

CONSUMER PROTECTION AS CONCURRENT CREDITORS FOR DISTRIBUTION OF BOEDEL BANKRUPTCY DEVELOPER PROPERTY TYPE OF HOUSING

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Abstract

As a result of a property developer going bankrupt, housing consumers suffer losses, because Article 37 of the Bankruptcy Law & PKPU has not provided the same protection as the Consumer Protection Act. This study aims to determine the position of consumers as concurrent creditors and their legal remedies. This normative legal research is analyzed using the deductive method, which is a way of analyzing that is based on general laws and regulations to find answers to the legal issues studied. The results of the study, that consumers are placed as Concurrent Creditors whose debt fulfillment is paid last. Efforts that can be made so that consumers can become creditors are prioritized by reviewing the rights and obligations in the Sale and Purchase Binding Agreement made based on the Regulation of the Minister of Public Works and Public Housing Number 11/PRT/M/2019 concerning the Preliminary Agreement System for the Sale and Purchase of Houses and based on the Decision Constitutional Court Number 67/PU-XI/2013 on review of Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower, which states that, because workers do not participate in business, their payments can be prioritized over other Creditors. The decision can be applied to housing consumers who have already paid the money to the developer.

Keywords: Consumers, Concurrent Creditors, Bankruptcy Boedel

INTRODUCTION

It is commonplace that property developers do not fully have the capital to build housing. Property developers as business entities that carry out construction of housing can carry out buying and selling houses while the development process is ongoing. Therefore, it is not uncommon for prospective home buyers or consumers to pay first in part or in full to the developer, and for that a Sale and Purchase Binding Agreement, abbreviated as PPJB, will be made. PPJB is one of several types of agreement models in civil law which are in nature as an initial agreement before the parties sign the main agreement or Sale and Purchase Deed which is abbreviated as AJB which is made with the Land Deed Making Officer (PPAT). PPJB is an agreement made by prospective buyers based on pre-sales and pre-purchase agreements. This agreement is necessary to protect the interests of the seller and the buyer and to minimize disputes that may occur. [1] The binding in this agreement has the same effect as written law, as long as the agreement as the source is true or valid as required by Article 1320 BW.[2]

PPJB's legal basis is PUPR Ministerial Decree No. 11/PRT/M/2019 entitled Preliminary Agreement System for the Sale and Purchase of a House, Article 1 paragraph (2) states:

"Sales and Purchase Binding Agreements are bonds made by development actors with anyone to carry out the sale and purchase of houses or flats that can be held by the developer before the apartment is built or in the process of constructing single houses and row houses as stipulated in a notarial deed."

PPJB can be divided into 2 types:

1. PPJBWhat has not been paid in full is PPJB which contains a promise because the price has not been paid by the buyer, but there are several installments that must be paid.
2. PPJBpaid off is PPJB whose payment has been paid off but cannot be made AJB before the PPAT, because there are other requirements and reasons that have not been fulfilled so that AJB has not been made.[3]

In practice, PPJB can be made by private deed or notarial deed. Both forms will affect the strength of evidence in court, in the event of a dispute. After the issuance of the Minister of Public Works and Public Housing No. 11/PRT/M/2019, it is determined that a PPJB must be made with a notarial deed. Notary deed is the original deed which clearly stipulates the rights and obligations of the parties and guarantees legal certainty, so that it is expected to be used to avoid disputes. If a dispute is unavoidable, this document is the strongest and most comprehensive written evidence in dispute resolution and

makes a real contribution to a cost-effective and speedy settlement process. However, in practice, notaries usually work together to make standard agreements, so that the buying and selling process becomes practical and efficient.

The Consumer Protection Law Number 8 of 1999, Article 1 paragraph (10) explains, the standard clause is a clause that is prepared and determined earlier by the entrepreneur unilaterally and is included in the agreement which must be complied with by the consumer. However, many consumers are not careful about the contents of the signed agreement, because in general consumers when the PPJB is offered and read by the developer, it is easy to say they agree without knowing what the intent of the agreement is, so that when a dispute occurs, the consumer suffers a loss.

