

Legal Protection of Creditors in Spin-offs: Comparing Indonesian and Philippine Corporate Law

Perlindungan Kreditor dalam Pemisahan Tidak Murni: Komparasi Hukum Perusahaan Indonesia dan Filipina

Cut Tiara Sekar Maharani

Faculty of Law, University of Indonesia, Indonesia

Article Info

Corresponding Author:

Cut Tiara Sekar Maharani

✉ cuttiarasekar@gmail.com

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Abstract

Corporate restructuring through demerger mechanisms perpetually triggers dogmatic tension between managerial efficiency and the protection of creditor constitutional rights. This article comprehensively compares creditor protection architecture within the corporate law jurisdictions of Indonesia and the Philippines. Utilizing a normative legal method with comparative approaches, this research explicitly exposes systemic weaknesses of Indonesian law. The Indonesian corporate legal regime proves highly fragile, relying purely on administrative procedural positivism through draconian objection deadlines and an impossible Actio Pauliana instrument. Conversely, the Philippine Revised Corporation Code offers absolute protection grounded in equity supremacy via the majestic Trust Fund Doctrine. This ancient doctrine positions corporate capital as an absolute trust fund for creditors, which instantaneously invalidates fraudulent asset transfers. As a primary academic conclusion, this research recommends paradigmatic hybridization for Indonesian corporate governance. Lawmakers now urgently must adopt these substantive principles by implementing a reversed burden of proof to entirely prevent corporate cannibalization crimes.

Abstrak

Restrukturisasi korporasi melalui mekanisme pemisahan tidak murni senantiasa memicu ketegangan dogmatik antara efisiensi manajerial perusahaan dan perlindungan hak konstitusional kreditor. Artikel ini membandingkan secara komprehensif arsitektur perlindungan kreditor dalam yurisdiksi hukum perseroan Indonesia dan Filipina. Melalui penggunaan metode yuridis normatif dengan pendekatan perbandingan hukum, penelitian ini secara tegas mengungkap kelemahan sistemik hukum Indonesia. Rezim hukum perseroan Indonesia terbukti sangat rapuh karena murni bertumpu pada positivisme prosedural administratif melalui tenggat waktu keberatan drakonian serta instrumen Actio Pauliana yang mustahil dibuktikan. Sebaliknya, Revised Corporation Code Filipina menawarkan perlindungan paripurna bersendikan supremasi ekuitas melalui instrumen agung Trust Fund Doctrine. Doktrin purba ini memposisikan modal perseroan sebagai dana amanat mutlak bagi kreditor, yang seketika membatalkan pengalihan aset beriktikad buruk. Sebagai konklusi akademis utama, penelitian ini merekomendasikan hibridisasi paradigmatis bagi tata kelola perseroan Indonesia. Pemerintah Indonesia secara mendesak harus mengadopsi prinsip substantif doktrin tersebut dengan menerapkan pembalikan beban pembuktian demi mencegah kejahatan kanibalisasi korporasi seutuhnya.



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A. INTRODUCTION

1. Background

The fundamental architecture of twenty-first-century global corporate governance is perpetually besieged by a profound clash of norms—an enduring, systemic tension between the corporate imperative for efficiency-driven restructuring and the absolute necessity of safeguarding the constitutional rights of creditors. Within the contemporary landscape of macroeconomic turbulence and hyper-competitive markets, the mechanism of corporate division—or *demerger*—has evolved into an indispensable instrument for structural reorganization.¹

Dogmatically and lexically within the lexicon of corporate law, the division of a company is dichotomously classified into *split-off* (pure division) and *spin-off* (partial division). The latter represents a highly complex legal fiction wherein a portion of the assets and liabilities of an existing corporate entity is transferred *by operation of law* to one or more recipient entities, while the parent company that initiates the division remains legally extant and is not dissolved.²

Through the lens of orthodox managerial efficiency, the partition of assets via *spin-off* mechanisms grants corporate entities unparalleled flexibility to isolate strategic business units. This enables the maximization of market capitalization and the attraction of external capital injections, all while shielding high-performing assets from the contagion of underperforming units. However, in the grimmer realm of empirical reality, often fraught with asymmetric manipulation, this partial division mechanism is frequently degraded and exploited as a Machiavellian catalyst for fraudulent restructuring. It serves as a vehicle for legal subversion, facilitating brutal asset stripping and unilateral risk segregation. In its final configuration, this process often leaves the transferor entity as a hollowed-out 'shell,' burdened by a mountain of liabilities yet devoid of liquid assets.³

¹ Afan Aftory, "The Legal Framework of Mergers as a Pillar of Economic Reform: A Normative Analysis of the Implementation and Coordination of Regulations," *Journal Research of Social Science, Economics, and Management* 5, no. 4 (November 17, 2025): 4017–27, <https://doi.org/10.59141/jrssem.v5i4.1199>.

