

LEGAL PROTECTION FOR BUYERS FOR SELLING OF LAND RELATED TO BUDEL PAILIT OBJECT

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ABSTRACT

The research method used in this research is the normative juridical method, carried out as an effort to obtain the necessary data regarding the problem. The data used are secondary data consisting of primary, secondary and tertiary legal materials. The data was collected by means of library research by studying the literature related to the sale and purchase of land, contract law, laws and regulations regarding bankruptcy and legal protection for buyers.

From the results of the research, it can be concluded that the sale and purchase of land using PPJB has not transferred land rights because the transfer of land rights must be proven by a Sale and Purchase Deed made by the authorized Land Deed Maker (PPAT). Bankruptcy results in general confiscation of all of the seller's property (bankrupt debtor) including the object of sale and purchase. The sale and purchase of land becomes null and void by law and the legal position of the buyer is to become a concurrent creditor as stipulated in Article 36 Paragraph (3) of the Bankruptcy Law. Legal protection for buyers for buying and selling land related to the object of bankruptcy in the form of preventive legal protection includes pre-contractual legal counseling by a Notary and / or PPAT on the object of sale and purchase, checking evidence and information provided by the parties, physical examination and confirmation to BPN against the object of sale and purchase by a Notary and / or PPAT. Regressive legal protection includes mediation by a Notary and / or PPAT to the parties, testifying that the Deed made before a Notary and /

or PPAT has met the requirements and binds the object of sale and purchase so that the buyer can

INTRODUCTION

The sale and purchase agreement is a way to solve the complicated requirements that must be met by the parties before making a sale and purchase in accordance with the Prevailing Laws concerning land rights, where all of these requirements cannot be fulfilled forever. The Sale and Purchase Agreement may be accompanied by a Deed of Authorization to Sell, that is, when the sale and purchase is paid in full, it is a form of protection for buyers who have paid in full but have not been able to make a Sale and Purchase Deed because there are several conditions of sale and purchase that have not been met. Both are stated in the form of an authentic deed which is made before a Notary as the party authorized to make an authentic deed and has perfect evidentiary power. When all the requirements have been met, there is no need for the seller to be present because it is represented by a Selling Authority who has authorized the buyer to sign the Sale and Purchase Deed himself which is made as a seller and as a buyer directly. The growing phenomenon, the sale and purchase of land with the making of the Sale and Purchase Agreement (PPJB) first places the buyer in a weak legal position because the sale and purchase using the PPJB media has not yet realized the absolute levering (handover) of land. This is more pronounced when the seller then goes bankrupt.

Law Number 37 of 2004 concerning Bankruptcy and Postponement of Obligations of Debt Service (hereinafter referred to as the

Bankruptcy Law) regulates general confiscation of all assets of bankrupt debtors whose management and settlement is carried out by curators under the supervision of the Supervisory Judge. The Bankruptcy Law was established to protect the community, the good faith of the parties must obtain legal protection, especially legal protection for buyers in buying and selling land related to the object of bankruptcy.

According to Philipus M Hadjon, legal protection is protection of dignity and recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that can protect one thing from other things.

Efforts to protect the rights of buyers if bankruptcy arises against the seller in the Bankruptcy Law Article 37 paragraph (1) stipulates that if the agreement as referred to in Article 36 of the Bankruptcy Law has been agreed to deliver merchandise which is usually traded for a period of time and the party who must submit the object before the delivery is declared bankrupt, then the agreement is canceled by pronouncing the decision to declare bankruptcy, and in the event that the opposing party is harmed due to the write-off, then the person concerned can apply as a concurrent creditor to get compensation. When a seller's bankruptcy occurs, the buyer's legal position is only as a concurrent creditor of the bankrupt seller. The buyer does not receive legal protection for the PPJB even though the land purchase has been paid in full.

As the case of buying and selling land between Mrs. Liem Jauw Khim and Mrs. Emmawati who performed one year before Ny Liem Jauw Khim went bankrupt. Where Mrs. Liem Jaw Khim sold 3 (three) plots of land belonging to Mrs. Emmawati on September 30, 2015 and the payment has been paid by the buyer, the Sale and Purchase Deed has not been made because the certificate has not been processed and the tax on the land has not been paid by Mrs. by Notary and PPAT Dina Juniati, SH, dated 23 October 2015. After the certificate has been in roya, the seller has not provided any news

regarding tax payments. On the advice of a notary public because waiting for uncertainty about the seller who is not in good faith to pay the tax, Mrs. Emmawati as the buyer made tax payments which should have been the obligation of the seller.

Considering that the payment has been paid and the certificate has been processed, a Sale and Purchase Deed was drawn up on December 29, 2016 which was made based on the Sale and Purchase Agreement and the Power of Attorney to Sell Agreement. With the Sale and Purchase Agreement and the Power of Attorney to Sell Agreement, there is no need to sign the seller again. At the time of changing the name at the National Land Agency (BPN), he was blocked at the request of the curator from the bankrupt debtor who stated that Mrs. Liem Jauw Khim was declared bankrupt on November 26, 2016.

