

LEGAL CERTAINTY FOR CONSUMERS IN GOOD FAITH DUE TO THE DEVELOPER COMPANY BEING DECLARED BANKRUPT

Hengky Himawan Hie^{1*}, Dewi Iryani², Puguh Aji Hari Setiawan³

^{1,2,3}Faculty of Law, Bung Karno University, Jakarta, Indonesia

hengky.hengkie@gmail.com^{1*}, iryani.dewi@yahoo.co.id², ubkpuguhaji@gmail.com³

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Abstract

The issue of legal certainty for consumers in good faith in buying and selling houses becomes even more important when the developer company is declared bankrupt. Consumers who have carried out their obligations, whether in the form of down payment, installments, and repayment, are often only positioned as concurrent creditors in the bankruptcy settlement process. This study uses normative juridical legal methods with a statutory *approach* and a conceptual approach. The source of research data was obtained through literature studies which include primary legal materials in the form of the 1945 Constitution of the Republic of Indonesia, the Civil Code, Law Number 8 of 1999 concerning Consumer Protection, Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, as well as several Supreme Court decisions related to developer bankruptcy cases. Secondary legal materials are derived from books, legal journals, and the results of previous research. Data analysis is carried out by interpreting laws in a systematic, contextual, and comparative manner to obtain the right legal construction. The results of the study show that there is a legal disharmony between the Consumer Protection Law and the Bankruptcy Law. Consumers in good faith are often only placed as concurrent creditors so that they do not get optimal legal protection. In fact, Article 28H of the 1945 Constitution guarantees the right of everyone to live and live properly. Therefore, there is a need for legal reconstruction that places consumers as preferred creditors or given a special position in developer bankruptcy, in order to realize legal certainty, justice, and utility. The author recommends that regulatory reform be carried out through amendments to the Bankruptcy Law by accommodating the legal protection of consumers in good faith as a form of implementation of the principles of social justice.

Keywords: Legal Certainty, Consumer, Bankruptcy

INTRODUCTION

The development of housing and residential areas is one of the basic needs of the community guaranteed in the Indonesian constitution. Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that everyone has the right to live a prosperous life in birth and mind, to live, and to have a good living environment. This norm is emphasized in Law Number 39 of 1999 concerning Human Rights, which in Article 40 states that everyone has the right to live and get a decent life. (Waha, 2014). Thus, the right to housing is not only economically valuable, but also a fundamental right that the state must protect. The fulfillment of housing rights is generally carried out through the mechanism of buying and selling houses provided by the developer company. *The developer* acts as a business actor who provides the housing unit, while the consumer is the party who buys in the hope of obtaining ownership rights in accordance with the agreement. (Fauzia, 2021)

Housing is not only economically valuable, but also has social and cultural value. The house is a means of forming a family, a social environment, and a socio-economic identity. Therefore, the housing sector plays a strategic role in national development. The state's limitations in building housing for the entire community give birth to the role of the private sector, especially developers or development companies, which are present to provide housing through the buying and selling mechanism. (Hamdani, 2023)

Consumer Protection is an effort to ensure legal certainty to provide protection for consumers. Consumer protection explains the principle of *the privity of Contract*, this principle states that business actors can only be held legally responsible as long as there is a contractual relationship between themselves and consumers. It is not surprising that there is a view that consumer protection law is closely correlated with contract law. (Karimuna, 2024)

The obligation of business actors is to protect consumers, if a contractual relationship has been established between them. Business actors cannot be blamed for things outside the agreement, which means that consumers can sue based on default (*contractual liability*). Although juridically the business actor and the consumer are in the same position, the fact is that the consumer is the party who usually benefits according to the will of the business actor. The phenomenon of standard contracts that is widely circulated in society is a clear indication of how helpless consumers are in the face of the dominance of business actors. In such a contract, the business actor can unilaterally eliminate the obligations that he should bear. The rights and obligations of Consumers and Business Actors have been regulated in Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as the Consumer Protection Law). (Indradewi, 2020)

The provision of housing needs is the responsibility of the government, as stated in the 1945 Constitution states that "everyone has the right to live a prosperous life in birth and mind, to live, and to have a good and healthy living environment." The government's limitations in management, providing opportunities for business entities that are active in the property sector or commonly known as housing developers are very helpful and make it easier for the government to meet the basic needs of the community. (1945.)

