesia Bankruptcy Law, this conduct called *actio pauliana*. Actio Pauliana is governed by Government Regulation in *Faillissementsverordening*, implemented as law by conversion by Law No. 4 of 1998, and also Law No. 37 of 2004. Creditors are allowed to set aside certain transfers by debtors to Commercial Court before the declaration of bankruptcy, since unfair transfers made without deceptive intent and debtor know that this conduct will disadvantage creditors.³ According to the illustration above, this article will attempt to analyze the implementation of actio pauliana in Commercial Court in order to protect the creditor's rights. Beside that, in this article I also construed the obstacles of implementing actio pauliana in bankruptcy.

Actio Pauliana: In Comparison

Actio Pauliana is defined as debtor conduct towards creditor before debtor is declared bankrupt, which is the conduct is not an obligation to do, caused the disadvantaged to creditor interest.⁴ Creditors entitled to challenged voidable transactions to Commercial Court according to debtors conduct that disadvantaged the creditors' interest. Debtor, or the third party where the debtor transfer his assets, may prove the allegedly actio pauliana that caused detriment to creditors interest.⁵ This challenged to

¹ Max Radin suggest that "The object of the avoidance remedies under Roma Law was the preservation of the corpus of the debtor's estate for the proportionate benefit of creditors in the context of the Roman systems of the collective proprietary execution". See Frank R. Kennedy, "Involuntary Fraudulent Transfers," 9 *Cardozo L. Rev.* 531, December, 1987, p. 535.

² Victor Situmorang & Hendri Soekarso, *Pengantar Hukum Kepailitan di Indonesia*, Jakarta: Rineka Cipta, 1994, p. 13.

³ Article 41 Law No. 4 of 1998 and Law No. 37 of 2004.

⁴ For further information see Articles 41-44 Law No. 4 of 1998 dan Articles 41-44 Law No. 37 of 2004.

⁵ The conducts of debtor that include of *actio pauliana* can be seen in Article 42 Law No. 37 of 2004.

Commercial Court before the declaration of bankruptcy is submitted to winding up the debtors estates. It proposed to maximilized of payment that in line with creditors claim owned to debtor.⁶

As an institution that protect creditor interests, there are five cumulative conditions constitute *actio pauliana*. *First*, there is a legal act. *Second*, this legal act is not an obligation. *Third*, this conduct caused detriment to creditors interest. *Fourth*, Debtor knew or should have known that this conduct of fraud disadvantaged the creditor. Finally, the third party also knew or should have known that this legal act would damage the creditors.⁷

Compared to Indonesian Bankruptcy Law, let see the regulation of *actio pauliana* in United States of America (US) and Italy. In US, *actio pauliana* is provided in fraudulent transfer law, and claw back in Italy. The legal history of fraudulen transfer law in US came from England's Statute of 13 Elizabeth, which enacted in 1571.⁸ In recent years, this statute was developed and become Uniform Fraudulent Conveyance Act (UFCA), the Banckruptcy of 1975, and now embodied in the Uniform Fraudulent Transfer Act (UFTA).⁹ From the beginning, the Statute of 13 Elizabeth restricted debtor's estates transfer which was intended to thwart, delay, or even fraud legitimate creditors.¹⁰ Thus, the goal of fraudulent transfer law to prevent debtor made untruthful conduct toward creditors in a manner of certain transfer of debtor assets before the declaration of bankruptcy, then, in this case, decreased the maximilization of payment to creditors. Another goal of fraudulent conveyance law is to prevent debtor from sale his assets in order to cheat on creditors.¹¹

In recent years, the Bankruptcy Code extended the scope of fraudulent conveyance, including the constructively fraudulent conveyance.¹² Constructive fraud happens when a debtor sale all his assets under market level, which caused bankruptcy to the debtor, or in other words debtor become bankrupt after he sold his assets beyond reasonable. Thus, this undercapitalized business conduct is included in constructive fraud.¹³ Beside that, actual fraud also part of fraudulent conveyance, where a debtor is intended to twarth or delay the payment of his debt to his creditors, intentionally.¹⁴

According to Bankruptcy Code and another bankruptcy provisions in US, it is not clear whether creditors excepted services from the debtor without diminished his wealth shall give back to debtor what had been gave to third party.¹⁵ This condition resulted from the arrangement of fraudulent transfer only provide transfer of property—services are excluded.¹⁶ Thus, debtor accountable for the property transfer,

⁶ Elijana, et al., *Penelitian Hukum Tentang Penyelesaian Sengketa Melalui Pengadilan Niaga*, Jakarta: BPHN & Depkeh dan HAM, 2000, p. 15.