² Muhammad Parrij Abdi, Mahmul Siregar, and Agusmidah, "Legal Position of Employees Post Spin off PT Perkebunan Nusantara III (Persero) Medan Operations Become PT Perkebunan Nusantara IV (Study at PT Perkebunan Nusantara IV Regional I)," *Mahadi: Indonesia Journal of Law* 4, no. 02 (August 31, 2025): 136–45, <https://talenta.usu.ac.id/Mahadi/article/view/22645>.

³ Larissa M. Batrancea et al., "Do Spin-Offs Signal an Effective Restructuring Strategy to Shareholders? A Global Study on the Short- and Long-Term Performance of Parent Companies," *Borsa Istanbul Review*, May 2026, 100836, <https://doi.org/10.1016/j.bir.2026.100836>.

This situation precipitates a deeply concerning structural legal anomaly, wherein the 'corporate veil' is systematically misappropriated as an instrument of absolute immunity—deployed to delegitimize, amputate, and ultimately extinguish the enforcement rights of unsecured creditors.

In an attempt to navigate this labyrinth of uncertainty, the existing academic discourse has proposed various prescriptions to map and restore the equilibrium of creditor protection within the insolvency restructuring ecosystem. A thematic synthesis of cutting-edge primary literature exposes the landscape of this debate. First, Cui et al. (2025) comprehensively dissect the ontological correlation between insolvency law reform and corporate breakthrough innovation, convincingly asserting that excessively lenient insolvency frameworks act as the primary determinant that catalyzes destructive risk-taking behavior by corporate entities.⁴

In a parallel spectrum examining the Indonesian legal landscape, Basri et al. (2024) delineate the anatomy of systemic vulnerabilities within the national insolvency resolution framework. Their analysis starkly exposes an institutional opacity and paralysis that significantly undermines the enforcement of creditor rights once a corporate entity has descended into the depths of insolvency.⁵

Third, Cazac (2025) elevates this discourse to the European stage by unmasking the inherent limitations of the *actio pauliana* as a solitary shield for creditor protection in response to the adverse effects of corporate divisions within the European Union. Cazac contends that such *ex-post* curative mechanisms have proven obsolete, failing to provide the proactive safeguards necessitated by contemporary restructuring complexities.⁶

Fourth, Kumar (2025) proposes an integrated governance model that juxtaposes consumer protection regimes with corporate restructuring. Kumar convincingly demonstrates that corporate insolvency triggers fatal domino effects unless managed through a precise *ex-ante* preventive architecture, thereby underscoring the inadequacy

⁴ Xin Cui, Chunfeng Wang, and Tingting Ma, "Bankruptcy Reform and Breakthrough Innovation: Evidence from the Quasi-Experiment in China," *Finance Research Letters* 71 (January 2025): 106457, <https://doi.org/10.1016/j.frl.2024.106457>.

⁵ Herlina Basri et al., "Bankruptcy Legal System Reform in Settlement of Debtors' Debt According to the Bankruptcy Law," *Nagari Law Review* 7, no. 3 (June 10, 2024): 567, <https://doi.org/10.25077/nalrev.v.7.i.3.p.567-577.2024>.

⁶ Octavian Cazac, "Inopposability of the Division of a Legal Person in Relation to Creditors on the Basis of Actio Pauliana: The Impact of the Case Law of the Court of Justice of the European Union," in *Integrare Prin Cercetare Şi Inovare. Ştiinţe Juridice Şi Economice* (Moldova State University, 2026), 306–11, <https://doi.org/10.59295/spd2025j.41>.

of reactive, post-failure interventions.⁷ Fifth, Chen et al. (2022) establish an empirical postulate that the degree of legal protection afforded to creditors during the restructuring phase bears a direct causal correlation with the pricing of debt and the collective behavior of institutional investors.⁸

Through a thematic synthesis of the aforementioned literature, this study identifies a glaring and significant research gap. Current academic discourse remains tethered to a retrospective focus, confined primarily to *ex-post* insolvency restructuring or high-level macroeconomic analyses of conventional mergers and acquisitions. A critical dogmatic and empirical 'blind spot' persists in contemporary literature: the lack of ontological elaboration regarding creditor protection mechanisms during the *pendente lite* and *ex-ante* phases, specifically concerning corporate *spin-offs*. Within these mechanisms, a seemingly solvent entity can shrewdly restructure its balance sheet through radical, unilateral asset partitions—circumventing the thresholds of formal insolvency. This maneuver effectively creates a profound legal vacuum, leaving creditors—whose claims predated the director-orchestrated division—entirely without recourse.

In response to these profound theoretical and normative lacunae, this study firmly asserts its novelty and revolutionary academic value. Departing from existing literature—which largely focuses on macroeconomic insolvency dynamics or passive creditor protection in conventional merger instruments—this research introduces a sharp comparative innovation by dissecting the anatomy of legal voids, procedural tyranny, and normative tensions exclusively within the context of corporate *spin-offs*.