In the development process, it is not uncommon for developers to experience obstacles that result in failure to fulfill creditors' achievements, such as non-performing installments on bank construction loans, failure of the marketing process, and delays in the transfer of land rights, resulting in losses for the bank, consumer or investor. The loss is then considered as debt in bankruptcy. Inability of the Developer to pay his debts to Creditors and subsequently declared bankrupt, the Creditors (including prospective home buyers, must obtain certainty that the proceeds from the sale of the developer's assets or assets after being declared bankrupt can be an alternative payment for consumer losses and debts to other creditors. The obligation to pay compensation for default arises from the application of the terms of the agreement. This is a guideline for entrepreneurs and consumers, who have made agreements without coercion.[4]

Default is the main reason for consumers to file a bankruptcy lawsuit to the Commercial Court due to the delay in the process of submitting the certificate of land purchased to the Developer. Bankruptcy occurs when two or more creditors feel that their rights to repay debts have not been fulfilled, and at least one debt has defaulted, which is due and can be repaid. The judge at the Commercial Court renders his decision and declares bankruptcy if the company is in a state of insolvency. Insolvency is the stage where there is no settlement until homologation, and the bankruptcy estate is settled at that stage. [5]

Investors or consumers have the right to collect their debts to the bankrupt developer. In bankruptcy law, there are 3 types of creditors according to the order of distribution:

- 1) Spartan Creditors who have the right of material security;
- 2) Preferred Creditors who have privileged rights or take precedence over other creditors,
- 3) Concurrent Creditors who do not have material security rights and privileges.

If it is categorized because the consumer does not have material security rights and privileges, then his position is as a Concurrent Creditor.

The position of consumers as concurrent creditors is still not fully fair when the bankruptcy case is distributed, especially in this issue the consumer as a buyer is bound by PPJB to pay for the house even though it has not been fully completed. Because the house purchased has not yet been handed over to the building and land rights. It is very likely that the house will be used as collateral or entered into the settlement of bankrupt assets to pay off the creditors with the highest position.

In practice, the Concurrent Creditors receive a share after deducting the obligation to pay the bills of Separatist Creditors and creditors who have Preference rights in a proportional manner in accordance with the receivables of each Concurrent Creditor.[6]

With reference to the Decision of the Constitutional Court Number 67/PU-XI/2013 concerning Judicial Review Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower "payments of wages of workers/laborers who are owed take precedence over all types of creditors, including claims of Separatist creditors. , claims for state rights, auction institutions, and public bodies established by the Government. Meanwhile, the payment of rights of other workers/labourers takes precedence over all claims including claims for state rights, auction offices, and public bodies made by the Government, except claims for Separatist creditors". So according to the decision on the judicial review of the Manpower Act, the workers' wages are above the Separatist creditors. When compared, the position of the consumer on the bankrupt bank gets the last share, even though the consumer has already fulfilled his obligation to pay all or part of the bill in accordance with the agreement. There are still many loopholes in the Bankruptcy Act and PKPU, which cause huge losses to consumers. In the world of commerce, consumers are often the potential victims of business actors. Based on the decision of the Constitutional Court, consumers should have the right to prioritize their fulfillment.

Based on this, the author's purpose is to conduct research to analyze and solve problems related to the position of consumers as concurrent creditors in the distribution of bankruptcy estates for home property developers and the efforts made by consumers to have the right to take precedence or the house purchased is not used to pay off higher creditor debts.

RESEARCH METHODS

Normative Law Research is conducted by reviewing and analyzing regulations that address selected legal issues. The law approach and the case approach are used as research approaches. The analysis of legal materials is based on the deductive method by examining legal documents of a general nature and other supporting materials as analytical materials, to find answers to the legal problems under study so as to obtain correct conclusions.

