



3rd International Conference on Law Reform (3rd INCLAR)

22–23 July 2022

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3rd International Conference on Law Reform (3rd INCLAR)

This collection contains selected papers from the 3rd International Conference on Law Reform (3rd INCLAR) held virtually on the 22nd-23rd of July 2022. This event was hosted by the Faculty of Law, University of Muhammadiyah Malang.

The conference was held to discuss the impact of COVID-19 on Indonesian legal and judicial systems.

This KnE Social Sciences collection contains 59 peer-reviewed articles analysing the latest political and legal reforms introduced in Indonesia to combat the COVID-19 health emergency. In addition, studies examine human rights fulfillment, compliance with international and Indonesian health laws, and handling of economic crises and corruption as a consequence of the pandemic.

These papers will be of interest to academics, students and professionals researching or working in the fields of law, social sciences, Islamic studies, human rights and public health.

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Conference Paper

Fulfilling the Rights of Housing Consumers As a Result of Developer's Bankruptcy Decision

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Abstract.

The state guarantees the right of every citizen to get a decent living and a place to live as a human being. Consumer rights in the housing sector are regulated in Law Number 8 of 1999 concerning Consumer Protection, Law Number 1 of 2011 concerning Housing and Settlement Areas, and Law Number 20 of 2011 concerning Flats. Consumer rights are the obligation of business actors to fulfill. Bankruptcy is an effort for creditors to fulfill their rights to debtors. In principle, consumers in the housing sector do not want developers to go bankrupt, but on the contrary, bankruptcy is used as a loophole for irresponsible developers to avoid their obligations. The consumer's position becomes a questionable matter because the consumer's position is harmed by the bankruptcy decision. In this paper, we will discuss on how is the position of consumers in the housing sector as a result of the bankruptcy decision of the developer and the efforts to fulfill the rights of housing consumers fairly. The research method used is normative with an approach to norms and principles in regulation. The data used is secondary with qualitative data analysis and deductive conclusions. The purpose of this paper is to explain the position of housing consumers on the developer's bankruptcy decision, and efforts to fulfill consumer rights due to the developer's bankruptcy decision. The developer's bankruptcy decision has resulted in housing consumers being concurrent creditors. Efforts that can be taken to fulfill consumer rights are to position consumers as creditors with special rights because of the law based on the Circular Letter of the Supreme Court Number 4 of 2016 and the Decision of the Constitutional Court 21 of 2015, in addition to efforts to file a lawsuit to the district court as well as amendments to bankruptcy regulations and consumer protection.

Keywords: bankruptcy, housing, consumer protection

1. INTRODUCTION

The COVID-19 pandemic that has hit Indonesia since March 2020 has undeniably brought a significant impact on the economic sector. The imposition of Large-Scale Social Restrictions (PSBB) directly or indirectly has an impact on the industrial sector which has to reduce production costs by closing factories, laying off employees and terminating employment as a rational effort in responding to the decline in demand and income. This has a domino effect, such as increasing the number of unemployed and

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decreasing people's quality of life. The government must also spend a large amount of money from the state budget to provide stimulus in order to support the various affected sectors. One of the sectors affected is the housing sector.[1],[2] The rise of developer bankruptcy cases adds to new problems, especially the problem of protection for the fulfillment of housing consumer rights during this pandemic.

Since January 2020, requests for postponement of debt payment obligations (PKPU) and bankruptcy have soared to reach 318 applications with a majority of 278 PKPU cases and the rest being bankrupt, when compared to last year's data, there is a significant difference in cases. Based on data compiled by Hukumonline, the PKPU and Bankruptcy cases as of September last year stood at 257, or a difference of 131 cases from this year. Examples of developer bankruptcy cases include PT. Pelangi Putra Mandiri (PT.PPM) which makes its consumers restless because they have paid in installments at the bank even though it has been paid off but has not yet received a certificate as proof of ownership, and even many of the consumers who have occupied houses that have become assets or have gone bankrupt while the installments to the bank continue to run every month and if the consumer does not pay the installments it will become a collectivity record at Bank Indonesia and if you continue to pay installments there is no certainty that you will get a certificate. In addition, there is a contractor PT PPM whose bills are paid through house swaps who also do not receive a certificate of ownership[3].

Starting with the PKPU application against PT Prospek Duta Sukses (PT.PDS), the developer of the 45 Antasari Apartment, which was submitted by Eko Aji Saputra as the Petitioner with a total receivable of Rp. 2 billion, which was finally declared bankrupt by the Central Jakarta Commercial Court on September 22, 2020 The consumer is harmed by the bankruptcy decision because the consumer (buyer) is in a weak position in regard to the distribution of the bankruptcy estate[4]. The developer bankruptcy case also happened to PT Cowell Development Tbk, a developer of luxury housing in the Serpong area, South Tangerang City, which was declared bankrupt based on the decision of the Commercial Court at the Central Jakarta District Court (PN) with register Number: 21/Pdt.Sus/Pailit/2020/PN .Niaga.Jkt.Pst, submitted by creditors on behalf of PT Multi Cakra Kencana Abadi. As a result of the bankruptcy decision, consumers are threatened with difficulty in obtaining their rights. The same thing happened to the consumers of the Green Pramuka Apartment. Consumers were surprised by the decision of the Central Jakarta Commercial Court regarding the Application for Determination of Suspension of Debt Payment Obligations (PKPU) by Arya Adipurwa and Indiarti Wulandhari (both are residents of GPC Apartments against PT. Duta Paramindo Sejahtera as the developer)[5]. The same thing also happened to consumers in Palembang, PT.

Trinitas Properti Persadan was decided PKPU by a Commercial Court Decision with case register number 391/Pdt.sus PKPU/2020/PN.Niaga.Jkt.Pst on January 20, 2021. There are many more housing consumer cases that ultimately harm consumer rights, such as the K2 Park Apartment case, at Serpong; the Meikarta case, the Green Pramuka City Apartment case, the LA City Lenteng Agung apartment case, the M-Icon Yogyakarta case, the Kemanggisan Residence case, and the case Violet Garden Bekasi.

Debt in the business world is something that is usually done by individual business actors and companies. Business actors who are still able to repay their debts are usually called “solvable” business actors, meaning business actors who are able to pay their debts. On the other hand, business actors who are unable to pay their debts are called “insolvable”, meaning that they are unable to pay.[6] As for what is meant by bankruptcy is a confiscation and execution of the entire wealth of the debtor (the debtor) for the benefit of all his creditors (the creditor). Article 1 point 1 of Law no. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law) defines bankruptcy as a general confiscation of all assets of a bankrupt debtor whose management and settlement is carried out by the curator under the supervision of a supervisory judge.[7] Bankruptcy is an effort to guarantee the payment of debtors’ debts to creditors, this effort offers a fair, fast, open, and effective settlement of debt problems, through bankruptcy it is hoped that there will be no seizure of debtor’s assets; Creditors holding material guarantees pay more attention to the fate of other creditors; and frauds by Debtors and Creditors can be avoided.[7]

To protect, empower the dignity of consumers, it is necessary to have awareness, knowledge, ability, and independence of consumers to protect themselves and to develop the attitude of responsible business actors, as well as the need for state intervention through the establishment of a legal protection system for consumers.[8] In general, consumers do not understand about bankruptcy, and this confuses consumers where in the initial agreement the developer or agent never discussed bankruptcy, payments to consumers due to the bankruptcy decision were made by the curator after conducting a Verification Meeting, and there are still many consumers who do not understand what steps they take if the developer goes bankrupt so that their rights as consumers are protected, considering that most of them have paid in full and have occupied a house or apartment unit/flat but still hold proof of the PPJB in full and do not have a certificate of ownership.