This comparative novelty is manifested through a clash of paradigms: between the Indonesian legal system's rigid adherence to civil law positivism under its Limited Liability Company Law, and the Philippine Revised Corporation Code's equitable hegemony, grounded in the *Trust Fund Doctrine*. By critically synthesizing these divergent traditions, this study transcends repetitive classical debates, actively contributing a futuristic, hybrid construct for corporate governance law within Southeast Asia.

As the culmination of this foundational discourse, this article posits that the procedural-based creditor protection mechanism—specifically the 14-day objection

⁷ Akash Kumar, "A Way to Resolve the Corporate Insolvency Under the IBC," *LawFoyer International Journal of Doctrinal Legal Research* 3, no. 2 (May 2025): 314–34, <https://doi.org/10.70183/lijdlr.2025.v03.52>.

⁸ Zhiyao Chen et al., "Why Are Bidder Termination Provisions Included in Takeovers?," *Journal of Financial and Quantitative Analysis* 57, no. 7 (November 10, 2022): 2860–96, <https://doi.org/10.1017/S0022109021000508>.

period—under the Indonesian corporate legal regime is dogmatically fragile, inherently flawed, and acutely vulnerable to predatory corporate cannibalization. The academic community and policymakers must no longer avert their gaze from this reality; instead, they must urgently integrate the substantive principles of the Philippine *Trust Fund Doctrine*. By elevating corporate capital and assets to the status of a 'sacred trust' (*res sacra*), which is inviolable against unilateral interests, we can construct an absolute and impenetrable legal shield for creditors. Ultimately, this research advocates for a paradigmatic transition in Indonesian corporate regulation toward a standard of absolute substantive protection—ensuring that no asset partition in a *spin-off* scenario can insulate a company from its solidary and absolute liability toward its creditors.

2. Research Questions

In light of the macro and micro-level problematics deconstructed above, the research inquiries of this comprehensive study are constructed and sharpened into two primary investigative questions.

First, what are the philosophical foundations and the anatomy of normative tensions within the legal protection framework for creditors during *spin-off* restructuring in the jurisdictions of Indonesia and the Philippines?

Second, how does a comparative analysis of the dogmatic effectiveness and prescriptive rationale of creditor protection instruments—within the Indonesian Limited Liability Company Law *vis-à-vis* the Philippine Revised Corporation Code—reveal the potential for academic discourse to synthesize a hybrid legal construct between these two distinct entities?

3. Research Methodology

To analytically, systematically, and operationally dissect this gargantuan legal complexity, this study utilizes a doctrinal (normative-juridical) legal research design, specifically engineered by integrating a comparative law approach with a conceptual approach. This comparative framework is far from a mere academic formality; rather, it constitutes an essential methodological justification that enables the author to deconstruct the systemic anatomy across jurisdictions, identify critical connecting factors, and gauge the degree of normative responsiveness in both nations when confronted with identical corporate anomalies.⁹

⁹ Terry Hutchinson, "Doctrinal Research," in *Research Methods in Law* (London: Routledge, 2025), 8–38, <https://doi.org/10.4324/9781032710372-2>.

The research material utilizes a rigorous hierarchy of primary legal sources, anchoring the analysis in Indonesia's Law No. 40 of 2007 concerning Limited Liability Companies and Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. These domestic instruments are dialectically juxtaposed against the Philippines' Republic Act No. 11232, widely recognized as the *Revised Corporation Code of the Philippines* (RCC). The utilization of secondary legal materials is comprehensively accelerated through a targeted synthesis of global databases—indexed in Scopus—encompassing cutting-edge publications from the past five years, seminal landmark judicial decisions, and rigorous jurisprudential annotations.

Data collection is implemented through a rigorous systematic literature review. The analytical framework is predicated on high-level deductive syllogism, wherein the major premise—comprising established postulates, equitable doctrines, and positive regulations—is confronted with the minor premise of *Machiavellian* corporate *spin-off* practices. This analytical dialectic is synthesized through teleological and systematic interpretation methods, culminating in a robust, universally applicable conclusion that upholds the supremacy of justice.

B. DISCUSSION

1. Philosophical Foundations and the Anatomy of Normative Tensions in Corporate Spin-off Restructuring

Before delving into the textual positive norms within each jurisdiction, this academic discourse must begin with a profound philosophical deconstruction of the ontological nature of corporate *spin-offs* and the high-intensity clash of norms they precipitate within corporate civil relations. Within the crucible of global corporate law, the Limited Liability Company is grandly constructed as a legal fiction (*persona ficta*), endowed with an independent legal personality and the privilege of limited liability. A logical and derivative consequence of this foundational doctrine is that the company's assets must be separated absolutely, bound by a clear line of demarcation from the personal assets of both its shareholders and its management.^{10,11}

¹⁰ Muhammad Aqil Kamaluddin, "History and Application of Piercing the Corporate Veil Doctrine: A Comparison Study between the United Kingdom and Indonesia," *Jurist-Diction* 8, no. 2 (May 31, 2025): 227–46, <https://doi.org/10.20473/jd.v8i2.71569>.