The occurrence of a sale and purchase agreement between a company and a consumer according to the Civil Code (KUHPerdara) is that the sale and purchase agreement is only obligatoir, meaning that the sale and purchase transfers property rights, it only gives rights and establishes obligations to both parties, namely giving the buyer the right to demand the surrender of ownership rights to the goods sold. What is stated here regarding the sale and purchase is clear from Article 1459 of the Civil Code, which explains that the title of the goods sold does not transfer to the buyer as long as the delivery of the goods to the buyer has not been carried out (according to the relevant provisions). (Umardani)

The relationship between the housing company and the consumer is based on the existence of an agreement outlined in a form of a predecessor agreement. This is in practice giving birth to a preliminary agreement or what is called a Sale and Purchase Agreement Agreement. Housing companies take advantage of low consumer awareness and knowledge as a land for the company to run a business so that consumers have greater risks than business actors, in other words consumer rights are very vulnerable. (Christian Luther Manopo, 2016)

Many cases show that consumers have paid most of the house price, some have even paid off, but have not received the house. The loss is even greater when the developer is declared bankrupt, because all the company's assets become the object of settlement by the curator to pay off debts to creditors. In this position, consumers do not automatically get priority over the house units that have been ordered, but are only positioned as concurrent creditors. (Chumaida, 2014)

In practice, consumers have often carried out their obligations, such as paying down payments, installments, or even paying off the house price. However, it is not uncommon for developers to experience financial difficulties until they are finally declared bankrupt by the court. In such conditions,

the position of consumers becomes very weak because their status is often only seen as a concurrent creditor, which means that their rights are equated with other creditors without priority. In fact, consumers have shown good faith by carrying out obligations according to the agreement, while the promised rights to the house are not also accepted. (Bhakti, Perlindungan Hukum Konsumen Properti Atas Sistem Pre Project Selling Di Kota Batam, 2019)

The presence of developers plays a strategic role in the provision of housing, especially in urban areas that are experiencing rapid growth. Consumers generally buy houses through a *pre-project selling scheme* or a binding sale and purchase agreement (PPJB) before the construction is completed. This scheme provides an opportunity for consumers to pay in installments from the beginning, but on the other hand, it creates a risk if the developer fails to complete the project. In practice, not a few consumers have fulfilled their payment obligations, either partially or fully, but have not received their rights to the housing units as agreed. (Bhakti, Perlindungan Hukum Konsumen Properti Atas Sistem Pre Project Selling Di Kota Batam)

Developer bankruptcy is regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. In bankruptcy conditions, all of the debtor's assets become a bankruptcy estate managed by a curator. Debt payments are carried out by prioritizing separatist and preferential creditors, while concurrent creditors get the last share according to the principle of *pari passu prorata parte*. (Hartanto, 2016)

Law Number 37 of 2004 concerning Bankruptcy and PKPU defines bankruptcy as a situation in which the debtor has two or more creditors and does not pay at least one debt that has matured and can be collected, which is then declared by a court decision. In the event that the developer is declared bankrupt, all of the company's assets become bankrupt assets controlled by the curator to be distributed to creditors.

The problem arises when the consumer is only considered a concurrent creditor without special collateral. As a result, consumers have to compete with banks, financing institutions, or suppliers of building materials that are often separatist creditors (holding material guarantees) or preferred creditors (e.g., countries with tax rights). This weak legal position makes consumers almost always in the last position in the distribution of the proceeds of the settlement of bankruptcy assets (Septiyeni, 2020).

It is undeniable that the rampant bankruptcy cases that befall housing business actors are quite attention-grabbing. Several housing companies were declared bankrupt with all the legal consequences. In the bankruptcy case that befell the housing company, the position of consumers is a questionable thing. The reason is that some parties say that housing consumers do not have clear rights when the company that manages the housing they buy stumbles into bankruptcy, as experienced by PT Graha Anggoro Jaya Consumers (hereinafter referred to as PT. GAJ) as the buyer of the house named Mrs. Paulina Peperawati Narahawarin (hereinafter referred to as Paulina).