In the case of bankruptcy that afflicts the developer, the position of the consumer becomes a questionable matter because the consumer does not have clear rights when the developer stumbles into bankruptcy, and if viewed from Law no. 8 of 1999 concerning

Consumer Protection (UUPK), losses suffered by consumers must be resolved fairly, consumers have the right to receive compensation as they should, the consumer has the right to choose the goods and/or services and obtain the goods and/or services in accordance with the exchange rate and the promised conditions and guarantees, the consumer has the right to obtain compensation, indemnity and/or replacement, if the goods and/or services accepted not in accordance with the agreement or not properly if the business actor commits an act that is prohibited for the business actor [9], where business actors are prohibited from producing and/or trading goods and/or services that are not in accordance with the promises stated in the label, etiquette, description, advertisement or promotion of the sale of the said goods and/or services.[10]

On the basis of these considerations, the issue discussed in this paper is in regard to the position of housing consumers as a result of the developer's bankruptcy decision and how to fulfill the rights of housing consumers fairly. The purpose is in order to describe and explain the position of housing consumers as a result of the developer's bankruptcy decision and the solution to the fulfillment of housing consumer rights fairly. Answering these problems, the author uses a type of normative juridical research [11], with an approach to the legal norms or rules of laws and regulations relating to consumer protection as a result of the developer's bankruptcy related to the subject matter [11]. The type of data used is secondary data [11] with qualitative descriptive data analysis [11]. The justification for data analysis is not only describing and disclosing the data as it is, but also revealing the existing reality in relation to the protection for housing consumers as a result of the bankruptcy of the developer. Conclusions are drawn using the deductive method [11].

2. METHODOLOGY/ MATERIALS

This research is normative research (legal research) [12] with several approaches at once. Each of them is a legal approach (statute approach), analytical approach (analytical approach), and philosophical approach (philosophical approach). This research will depart from textual studies, namely legislation and judges' decisions. This research will examine the legal norms contained in the regulatory texts. This research will use secondary data as the main data, which is obtained from the literature study. The secondary data in this study will be presented systematically and then analyzed descriptively and analytically using deductive logic.

3. RESULTS AND DISCUSSIONS

The legal umbrella for bankruptcy and PKPU is Law No. 37 of 2004 concerning Bankruptcy and PKPU [13] supported by related laws and regulations, namely the Civil Code (KUHPperdata) Articles 1131, 1132, 1139 and 1149, and Law No. 40 of 2007 concerning Limited Liability Companies (UUPT) [14]. Meanwhile, the legal umbrella for consumer protection is Law No. 8 of 1999 concerning Consumer Protection and its derivative regulations. Regarding the bankruptcy of the housing sector, it is also necessary to look at Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) [15], Law No.1 Year 2011 concerning Housing and Settlement Areas (Housing Law) [16], Law No.20 Year 2011 concerning flats (UURS) [17], Law No. 4 Year 1996 concerning Mortgage Rights on Land and Objects Relating to Land (UU Mortgage Rights) [18] 4, Government Regulation No. 24 Year 1997 (Government Regulation on Land Registration), Supreme Court Circular (SEMA) Number 4 Year 2016 concerning the Implementation of the Formulation of the Results of the 2016 Plenary Chamber Meeting of the Supreme Court as a Guide to the Implementation of Duties for the Court, and Decision Number 21/PUU-XIII/2015 on Judicial Review of Law Number 20 of 2011 concerning Flats.

Article 1 number 1 of the Bankruptcy Law defines Bankruptcy as "general confiscation of all assets of the Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law". Whereas Article 1 number 6 defines debt as "an obligation that is stated or can be stated in the amount of money both in Indonesian currency and foreign currency, either directly or which will arise in the future or contingent, arising from an agreement or law and which must be fulfilled by the Debtor and if it is not fulfilled, it entitles the Creditor to obtain its fulfillment from the assets of the Debtor". It means that the existence of a Bankrupt Decision by a Judge will result in general confiscation for the Bankrupt Debtor on all of his assets, both the Debtor's assets at the time of the bankruptcy declaration decision as well as everything obtained during the bankruptcy and the loss of the Bankrupt Debtor's right to control and manage his assets because the Curator is authorized to manage the Debtor's assets. The bankruptcy decision is decided by the judge if it fulfills the bankruptcy requirements [13]. The Bankruptcy Law defines debt in a broad sense, namely not only obligations arising from debt agreements but also obligations arising outside of debt and receivable agreements, either because of the law or because of agreement [19].

Bankruptcy is the implementation of Articles 1131 and 1132 of the Civil Code related to the fulfillment of the rights of creditors. Types of Creditors in Bankruptcy are namely Creditors holding the highest preference (Article 1137 of the Civil Code), Separatist Preference (Article 1133 of the Civil Code), Special (Article 1134 of the Civil Code), General Preference (Article 1139 of the Civil Code and Special Preferences (Article 1149 of the Civil Code), and Concurrent Creditors (Article 1131 of the Civil Code). So there are 3 groups of Creditors, namely Separatist Creditors, namely Creditors holding material security rights, who can act alone. These creditors are not affected by the bankruptcy declaration decision, meaning that their execution rights can still be exercised as if there was no debtor bankruptcy. Creditors holding mortgages, fiduciary guarantees, mortgages, and mortgages or other collateral rights are characteristics of separatist creditors. Furthermore, concurrent creditors, namely creditors who must share with other creditors proportionally (*pari passu*), namely according to the ratio of the size of each claim, from the sale of the debtor's assets that are not burdened with collateral rights, and preferred creditors, namely creditors that have privilege or priority. UUK-PKPU uses the term special rights, as regulated in the Civil Code. Privileges contain the meaning of rights that are given by law to a debtor so that the level is higher than other debtors. As a result of the declaration of bankruptcy by the Judge of the Commercial Court against the Bankrupt Debtor, for Creditors the *Pari passu pro rata parte* condition applies, except for those who have the right to take precedence and a 90-day "stay" period for Separatist Creditors.

The Bankrupt Decision brings legal consequences for general confiscation, where the legal consequences of confiscation of collateral are all assets of the Bankrupt Debtor are in the management and settlement of the Curator, no payment can be made to one of the Creditors, all the consequences of civil procedural law in terms of confiscation of collateral, confiscation of execution and confiscation all revindications must be appointed/removed, all assets of the Bankrupt Debtor which are under the control of another party must be returned to the boedel, detentions that have been made against the Bankrupt Debtor must be immediately released.

In the housing sector, based on the understanding of consumers (Article 1 point 2 UUPK), what is meant by housing consumers are those who buy and use housing units or apartments for personal (self) purposes and not for sale. Personal purpose is meant as a place to live. Meanwhile, the definition of developers (developers or development actors), based on the understanding of business actors (Article 1 point 3 UUPK), are those who build and/or market apartment units to the public. In practice, there are two types of housing consumers (real estate), namely end users who buy for their own use

and investors (speculators) who buy to sell again to make a profit. By term, End user means consumer, as stipulated in Article 1 number 2 of the UUPK, while investors can be said to be intermediate consumers, as explained in Article 1 number 2 of the UUPK. For middle- and upper-middle-class housing, investors are generally dominated, while there are only a few end users. Due to the dominance of investors, it is not surprising that every time a new product launches housing or apartment in a favorite location, the product runs out immediately. In common sense, is it possible for an end user to buy a house blindly so that hundreds of houses or thousands of apartment units can be sold in just a few days or a few weeks. Most ordinary people do not understand the situation, so they are amazed how people buying houses or apartments for hundreds of millions to billions of rupiah can be like buying fried bananas. Because of lack of knowledge, end users are often disadvantaged because they follow the wrong path.

In the housing sector, the legal relationship between consumers and developers exists out of an agreement as evidenced by a binding sale and purchase agreement (PPJB) or a deed of sale and purchase (AJB). The rights and obligations of consumers and developers are as follows:

3.1. Condition Prior to Development (No Cinsturuction)

In conditions prior to construction, consumers have the right to clear, correct, honest and accountable information regarding:[10],[20]

1. Land ownership status (certificate of land rights)
2. Certainty of space allocation (certificate of city plan approved by local government)
3. Certainty of the ownership status of the flats (descriptors approved by the local government)
4. Ownership of Building Permits (IMB)
5. Availability of infrastructure, facilities & public utilities
6. Construction of at least 20%
7. guarantee for the construction of flats from the guarantor institution (bank/non-bank support letter)
8. Other agreed terms (location of houses/flats, shape of houses/flats, building specifics, price of houses/flats, other facilities, time of handover of houses/flats).

On the other hand, the consumer's obligation (Article 5 UUPK) is to find out all information and read Sale and Purchase Binding Agreement/PPJB (for Flats) to form P3SRS. Consumer rights as mentioned above are an obligation for developers to fulfill them. On the other hand, the obligations of the Developer (Business Actor) in the pre-development condition are:[10]

1. Have good intentions in doing business (comply with applicable laws)
2. Provide correct, clear and honest information, including in conducting promotions/advertising
3. Comply with the limitation of inclusion of standard clauses in documents and/or agreements
4. Sale and Purchase Binding Agreement (PPJB) in the form of a Notary Deed

Meanwhile, the developer's right is to get payment for the unit price of the house or apartment/flat according to the initial agreement.

