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Criminal Liability of Fraudulent Debtors in the Framework of *Actio Pauliana*: A Doctrinal and Normative Reconstruction in Indonesian Law

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ABSTRACT

Debtor misconduct in the form of asset transfers aimed at defeating creditor claims presents a serious challenge to the effectiveness of Indonesia's civil and criminal legal systems. While *actio pauliana*, as codified in Article 1341 of the Indonesian Civil Code, provides a civil remedy to annul such prejudicial acts, its operation remains disconnected from the criminal law framework. This article examines the doctrinal gap between civil annulment and penal enforcement, particularly in cases where debtor conduct reflects structured and intentional deception. Using a normative legal research methodology supported by comparative analysis of the Dutch and Singaporean legal systems, this study explores the overlap between civil bad faith and criminal fraudulent intent. The findings reveal that Indonesian courts and prosecutors have not developed an integrated approach to apply Article 378 of the Penal Code in cases involving debtor fraud, despite the presence of circumstantial indicators such as concealment, collusion, undervaluation, and asset dissipation. This article proposes a dual-track sanction model that allows *actio pauliana* to operate alongside penal prosecution when debtor conduct meets defined thresholds of criminal intent. The model includes doctrinal integration, procedural connectivity, and institutional reforms involving judges, curators, and law enforcement. It also provides legal safeguards to prevent over-criminalization and ensure proportionality. Ultimately, this study offers a legal reconstruction that aligns creditor protection with principles of justice and deterrence, reinforcing the integrity of Indonesia's insolvency and commercial enforcement system.

Keywords: Actio Pauliana, Creditor Protection, Criminal Liability, Fraudulent Debtor, Indonesian Civil Code

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INTRODUCTION

Fraudulent behavior by debtors in insolvency situations remains a persistent and structurally unresolved problem within the Indonesian legal system. One of the most notable mechanisms for creditor protection is the *actio pauliana*, as provided under Article 1341 of the Indonesian Civil Code (KUHPerdata), which allows creditors to request the nullification of legal actions taken by debtors that harm their interests.[1] The doctrine of *actio pauliana* originated from Roman-Dutch legal traditions, and was intended to prevent unjust enrichment and protect creditors from debtors acting in bad faith. However, the implementation of *actio pauliana* in Indonesia is largely confined to civil proceedings and does not provide adequate deterrence or remedies when debtors act with deliberate fraudulent intent.[2] The limited scope of this civil remedy raises the question of whether certain debtor actions, especially those that systematically deceive creditors, should be subject not only to civil annulment but also to criminal liability.

[1] Actio Pauliana, Creditor Protection, Criminal Liability, Fraudulent Debtor, Indonesian Civil Code
[2] Rachmadi Usman, Hukum Kepailitan (Jakarta: Sinar Grafika, 2021), 179.

The issue becomes more critical in cases where debtors anticipate insolvency and transfer assets to third parties in order to place them beyond the reach of creditors. Although these transactions may appear formally legal, they are often executed with the sole intention of evading legitimate financial obligations.[3] This conduct reflects a pattern of deception that aligns more with the definition of economic crimes rather than mere contractual breaches. Yet, Indonesia's legal system has not fully developed an integrated doctrinal or normative approach that bridges the civil law of actio pauliana with relevant provisions in the criminal code, such as fraud (Article 378 of the KUHP) or embezzlement (Article 374 of the KUHP).[4] Consequently, debtors who engage in complex asset-stripping schemes can exploit the legal separation between civil and criminal law, leaving creditors with insufficient remedies and the broader legal system with a significant enforcement gap.

From a comparative legal standpoint, other jurisdictions have made progress in addressing this issue. In Dutch law, for example, the pauliana action is used in tandem with criminal enforcement when a debtor's fraudulent intent can be established.[5] Under Dutch bankruptcy law, transfers made to disadvantage creditors, especially when made to related parties or without consideration, can result in both civil and penal consequences. Similarly, Singapore's Insolvency, Restructuring and Dissolution Act 2018 permits criminal penalties for fraudulent or wrongful trading where debtor conduct demonstrates intentional deception or reckless disregard for creditor rights.[6] In these systems, fraudulent intent in civil insolvency contexts does not preclude criminal prosecution but rather complements it, forming part of a dual-track legal framework designed to deter misconduct and provide robust creditor protection.

In contrast, Indonesia's legal approach remains fragmented. Although civil and criminal remedies theoretically coexist, their application is often compartmentalized. Courts typically treat asset transfers by debtors as a matter of private law, unless there is clear and separate evidence of criminal elements.[7] Even when indicators of fraudulent conduct are present—such as concealment, collusion with related parties, or rapid transfers without adequate compensation—there is often judicial reluctance to initiate or recommend criminal investigations. This compartmentalization reflects a legal formalism that overlooks the substantive nature of economic harm and undermines both the deterrent function of criminal law and the protective purpose of civil law.[8]

The doctrinal separation also reveals a deeper theoretical weakness: the absence of a legal concept that treats fraudulent conduct in insolvency as a continuum between civil and criminal liability. Most legal scholarship in Indonesia treats actio pauliana as a procedural device and fails to analyze its potential criminal implications.[9] There is little discussion about the thresholds or criteria for when a debtor's civil wrongdoing transitions into criminal culpability. Moreover, the prevailing doctrine does not provide clear guidance for courts, prosecutors, or insolvency administrators in recognizing such transitions, creating ambiguity in enforcement and legal uncertainty for all parties involved.