The bankruptcy of Mrs. Liem Jauw Khim resulted in the land being traded being the object of bankruptcy. This is of course very detrimental to Mrs. Emmawati as the buyer. This problem arises when the sale and purchase agreement has not been made before the PPAT. Mrs. Emmawati through her attorney sent a letter to the curatorial team from Mrs. Liem Jauw Khim to remove the object of sale and purchase from the bankruptcy budget. Because there was no response from the curatorial team, so Mrs. Emmawati as the buyer filed a lawsuit at the Semarang Commercial Court. The Semarang Commercial Court judge granted Mrs. Emmawati to remove the three lands from the bankruptcy budget and state that the sale and purchase of the land was legal and Mrs. Emmawati is a buyer in good faith and must be protected by law.

The case of buying and selling land between Mrs. Liem Jauw Khim with Mrs. Emmawati is interesting to be used as research. This research is intended to provide legal protection for buyers with good intentions in buying and selling land in the event of bankruptcy. The sale and purchase of land creates an obligation that must be carried out by the seller to hand over the object sold if the

payment has been paid off, so that since that time the legal relationship between the seller and the object of sale and purchase has ended and has ended. switching to the buyer, so that the legal consequence is that the object of sale and purchase must be removed from the bankruptcy budget.

FRAMEWORK

The agreement made by the parties, especially as stated in the Sale and Purchase Agreement and Authorization to Sell is expected to achieve its objectives. The expected goal is the good faith of the parties to implement the agreement. The purpose of making the agreement is to obtain legal protection. Legal protection for parties can be obtained if the terms of the validity of the agreement in Article 1320 of the Civil Code can be fulfilled, namely agreeing to bind themselves, the parties have the ability to make agreements, certain objects and lawful causes.

In this thesis research, the theory used is the theory of legal protection and the theory of buying and selling, namely that buyers who have good intentions must be protected by law. Legal protection theory is used to analyze legal protection for buyers who have good intentions in carrying out the sale and purchase.

Quoting Satjipto Raharjo's opinion in a book entitled "Application of Legal Theory in Thesis and Dissertation Research", legal protection is to provide protection for human rights (HAM) that harm others and that protection is given to the community so that they can enjoy all the rights given. by law (Salim HS and Erlies Septiana Nurbani, 2014) In this case, legal protection for buyers who have been harmed by the bankruptcy of the seller needs to be provided so that the buyer can enjoy the rights provided by law.

According to Philipus M Hadjon, legal protection is protection of dignity and recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that can protect one thing from other things.

Theoretically, the form of legal protection is divided into 2 (two) forms, namely:

1. Preventive protection;

Preventive legal protection is legal protection that is preventive in nature. Protection provides the opportunity for the people to object (inspraak) their opinion before a government decision takes a definitive form. Thus, this legal protection aims to prevent disputes and has a very large meaning for government action based on freedom of action. With the existence of preventive legal protection, encourages the government to be careful in making decisions related to the *ermessen* *freies* principle, and the people can raise objections or be asked for their opinions regarding the planned decision.

2. Refressive protection

Regressive legal protection functions to resolve a dispute.

Basically, the theory of legal protection is a theory related to providing services to the community. Roscou Pound argues that law is a tool of social engineering (law as tool of social engineering). Human interest is a demand that is protected and fulfilled by humans in the field of law.

Roscou Pound divides human interests protected by law into 3 (types), which include:

1. Public interest (public interest);
2. Social interest (community interest);
3. Private interest (individual interest).

Sudikno Mertokusumo stated not only about the objectives of law, but also about the function of law and legal protection. He argues that: "In its function as protection of human interests, law has a purpose. Law has goals to be achieved. The main purpose of law is to create an orderly social order, create order and balance. By achieving public order, it is hoped that human interests will be protected. In achieving this goal, the law has the duty to divide rights and obligations between individuals in society, share authority and regulate ways to solve legal problems and maintain legal certainty. (Wirjono Prodjodikoro, 1992). The sale and purchase implementation must be based on the

good faith of the parties. Good faith is one of the principles in contract law. An agreement must be carried out in good faith. Good faith is a must, as the background for someone to commit a legal act.

Good faith is divided into 2 (two) types, namely:

1. Good faith when a legal relationship begins. Good faith usually takes the form of a person's estimate or assumption that the conditions necessary for the initiation of a legal relationship have been met. In this context, the law provides protection to parties with good intentions, while those who do not have good intentions or bad intentions must be responsible and bear risks;
2. Good faith when exercising the rights and obligations contained in the legal relationship. The emphasis of good faith can lie in the actions to be taken by both parties, namely actions as the implementation of something.

The provisions regarding good faith are regulated in Article 1338 paragraph (3) of the Civil Code that the agreement must be carried out in good faith. Buyers in good faith must receive legal protection. The will of the parties embodied in the agreement is the basis for binding an agreement. The will can be expressed in various ways both verbally and in writing and binds the parties with all the legal consequences. In practice, based on the principle of good faith, the Judge uses the authority to interfere with the contents of the agreement, so that it appears that good faith is not only in the implementation of the agreement, but also at the time the agreement is made or signed.

According to Djaja S. Meliala, good faith has a very important role in civil law, both related to material rights as stipulated in Book II of the Civil Code and individual rights as regulated in Book III of the Civil Code. Good faith appears in the actions that will be taken by both parties, especially actions in implementing the agreement. In carrying out this action, good faith must run deep within one's heart in the form of always remembering that humans as part of society must stay away from traits that are detrimental to other parties. Both parties must always pay attention to good faith and must not use

the other's negligence to benefit themselves. In other words, in exercising rights and obligations in a legal relationship, good faith is required in the form of honesty at the time the legal relationship takes effect.

