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ANALYSIS OF DIRECTORS' ULTRA VIRES ACTS AS A LEGAL BASIS FOR FILING ACTIO PAULIANA IN LIMITED LIABILITY COMPANY BANKRUPTCY

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Abstract: *Directors of a Limited Liability Company (Perseroan Terbatas or PT) are bound by the company's articles of association and the provisions of Law No. 40 of 2007 on Limited Liability Companies. Acts exceeding that authority are classified as ultra vires, often surfacing in commercial practice as unlawful asset transfers or encumbrances that deplete the corporate estate prior to a court declaring the company bankrupt. Indonesian bankruptcy law offers the actio pauliana mechanism under Articles 41 to 47 of Law No. 37 of 2004 to annul debtor legal acts that prejudice creditors' rights. Nevertheless, the vast majority of actio pauliana claims filed since its enactment have reportedly been rejected by Commercial Courts, mainly due to evidentiary hurdles in establishing that the transaction was non-obligatory and known to harm creditors. This article examines the position of directors' ultra vires acts as a legal basis for filing actio pauliana in PT bankruptcy and clarifies the statutory basis of directors' personal liability under company law. Employing a normative legal research methodology combining a statutory approach, case approach, and conceptual approach, the analysis reveals that ultra vires acts conceptually satisfy the actio pauliana requirement of a non-obligatory act (tidak wajib dilakukan) and trigger personal director liability under Article 97(3) of the Company Law, reinforced by the statutory presumption of knowledge in affiliated-party transactions under Article 42 of Law No. 37 of 2004. However, ultra vires status alone does not automatically establish actual creditor detriment, requiring Commercial Courts to adopt a bifurcated evidentiary approach that separates formal documentary verification of ultra vires from the substantive evaluation of financial prejudice to creditors.*

Keywords: *Actio Pauliana; Bankruptcy; Board of Directors; Limited Liability Company; Ultra Vires.*

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Introduction

In modern corporate law, the Limited Liability Company (Perseroan Terbatas or PT) serves as the legal foundation for economic transactions. Under Article 1 Point 1 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as Law No. 40/2007 or UU PT), a limited liability company is defined as a legal entity established based on an agreement, conducting business activities with authorized capital divided into shares. As an independent legal person (rechtssubject), a limited liability company possesses rights and obligations separate from its founders, directors, and shareholders under the foundational doctrine of separate legal entity (Amelia, 2025; Sukma et al., 2024). Corporate actions are executed on behalf of the company through its three institutional organs: the General Meeting of Shareholders (GMS), the Board of Directors (Direksi), and the Board of Commissioners (Dewan Komisaris) (Yusuf, 2023).

Among these corporate organs, the Board of Directors occupies the central operational role in managing the daily business affairs of the company. Article 1 Point 5 of Law No. 40/2007 explicitly defines the Board of Directors as the corporate organ fully authorized and responsible for managing the company in its best interests, in accordance with its corporate purposes and objectives (maksud dan tujuan perseroan), and representing the company both inside and outside the court pursuant to the provisions of its articles of association (anggaran dasar) (Arimurti, 2025; RH, 2026). In carrying out these managerial duties, directors are bound by fiduciary duties—requiring every member of the board to act in good faith (itikad baik), with due care, and with complete loyalty toward the corporate legal entity (Prakasa & Sudarwanto, 2025; Waruwu et al., 2022).

When directors execute corporate transactions that exceed the scope of their statutory authority, violate internal restrictions set forth in the company's articles of association, or act outside the corporate purposes and objectives, such actions are classified in corporate jurisprudence as ultra vires acts (Ramadhan, 2022; Sjawie, 2017; Widodo & Hidayah, 2022). In commercial practice, ultra vires actions frequently manifest as unlawful transfers of corporate real estate or shares to third parties at below-market prices, unauthorized encumbrances of corporate assets as security for third-party debts without requisite shareholder consent, or fraudulent transactions with affiliated entities that drain corporate capital (Nasar, 2024; Putra, 2025). The legal consequence of a director's ultra vires act is codified under Article 97 paragraph (3) of Law No. 40/2007, which mandates that every member of the Board of Directors who is at fault or negligent in executing management duties shall be held fully personally liable (tanggung jawab pribadi) for any resulting corporate losses (Indrawati et al., 2021; Sukma et al., 2024). This statutory rule represents a direct exception to the doctrine of limited liability, piercing the corporate veil when directors breach their fiduciary mandate (Panalaga, 2023; Sugandi et al., 2024).