3.2. Condition after Development (Existing Development)

In the existing development conditions, consumers have the right to clear, correct, honest and accountable information regarding information regarding:[10]

1. Sale and Purchase Deed (AJB) in the form of a Notary Deed /PPAT
2. Function-worthy certificate (SLF) has been issued
3. Decision Letter (SK) of split main land certificate has been obtained
4. Ownership Certificate (SHM/SHGB) or Ownership Certificate of Flats unit (SHM-SRS) or Statement of Premise (SKBG) has been issued
5. Other things, such as electricity connections, clean water, hydrants, etc., are functioning properly
6. Public Facilities (Fasum) and Social Facilities (Fasos) are available
7. Transparent information related to Management Fees (IPL), electricity and water tariffs, parking, and others for apartments/flats

On the other hand, the consumer's obligation (Article 5 UUPK) is to ensure that all the equipment is in place/ready and for apartments/flats, it is the consumer's obligation

as owners and residents to form P3SRS. Consumer rights as mentioned above are an obligation for developers to fulfill them. On the other hand, the obligations of business actors are to fulfill, prepare, and ensure that all the equipment which is the right of consumers is already available/ready, to provide all relevant information in a transparent, correct & accountable manner, and for apartments/flats, the developer's obligation to facilitate consumers form P3SRS.

In practice in the housing sector, in the conditions of Bankruptcy Decisions against Developers, generally the conditions that occur in the field include the following:

1. The consumer has paid the price for the purchased house unit or apartment/flat, either in cash/in installments/House Ownership Credit;
2. The housing unit or apartment/flat has been handed over from the Developer to the Consumer and many have been occupied by the Consumer;
3. Generally, for the most part, the basis of Consumer rights is still in the form of a Sale and Purchase Binding Agreement (PPJB) [21];
4. Generally, most of the Consumers still have not got the Ownership Certificate/SHM because the Developer has not been able to solve the Master Certificate;
5. Generally the Master Certificate is pledged as collateral by the Developer to the Bank providing the Construction Credit for the Development of the Developer item plan, and the Master Certificate cannot be resolved if the Developer has not paid off the debt to the Bank [22].

As a result of the Bankruptcy Decision on the Developer having an impact, among others, Land and all objects located on it become bankrupt assets, the Bank as a Separatist Creditor (Holder of Mortgage) has the right to carry out execution (auction) on land whose certificates are pledged as collateral to the Bank, Consumers (Unit Buyers) do not can be considered as the owner of land rights due to not having a certificate of ownership because generally consumers still hold PPJB even if the PPJB has been paid off, thus Consumers become Concurrent Creditors and have the right to register bills with the Curator Team. The condition of consumers as concurrent creditors is certainly detrimental to consumers in fulfilling their rights, especially when consumers have paid in full for their houses or flats/apartments

3.3. Efforts to Fulfill Housing Consumer Rights as a Result of the Developer's Bankrupt Decision

Legal protection can be divided into two types, namely preventive and repressive protection. Preventive protection is protection provided by the government with the aim of preventing violations before they occur. This is contained in laws and regulations with the aim of preventing a violation and providing signs or limitations in carrying out an obligation. While repressive protection is repressive legal protection is a final protection in the form of sanctions in the form of fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed [23]. Preventive protection has been regulated in the UUPK, the Housing Law, and the UURS in articles that regulate the rights and obligations of consumers and business actors/developers/development actors, prohibitions for business actors/developers/development actors, limits on the inclusion of standard clauses and guidance and supervision. Meanwhile, repressive protection is regulated in articles of administrative, civil and criminal sanctions, including efforts to settle disputes.

In addition, the Civil Code as the basis for civil law in the Second Book (regarding objects) has also regulated protection for creditors, namely Article 1131 (General Guarantee), Article 1132 (Special Guarantee), Article 1133 (Separatist Preference), Article 1134 (Special), Article 1137 (creditor of the Holder of the Highest Preference), Article 1139 (General Preference), Article 1149 (Special Preferences). Furthermore, in the Third Book (regarding Legal Relation), namely Article 1233, 1234 (Legal Relation due to Agreement & Law), Article 1239 (Default), Article 1313 (Definition of Agreement), Article 1320 (conditions for a valid agreement), jo. Articles 1334, 1338, 1340, 1365, 1457, 1458, 1459.

The provisions that have been described above regulate the order of priority of the Creditors. If it is not determined that a receivable is a special right that has a higher position than the receivable guaranteed by a material security right such as a lien, fiduciary right, mortgage, then the order is as follows:

1. First, creditors who have receivables that are guaranteed by material guarantees.
2. Second, creditors who have Special Rights.
3. Third, concurrent creditors.

On the other hand, if a Special Right is determined to be repaid first than other reditors, including Creditors holding material Collateral rights, the order of the Creditors is as follows:

1. First, creditors who have Special Rights.
2. Second, creditors who have receivables that are guaranteed with material guarantee rights;
3. Third, concurrent creditors [24].

In addition to the UUPK, the Housing Law, the UURS, and the Civil Code, it is necessary to look at Law No. 40 of 2007 concerning Limited Liability Companies (UUPT), namely Article 104 in conjunction with Article 97, Article 92 (Piercing the corporate veil and Fiduciary Duty of Directors), and Article 115 jo. Article 114, Article 108 (Piercing the corporate veil and Fiduciary Duty of the Board of Commissioners). Furthermore, Law no. 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA), namely Article 19 paragraph (2) letter c (the provision of proof of rights documents is valid as a strong evidence), Government Regulation Number 24 of 1997 concerning Land Registration (PP Land Registration), namely Articles 23 and 32 (Certificate is a certificate of proof of rights), Law no. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (Law of Mortgage Rights), namely Article 14 paragraph (3) concerning Mortgage Certificates, Circular Letter of the Supreme Court (SEMA) Number 4 of 2016 concerning Enforcement of the Formulation of Meeting Results 2016 Plenary Chamber of the Supreme Court as a Guide to Duties for the Court: Point 7 Legal Formulation of the General Civil Chamber: The transfer of land rights based on the Sale and Purchase Binding Agreement (PPJB) legally occurs if the buyer has paid the land price in full and has mastered the object of sale purchased and carried out in good faith and the Constitutional Court Decision Number 21/PUU-XIII/2015 Testing of Law Number 20 of 2011 concerning Flats, 10 May 2016.

Efforts that can be made by consumers if the developer is declared bankrupt are indeed limited, considering that the position of the consumer is only as a concurrent creditor, which together with other creditors receive guarantees from the developer's property as debtors. The proceeds from the sale of debtor's property will be divided in a balance (*pari passu pro rata parte*) based on the amount of each creditor's claim. While on the other hand, it is possible for developers to borrow money from banks or other financial institutions with land guarantees in the form of Mortgage Rights. [25] This condition causes banks or other financial institutions to become separatist creditors who can exercise their rights as if there was no bankruptcy. This means that they can directly execute the land in the manner stated in Article 6 in conjunction with Article 20 of Law No. 4 of 1996 concerning the Mortgage Rights Act, namely:

1. Selling the object of the Mortgage on its own power through a public auction and taking the settlement of its receivables from the proceeds of the sale. This legal act is known as "parate execution".
2. Based on the executorial title listed in the Mortgage Certificate, conduct a public auction

Property rights (HM) are regulated in Articles 20 – 27 of the UUPA. Article 20 paragraph (1) of the UUPA defines HM as a hereditary, strongest and fulfilled right that can be owned by people on land by keeping in mind the provisions of Article 6 of the UUPA. The purpose of the strongest and fulfilled rights does not mean that HM is an absolute, unlimited and inviolable right, as referred to in the eigendom rights, but rather to show that among land rights HM is the strongest and most complete right. Because HM is a hereditary right, HM can be inherited by the right holder to his heirs. HM is the strongest, meaning HM is not easy to delete and easy to defend against interference from other parties [26]. Fully means that HM grants other powers broadly compared to other rights. This means that the HM can be the master of other rights, for example the holder of the HM can lease it to someone else. As long as it is not limited by the authorities, the authority of a HM holder is not limited [26].