Legal protection is always related to the role and function of law as regulator and protector of the interests of society. It is hoped that legal protection can fulfill legal demands that stem from rights and obligations in the context of protecting the interests of various parties.

The Bankruptcy Law must provide more concrete guarantees in the implementation of legal protection so that no more parties are harmed because in good faith there is an obligation to apply in good faith.

Legal protection for buyers related to the object of bankruptcy is an effort to protect the rights of the buyer in the event of bankruptcy against the seller. Article 37 paragraph (1) of the Bankruptcy Law stipulates that if the agreement as referred to in Article 36 has been agreed to deliver merchandise which is usually traded for a period of time and the party that must surrender the said object before the delivery is declared bankrupt, the agreement shall be nullified by pronouncing a statement decision. bankruptcy, and in the event that the opposing party is harmed due to the write-off, the concerned person can apply as a concurrent creditor to get compensation. (Djaja S. Meliala, 1987).

The relevance of this research is that the implementation of buying and selling must be based on good faith. The theory of legal protection is closely related in the context of providing legal protection to buyers who have good intentions of buying and selling land related to the object of bankruptcy as linked to the Bankruptcy Law. The Prevailing Laws are expected to provide legal protection for the parties, not only the bankrupt creditors and debtors but also the buyers.

RESEARCH METHODS

Based on the formulation of the problem and research objectives, the approach method used in this study is the normative juridical method, namely legal research that emphasizes secondary data, namely data obtained from library materials, by reviewing or analyzing secondary data in the form of primary legal materials, legal materials, secondary and tertiary legal materials by understanding law as a set of regulations or positive norms in the Prevailing Law System.

The statutory approach in this research is carried out by examining regulations related to bankruptcy law, especially legal protection for land buyers in the event of bankruptcy of the seller associated with the object of sale and purchase becomes bankruptcy. The use of the Legislative Approach is a *conditio sine qua non* for normative legal research. By analyzing the Prevailing Laws, results will be obtained in the form of discoveries of legal principles and rules as well as the consistency and harmonization between the Prevailing Laws and regulations.

This method is related to the legal rules of land sale and purchase and the principles of bankruptcy law in Indonesia as well as the practice of its application in providing legal protection regulated in the Bankruptcy Law.

The specification used in this research is descriptive analytical research with the aim of collecting information in detail and actual, where what is discussed describes what actually happened, identifies a problem or checks a situation and current practices, makes a comparative observation. (R. Anton Suyatno, 2009)

Descriptive research is expected to describe systematically and thoroughly all matters related to the Bankruptcy Law in the form of legal protection for buyers who have good intentions for buying and selling land, both from case studies and literature studies.

Sources of data used in normative juridical research are literature as secondary data, including:

- a. Primary legal materials, namely materials whose contents are binding, consisting of:
 - 1) Civil Code;
 - 2) Civil Procedure Code;
 - 3) Law No. 5 of 1960 concerning Basic Agrarian Principles;
 - 4) Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations;
 - 5) Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position;
 - 6) Government Regulation No. 37/1998 concerning Regulations on the Position of Land Deed Making Officials;
 - 7) Government Regulation Number 24 of 1997 concerning Land Registration;
 - 8) Decision Number 04 / Pdt.SUS-Other Lawsuit / 2017 / PN Niaga Smg. JO Number 15 / PDT.Sus-Pailit / 2016 / PN Niaga Smg;
 - 9) Decision of the Supreme Court of the Republic of Indonesia Decision Number 1452 K / Pdt.Sus-Pailit / 2017;
 - 10) Jurisprudence Decision Number 018 PK / Pdt.Sus / 2007;
 - 11) Jurisprudence of the Decision of the Supreme Court of the Republic of Indonesia Number 72 K / Sip / 1973.
- b. Secondary legal materials are in the form of books and legal scientific writings related to research. The secondary legal material in question is books in the field of law whose contents discuss or explain primary materials such as scientific books on law, legal protection, law of sale and purchase in general, books discussing bankruptcy, legal opinions on legal protection theory, and books on contract law.
- c. Tertiary legal materials are materials that support or add to the clarity of primary and secondary materials such as the Big Indonesian Dictionary, Legal Dictionary, website, encyclopedia.

Data collection techniques are carried out starting from library research by studying and reading literature related to land buying and selling, contract law, legal protection, and laws and regulations regarding bankruptcy, especially regarding legal protection for buyers. Data collection in legal research includes the collection of legal materials consisting of primary legal materials, secondary legal materials and tertiary legal materials.

The data analysis method used is a qualitative normative method, namely data analysis is carried out by clearly describing the implementation of the sale and purchase of land related to the object of bankruptcy and legal protection for buyers related to the sale and purchase of land on the object of bankruptcy, so that a comprehensive picture of the problem is obtained. -the problem being researched.

The data obtained during the research are based on legal norms or rules, legal theory, legal definitions contained in a field of legal science and are systematically compiled which are then analyzed qualitatively with this analysis, conclusions are drawn to achieve a clear problem. will be discussed.