From a bankruptcy perspective, repeated or severe ultra vires asset transfers severely impair the financial solvency of the company. When a financially distressed company is ultimately declared bankrupt by a Commercial Court (Pengadilan Niaga), all corporate property constitutes a general attachment (sita umum) serving as joint security for all creditors under Article 1 Point 1 of Law Number 37 of 2004 concerning Bankruptcy and PKPU (hereinafter referred to as Law No. 37/2004 or UU KPKPU) and Articles 1131 and 1132 of the Indonesian Civil Code (KUHPerdata) (Isfardiyana, 2014; Sudiato, 2022). However, in many corporate insolvencies, the remaining bankrupt estate (boedel pailit) is grossly insufficient to satisfy creditor claims because valuable corporate assets were depleted through ultra vires transactions executed by directors prior to the bankruptcy declaration (Adiwangsa et al., 2026; Cape et al., 2025).

To remedy such pre-bankruptcy asset depletion, bankruptcy law provides the legal instrument of actio pauliana, regulated under Article 1341 KUHPerdata and specifically codified under Articles 41 through 47 of Law No. 37/2004 (Mantili, 2020; Syahrin, 2017). Through actio pauliana, the court-appointed Curator (Kurator) is legally empowered to request the Commercial Court to annul legal transactions executed by the debtor prior to bankruptcy that prejudiced creditors' recovery rights (Adiwangsa et al., 2026). Under Article 41 of Law No. 37/2004, an actio pauliana claim may be granted if two core statutory conditions are satisfied: (1) the transaction was not legally or contractually obligatory for the debtor (tidak wajib dilakukan); and (2) both the debtor and the transaction counterparty knew or reasonably should have known that the transaction would prejudice creditors' rights (mengetahui merugikan kreditor) (Butarbutar, 2019; Fikri et al., 2023).

Despite the critical protective function of actio pauliana, empirical judicial studies in Indonesia reveal a troubling reality: virtually every actio pauliana lawsuit filed since the enactment of Law No. 37 of 2004 has been rejected by Commercial Courts, as well as on cassation and judicial review before the Supreme Court (Butarbutar, 2019; Fikri et al., 2023; Syahrin, 2017). The primary obstacle facing curators is the heavy evidentiary burden of proving subjective bad faith (scientia fraudis)—specifically proving that the debtor and counterparty actively intended to harm creditors or possessed actual knowledge of impending insolvency (Butarbutar, 2019). Commercial Court judges frequently struggle to distinguish between normal business risk (business judgment) and fraudulent asset dissipation, resulting in conflicting judicial interpretations and rendering actio pauliana largely ineffective in practice (Fikri et al., 2023).

This evidentiary bottleneck creates a compelling legal opportunity to examine the intersection between corporate law and bankruptcy procedure: Can a director's ultra vires act serve as an objective legal basis and evidentiary indicator for filing actio pauliana in corporate bankruptcy? Because an ultra vires act by definition exceeds the statutory or constitutional authority of the company, such an act is inherently voidable or void, establishing objectively that the transaction was "not legally obligatory" (tidak wajib dilakukan) for the corporate entity (Ramadhan, 2022; Sjawie, 2017). Furthermore, where ultra vires asset transfers involve affiliated parties (e.g., parent companies, subsidiaries, or director-owned entities), Article 42 of Law No. 37/2004 imposes a statutory presumption of knowledge (presumsi hukum), reversing the burden of proof onto the debtor and counterparty to prove the absence of bad faith (Adiwangsa et al., 2026; Luwinanda & Handayani, 2024).

