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Legal Protection of Disputed Land Deed Officials in the Bankruptcy Estate by the Curator in Relation to the Principle of Justice

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ABSTRACT

Bankruptcy occurs when a person or entity stops paying its overdue debts, leading to the management of their assets by a curator. The curator oversees and manages the bankruptcy estate. The problem of bankruptcy estate often arises due to the transfer deed issued by the Land Deed Official (PPAT) which is considered incorrect by the curator, resulting in the Land Deed Official being sued and creates uncertainty as well as injustice for the Land Deed Official. This research will examine how the land law system regulates land sale and purchase transactions in the agrarian field in Indonesia, which was previously regulated in Government Regulation No. 24 of 1997 concerning Land Registration by applying a negative publication system with positive elements. This research applies empirical juridical research methods. The findings of this research identified that the legal system of land sales and purchases in Indonesia can lead to disputes in bankruptcy estates managed by curators, particularly concerning the principle of prudence. The Land Deed Official is responsible for errors or violations in the deeds they create but not for inaccuracies provided by the parties involved. If the parties provide false information, the responsibility lies with them, rather than with the Land Deed Official who only records the submitted information.

Keywords: *Bankruptcy Estate, Curator, Disputed*

INTRODUCTION

Law, people and land in this world are inseparable; between people and land, there are tangible laws attached, such as the law of buying and selling land. Research on the land law system in Indonesia is normative, analytical and empirical. In this research, legal comprehension is utilized as a complementary theory and science in order to broadly understand the issues or objects in legal science operating in society.

Countries that adhere to the principle of the rule of law apply the basis of the rule of law, equality before the law, and law enforcement that does not contradict the law itself. These principles are the foundation of law enforcement. As a state of law, all aspects of life in the fields of society, nationality and statehood must be based on law in accordance with the national legal system.¹

Bankruptcy in the Great Indonesian Dictionary means a state of loss, fall, bankruptcy, poverty.² The dictionary of economic law defines liquidation as the dissolution of a company followed by the process of selling company assets, collecting receivables, paying off debts, and settling the remaining assets or debts between shareholders.³ Bankruptcy refers to all matters related to the event of insolvency, which is a condition in which a person or entity fails to pay its overdue debts.⁴ Bankruptcy estate is closely related to bankruptcy, in that it refers to the assets owned by the bankrupt party, and it is related to the curators who are in charge of managing or supervising the property of the bankrupt party.⁵

The object of land sale and purchase is land within the scope of the First Agrarian Law which has five scopes as stated in Article 4 Paragraph (1) of Law No. 5/1960 on the Basic Regulation of Agrarian Principles (UUPA) that the definition of land is interpreted in the juridical sense, that is, the surface of the earth: "On the basis of the State's Right to Control as referred to in Article 2, various kinds of rights over the earth's surface, called land, can be granted to and owned by persons either alone or jointly with other persons and legal entities."⁶

¹ Teresia Din, Lilik Mulyadi, and Udin Narsudin, "Perlindungan Hukum Terhadap Pejabat Pembuat Akta Tanah Dalam Pembuatan Akta Otentik," *Jurnal Penelitian Hukum Legalitas* 10, no. 2 (2016).

² Ilham Fikriansyah, "Pailit Adalah: Pengertian Dan Perbedaannya Dengan Bangkrut," *Detikfinance*, last modified 2023, <https://finance.detik.com/berita-ekonomi-bisnis/d-7047755/pailit-adalah-pengertian-dan-perbedaannya-dengan-bangkrut>.

³ Tanto Gatot Sumarsono and Supardi, *Kewirausahaan Teori & Praktik* (Media Nusa Creative (MNC Publishing), 2021).

⁴ Wayan Karya, "Rekonstruksi Pembuktian Secara Sumir Dalam Hukum Acara Kepailitan Terkait Dengan Bukti Elektronik Di Indonesia" (Universitas Jayabaya, 2020), [https://repo.jayabaya.ac.id/2042/1/Disertasi Wayan Karya.pdf](https://repo.jayabaya.ac.id/2042/1/Disertasi%20Wayan%20Karya.pdf).

⁵ Fikriansyah, "Pailit Adalah: Pengertian Dan Perbedaannya Dengan Bangkrut."

⁶ Pemerintah Pusat, *Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria* (Jakarta, 1960).