This case began when Paulina was interested in buying a house marketed by PT. GAJ located at Block E5 DN Joho No. 032 RT 03 RW 02 Jambidan Banguntapan Bantul Type 90 at a price of Rp.609,000,000;- (six hundred and nine million Rupiah), which on May 6, 2014 Paulina made a cash payment in stages, namely the first stage of payment was made on May 6, 2014 amounting to Rp.350,000,000; (three hundred and fifty million Rupiah) and after that Paulina's husband immediately signed the Booking of House Unit Type No. 009/SP/2014 dated July 2, 2014, and the second phase of payment on July 25, 2014 amounting to Rp. 200,000,000;- (two hundred million Rupiah) and the third/final phase payment on January 5, 2015 amounting to Rp.54,000,000;- (fifty-four million Rupiah) which in whole was added with the Booking Fee which amounted to Rp. 609,000,000;- (six hundred and nine million Rupiah). After the second phase of payment, on August 8, 2014, Mr. Wisnu Tri Anggoro as President Director of PT. GAJ invited the Plaintiff to sign the sale and purchase deed in front of the PPAT Notary. Furthermore, after the sale and purchase deed was made, PT. GAJ brought the deed with the reason of making a certificate/name change of name for the house and land located in Block E5 DN Joho No. 032 RT 03 RW 02 Jambidan Banguntapan Bantul, but until now there has been no follow-up from PT. GAJ related to this, even PT. GAJ became difficult to contact and/or find its existence until finally there was a Decision of the Surabaya Commercial Court No. 02/PKPU/2016/PN. Niaga.Sby, dated April 14, 2016, which bankrupted PT. GAJ and appointed Eries Jonifianto as the Curator to manage and settle the bankruptcy assets belonging to PT. GAJ, the Curator immediately carried out the registration of the bankruptcy assets where Paulina's millik house is located in Block E5 DN Joho No. 032 RT 03 RW 02 Jambidan Banguntapan Bantul which was obtained by buying and selling legally from PT. GAJ is also included as a list of bankruptcy budel/bankruptcy assets of PT. GAJ.

Commercial Court Decision at Surabaya District Court No. 22/Miscellaneous Lawsuits/2018/PN. Trade. Sby Jo. No. 02/PKPU/2016/PN Niaga Sby granted Paulina's Resistance as a Resistor and Counteract which included the house owned by Pelawan located in Block E5 DN Joho No. 032 RT 03

RW 02 Jambidan Banguntapan Bantul in the list of Bankruptcy Decrees of PT. GAJ is an unlawful act and has no legal force and must be canceled. On this Decision, the Opponent filed an Cassation Decision in which Cassation Decision Number 435 K/Pdt.Sus-Pailit/2019 actually granted the Cassation application so as to cancel the Commercial Court Decision at the Surabaya District Court No. 22/Miscellaneous Lawsuit/2018/PN. Trade. Sby Jo. No. 02/PKPU/2016/PN Niaga Sby. (Putusan Kasasi Nomor 435 K/Pdt.Sus-Pailit/2019). This further adds to legal uncertainty and the lack of justice for consumers in legal protection. Consumers are also often categorized as concurrent creditors who will receive compensation after separatist and preferential creditors.

The issue of legal certainty and legal justice for consumers in the housing industry becomes increasingly crucial when the developer company is declared bankrupt. The case in the Supreme Court Decision No. 644K/Pdt.Sus-Pailit/2017 reveals how dozens of consumers who have paid off their house payments legally still do not get ownership rights because the property is entered as bankruptcy by the curator. In the decision, the Court stated that the sale and purchase agreement that had been carried out before bankruptcy was valid according to the law and met the elements of Article 1320 of the Civil Code. (Putusan Mahkamah Agung Nomor 395 K/Pdt.Sus-Pailit/2024)

The phenomenon of developer company bankruptcy often leaves complex legal issues, especially related to the protection of consumer rights as home buyers. The case in the Supreme Court Decision Number 395 K/Pdt.Sus-Pailit/2024 is a clear illustration when the curator puts the house unit that has been paid in full by the consumer into the bankruptcy bond, even though the binding sale and purchase agreement has been made and the house has been handed over. In the ruling, the Court emphasized that consumers who have fulfilled their obligations are parties in good faith and are obliged to receive legal protection, and the house is not part of the bankruptcy estate.