This legal ambiguity not only harms creditors but also damages public confidence in the legal system. When debtors can abuse formal legal mechanisms to avoid fulfilling their obligations, and when the legal system provides only limited responses to such abuse, the rule of law is weakened.[10] This is especially problematic in an era where complex financial instruments and digital asset transfers allow for

[3] Marcellus Wibisono, "Tanggung Jawab Pidana Debitur dalam Kepailitan," Jurnal Hukum & Pembangunan 52, no. 2 (2022): 231.
[4] Indonesia, Kitab Undang-Undang Hukum Pidana (KUHP), Articles 374 and 378.
[5] Mischa Spaan, "The Pauliana Action and the Fraudulent Transfer in Dutch Bankruptcy Law," Netherlands International Law Review 65, no. 1 (2018): 79–94.
[6] Singapore, Insolvency, Restructuring and Dissolution Act, Act No. 40 of 2018, Sections 238–240.
[7] Nurul Huda, "Actio Pauliana sebagai Upaya Perlindungan terhadap Kreditor dalam Hukum Kepailitan," Jurnal Yuridis 8, no. 1 (2021): 15–28.
[8] Huala Adolf, Aspek Hukum Kepailitan dalam Sistem Hukum Indonesia (Bandung: Alumni, 2020), 95.
[9] Sutan Remy Sjahdeini, Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang (Jakarta: Grafiti, 2004), 202.
[10] Peter Mahmud Marzuki, Penelitian Hukum (Jakarta: Kencana, 2017), 122.

sophisticated schemes that are difficult to detect and even more difficult to prosecute. Without the possibility of penal sanctions, legal remedies become merely symbolic and fail to achieve any meaningful deterrence.[11]

Furthermore, the normative foundation for penal liability in such cases already exists within Indonesian criminal law. Article 378 of the KUHP defines fraud as an act committed with the intent to unlawfully obtain benefits for oneself or others by using false names, deceitful means, or misrepresentation. Debtors who deliberately mislead creditors, conceal assets, or create fictitious transactions arguably fall within this definition. However, there is a lack of legal integration between this provision and civil insolvency remedies. The absence of interpretative doctrine or jurisprudence connecting actio pauliana to Article 378 KUHP means that enforcement is highly discretionary and often left unexplored.[12]

To address these challenges, this article seeks to reconstruct the doctrinal foundations of actio pauliana to accommodate criminal liability for fraudulent debtor conduct. It proposes a dual-track legal framework that preserves the civil character of actio pauliana while enabling penal enforcement where warranted. This reconstruction draws upon comparative legal models, doctrinal analysis, and existing Indonesian legal instruments to develop an integrative model that supports creditor protection, deters misconduct, and strengthens legal coherence.

Research Problems

This study focuses on three core research questions:

1. How is actio pauliana normatively constructed and currently applied within the Indonesian civil law system?
2. To what extent can debtor actions that fall under actio pauliana also be categorized as criminal fraud under Indonesian penal law?
3. What doctrinal and normative reforms are required to construct an integrated dual-track legal framework that links actio pauliana with criminal liability for fraudulent debtors?

Through these questions, the article aims to contribute both theoretically and practically to the improvement of creditor protection in Indonesia. It argues that a refined legal framework—one that allows for penal sanctions when debtor conduct crosses the line into intentional fraud—is essential not only for justice but for the credibility of the legal system as a whole.

RESEARCH METHODOLOGY

This study adopts a normative legal research methodology, focusing on the examination and evaluation of legal norms, statutory frameworks, and doctrinal interpretations related to actio pauliana and the potential imposition of criminal liability upon fraudulent debtors.[13] This method is chosen due to its appropriateness in analyzing legal concepts, assessing the consistency of regulatory provisions, and proposing normative reconstruction where doctrinal gaps or disharmonies are identified.[14] Through this approach, the research prioritizes legal texts, judicial decisions, and scholarly commentary as the principal materials for evaluation, rather than empirical data or field-based observations.

The core aim of normative legal research is to assess what the law ought to be—a perspective particularly relevant in the Indonesian context where civil and criminal liabilities of debtors remain institutionally separated, both normatively and procedurally. This method enables the identification of conflicting interpretations in both jurisprudence and literature regarding the extent to which debtor fraud should be

[11] K. S. Dhillon, "Toward a Dual-Track Enforcement Model for Fraudulent Insolvency," Asian Journal of Law and Society 7, no. 3 (2020): 455–472.
[12] Indonesia, Kitab Undang-Undang Hukum Pidana (KUHP), Article 378.

[13] Dr. Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif* (Bayu Media, 2013).
[14] Peter Mahmud Marzuki, Penelitian Hukum (Jakarta: Kencana, 2017), 29–30.

criminalized. It also facilitates a detailed analysis of how the concept of intent (dolus) in criminal law might intersect with the standard of "bad faith" (itikad buruk) in civil obligations under *actio pauliana*.

The legal materials used in this research are divided into three categories:

1. Primary legal materials, including statutory texts such as:
2. The Indonesian Civil Code (KUHPerdata), particularly Article 1341.
3. The Indonesian Penal Code (KUHP), notably Articles 374 and 378.
4. Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations.

