

**PROCEEDING OF INTERNATIONAL CONFERENCE ON
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Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

**The Position Of Land Ownership Certificates In Determining
Bankruptcy Budel In Bankruptcy Cases**

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Abstract. This research discusses the position of LAND OWNERSHIP CERTIFICATES IN DETERMINING BANKRUPTCY BUDEL IN BANKRUPTCY CASES. This research is legal research, using normative (juridical) legal research methods. This legal research uses a statutory approach and a comparative approach. This research was carried out using primary legal materials, namely in the form of statutory regulations and secondary legal materials in the form of law books and legal journals related to the problem under study. The results of this research indicate that the Certificate cannot be used as a benchmark in determining the bankruptcy decision by the curator for land that has been sold to a third party by the bankrupt debtor, the repayment of which was made before the bankruptcy decision was made but the title certificate has not yet been transferred, because in this case, the certificate cannot be used as a benchmark for land ownership and also by making a payment the rights to the land have been transferred and the position of the certificate is only as proof of ownership and not a suggestion of a transfer of rights. The action of a curator who includes land that has been sold to a third party by a bankrupt debtor, the payment of which was made before the bankruptcy decision was made but the title certificate has not yet been transferred, is an act against the law and is invalid.

Keywords: Bankruptcy; Certificate; Land.

1. Introduction

Land registration is requirements in efforts to organize and regulate the allocation, control, ownership and use of land, including to resolve various land problems. Land registration is intended to provide certainty of rights and legal protection for holders of land rights by proving

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land certificates, as an instrument for structuring land control and ownership and as an instrument for controlling the use and utilization of land.¹

The land registration process will result in obtaining a certificate on land rights. The purpose of land registration is according to Article 19 of the Basic Agrarian Law and reaffirmed in Government Regulation no. 24 of 1997 is to provide guarantees of legal certainty in the land sector. Legal certainty that can be guaranteed includes certainty regarding the location of the boundaries and area of the land, the status of the land and the person entitled to the land and the granting of a letter in the form of a certificate.² The certificate itself is proof of ownership of land rights.

The existence of a land title certificate as proof of ownership of land rights is often used as a reference for the determination of the bankruptcy budget in bankruptcy cases. Based on the provisions of Article 1 number 1 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, Bankruptcy is a general confiscation of all the assets of the Bankrupt Debtor whose management and/or settlement is carried out by the Curator under the supervision of the Supervisory Judge. Etymologically, Bankruptcy comes from the word bankrupt. The term bankruptcy comes from the word

Dutch is *failliet* which has a double meaning, namely as a noun and as an adjective. The term *failliet* itself comes from French, namely *faillite*, which means strike or payment jam,³ while the bankruptcy estate itself is the property of a debtor who has been declared bankrupt.

In carrying out the settlement and management of the bankruptcy budget, Curators often rely on land title certificates to determine whether a plot of land belongs to the bankrupt debtor or not. The curator will always be of the view that all plots of land which are united in the name of the bankrupt debtor can be categorized as bankruptcy estates, however, the determination of the bankruptcy estate by the curator which is based on the land title certificate often causes problems, especially regarding buying and selling between the bankruptcy debtor as seller and other parties. thirdly as a buyer whose repayment was made long before the bankrupt debtor was declared bankrupt by the court.

Based on the description above, a problem formulation can be drawn, namely

¹Adrian Sutedi, *Land Rights Certificate*, Sinar Gafika, Second Printing, Jakarta, 2012, p.59

²Adrian Sutedi, *Transfer of Land Rights and Their Registration*, Sinar Gafika, Jakarta, p.114

³Victor Situmorang & Soekarso, 1994, *Introduction to Bankruptcy Law in Indonesia*, Rineka Cipta, Jakarta, p. 18

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1. What is the position of a land title certificate in determining a bankruptcy case in a bankruptcy case regarding land that has been sold and by a bankrupt debtor for which repayment has been made before the bankruptcy decision but the name of the certificate has not yet been changed?
2. Is the action of a curator who includes land that has been sold by a bankrupt debtor to a third party for which settlement has been made before the bankruptcy decision but has not yet transferred the name of the certificate, declared valid according to law?

