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LEGAL PROTECTION ON APARTMENT UNITS' CUSTOMERS WITH PPJB WHEN THE DEVELOPER IS FAILED

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Abstract

The purpose of this study is to find out the legal protection regulations for buyers, the efforts that buyers of apartment units can take in the form of PPJB if the developer is declared bankrupt and how the law should give rights to the apartment buyers. Research on the above problems was conducted using qualitative methods. The type of research used is normative empirical by using approaches with methods of legal interpretation, legal construction, legal philosophy, legal history, and comparative law, as well as a legal pluralism approach. The data used in this dissertation research are primary and secondary and tertiary data which are analyzed objectively based on existing juridical references in order to obtain answers to the problems. Based on the research results from the problems above, it is concluded that there are several arrangements regarding the protection of buyers/consumers in Indonesian positive law, both from civil law, criminal law, customary law, and Islamic law. Buyers of apartment units can also sue in accordance with Article 3 of the UUK and PKPU, although the process must take a long time. The law should provide an update by adding a clause in the PPJB that objects being traded cannot be included in the bankruptcy budget.

Keywords: *consumer protection; legal protection; PPJB; bankruptcy*

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INTRODUCTION

A residence is one of the basic needs (Primary) whose implementation is regulated by the 1945 Constitution Article 28H, which reads "Everyone has the right to live a prosperous life born and inner, live and also get a better and healthier living environment and entitled to health services". In terms of meeting the need for housing, the government is mandated to hold or provide housing in the form of both rowing houses and terraced houses (Anabelle & Tanawijaya, 2019). However, the fulfillment of this residence is not easy to do because as time grows and the number of residents increases, land prices are getting more expensive and more difficult to obtain (Yusuf et al., 2021).

In urban areas, the land is an economical item because of its high price and scarce amount, and not everyone can have a decent and adequate place to live. Only people with a certain economic status can own land (Siahaan, 2004). In the center of the capital began to be known as tall buildings with joint ownership or known as flats. The construction of these flats is used as a way out of solving the problem of providing housing because the construction of these flats minimizes land use, increases open land in the city center more, and can be used as an effort to reform the city for slums (Mawardi et al., 2020).

As an alternative to solving the problem of the need for housing, the implementation of these flats itself is regulated in Law No. 20 of 2011 on Flats. Article 1 of the Law states that:

"Functionally structured, both in horizontal and vertical directions and high-rise buildings built in an environment divided into parts that are units that can each be owned and used separately, especially for dwellings equipped with shared parts, common objects, and common ground."

Buying and selling held before the construction of flats is completed or known as the Pre Project Selling system is carried out through the creation of a Sale and Purchase Binding Agreement or known through PPJB which contains the authority and responsibility of the parties to be agreed through the deed of sale and purchase and payment can be made by cash or cash or installments or gradual payments. PPJB is a binding deed from seller to buyer that is usually made under the hand or not from PPAT usually made by the developer (Cowandy, 2021). However, it needs to be considered by PPJB and AJB consumers, in the Indonesian legal system, buying and selling do not necessarily change ownership of an item. Buying and selling need to be followed by handover (Levering) to change ownership. Against immovable objects such as apartment units, the submission is carried out administratively, namely the name change recorded in the building ownership certificate.

Based on the above presentation, the author wants to examine how positive law provides protection to buyers of apartment unit units in the form of PPJB or PPJB paid off if the Developer is declared bankrupt and how should buyers of apartment units in the form of PPJB whose assets enter into bankruptcy bundle. In addition, the author also wants to research how the law should give rights to the owners of apartment unit units in the event that the developer is declared bankrupt according to Law No. 37 of 2004 on Bankruptcy.

METHOD

This research method uses qualitative methods, namely describing facts with primary, secondary, and tertiary legal materials. The primary legal material used is authoritative legal material, the primary legal material is binding legal material in the form of basic norms or rules as contained in the legislation. The primary legal materials used for this study include the Constitution of the Republic of Indonesia of 1945, Law No. 37 of 2004 on Insolvency, Law No. 20 of 2011 on Flats, Law No. 8 of 1999 on Consumer Protection, and other regulations relating to this research material.