Article 23 paragraphs (1) and (2) of the UUP, property rights, as well as any transfer, annulment and encumbrance with other rights must be registered according to the provisions referred to in article 19. The registration referred to in paragraph (1) is a means of proof a strong statement regarding the abolition of property rights and the legality of the transfer and assignment of such rights. Furthermore, Article 32 of PP Number 24 of 1997 concerning Land Registration,

Certificates are letter of proof of rights that are valid as a strong means of proof regarding the physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the letter of measurement and the book of land rights in question. Regarding the legal force of mortgage, Article 14 paragraph (3) of Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land, the Mortgage Certificate as referred to in paragraph (2) has the same executorial power as the decision a court that has obtained permanent legal force and is valid as a substitute for a grosse acte Hypothek insofar as it concerns land rights. For the transfer of land rights based on PPJB, there is the Supreme Court (MA) of the Republic of Indonesia, as stated in the Circular Letter of the Supreme Court (SEMA) Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber of 2016 as Guidelines for the Implementation

of Duties for the Court, Points 7 Legal Formulation of the Civil Chamber, General Civil: "The transfer of land rights based on the Sale and Purchase Binding Agreement (PPJB) legally occurs if the buyer has paid the land price in full and has mastered the object of sale and purchase and is carried out in good faith".

Both consumers and business actors (development actors) have the same rights and obligations as regulated in the laws and regulations. Consumer rights are obligations for business actors (development actors) to be fulfilled. This obligation cannot be ignored by business actors (development actors) on the basis of the inability of business actors. There is a bankruptcy decision against the developer (development actor) with reasons, of course. However, the bankruptcy decision of the developer does not necessarily harm the rights of consumers, considering that consumers generally only have PPJB and do not hold a Certificate or SHMSRS. Besides that, bankruptcy efforts are not a loophole or a way for developers/development actors to avoid their responsibilities in fulfilling consumer rights.

As a legal basis for bankruptcy, the Bankruptcy Law classifies creditors into three types, namely concurrent, preferred and separatist creditors, which generally belong to the housing sector consumers in the group of concurrent creditors because most consumers only have or hold PPJB and have not held a Certificate of Rights. In addition, most consumers have paid in full for purchases. This condition often occurs in consumers of vertical housing of flats/apartments, and many of them are already living in houses or flats/apartments. The problem with consumers having certificates is because the land where the house or flat or apartment has not yet been described by the developer and some even have the land used as collateral (as collateral for debt) by the developer, even though the developer's obligation (construction actor) is to carry out a description for the requirements in making entitlement certificate. The consumer's position as a concurrent creditor certainly has an unfavorable impact on consumers if the developer goes bankrupt because the fulfillment of consumer rights is the last order after the preferred creditor and privileges. However, that does not mean that the bankruptcy of the developer will be the end of the world for consumers because consumers are only concurrent creditors.

There are several efforts that can be made for the fulfillment of housing consumer rights as follows:

1. SEMA Number 4 of 2016 states that "The transfer of land rights based on the Sale and Purchase Binding Agreement (PPJB) legally occurs if the buyer has paid the land price in full and has mastered the object of sale and purchase and is carried out in good faith". This means that consumers who hold PPJB paid off in

good faith have the same rights as consumers who have a Certificate of Rights, so that consumers who hold PPJB paid off in good faith have the same position as creditors who are privileged on the basis of the law. Therefore, for housing consumers who hold PPJB in full, the fulfillment of their rights should be prioritized from the proceeds from the sale of assets from the auction of business actors' assets (Article 1139 in conjunction with Article 1149 of the Civil Code).

2. The corporate legal regime in terms of personal liability of company organs can be an option that can be taken if there is strong evidence, namely the developer's bad faith using the bankruptcy route in order to avoid his responsibility for the fulfillment of consumer rights (UUPT, Article 104 in conjunction with Article 97, Article 92 and Article 115 in conjunction with Article 114 and Article 108). Of course, going through the company's legal regime is a pretty difficult choice for consumers because it costs a lot of money in the process of filing and settling civil lawsuits to the district court. Not all housing consumers can afford to pay the costs of civil case proceedings in district courts. In addition, consumers also need to obtain evidence of bad faith from developers taking bankruptcy efforts to avoid their responsibilities in fulfilling consumer rights. In line with the company's legal regulations, Article 61 of the UUPK states that "criminal prosecutions can be carried out against business actors and/or their managers". This means that the legal umbrella for consumer protection regulates the efforts of consumers who are harmed by business actors to file criminal charges if there is strong evidence that the consequences of the actions of business actors and/or their administrators cause harm to consumers. This effort is of course also quite difficult for consumers because it requires money, time and energy to process reports to the police regarding allegations of criminal acts of business actors causing losses to consumers, although consumers who are harmed can take class action.
3. Efforts to amend the Bankruptcy Law and UUPK. Bankruptcy Law amendments are needed to include provisions for the position and order of creditors due to bankruptcy decisions, where housing consumers are included in creditors with special rights on the basis of the law. Meanwhile, amendments to the UUPK are needed to include the position of housing consumers in bankruptcy, the developer is a consumer or creditor who has special rights granted by law and the State guarantees the fulfillment of housing consumer rights as a result of the developer's bankruptcy decision.

Point 2, regarding efforts to fulfill consumer rights through the company's legal regime, it can be noted that consumers can also file lawsuits against members of the Board of Directors and/or members of the Board of Commissioners who have a role in the occurrence of the bankruptcy of their company. This lawsuit is a lawsuit based on Unlawful Acts (PMH) committed by members of the Board of Directors and/or members of the Board of Commissioners as regulated in Article 1365 of the Civil Code which states that: because it was wrong to issue the loss, compensate for the loss.”.[27]

This article was interpreted by Hoge Raad (Dutch Supreme Court) in its Decision (Arrest) dated January 31, 1919 in the Lindebaum vs. Cohen Case: (See M.A. Moegni Djodirdjo, Unlawful Acts, Pradnya Paramita: 1982, p. 35 etc.) [28]:

1. the existence of deeds;
2. the act must be against the law;
3. There are four things that can be said to be unlawful acts:
4. contrary to the rights of others; or
5. contrary to its own legal obligations; or
6. contrary to good morals; or
7. contrary to the imperative that must be heeded in social interactions regarding other people or things.
8. there is a loss suffered by the other party;
9. There is a causal relationship between the unlawful act and the loss suffered by the other party.

Based on this PMH, sow the company as a legal entity that covers members of the Board of Directors and/or members of the Board of Commissioners will be opened so that they can no longer hide behind the status of a limited liability company as a legal entity. This is a principle in corporate law known as piercing the corporate veil, which is literally interpreted as uncovering the veil of the company.

Corporate law describes piercing the corporate veil as a doctrine or theory that describes the process to impose responsibility on other people or other companies for the legal actions they have committed. The court will ignore the status of the company, and impose responsibility on the "personal" and "perpetrators" who are in the company. So that in this case there is a disregard for the principle of limited liability from the company as a legal entity, which is often the principle of limited liability enjoyed by

those behind the company. This court action explains that the court has removed the veil or veil of the company [29].

Based on the principle of piercing the corporate veil, the existence of Article 3 Paragraph (2), Article 104 Paragraph (2) and Paragraph (3) as well as Article 115 Paragraph (1) and Paragraph (2), will be strengthened by Article 1365 of the Civil Code which allows consumers to use it as a legal remedy to enforce its rights that have been violated by the developer and the developer is in a state of bankruptcy

Based on several efforts that can be taken to fulfill housing consumer rights as described above, the authors consider that the efforts of the corporate legal regime, consumer protection legal regime and efforts to review the Bankruptcy Law against the UUPK are less profitable for consumers because consumers need to prepare costs, time and effort including legal counsel who can assist consumers in the process. Of course, this is quite burdensome for consumers, although it can be done through class action. Efforts to fulfill housing consumer rights through SEMA Number 4 of 2016 can be a logical and effective choice for consumers because the Supreme Court through a Circular clearly states that for consumers who hold PPJB paid off can be interpreted the same as consumers who hold Certificates and/or SHMSRS so that the position of consumers as creditors with privileges under the law. [30] Therefore, against the developer's bankruptcy decision, the consumer rights of the PPJB holder in full are protected for the fulfillment of their rights as housing consumers. For that we need good support from law enforcement officers, in this case the judges in implementing SEMA No. 4 of 2016 including practitioners as legal counsel for consumers.

