

LEGAL IMPLICATIONS OF A GOOD FAITH LAND BUYER BASED ON A BINDING AGREEMENT FOR SALE AND PURCHASE IN FULL ENTERED INTO BANKRUPTCY BOEDEL

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ABSTRACT

The results of this study show that the regulations used as the basis for the bankruptcy boedel on land purchased based on evidence in the form of a Sale and Purchase Binding Agreement (PPJB) in full entered by the receivership into the bankruptcy boedel section are generally based on Articles 1131, 1132 of the Civil Code and Article 21 of the Bankruptcy Law and PKPU. When examining point b of the formulation of the civil chamber law number 7 SEMA Number 4 of 2016 that the purchase of land in good faith which is only proven by PPJB is paid off and the land is under its control, then the ownership of the land is legally valid. Therefore, in the determination of bankruptcy model the curator must heed the element of justice for land buyers in good faith. The legal implication of the act of the curator deliberately inserting the land that was sold and purchased based on PPJB Paid into the bankruptcy boedel is that it can be canceled. The cancellation can be done through a lawsuit filed by the buyer as stipulated in Article 3 paragraph (1) of the Bankruptcy Law and PKPU. This is because the purchase of land and/or buildings purchased by buyers who have good intentions and have been physically controlled is legally valid, therefore the act of the curator entering the buyer's land previously purchased from the seller based on PPJB Lunas is a wrong legal act because it has implications for harming buyers who have obtained the land by legal means.

Keywords: Boedel Bankruptcy; PPJB Paid Off; Curator

Introduction

One of the legal solutions that can be used as a solution by creditors and debtors to resolve debt problems is through the bankruptcy process and postponement of debt payment obligations (Anggriani 2021). The settlement is regulated in the provisions of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Obligations (called the Bankruptcy Law and PKPU). The Bankruptcy Law and PKPU have the purpose and purpose of providing legal protection for creditors whose receivables are not paid by the debtor by providing clear and definite settlement solutions (Widjaja 2021). The definition of bankruptcy itself when reviewed in Article 1 point 1 and Article

2 Paragraph (1) of the Bankruptcy Law and PKPU is a condition where the commercial court determines to debtors who have at least two creditors and no intention to pay either because there is no desire to pay or unable to pay, whose debts have entered the deadline and can be collected (Hartini, 2020). Since being declared bankrupt by a commercial court judge, the debtor no longer has the authority to manage, own, or control property, meaning that the debtor has legally lost the right to the property he owns (Asikin 2002).

Bankruptcy applications can not only be filed by creditors but debtors are also allowed to submit themselves for bankruptcy in the commercial court. Debtors who have been terminated bankrupt certainly have legal consequences as stipulated in Article 19 to Article 62 of the Bankruptcy Law and PKPU. Among the legal consequences arising from the termination of the bankrupt debtor is the confiscation and execution process of the debtor's bankruptcy debtor, this is regulated in Article 31 of the Bankruptcy Law and PKPU. (Widjaja 2021)

The debtor's assets are then managed and settled by the curator and supervised by a supervisory judge by Article 24 of the Bankruptcy Law and PKPU. The property managed by the receivership is then sold and the proceeds are intended for the repayment of the debtor's debt to its creditors fairly, proportionately and according to the position of the creditor (Titik Tejaningsih 2016:13). This is based on Article 1131 of the Civil Code (KUHPercivil) which explains that: "All assets of the debtor, both movable and fixed objects, both existing and new will exist in the future, become collateral for all debt engagements." (Subekti and Tjitrosudibio 1999)

Guided by Article 21 of the Bankruptcy Law and PKPU, it explains that bankruptcy includes all assets and assets of the debtor since the commercial court decision declaring the debtor bankrupt as well as assets and assets obtained by the debtor during the bankruptcy period. Furthermore, the curator acts as a custodian to find and collect the debtor's assets to settle the debtor's debt. Curators in collecting debtor assets are required to be careful and analyze which are still the debtor's property and which assets are no longer the debtor's property (Anggiat et al., 2023).

Some receivers who handle bankruptcy cases include land that has previously been purchased in full by the buyer based on a Notarial Deed of Sale and Purchase Binding Agreement (Anggriani 2021). The purchase of the land was made before the Seller was declared bankrupt by the Commercial Court. The legal basis for the Curator's consideration is that the process of buying and selling the land has not reached the stage

of making a Sale and Purchase Deed (AJB) before the PPAT, so the PPJB does not provide legal protection for buyers. So that land that is only based on PPJB Paid off can enter into bankruptcy boedel (Sitorus, 2022). This is certainly contrary to the provisions of point b number 7 of the legal formulation of the SEMA civil chamber No. 4 of 2016 that PPJB Lunas provides legal protection for the buyer as long as the purchase is based on good faith and the land is currently in the control of the buyer. This certainly has legal consequences that can harm the buyer of the land both materially and immaterially. Therefore, the author wants to analyze further about the act of the curator who put the land on the basis of PPJB Paid off into the bankrupt boedel can be legally justified or not.