The law should protect consumers in good faith, as stipulated in Law No. 8 of 1999 and the principle of justice in the Bankruptcy Law. Consumers should be positioned as parties who receive special protection in the bankruptcy process, not equated with ordinary creditors. The ideal law must guarantee certainty and justice, by providing a proper legal standing for consumers in the distribution of bankruptcy assets. (Mantili, 2020)

In the Indonesian legal system, bankruptcy is regulated through Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law). Based on Article 1 number 1 of the Bankruptcy Law, bankruptcy is defined as "general confiscation of all assets of a Bankruptcy Debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge as stipulated in this Law." This means that all debtors' assets, including assets promised to consumers, are included in the bankruptcy bond which will be distributed to creditors in the order stipulated in Article 189. In this division, consumers are generally qualified as concurrent creditors, i.e. the party that receives the latest payment after separatist and preferential creditors. This causes injustice, especially for consumers who have deposited money in good faith to buy a house from a developer who was later declared bankrupt.

Meanwhile, in Article 4 letter a of Law Number 8 of 1999 concerning Consumer Protection, it is emphasized that;

"Consumer rights are the right to comfort, security, and safety in consuming goods and/or services".

In addition, Article 19 paragraph (1) of the same Law states that;

"Business actors are responsible for providing compensation for damage, pollution, and/or losses to consumers due to consuming goods and/or services produced or traded".

This provision should provide legal certainty for consumers in the event of losses, including due to default or bankruptcy of business actors. However, in practice, legal protection for consumers in bankruptcy cases is not adequately touched because the provisions in the Bankruptcy Law do not accommodate the legal position of consumers as parties who are required to be specifically protected.

This reality is reflected in several court decisions, such as Supreme Court Decision Number 435 K/Pdt.Sus-Pailit/2019, Decision Number 644 K/Pdt.Sus-Pailit/2017, and Decision Number 395 K/Pdt.Sus-Pailit/2024, which shows that in many cases, consumers are only positioned as concurrent creditors and do not receive priority in the execution of bankruptcy bonds. In fact, houses or properties purchased by consumers are not just commercial assets, but concern the right to residence and the feasibility of life which are also guaranteed by the constitution in Article 28H of the 1945 Constitution.

According to Gustav Radbruch, law has three basic values, namely legal certainty (*rechtssicherheit*), justice (*gerechtigkeit*), and utility (*zweckmäßigkeit*). In the context of developer bankruptcy, these three values are often unbalanced. Legal certainty fails to be realized because regulations do not provide a clear position for consumers. The principle of justice is also neglected because consumers with good intentions are often the most disadvantaged. In terms of benefits, this situation causes social unrest and lowers public trust in the property sector. (Ali, 1996)

From the perspective of Hans Kelsen's theory of legal certainty, law should provide strict and predictable norms. However, in the practice of developer bankruptcy, consumers do not get certainty because their position is not clearly regulated in the law. Meanwhile, according to Satjipto Rahardjo, the law must be on the side of justice-seeking society (*law for human, not human for law*). In line with that, Sudikno Mertokusumo emphasized that the law must provide protection for human interests in a fair manner. Thus, consumers in good faith should not be treated solely as ordinary creditors, but given special protection. (Serlika Aprita, 2019)

In the Bankruptcy Law, Article 55 gives separatist creditors the right to execute their guarantees as if there were no bankruptcy. Article 1131 of the Civil Code emphasizes that all debtors' assets are general collateral for creditors. However, housing consumers do not have material guarantees for houses that have not been completed or have not been handed over, so they do not have legal force to compete with other creditors.

The Consumer Protection Law (Law No. 8 of 1999) does guarantee the right of consumers to obtain goods or services according to agreements. However, when the developer goes bankrupt, these rights cannot be fulfilled because they are hit by the bankruptcy mechanism. Thus, there is a clash between the bankruptcy law regime and consumer protection law.

This problem creates legal uncertainty. From the normative side, Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations regulates the procedures for settling bankruptcy assets, but it has not clearly provided special protection for good-faith consumers who buy developer products. Meanwhile, Law Number 8 of 1999 concerning Consumer Protection emphasizes the responsibility of business actors in sale and purchase agreements, but its application in the context of bankruptcy still raises debate.

