

Legal Aspects of The Agreement to Purchase a House Owned by a Bankrupt Debtor

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Abstract

This study examines the philosophical and legal basis of the sale and purchase agreement of bankrupt objects involving the assets of the debtor who has been declared bankrupt. The transaction is not merely an economic exchange, but must also integrate ethical values of muamalah, such as good faith (husn al-niyyah), distributive justice, and transparency of information in order to minimize the level of uncertainty (gharar) inherent in bankrupt assets Faustina & Hoesin (2022). From an Islamic perspective, the basic sharia principles that guide the validity of the sale and purchase agreement are an important foundation so that the rights of buyers with good faith are maintained and protection of creditor interests is still accommodated through mechanisms such as actio pauliana (Haryanto & Calvin, 2021). Furthermore, this study highlights the problems that arise in legal practice, such as the validity of the sale and purchase agreement (PPJB) that has not been formally certified, which has the potential to complicate legal certainty for buyers and threaten the balance between private and public interests (Amini & Wardani, 2023). By applying a normative legal methodology that relies on secondary data from legal literature and court decisions, this study formulates a transaction mechanism that not only ensures fairness and transparency, but also strengthens the integrity of the legal and economic systems in bankruptcy situations. On the other hand, the integration of ethical values and principles of justice is expected to create harmonious cooperation between bankrupt actors, creditors, and good-faith buyers, thereby creating sustainable legal stability and certainty.

1. Introduction

The sale and purchase agreement for bankrupt objects puts forward fundamental ideas that support its legitimacy as an economic and legal transaction, especially in the context where the objects being traded originate from the assets of the debtor who is bankrupt. In general, the concept of buying and selling in the muamalah paradigm is not only the exchange of goods at an agreed price, but also includes ethical values, justice, and trust which are the foundation for creating harmonious economic interactions (Jamaluddin, 2017).

From an Islamic perspective, muamalah as the basis for economic transactions emphasizes the importance of good faith (*husn al-niyyah*), justice, and transparency in every sale and purchase agreement. This is especially relevant when the object being traded is in bankruptcy status, because this condition creates a level of uncertainty (*gharar*) that must be minimized through the principle of clarity of the rights and obligations of each party. Therefore, in the sale and purchase agreement for bankrupt objects, the philosophical basis demands that the transaction be based on the principles of distributive justice, namely the distribution of risks and benefits in a balanced manner, so that the rights of buyers in good faith are not harmed, while creditors continue to receive protection for assets that have been integrated into the bankruptcy estate (Kurniawaty et al., 2024).

This philosophical view also refers to the emphasis that every sale and purchase agreement must require a sincere agreement, clear information, and openness regarding the status of the object being traded. In the context of bankrupt objects, transparency of information becomes essential so that buyers can assess the risks inherent in the transaction. The philosophy of buying and selling in Islam which emphasizes the validity of contracts based on predetermined pillars and conditions is also an important basis in formulating agreements in which bankrupt objects are included. Thus, the application of the principles of ethics and justice not only secures individual interests, but also maintains the integrity of the legal and economic system as a whole. Furthermore, the philosophical basis of the bankruptcy object sale and purchase agreement invites stakeholders to consider that the transaction must be able to reflect a balance between private and public interests. In this case, the philosophy of sale and purchase demands protection for buyers who act in good faith by providing legal certainty and clear information regarding the status of the object being sold, so that mutual trust arises between the seller and the bankruptcy executor with the buyer. This also underlies the concept of legal and ethical intervention in managing the risk of uncertainty due to bankruptcy status, so that a fair and harmonious transaction system is formed, both from a normative and ethical perspective.

By integrating these values into the agreement structure, it is hoped that a mechanism can be created that not only accommodates the interests of creditors and bankrupts, but also provides guaranteed protection to buyers. This concept is a reflection of the philosophical basis that every sale and purchase transaction should realize justice, transparency, and trust, all of which play an essential role in maintaining the stability

and integrity of the legal economic system, especially in vulnerable conditions such as bankrupt objects.