Supreme Court decisions and commercial court rulings involving claims of actio pauliana and related fraudulent transfers.[15]

Secondary legal materials, consisting of:

1. Legal textbooks and monographs by authoritative scholars on civil, bankruptcy, and criminal law.
2. Peer-reviewed journal articles from national and international academic journals, including Scopus-indexed sources.
3. Legal commentaries and explanatory documents issued by institutions such as the Supreme Court Research and Development Center (Puslitbang MA) and the Ministry of Law and Human Rights.
4. Tertiary legal materials, including legal dictionaries, encyclopedias, and summaries that aid in clarifying key concepts, particularly in the translation or interpretation of foreign doctrines such as the Dutch pauliana, or Singaporean fraudulent conveyance provisions.[16]

In addition to normative doctrinal analysis, the study also incorporates a comparative legal method, which examines how other jurisdictions—particularly the Netherlands and Singapore—have developed dual-track legal frameworks for addressing fraudulent debtor behavior. The Netherlands is chosen due to its historical influence on Indonesian private law, especially the Civil Code; while Singapore represents a modern, mixed legal system with progressive insolvency legislation. Comparative examination focuses on statutory language, court decisions, and regulatory enforcement patterns related to fraudulent asset transfers, criminal insolvency, and creditor protection mechanisms.[17]

This comparative aspect serves two purposes: (a) to identify legal transplants or best practices that could enrich Indonesia's doctrinal framework, and (b) to offer critical reflection on whether existing legal institutions can accommodate such integration without jeopardizing legal certainty. The analysis does not aim to adopt foreign models uncritically, but rather to contextualize them within Indonesian institutional and normative constraints.

To further support the doctrinal analysis, the research applies a theoretical-conceptual framework based on the principles of legal certainty, justice in economic relations, and creditor protection. Concepts such as economic crime, abuse of legal form, and dual-track enforcement are operationalized to examine the overlap between civil fraud and criminal deception.[18] These concepts are explored to demonstrate that certain forms of debtor misconduct—although formally valid under civil law—undermine substantive justice and thus justify criminal sanctions.

Analytical emphasis is placed on how the intent to defraud (dolus malus) can be legally interpreted in both civil and criminal contexts, and how this interpretive overlap could be leveraged to develop a more integrated approach. This includes a review of how legal interpretation techniques—grammatical, systematic, teleological, and comparative—can harmonize diverging legal principles between civil and

[15] Indonesia, Kitab Undang-Undang Hukum Perdata (KUHPerdata), Art. 1341; and Kitab Undang-Undang Hukum Pidana (KUHP), Arts. 374 and 378.
[16] Huala Adolf, Aspek Hukum Kepailitan dalam Sistem Hukum Indonesia (Bandung: Alumni, 2020), 76.
[17] Mischa Spaan, "The Pauliana Action and the Fraudulent Transfer in Dutch Bankruptcy Law," Netherlands International Law Review 65, no. 1 (2018): 79–94.
[18] K. S. Dhillon, "Toward a Dual-Track Enforcement Model for Fraudulent Insolvency," Asian Journal of Law and Society 7, no. 3 (2020): 455–472.

criminal regimes.[19] For instance, teleological interpretation helps reveal the underlying purpose of actio pauliana as a mechanism to prevent asset evasion, which aligns with the criminal law's preventive and retributive objectives.

Finally, the legal reasoning model employed in this research is oriented toward prescriptive analysis, whereby existing laws are not only described and explained but also evaluated for coherence and adequacy, and recommendations are offered for reform. This includes proposing amendments, judicial guidelines, or interpretative doctrines that could bridge the current doctrinal gaps. All materials are interpreted with an emphasis on systemic integration and doctrinal consistency, particularly in light of Indonesia's ongoing legal reform agenda and efforts to modernize insolvency law.

RESULT AND DICUSSIONS

The Legal Doctrine and Historical Foundations of *Actio Pauliana* in Indonesian Law

The actio pauliana, as embedded in Article 1341 of the Indonesian Civil Code (KUHPerdata), originates from the Roman legal tradition and was later systematized in the Napoleonic Code, from which the Dutch Civil Code derived its structure.[20] The essential function of actio pauliana is to protect the interests of creditors against fraudulent or prejudicial acts committed by debtors who dispose of their assets in bad faith. These actions, if left unchecked, can disrupt the equitable distribution of assets and undermine the integrity of debt enforcement mechanisms.[21] In the Indonesian legal system, actio pauliana provides creditors the right to file a claim in court to nullify transactions made by a debtor that cause harm to the creditors' potential recovery. Article 1341 KUHPerdata reads:

"Every act of a debtor undertaken with the intent to harm his creditors, which is not legally mandated or compelled, may be annulled upon the request of the creditor, if such act results in the diminishment of the debtor's patrimony."[22]

This provision reflects the foundational principles of creditor protection and asset preservation. Unlike ordinary contractual annulments, actio pauliana is not concerned with the invalidity of the contract per se but with the relative effect of a legal action that impairs creditors' rights. The annulment has a restitutory character, aiming to restore the status quo ante of the debtor's patrimonial estate.[23] Notably, actio pauliana operates inter partes—it does not void the transaction universally but revokes its enforceability vis-à-vis the plaintiff creditor.

Despite its importance, the doctrine in Indonesian practice suffers from ambiguities in interpretation and enforcement, particularly regarding the evidentiary burden of proving "bad faith" (itikad buruk) and the requirement that the transaction was not "legally compelled."[24] Moreover, the courts have not uniformly developed a robust jurisprudence distinguishing between valid strategic debt management and fraudulent asset evasion. This doctrinal gap allows debtors to design transactions that formally appear legal but are substantively fraudulent in intent.