Philosophically, the law is supposed to provide protection and justice for the weak, in this case the consumer. But sociologically, many cases show that consumers have to bear the double loss of losing money that has been paid while not getting a house. For example, in some Supreme Court rulings, consumers often do not get priority despite having made full payments, as the courts put consumers on an equal footing with ordinary creditors. This shows the disharmony between legal certainty, justice, and utility. (Amin, 2019)

From a juridical perspective, this condition indicates that there is a gap or legal gap in protecting consumers in good faith when the developer goes bankrupt. Existing norms tend to favor the interests of corporations and large creditors, rather than the interests of consumers who are essentially the most disadvantaged. Therefore, research on legal certainty for consumers in good faith due to the developer company being declared bankrupt is very important to examine the extent to which positive law provides protection and how legal reconstruction should be carried out so that the interests of consumers can be protected fairly.

The legal uncertainty experienced by consumers has a wide impact. From a social perspective, consumers have lost trust in developers and legal systems. From the economic side, the losses experienced by consumers are very large because they lose the money that has been paid, while the obligation to pay mortgage installments to banks must still run. This creates structural inequities that harm small and medium-sized communities.

In practice, courts often give different rulings regarding the position of consumers in developer bankruptcy. There are decisions that recognize consumers as parties that must be protected, but there are also those that place consumers only as concurrent creditors. This disparity in decisions further strengthens the legal uncertainty. From this description, it is clear that there is a legal *vacuum* and legal disharmony between the Bankruptcy Law and the Consumer Protection Law. This legal vacuum causes consumers in good faith not to get optimal protection. In fact, the existence of the law is supposed to protect the most vulnerable parties.

RESEARCH METHODS

This study uses normative juridical legal methods with a statutory *approach* and a conceptual approach. The source of research data was obtained through literature studies which include primary legal materials in the form of the 1945 Constitution of the Republic of Indonesia, the Civil Code, Law Number 8 of 1999 concerning Consumer Protection, Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, as well as several Supreme Court decisions related to developer bankruptcy cases. Secondary legal materials are derived from books, legal journals, and the results of previous research. Data analysis is carried out by interpreting laws in a systematic, contextual, and comparative manner to obtain the right legal construction.

RESULTS AND DISCUSSION

Legal regulation for consumers who are harmed due to the bankruptcy of housing companies based on Law No. 8 of 1999 concerning Consumer Protection.

In the Indonesian property business world, consumers often face a complicated dilemma when the developer company they bought a house from goes bankrupt. Imagine a family that has saved for years to buy a dream house, has paid in full to the developer, but suddenly has to lose the house because the developer is declared bankrupt. Situations like this reflect the disharmony between two important pillars of law: the Bankruptcy Act and the Consumer Protection Act. (Shahira, 2022)

Consumer protection is actually a legal aspect that aims to regulate and protect the interests of consumers based on the principle of "Privity of Contract" - where business actors can be held legally liable if there is a contractual relationship with consumers. However, in practice, consumers are often the most disadvantaged parties when dealing with the economic power of business actors, especially in standard contracts that do not provide negotiation space for consumers. (Syamsuddin)

When a property company is declared bankrupt under Law Number 37 of 2004, all of its assets become part of the bankruptcy *boedel* managed by the curator. The process begins when a company has two or more creditors and is unable to pay in full at least one debt that has become due. The Commercial Court then has the authority to decide on bankruptcy within a maximum period of 20 days after the application is registered. (Siahaan, 2016)

On the other hand, Law Number 8 of 1999 concerning Consumer Protection provides a guarantee that consumers have the right to obtain legal certainty, convenience, and justice in every transaction. Article 19 paragraph (1) even emphasizes that business actors are responsible for providing compensation for consumer losses due to the goods or services produced.

However, when these two laws meet in the case of developer bankruptcy, a clash of norms arises that are detrimental to consumers. Consumers who have paid in full for their homes are only considered concurrent creditors - i.e. those who do not have special security rights and can only get repayment after the separatist creditors (such as the dependent banks) and the preferred creditors are met first.

The inconsistency in the application of this law is clearly seen in three Supreme Court decisions with different orientations. Supreme Court Decision Number 435 K/Pdt.Sus-Pailit/2019 with the bankruptcy debtor PT. Graha Anggoro Jaya reflects a rigid and formalistic face of the law. In this case, consumers who have paid in full are still declared to have no ownership rights because there is no Sale and Purchase Deed (AJB), so they are only placed as concurrent creditors.