While existing literature has examined ultra vires under company law (Sjawie, 2017; Waruwu et al., 2022) and actio pauliana in general bankruptcy (Mantili, 2020; Syahrin, 2017), there remains a significant research gap regarding how establishing ultra vires corporate status can streamline the evidentiary framework of actio pauliana litigation in Commercial Courts. To address this gap, this article formulates two primary legal questions What is the statutory basis of directors' personal liability for ultra vires acts under Law No. 40 of 2007 on Limited Liability Companies; How do directors' ultra vires acts conceptually align with the statutory elements of actio pauliana under Law No. 37 of 2004, and what are the practical evidentiary implications of utilizing ultra vires determinations in Commercial Court bankruptcy proceedings. This study aims to provide a comprehensive normative legal analysis that clarifies the relationship between corporate authority and bankruptcy avoidance, offering procedural recommendations for curators and commercial court judges.

Method

This study is conducted using a normative legal research methodology (penelitian hukum normatif), which examines positive statutory provisions, legal doctrines, statutory harmony, and judicial decision-making in corporate and bankruptcy law (Soekanto & Mamudji, 2019). Normative legal research is uniquely suited for this study because the core problems investigated center on statutory interpretation under Law No. 40/2007 (UU PT) and Law No. 37/2004 (UU KPKPU), the application of Civil Code principles, and the conceptual integration of ultra vires doctrine with actio pauliana evidentiary standards.

To systematically address the research questions, three primary legal approaches are deployed Statutory Approach (Pendekatan Perundang-undangan): Analyzing all relevant legislations governing corporate governance, director duties, bankruptcy avoidance, and general guarantees. Primary statutes examined include Law Number 40 of 2007 on Limited Liability Companies (as amended by Law No. 6 of 2023), Law Number 37 of 2004 on Bankruptcy and PKPU, and the Indonesian Civil Code (Burgerlijk Wetboek), Case Approach (Pendekatan Kasus): Scrutinizing judicial reasoning (ratio decidendi) and evidentiary evaluation in landmark commercial court decisions and Supreme Court verdicts concerning actio pauliana and director liability. Decisions examined include Commercial Court Decision No. 07/Pdt.Sus-Actio Pauliana/2015/PN.Niaga.Mdn, Supreme Court Decision No. 560 K/Pdt.Sus-Pailit/2021, Supreme Court Decision No. 436 K/Pdt.Sus-Pailit/2021, South Jakarta District Court Decision No. 439/Pdt.G/2011/PN.Jkt.Sel (PT Humpuss Intermoda Transportasi case), and the PT Aditya Toa Development vs. PT Wijaya Wisesa bankruptcy case (Butarbutar, 2019; Cape et al., 2025; Fikri et al., 2023; Irma, 2016; RH, 2026), Conceptual Approach (Pendekatan Konseptual): Exploring foundational legal concepts, including the doctrine of ultra vires, fiduciary duty, corporate legal personality (separate legal entity), piercing the corporate veil, actio pauliana, non-obligatory legal acts (tidak wajib dilakukan), scientia fraudis, and statutory presumptions in affiliated transactions (Mantili, 2020; Prakasa & Sudarwanto, 2025; Syahrin, 2017).

The legal materials used in this research are systematically categorized into Primary Legal Materials: Binding statutory instruments, including the Indonesian Civil Code (KUHPerdata), Law No. 40/2007 (UU PT), Law No. 37/2004 (UU KPKPU), Law No. 6/2023 (UU Cipta Kerja), and official court decisions; Secondary Legal Materials: Authoritative academic literature, including peer-reviewed law journal articles (from Jurnal Hukum To-Ra, Jurnal Yudisial, ADHAPER, Jurist-Diction, AHKAM, and Vej), legal treatises, monographs, doctoral dissertations, and master's theses; Tertiary Legal Materials: Specialized legal dictionaries and legal encyclopedias providing standard definitions of technical jurisprudential terms.