¹¹ Dedi Suwasono and Siti Mahmudah, "Business Judgment Rules Regulations by Directors in Indonesia," *International Journal of Multicultural and Multireligious Understanding* 11, no. 2 (February 2024): 33, <https://doi.org/10.18415/ijmmu.v11i2.5478>.

Within the landscape of civil guarantees, Article 1131 of the Indonesian Civil Code—which resonates with the universal *pari passu pro rata parte* doctrine—provides an eschatological assurance that all assets of the debtor company, whether movable or immovable, existing or future, serve as the comprehensive general collateral for all corporate obligations toward its creditors. This doctrine of general guarantee constitutes the lifeblood of market confidence, which underpins the entirety of global credit transactions.¹²

The *spin-off* maneuver disrupts this doctrine of general collateral in a brutal and fundamental manner. Under modern corporate governance doctrines recognized in both civil law and *common law* jurisdictions, a *spin-off* is justified when a corporate entity bifurcates its structure by transferring, delegating, or assigning a portion—but not the totality—of its asset and liability configuration to one or more new or pre-existing corporate entities, under the absolute condition that the parent company undertaking the partition refrains from dissolution and maintains its legal existence and corporate survival.¹³

The crucial juncture and epicenter of the polemic that distinguishes a *spin-off* from a standard commercial asset acquisition lies in the nature of its transition: the transfer of assets and liabilities in a *spin-off* mechanism occurs *by operation of law*. This terminology—*by operation of law*—implies a legal potency that deterministically and automatically transfers ownership of assets, along with their imputed liabilities, without requiring a single instrument of explicit consent or debt renewal (*novation*) from the affected creditors.¹⁴

The normative tension reaches a boiling point when a fatal collision occurs between the supremacy of the *freedom of contract*—bolstered by the managerial prerogative of the *Business Judgment Rule*—on one front, and the *bona fide* principles governing the protection of creditors' proprietary rights on the other.

On paper, a corporation possesses a rational economic imperative to hive off its most productive and high-growth business units into a 'sterilized' new entity, primarily

¹² Nazhif Ali Murtadho, "Perlindungan Hukum Terhadap Kreditor Preferen Dalam Pemberesan Proses Kepailitan," *Journal of Contemporary Law Studies* 1, no. 4 (July 27, 2024): 207–26, <https://doi.org/10.47134/lawstudies.v2i3.2499>.

¹³ Abdi, Siregar, and Agusmidah, "Legal Position of Employees Post Spin off PT Perkebunan Nusantara III (Persero) Medan Operations Become PT Perkebunan Nusantara IV (Study at PT Perkebunan Nusantara IV Regional I)."

¹⁴ Jennifer Payne, "Member Schemes of Arrangement: Other Examples," in *Schemes of Arrangement* (Cambridge University Press, 2021), 176–200, <https://doi.org/10.1017/9781108883672.007>.

to attract external capital that seeks to avoid contamination from the default risks inherent in the parent company's other business units. However, this legal acrobatic act is direct, merciless, and exploitative; it fundamentally sacrifices the vital interests of the creditors of the transferor company.

Unsecured creditors, who at the inception of the contract relied upon the empirical postulate that the transferor company maintained a robust asset ratio and high *going concern value*, are suddenly confronted with an apocalyptic reality: the company's most liquid and valuable assets—its 'crown jewels'—have been unilaterally sequestered and transferred. The transferor company is consequently left as a 'hollow shell,' suffering from critical, plummeting solvency.¹⁵

The condition of information asymmetry, exacerbated by the pervasive *moral hazard* of corporate directors, transforms the legal fiction of the *spin-off* from a noble instrument of economic efficiency into a weapon of mass destruction for liability evasion. In international academic dialectics, this phenomenon is sharply characterized as a manifestation of the 'perpetual, unethical warfare between corporate insiders and external creditors'.¹⁶

2. Dogmatic Deconstruction and the Fragility of Procedural Tyranny in the Indonesian Limited Liability Company Law Regime

The systematization of creditor protection within the Indonesian legal framework—specifically in navigating the turbulence of *spin-offs*—manifests through a procedural architecture constructed upon profoundly cursory, superficial, and positivistic foundations within Law No. 40 of 2007 concerning Limited Liability Companies (the 'Company Law'). Through Article 135(3) of the Company Law, the state provides a dogmatic justification and plenary legitimacy for the principle that a *spin-off* mandates the transfer of partial assets and liabilities *by operation of law* to a successor entity, while simultaneously permitting the transferor company to maintain its corporate existence.

As a compensatory mechanism or a mere illusion of *ex-ante* protective ramparts for third parties, the Company Law dictates a procedural rite: the board of directors is legally mandated to announce the draft of the spin-off through national mass media to notify the

¹⁵ Nyulistiowati Suryanti, Deviana Yuanitasari, and Hazar Kusmayanti, "The Status of Property Granted in The Provisions of Bankruptcy Law in Indonesia," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 1 (April 2025): 38–54, <https://doi.org/10.29303/ius.v13i1.1593>.