On the contrary, the Supreme Court Decision Number 644 K/Pdt.Sus-Pailit/2017 against PT. Rizky Jaya Sentosa Farm shows a more progressive approach. The judge provides protection to consumers by stating that houses that have been paid in full should not be included in bankruptcy bonds. This decision reflects the application of distributive justice, where consumers who have fulfilled payment obligations receive ownership recognition.

The culmination is the Supreme Court Decision Number 395 K/Pdt.Sus-Pailit/2024 in the case of PT. Graha Cipta Suksestama and PT. Niman Internusa, developer of the Lavanya Hills Residences project. The Supreme Court took a progressive step by affirming that the Binding Sale and Purchase Agreement (PPJB) that has been carried out by the consumer remains valid and the house unit cannot be included in the bankruptcy bond. This ruling is an important precedent in building legal certainty and justice.

The position of consumers as concurrent creditors actually contains profound structural injustices. Unlike other commercial creditors who understand business risks, consumers are simply ordinary people who buy homes for basic residential needs. They do not have a strong bargaining position and often do not understand the complexities of bankruptcy law.

From the point of view of Gustav Radbruch's theory of legal certainty, this situation shows that legal certainty should not be understood in a purely formalistic way. When consumers in good faith do not get their homes due to a bankrupt developer, legal certainty becomes an illusion. Radbruch himself emphasized that if there is a conflict between legal certainty and justice, then justice must take precedence. (Nasution, 2016)

In Aristotle's perspective of justice, which distinguishes distributive and corrective justice, consumers are supposed to be protected through distributive justice. Those who have fulfilled the payment obligation should receive a distribution of rights in the form of acknowledgment of ownership. Corrective justice also requires that when consumers are harmed by developer failure, they must be restored to their original position. (Pratama, 2024)

Satjipto Rahardjo's progressive legal theory is also relevant in this context. The law should be a means of protection for the weak, not just a formal mechanism for asset distribution. Decisions that

protect consumers are a tangible form of progressive law, where judges not only adhere to normative texts but also incorporate substantive justice values.

Consumer protection in developer bankruptcy also has an important constitutional dimension. Article 28H paragraph (1) of the 1945 Constitution guarantees the right of everyone to obtain a decent place to live. Housing is not just a business commodity, but a basic citizen's right guaranteed by the constitution. (Haryono, 2023)

The social function of land and housing rights as stipulated in the 1960 Law also strengthens the argument that consumers deserve special treatment. When the consumer's house that has been paid enters the bankruptcy bank, the state actually fails to guarantee the basic rights of its citizens. Therefore, consumer protection is not only a matter of private law, but also a constitutional obligation of the state.

Consumer protection also creates an incentive for developers to manage their business more prudently and responsibly. When they know that consumers will be protected in bankruptcy, developers will be more careful in financial management and will not carelessly take risks that could harm consumers. (Fратиwi, 2023)

The fundamental problem that must be solved is the disharmony between the Bankruptcy Law and the Consumer Protection Law. These two laws have different spirits and objectives, so when they meet in practice they create a conflict of norms that are detrimental to consumers.

The Bankruptcy Law emphasizes more on the principle of creditorum parity and proportional distribution of assets based on creditor classification. Meanwhile, the Consumer Protection Law focuses more on protecting the weak from adverse business practices. Without good harmonization, there will continue to be disparities in decisions that create legal uncertainty.

To overcome this problem, it is necessary to reformulate norms in the Bankruptcy Law that provide a special position for consumers. Consumers who have made full payments need to be affirmed as parties who have priority material rights, not just concurrent creditors. Thus, protection no longer depends on the interpretation of diverse judges, but rather becomes a definite positive norm.

Harmonization must also be carried out with the UUPK so that legal certainty for consumers applies not only in ordinary contractual relationships, but also in the context of bankruptcy. It is necessary to create a special mechanism that recognizes PPJB that has been paid in full as a legal basis of ownership, even though the AJB has not been signed. (Widyantari, 2019)

In addition, it is necessary to strengthen a supervisory system for developers and *escrow account* institutions that can protect consumer funds from the risk of misuse by developers. With this system, consumer funds will be safe even if the developer faces financial problems.