The Supreme Court of Indonesia has, in several decisions, upheld the function of actio pauliana to protect the collective rights of creditors, particularly in bankruptcy contexts. For instance, in Putusan MA No. 37 K/Pdt.Sus-Pailit/2012, the Court nullified a land transfer executed shortly before the debtor filed for bankruptcy on the grounds of clear intent to defraud.[25] However, the Court stopped short of recognizing such conduct as potentially criminal, even when the debtor's fraudulent intent was evident. This

[19] Satjipto Rahardjo, Ilmu Hukum (Bandung: Citra Aditya Bakti, 2000), 73.
[20] Mischa Spaan, "The Pauliana Action and the Fraudulent Transfer in Dutch Bankruptcy Law," Netherlands International Law Review 65, no. 1 (2018): 79.
[21] Rachmadi Usman, Hukum Kepailitan (Jakarta: Sinar Grafika, 2021), 182.
[22] Indonesia, Kitab Undang-Undang Hukum Perdata (KUHPerdata), Art. 1341.
[23] Sutan Remy Sjahdeini, Hukum Kepailitan dan PKPU (Jakarta: Pustaka Utama Grafiti, 2002), 231.
[24] Huala Adolf, Aspek Hukum Kepailitan dalam Sistem Hukum Indonesia (Bandung: Alumni, 2020), 97.
[25] Supreme Court of Indonesia, Putusan No. 37 K/Pdt.Sus-Pailit/2012.

illustrates the narrow application of actio pauliana strictly within civil law, despite factual overlaps with elements of criminal fraud.

1. The Requirements of Actio Pauliana: Legal and Doctrinal Dimensions

Scholars have outlined several cumulative elements required for a successful actio pauliana claim:

1. The debtor must have conducted a legal act that results in the transfer or encumbrance of assets.
2. The act must cause prejudice to the creditor (i.e., reduction of assets available for execution).
3. The debtor must have acted in bad faith or with fraudulent intent.
4. The act must not be legally mandated or compelled (e.g., tax payment or court order).

In cases involving bilateral contracts, the third party must have also known or participated in the fraudulent intent.[26]

These elements, while doctrinally coherent, are difficult to prove in practice, particularly the subjective element of bad faith. The courts have often required circumstantial indicators, such as timing of the transaction relative to the insolvency process, lack of adequate consideration, familial relationships between parties, or concealment efforts.[27] However, there is no unified standard on what constitutes sufficient evidence, leading to inconsistencies and protracted litigation.

In Indonesian bankruptcy law, as governed by Law No. 37 of 2004, actio pauliana is explicitly recognized as a remedy available to the receiver or curator (kurator) on behalf of the bankrupt estate.[28] Article 41 of the Bankruptcy Law provides that the receiver may annul transactions made by the debtor within one year prior to the bankruptcy declaration if such transactions are deemed to have harmed the creditors. This provision represents a codified extension of the actio paulianaprinciple into bankruptcy procedure.

Nevertheless, this legislative framework remains civil in nature and does not address the penal implications of fraudulent asset transfers. The law does not mandate coordination with criminal prosecutors, nor does it provide mechanisms for penal referrals in cases where debtors' actions meet the elements of criminal fraud under the Penal Code.[29] As a result, debtors often face only civil consequences, even when their conduct would qualify as a criminal offense in other legal systems.

2. Comparative Doctrinal Evolution of Actio Pauliana

The Netherlands, whose legal traditions heavily influenced the Indonesian Civil Code, offers a more integrated doctrinal development of actio pauliana. Under Article 42 of the Dutch Bankruptcy Act (Faillissementswet), the trustee may annul transactions that were prejudicial to creditors, especially when executed with intent to defraud.[30] In Dutch jurisprudence, courts have recognized that actio pauliana and criminal prosecution for fraudulent conveyance are not mutually exclusive. The same act may give rise to civil nullification and criminal punishment under fraud statutes.[31] This dual-track enforcement enhances deterrence and allows a more holistic approach to creditor protection.

In Singapore, the Insolvency, Restructuring and Dissolution Act (IRDA) of 2018 further strengthens this approach by explicitly criminalizing fraudulent trading. Section 239 of the IRDA allows courts to declare persons criminally liable if they carried out business with the intent to defraud creditors, regardless of whether bankruptcy proceedings have commenced.[32] Moreover, courts are empowered to impose compensatory orders against individuals found liable, thus integrating civil recovery and criminal sanctions within the same proceeding.

Such doctrinal evolution shows that actio pauliana, though civil in origin, can be effectively harmonized with penal frameworks without undermining the integrity of either legal sphere. This approach contrasts with Indonesia's compartmentalized system, which lacks doctrinal tools and judicial willingness to explore penal dimensions in creditor-debtor disputes.

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[26] Nurul Huda, "Actio Pauliana dalam Hukum Kepailitan Indonesia," Jurnal Yuridis 8, no. 1 (2021): 22.
[27] Peter Mahmud Marzuki, Penelitian Hukum (Jakarta: Kencana, 2017), 129.
[28] Indonesia, Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, Art. 41.
[29] KUHP, Articles 374 and 378.
[30] Netherlands, Faillissementswet, Art. 42.
[31] Ibid.
[32] Singapore, Insolvency, Restructuring and Dissolution Act (IRDA), Section 239.

3. Implications for Legal Reconstruction in Indonesia

The historical and doctrinal analysis of actio pauliana suggests that the Indonesian legal system has maintained a strict separation between civil and criminal responses to debtor misconduct. This separation is not mandated by any constitutional or structural constraint, but rather reflects a doctrinal inertia and absence of integrated legal theory. As a result, debtors can manipulate civil procedures to shield fraudulent conduct from criminal scrutiny.