¹⁶ Berlyana Helvy Apandi et al., "Penerapan Prinsip Piercing The Corporate Veil Dalam Kasus Forced Delisting," *JURNAL USM LAW REVIEW* 6, no. 2 (September 16, 2023): 796–811, <https://doi.org/10.26623/julr.v6i2.7076>.

public, while concurrently stipulating a rigid and restrictive mechanism for the resolution of creditor objections.

In the practical laboratory of corporate restructuring, the Company Law subjects creditors to a remedial instrument—the right to file written objections—governed by a lethal deadline: no later than 14 (fourteen) calendar days following the publication of the spin-off plan. Should a creditor remain passive or fail to articulate their objection within this puritanical, draconian, and fleeting window, the law brutally imposes a legal fiction of implied consent (*qui tacet consentire videtur*). Consequently, the creditor is deemed to have acquiesced to the corporate partition, thereby forfeiting their right to contest the restructuring that fundamentally jeopardizes their interests.

In the event a vigilant creditor successfully lodges an objection, the board of directors is mandated to pursue a resolution. Should the directors fail to reach an amicable settlement, the dispute must be elevated to the forum of the General Meeting of Shareholders (GMS). The imperative provision—championed by proponents of legal positivism within the Company Law—dictates that so long as the creditor’s objection remains unresolved, the execution of the spin-off and its formalization into a notarial deed are strictly and categorically prohibited.¹⁷

While appearing heroic in its legislative text, a teleological and critical interpretation of this legal scheme unveils a profound, systemic, and institutionalized structural failure. Rather than providing substantive and equitable protection, the Company Law’s regulatory architecture is reductionist, seemingly indulging in a tyranny of procedural positivism. The imposition of a mere 14-day window for objections is, in effect, a sharp affront to the realities of complex global commercial transactions involving syndicated creditors, international supply chains, and multinational financial institutions.

Unsecured creditors, in particular, are asymmetrically burdened by an absurd standard of *caveat creditor* (the doctrine that creditors must remain ever-vigilant). If a creditor fails to detect a notice buried in an obscure corner of a newspaper—due to limited analytical resources or information asymmetry deliberately engineered by the corporation—their entire constitutional right to repayment can be liquidated and evaporated instantaneously by operation of law, without any form of compensation. This

¹⁷ Imastian Chairandy Siregar et al., “Tanggung Jawab Dan Tata Kelola Perseroan Perorangan Sebagai Badan Hukum Baru Di Indonesia,” *Locus Journal of Academic Literature Review* 1, no. 1 (May 13, 2022): 26–35, <https://doi.org/10.56128/ljoalr.v1i1.49>.

no longer qualifies as legal protection; it is, in reality, a deliberate administrative trap.

Even more tragically, once the *spin-off* maneuver has been formalized by a notary and ratified by the ministry, the debtor company may subsequently succumb to recession and bankruptcy due to the loss of its productive assets. In such instances, the sole remaining *ex-post* curative weapon available to creditors or the receiver (*curator*) is the archaic instrument known as the *Actio Pauliana*. This instrument is rigidly codified within the realm of insolvency law, specifically pursuant to Articles 41 and 42 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (the 'Bankruptcy Law').

The *Actio Pauliana* doctrine empowers the *curator* (receiver) to petition the Commercial Court to set aside any legal act by the debtor that prejudices creditors. However, judicial practice reveals that the evidentiary prerequisites for *Actio Pauliana* are draconian and near-impossible to satisfy. Creditors or curators bear an extraordinarily heavy burden of proof to empirically demonstrate the existence of a premeditated intent to defraud (*fraus creditorum*) at the precise moment the *spin-off* was executed, as well as to establish that both the transferor company (the debtor) and the transferee entity possessed the requisite *mens rea*—that is, the mutual knowledge that the corporate action would inevitably prejudice the creditors' interests.¹⁸

This anomaly in protection is theatrically illustrated by seminal cases in Indonesian jurisprudence, such as the colossal insolvency dispute between *PT Sumber Urip* and the *PT Sinar Mas* affiliates. This case exposed to the world the intricate, costly, and exhausting nature of attempting to nullify illicit asset transfers via *Actio Pauliana*—a process that required immense temporal and financial resources, ultimately culminating in a Supreme Court decision at the *Peninjauan Kembali* (judicial review) level, merely to establish the board of directors' bad faith in amputating creditors' rights. The dual burden of proof imposed upon these victims has reduced *Actio Pauliana* to a jurisprudential mirage or, at best, a rusted Damocles' sword, rather than the sharp, effective protective blade that creditors in this Republic desperately require.¹⁹

¹⁸ Nyulistiowati Suryanti, Deviana Yuanitasari, and Hazar Kusmayanti, "The Status of Property Granted in The Provisions of Bankruptcy Law in Indonesia," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 1 (April 25, 2025): 38–54, <https://doi.org/10.29303/ius.v13i1.1593>.