Legal certainty for consumers in good faith due to a developer company that is declared bankrupt

Law is essentially an abstract concept that becomes real when applied, and a rule of law is considered good if its impact results in goodness, maximum happiness, and a reduction in suffering. The purpose of the law is to achieve justice, utility, and legal certainty. Legal certainty is achieved when regulations are drafted and announced clearly so as not to cause multiple interpretations or conflicts of norms.

Gustav Radbruch stated four basic things related to the meaning of legal certainty, namely: (1) law is a positive law in the form of legislation, (2) law must be based on facts or reality, (3) legal facts must be formulated clearly so that they are not misinterpreted and easy to implement, and (4) positive law must not be easily changed. Radbruch places legal certainty as the product of positive laws that govern people's lives, even though they are sometimes unjust, they must still be obeyed. (Harefa, 2020)

In the context of bankruptcy, creditors or creditors are parties who have the right to debt payments, including consumers who buy houses from developers. In bankruptcy, residential consumers are usually categorized as concurrent creditors, who have no priority over the bankruptcy assets and can only collect from the remaining assets after separatist and preferential creditors are met. Bankruptcy cases of several property developers such as PT. Ladang Rizky Jaya, PT. Graha Anggoro Jaya, and PT. Graha Cipta Suksestama shows a weak consumer position even though they have paid off payments or have a valid sale and purchase agreement. They are treated as ordinary creditors with no special protections and are not recognized as the rightful owners of the home.

This creates a disharmony between the principle of procedural legal certainty in the Bankruptcy Law and the substantive justice promised in the Consumer Protection Law. Normatively, bankruptcy law provides certainty for large creditors with collateral, but leaves consumers in uncertainty because their rights depend on the rest of the bankruptcy estate. In this case, progressive legal interpretation and regulatory revision are needed so that the principles of substantive justice and legal

certainty can go hand in hand, so that consumers get balanced legal protection as part of true justice and legal certainty. (Isfardiyana, 2016)

Another important thing is the role of the curator in the bankruptcy process who manages and settles the bankruptcy proceedings and the obligation of the curator to provide legal protection to creditors, including consumers. The curator must prepare a deed of sale and purchase for consumers that has been paid off as part of an effort to provide legal certainty. The process of land registration and transfer of ownership recorded through the Land Deed Making Officer (PPAT) in accordance with the Agrarian Law is also an important part in ensuring legal certainty for land and house ownership rights.

In addition, in bankruptcy, the debtor can apply for peace with the creditor so that the debt payment can be settled peacefully, which, if approved and homologated by the commercial court, has legal force. This peace is beneficial for both parties to avoid greater losses and provide certainty of debt settlement.

In conclusion, the law must guarantee certainty, justice, and utility. In the practice of bankruptcy, especially in the case of housing consumers, there is a tension between procedural legal certainty and substantive justice that must be overcome in order to improve legal protection for consumers, in accordance with Gustav Radbruch's idea of placing justice as a top priority in law.

CONCLUSION

Legal arrangements for consumers who are harmed by the bankruptcy of the developer company still do not provide optimal protection. Law No. 37 of 2004 on Bankruptcy puts consumers in a position as concurrent creditors, without privileges, so that their bills can only be fulfilled after separatist and preferred creditors are paid. This causes great losses, especially for consumers who have fulfilled payment obligations, even to the point of being paid off. Meanwhile, Law No. 8 of 1999 on Consumer Protection has normatively guaranteed consumers' rights to a sense of security, comfort, legal certainty, and compensation, but these protections are often not implemented in bankruptcy mechanisms. This disharmony shows the gap between consumer protection norms and formalistic bankruptcy practices.

Legal certainty for consumers in good faith in bankruptcy cases still faces serious problems. The inconsistency of the court's decision shows that there is a tug-of-war between the application of formalistic legal certainty and the need for substantive justice. In some rulings, judges tend to be rigid by placing consumers only as concurrent creditors, while in other rulings judges start progressive by recognizing consumers' rights to the house that has been paid. This difference in the application of the law shows that legal certainty that should provide predictability actually gives birth to new uncertainty. This condition not only harms consumers, but also weakens public trust in the legal system and the property sector.

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