Legal scholars have long called for the reconstruction of actio pauliana as a hybrid doctrine, capable of serving both restitutive and punitive functions.[33] Such reconstruction does not imply the automatic criminalization of all prejudicial transactions, but rather the recognition of penal thresholds—where conduct exceeds civil wrong and enters the realm of criminal fraud. These thresholds must be clearly defined by doctrinal criteria and supported by interpretative guidance from the Supreme Court.

Furthermore, the implementation of integrated procedures—whereby civil courts may recommend penal investigation or coordinate with prosecutors—is crucial.[34] This requires amendments to procedural laws, including the Bankruptcy Law, and issuance of technical guidelines by the Supreme Court and the Attorney General's Office. Without such reforms, actio pauliana will remain a partial and inadequate remedy, unable to address the full spectrum of fraudulent debtor behavior.

Fraudulent Intent and Penal Interpretation in Debtor Conduct

The distinction between civil bad faith and criminal fraudulent intent (dolus malus) is critical when evaluating the potential for imposing criminal liability upon debtors whose actions, though formally valid under civil law, effectively defraud their creditors. While the actio pauliana provides a civil remedy for creditors, the boundary at which a debtor's conduct transitions from private bad faith to punishable deceit remains underdeveloped in Indonesian legal doctrine.[35] This chapter analyzes how fraudulent intent can be interpreted within the penal framework, particularly under Article 378 of the Penal Code (KUHP), and proposes criteria to guide both judges and prosecutors in identifying cases where civil conduct amounts to criminal fraud.

1. The Legal Concept of Fraudulent Intent (Dolus Malus) in Criminal Law

Under Indonesian criminal law, fraud (penipuan) is regulated by Article 378 of the KUHP, which states:

"Anyone who, with the intent of unlawfully profiting himself or another, by using a false name, a false status, deceit, or a series of lies, induces another person to hand over property, shall be guilty of fraud."[36]

This provision contains four essential elements:

a. Intent to unlawfully benefit (mens rea).
b. Use of deception or lies (actus reus).
c. Causation: the deception induces another to act.
d. Result: the deceived party suffers loss

The jurisprudential interpretation of deceit in this context is not limited to verbal misrepresentation. Courts have accepted that structural acts of concealment, simulation, or asset manipulation can constitute deceit when they create a false appearance of solvency or financial honesty.[37] In the context of debtor-creditor relationships, a debtor who transfers property to a third party with the intention of avoiding execution may fulfill these elements, particularly if the third party is complicit.

By contrast, bad faith in civil law—as required in actio pauliana claims—does not require proof of deceit or intent to profit. Rather, it revolves around the knowledge that the act harms creditors and the volitional choice to proceed despite this knowledge.[38] While the standards of proof differ (balance of

[33] K. S. Dhillon, "Toward a Dual-Track Enforcement Model for Fraudulent Insolvency," Asian Journal of Law and Society 7, no. 3 (2020): 462.
[34] Ibid.
[35] Peter Mahmud Marzuki, Penelitian Hukum (Jakarta: Kencana, 2017), 131.
[36] Indonesia, Kitab Undang-Undang Hukum Pidana (KUHP), Art. 378.
[37] Huala Adolf, Aspek Hukum Kepailitan dalam Sistem Hukum Indonesia (Bandung: Alumni, 2020), 112.
[38] Rachmadi Usman, Hukum Kepailitan (Jakarta: Sinar Grafika, 2021), 176.

probabilities in civil law vs. beyond reasonable doubt in criminal law), the underlying mental state involved may overlap in severe cases.

2. Doctrinal Disconnect in Indonesian Law

Despite these intersections, Indonesian law does not clearly integrate the assessment of fraudulent intent in civil asset transfers with the penal evaluation of fraud. The Bankruptcy Law (Law No. 37/2004) contains no references to criminal liability for fraudulent conveyances. Nor does it provide a procedural bridge for referrals to criminal prosecutors in the event of clear bad faith and collusion.[39] This institutional compartmentalization leads to inconsistent enforcement. In practice, many cases involving debtor misconduct are resolved only via actio pauliana or bankruptcy proceedings, without exploring potential penal sanctions—even when transactions are clearly structured to defeat creditor claims.

This doctrinal disconnect weakens deterrence and fails to hold debtors accountable in proportion to the gravity of their misconduct. As noted by Wibisono, the absence of penal consequences for fraudulent debtors has led to a "culture of impunity" in which debtors exploit legal formalities while avoiding liability.[40] Moreover, it creates inequality between large and small creditors: larger institutions may pursue complex civil actions, while small creditors lack the resources to challenge fraudulent acts in court.

3. Judicial Reluctance to Criminalize Debtor Fraud

Indonesian courts have generally refrained from applying Article 378 KUHP to cases involving debtor asset transfers, even when collusion or concealment is evident. The prevailing view is that unless explicit deception (e.g., falsified documents, false representations) can be proven, the conduct falls outside the realm of criminal fraud.[41] This conservative approach limits the penal code's utility in insolvency-related fraud.

However, this position contrasts with emerging global practices. In the Netherlands, for instance, debtor conduct may simultaneously be subject to civil annulment (actio pauliana) and criminal prosecution under fraud or bankruptcy-specific statutes, particularly when the debtor engages in "fraudulent conveyance" or "bankruptcy fraud" (faillissementsfraude).[42] In Singapore, the courts have ruled that asset transfers made with knowledge of impending insolvency and with intent to defeat creditors may be prosecuted under Section 239 of the IRDA 2018, which criminalizes fraudulent trading.[43] These jurisdictions do not require verbal deceit; structured acts of concealment or simulation suffice to establish fraudulent intent.