RESULTS AND DISCUSSION

1.1. The Position of Consumers as Concurrent Creditors in the Distribution of Bankruptcy Accounts

When the bankruptcy enters the settlement stage, all the assets of the developer as the debtor become bankrupt boedel (Article 1 paragraph (1) of the Bankruptcy Law & PKPU). Article 1131 of the Burgerlijk Wetbook stipulates that "All objects of the debtor, both movable and immovable, both those already existing, and those that will only exist in the future, are borne by all individual engagements". Unless the house purchased by the consumer has been carried out in the buying and selling process, the house cannot be included in the bankruptcy account because ownership has been transferred to the consumer's name. In the provisions of Article 1459 of the Burgerlijk Wetbook, it is explained, if the delivery is not carried out in accordance with Articles 612, 613, and 616 of the Burgerlijk Wetbook, the ownership of the goods sold will not be transferred to the buyer.

The position of consumers is confirmed by Article 37 of the Bankruptcy Law and PKPU which states that the agreement in which the agreement is a delivery with a period of time, then after the bankruptcy is decided, the agreement will be deleted and the injured party is included in the concurrent creditor. This means that when the consumer makes an agreement with the developer with PPJB and if the developer is declared bankrupt, then the agreement agreed becomes invalid and is only an agreement to provide the consumer's position as a concurrent creditor.

Consumers will also be greatly harmed by the provisions of Article 138 of the Bankruptcy Law & PKPU, which in essence states that if the separatist creditor and preference creditor in the distribution of bankruptcy assets in the proof that some of their receivables cannot be repaid by selling collateral or auction, they can still request from the rights of the parties concerned. Concurrent creditors' rights. In practice, the distribution of concurrent creditors is carried out proportionately according to comparisons, as a result, with the existence of separatist and preferred creditors, consumers who from the start as concurrent creditors get a very small percentage.

In bankruptcy, there are 3 types of creditors who are entitled to repayment of their receivables, including:

- 1) Separatist creditors who have material security rights. This creditor can execute the collateral as if there was no bankruptcy, even though there is a bankruptcy decision. (Article 55 Bankruptcy Law & PKPU). These creditors may sell the collateral themselves. The sale of collateral goods is used to pay the receivables, if there is any excess, it will be given to the Curator as a bankrupt account. However, if the proceeds from selling the collateral goods are still not sufficient, the creditor may include the deficiency as a competitor in the unpaid bill as a competing (concurrent) creditor.[7]
- 2) Preferred creditors who have the privilege to collect due to the nature of the receivables. There are two kinds of Preferred Creditors, namely the special Preferred Creditors stipulated in Article 1139 of the Burgerlijk Wetbook, and the General Preferred Creditors in Article 1149 of the Burgerlijk Wetbook.[8]
In Article 1134 of the Burgerlijk Wetbook, it is stated "A privilege is a right that a creditor has under the law at a higher level than other creditors, only based on the nature of the receivable. Unless otherwise provided by law, with the exception of Pawns and Mortgages, they are more important than privileges."
- 3) Concurrent Creditors who are not holders of material security rights and privileges. (Article 1131 jo. Article 1132 Burgerlijk Webook).

In fact, creditors have the same position (parity creditorium) so that they will receive an equal share of the proceeds from the sale of bankrupt assets. However, there are exceptions to the *pari passu pro rata* principle, namely groups of creditors who hold collateral rights over an object and groups of creditors whose rights take precedence according to the Bankruptcy Act and other statutory regulations. Thus, the principle of creditorium parity only applies to concurrent creditors.[9]

Consumers as concurrent creditors who do not have material security rights and do not have special rights still have the right to the bankruptcy account because they have entered into an agreement with the developer through PPJB Rumah. The distribution of bankruptcy cases must be

carried out fairly in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia Article 28D paragraph (1) which states: Everyone has the right to recognition, guarantees, protection, fair legal certainty and equal treatment in the eyes of the law. The Consumer Protection Act is also based on the principles of expediency, justice, balance, consumer safety and security, as well as legal certainty.

