

Legal Protection for Land Buyers Who Have Not Registered the Transfer of Land Rights After the Seller is Declared Bankrupt by the Commercial Court at the District Court

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Abstract. *Developers who have been declared bankrupt can cause various legal consequences for the community, one of which is home buyers. Home buyers have made a Sale and Purchase Agreement with the developer. However, if the developer goes bankrupt, the house becomes bankrupt property as long as it is still recorded as a PPJB and the purchase has not been carried out by AJB before the PPAT. In this article, the author wants to examine the legal protection for home buyers if the developer is declared bankrupt. Purpose of this study is to analyze: 1) How is the Legal Force of the Deed of Sale and Purchase Agreement (PPJB) against the Deed of Sale and Purchase (AJB) that has not been made by a notary because the developer is bankrupt 2) How is the Legal Protection for Land Buyers Who Have Not Registered the Transfer of Land Rights After the Seller is Declared Bankrupt by the Commercial Court at the District Court? 3) What are the Settlement Steps that must be taken by the Curator to protect the interests of the Buyer? This type of research is normative legal research. The approach method in this study is a Qualitative approach. The types and sources of data in this study are primary and secondary data obtained through literature studies and documentation. The results of the study are that in filing Other Lawsuits starting from the Registration of Lawsuits that must be filed by an advocate, Lawsuits must be filed with the Chairman of the Commercial Court at the District Court, the trial process is held within a maximum period of 20 days from the date of registration.*

Keywords: Agreement; Bankruptcy; Law; Protection.

1. Introduction

A judicial body, judges have the most important role because judges are the ones who have the right to decide cases. Judges in carrying out their duties, especially

in deciding a case, must always adhere to the principles of an independent and impartial judiciary as regulated in Article 1 of Law Number 4 of 2009 concerning Judicial Power which reads "Judicial power is the power of an independent state to organize trials in order to uphold law and justice based on Pancasila, for the sake of the implementation of the Law of the Republic of Indonesia".¹ Putusan tidak cukup hanya dituangkan dalam bentuk tulisan, tetapi juga harus dinyatakan secara lisan dalam sidang terbuka untuk umum. Prinsip keterbukaan untuk umum bersifat imperatif. Persidangan dan putusan yang diucapkan dalam sidang terbuka untuk umum merupakan salah satu bagian yang tak terpisahkan dari asas fair trial.²

Pengadilan Niaga sebagai pengadilan khusus yang berada di bawah lingkungan peradilan umum secara tegas disebutkan pada penjelasan Pasal 8 ayat (1) Undang-Undang Nomor 49 Tahun 2009 tentang Perubahan Kedua Atas Undang-Undang Nomor 2 Tahun 1986 Tentang Peradilan.³

Developer atau yang biasa dikenal sebagai pengembang property sebagai suatu Perusahaan pengembang yang memiliki tujuan untuk mengembangkan suatu Kawasan pemukiman menjadi perumahan yang layak huni dan memiliki nilai yang ekonomis sehingga dapat dijual kepada Masyarakat.⁴ Pada dasarnya PPJB dengan objek hak atas tanah merupakan perjanjian yang dibuat antara pihak penjual dan pihak pembeli untuk melaksanakan hak-hak dan kewajiban-kewajiban tertentu dalam proses peralihan hak atas tanah sampai Akta Jual Beli (AJB) yang dibuat di hadapan Pejabat Pembuat Akta Tanah (PPAT). Dapat dikatakan PPJB merupakan perjanjian pendahuluan yang fungsinya untuk mempersiapkan perjanjian utama atau pokok yang nantinya akan dilakukan, dalam hal ini adalah AJB.⁵ Perjanjian Pengikatan Jual Beli (selanjutnya disebut dengan PPJB) dilakukan setelah memenuhi syarat kepastian atas status kepemilikan tanah, kepemilikan izin mendirikan bangunan (selanjutnya disebut IMB), ketersediaan prasarana, sarana dan utilitas umum, keterbangunan paling sedikit 20% (dua puluh persen) dan hal yang diperjanjikan.⁶ So many people assume or argue that in the process of transferring land rights it is considered complete (final) when an AJB has been made. In registering land rights at the Land Office in order to obtain and obtain stronger legal certainty and obtain legal certainty, the land registration can only

¹ See Article 1 of Law Number 4 of 2009 concerning Judicial Power.