Land rights refer to the ownership of a certain part of the earth's surface.⁷ Agrarian in a narrow sense only includes land as the surface of the earth, while in a broader sense, agrarian includes the earth, water, space, and the natural resources within. Land is the surface or top layer of the earth, the condition of the earth at a location, an area of the earth that has certain boundaries, material derived from the earth, and the base material for various substances such as sand, stone, clay, and such.⁸

Selling and buying is a term that consists of two words, “sell” and “buy”. In the Great Indonesian Dictionary, the word “selling” is defined as the act of trading goods, while “buying and selling” refers to an agreement between a seller who delivers goods and a buyer who pays the price of the goods being sold.⁹

In Indonesia, the concept of buying and selling is recognized in customary law, civil law, and agrarian law (land law). In civil law, buying and selling is defined as a transaction that has not transferred property rights, where property rights are only transferred when delivery or levering occurs. Meanwhile, in customary law, a sell and buy is considered to have occurred since it is accompanied by installments. In the context of buying and selling land under customary law, this includes the seller's act of handing over the land to the buyer in perpetuity when the buyer pays part of the price of the land, resulting in the right to the land passing from the seller to the buyer.¹⁰

Land transfer can occur through legal actions or legal events. Legal actions (*rechtshandelingen*) include various transactions such as sale and purchase, grants, gifts by will, exchanges, gifts according to custom, and other legal actions. Meanwhile, the transfer of property rights due to legal events can occur, for example, through the process of inheritance.¹¹

In civil law, sale and purchase has an obligatory nature, which means that the sale and purchase agreement establishes reciprocal rights and obligations between the seller and the buyer. The seller has the obligation to deliver title to the goods sold and has the right to demand payment of the agreed price. Meanwhile, the buyer

⁷ Ni Ketut Suartining and Benny Djaja, “Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law Number 5 of 1960,” *Journal of Social Research* 2, no. 6 (May 12, 2023): 1775–1785, <https://ijsr.internationaljournallabs.com/index.php/ijsr/article/view/903>.

⁸ Teresia Din, Lilik Mulyadi, and Udin Narsudin, “Perlindungan Hukum Terhadap Pejabat Pembuat Akta Tanah Dalam Pembuatan Akta Otenti,” *Jurnal Penelitian Hukum Legalitas* 10, no. 2 (2016): 117–138.

⁹ Kamus Besar Bahasa Indonesia, “Arti Kata Jual Beli - Kamus Besar Bahasa Indonesia (KBBI) Online,” *Kamus Besar Bahasa Indonesia (KBBI) Online*, last modified 2024, <https://kbbi.web.id/jual-beli>.

¹⁰ Fredrik Mayore Saranaung, “Peralihan Hak Atas Tanah Melalui Jual Beli Menurut Peraturan Pemerintah Nomor 24 Tahun 1997,” *Lex Crimen* 6, no. 1 (2017).

¹¹ Intan Tresna Sari Rosita, Imam Kuswahyono, and Hariyanto Susilo, “Application of Registration of Transfer of Rights Due to Direct Inheritance with Deed of Distribution of Inheritance (Study at Land Offices Throughout Malang),” *Jurnal Multidisiplin Madani* 3, no. 6 (July 5, 2023): 1392–1406, <https://journal.formosapublisher.org/index.php/mudima/article/view/4362>.

has the obligation to pay the price of the goods in exchange for their right to demand the transfer of title to the goods they bought.¹²

Land sale and purchase transactions are related to the Land Deed Official (PPAT), which is a functional position regulated in the regulation of the position of PPAT in accordance with Government Regulation (PP) No. 37/1998. The authority of PPAT is also regulated in Article 6 Paragraph (2) of Government Regulation (PP) No. 24/1997. In a land sale and purchase transaction, the evidentiary document is prepared in the form of a deed issued by and before the Land Deed Official.

The deed is used as the basis for registering land ownership, in accordance with the provisions listed in Article 95 Paragraph (1) letter a of Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 3/1997 on the Implementation of Government Regulation No. 24/1997 on Land Registration. The making of a land sale and purchase deed before the Land Deed Official aims to provide legal certainty to the landowner (land buyer).

Public officials refer to individuals chosen by the government to provide services to the public in a particular field.¹³ Public officials possess a juridical character that is constantly related to public law. The public nature is seen from the process of appointment, dismissal, and the authority possessed by the Land Deed Official.¹⁴ Registration of land ownership at the land office involves recording such changes in a deed made by a Land Deed Official (PPAT), who is in charge of verifying the accuracy of the data included in the deed. The Land Deed Official (PPAT) has an active role in the title registration system by performing data maintenance, collecting relevant juridical information, including physical, object and subject data, in land sale and purchase transactions.