As happened in the case of PT Dewata Abdi Nusa and Dewa Putu R Wibawa, the decision was made at the Surabaya Commercial Court Number 16/PAILIT/2013/PN.SBY., due to the bankruptcy petition of PT Bank Rakyat Indonesia. PT Dewata Abdi Nusa was declared to have credit to PT BRI for the construction of Graha Dewata housing. As a result of the decision, PT Dewata Abdi Nusa of course could no longer manage its assets because it was declared bankrupt. So that a total of 125 consumers suffered losses due to the bankruptcy of the housing development company which was unable to continue construction, because consumers only held PPJB not AJB.

Consumers are only entitled to a Building Use Rights Certificate (HGB Induk). Previously, this certificate was guaranteed to PT Bank Rakyat Indonesia as a Separatist creditor who provided construction loan facilities. Because the Certificate is encumbered with Mortgage Rights, when it is declared bankrupt, the certificate is in the hands of the Separatist creditor.[10] So that consumers as concurrent creditors who do not have material guarantees have a weak position compared to separatist creditors. Conditions like this are often not known by consumers, because they are usually not explained by developers. Whereas according to the provisions of Article 7 letter (b) of the UUPK, entrepreneurs or developers have the obligation to convey true, clear and honest information regarding the conditions and guarantees of goods and/or services as well as provide explanations on the use,

For the losses suffered by consumers, the distribution of bankrupt assets should refer to the articles of the Consumer Protection Law, including:

1. Article 4 letter (b), the rights of consumers, namely the right to choose goods and/or services and to obtain these goods and/or services in accordance with the exchange rate and the promised conditions and guarantees.
2. Article 4 letter (h), the right to receive compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not properly.

If the purchase of a house is made using a Home Ownership Credit (KPR), this is certainly beneficial for consumers, because consumers can make installment payments to banks whose security is more reliable than having to pay to the developer. Moreover, when the construction has been completed and the house is ready for occupancy, the bank will pay the full payment to the developer and immediately drop the mortgage on behalf of the consumer. With this, the purchased house is used as debt guarantee if the consumer does not perform his achievements. When the certificate has been transferred to the consumer's name and has Mortgage status, the house does not become part of the developer bankrupt bill because ownership of the object has been completely transferred to the consumer.

Bankruptcy law aims to provide protection to Concurrent Creditors in order to obtain their rights related to the application of the principle of guarantee, namely that "all assets of the Debtor, both movable and immovable, both existing and new in the future, become collateral for the Debtor's engagement. It also guarantees that the distribution of Debtor's assets is carried out on the basis of *pari passu pro rata* principle, proportionally dividing the Debtor's assets, as well as protecting Creditors from fellow Creditors.

1.2. Consumers Can Become Creditors with Priority in Payment

Article 1 paragraph 2 of the Bankruptcy & PKPU Law states that a creditor is a person who makes a debt agreement either because of an agreement or a law that can be collected before the court. Consumers usually enter into agreements with entrepreneurs to obtain and/or use goods/services. For example, in a sale and purchase agreement, the entrepreneur is obliged to provide and deliver goods or services, and the consumer is obliged to pay a predetermined price. For consumer payments, it means that there are receivables that can be collected.[11]

To give legal standing to consumers so that they can fight for their rights, it is necessary to clarify the status of their receivables. Therefore, concurrent creditors have the obligation to report their receivables to the curator at the creditors' meeting as stipulated in Article 115 paragraph 1 of the Bankruptcy & PKPU Law.

As a concurrent creditor, the consumer has the right to request a receipt for delivery to the curator. The curator as the trustee must attach evidence to support the claim to verify the veracity of the bill submitted by the creditor. An application can be accepted (verified) if it can be proven correctly and definitely based on the available evidence. [12] This is necessary for consumers to get clear recognition of receivables in the distribution of bankrupt accounts.