The background of the research on the purchase agreement of a house owned by a bankrupt debtor arises from the dynamics of the property sector and the legal complexity that accompanies bankruptcy. In Indonesia, bankruptcy not only impacts creditors, but also affects legal certainty for buyers. In this context, the application of the *actio pauliana* principle often becomes an interventionist legal instrument against property transactions that have been carried out by bankrupt debtors, thus creating a risk of null and void for the agreement that has been signed. Research by Widiyaningrum and Joesoef (Widiyaningrum & Joesoef, 2024; highlights how this principle can be used to cancel the transfer of rights to a house carried out by a bankrupt debtor, thereby threatening the rights of good faith buyers and creating legal uncertainty. This shows the need for an in-depth study of the legal force of home purchase agreements in the context of bankruptcy, in order to provide fair protection for buyers while protecting the interests of creditors.

In addition, this problem becomes more complex when viewed from the side of the implementation of the sale and purchase agreement (PPJB) which has not received a certificate resolution. Research by Apriandini and Sudiro (Apriandini & Sudiro, 2023) revealed that in situations where the developer or seller (debtor) is declared bankrupt, the validity of the PPJB and certainty of home ownership become sources of legal conflict. Without legal certainty over the certificate, the buyer not only faces the risk of economic loss but also uncertainty in obtaining legal ownership rights. This condition encourages the need for efforts to review and strengthen legal protection mechanisms for buyers in good faith, so that property transactions can still be carried out fairly even if the seller goes bankrupt.

The relevance of this research lies in the importance of a comprehensive understanding of the legal aspects of house purchase agreements in the context of bankruptcy. With the increasing number of bankruptcy cases involving property assets, there is an urgency to identify legal loopholes that can harm buyers and find solutions that guarantee legal certainty. This study aims to analyze in depth the legal force of house purchase agreements owned by bankrupt debtors, with a focus on the application of the *actio pauliana* principle and the validity of PPJB in facing bankruptcy proceedings. Thus, this study will not only provide an important contribution to the development of bankruptcy law theory and buyer protection, but can also help formulate more effective policies to balance the interests of creditors and buyers in property transactions (Widiyaningrum & Joesoef, 2024 ; , Apriandini & Sudiro, 2023).

2. Research Method

In this research, the type of research used is normative legal research or library legal research because it is in the form of secondary data such as laws and literature books. "In this research, the way of accessing and research takes a lot from library materials, namely

materials that contain new or up-to-date scientific knowledge, or new understanding of known facts or ideas, in this case including books, journals, dissertations or theses and other legal materials. This normative legal research fully uses primary legal materials and secondary legal materials. (Johan Nasution, 2008).

3. Results and Discussion

Debtor Bankruptcy Status. The legal status of a debtor who has been declared bankrupt affects the legality and enforceability of the sale and purchase agreement for assets (houses and land)

The results of the study on the bankruptcy status of debtors show that the legal status of being declared bankrupt has a significant impact on the validity and legality of house sale and purchase agreements. Bankruptcy automatically changes the debtor's position as the party that has control over his assets, so that the assets—in this context, the house—enter the bankruptcy estate. This fundamentally raises problems regarding the validity of the sale and purchase agreement made by the bankrupt debtor, especially because the object of the transaction can be subject to cancellation or transfer of rights on the basis of creditor protection and the principle of justice in civil law (Supriyadi et al., 2023).