Secondary legal materials in this study are all publications on a law that are not official documents that can help analyze and understand primary legal materials in the form of research results, the writings of experts in the field of law both nationally and internationally, and also scientific journals obtained through the study of literature related to the criminal justice system. Tertiary legal materials are legal materials that provide instructions and explanations of primary and secondary legal materials, namely legal dictionaries, encyclopedias, and so on.

The type of research used is empirical normative research supported by methods of legal interpretation, legal construction, legal philosophy, legal history, and legal comparison, as well as legal pluralism approaches. The method of interpretation used is systematic, authentic, and teleological interpretation.

The data in this study is analyzed objectively based on existing juridical references so that answers to the problem are obtained. In analyzing data, the author performs stages, namely data collection, data presentation, and conclusions.

RESULT AND DISCUSSION

Bankruptcy to Apartment Developers and Their Impact

At the beginning of its formation history, the ancient bankruptcy law had two main purposes, namely to secure the distribution of debtors' property from the loot of its creditors, and the second to prevent the debtor from hiding his property to the detriment of his creditors. Legal protection is only given to debtors of good faith, but nevertheless, protection for debtors is not the basic purpose of the establishment of ancient bankruptcy laws (Sjahdeini, 2010).

The legal principles that exist in bankruptcy law in various forms of insolvency legal systems in various States are as follows.

Creditorium Parity Principle

The principle *of creditor parity* (Equality of the position of creditors) dictates that creditors have equal rights to all debtor property. If the debtor cannot pay his debts, then the debtor's wealth is targeted by creditors (Shubhan, 2015).

The philosophy of *the creditorium parity* principle is that it is an injustice if the debtor owns property while the debtor's debt to his creditors is not paid off. The law provides a general guarantee that the debtor's property for the sake of the law becomes a guarantee of his debts even though the debtor's property is not directly related to the debts (Shubhan, 2015).

Thus, the principle *of creditorial parity* departs from the phenomenon of injustice if the debtor still has property while the debtor's debt to the creditors is not paid. Another meaning of the principle of creditorium parity is that being a general guarantee of debtors' debts is limited to wealth alone, not other aspects, such as personal status and other rights outside the property has absolutely no effect on the debt receivable debt of the debtor.

However, the principle *of creditorium parity* even if it is a response to the injustice, if the principle of creditorium parity is applied *letterlijk*, it will cause the next injustice. The unfairness of the *creditorium parity* principle is that the creditors are equally domiciled between one creditor and another creditor. The principle *of creditorium parity* does not distinguish the treatment of creditor conditions, be it creditors who have large receivables or creditors who have small receivables, both creditors who hold guarantees and creditors who do not hold guarantees.

Principle of Pari Passu Prorata Part

The principle *of pari pasu pro rata parte* means that the property is a joint guarantee for creditors and the proceeds must be distributed proportionately between them unless between the creditors there is something that by law must take precedence in receiving the payment of the bill (Muljadi, 2001).

If the principle *of creditorium parity* aims to provide justice to all creditors without distinguishing its condition to the debtor's wealth even though the debtor's wealth is not directly related to the transaction he made, then the pari *passu prorata parte* principle provides justice to creditors with the concept of proportional justice, where creditors who have larger receivables, will get a portion of the receivable payments from the debtor is greater than the creditor who has smaller receivables than him. If creditors are equalized without seeing the small size of receivables, it will cause an injustice of its own.