⁷ Fred B.G. Tumbuan, "Mencermati Pokok-pokok Undang-undang Kepailitan yang Diubah Perpu No. 1/1998," *Newsletter No. 33/IX/Juni/1998*, p. 3

⁸ Douglas G. Baird & Thomas H. Jackson, "Fraudulent Conveyance Law and its Proper Domain," *38 Van. L. Rev.* 829, 1983, p. 829.

⁹ The words "transfer" and "conveyance" in UFTA are submitted to explain transfer in lieu of real property as well as personal property transfer. See Rosenberg, "Intercompany Guaranties and the Law of Fraudulent Conveyances: Lender Beware," *125 U. Pa. L. rev.* 235, 1976, p. 241. For further understanding of the difference between UFCA and UFTA, see Acles & Dorr, "A Critical Analysis of the New Uniform Fraudulent Transfer Act," *1985 U. Ill. L. Rev.* 527, 1985; Cook & Mendales, "Uniform Fraudulent Transfer Act: AN Introductory Critique," *62 Am. Bankr. L. J.* 87, 1988.

¹⁰ Douglas G. Baird & Thomas H. Jackson, *loc. cit.*; Daniel V. Davidson, et al., *Comprehensive Business Law Principles and Cases*, Boston: Kent Publishing Company, 1987, p. 674.

¹¹ John D. Donell, et al., *Law for Business*, Illinois: Richard D. Irwin, Inc., 1983, p. 47.

¹² McCoid, "Constructively Fraudulent Conveyances: Transfers for Inadequate Consideration," *62 Tex. L. Rev.* 639, 1983 p. 647-648.

¹³ Daniel V. Davidson, et al., *loc. cit.*

¹⁴ *Ibid.*

¹⁵ 11 U.S.C. § 541(a).

¹⁶ 11 U.S.C. § 548.

not services transfer.¹⁷ Nevertheless, the Bankruptcy Court categorized services as part of property, so creditors are entitled to claim the service values to the third party. According to fraudulent transfer law, Bankruptcy Court may examine whether the value of services are property not, along with the sole purpose of Bankruptcy Law which is optimality of payment to benefit the creditors.¹⁸

Further, does the services to the third party be deemed as debtor's estates transfer, in lieu of the definition of service is not belong to property?¹⁹ The services to the third party obviously it is not wealth transfer. This view is based on theory of *underlying chattel*, which contends that services are not property, but "culminate in transferable property".²⁰ In other words, if the services to the third party diminishing and detrimented the assets of debtor, then it is a fraudulent transfer. Otherwise, if this services benefiting creditors, so it is not untruthful conduct.

Initially, the basic form of debtor untruthfull conduct toward his creditors is wealth transfer before the pronouncement of bankruptcy by the Court.²¹ In its recent development, the limits of fraudulent transfer law is wide applicability, ambiguous, and doubtful when indebted debtor cannot meet his obligation and not transfer his assets instead give his services to third party without diminishing his assets.²²

Similarly, in Italy *actio pauliana* called Claw back, which provided in Italian Insolvency Law in lieu of Law Decree No. 35, March, 14th 2005 implemented as law by conversion by Law 80 in May, 14th 2005. This following conduct demonstrates clawed back, except the third party could prove otherwise. *First*, considering all conducts before insolvency where the actions has undertaken or right has been executed by the third party. *Second*, all of the payments (*atto estintivo*) towards the financial obligations that become due and payable, but the payment perform within one year prior the pronouncement of bankruptcy for not yet due and payable debts. *Third*, all writs, costs, and mortgages might be made within six months prior to declaration of bankruptcy of due and payable debts when creditors file petition. *Fourth*, if liquidator could prove that the third party knows debtor is declared bankrupt, but debtor still following relevant act for the payment of due and payable debts. This act is with consideration, where this is a preferential deeds (*diritto di prelazione*) toward the debts—and also the third party—made within six months when insolvency is declared.²³

Actio Pauliana Cases: Commercial Court Judgment

Before the Law No. 37 of 2004, within the implementation the Law No. 4 of 1998 there were some *actio pauliana* petitions to Commercial Court filed by curators and rejected by the Court. It was evoked the erroneous made by curators in seizure of debtor assets. This case of *actio pauliana* can be seen in *William E. Daniel, Kurator PT Ometraco Multi Artha v. PT Ometraco Multi Artha*.²⁴

¹⁷ Oksana Lashko, "Enhancing Creditor Recovery, Should Services be Deemed "Property" for the Purpose of Fraudulent Transfer Law?" 72 *Brook. L. Rev.* 317, 2006, p. 318-319.