4. Circumstantial Indicators of Fraudulent Intent

In the absence of confessions or direct evidence, courts and prosecutors must rely on circumstantial indicators to assess fraudulent intent. Legal literature and comparative jurisprudence suggest several red flags that, when present cumulatively, may justify criminal investigation:

a. Timing: Transfers made shortly before or after default on obligations or insolvency filing.
b. Relationship: Transfers to related parties (family, affiliates, shell companies).
c. Undervaluation: Assets sold at prices significantly below market value.
d. Lack of consideration: Transfers made without compensation or quid pro quo.
e. Concealment: Failure to report transactions to creditors, courts, or bankruptcy receivers.
f. Pattern: Repeated transactions that cumulatively erode the debtor's estate.[44]

These indicators must be viewed in context, and courts should evaluate the totality of circumstances, rather than requiring each to be independently proven beyond doubt. The presence of two or more indicators may justify initiating a penal inquiry, especially when the transaction undermines creditors' legal rights and violates the principle of good faith.

[39] Indonesia, Law No. 37 of 2004 on Bankruptcy, lacks provisions on penal linkage.
[40] Indonesia, Law No. 37 of 2004 on Bankruptcy, lacks provisions on penal linkage.
[41] Marcellus Wibisono, "Tanggung Jawab Pidana Debitur dalam Kepailitan," Jurnal Hukum & Pembangunan 52, no. 2 (2022): 235.
[42] Supreme Court, Putusan No. 212 K/Pid/2015.
[43] Netherlands, Faillissementswet, and Spaan, "The Pauliana Action," 88.
[44] Singapore, Insolvency, Restructuring and Dissolution Act (IRDA), Section 239.

5. Doctrinal Recommendations for Penal Interpretation

To reconcile the divide between civil and penal responses, Indonesian legal doctrine must adopt a functional interpretation of Article 378 KUHP, one that recognizes structured debtor deception as falling within the scope of criminal fraud. This does not require rewriting the statute but rather reinterpreting existing language—particularly the phrase "series of lies"—to include asset concealment and simulated transactions.[45]

Such an interpretation is consistent with the teleological purpose of the fraud statute, which aims to protect the integrity of legal and financial relationships from manipulation. The debtor-creditor relationship, being foundational to economic order, warrants equal protection. When debtors intentionally frustrate this relationship through deceitful structuring, the law must respond with both restitutive and punitive measures.

Judicial training and prosecutorial guidelines should emphasize that fraudulent debtor conduct may meet the elements of Article 378 KUHP, particularly when combined with proof of intent to defeat creditor claims.[46] Moreover, bankruptcy receivers should be empowered, through regulatory amendments, to report such cases to law enforcement agencies when indicators of criminality are present.

6. Policy and Legislative Reform Proposals

Beyond doctrinal interpretation, institutional reform is necessary to implement a coherent dual-track enforcement regime:

a. Amend the Bankruptcy Law to include mandatory reporting obligations when a debtor's conduct suggests fraudulent intent.

b. Issue Supreme Court Circular Letters (SEMA) clarifying the role of civil judges in identifying and referring potential fraud cases.

c. Develop prosecutorial guidelines under the Attorney General's Office, establishing indicators and procedures for investigating debtor fraud.

d. Enable joint proceedings, whereby civil courts may issue interlocutory findings of fact relevant to subsequent criminal trials.

These reforms would improve coherence between Indonesia's civil and criminal legal systems, ensure proportionality in enforcement, and restore confidence in the rule of law among creditors and the public.

Toward a Dual-Track Sanction Model in Indonesian Law

The failure of the Indonesian legal system to adequately respond to debtor misconduct that transcends civil bad faith and enters the realm of criminal fraud demands serious doctrinal and institutional reconsideration. As discussed in previous sections, actio pauliana offers a mechanism to undo transactions that harm creditors, yet it is limited to the restoration of civil interests and lacks the force to penalize morally or legally reprehensible behavior. Conversely, although the Indonesian Penal Code provides a normative framework for punishing deceitful acts through Article 378, its application in the context of debtor dishonesty remains limited and largely untested. This fragmentation calls for the construction of a more coherent legal approach—one that enables the application of both civil and criminal sanctions within a unified conceptual and procedural framework. Such a structure, widely referred to as a dual-track sanction model, provides a solution that is both legally principled and practically necessary.

In its conceptual essence, a dual-track model permits the law to impose both civil consequences—such as annulment of a fraudulent transfer under actio pauliana—and criminal liability for intentional deception. These dual consequences are justified not by their coexistence in a single legal act, but by the multi-dimensional nature of the harm caused. While civil remedies serve the interests of private justice and asset restitution, criminal sanctions uphold public order, enforce ethical standards, and deter repetition. Such a model does not violate the prohibition against double punishment, as the objectives and legal

[45] K. S. Dhillon, "Dual-Track Enforcement," Asian Journal of Law and Society 7, no. 3 (2020): 459.
[46] Satjipto Rahardjo, Ilmu Hukum (Bandung: Citra Aditya Bakti, 2000), 102.

justifications of each track differ substantially.[47] In other legal systems, particularly those influenced by Continental and Anglo-American traditions, this structure is widely accepted, especially in areas involving white-collar and economic crimes.