This research was conducted starting in November 2018 and the research location is the Regional Public Library (PERPUMDA) DKI Jakarta Jalan Rasuna Said Kav. C22 South Jakarta 7th Floor, National Library of the Republic of Indonesia Jalan Medan Merdeka Selatan Number 11, 21st Floor, Jayabaya University Library Jakarta, University of Indonesia Library, Depok.

RESULTS AND DISCUSSION

A. Implementation of Sale and Purchase of Land Related to the Object of Budel Bankruptcy

In the practice of buying and selling land, sometimes the legal act of buying and selling is not immediately made a Sale and Purchase Deed, but only limited to the Sale and Purchase Agreement and not forever in the legal action it

can run smoothly, sometimes things appear unexpected and usually arise at a later date.

In connection with the case, the making and signing of the Deed of Sale and Purchase of land rights has not been carried out before the Official for Making Land Deeds (PPAT) at the time of the bankruptcy statement because several conditions of sale and purchase have not been fulfilled so that PPJB and Deed of Authorization to Sell were made prior to the bankruptcy statement. PPJB is a form of seller agreement to sell to buyers and buyers to buy from sellers.

In the Sale and Purchase Agreement Deed, where there is a clause which states that the seller guarantees that the object of sale and purchase is not involved in a dispute, besides that the buyer has carried out and / or fulfilled his obligations as a buyer to the seller in good faith, namely making payments in full. Good faith is one of the legal instruments to limit freedom of contract and the binding force of the agreement. The provisions regarding good faith are regulated in Article 1338 paragraph (3) of the Civil Code that the agreement must be carried out in good faith. Good faith is a must, as the background for someone to commit a legal act. Good faith is divided into 2 (two) types, namely:

1. Good faith when a legal relationship begins. Good faith usually takes the form of a person's estimate or assumption that the conditions necessary for the initiation of a legal relationship have been met. In this context, the law provides protection to parties with good intentions, while those who do not have good intentions or bad intentions must be responsible and bear risks;
2. Good faith when exercising the rights and obligations contained in the legal relationship. The emphasis of good faith can lie in the actions to be taken by both parties, namely actions as the implementation of something.

PPJB becomes the binder for the parties not to deny what has been agreed on the promised object. With the PPJB made by the parties it will provide the power of proof if the parties deny what has been agreed upon. The PPJB will be followed by the signing of the Sale and Purchase Deed (AJB). It is this AJB that has just been transferred from the seller to the buyer. PPJB has not transferred land rights because the transfer of land rights must be proven by a sale and purchase deed made by the authorized Land Deed Authorization Officer (PPAT) and evidence of registration at the land office, as stated in Article 37 paragraph (1) Government Regulation Number 24 of 1997 concerning Land Registration, stipulates that for the transfer of land rights, the sale and purchase of land must be carried out by means of a deed drawn up by and in the presence of the Land Deed Making Official (PPAT). Declaration of bankruptcy against the seller, the PPJB becomes null and void as stipulated in Article 37 Paragraph (1) of the Bankruptcy Law, which stipulates that:

If in the agreement as referred to in Article 36 an agreement has been made to deliver the merchandise which is normally traded for a period of time and the party that must surrender the object before the delivery is declared bankrupt, the agreement shall be nullified.

Article 36 of the Bankruptcy Law stipulates that ongoing agreements, where there are one or more obligations that have not been carried out by the bankrupt debtor while the bankruptcy decision has been pronounced, then by law the agreement becomes void. Unless according to the curator's consideration, it can still be met from the bankruptcy estate.

The provisions of Article 49 of the Bankruptcy Law state that:

(1) Every person who has received an object which is part of the Debtor's assets which is covered by the canceled legal action, must return the said object to the Curator and report it to the Supervisory Judge.

(2) In the event that the person as referred to in paragraph (1) is unable to return the object that was received in its original state, he is obliged to pay compensation to the bankruptcy property.

It is proper for the buyer to get legal protection because the agreements that have been carried out in good faith between the buyer and the seller should be carried out in good faith, namely by fulfilling their achievements. In the case it can be seen that the seller does not have good faith, the seller inhibits the sale and purchase by delaying tax payments and finally the buyer is responsible for paying the tax, as a consequence of the delay is blocking constraints when changing the name because the seller is declared bankrupt which has an impact on the dispute on the object of sale and purchase, where the object of sale and purchase is included in the seller's assets.

Jurisprudence of the Supreme Court Number 018PK / Pdt.Sus / 2007 dated January 8, 2008 states that the sale and purchase that has been made before the Official for Making the Land Deed (PPAT) which begins with the PPJB and the Power of Selling is still valid even though the Sale and Purchase Deed was made after the bankruptcy decision was made due to preceded by a Sale and Purchase Agreement and a Power of Attorney to Sell, made 1 (one) year prior to the bankruptcy decision.

The rule of law of the jurisprudence of the Supreme Court is based on Article 41 of the Bankruptcy Law that buying and selling between a bankrupt debtor and a buyer cannot be canceled because it was carried out before the debtor went bankrupt. declared bankrupt. Because it does not prove that either the debtor is bankrupt or the party with whom the sale and purchase was carried out knows and should know that the sale and purchase will harm the creditor. Jurisprudence confirms that buying and selling between a bankrupt debtor and a buyer cannot be canceled because it was carried out before the bankrupt debtor was declared bankrupt.