2. Research Methods

This research is legal research, using normative (juridical) legal research methods. This legal research uses a statutory approach and a comparative approach. This research was carried out using primary legal materials, namely in the form of statutory regulations and secondary legal materials in the form of law books and legal journals related to the problem under study. This research uses library and internet studies in collecting legal materials. The legal material analysis technique used is syllogism using deductive logic.

3. Results and Discussion

Based on the provisions of Article 1 point of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, the definition of bankruptcy is as follows, bankruptcy is a general confiscation of all the assets of the Bankrupt Debtor the management and/or settlement of which is carried out by the Curator under the supervision of the Supervising Judge.

From the date the decision to declare bankruptcy is pronounced, the Bankruptcy debtor loses his or her right to administer and manage the debtor's assets which are included in the bankruptcy budget. This matter must be handed over to the curator, the curator is the one who manages and settles the bankruptcy assets. Bankruptcy covers all of the Debtor's assets at the time the bankruptcy declaration is pronounced as well as everything obtained during the bankruptcy. The debtor by law loses his right to control and manage his assets which are included in the bankruptcy estate, from the date the decision to declare bankruptcy is pronounced.

With a bankruptcy decision, the bankruptcy debtor is declared incompetent but it is also legal to carry out legal actions related to his assets (bankruptcy law). The implementation of the

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settlement and management of the bankrupt debtor's assets (bankruptcy budel) is the responsibility of the curator appointed based on the decision to declare bankruptcy.

Implementation of the management and settlement of the bankruptcy debtor's assets (bankruptcy budel) by curatorship is carried out both for movable and immovable objects, specifically for immovable objects in this case land, curatorship in practice always refers to the certificate of title to the land in question, in other words the curator determines the bankruptcy estate, especially regarding land, the name stated on the certificate The right to the land in question is used to determine whether the land is included in the bankruptcy case or not.

According to Article 19 paragraph (2) letter c of the UUPA, it is stated that the end of land registration activities carried out by the government is the provision of a certificate of proof of title, which acts as a strong means of proof. In Article 13 paragraph (3) Government Regulation no. 10 of 1961 states that a certificate of registered land rights is called a certificate, namely a copy of the land book and measurement letter after being stitched together with a cover paper whose form is determined by the Minister of Agrarian Affairs. .

According to Article 1 number 20 of Government Regulation Number 24 of 1997 states that a Certificate is a letter of proof of rights as intended in Article 19 paragraph (2) letter c UUPA for land rights, management rights, waqf land, ownership rights to apartment units, and mortgage rights, each of which has been recorded in the relevant land book. From the explanation of the articles above, we can conclude that the position of the certificate, seen from the perspective of land registration, is proof of ownership of land rights.

In the process of buying and selling land that occurs in Indonesia, in its implementation it can be found that it is not uncommon for the process of changing the name of the land certificate which is the object of the sale and purchase to not be carried out, the parties in the sale and purchase only rely on the sale and purchase deed with the argument that by controlling the land and certificate, then the ownership of the land rights has been transferred and has also received legal certainty. If this is related to the process of determining the bankruptcy bill in a bankruptcy case, it will clearly cause conflict, especially regarding land sales and purchases between third parties and bankrupt debtors whose repayment has been made long before the bankruptcy decision, but the name change process for the certificate of title to the land in question has not yet been carried out.

Article 21 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations states that Bankruptcy includes all of the Debtor's assets at the time the decision to declare bankruptcy is pronounced as well as everything obtained during bankruptcy,

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as well as Article 24 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations which states "The debtor by law loses his right to control and manage his assets which are included in the bankruptcy estate, from the date the decision to declare bankruptcy is pronounced"

These two articles explain that because bankruptcy only covers the debtor's assets starting from the time the bankruptcy declaration decision was pronounced and also legal actions carried out by the debtor long before the bankruptcy decision were still declared valid and the object objects in the legal action cannot be used as bankruptcy documents, it will. However, it is not uncommon for land which is the object of sale and purchase between a third party and a bankrupt debtor, the repayment of which has been made long before the bankruptcy decision, but the process of changing the name of the certificate of title to the land in question has not yet been carried out by the curator and is made into a bankruptcy case.