² M.Yahya Harahap. (2005). *Hukum Acara Perdata*, Jakarta: Sinar Grafika. p. 803.

³ Herwastoeti & Nur Putri Hidayah. (2020). *Hukum Acara Peradilan Niaga: Mengupas Sengketa Kepailitan, PKPU dan Kekayaan Intelektual*, Malang: UMM Press. p. 10.

⁴ Dhaniswara K. Harjono. (2016). *Hukum Properti*, Jakarta: Pusat Pengembangan Hukum dan Bisnis Indonesia. p. 19.

⁵ Herlien Budiono. (2018). *Demikian Akta Ini: Tanya Jawab Mengenai Pembuatan Akta Notaris di Dalam Praktik*, Bandung: PT. Citra Aditya Bakti. p. 118

⁶ Urip santoso. (2017). *Hak atas tanah, Hak Pengelolaan, dan Hak atas tanah satuan rumah susun*, Kencana. P. 221.

be done with an AJB, not a PPJB. In the sale and purchase of land and buildings, it has been regulated in Government Regulation Number 24 of 1997 concerning Land Registration in Article 37 paragraph 1 which reads: "Transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, grants, income in the Company and other legal acts of transfer of rights, except for the transfer of rights through auction can only be registered if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations". In the Sale and Purchase Agreement (PPJB) as the basis for the preliminary agreement made by the real estate developer (property developer) with prospective buyers before the signing of the Sale and Purchase Deed (AJB). This means that PPJB is not regulated in the Civil Code (KUH Perdata), but is regulated in Article 42 paragraph 1 of Law Number 1 of 2011 concerning Housing and Residential Areas, which states that "Single houses, terraced houses, and/or flats that are still in the development process can be marketed through a preliminary sale and purchase agreement system in accordance with the provisions of laws and regulations."

Bankruptcy is a legal condition determined by the Commercial Court against a debtor who has at least two creditors and is unable (unwilling) to pay at least one debt that has matured and is collectible.⁷ Starting from the time the bankruptcy decision is pronounced, the bankrupt debtor legally loses his right to control and/or manage all his assets that are included in the qualifications as bankrupt assets.⁸ As a legal consequence of the bankruptcy declaration, all of the debtor's assets that existed at the time of bankruptcy and assets acquired during bankruptcy are seized. This is called a Public Attachment.⁹

One of the bankruptcy cases related to Real Estate Developer (Property Developer) is PT. Alam Galaxy¹⁰ which is now declared bankrupt, is engaged in real estate/housing development in the city of Surabaya. That in the case registered and recorded number 6/Pdt.Sus-Other Claims/2024/PN.Niaga.Sby Jo. number 54/Pdt.Sus-PKPU/2021/PN.Niaga.Sby dated February 5, 2024, in the case the Plaintiff filed a Other Claim in the ongoing bankruptcy process. That in the main points of the lawsuit, the Plaintiff alleges that he feels disadvantaged by the implementation of the execution auction of the Bankrupt estate carried out by the Curator of PT ALAM GALAXY (In Bankrupt) who auctioned off all assets in the form of land and buildings owned by PT ALAM GALAXY (In Bankrupt) and the Plaintiff in the arguments of his lawsuit demands that one of the objects auctioned must be

⁷See the provisions of Article 1 number 1 and Article 2 paragraph 1 of Law No. 37 of 2004 concerning K-PKPU.

⁸See the provisions of Article 24 paragraph 1 of Law No. 37 of 2004 concerning K-PKPU.

⁹HS. Sastrawidjaja. (2006). *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, Bandung: Alumni. p. 78-81.