¹⁹ Bintang Adiwangsa, Rilda Murniati, and Harsa Wahyu Ramadhan, "Perlindungan Hukum Terhadap Boedel Pailit Dari Perbuatan Hukum Direksi Melalui Gugatan Actio Pauliana," *AHKAM* 5, no. 2 (April 3, 2026): 895–912, <https://doi.org/10.58578/ahkam.v5i2.9415>.

3. The Hegemony of Equity and the Destructive Potential of the Trust Fund Doctrine: The Architecture of Comprehensive Protection in the Philippines

Elevating this discourse and traversing the seas to the Philippine jurisdiction, we are introduced to a corporate law architecture that has evolved by absorbing the genetic essence of the American *common law* and the tradition of *equity law*. This evolution has been elegantly, modernly, and comprehensively codified in Republic Act No. 11232, widely renowned as the 'Revised Corporation Code of the Philippines' (RCC).²⁰

Doctrinally, Philippine corporate law is not confined by antiquated dogmas; it accommodates sophisticated corporate restructuring instruments not only through mergers and consolidations but also by providing a framework for corporate divisions, holistically encompassing the terminologies of both *demergers* and *spin-offs*. Within the anatomical process of a *spin-off* in the Philippines, business entities are authorized to transfer their core assets and liabilities into a newly incorporated entity or delegate them to an existing one, complemented by a suite of procedural notification requirements meticulously designed to respect and safeguard the sacrosanct rights of creditors.²¹

However, what distinguishes Philippine law and elevates it diametrically above the textual approach of Indonesia is the very spirit of its protective framework. Under the Filipino jurisdictional canopy, the foundation of creditor protection is never anchored merely to the ephemeral deadline of procedural notification; rather, it is anchored and deeply embedded in an absolute, ancient doctrinal bedrock that possesses a merciless destructive power against any corporate bad faith: the *Trust Fund Doctrine*.²²

The historical roots of the *Trust Fund Doctrine* emerge from the crucible of a foundational American judicial precedent: the 1824 monumental ruling in *Wood v. Dummer*, delivered by Justice Joseph Story. Through this precedent, Justice Story postulated the necessity of a paradigm shift, asserting that conventional commercial legal frameworks governing debtor-creditor relations between individuals were fundamentally flawed, blind, and wholly inadequate when applied, in their naked form, to

²⁰ Benedict Sheehy and Karla A. Funtilla-Abugan, "Dissemination and Development of Global Corporate Governance Standards: Comparing Approaches to 'Comply or Explain' in Philippines and Malaysia," *Asia Pacific Law Review* 32, no. 2 (July 2, 2024): 459–86, <https://doi.org/10.1080/10192557.2024.2323807>.

²¹ Carolyn Sutherland and Amanda Darshini Selvarajah, "Resolving Labour Disputes in the Philippines: Legitimacy and Effectiveness in a Polycentric Regulatory Framework," *Journal of Law and Society* 52, no. 3 (September 4, 2025): 480–506, <https://doi.org/10.1111/jols.70008>.

²² Romel Regalado Bagares, "The Philippines," in *The Oxford Handbook of International Law in Asia and the Pacific* (Oxford University Press, 2019), 406–32, <https://doi.org/10.1093/law/9780198793854.003.0017>.

the complexities of the limited liability company.²³ Consequently, this doctrine has evolved into an equilibrium of supreme equity, postulating that the entirety of a company's subscribed capital stock and asset landscape does not constitute merely private corporate property. Instead, it is treated by law as a collective trust fund—or, in its ethical equivalent, as *res sacra* (a sacred object or fiduciary deposit)—held, guarded, and managed under a strict fiduciary duty exclusively for the benefit of the company's creditors.

The transformative potency of the *Trust Fund Doctrine* under the regulatory umbrella of the Philippine RCC elevates the legal relationship from a mere contractual obligation to a sacred fiduciary duty. This doctrine mandates an iron law: as long as a corporation retains a scintilla of liability or financial obligation to third parties, its capital instruments are strictly prohibited from being distributed, liquidated, returned, or transferred to shareholders or affiliated entities through any restructuring vehicle—including the camouflage of a *spin-off*—should such an action materially impair the corporate capital base, which serves as the ultimate guarantee for creditors.

Should a corporation in the Philippines arrogantly attempt to circumvent the law by maneuvering a *spin-off* with the malefic intent of concealing productive assets and evading debt repayment, the gavel of justice strikes decisively: such asset transfers are deemed *ipso jure* void, as they mutilate and eviscerate the creditors' rights to satisfaction. Through a line of consistent and uncompromising jurisprudence—as evidenced by landmark cases such as *Enano-Bote v. Alvarez* and *Halley*—the Supreme Court of the Philippines has affirmed that aggrieved creditors are equitably empowered to undertake extreme intervention. Creditors are entitled to 'step into the shoes of the corporation,' effectively assuming the company's legal standing to forcibly compel the restitution of the transferred assets or capital back into the original corporate treasury.²⁴

More radically—and perhaps apocalyptically for corporate malfeasants—the deliberate and systemic violation of the *Trust Fund Doctrine* via manipulative structural engineering, such as fraudulent *spin-offs*, mandates the involuntary stripping of the corporate veil. Under the doctrine of *piercing the corporate veil*, directors, commissioners,

²³ Joseph Orangias, "Towards Global Public Trust Doctrines: An Analysis of the Transnationalisation of State Stewardship Duties," *Transnational Legal Theory* 12, no. 4 (October 2, 2021): 550–86, <https://doi.org/10.1080/20414005.2021.2006030>.