An illustration of the injustice, if there is no principle of creditorium parity, is as follows: a bankruptcy debtor has wealth that is included in the bankruptcy boedel of 10 billion Rupiahs. The bankrupt debtor has five concurrent creditors, namely A has receivables of 20 billion, B has receivables of 15 billion, C has receivables of 10 billion, D has receivables of 3 billion, and E has receivables of 2 billion, so the total debt of the debtor insolvent is 50 billion. If there is no pari *passu prorata parte* principle, then the five debtors are the same domiciled on the debtor's wealth. The 10 billion insolvent property will be divided equally against five debtors which means each will get two billion. Here lies the injustice if there is no pari *passu prorata parte* principle where A creditor who has receivables of 20 billion will get the same share as E creditors who have receivables of 2 billion. The injustice of the division is overcome by the principle of *pari passu prorate parte*. So that with the principle of *pari passu prorate parte*, the division into A who has receivables of 15 billion will get a share of 4 billion (40% of the bankruptcy property), B who has receivables of 15 billion will get a share of 3 billion (30% of the bankruptcy property), C who has receivables of 10 billion will get a share of 2 billion (20% of the bankruptcy property), D who has receivables of 3 billion will get a share of 0.6 billion (6% of the bankruptcy), and E who has receivables of 2 billion will get a share of 0.4 billion (4% of the bankruptcy property) (Shubhan, 2015).

Principe of Structured Creditors

The principle *of structured creditors* is a principle that classifies and groups various debtors according to their respective classes. In bankruptcy, creditors are classified into three types, namely separatist creditors, preferred creditors, and concurrent creditors (Shubhan, 2015).

The division of creditors into the three classifications mentioned above is different from the division of creditors in the general civil law regime. In general civil law, it can include creditors who have sovereign security rights and creditors who by law must take precedence over the payment of receivables, such as privilege rights holders, retention rights holders, and so on. While creditors who have a guarantee of materiality, in bankruptcy law, are classified as separatist creditors (Shubhan, 2015).

The three principles mentioned above are very important both in terms of the law of engagement and the law of guarantee and the law of insolvency. In the absence of this principle, then the insolvency institution becomes meaningless because the philosophy of bankruptcy is as an institution to liquidate the assets of debtors who have many debtors where without bankruptcy, the debtors will fight each other both legally and unlawfully so as to cause a state of injustice for

the debtor himself and against creditors, especially creditors who enter later so as not to get a share of the property. debtors for the payment of debtors (Shubhan, 2015).

Position of Apartment Buyers in Bankruptcy Decision

Consumers as buyers of property units from a property developer based on the buying and selling relationship of property units built by the development company. Buying and selling land or buildings in light and cash, meaning that repayment has occurred and the purchased goods or units have become the property of the buyer. However, in fact, the purchased property unit has been mastered by inhabiting it, but juridically there has not been levering because the process of turning over the name on behalf of the buyer takes a short time, as a result of which juridical ownership is still in the hands of the development company.

In the event of levering, there are two kinds of elements, including real submission (*Feitelijke levering*) and juridical submission (*Juridische levering*). A levering is declared valid when both levering elements occur. Related to the levering event, it turns out that the delivery of moving objects and immovable objects there is different. Moving objects if handed over instantly, both *feitelijk levering* and *juridische levering*, occur simultaneously without seeing the stages between the two elements. Conversely, if the handover of immovable objects is generally between *feitelijke levering* and *juridische levering*, both events appear to have a separation pause.

This is called one of the consequences arising from the division of moving objects and immovable objects in the Civil Code. The most controversial recommendation addresses consumer bankruptcy legislation, under which banks and some commission members have pushed for "meaningful testing." That would limit the availability and force some debtors with the capacity to pay debts to where they would be required to make payments to creditors.

The commission's report does not contain any meaningful testing. However, his legislation has already been introduced in Congress. Under the recommendation by the commission, the Bankruptcy Code would establish a national exemption (currently in many countries, debtors can choose a state exemption from the exemption specified in the Bankruptcy Code).

Article 4 letter h of the Consumer Protection Law regulates that one of the rights of consumers is to get compensation, compensation or reimbursement if the goods or services received are not in accordance with the agreement. Furthermore, according to Article 19 paragraph (3) of the Consumer Protection Law, the provision of compensation must be made 7 (seven) days after the date of the transaction. If the provisions of Article 19 paragraph (3) of the Consumer Protection Law are not implemented, it can be subject to administrative sanctions in the form of determination of the compensation of at most 200 million Rupiahs (Article 60 of the Consumer Protection Law).