In the settlement of bankrupt accounts, the concurrent creditors receive adequate reimbursement of receivables with the remaining proceeds from the sale or auction of bankrupt assets after the shares of the special (separatist) and special (preferred) groups are taken. [13]

If the creditors feel that there is an inappropriate or disproportionate distribution, then the creditor can file a fight. This challenge should be filed based on the arguments and demands that the Court declare the distribution list invalid, and instruct the Curator to revise the distribution list in accordance with what is requested by the creditor.[14]

According to the provisions that contain compensation, consumers should get privileges on their receivables. The position of the consumer as a concurrent creditor is very detrimental and is not in accordance with the regulations governing the rights of the buyer.

Referring to the Decision of the Constitutional Court Number 67/PU-XI/2013 concerning the Judicial Review of Article 95 paragraph (4) of the Manpower Act Number 13 of 2003, the decision is "payment of wages of workers/laborers who have not been paid must take precedence over all existing creditors. , including claims for Separatist creditors, claims for state rights, auction offices, and public bodies established by the Government. Meanwhile, the payment of other workers/labor rights takes precedence over all claims including claims for state rights, auction offices, and government public agencies, except claims from Separatist creditors". So according to the decision of the Judicial Review, the workers/labourers who were initially the Preferred Creditors were divided into:

1. Labor Wages.
2. Separatist Creditors, who have collateral rights.
3. Preferred Creditors, who have special rights.
4. Concurrent Creditors, general creditors.

It is clear that the Constitutional Court in giving its decision refers to Human Rights. It was written in its decision in the Court's Opinion [3.18], "It is unfair to insure something against something that does not participate in the business". Based on article 28A of the 1945 Constitution, it is a constitutional right and based on article 28 I paragraph (1) is a right that cannot be reduced under any circumstances, therefore based on paragraphs (4) and (5) of the article, the State must protect, promote, enforce, and fulfill it in laws and regulations in accordance with the principles of a democratic rule of law.

Likewise property consumers, they are not directly involved with development or marketing activities. Consumers only perform their achievements, namely paying the cost of the house purchased in accordance with the Sale and Purchase Binding Agreement. When the curator settles the bankrupt certificate, the house can be immediately included in the bankrupt certificate. Consumers can't do anything, because the Sale and Purchase Engagement Agreement (PPJB) is not proof of the transfer of rights like the Sale and Purchase Deed (AJB). Based on the decision of the Constitutional Court, the position of the consumer as a concurrent creditor who is not directly involved in the house construction business, should be equal in position to that of a laborer whose wages must be paid before other creditors.

Therefore, consumers should be placed as Preferred creditors, even though there are no explicit provisions stating that property consumers have the right to take precedence. Elucidation of Article 74 of the Human Rights Law Number 39 of 1999, stipulates that "no one is justified in taking unilateral advantage and or causing harm to another party". The purpose of the regulation is that a regulation must not cause the loss or reduction of human rights protected by law. This provision can be used as the basis for not causing property consumer losses, by increasing the consumer status from concurrent creditors to preferred creditors.

CONCLUSION

The position of consumers in the distribution of bankrupt accounts for Home Property Developers as concurrent creditors has not been fully fair because consumers have suffered losses as a result of the distribution of bankrupt accounts, consumers are in the last place after Separatist creditors and Preferred creditors. Indeed, there is no rule that states the existence of Priority Rights for property consumers as creditors who do not have collateral, but with reference to other cases that are both related to developer bankruptcy, such as the Constitutional Court Decision Number 67/PU-XI/2013 regarding judicial review Article 95 paragraph (4) The Law on Manpower Number, the ruling of which states that workers/ laborers can pay off their debts first, even over Separatist creditors, even though their initial position is as Preferred creditors.

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