Based on the case, the buyer's first legal remedy through his attorney was to send a letter to the curatorial team asking for an exception as bankruptcy budgets for the three land parcels that he had bought but there was no response and / or response from the curatorial team of Mrs. Liem Jauw Khim and based on information received that the three land parcels have been included in the debtor's bankruptcy budget, so the buyer makes another attempt, namely by filing a lawsuit through the Semarang Commercial Court.

According to the author, it is impossible for a law to regulate all legal actions that occur and will occur concretely in the life of a society that changes continuously. In certain matters, the law itself gives freedom to the judge to judge what he believes according to the law is appropriate and fair in regard to a concrete legal act. However, the freedom of judges should not be abused so that it is against the law which has the essence of justice and truth. The freedom of judges is to be accountable for their decisions juridically, morally, ethically and spiritually.

In order to be able to give decisions that truly reflect justice, Judges as state apparatus who carry out the Judiciary must really know the true seat of the case, as well as the legal regulations governing it that will be applied, both legal regulations written in the Prevailing Laws and laws unwritten, as mandated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which confirms that "judges and judges of the constitution are obliged to explore, follow and understand legal values and a sense of justice that lives in society".

In the case of case handling in court, the law is incomplete or unclear, there is a legal vacuum in a case that is submitted to the court, it is the judge's duty to explore and find the law. Laws of a general nature do not necessarily cover the events being faced by the Judge. Therefore, the Judge must try to find law and other sources of law to be able to help solve the incident brought by justice seekers. The court (in this case the judge as the case decision

maker) is in charge of assisting the seeker justice in any case, including in the absence of legal regulations to create a justice that is desired by the community.

A judge must always follow developments in society because of the duties he carries out in the judiciary in order to provide a sense of community justice. The judge must also make legal discoveries to be able to apply in concrete events that are presented to him. Thus Judges must have the ability and creativity to be able to decide cases by seeking and finding law in cases where there is no legal rule.

B. Legal Protection for Buyers for Sale and Purchase of Land Related to the Object of Bankruptcy of Budel

Legal protection is given to buyers based on good faith buying and selling. In making an agreement, it is undeniable that there is a gap of weakness which one day in the event of a dispute becomes a gap to be used as reasons and self-defense of the party who wants to cancel the agreement. The imposition of the Bankruptcy Decision is one way to force debtors to pay debts to their creditors, even though they are faced with the possibility of not fulfilling the buyer's rights in buying and selling. Declared bankrupt or not by the court, the seller must still fulfill its obligations to the buyer.

The theory of protection according to Philipus M Hadjon which states that legal protection is the protection of dignity and the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that can protect one thing from other things.

To obtain legal protection for the sale and purchase that is canceled, the author uses the recognition of the rights owned by the land buyer based on the legal provisions of the arbitrariness of using the applicable laws and regulations. Sales and purchases made before the seller is declared bankrupt and the payment for the land purchase

has been made in full can be upgraded to a Sale and Purchase Deed. And the making of the Sale and Purchase Deed from the seller has been represented by the buyer based on the Sale and Purchase Agreement and Authorization to Sell from the seller. The agreement was made based on the agreement of the parties and legal provisions, the parties did not get a pressure which resulted in defects for the realization of the will.

In the research case, the legal protection for the buyer included the Semarang Commercial Court Judge who granted the buyer's claim, stated that the plaintiff was a buyer who had good intentions and must be protected by law, declared the sale and purchase between the plaintiff and Defendant II (seller / bankrupt debtor) for the three land objects, stated that the three land objects were legally owned by the plaintiff (buyer) and not bankruptcy, punished Defendant I (curatorial team of bankrupt debtors) to remove / cross off the list of bankruptcy pail over the three lands.

The sale and purchase agreement aims to transfer property rights from the hands of the seller to the buyer. By fulfilling its main obligation, namely surrendering objects to the real power and ownership of the buyer, it becomes acceptable considering that the seller has received its rights in the form of an agreed price as stipulated by Article 1478 of the Civil Code. After receiving the right as the desired achievement, the seller is obliged to provide a reward achievement to the buyer, namely handing over his property which has agreed to be the object of the Sale and Purchase Agreement.

Article 1478 of the Civil Code makes the seller the priority in the acquisition of rights, then in return he is obliged to release his property (the object of sale and purchase) to the buyer considering that the buyer has already made a sacrifice by releasing an amount of his money according to the agreement. Sacrificing each other to give up property rights to objects that they own, has become a demand for propriety. The sacrificial seller gives up his property, while the newspaper buyer releases his money.

With regard to the sale and purchase carried out by the parties by using the Deed of the Sale and Purchase Agreement followed by the Deed of Authorization to Sell. One of the parties may not fulfill what is his obligation. Violating what has been agreed and stated in the Sale and Purchase Agreement Deed followed by the Power of Attorney to Sell is called default is something that should not be done.

Article 1480 of the Civil Code states that if it is caused by the seller's negligence so that the delivery cannot be made, the buyer can sue for one of the possibilities based on the provisions of Articles 1266 and 1267 of the Civil Code. Negligence is an act that is not accurate and contrary to the principle of decency in society, so it is a mistake. In the law that who is at fault, must bear the risk, the seller is negligent so that delivery as one of his main obligations cannot be fulfilled, then the risk that must be borne is facing the buyer's demands in accordance with what is regulated in Articles 1266 and 1267 of the Civil Code, which is one of the possibility: fulfillment, dissolution, pay compensation, fulfillment accompanied by compensation, or dissolution plus compensation. One of The five possibilities basically can be used by buyers who feel that their promises have been violated due to the seller's negligence.