The government guarantees legal certainty and protection of land ownership through the land registration process regulated under Article 19 Paragraph 1 of the 1945 Constitution. Land registration procedures are carried out throughout the territory of the Republic of Indonesia in accordance with the provisions regulated by Government Regulation.¹⁵

The legal system provides clear guidance for individuals subject to the law, preventing abuse of power by the state. Legal certainty is required by fulfilling five criteria: promulgation of laws and decisions, clarity and decisiveness of laws and

¹² Dewi Wulan Fasya, "Jual Beli Dengan Hak Membeli Kembali (Studi Komparasi Antara Kitab Undang-Undang Hukum Perdata Dan Fikih Syafi'i)," *Jurisdictie: Jurnal Hukum dan Syariah* 6, no. 1 (2015): 50–62, <https://media.neliti.com/media/publications/72213-ID-jual-beli-dengan-hak-membeli-kembali-stu.pdf>.

¹³ Putri Auliyaa, Rahmat Hidayat, and Rudyk Nababan, "Implementasi Pelayanan Publik Berbasis E-Government Melalui Ogan Lopian," *KINERJA* 18, no. 4 (January 20, 2022): 502–512, <https://journal.feb.unmul.ac.id/index.php/KINERJA/article/view/9804>.

¹⁴ Mulya Darma Orades, "Autentisitas Akta Pejabat Pembuat Akta Tanah (PPAT) Sebagai Alat Bukti Tertulis Yang Sempurna" (Universitas Islam Indonesia, 2017), <https://dspace.uui.ac.id/bitstream/handle/123456789/5535/TESES.pdf>.

¹⁵ Din, Mulyadi, and Narsudin, "Perlindungan Hukum Terhadap Pejabat Pembuat Akta Tanah Dalam Pembuatan Akta Otentik."

decisions, binding court decisions, prohibition of retroactive lawmaking, and enforceability of general principles in the legal system.¹⁶ In Indonesia, there are various national legal systems, such as customary law, Islamic law and Western law. However, all are subject to Pancasila as the ultimate normative foundation outlined in the 1945 Constitution. Pancasila guides the direction of Indonesia's legal system, expressed in five precepts that encompass the basic values in living life, including in the context of buying and selling land.

The publication system applied in the Basic Agrarian Law is a combination of negative and positive elements. The Basic Agrarian Law does not fully utilize a positive publication system because this would result in a certificate of title that has strong evidentiary power. However, it also does not adopt a purely negative publication system because the process of maintaining and issuing land rights certificates is carried out carefully to ensure that the data presented is correct.¹⁷ Under the negative publication system, all information contained in a land certificate is presumed to be correct until evidence to the contrary is presented in court.

Land that is the object of land registration in accordance with Government Regulation No. 24 of 1997, except state land, is recorded in the Land Book and given a certificate as proof of ownership. This land registration object, when associated with the land registration system, uses the land registration system (registration of titles) instead of the deed registration system (registration of deeds). In the registration of titles system, information about ownership and physical characteristics of land is documented in the land book, and a certificate is issued as proof of registered ownership.¹⁸

The events experienced by researchers become the focus of research in the field of legal theory, which involves normative, empirical, and analytical aspects using legal reasoning methods in a comprehensive and in-depth manner. By applying a legal thinking approach, the research aims to comprehend the essence of law related to substance and science. Referring to the context that has been explained, it will be relevant to examine the legal protection for land deed officials who are disputed in the bankruptcy estate by the curator, related to the principle of justice. This research will examine how the land law system regulates land sale and purchase transactions in the agrarian field in Indonesia, which was previously regulated in Government Regulation No. 24 of 1997 concerning Land Registration by applying a negative publication system with positive elements.

¹⁶ A'an Efendi and Dyah Ochtorina Susanti, *Ilmu Hukum* (Prenada Media, 2021).

¹⁷ Jamaluddin Jamaluddin, "Prosedur Penerbitan Sertipikat Hak Atas Tanah Sebagai Alat Bukti Berdasarkan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah," *Lex Et Societatis* 4, no. 4 (2016), <https://ejournal.unsrat.ac.id/v3/index.php/lexetsocietatis/article/view/11892>.

¹⁸ I. Yuliawan, "Electronic Land Certificates in The Perspective IUS Constitutum and IUS Constituum in Semarang Regency," *The Virtual International Conference on Economics, Law and Humanities* 1, no. 1 (2022): 119–129, <https://callforpaper.unw.ac.id/index.php/ICOELH/article/view/159>.