Research Method

The method used to study this problem is normative jurisdiction. The approaches used are the legislative approach and the conceptual approach. This research uses primary data obtained through laws and regulations, especially the Bankruptcy Law PKPU and the Civil Code. In addition, it is also based on the doctrine and opinions of scholars. Secondary data was obtained from searching literature related to legal issues in this article. In addition, the data is analyzed qualitatively and then presented descriptively.

Result and Discussion

Civil Law in Indonesia contained in the Civil Code only regulates the level of creditor structure and the order of repayment of creditors' receivables. Legal arrangements that are still at this level are considered unable to provide fair legal certainty for creditors. So that law-level regulations are needed to regulate how to distribute the proceeds from the sale of debtors' assets and assets intended for repayment of creditors' receivables in order of priority. In addition, a person appointed by law is also needed as a person who has the right to settle and distribute the proceeds of the sale of the debtor's assets to each creditor (Sjahdeini 2018). This is the background of the issuance of the Bankruptcy Law and PKPU to solve the problem of debts through bankruptcy.

Bankruptcy is used as a solution to settle debts with the aim and purpose of preventing dishonest debtor actions and preventing mass execution actions carried out by debtors and creditors. This means that the existence of the Bankruptcy Law and PKPU is here to provide legal protection proportionally and fairly to all parties, both debtors and creditors from fraudulent actions or bad faith. (Belladina 2020)

The legal basis used as a guideline by the curator regarding the bankruptcy boedel of land with PPJB evidence purchased by the buyer before the seller is declared bankrupt is Article 1131, 1132 of the Civil Code and Article 21 of the Bankruptcy Law and PKPU.

Article 1131 of the Civil Code, reads: "All property of the debtor, both movable and immovable, both existing and new in the future, shall be borne for all personal

engagements".

Article 1132 of the Civil Code, reads: "The property shall be common security for all persons who owe it, the proceeds from the sale of the objects shall be divided according to the balance, that is, according to the size of each receivable, unless among the debtors there are valid reasons for precedence".

Article 21 of the Bankruptcy Law and PKPU, reads: "Bankruptcy includes all assets of the Debtor at the time the bankruptcy declaration decision is pronounced as well as everything obtained during bankruptcy."

If examined carefully, the above Articles can be understood that the bankruptcy boedel only includes the debtor's assets, both existing and new ones that will exist in the future, meaning that assets that have been sold to other parties before the bankruptcy decision are not included in the bankruptcy boedel that can be withdrawn by the receiver. This is because, land that has been sold and paid for in full before the bankruptcy decision is no longer the right of the debtor.

The Curator should review point b regarding the Legal Formulation of the Civil Chamber number 7 SEMA No. 4 of 2016, which explains that paid PPJB is considered legally valid as long as the buyer has good faith and the land is in his control. Based on the SEMA, it can be seen that the sale and purchase carried out by buyers in good faith when buying land from the seller before the bankruptcy verdict was recognized by law, even though it is only binding with PPJB, namely a preliminary agreement before reaching the AJB stage before the Land Deed Making Officer (PPAT). This is also in line with Article 36 paragraph (1) of the Bankruptcy Law and PKPU which explains that: "If at the time the bankruptcy declaration judgment is pronounced, there is a reciprocal agreement that has not been or has only been partially fulfilled, the party agreeing with the Debtor may request the Curator to provide certainty about the continuation of the implementation of the agreement within the period agreed by the Curator and that party." (Bakri 2018)

Based on the provisions above, the action of the curator who considers land that has been sold based on PPJB Lunas to be included in the bankruptcy boedel is the right rate. Curators who stick to the understanding of the land that has not been AJB-kan in the PPAT can be included in the bankruptcy boedel, but need to re-understand the provisions of Article 25, Article 26 paragraph (1), Article 36 paragraph (1), and Article 69 of the Bankruptcy Law and PKPU, which gives the receiver's access to perform actions on behalf of the bankrupt debtor to sign the AJB so that the land does not enter the list of bankrupt boedels and does not harm buyers in good faith. This is based on

buyers who have made obligations in the form of full payments to the seller, which in this case is the debtor has been carried out perfectly, as evidenced by PPJB Notarial as proof of a sale and purchase transaction as well as proof of payment receipts. Therefore, the Seller in this case the debtor has the obligation to make a land surrender both physically and juridically. Because the seller is already under custody, by the provisions of Article 24 paragraph (1) of the Bankruptcy Law and PKPU, he no longer has the right to carry out AJB or transfer his assets to other parties. This is also mentioned in Article 34 of the Bankruptcy Law and PKPU which explains that an agreement to transfer land rights cannot be carried out after a bankruptcy decision. It can be said that the land, which is only based on PPJB, has not been transferred juridically so the land in the certificate is still listed as belonging to the debtor by being linked to article 21 of the Bankruptcy Law and PKPU jo. Article 1131 of the Civil Code, so that the land is included in the bankruptcy boedel. (Supriyadi 2016)