¹⁰Lihat situs SIPP PN Surabaya <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaecf78dde46cefc8487313632383433.html>. accessed on Sunday, 04 May 2025

removed and crossed out from the Bankrupt estate because there has been a purchase and is stated in the Sale and Purchase Agreement that has been made between the Plaintiff (Buyer) with Defendant II and Defendant III (Seller). In this case, the Plaintiff filed a "Miscellaneous Lawsuit" against the Curator Team, the meaning of the definition of Miscellaneous Lawsuit is a lawsuit filed by a party, the same as the definition of a lawsuit in general, where if a party feels that his rights have been violated so that a loss occurs, then the party can file a lawsuit application against the party considered to have suffered a loss. Miscellaneous Lawsuits are regulated in Article 3 Paragraph (1) of the Bankruptcy and PKPU Law.¹¹which contains "The decision on the application for a declaration of bankruptcy and other matters related to and/or regulated in this Law, is decided by the Court whose jurisdiction includes the area where the debtor is legally domiciled", which is meant as other matters based on the explanation in Article 3 Paragraph (1) of the UUK and PKPU¹²This is if there is resistance from a third party to the position of the debt object, an Actio Pauliana lawsuit, resistance from a third party to confiscation, or a situation where the debtor, creditor, curator and administrator become one of the parties in a case related to bankrupt assets including a lawsuit by the curator against the board of directors which causes the company to be declared bankrupt due to its negligence or error, and the procedural law applicable to this situation is the same as the civil procedural law applicable to cases of petitions for declarations of bankruptcy including regarding the limitation of the time period for settlement of petitions for other lawsuits registered

2. Research methods

The type of research used in this journal/scientific work is normative legal research, using the method research used in writing, namely: Approach Method is useful for approaching the object of research or in collecting the necessary data. The approach method used in this study is the normative legal approach method. The legal approach (law is seen as a norm or *das sollen*), because it discusses the problems of this study using legal materials (both written and unwritten laws, and the data analysis method used is qualitative descriptive, namely the breakdown of data analysis that starts from information obtained from respondents to achieve clarity of the problems discussed. From this analysis, it can be seen the effectiveness of the legal system that is educational for the community in knowing the legal protection for land buyers who have not registered the transfer of land rights after the seller is declared bankrupt by the commercial court at the district court.

¹¹See Article 3 paragraph 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations

¹²See the explanation of Article 3 paragraph 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations

3. Results and Discussion

3.1. What is the Legal Force of a Deed of Sale and Purchase Agreement (PPJB) Against a Deed of Sale and Purchase (Ajb) That Has Not Been Drawn Up by a Notary Due to the Developer Going Bankrupt?

In a situation where the developer is declared bankrupt and the PPJB has not become an AJB, the PPJB made before a Notary has strong legal force as evidence of a sale and purchase agreement, but does not guarantee the transfer of official ownership rights. A valid AJB (Deed of Sale and Purchase), made by a PPAT, is the one that officially transfers ownership rights. If the developer goes bankrupt, assets including property that is the object of the PPJB will be included in the bankruptcy estate. Because the PPJB will be considered invalid or lose its legal force after the bankruptcy verdict is pronounced. Consumers / buyers can file a claim with the curator as a concurrent creditor to obtain compensation for the loss of the PPJB or the buyer can file a legal action to issue their rights.

Regarding the above, the author found jurisprudence which states the following:

- 1) Decision of the Supreme Court of the Republic of Indonesia Number 92 PK/Pdt.Sus-Pailit/2019 dated August 26, 2019 which reads as follows "That because there has been no transfer of rights to the object of the dispute, the object of the dispute is the bankrupt estate whose settlement process is handed over to the Plaintiff as curator for management and settlement";
 - 2) Supreme Court Decision of the Republic of Indonesia Number 482 K/Pdt.Sus-Pailit/2014 dated October 26, 2014 which reads "That in accordance with the provisions of Article 37 of Government Regulation Number 24 of 1997, the transfer of land rights is considered valid if the transfer is registered at the local land office (BPN), which was not proven in the a quo case so that the Plaintiff succeeded in proving the argument of his lawsuit, namely that the disputed lands are the Plaintiff's personal property and therefore must be removed from the list of bankrupt assets of PT. METRO BATAVIA (in Bankrupt);
 - 3) Decision of the Supreme Court of the Republic of Indonesia Number 350 K/Sip/1968 dated 03 May 1969 which reads as follows "That indeed buying and selling is obligatory in nature while ownership of the goods being bought and sold is only transferred when the goods have been legally handed over";
- a) Legal Protection for Land Buyers Who Have Not Registered the Transfer of Land Rights After the Seller is Declared Bankrupt by the Commercial Court at the District Court

Land buyers who have not registered the transfer of land rights after the seller is declared bankrupt by the Commercial Court still have legal protection. The buyer can file a claim as a concurrent creditor in the bankruptcy process, as regulated in

the KPKPU Law. If the buyer is proven to have paid the land in full, then he is entitled to the rights according to the sale and purchase agreement, including the rights to the land.