Efforts to protect the law are carried out by referring to the Prevailing Laws, namely 1267 Civil Code, where according to Abdul Kadir Muhammad, a legal agreement is an agreement that meets the requirements stipulated by law, so that it is recognized by law. The terms for the validity of the agreement are regulated in Article 1320 of the Civil Code, namely:

1. Agree those who bind themselves.

An agreement is an agreement with the will of the parties regarding the main points of the agreement made. The subject of the agreement is the object of the agreement and the terms of the agreement. What one party wants is also what the other party wants. They want the same thing in reciprocity. If it is connected with the

making of an authentic deed, legally the parties who come to the Notary and PPAT as public officials and agree in an agreement, then the law of the agreement is valid and legally enforceable, besides that the agreement deed has perfect evidentiary power because it is authentic and made in writing with the agreement of the parties who signed the deed.

2. Competent to make an engagement.

Article 1330 of the Civil Code stipulates which people are deemed incompetent to act in making agreements, namely people who are minors, those who are under interdiction, women, in matters stipulated by law and in general all people to whom the law prohibits making certain agreements, namely those who when doing legal actions must be represented by their guardian, and for the wife there is the husband's permission. In terms of legal prowess, as a seller, Mrs. Liem has fulfilled the requirements, namely having received permission from her husband, then the agreement of the parties to carry out the agreement is a legal agreement according to law. So legally it has fulfilled subjective requirements.

3. A Certain Thing.

An agreement must be about a certain thing. A certain matter is the subject of an agreement that contains certain achievements or at least it can be determined.

4. A cause that is permitted

The contents of the agreement are not prohibited by law or are not contrary to decency and public order.

The first and second terms are subjective conditions, while the third and fourth conditions are objective conditions. All agreements that have fulfilled these conditions are recognized by law, but if they do not fulfill any of the conditions it causes defects in the agreement and the agreement becomes null and void, either in the form of cancellation (if it does not meet the subjective requirements), or null and void (if does not meet the objective requirements).

The authority granted by law to legal subjects is called "Rights", namely the power / authority to do something or demand something that is required by that right. Every legal relationship certainly creates rights and obligations, besides that each member of society certainly has a relationship of different and opposite or opposing interests, to reduce conflicts, laws that regulate and protect these interests are called law protection.

Preventive protection for the buyer of the sale and purchase of land related to the object of bankruptcy is a Notary and / or PPAT is obliged to provide legal counseling by pre-contractual to the object of the agreement, in the deed-making process has checked the evidence and examined the documentary evidence and information provided by the parties, physical examination and confirmation to the Land Agency Office of the object of the agreement by the Notary / PPAT and the parties with the aim of preventing disputes and preventing actions that harm other parties, so that what the parties do is in accordance with the prevailing laws and regulations.

Regressive legal protection aims to resolve disputes. Regressive legal protection for land buyers can be in the form of legal protection which includes mediation by a notary to the parties and the notary must testify that the agreement made before a notary has met the requirements and is binding on the object of sale and purchase. So that buyers who have good intentions when buying land in accordance with the procedures / Prevailing Laws and have previously carefully examined the material facts (physical data) and the validity of the transfer of rights (juridical data) to the land they purchased.

Based on the case investigated that the sale and purchase is canceled, the legal protection for the buyer is being able to claim compensation, as the Bankruptcy Law Article 36 Paragraph (3) states that if within the timeframe referred to in Paragraph (1) and Paragraph (2) the Curator if they do not provide an answer or are not willing to continue the implementation of the agreement, the

agreement ends and the party as referred to in paragraph (1) can demand compensation and will be treated as a concurrent creditor. And based on the provisions of Article 49 Paragraph (3) that the rights of third parties to objects as intended in paragraph (1) obtained in good faith and not for free, must be protected.

The concept of bankruptcy law places the buyer as a concurrent creditor, has the same position and is entitled to obtain the proceeds from the sale of the debtor's assets. The position as a concurrent creditor is a creditor who must share proportionally with other creditors (*pari passu*), that is, according to the ratio of the size of each claim, from the sale of the debtor's assets which is not encumbered with collateral rights. After previously deducting the obligation to pay receivables to creditors who hold security rights and creditors with special rights.

According to the author's analysis, the buyer has not fully obtained legal protection in implementing PPJB and the Power to Sell over the land in the event of bankruptcy because the PPJB and the Power to Sell have not fully guaranteed the object of the sale and purchase agreement on the land, because by using the PPJB media, there has not been an absolute levering (transfer) of land. In addition, the concept of bankruptcy law is not appropriate where the buyer becomes a concurrent creditor, because the legal relationship between Mrs. Emmawati and Mrs. Liem is not a debt relationship but a buying and selling relationship that creates the obligation to perform achievements.

Judges' decisions, which are commonly referred to as court decisions, are decisions that are desired by the parties in a case. Because with the Judge's Decision, the disputing parties expect legal protection in the cases they face.