Based on Article 19 paragraph (3) of the Consumer Protection Law, consumers are implicitly declared as preferred creditors because they must get compensation immediately, which is seven days after the transaction date. The problem is that the Consumer Protection Law does not regulate further what is meant by the "transaction date". With regard to the date of this transaction, it is growing that the date is the same as since the failure to carry out its obligations.

With regard to the substance of the law, there is a weakness in the rules that discuss the position of consumers. The Civil Code, bankruptcy law, and consumer protection law do not clearly regulate the position of consumers in bankruptcy. Only Article 52 of the Insurance Law regulates strictly the position of consumers in bankruptcy, namely as preferred creditors. This arrangement is different from the arrangements in the Bankruptcy Law that regulate consumers as concurrent creditors. In law applies the provisions of the Law that are specifically overriding laws of a general nature (*Lex specialis derogate legi generalis*).

With regard to the legal structure, bankruptcy cases involve at least four parties, namely the consumer himself, curators, administrators, and supervisory judges. For both curators, administrators, and supervisory judges, the legality has been clearly regulated in the Bankruptcy Law, in contrast to consumers who are not clearly positioned in the Law. Because the Bankruptcy Law only mentions consumers as parties who enter into agreements with debtors (Article 36 paragraph (1) or the affected counterparty (Article 37 paragraph (1)). With the vagueness of the position of consumers in Bankruptcy Law, the consumer's position is under curators, administrators, and supervisory judges. This misaligned position will make consumers feel pressured in the process of achieving an agreement, especially with regard to the period of implementation of achievements. Not to mention the compensation that can be received by these consumers. This kind of condition is clearly contrary to the four legal conditions of the agreement stipulated in Article 1320 of the Civil Code, namely agreeing on the parties and the prowess of the parties which include subjective conditions and certain objects or things and halal causes including objective conditions. Related to the agreement of the parties must be obtained without coercion (*Dwang*), error (*Dwaling*), and fraud (*Bedrog*).

As mentioned above, in bankruptcy known 3 types of creditors, namely separatist creditors, preferred creditors, and concurrent creditors. Article 1 number 2 of the Bankruptcy Law and PKPU defines creditors as people who have receivables due to agreements or laws that can be billed in front of the court.

The level of creditors in bankruptcy indicates the right to go bankrupt property, meaning that one creditor has the right first to obtain receivable payments from the bankrupt bundle compared to other creditors. The level of creditors in bankruptcy from the most advanced is preferred creditors / special creditors, separatist creditors, and the latter are concurrent creditors. Preferred creditors have receivables that are specially domiciled or privileged as stipulated in Article 1131 of the Civil Code and Article 1149 of the Civil Code.

Legal Efforts for Consumers Over Developer Bankruptcy

Legal remedies that can be made in bankruptcy cases and/or delays in debt payment obligations are cassation to the Supreme Court. In this case, it is not known for the legal appeal in the High Court of Religion.

Based on Law No. 37 of 2004 concerning Bankruptcy and Delay of Debt Payment Obligations, it is regulated regarding which parties are authorized to apply for bankruptcy. In

addition, there are also conditions in filing bankruptcy cases. The parties authorized to file a bankruptcy case are regulated in Article 4 paragraph (1) and paragraph (2), as follows:

1) In the event that the application for a bankruptcy statement is submitted by a debtor who is still bound in a valid marriage, the application can only be submitted with the consent of the husband or wife;
2) Provisions such as point a do not apply if in the marriage there is no union of property between husband and wife.

While the conditions in the bankruptcy application are regulated in Article 2, namely as follows:

1) Debtors who have two or more creditors and do not pay off at least one debt that has fallen in time and can be collected, are declared bankrupt by the court's decision, either on their own application or on the request of one or more creditors;
2) Applications can also be submitted by the prosecutor's office in the public interest.

Settlement of Buyer's Assets Entered in Budel Bankruptcy

After the release of the verdict from the court, the next stage is the management and settlement of bankruptcy property. The first step in the management and enforcement of bankruptcy property is to announce an overview of the Bankruptcy Verdict in two newspapers stipulated by the Supervisory Judge, in accordance with Article 15 paragraph (4) of Law No. 37 of 2004 concerning Bankruptcy and PKPU.