Data collection was executed through comprehensive library research and digital statutory database retrieval. The collected legal materials were analyzed qualitatively using deductive reasoning, grammatical interpretation, teleological interpretation, and systematic structural analysis to construct a harmonized evidentiary framework for commercial courts

Discussion

The Basis of Directors' Liability for Ultra Vires Acts under Law No. 40 of 2007 on Limited Liability Companies

To establish the legal foundation of director liability, one must examine the statutory scope of management authority granted to the Board of Directors under Law No. 40 of 2007. Under Article 1 Point 5 of Law No. 40/2007, the Board of Directors is vested with full authority and responsibility to manage the company for its best interests, in accordance with its corporate purpose and objectives (*maksud dan tujuan perseroan*), and to represent the company both inside and outside the court pursuant to its articles of association (*anggaran dasar*) (Arimurti, 2025; RH, 2026). Article 92 paragraph (1) reinforces this mandate by establishing that management is executed directly by the Board of Directors under the internal governance rules set forth in the articles of association.

The company's articles of association serve as the constitutional framework governing corporate actions. When a director executes a transaction that falls outside the corporate purpose and objectives, exceeds express statutory restrictions, or bypasses mandatory corporate approvals (such as GMS or Board of Commissioners authorization), that action is legally classified as an **ultra vires** act (Ramadhan, 2022; Sjawie, 2017). The term *ultra vires* derives from Latin, meaning "beyond the powers." In corporate law doctrine, an *ultra vires* act stands in direct opposition to an *intra vires* act, which is performed strictly within authorized constitutional limits (Widodo & Hidayah, 2022).

In legal analysis, a director's *ultra vires* act produces distinct consequences regarding corporate binding power versus individual officer liability:

- **Binding Effect on the Company:** As a general rule under Indonesian corporate law, an *ultra vires* transaction executed by a director does **not** bind the corporate legal entity, because the director acted without valid representative authority (*onbevoegd*), unless the transaction is subsequently ratified by the General Meeting of Shareholders or the company actually retained and benefited from the proceeds (Nasar, 2024; Sjawie, 2017).
- **Personal Liability of the Director:** Pursuant to Article 97 paragraph (3) of Law No. 40/2007, if an *ultra vires* act results in corporate financial losses, every member of the Board of Directors who is at fault or negligent shall be **fully personally liable (*tanggung jawab pribadi*)** for the loss (Indrawati et al., 2021; Sukma et al., 2024). This statutory personal liability strips away the veil of limited liability, allowing damaged corporate entities, shareholders, or creditors to seek compensation directly from the director's personal assets (Panalaga, 2023; Sugandi et al., 2024).

Article 97 paragraph (5) of Law No. 40/2007 outlines the statutory exculpation mechanism under the Business Judgment Rule (BJR), allowing a director to escape personal liability only if they can cumulatively prove that: (1) the loss was not caused by their fault or negligence; (2) management was conducted in good faith and with due care; (3) no conflict of interest was present; and (4) appropriate measures were taken to prevent the loss (Prakasa & Sudarwanto, 2025; Rissy, 2020). Crucially, an *ultra vires* act inherently fails the second and third conditions of the Business Judgment Rule: a director who deliberately or negligently violates statutory authority or articles of association restrictions cannot claim to have acted with procedural "due care" or in "good faith" (Prakasa & Sudarwanto, 2025; Ramadhan, 2022).

Furthermore, where an *ultra vires* transaction involves intentional fraud, self-dealing, or willful asset dissipation, civil personal liability under Article 97 paragraph (3) may escalate into criminal liability. Under general criminal jurisprudence and specific corporate offenses, a director who intentionally executes *ultra vires* transfers to siphon company wealth into personal or affiliated accounts can be prosecuted for embezzlement under Article 374 of the Indonesian Criminal Code (KUHP) or corporate fraud (RH, 2026; Sukma et al., 2024). Thus, the *ultra vires* doctrine serves as an indispensable benchmark for evaluating whether a director acted within lawful managerial bounds or engaged in actionable breach of fiduciary duty (Waruwu et al., 2022).