According to research examining land registration regulations and mechanisms for cancellation of transfer of rights, the inability of debtors who have been declared bankrupt to fulfill all legal obligations raises questions regarding legal certainty in sales and purchase transactions. The results of the study show that although the sale and purchase agreement has been agreed upon by the parties, the debtor's bankrupt status requires a review of the transaction, taking into account the potential for court intervention to apply the *actio pauliana* principle as a form of transaction cancellation in order to protect the creditor's rights. On the other hand, this lack of legal certainty has an impact on protection for buyers, where buyers with good intentions actually face the risk of losing ownership rights even though they have fulfilled their obligations. This indicates that the applicable legal system needs to improve the protection mechanism so that property transactions not only benefit creditors but also provide justice for buyers (Supriyadi et al., 2023). Furthermore, research by Saputri et al. (Saputri et al., 2019) highlights that legal protection for consumers—in this case property buyers—becomes very crucial if the business actor (developer) selling the property has been declared bankrupt. In such circumstances, the buyer's position often shifts to being a concurrent creditor who is in the last order in paying off obligations. Therefore, the research results emphasize the need for a policy orientation that not only accommodates the interests of creditors but also provides legal protection guarantees for buyers in good faith. This study implies that the debtor's bankruptcy status is a crucial variable that determines the validity of a property sale and purchase agreement, so that in the future it is necessary to improve regulations to balance the protection of both parties so that unnecessary losses do not occur (Saputri et al., 2019).

Legal Power of Debtor Transfer. This aspect assesses the mechanism of transfer of property rights through agreements, especially in underhand practices whose validity is often questioned in the context of home ownership credit.

In the context of home ownership credit, the mechanism of debtor transfer through an underhand agreement is often a source of debate regarding the legal force and validity of the agreement. This debtor transfer practice occurs when the old debtor transfers the remaining home credit obligations to the new debtor through an informal agreement without going through a formal legal process such as making an authentic deed and approval from the creditor. This mechanism can weaken the creditor's position because the fundamental requirements for transferring property rights through credit, as stipulated in laws and regulations, are not met (Mustafa et al., 2023;

Research that examines the legal power of debtor transfers places focus on two main aspects. First, the validity of a debtor transfer agreement carried out underhand must refer to the principles of transparency, good faith, and balance between the interests of the old debtor, the new debtor, and the creditors. The case studied at the Cikarang District Court showed that the over-credit sale and purchase agreement that did not involve an authentic deed and creditor approval was deemed not to meet the legality criteria and therefore was vulnerable to being canceled in order to protect the creditor's rights (Wijaya & Kusumawati, 2024). The study highlights the importance of ensuring formalities in every credit transfer mechanism to ensure that all interested parties are legally protected (Wijaya & Kusumawati, 2024).

Second, the aspect of the debtor transfer mechanism needs to be viewed from the perspective of legal protection for the consistency and enforceability of the agreement. Normative studies have shown that the transfer of house rights through an underhand agreement without official ratification violates the principles of contract and bankruptcy law. The results of the study show that informal debtor transfers are considered null and void by law if they are not accompanied by creditor approval and are not verified through an authentic deed, so that the transfer does not provide legal certainty for the parties involved (Manurung et al., 2023). This study emphasizes that the validity of a private debtor transfer agreement must be accompanied by a mechanism that accommodates the creditor's explicit approval to avoid legal conflicts in the future (Manurung et al., 2023).

The implication of this research is the importance of stricter regulations regarding debtor transfer mechanisms. Regulations that require creditor approval and formal implementation through a notary or authorized official can guarantee the legality of the agreement and protect the rights of creditors while providing legal certainty for property buyers. Thus, efforts to reorganize the debtor transfer mechanism will not only prevent legal disputes but will also strengthen the integrity of the financial system and legal protection in home ownership credit transactions (Mustafa et al., 2023 ; , Manurung et al., 2023).