According to the Bankruptcy Law and PKPU, the curator's task is to manage and/or settle bankruptcy assets. In order to carry out their duties, curators are given the authority to:

- a. There is no need to obtain approval from or provide prior notification to the debtor or one of the debtor's organs, even though in circumstances other than bankruptcy such approval or notification is required;
- b. Can take out loans from third parties, only in order to increase the value of the bankruptcy estate.

To determine whether land which is the object of sale and purchase between a third party and a bankrupt debtor whose repayment has been made long before the bankruptcy decision but which has not yet carried out the process of changing the name of the certificate of title to the land in question can be said to be a bankruptcy case or not, it must be studied first regarding The position of the certificate in the buying and selling process is whether the certificate is a condition for the transfer of rights in the land buying and selling process or not.

In the UUPA and in Government Regulation Number 24 of 1997 there is not a single article that regulates when the transfer of land rights occurs in the sale and purchase process, so if the special norm (lex specialist) does not regulate it then we will refer to the general norm (lex generalis) in this case the Civil Code, in article 1320 of the Civil Code explains the conditions for the validity of an agreement, namely:

- 1) There is a common word
- 2) The parties must be legally competent

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- 3) A certain thing
- 4) Halal reasons

These four things can be used as a benchmark for the validity of a sale and purchase. If these things have been fulfilled then the sale and purchase can be said to be valid, if we relate these things to the provisions of Article 1381 of the Civil Code regarding the annulment of an agreement, where payment is one of the means of annulling the agreement, So the payment made by a third party to the bankrupt debtor indicates that the sale and purchase agreement between them can be said to have been completed, therefore it can be concluded that the transfer of land rights in the sale and purchase from the seller to the buyer, as well as if it is linked to Article 1 number 20 of the Regulations Government Number 24 of 1997 states that a certificate is a proof of rights, from this article it can be concluded that the position of a certificate in the land buying and selling process is that it is only a proof of rights and not a means of transferring rights.

Supreme Court Jurisprudence Number 126.K/Sip/ 1976 dated April 4 1978 which decided that: "For a land sale and purchase to be valid, it is not absolutely necessary to have a deed made by and before the Land Deed Official, or the process of changing the name of the certificate, Official Deed and This certificate is only a piece of evidence." This jurisprudence also explains the position of land title certificates in the buying and selling process.

Thus, if it is related to Article 21 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations which states that Bankruptcy covers all of the Debtor's assets at the time the bankruptcy declaration decision is pronounced as well as everything obtained during the bankruptcy, it can be concluded that the land has been sold by the bankrupt debtor to a third party whose payment has been made in advance before the bankruptcy decision, but the reverse process for the land title certificate has not been carried out, cannot be used as a bankruptcy bond, because the bankruptcy bond only covers the assets belonging to the bankruptcy debtor at the time the bankruptcy declaration is made because the land on the object of sale and purchase has transferred ownership rights to the buyer and is no longer the property of the bankruptcy debtor.

4. Conclusion

- 1) The certificate cannot be used as a benchmark in determining the bankruptcy decision by the curator for land that has been sold to a third party by the bankrupt debtor, the repayment

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of which was made before the bankruptcy decision was made but the title certificate has not yet been transferred, because in that case, the certificate cannot be used as a the benchmark for land ownership and also by making a payment, the rights to the land have been transferred and the position of the certificate is only as proof of ownership and not a suggestion for a transfer of rights.

2) The action of a curator who includes land that has been sold to a third party by a bankrupt debtor, the repayment of which was made before the bankruptcy decision was issued but the name of the title certificate has not yet been transferred, is an act against the law and is invalid.

5. References

Books:

Adrian Sutedi, Land Rights Certificate, Sinar Gafika, Second Printing, Jakarta

Adrian Sutedi, Transfer of Land Rights and Registration, Sinar Gafika, Jakarta

Victor Situmorang & Soekarso, 1994, Introduction to Bankruptcy Law in Indonesia, Rineka Cipta, Jakarta

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