Conceptual Alignment of Directors' Ultra Vires Acts with the Statutory Elements of Actio Pauliana

The core thesis of this research is that a director's *ultra vires* act provides a robust legal basis and objective evidentiary foundation for filing an *actio pauliana* lawsuit in corporate bankruptcy. To evaluate this thesis, one must compare the conceptual characteristics of *ultra vires* acts with the four cumulative statutory elements of *actio pauliana* under Articles 41 through 47 of Law No. 37/2004 (UU KPKPU) and Article 1341 KUHPerdata (Mantili, 2020; Syahrin, 2017).

To establish operational clarity, a director's transaction can be classified as *ultra vires* if it meets any of three objective indicators:

1. The transaction falls **outside the scope of corporate purposes and objectives** as defined in Article 2 of the company's registered articles of association;
2. The transaction involves **major corporate asset transfers or encumbrances exceeding 50% of net corporate assets** under Article 102 of Law No. 40/2007, but was executed without obtaining required General Meeting of Shareholders (GMS) approval; or
3. The transaction violates **express statutory restrictions or explicit prohibitions** set forth in the articles of association or relevant regulatory statutes (Ramadhan, 2022; Sjawie, 2017; Widodo & Hidayah, 2022).

Comparing these *ultra vires* indicators with the statutory elements of *actio pauliana* yields significant conceptual alignment:

Table 1: Conceptual Alignment Matrix Between Ultra Vires Indicators and Actio Pauliana Statutory Elements

Actio Pauliana Statutory Element (Law No. 37/2004)	Characteristics of Director's Ultra Vires Act (Law No. 40/2007)	Evidentiary Impact in Commercial Court Proceedings
1. Debtor performed a legal act (*perbuatan hukum*) prior to bankruptcy declaration.	Director executed a formal contract, asset transfer, sale, pledge, or guarantee on behalf of the company.	Easily proven via physical deeds, contracts, transfer receipts, or land registration records.
2. The legal act was NOT legally or contractually obligatory (*tidak wajib dilakukan*).	Because the act exceeded statutory authority or articles of association rules, the company had no legal duty to perform it. *Ultra vires* acts are voidable/void.	**Objective Documentary Proof:** Presenting the registered articles of association and board minutes proves the act was non-obligatory without needing subjective intent analysis.
3. The legal act prejudiced creditors' recovery rights (*merugikan kreditor*).	The transaction depleted corporate assets, reduced the bankrupt estate (*boedel pailit*), or increased liabilities prior to insolvency.	Proven through financial accounting audits comparing pre-transaction net asset value with final bankrupt estate deficit.
4. Debtor and counterparty knew or should have known of creditor detriment (*scientia fraudis*).	Director deliberately bypassed constitutional restrictions or GMS approvals. In affiliated transactions, statutory presumption applies.	**Reversed Burden of Proof:** Under Article 42 UU KPKPU, affiliated transactions presume knowledge, shifting burden to defendant to prove good faith.

As detailed in Table 1, the most critical evidentiary advantage of utilizing *ultra vires* as a basis for *actio pauliana* lies in proving the second element: that the legal act was **not legally obligatory** for the debtor (Adiwangsa et al., 2026; Butarbutar, 2019). In standard *actio pauliana* cases, debtors frequently defend pre-bankruptcy asset transfers by claiming they were "obligatory commercial transactions" conducted in the ordinary course of business. When a curator proves that the underlying transaction was *ultra vires*—for instance, an asset sale executed without mandatory Article 102 GMS approval—the legal act is objectively stripped of its mandatory status. An unauthorized, unconstitutional transaction can never be classified as a legally obligatory duty of the corporate entity (Ramadhan, 2022; Sjawie, 2017).