4. CONCLUSION AND RECOMMENDATION

The existence of a Bankruptcy Decision by a Commercial Court Judge against Developers, the position of consumers being concurrent creditors (Ordinary Creditors) due to most housing consumers do not have/hold proof of ownership in the form of Certificates and only have proof of sale and purchase binding agreement (PPJB). The solution in fulfilling consumer rights is to position the consumer (the holder of the paid off PPJB) to be equated as a creditor with special rights on the basis of the law as stated in Circular Letter of the Supreme Court No. 4 of 2016 and the Constitutional Court's Decision No.21 of 2015. Another effort, consumers (holders of paid off PPJB) can take efforts through corporate law permits and consumer protection laws through corporate and/or personal accountability efforts from the Board of Directors if they are indeed bankrupt due to the

actions of the Board of Directors that harm the company so that the company cannot fulfill its obligations.

In addition to efforts to amend the consumer protection law and the Bankruptcy Law. It is necessary to amend consumer protection law by including the position of housing consumers in bankruptcy the developer is a consumer who has special rights granted by law and the State guarantees the fulfillment of the rights of housing consumers as a result of the developer's bankruptcy decision. It is necessary to amend the Bankruptcy Law by including provisions on the position and order of creditors due to bankruptcy decisions, where housing consumers are included in creditors with special rights. Strengthening the role of law enforcement and also the function of guidance and supervision in the housing sector in order to enforce the law on consumer protection in the housing sector. There is a need for intensive and massive education on an ongoing basis to the community as consumers, including optimizing the role of non-governmental consumer protection agency as a consumer companion.

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Fulfilling the Rights of Housing Consumers As a Result of Developer's Bankruptcy Decision

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Fulfilling the Rights of Housing Consumers As a Result of Developer's Bankruptcy Decision

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Abstract.

The state guarantees the right of every citizen to get a decent living and a place to live as a human being. Consumer rights in the housing sector are regulated in Law Number 8 of 1999 concerning Consumer Protection, Law Number 1 of 2011 concerning Housing and Settlement Areas, and Law Number 20 of 2011 concerning Flats. Consumer rights are the obligation of business actors to fulfill. Bankruptcy is an effort for creditors to fulfill their rights to debtors. In principle, consumers in the housing sector do not want developers to go bankrupt, but on the contrary, bankruptcy is used as a loophole for irresponsible developers to avoid their obligations. The consumer's position becomes a questionable matter because the consumer's position is harmed by the bankruptcy decision. In this paper, we will discuss on how is the position of consumers in the housing sector as a result of the bankruptcy decision of the developer and the efforts to fulfill the rights of housing consumers fairly. The research method used is normative with an approach to norms and principles in regulation. The data used is secondary with qualitative data analysis and deductive conclusions. The purpose of this paper is to explain the position of housing consumers on the developer's bankruptcy decision, and efforts to fulfill consumer rights due to the developer's bankruptcy decision. The developer's bankruptcy decision has resulted in housing consumers being concurrent creditors. Efforts that can be taken to fulfill consumer rights are to position consumers as creditors with special rights because of the law based on the Circular Letter of the Supreme Court Number 4 of 2016 and the Decision of the Constitutional Court 21 of 2015, in addition to efforts to file a lawsuit to the district court as well as amendments to bankruptcy regulations and consumer protection.

Keywords: bankruptcy, housing, consumer protection

1. INTRODUCTION

The COVID-19 pandemic that has hit Indonesia since March 2020 has undeniably brought a significant impact on the economic sector. The imposition of Large-Scale Social Restrictions (PSBB) directly or indirectly has an impact on the industrial sector which has to reduce production costs by closing factories, laying off employees and terminating employment as a rational effort in responding to the decline in demand and income. This has a domino effect, such as increasing the number of unemployed and

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decreasing people's quality of life. The government must also spend a large amount of money from the state budget to provide stimulus in order to support the various affected sectors. One of the sectors affected is the housing sector[1],[2] The rise of developer bankruptcy cases adds to new problems, especially the problem of protection for the fulfillment of housing consumer rights during this pandemic.

Since January 2020, requests for postponement of debt payment obligations (PKPU) and bankruptcy have soared to reach 318 applications with a majority of 278 PKPU cases and the rest being bankrupt, when compared to last year's data, there is a significant difference in cases. Based on data compiled by Hukumonline, the PKPU and Bankruptcy cases as of September last year stood at 257, or a difference of 131 cases from this year. Examples of developer bankruptcy cases include PT. Pelangi Putra Mandiri (PT.PPM) which makes its consumers restless because they have paid in installments at the bank even though it has been paid off but has not yet received a certificate as proof of ownership, and even many of the consumers who have occupied houses that have become assets or have gone bankrupt while the instalments to the bank continue to run every month and if the consumer does not pay the instalments it will become a collectivity record at Bank Indonesia and if you continue to pay instalments there is no certainty that you will get a certificate. In addition, there is a contractor PT PPM whose bills are paid through house swaps who also do not receive a certificate of ownership[3].

Starting with the PKPU application against PT Prospek Duta Sukses (PT.PDS), the developer of the 45 Antasari Apartment, which was submitted by Eko Aji Saputra as the Petitioner with a total receivable of Rp. 2 billion, which was finally declared bankrupt by the Central Jakarta Commercial Court on September 22, 2020 The consumer is harmed by the bankruptcy decision because the consumer (buyer) is in a weak position in regard to the distribution of the bankruptcy estate[4]. The developer bankruptcy case also happened to PT Cowell Development Tbk, a developer of luxury housing in the Serpong area, South Tangerang City, which was declared bankrupt based on the decision of the Commercial Court at the Central Jakarta District Court (PN) with register Number: 21/Pdt.Sus/Pailit/2020/PN .Niaga.Jkt.Pst, submitted by creditors on behalf of PT Multi Cakra Kencana Abadi. As a result of the bankruptcy decision, consumers are threatened with difficulty in obtaining their rights. The same thing happened to the consumers of the Green Pramuka Apartment. Consumers were surprised by the decision of the Central Jakarta Commercial Court regarding the Application for Determination of Suspension of Debt Payment Obligations (PKPU) by Arya Adipurwa and Indarti Wulandhari (both are residents of GPC Apartments against PT. Duta Paramindo Sejahtera as the developer)[5]. The same thing also happened to consumers in Palembang, PT.

Trinitas Properti Persadan was decided PKPU by a Commercial Court Decision with case register number 391/Pdt.sus PKPU/2020/PN.Niaga.Jkt.Pst on January 20, 2021. There are many more housing consumer cases that ultimately harm consumer rights, such as the K2 Park Apartment case, at Serpong; the Melkarta case, the Green Pramuka City Apartment case, the LA City Lenteng Agung apartment case, the M-Icon Yogyakarta case, the Kemanggis Residence case, and the case Violet Garden Bekasi.

Debt in the business world is something that is usually done by individual business actors and companies. Business actors who are still able to repay their debts are usually called "solvable" business actors, meaning business actors who are able to pay their debts. On the other hand, business actors who are unable to pay their debts are called "insolvable", meaning that they are unable to pay.[6] As for what is meant by bankruptcy is a confiscation and execution of the entire wealth of the debtor (the debtor) for the benefit of all his creditors (the creditor). Article 1 point 1 of Law no. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law) defines bankruptcy as a general confiscation of all assets of a bankrupt debtor whose management and settlement is carried out by the curator under the supervision of a supervisory judge.[7] Bankruptcy is an effort to guarantee the payment of debtors' debts to creditors, this effort offers a fair, fast, open, and effective settlement of debt problems, through bankruptcy it is hoped that there will be no seizure of debtor's assets; Creditors holding material guarantees pay more attention to the fate of other creditors; and frauds by Debtors and Creditors can be avoided.[7].

To protect, empower the dignity of consumers, it is necessary to have awareness, knowledge, ability, and independence of consumers to protect themselves and to develop the attitude of responsible business actors, as well as the need for state intervention through the establishment of a legal protection system for consumers.[8] In general, consumers do not understand about bankruptcy, and this confuses consumers where in the initial agreement the developer or agent never discussed bankruptcy, payments to consumers due to the bankruptcy decision were made by the curator after conducting a Verification Meeting, and there are still many consumers who do not understand what steps they take if the developer goes bankrupt so that their rights as consumers are protected, considering that most of them have paid in full and have occupied a house or apartment unit/flat but still hold proof of the PPJB in full and do not have a certificate of ownership.