In Indonesia, however, the separation between civil and criminal law in debtor-creditor contexts has led to inadequate enforcement and frequent injustice. When a debtor deliberately hides, transfers, or liquidates assets to avoid execution or bankruptcy, the civil system may succeed in recovering the assets through actio pauliana, but no criminal sanction is imposed unless the act also involves falsification, forgery, or other explicitly criminal behavior. Even in cases where the pattern of deception is evident—such as in systematic asset transfers to family members, simulation of debt, or undervalued sales—law enforcement agencies and the judiciary rarely consider the use of penal instruments.[48]

This pattern has led to a dangerous legal culture in which debtors are incentivized to exploit formal legality to commit structured fraud. The harm, though civil in appearance, often arises from intentional and premeditated conduct that satisfies the elements of criminal fraud. The absence of meaningful sanctions beyond civil reversal fosters an environment of impunity, particularly in high-stakes corporate or commercial disputes. As noted in empirical studies, civil litigation alone often lacks deterrent power, especially against parties who perceive the cost of litigation or annulment as a mere business risk.[49]

A dual-track sanction model must therefore be built upon an integrative interpretation of existing laws, beginning with the doctrinal alignment between actio pauliana and Article 378 of the KUHP. This integration does not require legislative overhaul, but rather a shift in legal reasoning: judges and prosecutors must recognize that the same factual conduct—a debtor's asset transfer intended to defeat creditor claims—can amount to both a civil wrong and a criminal offense, depending on the mental state and contextual indicators. The civil court's finding of bad faith in actio pauliana cases should be seen not merely as a civil judgment but also as a potential signal for penal scrutiny, especially when supported by patterns of concealment, collusion, or repetition.[50]

What is needed is a harmonization of interpretive techniques, particularly through teleological reasoning that seeks to fulfill the underlying purpose of each legal provision. In this sense, Article 1341 of the Civil Code and Article 378 of the Penal Code are not contradictory, but complementary. The former seeks to protect the creditor's patrimonial interest, while the latter seeks to punish and deter acts of deception that harm legal certainty and economic fairness. When a debtor's civil act not only harms a creditor but is also executed with deceitful intent, the law must respond on both fronts.

To support this framework, institutional mechanisms must also evolve. The role of bankruptcy receivers (kurator) can be expanded beyond asset administration to include reporting obligations when signs of criminal intent emerge during insolvency proceedings. Such mechanisms have long existed in jurisdictions like Singapore and the Netherlands, where receivers are often mandated to coordinate with financial intelligence units and public prosecutors when suspicious transactions are detected.[51] In Indonesia, this would require regulatory alignment between the Ministry of Law and Human Rights, the Supreme Court, and the Attorney General's Office, possibly through technical guidelines or inter-agency memoranda of understanding.

Judicial training is also essential. Judges presiding over commercial and civil courts must be sensitized to recognize patterns of structured fraud, and to articulate their findings in such a way that enables prosecutors to consider penal follow-up. This can be facilitated through jurisprudential development—

[47] K. S. Dhillon, "Toward a Dual-Track Enforcement Model for Fraudulent Insolvency," Asian Journal of Law and Society 7, no. 3 (2020): 455.
[48] Rachmadi Usman, Hukum Kepailitan (Jakarta: Sinar Grafika, 2021), 190.
[49] Marcellus Wibisono, "Tanggung Jawab Pidana Debitur dalam Kepailitan," Jurnal Hukum & Pembangunan 52, no. 2 (2022): 233.
[50] Peter Mahmud Marzuki, Penelitian Hukum (Jakarta: Kencana, 2017), 129.
[51] Mischa Spaan, "The Pauliana Action and the Fraudulent Transfer in Dutch Bankruptcy Law," Netherlands International Law Review 65, no. 1 (2018): 84.

such as the issuance of Supreme Court circular letters (SEMA)—that endorse dual interpretations where appropriate.[52] Legal education and continuing judicial development must emphasize that insolvency-related misconduct is not merely a civil matter, but a threat to systemic trust in legal institutions.

Furthermore, the legal community must embrace the idea that debtor accountability cannot stop at asset restoration. In cases of deliberate, repeated, or large-scale fraudulent transfers, the absence of criminal prosecution sends a dangerous signal. The law must be capable of expressing condemnation, not just correction. A dual-track model makes this possible, by ensuring that serious economic misconduct is not treated as a civil inconvenience but as a legal violation that offends both private and public order.

It must also be acknowledged that implementing a dual-track system carries risks. Over-criminalization may occur if the threshold for fraud is too low, or if creditors use penal threats as leverage in civil disputes. To guard against this, doctrinal guidance must be clear: not every *actio pauliana* case should trigger penal action. Only when indicators such as intentional concealment, repeated behavior, involvement of related parties, and material harm are present should the possibility of criminal prosecution be seriously considered.[53]

In addition, procedural safeguards must be established to ensure due process. Debtors must have the right to challenge penal referrals based on civil judgments, and a filtering mechanism must exist—possibly through judicial authorization—before prosecutors can pursue criminal charges based on civil findings. This will prevent the abusive use of criminal law while preserving its legitimate deterrent function.

In the long term, the dual-track sanction model can strengthen the coherence of Indonesian law. It reinforces the idea that civil law does not stand in isolation from the broader legal order. It also enhances creditor confidence, improves enforcement outcomes in bankruptcy cases, and aligns national legal practice with international best standards in commercial law. The OECD and UNCITRAL, for example, have emphasized the need for jurisdictions to adopt coordinated frameworks that enable both civil recovery and criminal accountability in insolvency-related fraud.[54]

Ultimately, law must evolve to reflect the complexity of modern economic relationships. The days when debtor misconduct could be compartmentalized as merely private wrongdoing are over. In an interconnected and high-risk financial environment, the public dimension of financial honesty must be upheld. The *actio pauliana,* as a legacy of Roman-Dutch civil tradition, can no longer stand alone. It must be joined by an equally strong penal framework, not in conflict, but in complement. Only then can the legal system fulfill its dual mission: to protect the interests of individuals and to defend the integrity of the public order.