¹⁸ *Ibid.*, p. 319.

¹⁹ *Ibid.*

²⁰ *Ibid.*, p. 320

²¹ 11 U.S.C. § 548.

²² Michael Bagge, "Planned Poverty's Pitfalls and Platfalls—Ain't We Got Fun?," 69-*Aug N.Y. St. B.J.* 26, July/August, 1997, p. 27. For example where a debtor give health service beyond the standard provided in Law, then it is fraudulent transfer of estate. See *Dawson v. Meyers*, 622 F 2s. 1304, 9th Cir. 1980.

²³ Sandy Shandro, "Italian Law Reform," 24 *Am. Bankr. Inst. J.*, October, 18th 2005, p. 18-19. See also Marco Lantelme, "Italy: Insolvency – Claw Back," *J.I.B.L.R* 20 (10), 2005, p. 95 – 96.

²⁴ Commercial Court Judgment in *William E. Daniel kurator PT Ometraco Multi Artha v. PT Ometraco Multi Artha, etc.*, No. 01/Actio Pauliana/2000/PN.Niaga/Jkt.Pst., and also Supreme Court Judgment No. 15/K/N/2000.

This petition was began when PT Ometraco Multi Artha, as Debtor, paid their obligations to PT Duta Trada Internusa amount to Rp 43,976,666,974.00 that become due and payable on February, 23rd 1998, January, 26th 1998 and March, 10th 1998 by accepted bond of PT Ekagunatama Mandiri in the amount of Rp 12,006,000.00 including total interests Rp 132,232,750.00 and also the bond of PT Ciputra Surya I amount to Rp 31,000,000,000.00 including total interest Rp 775,000,000.00 considering also the whole bonds based on the nominal value amount to Rp 43,913,232,750.00, and these bonds only can be clearanced on July, 28th 2002 for PT Citra Surya I, on June, 25th 2003 for PT Ekagunatama Mandiri. In practice, according to the principles of bond, if the bond is not yet due and payable shall be released based on the market value when its sold. According to market value of PT Citra Surya I bond is 17.5% from its nominal, nevertheless the real payment only Rp 9,342,515,000.00 instead of Rp 43,913,232,750.00. Obviously, the debtor conduct who fixed the bond amount to 100% from its nominal is violated fairness. Debtor knew or should have known that this conduct would detrimented to Creditors. Court rejected this actio pauliana petition, and Trustee file petition to Supreme Court. Similarly, Supreme Court refused this petition rely upon the statement of Commercial Court. The existed problem is PT Duta Trada Internusa indebteded to PT Ometraco Multi Artha where the paying off of its debt become due and payable on February, 23rd 1998, January, 26th 1998, and March, 10th 1998. On November, 13th 1998 Debtor was declared bankrupt. The Curator has executed those bonds under market level through PT Citramas Securindo and PT Sentra Investindo, as broker, cost of Rp 8,157,182,750.00. Definitely, this act damage to Creditors. The Supreme Court contends that Trustee have some options concerning to those bonds. First, Trustee suppose to tell PT Ometraco Multi Artha and PT Duta Trada Internusa; second, Trustee turn those bonds back to Debtor; and third, keep waiting until those bonds are become due and payable, then able to see whether the act of Debtor would damage Creditors or not. It is not a good idea for Trustee to file petition to Commercial Court, considering he sold those bonds before. The consequence is Debtor (PT Ometraco Multi Artha) and PT Duta Trada Internusa is not proven disadvantaged to Creditors.

Another case demonstrates similar condition is in *Tuti Simorangkir,, Kurator PT Fiskaragung Perkasa, Tbk., v. PT Fiskaragung Perkasa Tbk.*,²⁵ where the Court rejected the petition undertaken by Trustee. Supreme Court refused this case because of actio pauliana to avoid the Debtor transfer after bankruptcy pronouncement by third party, where it is a dispute and should settled in District Court jurisdiction not Commercial Court, as a consequence of petition quite different with dispute.