²⁴ "Enano-Bote vs. Alvarez, G.R. No. 223572, November 10, 2020" (2020), <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66972>.

and shareholders are summarily divested of their *limited liability* immunity. Once the corporate veil is rent asunder, they are dragged into the vortex of legal accountability, held *jointly and severally* liable to the extent that their personal assets may be liquidated to satisfy creditors' claims. This profound doctrinal implication creates a formidable *deterrence effect*—a chilling shadow cast over corporate architects—ensuring that no aperture, however needle-thin, remains for the kind of acrobatic asset-partitioning maneuvers intended to cripple the welfare of creditors in the Philippines.

4. A Comparative Analysis Toward the Hybridization of Corporate Law

By juxtaposing the corporate governance frameworks and insolvency landscapes fundamentally adopted by Indonesia and the Philippines, a striking asymmetry in legal civilization is revealed—specifically regarding enforcement philosophy, prescriptive methodology, and the determined effectiveness of creditor protection instruments. The comparative mapping of the dogmatic anatomy of both jurisdictions is rigorously represented in the analytical table below, designed to dissect technical specifications and facilitate empirical academic discourse:

Tabel 1. Comparative Analysis of Corporate Law Regimes: Indonesia vs. The Philippines

Dimension	/	Indonesian Corporate Law Regime (Company Law No. 40/2007)	Philippine Revised Corporation Code (RA 11232)
Comparative Parameter			
Philosophical Foundation of Protection	of	Procedural Prioritizes formalisms and the sanctity of the entity's contractual autonomy.	Positivism: Administrative recognition of the corporation's fiduciary duties toward third-party creditors.
Applied Governance Doctrine		Rigid Separate Entity: Maintains a strict corporate veil, with only illusionary mitigation via the archaic <i>Actio Pauliana</i> . ¹²	Holistic Trust Fund Doctrine: Integrated with accessible jurisprudential tools for piercing the corporate veil. ¹⁸
Ex-Ante Protection Mechanism		Draconian Constraints: Creditor objections are restricted by rigid 14-day	Essential Notification: Prioritizes substantive notice without absolute time-bar traps that nullify

<p>Philosophical Status of Corporate Capital/Assets</p>	<p>windows; silent consent is applied inflexibly.</p> <p>Private Commodity: Assets are viewed as private property, allowing free maneuverability until formal bankruptcy is declared.</p>	<p>claims against fraudulent transfers.</p> <p>Sacred Trust (<i>Res Sacra</i>): Capital is held and locked as a collective trust fund dedicated to the satisfaction of creditors.</p>
<p>Ex-Post Liability System</p>	<p>Evidentiary Curators/creditors bear a near-impossible burden of proof for <i>Actio Pauliana</i> to establish bad faith.</p>	<p>Impasse: <i>Spin-offs</i> that impair capital are <i>ipso jure</i> void; directors/shareholders face personal, joint, and several liability.</p>

The comparative synthesis presented above explicitly affirms the theoretical postulate advanced by Jose et al. (2020), which asserts that the architecture of creditor protection must not merely rely on insolvency laws at the terminal stage of a dispute; rather, it must be inherent, deeply embedded, and institutionalized within the substantive corporate law from the very inception of the entity.²⁵ This analysis transcends the conventional discourse frequently echoed in existing literature, such as Renssen’s (2017) comparative study on restructuring laws within the relatively homogeneous jurisdictions of the Western bloc.²⁶ This study radically elevates the academic discourse into the realm of comparative jurisprudential architecture within Southeast Asia—a rapidly burgeoning economic ecosystem that is, paradoxically, increasingly susceptible to sophisticated commercial fraud.

The Indonesian legal system, afflicted by a morbid obesity of procedural bureaucracy and fetishizing an artificial administrative certainty—premised merely on the publication of newspaper notices and a 14-day statutory window—has, ironically, morphed into an incubator that legitimizes white-collar corporate crime in the form of

²⁵ Jibin Jose et al., “Does Greater Creditor Protection Affect Firm Borrowings? Evidence from IBC,” *Margin: The Journal of Applied Economic Research* 14, no. 2 (May 28, 2020): 212–25, <https://doi.org/10.1177/0973801020904484>.