RESEARCH METHODOLOGY

This research uses empirical juridical research methods. Empirical legal research method is a legal research method that serves to observe the law in a real sense and examine how the law works in a community environment. The empirical method focuses on collecting empirical data and testing legal theories using the data.

The data sources in this research consist of three types of sources, which are primary, secondary, and tertiary legal materials. Primary legal materials consist of: 1945 Constitution of the Republic of Indonesia; Civil Code; Law No. 5 of 1960 on Basic Agrarian Regulations; Law No. 37 of 2004 on Bankruptcy; Government Regulation No. 37 of 1998 on the Regulation of Land Deed Officials; Government Regulation No. 24 of 1997 on Land Registration; and Court Decision No. 42/Pdt.Sus-Miscellaneous Lawsuits AP/2021/PN.Niaga.Jkt.Pst. On the other hand, secondary legal materials refer to the legal materials that provide interpretation and guidance on primary legal materials, such as books, magazines, articles, papers, previous research findings, and other sources. Meanwhile, tertiary legal materials are legal materials that provide interpretation and explanation of primary and secondary legal materials, including dictionaries of legal terms, language dictionaries, and encyclopedias.

RESULT AND DISCUSSION

The Role of the Curator and the Precautionary Principle in Land Sale and Purchase Disputes within the Bankruptcy Estate

The word prudence comes from the word “ prudent”, which relates to the supervisory and management functions of banks. The principle of prudence in banking, or prudent banking principle, is the principle that states that in carrying out business activities, banks must be prudent to protect the public funds entrusted to them.¹⁹

Sale and purchase is a transfer of rights that occurs as a result of an agreement, where one party commits to hand over a piece of land and the other party to pay an agreed price. According to customary law, the conditions for a valid sale and purchase must be made in light and in cash.²⁰ This sale and purchase is also related to legality and legism, two concepts that guarantee legal certainty.

The sale and purchase of land in civil law must fulfill the requirements of the agreement stipulated in Article 1320 of the Civil Code, including: agreement between those who bind themselves, capacity to make an agreement, a certain

¹⁹ Ida Bagus Paramaningrat Manuaba, I Wayan Parsa, and I Gusti Ketut Ariawan, “Prinsip Kehatian Notaris Dalam Membuat Akta Autentik,” *Acta Comitas: Jurnal Ilmiah Prodi Magister Kenotariatan* 1 (2018): 59–74.

²⁰ Waskito and Hadi Arnowo, *Pertanahan, Agraria, Dan Tata Ruang* (Jakarta: Prenada Media Group, 2018).

subject matter, and a cause that is not prohibited. The sale and purchase of land is also related to the role of the PPAT in national land law, where the PPAT as a public official is authorized to make authentic deeds regarding certain legal acts relating to land rights or Property Rights Over Flat Housing Units as stipulated in Government Regulation No. 37 of 1998 concerning PPAT.

Etymologically, bankruptcy comes from the word “pailit,” which is taken from the Dutch “failliet.” The word “failliet” has a dual meaning as a noun and an adjective. The term was originally derived from the French “faillite,” which means a strike or stoppage of payments. In the Indonesian language, *pailit* is defined as bankruptcy, which is a condition in which a debtor is unable to pay his debts that are due and collectible.²¹ Meanwhile, bankruptcy is a situation where a debtor has stopped paying his debts, and this situation requires the intervention of the Panel of Judges to guarantee the common interests of his creditors.²² Upon the decision on the bankruptcy petition, the Commercial Court may appoint a Curator to manage and/or administer the bankruptcy debtor's assets. The curator then distributes the bankrupt debtor's assets to the creditors in accordance with their respective debts.

It is important to recognize the process of bankruptcy because it determines the steps that can be taken against a company that has been declared bankrupt. One of the crucial stages in the bankruptcy process is the insolvency stage.²³ This stage is essential as this is where the fate of the bankrupt debtor is decided. Whether the debtor's assets will be fully distributed to cover debts, or the debtor still has a chance with the acceptance of a peace plan or debt restructuring. If the debtor is declared insolvent, then the debtor is truly considered bankrupt, and its assets will be immediately distributed, although this does not mean that the business of the bankrupt company cannot continue.²⁴

The sale and purchase of disputed land in the bankruptcy estate by the curator occurred due to a dispute over whether the land was included in the management and administration of the bankruptcy estate. The curator or Bankruptcy Estate Office (BHP) is responsible for the management and settlement of the bankruptcy estate during the bankruptcy proceedings, under the supervision of the supervisory judge who oversees the performance of the curator. Creditors are also obliged to

²¹ Herry Anto Simanjuntak, “Prinsip-Prinsip Dalam Hukum Kepailitan Dalam Penyelesaian Utang Debitur Kepada Kreditur,” *Justiqa* 2, no. 2 (2020).