Furthermore, the alignment becomes exceptionally powerful when an *ultra vires* asset transfer involves **affiliated parties (*pihak terafiliasi*)**—such as parent corporations, subsidiary companies, directors' family members, or entities sharing common management. Under **Article 42 of Law No. 37/2004**, if an unobligatory legal act compromising creditor recovery is executed with an affiliated party within **one year** prior to the bankruptcy declaration, the law establishes a **statutory presumption (*presumsi hukum*)** that both the debtor and the affiliated counterparty knew the act prejudiced creditors (Adiwangsa et al., 2026; Luwinanda & Handayani, 2024). This statutory presumption completely reverses the burden of proof (*pembuktian terbalik*), requiring the defendant director and affiliated counterparty to affirmatively prove that they had no knowledge of creditor detriment and acted in complete good faith (Butarbutar, 2019; Luwinanda & Handayani, 2024).

Finally, a crucial dual recovery structure must be emphasized. Filing an *actio pauliana* lawsuit under Law No. 37/2004 seeks to **annul the fraudulent transaction and retrieve the specific transferred asset**, returning it directly to the bankrupt estate (*boedel pailit*) for general creditor distribution (Adiwangsa et al., 2026; Mantili, 2020). Simultaneously, Article 104 paragraph (2) of Law No. 40/2007 allows the curator to pursue the director's **personal wealth (*kekayaan pribadi*)** to satisfy any remaining bankruptcy deficit that cannot be covered by the retrieved estate (Indrawati et al., 2021; Isfardiyana, 2014). Curators can and should deploy both legal instruments concurrently to maximize asset recovery for creditors.

Practical Implications and Judicial Challenges of Applying Actio Pauliana to Ultra Vires Acts in Bankruptcy

Despite the strong conceptual alignment detailed above, applying *actio pauliana* to directors' *ultra vires* acts in commercial court practice encounters significant evidentiary and procedural hurdles. Examining judicial precedents provides essential insights into how courts navigate these complexities.

Evidentiary Hurdles in Commercial Courts. In *actio pauliana* litigation, Commercial Court judges are required to evaluate not only the objective financial outcome of a transaction but also the subjective mental state (*scientia fraudis*) of the parties at the time the transaction was executed (Butarbutar, 2019). In Decision No. 07/Pdt.Sus-Actio Pauliana/2015/PN.Niaga.Mdn, the Medan Commercial Court highlighted that proving creditor detriment requires showing that the debtor executed asset sales in bad faith specifically to evade debt settlement obligations (Butarbutar, 2019). Similarly, Supreme Court Decision No. 560 K/Pdt.Sus-Pailit/2021 underscored that evidentiary process in *actio pauliana* remains fraught with legal uncertainty regarding what factual evidence is legally sufficient to establish actual creditor loss (Fikri et al., 2023).

Simple Proof Limitations in Initial Bankruptcy vs. Full Actio Pauliana Trials. A critical procedural distinction must be drawn between initial bankruptcy proceedings and subsequent *actio pauliana* trials. In the landmark bankruptcy case of *PT Aditya Toa Development vs. PT Wijaya Wisesa*, the Supreme Court ruled that determining whether a director's action was *ultra vires* contrary to the articles of association involves complex contractual and constitutional interpretations that **cannot be resolved under the simple proof standard (*pembuktian sederhana*)** required for declaring initial bankruptcy under Article 8 paragraph (4) of Law No. 37/2004 (Irma, 2016). However, this limitation applies exclusively to the initial bankruptcy petition hearing. Once bankruptcy is declared, an *actio pauliana* lawsuit is tried as a full adversary civil proceeding (*gugatan pembatalan perbuatan hukum*) before the Commercial Court, where comprehensive documentary evidence, expert testimonies, and detailed corporate audits are fully admissible (Adiwangsa et al., 2026; Mantili, 2020).