This request was begun when Trustee undertook examination to debtor's assets thoroughly, including contracts made by Debtor and third party. Trustee suspected that Debtor undertook some actions detrimented to Debtor's estates. This action stressed on the agreement that had been assented between Debtor and Catnera International Limited as Creditor, and the amount of debt is US\$ 3,000,000.00, on March 1st, 1999. Further, Debtor guaranted to pay off of debt to Catnera. Of course, by signing this agreement Debtor has damage to other Creditors. If Debtor were not signed the contract, then Catnera has same position with the others, so that the distribution of Debtor's estates will occur proportionally. This agreement, gave a privilege to Catnera to incure any debt without share it with another Creditors. In fact, Debtor indebteded to Catnera only US\$ 3,000,000.00; if it compared to the existed claim amount to US\$ 29,000,000.00. Commercial Court refused this petition filed by Trustee and stated Catnera International Limited as secured creditor of PT Fiskaragung Perkasa, Tbk.

²⁵ Tuti Simorangkir, Kurator PT Fiskaragung Perkasa, Tbk., v. PT Fiskaragung Perkasa Tbk., in Commercial Court Decision No.03/Actio Pauliana/2000/PN.Niaga/Jkt.Pst., Supreme Court Decision in cassation No. 16 K/N/2000, Supreme Court in judicial review No.12/PK/N/2000. Beside PT Fiskaragung Perkasa, Tbk., there is Catnera International Limited as a defendant in actio pauliana case, and Hanil Leasing & Finance (HK), Ltd., as Creditor.

Based on the decision of the Court, Trustee file cassation to Supreme Court. But, Supreme Court refused the petition and held that Trustee unable to pursued the Debtor because He was appointed to control the affairs of Debtor in financial difficulties until its debts are paid, and this is cannot be justified by Supreme Court. Concerning to Supreme Court decision, Trustee filed civil review to Supreme Court and this time judges held that the decision of Supreme Court in cassation was a mistake. Petition applied by Trustee was a challenged to debtor legal act which was declared bankrupt by the third party or *actio pauliana*, so that the Supreme Court held this petition is denied.

In the highest level, Supreme Court, once again, held that according to Section 280 (2) Law No. 4 of 1998 the Commercial Court entitled to examine and decide bankruptcy petition and suspension of payment, and also any others petition related to bankruptcy petition. To challenged the debtor legal act who declared bankrupt or *actio pauliana*, likewise any other legal act revised, it is a dispute and the settlement is belong to District Court, instead a petition is not a dispute. This is the reason why the challenged of the petition should apply to District Court according to civil procedural law, instead of Commercial Court.

The ground of *actio pauliana* applied by Trustee to Commercial Court not always based on Law or contract, as long as the legal act related to the third party. The result, the third party has privilege rights than the other creditors without any consideration excepted by the debtor. This was find in *R. Astuti Sitanggang, kurator Eddy Ondrawinata v. Soesanto Soetrisno*.²⁶

This application was began when Eddy Ondrawinata as debtor which declared bankrupt by Commercial Court, in its decision No.27/Pailit/2002/PN.Niaga/Jkt. Pst. Since October, 9th 2002, this declaration resulted the Trustee empowered to control the debtor assets until its debts are paid. Surprisingly, in his duty Trustee found that debtor only have one single asset, which is a 250m² field of land—Taman Permata Buana—at Jalan Pulo Bira Blok A8, Kelurahan Kembangan Utara, Kecamatan Kembangan, West Jakarta, and this land already at Susanto Soetrisno possession as a payment guarantee which its debts become due and payable in January, 9th 2003. The relationship between debtor and Susanto Soetrisno, were bound them in loan agreement with the interest is 4.5% per month and the whole amount of debt and its interest is Rp 1,400,000,000.00. As guarantee, debtor gave three BG for each amount to Rp 500,000,000.00 and become due and payable in June, 9th 2002. The debtor conduct empowered Susanto Soetrisno to possessed his asset where it is not obliged by Law or even the agreement between them. His act resulted Susanto Soetrisno placed the first position than the other creditors, without any consideration from Susanto, and this is an inappropriate conduct. The worst thing is, the remain creditors are disadvantaged, because the only asset was in Susanto's hand. The impact of his act of course there is no other asset to distribute to creditors. The debtor act, who paid Susanto Soetrisno within three months prior to bankruptcy declaration or when debtor realized that he is in financial difficulties and should knew his financial condition, where debtor was pursued to pay his debts to his creditors. Therefore, debtor shall knew or suppose to be realized that his act paid his debt to Susanto Soetrisno damaged another creditors.