Furthermore, the creation of Bankruptcy Property Registration is carried out. Article 100 of the Bankruptcy Law and PKPU state the following:

1) The Curator must make a record of the bankruptcy property no later than 2 (two) days after receiving the decree of his appointment as Curator;
2) Recording of bankruptcy property can be done under the hands of the Curator with the approval of the Supervisory Judge;
3) Members of the temporary creditor committee are entitled to attend the making of the recording.

Recording of Bankruptcy Property (Interventarization) is done by:

1) Based on The Debtor's Proof;
2) Based on records (creditor reports);
3) Matching Bookkeeping Reports with Supporting Documents;
4) Matching bookkeeping data with the physical existence of bankruptcy treasures;
5) Compile a list of Bankruptcy Treasures based on the type and location and actual circumstances of the bankruptcy property;
6) Securing the physical failed assets.

The next stage is continued by calling creditors and debtors to face creditor meetings in accordance with the provisions stipulated in Article 85 of the Bankruptcy Law and PKPU, namely in the Creditors meeting, the Supervisory Judge acts as the chairman and the Curator must be present at the Creditor meeting.

The next provisions are regulated in Article 86 of the Bankruptcy Law and PKPU jo. Article 113 of the Bankruptcy Law and PKPU. Article 86 of the Bankruptcy Law and PKPU itself have the following arrangements:

1) The Supervisory Judge determines the day, date, time, and place of the first Creditor meeting, which must be held within a period of no later than 30 days after the date the bankruptcy verdict is pronounced;
2) Within a period of 3 days after the decision of the bankruptcy statement is received by the Supervisory and Curator Judge, the Supervisory Judge shall submit to the Curator the plan for the implementation of the first Creditor meeting as intended in paragraph (1);
3) Within a period of no later than 5 days after the bankruptcy statement decision is received by the Curator and Supervisory Judge, the Curator shall notify the implementation of the Creditor meeting as intended in paragraph (2) to the Creditor known as a registered letter or by courier, and with advertisements in at least 2 (two) daily newspapers, taking into account the provisions as intended in Article 15 paragraph (4).

The next stage is the Receivable Match Meeting. The receivables match meeting was conducted in accordance with Article 124 of the Bankruptcy Law and PKPU which reads:

1) In the meeting as intended in Article 121, the Supervisory Judge reads the list of receivables that are temporarily recognized and the list of receivables disproved by the Curator;
2) Any Creditor whose name is listed in the receivables list as intended in paragraph (1) may request that the Curator provide information about each receivable and its placement in the list, or may dispute the correctness of the receivables, the right to take precedence, the right to hold an object, or can agree to the Curator's objection;
3) The Curator reserves the right to withdraw his provisional confession or rebuttal, or demand that the Creditor corroborate by oath the truth of his receivables which is not disputed by the Curator or by any of the Creditors;
4) If the original Creditor has died, the substitutes of their rights shall explain under oath that they in good faith believe the receivables exist and have not been repaid;
5) In the event that it is deemed necessary to postpone the meeting, the Supervisory Judge determines the next meeting held within 8 days after the meeting is postponed, without a summons.

What is done next is the collection of debtor receivables (if any), selling bankruptcy property in accordance with the following provisions:

1) Article 184
    a) Keeping in mind the provisions of Article 15 paragraph (1), the Curator shall initiate the enforcement and sale of all bankruptcy property without the need to obtain the approval or assistance of the Debtor if:
        - The proposal to take care of the Debtor's company is not submitted within the time period as stipulated in this Law, or the proposal has been submitted but rejected; or
        - The management of the Debtor's company is terminated.

b) In the event that the company is continued, the sale of objects that include bankruptcy property, which is not necessary to continue the company;
c) Bankruptcy debtors can be given only home furniture and equipment, medical devices used for health, or office furniture determined by the Supervisory Judge.

2) Article 185
   a) All objects must be sold in public in accordance with the procedures specified in the laws and regulations;
   b) In the event that public sales as intended in paragraph (1) are not achieved then the sale under the hand can be done with the permission of the Supervisory Judge;
   c) All objects that are not immediately or completely cannot be resolved then the Curator who decides the actions to be taken against the object with the permission of the Supervisory Judge;
   d) Curators are obliged to pay creditor receivables that have the right to hold an object so that the object is re-entered and benefits the bankruptcy property.