According to the author, the legal protection for the buyer for the sale and purchase of land related to the object of bankruptcy is the seller whose authority has been transferred to the curator and is obliged to return the purchase price that has

been paid and all costs, losses and interest to the buyer based on Article 1508 of the Civil Code, which is resolved by deliberation. or through a Court Decision. Thus the protection of human rights possessed by legal subjects based on legal provisions can be protected.

The following are the opinions of the Notary and PPAT regarding legal protection for buyers related to the sale and purchase of land on the object of bankruptcy:

- a. In the opinion of the notary and PPAT Eviani Natalia, SH, that the legal rule against the buyer is not appropriate as a concurrent creditor, because there is no debt or credit relationship. The Supreme Court should reconsider because there is already a Sale and Purchase Agreement and a Proxy to Sell. The object of sale and purchase should already belong to the buyer, there is no reason that the object can be taken back. Buyers are only late in making a Sale and Purchase Deed. With the deed actually has legal force. Legal protection for buyers related to the Supreme Court decision is to return the payment money that has been paid by the buyer to the seller. He disagree with the decision of the Supreme Court, because the sale and purchase incident took place prior to the bankruptcy decision. The buyer can sue by filing a different lawsuit, namely in the form of a civil lawsuit.
- b. In the opinion of the Notary and PPAT Anne Meyanne Alwy, SH, according to her, the Supreme Court's decision canceling the Commercial Court Decision was wrong, did not fulfill the principles of justice, and the decision was not correct. Buyers are buyers in good faith. With this decision, the Notary deed and / or PPAT are deemed invalid. The Bankruptcy Law places the buyer's position as a concurrent creditor, because there is no debt or credit relationship, but it is a clear and cash sale and purchase relationship, the party is different, not the party as the creditor. If the buyer becomes a concurrent creditor, the buyer only gets a proportional share, so it is not appropriate to

become a concurrent creditor. The object of sale and purchase should have been released from the bankruptcy budget, in this case the buyer is the owner of the property which is actually not bankruptcy. If the buyer agrees to become a concurrent creditor, it means that the object of sale and purchase is included in the assets of the bankrupt debtor, in this case the buyer is disadvantaged. It is advisable for the buyer to file a civil review (PK) and claim that it is wrong to enter the object of sale and purchase into the bankruptcy budget, because a perfect transfer of rights has been made based on the Sale and Purchase Agreement and Authorization to Sell where there is proof of payment.

CONCLUSION

Based on the discussion that has been described, the authors can conclude:

1. The sale and purchase of land related to the object of bankruptcy is that the sale and purchase using PPJB has not transferred land rights because the transfer of land rights must be proven by a sale and purchase deed made by the authorized Land Deed Making Official (PPAT). The bankruptcy experienced by the seller results in general confiscation of all the seller's property (bankrupt debtor) including the object of sale and purchase. The sale and purchase of the land becomes null and void by law and legally, the buyer's legal position is to become a concurrent creditor.
2. Legal protection for the buyer for the sale and purchase of land related to the object of bankruptcy in the form of preventive protection includes pre-contractual legal counseling by a notary public and / or PPAT on the object of sale and purchase, checking the evidence and information provided by the parties, physical examination and confirmation. to BPN against the object of sale and purchase by a Notary and / or PPAT. Refressive legal protection includes mediation by a Notary and / or PPAT to the parties and testifying that the Deed made before

the Notary and / or PPAT has meet the conditions and bind the object of sale and purchase and the buyer can claim compensation by registering as a concurrent creditor.

Based on the conclusions that have been described, the authors would like to provide suggestions:

1. It is advisable for the implementation of the sale and purchase of land to be immediately made a Sale and Purchase Deed before the Official for Making Land Deeds (PPAT) to anticipate things that are not desirable in the future. We recommend that every Notary Public and / or PPAT has the character of caution and accuracy, double-checking the documents related to the making of deeds so as not to harm the parties in the future. A PPJB can also be upgraded to AJB as long as the transaction has been paid off so as to provide legal certainty and protection to parties, especially buyers.
2. A concrete policy from the Government is needed to add an Article to the Bankruptcy Law regarding legal protection for buyers who have good intentions in the event of bankruptcy because the sale and purchase of land using PPJB media has not legally levered (handover).

REFERENCES

- 1 A Oka Mahendra, Revealing Legal, Democracy and Land Problems, Pustaka Sinar Harapan, Jakarta, 1996.
- 2 Abdul Kadir Muhammad, Bond Law, PT Citra Aditya Bakti, Bandung, 1990.
- 3 Adrian Sutedi, Transfer of Land Rights and Registration, Cet. 1, Sinar Grafika, Jakarta, 2007.
- 4 Ali Achmad Chomzah, Agrarian Law: Role of Indonesia, Prestasi Pustaka, Jakarta, 2004.
- 5 A.P Parlindungan, Interest of Agrarian Law and Landreform, Mandar Maju, Bandung, 1989.
- 6 Arus Akbar Silondae and Wirawan B. Ilyas, Principles of Business Law, Salemba Empat, Jakarta, 2011.