In the case of bankruptcy that afflicts the developer, the position of the consumer becomes a questionable matter because the consumer does not have clear rights when the developer stumbles into bankruptcy, and if viewed from Law no. 8 of 1999 concerning

Consumer Protection (UUPK), losses suffered by consumers must be resolved fairly, consumers have the right to receive compensation as they should, the consumer has the right to choose the goods and/or services and obtain the goods and/or services in accordance with the exchange rate and the promised conditions and guarantees, the consumer has the right to obtain compensation, indemnity and/or replacement, if the goods and/or services accepted not in accordance with the agreement or not properly if the business actor commits an act that is prohibited for the business actor [9], where business actors are prohibited from producing and/or trading goods and/or services that are not in accordance with the promises stated in the label, etiquette, description, advertisement or promotion of the sale of the said goods and/or services.[10]

On the basis of these considerations, the issue discussed in this paper is in regard to the position of housing consumers as a result of the developer's bankruptcy decision and how to fulfill the rights of housing consumers fairly. The purpose is in order to describe and explain the position of housing consumers as a result of the developer's bankruptcy decision and the solution to the fulfillment of housing consumer rights fairly. Answering these problems, the author uses a type of normative juridical research [11], with an approach to the legal norms or rules of laws and regulations relating to consumer protection as a result of the developer's bankruptcy related to the subject matter [11]. The type of data used is secondary data [11] with qualitative descriptive data analysis [11]. The justification for data analysis is not only describing and disclosing the data as it is, but also revealing the existing reality in relation to the protection for housing consumers as a result of the bankruptcy of the developer. Conclusions are drawn using the deductive method [11].

2. METHODOLOGY/ MATERIALS

This research is normative research (legal research)[12] with several approaches at once. Each of them is a legal approach (statute approach), analytical approach (analytical approach), and philosophical approach (philosophical approach). This research will depart from textual studies, namely legislation and judges' decisions. This research will examine the legal norms contained in the regulatory texts. This research will use secondary data as the main data, which is obtained from the literature study. The secondary data in this study will be presented systematically and then analyzed descriptively and analytically using deductive logic.

3. RESULTS AND DISCUSSIONS

The legal umbrella for bankruptcy and PKPU is Law No. 37 of 2004 concerning Bankruptcy and PKPU [13] supported by related laws and regulations, namely the Civil Code (KUHPerdata) Articles 1131, 1132, 1139 and 1149, and Law No. 40 of 2007 concerning Limited Liability Companies (UUPT) [14]. Meanwhile, the legal umbrella for consumer protection is Law No. 8 of 1999 concerning Consumer Protection and its derivative regulations. Regarding the bankruptcy of the housing sector, it is also necessary to look at Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) [15], Law No. 1 Year 2011 concerning Housing and Settlement Areas (Housing Law) [16], Law No. 20 Year 2011 concerning flats (UURS) [17], Law No. 4 Year 1996 concerning Mortgage Rights on Land and Objects Relating to Land (UU Mortgage Rights) [18], Government Regulation No. 24 Year 1997 (Government Regulation on Land Registration), Supreme Court Circular (SEMA) Number 4 Year 2016 concerning the Implementation of the Formulation of the Results of the 2016 Plenary Chamber Meeting of the Supreme Court as a Guide to the Implementation of Duties for the Court, and Decision Number 21/PUU-XII/2015 on Judicial Review of Law Number 20 of 2011 concerning Flats.

Article 1 number 1 of the Bankruptcy Law defines Bankruptcy as "general confiscation of all assets of the Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law". Whereas Article 1 number 6 defines debt as "an obligation that is stated or can be stated in the amount of money both in Indonesian currency and foreign currency, either directly or which will arise in the future or contingent, arising from an agreement or law and which must be fulfilled by the Debtor and if it is not fulfilled, it entitles the Creditor to obtain its fulfillment from the assets of the Debtor". It means that the existence of a Bankrupt Decision by a Judge will result in general confiscation for the Bankrupt Debtor on all of his assets, both the Debtor's assets at the time of the bankruptcy declaration decision as well as everything obtained during the bankruptcy and the loss of the Bankrupt Debtor's right to control and manage his assets because the Curator is authorized to manage the Debtor's assets. The bankruptcy decision is decided by the judge if it fulfills the bankruptcy requirements [13]. The Bankruptcy Law defines debt in a broad sense, namely not only obligations arising from debt agreements but also obligations arising outside of debt and receivable agreements, either because of the law or because of agreement [19].

Bankruptcy is the implementation of Articles 1131 and 1132 of the Civil Code related to the fulfillment of the rights of creditors. Types of Creditors in Bankruptcy are namely Creditors holding the highest preference (Article 1137 of the Civil Code), Separatist Preference (Article 1133 of the Civil Code), Special (Article 1134 of the Civil Code), General Preference (Article 1139 of the Civil Code and Special Preferences (Article 1149 of the Civil Code), and Concurrent Creditors (Article 1131 of the Civil Code). So there are 3 groups of Creditors, namely Separatist Creditors, namely Creditors holding material security rights, who can act alone. These creditors are not affected by the bankruptcy declaration decision, meaning that their execution rights can still be exercised as if there was no debtor bankruptcy. Creditors holding mortgages, fiduciary guarantees, mortgages, and mortgages or other collateral rights are characteristics of separatist creditors. Furthermore, concurrent creditors, namely creditors who must share with other creditors proportionally (*pari passu*), namely according to the ratio of the size of each claim, from the sale of the debtor's assets that are not burdened with collateral rights, and preferred creditors, namely creditors that have privilege or priority. UUK-PKPU uses the term special rights, as regulated in the Civil Code. Privileges contain the meaning of rights that are given by law to a debtor so that the level is higher than other debtors. As a result of the declaration of bankruptcy by the Judge of the Commercial Court against the Bankrupt Debtor, for Creditors the *Pari passu pro rata parte* condition applies, except for those who have the right to take precedence and a 90-day "stay" period for Separatist Creditors.

The Bankrupt Decision brings legal consequences for general confiscation, where the legal consequences of confiscation of collateral are all assets of the Bankrupt Debtor are in the management and settlement of the Curator, no payment can be made to one of the Creditors, all the consequences of civil procedural law in terms of confiscation of collateral, confiscation of execution and confiscation all revindications must be appointed/removed, all assets of the Bankrupt Debtor which are under the control of another party must be returned to the boedel, detentions that have been made against the Bankrupt Debtor must be immediately released.

In the housing sector, based on the understanding of consumers (Article 1 point 2 UUPK), what is meant by housing consumers are those who buy and use housing units or apartments for personal (self) purposes and not for sale. Personal purpose is meant as a place to live. Meanwhile, the definition of developers (developers or development actors), based on the understanding of business actors (Article 1 point 3 UUPK), are those who build and/or market apartment units to the public. In practice, there are two types of housing consumers (real estate), namely end users who buy for their own use

and investors (speculators) who buy to sell again to make a profit. By term, End user means consumer, as stipulated in Article 1 number 2 of the UUPK, while investors can be said to be intermediate consumers, as explained in Article 1 number 2 of the UUPK. For middle- and upper-middle-class housing, investors are generally dominated, while there are only a few end users. Due to the dominance of investors, it is not surprising that every time a new product launches housing or apartment in a favorite location, the product runs out immediately. In common sense, is it possible for an end user to buy a house blindly so that hundreds of houses or thousands of apartment units can be sold in just a few days or a few weeks. Most ordinary people do not understand the situation, so they are amazed how people buying houses or apartments for hundreds of millions to billions of rupiah can be like buying fried bananas. Because of lack of knowledge, end users are often disadvantaged because they follow the wrong path.

In the housing sector, the legal relationship between consumers and developers exists out of an agreement as evidenced by a binding sale and purchase agreement (PPJB) or a deed of sale and purchase (AJB). The rights and obligations of consumers and developers are as follows:

3.1. Condition Prior to Development (No Cinsturction)

In conditions prior to construction, consumers have the right to clear, correct, honest and accountable information regarding:[10],[20]

1. Land ownership status (certificate of land rights)
2. Certainty of space allocation (certificate of city plan approved by local government)
3. Certainty of the ownership status of the flats (descriptors approved by the local government)
4. Ownership of Building Permits (IMB)
5. Availability of Infrastructure, facilities & public utilities
6. Construction of at least 20%
7. guarantee for the construction of flats from the guarantor institution (bank/non-bank support letter)
8. Other agreed terms (location of houses/flats, shape of houses/flats, building specifics, price of houses/flats, other facilities, time of handover of houses/flats).