After doing the above stages, then next do a list of divisions in accordance with the following rules.

1) Article 188: If the Supervisory Judge thinks there is enough cash, the Curator is ordered to distribute to creditors whose receivables have been matched;
2) Article 189
   a) Curators are obliged to compile a list of divisions to be requested for approval by the Supervisory Judge;
   b) The list of divisions as intended in paragraph (1) contains details of receipts and expenses including curator's wages, the name of creditors, the amount matched from each receivable, and the portion that must be received by creditors;
   c) Concurrent creditors must be given the part specified by the Supervisory Judge;
   d) Payment to Creditors:
      - Who have privileged rights, including those whose privileges are denied; and
      - Holders of liens, fiduciary guarantees, dependent rights, mortgages, or collateral rights to other matters, to the extent that they are not paid under the provisions referred to in Article 55, may be made from the proceeds of the sale of objects to which they have privileges or are collateralized to them.
   e) In the event that the proceeds of the sale of objects as intended in paragraph (4) are not sufficient to pay all creditor receivables that come first then for the shortcomings they are domiciled as concurrent creditors.

3) Article 21
   a) After the expiration of the grace period to see the list of divisions as intended in Article 192, or in the event that resistance has been filed after the verdict of the resistance case is spoken, the Curator shall immediately pay the division that has been established;

b) Then make payments to creditors in accordance with the Division List that has been approved by the Supervisory Judge under Article 201 jo. Article 189 of the Bankruptcy Law and PKPU.

After the payment stage is completed, the next steps taken are:

1) Announcing the end of Insolvency in 2 Newspapers and Daily News of the Republic of Indonesia in accordance with Article 202 paragraph (2) of the Bankruptcy Law and PKPU;
2) Provide accountability regarding Management/Enforcement to supervisory judges in accordance with Article 202 paragraph (3) of the Bankruptcy Law and PKPU;
3) Returning books and Documents regarding the Debtor's bankruptcy property and accompanied by proof of valid receipt in accordance with Article 202 paragraph (4) of the Bankruptcy Law and PKPU;
4) Rehabilitation.

CONCLUSION

1) Positive law can provide protection to buyers of apartment units if the developer is declared bankrupt where the arrangements are regulated in several Laws and Regulations which in this case are in different provisions. Among them is the Law that generally regulates the protection of the basic rights of citizens which specifically also protect the buyers or recipients of land rights and owners whose developers are declared bankrupt. These regulations include the 1945 Constitution Article 28 H paragraph 1, the Criminal Code, the Civil Code. Then a special law that discusses the protection explicitly among the Electronic Information and Transaction Law, the Consumer Protection Law, Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, Law No. 36 of 2009 on Health and The Trade Law.
2) Legal efforts that should be made by buyers of apartment units in the form of PPJB or PPJB that have been paid in full, whose assets enter into bankruptcy bundle is to carry out several things including:
   a) Submit a bill based on the time limits and procedures set as can be seen in the bankruptcy newspaper announcement;
   b) Creditors have the right to be able to ask the curator to continue the business of the debtor (developer) either in the management or completion stage including continuing construction and submitting the ordered units;
   c) It is necessary to move as a unit and be organized in order to protect consumer rights in the Bankruptcy process; In some cases, bankruptcy against developers can be resolved peacefully when the consumer paguyuban manages to find new investors. In this case, consumers are proactive in finding solutions;
   d) Other legal efforts that can be taken by buyers are in the form of complaints to the Consumer Dispute Resolution Agency (BPSK). Using the instruments of Article 16 and Article 18 of Law No. 8 of 1999 concerning Consumer Protection, buyers can demand their rights as consumers of flats; and

e) Filed a lawsuit.

3) Regarding how the law should give rights to the owners of apartment unit units in the event that the developer is declared bankrupt according to Law No. 37 of 2004 concerning Bankruptcy.

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