Legal Protection Aspects and Good Faith Considerations

The discussion on the aspects of legal protection and consideration of good faith in the sale and purchase agreement of bankrupt assets emphasizes that each transaction must be designed in such a way as to provide legal certainty for all parties involved, especially for buyers who act in good faith. The legal basis in this study argues that even though the debtor is in a state of bankruptcy, the basic principles of the agreement including agreement, clarity of object, and good faith must still be fulfilled in order to protect the rights of the parties. The principle of good faith is a fundamental element in a contract that not only ensures a balance between the rights and obligations of the parties, but also functions as a legal protection mechanism when a dispute occurs in the future Rahmani & Octarina, 2020; In the context of bankrupt assets, the application of legal protection requires a strong formal mechanism, as explained in the study on the sale and purchase agreement (PPJB). Widjaja and Samsuto's research (Widjaja & Samsuto, 2024; highlights that the validity of PPJB is greatly influenced by the fulfillment of formal and material requirements in accordance with the provisions of civil law. If the transaction is carried out without such formal fulfillment, the risk of legal disputes and cancellation of the agreement becomes high. Therefore, formal mechanisms such as the creation of authentic deeds and the involvement of public officials/notaries are very important to provide adequate evidentiary power and ensure that the good faith of the parties is not misused in the transaction, especially when the object being traded is under bankruptcy status (Widjaja & Samsuto, 2024 ; .

Research by Rahmani and Octarina Rahmani & Octarina, 2020; emphasizes the importance of authentic deeds as strong legal evidence in a house or apartment sale and purchase agreement. An authentic deed not only provides clarity on ownership rights, but also serves as a means of legal protection for buyers by ensuring that all information related to the object, including bankruptcy status, has been communicated transparently. This is in line with the principles of good faith, where the parties must act honestly and inform each other correctly in order to form trust and contractual balance Rahmani & Octarina, 2020 ; . Furthermore, a study by Muda et al. Muda et al., 2024; argues that the responsibilities of developers and sellers must be strengthened through regulations that strictly regulate the form and content of the sale and purchase agreement, both those carried out privately and those formalized by notary. The study emphasizes that the implementation of the agreement must provide optimal legal protection to buyers even if there is a default by the developer. With this guarantee, buyers in good faith will obtain legal certainty even though the assets being sold are in bankruptcy status, so that protection against transaction risks can be minimized Muda et al., 2024 ; .

The aspect of considering good faith is also the core discussion in this research. the principle of equality and good faith must be the main consideration in assessing the transfer of mortgage rights, especially if the transfer is carried out without the knowledge of the creditor. This principle requires that the implementation of the agreement not only refers to the formal aspects of the law, but must also reflect a commitment to honesty and transparency. Thus, the application of the principle of good faith can be used as a basis for assessing the validity of the agreement, so that if there is abuse, for example unilateral transfer of rights, then the cancellation or compensation mechanism can be applied to

restore the balance of interests of the parties Binsneyder & Rosando, 2020; . Overview of legal protection in sales transactions carried out underhand. Although the implementation of this type of agreement often faces challenges related to the strength of evidence, the application of the principle of prudence and the enforcement of the principle of good faith can provide a strong legal basis. This underlines the importance of drafting a comprehensive agreement so that all clauses concerning the obligations and rights of each party are clearly presented, in order to anticipate potential disputes in the future. This legal protection not only plays a role in protecting buyers, but also ensures that all transactions are carried out within the framework of justice and applicable legal principles, even though the assets being traded are part of the bankrupt estate (Sakti & Budhisulistyawati, 2020).

Thus, the research results reveal that the aspects of legal protection and consideration of good faith in sale and purchase agreements involving bankrupt assets must be articulated through the preparation of adequate formal mechanisms. Authentic deeds, detailed clauses, and the application of the principle of good faith are key elements that together guarantee the validity and legal certainty of transactions. This also requires the active involvement of law enforcement agencies to ensure that every agreement made, even in bankruptcy, can provide optimal protection for the parties and minimize the potential for future disputes (Widjaja & Samsuto, 2024; , Rahmani & Octarina, 2020; , Muda et al., 2024; , Binsneyder & Rosando, 2020; , Sakti & Budhisulistyawati, 2020).

The debtor's bankruptcy status directly affects the validity of the home purchase agreement.