²² Lazuardi Filza, “Tinjauan Yuridis Permohonan Kepailitan Perseroan Komanditer (CV) Menurut Hukum Kepailitan Di Indonesia” (Universitas Medan Area, 2021), <https://repositori.uma.ac.id/jspui/bitstream/123456789/15405/2/158400029> - Lazuardi Filza - Fulltext.pdf.

²³ Boedi Haryantho, “Prinsip Solvabilitas Sebagai Pertimbangan Hakim Dalam Perkara Kepailitan” (Universitas Airlangga, 2020), <https://repository.unair.ac.id/108361/1/1> HALAMAN DEPAN .pdf.

²⁴ Serlika Aprita, “Asas Kelangsungan Usaha Sebagai Landasan Filosofis Perlindungan Hukum Bagi Debitor Pailit Sehubungan Tidak Adanya Insolvency Test Dalam Penyelesaian Sengketa Kepailitan,” *Nurani: Jurnal Kajian Syari'ah dan Masyarakat* 17, no. 2 (February 22, 2018): 153–179, <http://jurnal.radenfatah.ac.id/index.php/Nurani/article/view/1842>.

submit their claims for matching, with the creditors' committee serving as an advisory board to the curator.

The authority of the curator or the Bankruptcy Estate Office begins since the bankruptcy verdict is read out, in accordance with Article 16 of the Bankruptcy and Public Prosecution Law, which allows the curator to start the administration task despite the filing of an appeal or judicial review. Meanwhile, a legal representative in exercising his/her authority to execute the sale and purchase of land in a deed of a legal representative must have knowledge of how a deed of a legal representative can have authentic evidentiary power such as:

1. Externally Evidentiary (*uitwendige bewijskracht*) refers to the external evidential power of an authentic deed that meets the prescribed requirements. The deed is considered valid or authentic until evidence to the contrary is presented, in accordance with the principle of “*acta publica probat sese ipsa*”. This strength of evidence applies to all parties, as explained by Efendi Bachtiar.
2. Formal Evidentiary (*formale bewijskracht*) asserts that the validity of an event and fact contained in a deed is confirmed by the notary or explained by the party involved, as well as certainty regarding when and where the deed was made and the authenticity of the signature. This is in accordance with Notodisoerjo's view.
3. Material Evidentiary (*materiele bewijskracht*) asserts that the material evidence shows that the event that occurred between the parties involved has been described as having actually occurred, not only regarding the event itself, but also its truth.²⁵

Land sale and purchase procedures, in accordance with national land law as stipulated in Article 37 of Government Regulation No. 24 of 1997, must be conducted before a Land Deed Official. This is because the Sale and Purchase Deed acts as legal evidence of the transfer of land rights, as explained in Article 37 Paragraph (1) of Government Regulation No. 24 of 1997. This article states that the transfer of land rights and ownership rights over apartment units, through various means such as sale and purchase, exchange, grants, inclusion in companies, and other legal acts of transfer of rights, except transfers through auctions, can only be registered if proven by a deed made by a Land Deed Official who has the authority in accordance with the provisions of the applicable laws and regulations.

A Land Deed Official's deed is solid evidence according to the principle of “*acta publica probant sese ipsa*,” which states that a deed that meets all requirements is considered valid as an authentic deed until proven otherwise. Therefore, in

²⁵ Nadya Mifta Utami, “Kekuatan Pembuktian Akta Perdamaian Notariil Di Pengadilan,” *Indonesian Notary* 2, no. 20 (2020), https://scholarhub.ui.ac.id/notary/vol2/iss4/20?utm_source=scholarhub.ui.ac.id%2Fnotary%2Fvol2%2Fiss4%2F20&utm_medium=PDF&utm_campaign=PDFCoverPages.

recording a sale and purchase transaction in a deed of a Land Deed Official, the precautionary principle must be upheld by complying with the complete procedure in accordance with applicable law. In practice, the Land Deed Official has the obligation to verify the identity of all parties involved, thus the data regarding the parties involved and the property being traded can be carefully verified. The step that should be taken by the curator to apply the precautionary principle in exercising the authority to manage bankruptcy assets is to carefully record the value and amount of bankruptcy assets. This includes bankruptcy assets in the form of tangible and intangible goods, which are then officially recorded by a notary to ensure that the inventory of assets is carried out authentically and transparently, as well as effectively and efficiently.