Successful Actio Pauliana Precedents Involving Corporate Organs. Judicial practice confirms that Indonesian courts will annul transactions executed by corporate organs when asset transfers exceed normal commercial standards and harm creditors:

- **The PT Jabatex Bankruptcy Case:** The Curator successfully filed an *actio pauliana* lawsuit to annul asset sales executed by corporate officers while the company was under severe financial distress and PKPU proceedings. The court ruled that selling key operational assets during financial insolvency prejudiced creditors, and the annulment was upheld on cassation before the Supreme Court (Mantili, 2020).
- **Supreme Court Decision No. 436 K/Pdt.Sus-Pailit/2021:** The Supreme Court granted an *actio pauliana* petition annulling an unauthorized debt assignment (*pengalihan utang*) executed by a corporate Commissioner prior to bankruptcy, affirming that unauthorized organ transactions outside normal business

operations that harm creditors are subject to statutory avoidance (Cape et al., 2025).

These precedents prove that when curators present clear documentary evidence of unauthorized organ conduct combined with financial detriment, Commercial Courts possess full authority to annul the transactions.

Protection of Good Faith Third Parties. Under Article 47 paragraph (1) of Law No. 37/2004, the annulment of a transaction via *actio pauliana* must respect the rights of third-party transferees who acquired the asset in good faith for valuable consideration (*pihak ketiga beritikad baik*) (Luwinanda & Handayani, 2024; Setyabudi et al., 2023). If a third party purchased corporate real estate in good faith without knowledge of the director's *ultra vires* breach or impending insolvency, the court will not divest the third party of title. Instead, under Article 47 paragraph (2), the third party is entitled to receive compensation from the bankrupt estate, and their claim is classified as an **unsecured creditor claim (*kreditor konkuren*)** in the bankruptcy distribution (Setyabudi et al., 2023). This statutory mechanism maintains an equitable balance between protecting general creditors and safeguarding bona fide commercial transferees.

Proposed Bifurcated Evidentiary Approach. To overcome the historical pattern of rejecting *actio pauliana* claims, this article proposes that Commercial Courts adopt a **bifurcated evidentiary approach**:

1. **Stage 1 (Documentary Verification of Ultra Vires Status):** The court first conducts an objective, documentary examination of the transaction against the company's registered articles of association and Law No. 40/2007. If the transaction was executed without required GMS approval (Article 102) or outside corporate purposes, the court establishes a firm legal finding that the act was **not legally obligatory**.
2. **Stage 2 (Evaluation of Financial Detriment and Bad Faith):** Having established the non-obligatory nature of the act, the court then evaluates financial audit evidence to measure actual bankrupt estate depletion and applies the statutory presumptions under Article 42 UU KPKPU (if affiliated) to determine *scientia fraudis*.

By separating formal constitutional verification from subjective bad faith analysis, commercial court judges can adjudicate *actio pauliana* claims with significantly greater precision, consistency, and speed.

Conclusion

The statutory basis of directors' personal liability for ultra vires acts under Law No. 40 of 2007 is anchored in Article 97 paragraph (3), which mandates that directors who are at fault or negligent in executing management duties beyond statutory or constitutional authority are fully personally liable (tanggung jawab pribadi) for resulting corporate losses. Ultra vires acts inherently breach fiduciary duties of due care and good faith, disqualifying directors from exculpation under the Business Judgment Rule (Article 97 paragraph 5). Where ultra vires transactions involve intentional asset siphoning, civil personal liability may escalate into criminal prosecution for corporate embezzlement or fraud. A director's ultra vires act provides a powerful legal basis and objective evidentiary foundation for filing actio pauliana under Articles 41-47 of Law No. 37 of 2004. Because an ultra vires transaction exceeds constitutional authority, it is legally voidable/void and inherently satisfies the actio pauliana element of a "non-obligatory legal act" (tidak wajib dilakukan). In transactions involving affiliated parties, Article 42 of Law No. 37/2004 applies a statutory presumption of knowledge, shifting the burden of proof onto the defendant to prove good faith. While ultra vires status objectively proves the non-obligatory nature of an act, it does not automatically establish financial detriment, requiring Commercial Courts to adopt a bifurcated evidentiary approach (pembuktian berjenjang) that separates formal documentary verification of ultra vires from the substantive evaluation of creditor loss.

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