CONCLUSION AND SUGGESTIONS

The foregoing analysis has demonstrated that Indonesia's current legal framework is insufficient to fully address the complex and increasingly strategic misconduct of debtors who fraudulently transfer or conceal assets to avoid fulfilling their obligations. While actio pauliana provides a civil avenue for creditors to annul prejudicial transactions, its remedial function does not reach the punitive or deterrent dimensions required to effectively discourage calculated and systematic fraud. Conversely, the provisions of the Indonesian Penal Code, particularly Article 378 on fraud, remain doctrinally disconnected from civil mechanisms, resulting in an enforcement gap that allows debtors to commit financial manipulation with minimal risk of criminal prosecution.

This disjunction between civil and criminal law in handling debtor misconduct reflects not only a doctrinal fragmentation but also an institutional hesitation to apply criminal sanctions in commercial disputes. The research has shown that courts often treat bad faith as a purely civil concern, despite the

[52] Supreme Court Circular Letter (SEMA), Guidelines on Civil-Criminal Linkages, 2022.
[53] Satjipto Rahardjo, Ilmu Hukum (Bandung: Citra Aditya Bakti, 2000), 101.
[54] OECD, Principles for Effective Insolvency and Creditor Rights Systems (Paris: OECD Publishing, 2020), 17–22.

presence of deception, concealment, and harm consistent with the elements of criminal fraud. Likewise, prosecutors seldom initiate criminal proceedings in bankruptcy or actio pauliana contexts due to the lack of procedural integration, evidentiary guidance, and inter-agency collaboration.

The consequences of this doctrinal and practical separation are far-reaching. Debtors who intentionally dissipate assets, engage in simulated transactions, or transfer property to close associates with the aim of defeating creditor claims effectively undermine not only private contractual justice but also the public's trust in the integrity of legal institutions. By failing to treat such conduct as a matter of public concern, the legal system permits a normalization of dishonesty in economic relations, which over time weakens the rule of law and fosters a culture of impunity.

Comparative insights from the Netherlands and Singapore reveal the effectiveness of dual-track sanction models, where civil remedies and criminal enforcement mechanisms operate in a complementary and integrated manner. These systems allow courts to impose civil consequences such as annulment or compensation, while simultaneously referring the matter for criminal investigation when indicators of fraud are present. In these jurisdictions, structured deception by debtors is not shielded by the formal legality of civil transactions; rather, it is evaluated holistically with an emphasis on intent, effect, and pattern.

Indonesia must adopt a similar integrative approach to close the normative and institutional gap between actio paulianaand the Penal Code. Such an approach does not require radical legislative reform, but rather a doctrinal and procedural realignment grounded in coherent legal reasoning and supported by targeted institutional improvements.

First and foremost, the judiciary should adopt a harmonized interpretive doctrine that recognizes the overlapping elements between civil bad faith and criminal fraudulent intent. When civil courts find that a debtor has transferred assets in bad faith—particularly where evidence suggests collusion, concealment, or repeat behavior—such findings should be recognized as grounds for possible criminal referral. This does not pre-empt the presumption of innocence, but provides a legitimate basis for further investigation under Article 378 of the KUHP.

Second, there must be a procedural bridge between civil and criminal enforcement. Bankruptcy receivers, judges, and other legal actors involved in insolvency processes should be legally empowered and procedurally obliged to report suspected fraudulent conduct to law enforcement agencies. This requires amendments or interpretive extensions to Law No. 37 of 2004 on Bankruptcy and the Code of Civil Procedure. Without such mechanisms, civil proceedings will continue to function in isolation, and valuable evidentiary findings will be lost to the penal system.

Third, the Attorney General's Office should issue technical guidelines for prosecuting debtor fraud, outlining the evidentiary standards, indicators of fraudulent intent, and coordination mechanisms with the judiciary and curators. Such guidelines can be developed based on existing models in commercial crime or anti-corruption frameworks. These would provide clarity for law enforcement and ensure consistency in the initiation of criminal proceedings.

Fourth, judicial and prosecutorial training is essential. Many legal actors remain unfamiliar with the economic and structural nature of debtor fraud. Training programs should emphasize how legal form can be manipulated to conceal dishonesty, and how teleological interpretation can bridge statutory silos. The goal is to foster a legal culture that prioritizes substance over form and integrates ethical considerations into commercial adjudication.

Finally, a gradual development of jurisprudence is needed to reinforce the legitimacy of the dual-track model. Supreme Court circulars or judicial guidelines can help standardize the interpretation of actio pauliana in relation to fraud, while also providing doctrinal tools for civil judges to articulate findings that support penal referral. As more cases adopt this model, lower courts and legal practitioners will gain confidence in applying it consistently and fairly.

The long-term benefits of implementing such a model are significant. It will deter debtor misconduct, enhance creditor trust, improve the efficiency of insolvency proceedings, and contribute to the modernization of Indonesia's commercial legal system. It will also align national practice with international principles on creditor rights and economic crime prevention, as advocated by institutions such as UNCITRAL and the OECD.

In conclusion, the integration of civil and criminal remedies in cases of fraudulent debtor conduct is not only desirable but necessary. The moral and economic harms caused by debtor deception cannot be adequately addressed through civil annulment alone. The law must send a clear message that such conduct is not merely a breach of private duty but a violation of public norms. By adopting a dual-track sanction framework that enables actio pauliana to function alongside criminal enforcement, Indonesia can uphold both private justice and public integrity in its legal response to economic dishonesty.

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