Aristotle elaborated justice by distinguishing it into distributive and corrective justice. This concept is relevant in assessing the legal system of land sale and purchase in Indonesia, which can be disputed in the bankruptcy estate by the curator, by relating it to the principle of prudence. Distributive justice is applied in terms of the distribution of goods and honors in accordance with the position of each individual in society, where people with the same position shall be treated equally before the law.²⁶ Meanwhile, corrective justice according to Aristotle provides a measure for the day-to-day implementation of the law, with standards used to correct the consequences of actions, including the recovery of civil wrongs and compensation, which are carried out objectively without regard to specific individuals.²⁷

Legal Protection of Land Deed Officials in Bankruptcy Estate Disputes and the Principle of Justice

Legal protection provides rights in line with obligations to protect legal subjects, which are enforced through laws and regulations that carry enforced sanctions if violated. Legal protection is divided into two aspects: preventive and repressive. Preventive legal protection is carried out to prevent violations before they occur, by providing guidelines or limits in carrying out obligations. Meanwhile, repressive legal protection involves imposing sanctions such as fines or imprisonment after a breach has occurred. It is important for the Land Deed Official to apply preventive legal protection in making deeds because they are often faced with disputes or lawsuits, especially if the deeds made are involved in legal issues such as the bankruptcy of one of the parties or the use of fake documents.²⁸ According to Syafran Sofyan, there are problems faced by Notary/the Land Deed Official in making deeds, such as:

²⁶ Abintoro Prakoso, *Teori Hukum*, LaksBang J. (Yogyakarta, 2021).

²⁷ Ibid.

²⁸ Din, Mulyadi, and Narsudin, "Perlindungan Hukum Terhadap Pejabat Pembuat Akta Tanah Dalam Pembuatan Akta Otentik."

1. The parties (seller and buyer) do not appear before a Notary/the Land Deed Official, making it susceptible to forgery.
2. The Notary/the Land Deed Official does not read or explain the contents of the deed to be signed by the parties, making it prone to problems.
3. The Notary/the Land Deed Official does not record in the deed register book (reporitorium) or does not report to the National Land Agency.
4. The Notary/the Land Deed Official is less observant of the identity of the seller, resulting in an error by the seller who is not the actual seller.
5. The Notary/the Land Deed Official is less observant of the validity of the land documents recognized as belonging to the seller (related to Letter of Notification of Taxes Payable - Land and Building Tax).²⁹

The sale and purchase of disputed land in the bankruptcy estate by the curator becomes relevant if the land is included in the debtor's property which is considered bankrupt, in accordance with applicable legal provisions. In the practice of bankruptcy property management and administration, the most crucial thing is to trace or investigate and record an inventory of bankruptcy property for the purpose of registering bankruptcy property. The curator is obliged to register the bankruptcy estate within two days at the latest after receiving the decision on his appointment.³⁰

The implementation of the curator's duties is normatively based on Article 69 Paragraph (2) Letter a of the Bankruptcy Code and has full authority to manage the bankruptcy estate and in carrying out its duties. The curator is not required to obtain approval from or give prior notice to the debtor or one of the debtor's organs, although in circumstances excluding bankruptcy such approval or notice is required. The management and administration of bankruptcy assets mainly includes eight stages, which are:

1. Publicize the bankruptcy decision;
2. Collect and inventory the bankruptcy debtor's assets and secure the bankruptcy estate;
3. Registration of creditors' bills and debt matching;
4. Managing and continuing the bankruptcy debtor's company that still has prospects to increase the value of the bankruptcy estate or going concern;
5. Pre-insolvent sales: before the bankruptcy estate becomes insolvent, the curator, with the permission of the supervisory judge, may sell bankruptcy property if the cost of maintaining the property is burdensome to the bankruptcy estate or necessary to supplement the operating costs of the debtor's business which continues to operate;
6. Selling the entire bankruptcy estate if the bankruptcy estate is declared insolvent and the continuity of the bankruptcy debtor's business is

²⁹ Manuaba, Parsa, and Ariawan, "Prinsip Kehati-Hatian Notaris Dalam Membuat Akta Autentik."