On the other hand, the consumer's obligation (Article 5 UUPK) is to find out all information and read Sale and Purchase Binding Agreement/PPJB (for Flats) to form P3SRS. Consumer rights as mentioned above are an obligation for developers to fulfill them. On the other hand, the obligations of the Developer (Business Actor) in the pre-development condition are:[10]

1. Have good intentions in doing business (comply with applicable laws)
2. Provide correct, clear and honest information, including in conducting promotions/advertising
3. Comply with the limitation of inclusion of standard clauses in documents and/or agreements
4. ³⁰ Sale and Purchase Binding Agreement (PPJB) in the form of a Notary Deed

Meanwhile, the developer's right is to get payment for the unit price of the house or apartment/flat according to the initial agreement.

3.2. Condition after Development (Existing Development)

In the existing development conditions, consumers have the right to clear, correct, honest and accountable information regarding information regarding:[10]

1. ³⁰ Sale and Purchase Deed (AJB) in the form of a Notary Deed /PPAT
2. Function-worthy certificate (SLF) has been issued
3. Decision Letter (SK) of split main land certificate has been obtained
4. Ownership Certificate (SHM/SHGB) or Ownership Certificate of Flats unit (SHM-SRS) or Statement of Premise (SKBG) has been issued
5. Other things, such as electricity connections, clean water, hydrants, etc., are functioning properly
6. Public Facilities (Fasum) and Social Facilities (Fasos) are available
7. Transparent information related to Management Fees (IPL), electricity and water tariffs, parking, and others for apartments/flats

On the other hand, the consumer's obligation (Article 5 UUPK) is to ensure that all the equipment is in place/ready and for apartments/flats, it is the consumer's obligation

as owners and residents to form P3SRS. Consumer rights as mentioned above are an obligation for developers to fulfill them. On the other hand, the obligations of business actors are to fulfill, prepare, and ensure that all the equipment which is the right of consumers is already available/ready, to provide all relevant information in a transparent, correct & accountable manner, and for apartments/flats, the developer's obligation to facilitate consumers form P3SRS.

In practice in the housing sector, in the conditions of Bankruptcy Decisions against Developers, generally the conditions that occur in the field include the following:

1. The consumer has paid the price for the purchased house unit or apartment/flat, either in cash/in installments/House Ownership Credit;
2. The housing unit or apartment/flat has been handed over from the Developer to the Consumer and many have been occupied by the Consumer;
3. Generally, for the most part, the basis of Consumer rights is still ³⁰ in the form of a **Sale and Purchase Binding Agreement (PPJB)** [21];
4. Generally, most of the Consumers still have not got the Ownership Certificate/SHM because the Developer has not been able to solve the Master Certificate;
5. Generally the Master Certificate is pledged as collateral by the Developer to the Bank providing the Construction Credit for the Development of the Developer item plan, and the Master Certificate cannot be resolved if the Developer has not paid off the debt to the Bank [22].

As a result of the Bankruptcy Decision on the Developer having an impact, among others, Land and all objects located on it become bankrupt assets, the Bank as a Separatist Creditor (Holder of Mortgage) has the right to carry out execution (auction) on land whose certificates are pledged as collateral to the Bank, Consumers (Unit Buyers) do not can be considered as the owner of land rights due to not having a certificate of ownership because generally consumers still hold PPJB even if the PPJB has been paid off, thus Consumers become Concurrent Creditors and have the right to register bills with the Curator Team. The condition of consumers as concurrent creditors is certainly detrimental to consumers in fulfilling their rights, especially when consumers have paid in full for their houses or flats/apartments

3.3. Efforts to Fulfill Housing Consumer Rights as a Result of the Developer's Bankrupt Decision

¹¹ Legal protection can be divided into two types, namely preventive and repressive protection. Preventive protection is protection provided by the government with the aim of preventing violations before they occur. This is contained in laws and regulations with the aim of preventing a violation and providing signs or limitations in carrying out an obligation. While repressive protection is repressive legal protection is a final protection in the form of sanctions in the form of fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed [23]. Preventive protection has been regulated in the UUPK, the Housing Law, and the UURS in articles that regulate the rights and obligations of consumers and business actors/developers/development actors, prohibitions for business actors/developers/development actors, limits on the inclusion of standard clauses and guidance and supervision. Meanwhile, repressive protection is regulated in articles of administrative, civil and criminal sanctions, including efforts to settle disputes.

In addition, the Civil Code as the basis for civil law in the Second Book (regarding objects) has also regulated protection for creditors, namely Article 1131 (General Guarantee), Article 1132 (Special Guarantee), Article 1133 (Separatist Preference), Article 1134 (Special), Article 1137 (creditor of the Holder of the Highest Preference), Article 1139 (General Preference), Article 1149 (Special Preferences). Furthermore, in the Third Book (regarding Legal Relation), namely Article 1233, 1234 (Legal Relation due to Agreement & Law), Article 1239 (Default), Article 1313 (Definition of Agreement), Article 1320 (conditions for a valid agreement), jo. Articles 1334, 1338, 1340, 1365, 1457, 1458, 1459.

The provisions that have been described above regulate the order of priority of the Creditors. If it is not determined that a receivable is a special right that has a higher position than the receivable guaranteed by a material security right such as a lien, fiduciary right, mortgage, then the order is as follows:

1. First, creditors who have receivables that are guaranteed by material guarantees.
2. Second, creditors who have Special Rights.
3. Third, concurrent creditors.

On the other hand, if a Special Right is determined to be repaid first than other reditors, including Creditors holding material Collateral rights, the order of the Creditors is as follows:

1. First, creditors who have Special Rights.
2. Second, creditors who have receivables that are guaranteed with material guarantee rights;
3. Third, concurrent creditors [24].

In addition to the UUPK, the Housing Law, the UURS, and the Civil Code, it is necessary to look at Law No. 40 of 2007 concerning Limited Liability Companies (UUPT), namely Article 104 in conjunction with Article 97, Article 92 (Piercing the corporate veil and Fiduciary Duty of Directors), and Article 115 jo. Article 114, Article 108 (Piercing the corporate veil and Fiduciary Duty of the Board of Commissioners). Furthermore, Law no. 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA), namely Article 19 paragraph (2) letter c (the provision of proof of rights documents is valid as a strong evidence), Government Regulation Number 24 of 1997 concerning Land Registration (PP Land Registration), namely Articles 23 and 32 (Certificate is a certificate of proof of rights), Law no. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (Law of Mortgage Rights), namely Article 14 paragraph (3) concerning Mortgage Certificates, Circular Letter of the Supreme Court (SEMA) Number 4 of 2016 concerning Enforcement of the Formulation of Meeting Results 2016 Plenary Chamber of the Supreme Court as a Guide to Duties for the Court: Point 7 Legal Formulation of the General Civil Chamber: ¹⁵ The transfer of land rights based on the Sale and Purchase Binding Agreement (PPJB) legally occurs if the buyer has paid the land price in full and has mastered the object of sale purchased and carried out in good faith and the Constitutional Court Decision Number 21/PUU-XIII/2015 Testing of Law Number 20 of 2011 concerning Flats, 10 May 2016.