Land buyers who have not registered the transfer of land rights after the seller is declared bankrupt still have legal protection. The buyer can file a claim as a concurrent creditor and try to prove ownership rights based on the sale and purchase agreement. The court will play a role in overseeing the bankruptcy process and ensuring that the rights of all parties are protected, including buyers who act in good faith.

In this regard, the KPKPU Law can protect land buyers who have not registered their transfer as concurrent creditors by submitting or handing over their receivables to the curator as stipulated in Article 115 of the KPKPU Law.

b) Settlement Steps That Must Be Taken by the Curator to Protect the Buyer's Interests.

To protect the interests of buyers in the bankruptcy process, the curator needs to take several steps. First, the curator must secure and supervise the debtor's assets to prevent unauthorized use or sale. Second, the curator must ensure that the process of selling bankrupt assets is carried out transparently and fairly, including through public auction or private sales with the permission of the supervising judge. Third, the curator must prepare an accurate and regulatory distribution list, and make debt payments to creditors based on the list.

Steps that can be taken by the curator to protect buyers / creditors are:

- 1) Carrying out security and control over the assets belonging to the bankrupt debtor in their entirety which are part of the bankrupt estate as stipulated in Article 98 in conjunction with Article 99 in conjunction with Article 100 in conjunction with Article 108 of the KPKPU Law.
- 2) Conducting an Asset Assessment of the Bankrupt Debtor's Assets by using the services of experts or consultants such as tax consultant auditors, appraisal institutions or using the services of an Auction House in managing the pre-auction sale of bankrupt assets as stipulated in Article 186 of the KPKPU Law.
- 3) Conducting sales of assets belonging to bankrupt debtors through public auction or underhand, with permission from the supervising judge as stipulated in Article 185 of the KPKPU Law.
- 4) Conducting the Preparation of the Distribution List that must be carried out by the Curator. In this case, the Curator prepares a distribution list containing information about creditor debts, types and nature of receivables, and priority rights as stipulated in Article 189 of the KPKPU Law.

5) Conducting the Announcement of the Distribution List that must be carried out by the Curator. The Curator announces the distribution list to creditors for their information and verification as stipulated in Article 192 of the KPKPU Law.

6) Carrying out / Requesting the Approval of the Supervisory Judge which must be carried out by the Curator, as stipulated in Article 65 in conjunction with Article 66 in conjunction with Article 67 in conjunction with Article 106 of the KPKPU Law.

4. Conclusion

Based on the explanation above, several conclusions can be drawn, namely: In the decision process for case Number 6/Pdt.Sus-Other Claims/2024/PN Niaga Sby Jo. No. 54/Pdt.Sus-PKPU/2021/PN Niaga Sby dated June 12, 2024 which begins with the Registration of the Claim which must be filed by an advocate, the Claim must be filed with the Head of the Commercial Court at the District Court, the trial process is held within a maximum period of 20 days from the date of registration, the examination of other claims is examined simply in accordance with the K-PKPU Law, the Decision on Other Claims must be decided or pronounced no later than 60 days after the date the claim is registered; The transfer of rights to those still bound by the Sale and Purchase Agreement (PPJB) with a developer who has been declared bankrupt, namely the purchase made by the Buyer or consumer in the transfer process has met the principles of clear and cash. The clear principle is the act of transferring land rights carried out before a Notary or Land Deed Official (PPAT), while the cash principle is the existence of two legal acts carried out simultaneously, namely regarding the transfer of land rights and payment for the land (transaction). These legal acts refer to national land law regulations that have been regulated in the provisions of Law Number 5 of 1960 and Government Regulation Number 24 of 1997, which in essence regulate the transfer of land rights in sale and purchase transactions that adopt customary law and the function of land registration in sales and purchases based on the provisions of Law Number 5 of 1960 to strengthen and expand the proof that there has been a transfer of land rights. This legal act has the consequence that even though land registration has not been carried out, the sale and purchase is still valid as long as it meets the clear and cash principles;

5. References

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