

Legal Protection Against Buyer Good Faith in Implementation Execution of Mortgage Rights

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This journal aims to analyze the implementation of execution seizure of mortgage rights related to good faith buyers, as well as the legal protection available to them. Using normative legal research methods, the data collected includes primary, secondary, and tertiary data, with a case study on. The results of the study indicate that execution seizure by the court does not harm legitimate buyers, who still have the right to ownership even though they transact with sellers who are not entitled. The decision emphasizes the importance of legal protection for good faith buyers in accordance with the provisions of the Civil Code and the circular of the Supreme Court. It is recommended that the sale and purchase of land rights be carried out before a PPAT and that banks be more careful in providing credit to reduce future risks, and agreements between the parties must be clearly drafted to ensure legal validity.

INTRODUCTION

Indonesia is a democratic country that adheres to the rule of law. [1] Own plan For finish dispute social . Taking law to hand they Alone No will finish problem they on the contrary , they will get profit from rules and regulations that have been applicable and intended For overcome problems that exist in society . [2]

Execution as action law carried out by the court to the losing party in a case is rules and procedures advanced from the inspection process matter . [3] Therefore that , execution nothing else than sustainable action from the entire process of civil procedure . [4] Execution is a unity that is not separated from implementation of rules and regulations the proceedings contained in HIR (Hereditary) Inland Reglement) or RBG (Rechtreglement for the West). [5]

Almost every plan implementation execution will face problems new suddenly appear . Therefore that , thing This will become challenge alone for a chairman court , where law execution truly is a demanding art condition skill , patience , wisdom and determination [6]

Implementation decision is business the losing party For reach objective or pay the fine imposed in decision cases carried out by the court . [7] In reality , the execution was carried out with forced by court meet a number of obstacles , and execution No walk smooth Because the losing party No own faith Good For follow judge's decision . [8] Execution obstacles influenced by carelessness and inaccuracy clerk and bailiff in do his job carry out execution of course add obstacle implementation execution a decision case civil . [9]

Temporary that , right on land is the right that grants authority to holder his rights (good) individuals , groups , or legal entities) for manage , use and or exploit field land certain . [10] In accordance with its accessory nature , on Mortgage Rights , where the burden of Mortgage Rights started with agreement that gives rise to connection law borrowing and lending , [11] which is guaranteed its settlement , which is a agreement basically . As included in Article 10 Paragraph (1)

of the Mortgage Rights Law . [12]

One of method from acquisition land that is often done is with sell buy . In sell buy there are two subjects law that is sellers and buyers , each of whom has rights and obligations , then they each in a number of matter is the party that does obligations , and in other things are the receiving party rights . This is related with reciprocal nature from agreement sell buy (buying) overeenkomst). [12]

Faith Good in the process of selling buy , no in a way real mentioned classification about seller or honest buyer Good in regulation legislation . However Thus , the intention Good be one of reject measuring For give protection law for party in sell buy . Concept buyer in good faith Good in the rules are very vague , and No give explanation what is considered as faith Good That alone . Possibility understanding faith Good That Alone has shift from context origin , as can We Look from decisions court , will but in Islam is the same . This is explained in QS An-Nisa' verse 29: O you who believe , do not You each other eat treasure your fellow man with the wrong path , except with road current business with Like The same Like between you . " [13]

This matter in accordance with Article 37 paragraph (1) of the Regulation Government Regulation No. 24 of 1997 concerning Land Registration , which states that transition right on land and rights owned by on House stack up through sell buy , exchange exchange , grant , income in company and actions law transfer right others , except transfer right through auction , only can registered , if proven with deed made by an authorized PPAT according to provision regulation applicable legislation . [14]

RESEARCH METHODS

Researcher use type study Normative . Normative Legal Research is method that focuses on analysis rules , principles , and doctrines law For answer issue existing law , using material primary law such as legislation and materials secondary in the form of studies bibliography . [15] The goal is For take inventory law positive , principles law , and systematics and history law , with attention specifically on the norm as guidelines behavior social . With Thus , research This aiming For give better understanding Good about structure and function law in context more social wide . [16]

DISCUSSION

Position of Execution Seizure Concerning Buyers in Good Faith in Implementation Execution Regarding Mortgage Rights .