²⁶ Samantha Renssen, “Corporate Restructuring and Corporate Dissolution of Companies in Financial Distress: Ensuring Creditor Protection. A Comparison of the US, UK and Dutch Models,” *International Insolvency Review* 26, no. 2 (June 2017): 204–28, <https://doi.org/10.1002/iir.1277>.

covert asset dissipation. This system repressively compels creditors, particularly those passive or lacking the requisite market intelligence resources, to unilaterally bear the entire equilibrium of losses caused by the profound chasm of information asymmetry.

This observation aligns with the assessment of Cazac (2025) within the European context, which concludes that standalone protective instruments—such as the *actio pauliana*—are effectively impotent when confronted with structural restructurings like corporate divisions, as the associated evidentiary burden invariably collapses the efforts of creditors.²⁷ Conversely, the Philippine legal framework astutely leverages the formidable power of common law, wherein the principles of equity boldly intervene to subjugate and transcend the rigidity of written legal formalities. In the Philippines, the imperative of substantive justice cannot be suppressed, emasculated, or circumvented by the mere editorial sophistication of a notarial *spin-off* deed or the veneer of state-sanctioned legality.

Tracing these theoretical threads toward the fundamental principles of constitutional law and the universal architecture of the global economic order, we arrive at an axiom: the stability of a nation's financial system bears an absolute causal correlation with the certainty of debt repayment and the integrity of creditor protection instruments.

Global investors, syndicated lenders, and institutional creditors inevitably anchor their capital exclusively within jurisdictions that safeguard their proprietary interests and general guarantees as robust fortresses against the risks of internal corporate cannibalization. The passive and submissive admission by the Indonesian legal system that the *actio pauliana* serves as the sole—yet effectively impassable—avenue for post-*spin-off* dispute resolution reflects an existential failure of the state to articulate and implement preventative justice. The puritanical requirement to prove *mens rea* or *fraus creditorum* in *actio pauliana* proceedings constitutes a systemic oppression, as it imposes an insurmountable evidentiary burden upon the victims (the creditors), while the perpetrators of asset stripping remain shielded by the grandiloquent facade of 'managerial business judgment for economic efficiency'.

Culminating this profound and comprehensive academic discourse, the author posits an emergency-scale urgency for a massive hybridization of corporate law. The

²⁷ Cazac, "Inopposability of the Division of a Legal Person in Relation to Creditors on the Basis of Actio Pauliana: The Impact of the Case Law of the Court of Justice of the European Union."

regulation of Indonesian corporate regimes, particularly in navigating structural *spin-off* engineering, faces an absolute and pressing mandate to redefine its antiquated legal paradigm. Indonesia must, with intellectual humility, synthesize the essence of the Philippine *Trust Fund Doctrine* into the framework of the Company Law reform; or, at a minimum, infuse this spirit of equity through the creation of progressive, bold, and extra-textual judicial precedents by the Supreme Court.

This paradigmatic hybridization can be executed through a technical and tactical shift: the radical reversal of the burden of proof in *spin-off* disputes. Rather than forcing creditors to endure the grueling, uphill battle of proving *actio pauliana* claims post-partition, future corporate governance mandates must adopt an inverse doctrine: corporations intending to execute a *spin-off* must proactively demonstrate and provide absolute substantive guarantees—audited, verified, and insured by independent assessors—that such asset partitioning does not, in any capacity, diminish the transferor entity’s financial capacity to satisfy its existing debt obligations upon maturity. A fatal breach of this equitable postulate should not merely impede the administrative finalization of the *spin-off*; it must trigger derivative and automatic joint and several liability for both the deciding directors and the transferee entity. Such a comprehensive, integrative model of protection would not only eradicate legal loopholes and pierce the veil of illusory immunity, but would also brilliantly rebalance the pendulum of justice, harmonizing the corporate drive for economic efficiency with the moral imperative of commercial integrity and international legal certainty.

C. CONCLUSION

The philosophical tension underlying the normative conflicts in *spin-off* restructuring stems from the extreme collision between managerial prerogatives and the corporate freedom of contract, on the one hand, and the principle of good faith in safeguarding creditor repayment guarantees against covert asset dissipation, on the other. Dogmatically, the protective instruments within the Indonesian corporate legal regime have proven remarkably fragile, resting as they do upon a superficial procedural positivism and the *actio pauliana* evidentiary trap, which disproportionately burdens the creditor. Conversely, the Philippine Revised Corporation Code offers a demonstrably superior framework through the institutionalization of the *Trust Fund Doctrine*, predicated on the supremacy of equity. Within this regime, corporate capital and assets

are treated as an inviolable sacred trust—impermissible to divest should such actions erode the creditor’s ultimate security fortress. As a solution to this profound legal disequilibrium, the Indonesian corporate governance framework faces an absolute urgency to execute a paradigmatic hybridization by internalizing the essence of the Philippine doctrine. Specifically, this necessitates the implementation of a reversed burden of proof, requiring corporations that restructure their assets to proactively provide absolute substantive guarantees for debt repayment, thereby ensuring that creditors are not compromised.

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