In this case, Commercial Court rejected the application of *actio pauliana* by Trustee. But, Supreme Court upheld this claim and contended *judex factie* (Commercial Court) was wrong in apply Setion 41 of Law No.4 of 1998. The debtor act who shift his asset to Susanto Soetrisno as payment of his debt within one year prior bankruptcy declaration, has damaged the creditors. Beside, debtor sold four excavators and accepted Rp 1,500,000,000.00. But, instead give all the money, debtor gave three BG to pay the remain. Debtor is intended to pay his debt by shift his asset to Susanto. According to Supreme Court

²⁶ Commercial Court Decision in *R. Astuti Sitanggang, kurator Eddy Ondrawinata v. Soesanto Soetrisno*, No. 02/Actio Pauliana/2003/PN.Niaga/Jkt.Pst/. Supreme Court Decision in cassation No. 22 K/N/2003, and also Supreme Court Decision in judicial review No. 13 PK/N/2003

decision in cassation, Soesanto Soetrisno applied judicial review to Supreme Court, but Supreme Court rejected this claim.

The Supreme Court decision which rejected the application of *actio pauliana* to Commercial Court, it makes the process of collection and distribution of bankruptcy estates become longer and longer. Supreme Court decision which upheld that *actio pauliana* petition is belong to District Court authority caused the process of of collection and distribution of bankruptcy estates become dispersed, which should be settled in Commercial Court. Supreme Court decision in *Tuti Simorangkir kurator PT Fiskaragung Perkasa Tbk v. PT Fiskaragung Perkasa Tbk. dkk.*, was not followed by another decision which examined *actio pauliana* filed to Commercial Court, as we can see in case *R. Astuti Sitanggang, kurator Eddy Ondrawinata v. Soesanto Soetrisno* above.

Supreme Court decision in *Tuti Simorangkir kurator PT Fiskaragung Perkasa Tbk v. PT Fiskaragung Perkasa Tbk. dkk.*, shows us to clarified the provision of Bankruptcy Act related to *actio pauliana* petition to Commercial Court, beside that provide the rule of play to prove *actio pauliana* and also the period of settlement in court. Considering *actio pauliana* involved the third parties interest where they are entitled to maintain what they should have from debtor.²⁷ In one side, Law No. 37 of 2004 still not provide it firmly, though it clearly mention to file *actio pauliana* to Commercial Court whose jurisdiction covers the legal domicile of debtor concerned has pronounced the debtor a bankrupt.²⁸ Unfortunately, the provision use the same procedure including the limitation of period of settlement and the procedure to apply bankruptcy petition, which is unclear. Considering the provision of *actio pauliana*, the burden of proof should reverse to debtor and the third party involved.²⁹ How to implement what provided in Bankruptcy Act of course it takes time longer if it compare to bankruptcy petition to Commercial Court.

The implementation of Actio Pauliana and its Obstacles

In practice, the enforcement of Bankruptcy Act, according to the provision of *actio pauliana*, for some reasons we still cannot hope any better that this Act could protect the interest of creditors. The procedure to proof *actio pauliana* quit different to the summary proof existed in bankruptcy. If this filed to District Court, then the settlement would take much longer than in Commercial Court.³⁰ In general, individual debtor will shift all of his movable estates including his current accounts after the declaration of bankruptcy, this is aimed to avoid the collection and distribution by trustee.³¹ In particular, for corporation which the possession in the name of personal still maintained of using shareholders, and for some obligations signed with the third party is committed in backdate. This transaction is not difficult to do because the enforcement of the Law No.3 of 1982 related to Legal Entity Administration is to weak, especially according to annual financial report.³²

Trustee experienced some troubles to find the documents belong to debtor. In Ibi case, those documents was carried by Wandu Sofian, thus trustee absolutely cannot figure it out how much assets the debtor has.³³ Meanwhile, for some other assets were seized by the court order No. 36/Pen.Pid/2007/PN.Bdg on January, 5th 2007 issued by Bandung District Court for the shake of proof in

²⁷ Compare with Eljiana et al., *op. cit.*, p. 19. See also the elucidation of Section 3 (1) Law No. 37 of 2004.