Further research discussion on the debtor's bankruptcy status shows that the bankruptcy announcement legally changes the debtor's power and ownership status over his assets, thus having a direct impact on the validity of the house purchase agreement. Fundamentally, when a debtor is declared bankrupt, all assets—including the house—automatically enter the bankruptcy estate managed by the curator. This results in the debtor losing full authority to carry out transactions or transfer rights to the assets without going through official procedures involving the approval of the curator and, in some cases, the creditors. Thus, the house purchase agreement that has been made by the bankrupt debtor is vulnerable to being rejected as valid if it does not comply with the legal provisions governing the handling of bankrupt assets (Haryanto & Calvin, 2023).

In this context, bankruptcy law emphasizes the need to protect creditors' rights through the application of the principle of good faith and the principle of contractual justice. For example, the application of *actio pauliana* becomes a legal instrument to cancel transactions carried out by bankrupt debtors if the transactions endanger the creditor's rights. The use of this mechanism shows that a house purchase agreement made by a bankrupt debtor can be declared invalid if it is proven that the transaction was carried out in bad faith or without the approval of the bankruptcy authority (Damayanti et al., 2023).

Furthermore, this study indicates that bankruptcy factors not only change the status of asset ownership but also demand the implementation of transparency and intensive legal consultation. The practice of increasing transparency, consulting with legal and financial

experts, and open communication with creditors are strategic steps to ensure that every agreement made has full legal force. By fulfilling the administrative and formal requirements set, a house purchase agreement that was initially negotiated by a bankrupt debtor can gain validity if adjustments are then made to the assets that have been included in the boedel, or through official approval from the competent authority. This procedure is in line with legal risk mitigation efforts that have been identified in bankruptcy issues, so that the validity of the agreement can be enforced without reducing the protection of creditor rights (Damayanti et al., 2023).

The implications of these findings underlie the need for clearer and more integrated legal mechanisms related to property transactions involving bankrupt debtors. The research results emphasize that the validity of a home purchase agreement is highly dependent on the legal status of the debtor at the time the transaction takes place. If the bankruptcy status has not been disclosed transparently or is not followed by procedures that validate the transaction through the authorities, then the agreement has the potential to be null and void by law. Thus, a strategy of restructuring and revising regulations needs to be carried out to maintain a balance between creditor protection and buyer confidence, in order to realize legal certainty in every property transaction, especially those concerning the assets of bankrupt debtors (Haryanto & Calvin, 2023).

4. Conclusion

Based on the discussion that has been conducted, it can be concluded that the debtor's bankruptcy status has a direct and significant impact on the validity of the house purchase agreement. Legally, the announcement of bankruptcy automatically changes the status of the debtor's power and ownership over his assets, so that the house that is the object of the sale and purchase enters the bankruptcy estate managed by the curator. As a result, the debtor loses full authority to carry out transactions or transfer rights to the assets without official procedures that accommodate the approval of the curator or creditor, so that the purchase agreement made is vulnerable to being rejected as valid if it does not meet the formal requirements set by Haryanto & Calvin (2023).

The implications of this condition, in addition to the need to protect creditors' rights, require that every transaction in the context of bankruptcy also accommodate legal protection for buyers in good faith. Mechanisms such as the application of *actio pauliana* have been used as instruments to cancel transactions that are detrimental to creditors, but often the enforcement of protection for buyers is neglected. In addition, the practice of transferring debtors carried out informally through underhand agreements has been proven not to meet the legality criteria because it is not accompanied by formalities such as making an authentic deed and creditor approval, which results in the potential for the agreement to be null and void (Damayanti et al., 2023).

The findings of this study indicate that the validity of a home purchase agreement is highly dependent on the transparency of the debtor's bankruptcy status and the fulfillment of administrative requirements stipulated by law. Thus, regulatory *dorsum* and improvement of legal mechanisms become crucial to ensure a balance between the

protection of creditor rights and buyer confidence, as well as to ensure that property transactions involving bankrupt debtors can take place with optimal legal certainty.

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