

Kedudukan Hukum Perjanjian Pengikatan Jual Beli Hak Atas Tanah Yang Dimasukkan Ke Dalam Boedel Pailit (Studi Kasus Putusan Nomor 1245 K/Pdt.Sus-Pailit/2020 dan Putusan Nomor 15/Pdt.Sus-GugatanLain-Lain/2020/PN.Niaga.Jkt.Pst) = Legal position of the Sale and Purchase Agreement of a Land Which Has Been Included in Boedel Bankruptcy (Case Study of Decision No. 1245 K/Pdt.Sus-Pailit/2020 and Decision No. 15/Pdt.Sus-Gugatan Lain-Lain/2020/PN.NiagaJ.kt.Pst).

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Abstrak

Perjanjian Pengikatan Jual Beli merupakan perjanjian pendahuluan yang berisikan janji yang harus dipenuhi oleh para pihak sebelum dapat dilaksanakannya jual beli. Dalam praktik, terdapat perjanjian pengikatan jual beli yang tak kunjung dibuat akta jual beli hingga pihak penjual yakni PT. ASCO dinyatakan pailit dan objek dalam perjanjian pengikatan jual beli ditetapkan sebagai boedel pailit PT. ASCO sebagaimana Putusan No. 1245 K/Pdt.Sus-Pailit/2020 dan Putusan No. 15/Pdt.Sus-Gugatanlain-lain/2020/PN.Niaga.Jkt.Pst. Dalam putusan a quo terdapat perbedaan dalam majelis hakim menilai kedudukan hukum perjanjian pengikatan jual beli yang juga berimplikasi pada perbedaan implementasi ketentuan Pasal 34 Undang-undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang. Penelitian ini mengkaji kedudukan hukum perjanjian pengikatan jual beli hak atas tanah yang dimasukkan ke dalam boedel pailit serta implementasi ketentuan Pasal 34 Undang-undang Nomor 37 Tahun 2004. Metode penelitian yang digunakan ialah yuridis normatif dan bentuk penelitian eksplanatoris. Berdasarkan Kitab Undang-undang Hukum Perdata dan Hukum Pertanahan, peralihan hak atas tanah dibuktikan dengan akta jual beli yang dibuat dihadapan pejabat pembuat akta tanah. Namun berdasarkan angka 7 Surat Edaran Mahkamah Agung Nomor 4 Tahun 2016, peralihan hak atas tanah secara hukum berdasarkan perjanjian pengikatan jual beli telah terjadi apabila objek jual beli telah dibayar lunas, objek telah dikuasai dan pembeli beritikad baik. Dalam kedua putusan a quo perjanjian pengikatan jual beli telah menunjukkan terjadinya peralihan hak atas objek sengketa sehingga Pasal 34 Undang-undang Nomor 37 Tahun 2004 tidak tepat diterapkan dalam Putusan No. 15/Pdt.Sus-Gugatanlain-lain/2020/PN.Niaga.Jkt.Pst sehingga sudah seharusnya dikeluarkan dari boedel pailit PT. ASCO.

.....Sale and Purchase Agreement is a preliminary agreement that contains promises that must be fulfilled by the parties before the sale and purchase can be carried out. In practice, there is a case of Sale and Purchase Agreement which has never been made into a Deed of Sale until the seller, namely PT. ASCO is declared bankrupt and the object in the Sale and Purchase Agreement is determined as a boedel bankruptcy of PT. ASCO, which causes losses to the buyer as stated in Decision No. 1245 K/Pdt.Sus-Pailit/2020 and Decision No. 15/Pdt.Sus-Gugatan Lain-Lain/2020/PN.Niaga.Jkt.Pst. As for the two a quo decisions, the panel of judges have different assessments regarding the legal position of the Sale and Purchase Agreement which resulted in a different implementation of Article 34 of the Law Number 37 Year 2004 regarding Bankruptcy and Suspension of Obligation for Payment of Debts. In this regard, this case study will examine further the legal position of Sale and Purchase Agreement which is included in the bankruptcy boedel as well as the

implementation of Article 34 of the Law Number 37 Year 2004 on the legal position of Sale and Purchase Agreement which is included in the boedel bankruptcy. The research method used is normative juridical and explanatory research. The results of the case study are that in the Civil Code and Land Law basically, Sale and Purchase Agreement is not evidencing that there has been a transfer of land rights because the transfer of land rights can only be proven by the existence of a Deed of Sale made before a landed officer. However, based on number 7 of Supreme Court Circular Letter Number 4 of 2016, the transfer of land rights based on Sale and Purchase Agreement has occurred if the buyer has paid in full the object of sale and purchase, the object has been possessed by the buyer and the buyer obtained the land rights based on good faith. In both a quo decisions, the provisions in both a quo cases has shown a transfer of rights of the object of dispute and therefore Article 34 of the Law Number 37 Year 2004 should not be applied in Decision No. 15/Pdt.Sus-Gugatan Lain-Lain/2020/PN.Niaga.Jkt.Pst because the element of having the intention to transfer rights in Article 34 of the Law Number 37 Year 2004 has been exceeded since the transfer of rights of the Object of Dispute has been completed before PT. ASCO was declared bankrupt so it should have been removed from the bankruptcy boedel of PT. ASCO.