- 7 Aulia Muthiah, Aspects of Commercial Law and Its Implementation in Indonesia, Pustaka Baru Press, Yogyakarta, 2016.
- 8 Bambang Waluyo, Legal Research in Practice, Sinar Grafika, Jakarta, 2002.
- 9 Boedi Harsono, Indonesian Agrarian Law The history of the formation of the Basic Agrarian Law, its Content and Implementation, Djambat, Jakarta, 2003.
- 10 C.S.T Kansil and Christine S.T. Kansil, Basic Knowledge of Indonesian Commercial Law, Second Edition, Sinar Grafika, Jakarta, 2013.
- 11 Djaja S. Meliala, Authorization According to the Civil Code, Tarsito, Bandung, 1982.
- 12 -----, Issue of Good Faith in the Civil Code, Bina Cipta, Bandung, 1987.
- 13 Effendi Warsin, The Practice of Buying and Selling Land, Ed. 1, Cet. 3, PT Raja Grafindo Persada, Jakarta, 1994.
- 14 -----, Agrarian Law in Indonesia, Rajawali, Jakarta, 1991.
- 15 Habib Adjie, Cancellation and Cancellation of Notary Deed, fourth printing, PT Refika Aditama, Bandung, 2017.
- 16 -----, Civil and Administrative Sanctions Against Notaries as Public Officials, PT Refika Aditama, Bandung, 2008.
- 17 Harun Al Rashid, Overview of the Sale and Purchase of Land (Following the Rules), Ghalia Indonesia, Jakarta, 1987
- 18 I Ketut Oka Setiawan, Engagement Law, Sinar Grafika, Jakarta, 2017.
- 19 Ismail Rumadan, The Meaning of Due Debt in Bankruptcy Disputes, Kumdil MA Press, Jakarta, 2013.
- 20 Jono, Bankruptcy Law, Sinar Grafika, Jakarta, 2008.
- 21 K. Wantjik Saleh, Your Rights to Land, Cet 4, Gahalia Indonesia, Jakarta, 1990.
- 22 Lilik Mulyadi, Bankruptcy and Postponement of Debt Payment Obligation (PKPU) Theory and Practice, PT Alumni, Bandung, 2010.
- 23 -----, Bankruptcy and Postponement of Debt Payment Obligations (PKPU) Theory and Practice, PT Alumni, Bandung, Cet 2, 2013.
- 24 Mariam Darus Badruzaman, et.al, Compilation of Engagement Law, PT Citra Aditya Bakti, Bandung, 2001.
- 25 M. Hadi Shubhan, Bankruptcy Law: Principles, Norms and Practices in the Judiciary, Prenada Media Group, Jakarta, 2009.
- 26 Mhd. Yamin Lubis, Land Registration Law, Ed. Revision, Cet. 2, Mandar Maju, Bandung, 2010.
- 27 Moch Isnaeni, Sale and Purchase Agreement, First Printing, Refika Aditama, 2016.
- 28 M. Yahya Harahap, Aspects of Agreement Law, Wells Bandung, Bandung, 1982.
- 29 Philipus M. Hadjon, Legal Protection for the Indonesian People, PT Bina Ilmu, Surabaya, 1987.
- 30 Rachmadi Usman, Dimensions of Bankruptcy Law in Indonesia, PT Gramedia Pustaka Utama, Jakarta, 2004.
- 31 R. Anton Suyatno, Utilizing Postponement of Debt Payment Obligations to Prevent Bankruptcy, Cet 1, Kencana Prenada Media Group, Jakarta, 2012
- 32 Richard Burton Simatupang, Legal Aspects in Business, Rineka Cipta, Jakarta, 2007.
- 33 Riduan Syahrani, Civil Procedure Law in General Courts, Pustaka Kartini, Jakarta, 1998.
- 34 Rr. Rina Antasari and Fauziah, Business Law, Setara Press, Malang, 2018.
- 35 R. Subekti, Various Agreements, Alumni, Bandung, 1984.
- 36 -----, Agreement Law, Bina Cipta, Bandung, 1987.
- 37 Salim HS, Deed One Making Technique (Theoretical Concept, Notary Authority, Form and Minutes of Deed), Rajawali Pers, Jakarta, 2016.

- 38 Salim HS and Erlies Septiana Nurbani, Application of Legal Theory in Thesis and Dissertation Research, Rajawali Pers, Jakarta, 2016
- 39 Siti Malikhatun Badriyah, The Invention of Law in a Prismatic Society, Sinar Grafika, Jakarta, 2016.
- 40 Soedharyo Soimin, Status of Rights and Land Acquisition, Sinar Garafika, Jakarta, 2001.
- 41 Sri Wardah and Bambang Sutiyoso, Civil Procedural Law and Its Development in Indonesia, Gama Media, Yogyakarta, 2007.
- 42 Suharnoko, Agreement Law, Prenada Media, Jakarta, 2004.
- 43 Sutan Remy Sjahdeini, History, Principles and Theory of Bankruptcy Law, Prenada Media Group, Jakarta, 2016.
- 44 Syamsudin M. Sinaga, Indonesian Bankruptcy Law, Tata Nusa, Jakarta, 2012.
- 45 Wirjono Prodjodikoro, Principles of Civil Law, Wells, Bandung, 1992.
- 46 Zaeni Asyadie, Principles of Business Law in Its Implementation in Indonesia, PT Raja Grafindo Persada, Jakarta, 2014.
- 47 Zainuddin Ali, Legal Research Methods, Sinar Grafika, Jakarta, 2016.