²⁸ Elucidation of Section 3 (1) Law No. 37 of 2004.

²⁹ See Section 42 Law No. 37 of 2004.

³⁰ <http://www.hukumonline.com/detil.asp?id=1639&cl=Berita>, "Pengadilan Niaga Wadah Ketidakpastian baru," January, 15th 2001.

³¹ <http://www.hukumonline.com/detil.asp?id=1640&cl=Fokus>, "Rendah, Pemulihan Aset dalam Kepailitan," March, 27th 2007.

³² *Ibid.*

³³ <http://www.hukumonline.com/detil.asp?id=16321&cl=Berita>, "Kurator Ibi Rencanakan *Actio Pauliana* Secepatnya," March, 8th 2007.

criminal case.³⁴ Yet, trustee found the value of the estates is too small due to the debtor act to hide his assets from creditors.³⁵

Mostly, before the declaration of bankruptcy, debtor usually divides 'inter company loan' claims by using *cessie* as provided in Section 613 *Burgelijk Wetboek*. If this fission committed, then the debtor defender will carry the debtor and his assets too far. Beside that way, debtor get closed on the creditor with some compensations. For examples, the payment of the remain debts or the claims are shifted to affiliated firm. This is aimed to find the creditors' vote on Creditors Meeting. Beside, debtor frequently asked the creditors, or shareholders, even the affiliated to buy the creditors' claim through Special Purpose Vehicle in certain price. Thus, this Special Purpose Vehicle become new creditor who attends the creditors meeting. Usually, this happened to obligations which are not on behalf of, where those obligations were not exist in debtor accounting book. Those manners, of course will caused trouble to form creditors committee. Though it formed, it will not run well considering there are some creditors are 'friends' of debtor. This manner is difficult to detect, though trustee also knew this inappropriate conduct is happened but he seemed unwilling to file *actio pauliana*. Beside, Bankruptcy Act already provide this matter for trustee how to prevent this or to avoid the debtor conduct as I have mentioned above.³⁶

The minimum participation from the customers, police, public prosecutor, and also from banking due to their less understanding to Bankruptcy Law. For examples, we don't have the same paradigma related to the duty of judges in Commercial Court and judges who adjudicated bankruptcy, also external party such as banking, Tax Directorate General, and Directorate General of Claims and Public Sale. Let's say creditors found some difficulties to disclosed debtor's accounts in bank, considering the prudential principle. Of course, this matter will caused the cooperation between both of them to freeze the debtor's accounts doesn't run well. The result is trustee trapped in dilemma. One side, if he doesn't blocade the debtor's accounts then he threaten by criminal procedure, but in other side the bank will absolutely reject his petition.³⁷ Trustee also find some difficulties related to expiration date of tax claim about 10 years where trustee have to wait until this expiration date is over before he could distribute the bankruptcy estates to concurrent creditors.³⁸

Conclusion

In general, the proven of *actio pauliana* is not simple, so that the summary proof as provided in Bankruptcy Act not easy to implement. However, I disagree with the Supreme Court opinion which contends that *actio pauliana* is not the jurisdiction of Commercial Court. According to my opinion, the settlement of *actio pauliana* in District Court it will takes time. In addition, some obstacles such as the burden proof is not simple, some fraud acts carried out by debtor is not easy to detect, less empowered trustee to collect and distribute the debtor assets, and also less cooperation between the institutions aimed to veil *actio pauliana*. In order to protect the creditors interest, then, we need an implementative *actio pauliana* regulation.

³⁴ <http://www.hukumonline.com/detil.asp?id=16190&cl=Berita>, "Kepailitan Ibis Consult, Kurator Sudah Berkoordinasi dengan Polisi," February, 12th 2007.

³⁵ <http://www.hukumonline.com/detil.asp?id=16321&cl=Berita>, loc. cit.

³⁶ <http://www.hukumonline.com/detil.asp?id=16408&cl=Fokus>, loc. cit.

³⁷ *Ibid.*

³⁸ <http://www.pikiran-rakyat.com/cetak/1003/30/06x2htm>, "Kasus Kepailitan 2003 Turun, October, 30th 2003.