This kind of thing finally raises problems related to the sense of justice, Curators generally know that the PPJB between buyers and sellers (bankrupt debtors) has not implemented the AJB because of other factors that result in the AJB being implemented. One of the reasons AJB has not been done is that the Certificate is still in the process of splitting. Therefore, following Article 36 paragraph (1) of the Bankruptcy Law and PKPU, the Buyer has the right to request certainty regarding the continuation of the implementation of the agreement contained in the PPJB, namely the signing of AJB to return the name of the certificate in the form of an AJB signature carried out by the Curator. As is known in Article 69 of the Bankruptcy Law and PKPU, the curator is tasked with managing and settling bankruptcy assets. Another obligation of the curator is also contained in Article 26 paragraph (1) of the Bankruptcy Law and PKPU which explains that (Yunanto 2016) "Claims regarding rights or obligations concerning bankruptcy assets must be filed by or against the Curator". Based on these provisions, the curator can legally act for and on behalf of the debtor in signing the AJB.

Reviewing Article 25 of the Bankruptcy Law and PKPU which explains that "Curators are prohibited from making payments sourced from the bankrupt boedel against the engagement after the bankruptcy judgment, except those that benefit the bankruptcy property". Based on the article, the signing of the AJB is not included in an act that can harm the bankrupt property, in fact, the seller (bankrupt debtor) has previously received repayment of land payments from the buyer, so the curator is making this a further consideration.

The purpose of the law is justice If analyzed based on the principle of justice if the curator deliberately rejects the signing of the AJB based on PPJB Paid off and still holds guidelines to be included in the bankruptcy boedel, then the curator concerned is

considered to have injured the sense of justice and only focuses on collecting bankruptcy assets as much as possible without regard to the property rights of others. The result of the receiver's decision if examined through Article 36 paragraph (3) of the Bankruptcy Law and PKPU is "if the Curator does not provide an answer or is not willing to continue the implementation of the agreement, the agreement ends and the party can claim compensation and will be treated as a concurrent creditor". (Lukman 2022)

As a legal result of land buyers becoming concurrent creditors, the payment or repayment of receivables is divided proportionally with other creditors, so that the nominal obtained is far from fair. This is because, the curator will divide the proceeds of the sale of assets or bankruptcy assets to preferred creditors first, namely creditors whose repayment of receivables takes precedence over other creditors.

The action of the curator who inserts land based on PPJB in full into the bankruptcy boedel can be canceled by fighting by filing a lawsuit as explained by Article 3 paragraph (1) of the Bankruptcy Law and PKPU that: "what is meant by other matters, is, among others, *action pauliana*, third party resistance to confiscation, or cases where the Debtor, Creditor, Curator, or manager is one of the parties to the related case with bankruptcy assets including a Curator's lawsuit against the Board of Directors which caused the company to be declared bankrupt due to its negligence or misconduct. The Procedural Law that applies in adjudicating cases that include other matters is the same as the Civil Procedure Law that applies to cases of bankruptcy declaration applications, including regarding the limitation of the period for resolution".

This resistance effort is a form of asking for legal protection and asking for justice for the actions of the curator who is considered wrong by putting land based on PPJB paid off into bankruptcy boedel. If reviewing the consideration of the Supreme Court judge in the case of PT Asmawai Agung Corporation Case with the plaintiff in a judicial review effort (Decision No. 33 PK. PDT. SUS-PAILIT/2021) that the sale and purchase transaction carried out by the buyer in good faith is legally valid and cancels the receiver's decision to include land based on PPJB in full into the bankruptcy boedel. The basis for consideration of the Supreme Court is because the buyer has carried out his obligations by making payments in full and controlling the land parcel in good faith and is evidenced by the signing of PPJB Lunas before the Notary before the debtor is sentenced to bankruptcy. The existence of this decision and the existence of SEMA No. 4 of 2016, can be an answer related to this problem, especially related to the validity of PPJB Lunas. Therefore, the curator is expected to be able to examine and consider all aspects, not only debtors or creditors but other parties who also have interests in bankruptcy assets by heeding the sense of justice, without harming any party. (Rashid 1987:24)(Retired 2017)

Conclusion

The legal basis generally used by curators in entering land on the basis of PPJB Lunas into bankruptcy doedel is Article 1131, Article 1132 of the Civil Code and Article 21 of the Bankruptcy Law and PKPU. However, the legal basis used by the curator is not appropriate because it is considered to have violated the principle of justice and does not consider point b number 7 of the SEMA Civil Chamber Law Formulation No. 4 of 2016 which explains that PPJB Paid off is legally recognized as long as the purchase is based on good faith and has been controlled by the object of its order.

The legal implications arising from the actions of the curator who put the land on the basis of PPJB in full into the boedel pailir, the buyer will be placed as a concurrent creditor whose repayment of receivables is divided proportionally with other creditors, so that the acquisition will be far from the expected nominal. The receiver's legal action can be canceled by filing a lawsuit as stipulated in Article 3 paragraph (1) of the Bankruptcy Law and PKPU

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