³⁰ Elyta Ras Ginting, *Hukum Kepailitan: Pengurusan Dan Pemberesan Harta Pailit* (Jakarta: Sinar Grafika, 2019).

terminated or not proposed by the curator and concurrent creditors to be continued in operation;

7. Pay the creditors from the proceeds of the sale of the bankruptcy estate in accordance with the type and amount of receivables as stipulated in the distribution list which has been approved by the supervisory judge and has permanent legal force;
8. Return the owner's funds if there is an efficiency of the bankruptcy estate against its obligations.

According to Gustav Radbruch, the concepts of justice, expediency, and legal certainty relate to the rights of a bankrupt debtor in the management and administration of bankruptcy assets. The norms related to this are regulated in Law No. 37/2004 on Bankruptcy and Suspension of Debt Payment Obligations, which is compiled based on firm principles and explicitly stated in the explanation of the law, as follows:

1. **The Principle of Balance**
Aims to prevent bankruptcy and postponement of debt payment obligations (PKPU) from being abused by dishonest debtors, creditors who are not in good faith, or curators who abuse their authority as guardians and administrators of bankruptcy assets.
2. **The Principle of Business Continuity**
This principle allows debtors' businesses that have prospective or on-going concern value to continue even though the bankruptcy estate has become insolvent with the aim of increasing the value of the bankruptcy estate in order to pay creditors' receivables, especially the receivables of concurrent creditors that are not secured by the debtor's property rights.
3. **The Principle of Justice**
Provide equal protection between creditors and debtors to prevent arbitrariness on the part of creditors with majority rights who are authorized to determine the direction of the debtor's bankruptcy and prevent arbitrariness on the part of creditors who are not concerned about the rights of other creditors.
4. **The Principle of Integration**
The principle of integration emphasizes that material bankruptcy law is an integral part of the national civil law system and civil procedural law applicable in Indonesia.³¹

Article 1471 of the Civil Code is the legal foundation for the consequences of buying and selling land that is declared part of the bankruptcy estate. If the buyer is unaware that the object of the sale and purchase is the bankruptcy estate of the seller, then the sale and purchase is null and void. However, this nullification is

³¹ Ibid.

only applicable if all obligations of the buyer in the sale and purchase have been fulfilled prior to the object of sale and purchase being declared as bankruptcy estate by the curator. Demand for compensation by the seller will be impossible since the seller is in a state of bankruptcy.

In relation to the authority of the Land Deed Official (PPAT), they are responsible for any errors or violations that occur in the making of an authentic deed.³² However, if the errors or violations are committed by the parties involved, the Land Deed Official cannot be held liable because the Land Deed Official only records statements made by the parties or confrontants to be included in the deed. If the parties submit false information, then the responsibility falls on the parties, not the Land Deed Official. The Land Deed Official cannot be subject to administrative, criminal, or civil sanctions if problems later arise regarding the validity of the sale and purchase of the property, because the Land Deed Official has carried out his duties in accordance with the formal and material requirements stipulated in the applicable laws and regulations.

The responsibilities of a Land Deed Official in carrying out their duties and positions, including in the preparation of a Deed of Transfer of Fixed Objects over bankruptcy assets, include ethical and legal responsibilities. Ethically, the Land Deed Official must provide the best service to the community without discrimination based on the amount of payment. Such services are not solely for profit, but also as a form of social service. The professional organization of Land Deed Officials, namely the Association of Land Deed Officials (IPPAT), has an Honorary Council in charge of fostering, supervising, controlling, and has the authority to summon, examine, and impose sanctions or penalties on the Association of Land Deed Officials members who violate the Code of Ethics. A Land Deed Official must be a member of the Association of Land Deed Officials and is responsible to the Honorary Council of the Association of Land Deed Officials regarding professional ethical values and legal responsibilities, both civil and criminal, in the event of errors such as default or unlawful acts (*onrechtmatige daad*).

Satjipto Rahardjo states that legal principles are the core of legal regulations, becoming the main basis for the formation of legal regulations. Legal regulations are the embodiment of legal norms and the most complete means of conveying the intent of legal norms clearly to the public. The notion of law includes certain categories in individual cases that provide legal certainty and create justice.