In Civil Procedure Law foreclosure is purposeful action For ensure implementation decision court on a civil dispute. Dispute is a opposition between two parties or more that can cause different perceptions For a interest or right belonging to the one who can cause consequence law for both of them. Decision court is the judge's actions as authorized state official who spoke in hearing open For common and made in a way written For end disputes presented to him by the parties.

Article 227 Herzien Inland Regulation (HIR) explains , the plaintiff can ask to be placed confiscation to treasure riches Defendant on foreclosure that . Goods that have been dropped confiscate , then party Defendant No may do action law , such as diverting it.

On the results Judge's Decision in Case confirm that buyers who do transaction with faith Good must protected . In case this , buyer has fulfil terms and conditions agreement sell buy and have pay paid off price land , so that entitled on protection law .

Decision the reflect principle protection law for buyer in good faith good . The judge stated that

although land the made into guarantee , right on land move to buyer after payment done and mastered physique on land given. Decision This referring to the Circular Letter Number 4 of 2016 which states that transition right on land can happen in a way law If buyer has pay paid off and mastered object sell buy. This is strengthen position law buyer in case This .

The judge also emphasized not quite enough answer sellers and banks in give transparent information to buyer regarding object status land pledged . Failure For do it can considered as detrimental action party third (in matter this , the buyer). In his decision , the judge decided that execution by Bank BRI not legitimate to object land that has been purchased by the buyer in good faith good , because right on land the has move to buyer after fulfil all condition agreement .

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Protection law given by PPJB in full and power of attorney sell to buyer if seller died very strong and perfect Because characteristic proof from PPJB and power of attorney sell those made in advance official general in matter This Notary . This is as form guarantee certainty law and as form protection law for buyers who have pay paid off the price that has been paid for in a way full However Not yet Can implemented AJB creation and registration change the name Because one thing and another There is conditions that have not been met fulfilled . In addition to having characteristic strong and perfect proof , with making of PPJB and power of attorney selling is also possible give protection law for buyer as following :

Related with tax , buyer No bear tax sales , if seller has died because of moment signing of PPJB, PPh Already paid off paid off before the PPJB is signed handle matter This based on Article 1 paragraph

(3) letter a of the Regulation Government Regulation No. 34 of 2016 concerning Income Tax on Income from the Transfer of Land Rights and/ or Buildings , and Agreements Sale and Purchase Agreement for Land and/Or Buildings Along with The changes . Because before the validity of this PP in practice , at the time make PPJB and power of attorney sell without paid Income Tax moreover formerly so that if seller Already death takes the toll Income Tax is party buyers , and usually Income Tax new paid at the time making AJB.

His ownership in a way legitimate can proven with PPJB and power of attorney sell those made in advance Notary is very strong , if seller died then expert inheritance No can bother sue on ownership land the although land the Not yet AJB is made . Because the expert inheritance must subject to existing provisions in PPJB clauses and power of attorney sell .

In the Act The Sale and Purchase Agreement contains an article that states land along with all something that stands as well as embedded on the will become right Buyer . Based on provisions of Article in the PPJB deed since signed by the PPJB deed will switch become owned by buyers . With thus Already as it should be buyer protected by law .

So that based on all the description that has been writer expose the above , then writer conclude to buyers who have faith Good in the process of selling buy right on land based on the PPJB and the power of attorney made in front of Notary , get protection law as if buyer in good faith Good in deed sell buy made in front of the PPAT, even though in Regulation Government Number 24 of 1997 Concerning Land Registration has state obligation transaction sell buy based on deed sell buy one made by PPAT, but No means that transaction sell buy based on PPJB can it is said No protect buyer in good faith well , that's it the based on principle freedom contract (pacta sunt servanda) and Article 1338 of the Civil Code .

CONCLUSION

execution seizure is action law carried out by the court For confiscate treasure owned by defendant use carry out the decision that has been powerful law remains . This is can influence right party third , including buyer in good faith well , that remains own right For maintain his ownership although There is confiscation execution . In the context of this , protection law for buyer in good faith well very important , as emphasized in Decision Number 09/ Rev /2016/PT.SBY, where buyers who meet the requirements criteria must protected although There is action confiscation . Protection This set up in articles The Civil Code provides guarantee for buyer as well as principles in transaction sell buy . For the community or buyer . Next , sell buy right on land in a way paid off should implemented use base sell buy in front of the PPAT so that the buyer in good faith Good get protection law as set up in Regulation of the Minister of Agrarian Affairs and Jurisprudence .

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