Code of ethics comes from the word “ethics,” which is derived from the Greek “ethos,” meaning good manners, customs, character, feelings, attitudes, and worthiness. Rather than a teaching on morals, ethics is a branch of philosophy that focuses on critical and fundamental thinking about good, proper, and right based on

³² M. Yasser Al Mursyid, “Akta Peralihan Harta Pailit Berupa Benda Tetap Yang Dijual Tanpa Lelang Oleh Kurator,” *Jurnal Officium Notarium* 1, no. 2 (August 1, 2021): 230–240, <https://journal.uii.ac.id/JON/article/view/20967/12220>.

moral teachings. Ethics is a science, not a doctrine, and in many literatures is referred to as moral philosophy. Ethics is the systematic development of right or wrong, virtue or vice as it relates to behavior. Ethics is also defined as the science of morality or of human beings in relation to morality. Ethics is divided into three main parts:

1. Descriptive ethics is one that describes moral behavior in a broad sense, such as customs, actions that are permissible or not.
2. Normative ethics is ethics in which judgments about human behavior are formed on the basis of norms and normative ethics is perspective (ordering) not describing but determining whether or not behavior is correct and normative ethics presents arguments or reasons based on norms and ethical principles that can be rationally accounted for and can be applied in practice.
3. Metaethics, which is going beyond, studies the special logic of ethical utterances and metaethics studies the special logic of ethical utterances, questioning whether normative language can be reduced to actual utterances, pointing to the special meaning of ethical language.³³

Legal protection of the Land Deed Official is a manifestation of law enforcement. According to Soerjono Soekanto, there are five aspects that influence a law to function effectively, including:

1. Consideration of the application of the rule of law itself is important in terms of the ownership of land rights that are physically controlled by other parties in the process of land registration in Indonesia. According to legal theories, there are three aspects that must be fulfilled in order for legal rules to be applied, including:
 - a. In a juridical context, legal rules must be made in accordance with established procedures and mechanisms as a condition for the validity of a legal rule.
 - b. From a sociological point of view, legal rules can be applied with effectiveness, either because they are forcibly enforced by the authorities even though they are not approved by the community, or because they are accepted and obeyed by the community.
 - c. In terms of philosophical perspective, the rule of law must be in accordance with the ideals of law as the highest positive values. However, if it only has philosophical validity, then the rule of law is only a desired ideal concept (*ius constituendum*).
2. This structural component indicates the existence of institutions formed by the legal system. These institutions play their respective roles and functions in the implementation of the legal system. Among these institutions are the police, prosecutors, courts, correctional institutions,

³³ Cecep Triwibowo, *Etika Dan Hukum Kesehatan* (Yogyakarta: Nuha Medika, 2014).

- and legal counsel institutions. Furthermore, these institutions have their own legal basis that regulates their operations, in addition to the criminal laws that apply to the ownership of land rights that are physically controlled by other parties in the process of land registration in Indonesia.
3. Facilities are physical means that support to achieve the goal of legal protection of ownership of land rights that are physically controlled by other parties in land registration in Indonesia. The distinctive values in the articles of the 1945 Constitution reflect the views and culture that have been passed down by the ancestors since long ago.³⁴
 4. The influence of society is reflected in their level of compliance with the law, which is a key indicator of the effectiveness of a regulation. If the society at large complies with a rule, then the rule can be considered to function in protecting ownership of land rights that are physically controlled by other parties in the process of land registration in Indonesia.
 5. Culture, an expression of human imagination, creation and values in daily life, can be the basis for legal protection of ownership of land rights that are physically controlled by other parties in the process of land registration in Indonesia.

CONCLUSION

The legal protection of the disputed Land Deed Official in the bankruptcy estate by the curator, which is associated with the principle of justice, refers to the basic principles of Pancasila, especially the second Precept which emphasizes on “Just and civilized humanity”. This principle reflects the importance of mutual respect and honor regardless of differences in rights, and affirms the equality of human dignity. In this context, the fulfillment of individual rights and obligations must be implemented with an awareness of the importance of caring for each other, which is reflected in the code of ethics.

The legal system of land sale and purchase in Indonesia, which sometimes causes disputes in the bankruptcy estate by the curator, is related to the principle of prudence, related to the form of legal protection of the land deed official who is disputed in the bankruptcy estate by the curator, which is associated with the principle of justice. In terms of the authority of the Land Deed Official (PPAT) related to the responsibility in making an authentic deed, the Land Deed Official (PPAT) must be responsible for errors or violations in the deed they make. However, if the error or violation is committed by another party, then the Land Deed Official cannot be held liable because it only records the information submitted by the parties to be included in the deed. The same applies if the parties

³⁴ Mohammad Mahfud, *Membangun Politik Hukum, Menegakkan Konstitusi*, 4th ed. (Depok: Raja Grafindo Persada, 2017).

provide false information, where the responsibility falls on the parties, rather than the Land Deed Official (PPAT).

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