¹⁶ Efforts that can be made by consumers if the developer is declared bankrupt are indeed limited, considering that the position of the consumer is only as a concurrent creditor, which together with other ¹⁸ creditors receive guarantees from the developer's property as debtors. The proceeds from the sale of debtor's property will be divided in a balance (*pari passu pro rata parte*) based on the amount of each creditor's claim. While on the other hand, it is possible for developers to borrow money from banks or other financial institutions with land guarantees in the form of Mortgage Rights. ²⁷ [25] This condition causes banks or other financial institutions to become separatist ²⁷ creditors who can exercise their rights as if there was no bankruptcy. This means that they can directly execute the land in the manner stated in Article 6 in conjunction with Article 20 of Law No. 4 of 1996 concerning the Mortgage Rights Act, namely:

1. Selling the object of the Mortgage on its own power through a public auction and taking the settlement of its receivables from the proceeds of the sale. This legal act is known as "parate execution".
2. ¹³Based on the executorial title listed in the Mortgage Certificate, conduct a public auction

²¹Property rights (HM) are regulated in Articles 20 – 27 of the UUPA. ²⁴Article 20 paragraph (1) of the UUPA defines HM as a hereditary, strongest and fulfilled right that can be owned by people on land by keeping in mind the provisions of Article 6 of the UUPA. The purpose of the strongest and fulfilled rights ²¹does not mean that HM is an absolute, unlimited and inviolable right, as referred to in the eigendom rights, but rather to show that among land rights HM is the strongest and most complete right. Because HM is a hereditary right, HM can be inherited by the right holder to his heirs. HM is the strongest, meaning HM is not easy to delete and easy to defend against interference from other parties [26]. Fully means that HM grants other powers broadly compared to other rights. ²⁴This means that the HM can be the master of other rights, for example the holder of the HM can lease it to someone else. As long as it is not limited by the authorities, ¹⁶the authority of a HM holder is not limited [26].

Article 23 paragraphs (1) and (2) of the UUP, ¹⁶property rights, as well as any transfer, annulment and encumbrance with other rights must be registered according to the provisions referred to in article 19. The registration referred to in paragraph (1) is a means of proof a strong statement regarding the abolition of property rights and the legality of the transfer and assignment of such rights. Furthermore, Article 32 of PP Number 24 of 1997 concerning Land Registration,

Certificates are ¹⁴letter of proof of rights that are valid as a strong means of proof regarding the physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the letter of measurement and the book of land rights in question. Regarding the legal force of mortgage, Article 14 paragraph (3) of Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land, the Mortgage Certificate as referred to in paragraph (2) has the same executorial power as the decision a court that has obtained permanent legal force and is valid as a substitute for a grosse acte Hypothek insofar as it concerns land rights. For the transfer of land rights based on PPJB, there is the Supreme Court (MA) of the Republic of Indonesia, as stated in the Circular Letter of the Supreme Court (SEMA) Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber of 2016 as Guidelines for the Implementation

of Duties for the Court, Points 7 Legal Formulation of the Civil Chamber, General Civil: "The transfer of land rights based on the Sale and Purchase Binding Agreement (PPJB) legally occurs if the buyer has paid the land price in full and has mastered the object of sale and purchase and is carried out in good faith".

Both consumers and business actors (development actors) have the same rights and obligations as regulated in the laws and regulations. Consumer rights are obligations for business actors (development actors) to be fulfilled. This obligation cannot be ignored by business actors (development actors) on the basis of the inability of business actors. There is a bankruptcy decision against the developer (development actor) with reasons, of course. However, the bankruptcy decision of the developer does not necessarily harm the rights of consumers, considering that consumers generally only have PPJB and do not hold a Certificate or SHMSRS. Besides that, bankruptcy efforts are not a loophole or a way for developers/development actors to avoid their responsibilities in fulfilling consumer rights.

As a legal basis for bankruptcy, the Bankruptcy Law classifies creditors into three types, namely concurrent, preferred and separatist creditors, which generally belong to the housing sector consumers in the group of concurrent creditors because most consumers only have or hold PPJB and have not held a Certificate of Rights. In addition, most consumers have paid in full for purchases. This condition often occurs in consumers of vertical housing of flats/apartments, and many of them are already living in houses or flats/apartments. The problem with consumers having certificates is because the land where the house or flat or apartment has not yet been described by the developer and some even have the land used as collateral (as collateral for debt) by the developer, even though the developer's obligation (construction actor) is to carry out a description for the requirements in making entitlement certificate. The consumer's position as a concurrent creditor certainly has an unfavorable impact on consumers if the developer goes bankrupt because the fulfillment of consumer rights is the last order after the preferred creditor and privileges. However, that does not mean that the bankruptcy of the developer will be the end of the world for consumers because consumers are only concurrent creditors.

There are several efforts that can be made for the fulfillment of housing consumer rights as follows:

1. SEMA Number 4 of 2016 states that "The transfer of land rights based on the Sale and Purchase Binding Agreement (PPJB) legally occurs if the buyer has paid the land price in full and has mastered the object of sale and purchase and is carried out in good faith". This means that consumers who hold PPJB paid off in

good faith have the same rights as consumers who have a Certificate of Rights, so that consumers who hold PPJB paid off in good faith have the same position as creditors who are privileged on the basis of the law. Therefore, for housing consumers who hold PPJB in full, the fulfillment of their rights should be prioritized from the proceeds from the sale of assets from the auction of business actors' assets (Article 1139 in conjunction with Article 1149 of the Civil Code).

2. The corporate legal regime in terms of personal liability of company organs can be an option that can be taken if there is strong evidence, namely the developer's bad faith using the bankruptcy route in order to avoid his responsibility for the fulfillment of consumer rights (UUPK, Article 104 in conjunction with Article 97, Article 92 and Article 115 in conjunction with Article 114 and Article 108). Of course, going through the company's legal regime is a pretty difficult choice for consumers because it costs a lot of money in the process of filing and settling civil lawsuits to the district court. Not all housing consumers can afford to pay the costs of civil case proceedings in district courts. In addition, consumers also need to obtain evidence of bad faith from developers taking bankruptcy efforts to avoid their responsibilities in fulfilling consumer rights. In line with the company's legal regulations, Article 61 of the UUPK states that "criminal prosecutions can be carried out against business actors and/or their managers". This means that the legal umbrella for consumer protection regulates the efforts of consumers who are harmed by business actors to file criminal charges if there is strong evidence that the consequences of the actions of business actors and/or their administrators cause harm to consumers. This effort is of course also quite difficult for consumers because it requires money, time and energy to process reports to the police regarding allegations of criminal acts of business actors causing losses to consumers, although consumers who are harmed can take class action.
3. Efforts to amend the Bankruptcy Law and UUPK. Bankruptcy Law amendments are needed to include provisions for the position and order of creditors due to bankruptcy decisions, where housing consumers are included in creditors with special rights on the basis of the law. Meanwhile, amendments to the UUPK are needed to include the position of housing consumers in bankruptcy, the developer is a consumer or creditor who has special rights granted by law and the State guarantees the fulfillment of housing consumer rights as a result of the developer's bankruptcy decision.

Point 2, regarding efforts to fulfill consumer rights through the company's legal regime, it can be noted that: consumers can also file lawsuits against members of the Board of Directors and/or members of the Board of Commissioners who have a role in the occurrence of the bankruptcy of their company. This lawsuit is a lawsuit based on Unlawful Acts (PMH) committed by members of the Board of Directors and/or members of the Board of Commissioners as regulated in Article 1365 of the Civil Code which states that: because it was wrong to issue the loss, compensate for the loss." [27]

This article was interpreted by Hoge Raad (Dutch Supreme Court) in its Decision (Arrest) dated January 31, 1919 in the Lindebaum vs. Cohen Case: (See M.A. Moegni Djocirdjo, Unlawful Acts, Pradnya Paramita: 1982, p. 35 etc.) [28]:

1. the existence of deeds;
2. the act must be against the law;
3. There are four things that can be said to be unlawful acts:
4. contrary to the rights of others; or
5. contrary to its own legal obligations; or
6. contrary to good morals; or
7. contrary to the imperative that must be heeded in social interactions regarding other people or things.
8. there is a loss suffered by the other party;
9. There is a causal relationship between the unlawful act and the loss suffered by the other party.

Based on this PMH, sow the company as a legal entity that covers members of the Board of Directors and/or members of the Board of Commissioners will be opened so that they can no longer hide behind the status of a limited liability company as a legal entity. This is a principle in corporate law known as piercing the corporate veil, which is literally interpreted as uncovering the veil of the company.

Corporate law describes piercing the corporate veil as a doctrine or theory that describes the process to impose responsibility on other people or other companies for the legal actions they have committed. The court will ignore the status of the company, and impose responsibility on the "personal" and "perpetrators" who are in the company. So that in this case there is a disregard for the principle of limited liability from the company as a legal entity, which is often the principle of limited liability enjoyed by

those behind the company. This court action explains that the court has removed the veil or veil of the company [29].

Based on the principle of piercing the corporate veil, the existence of Article 3 Paragraph (2), Article 104 Paragraph (2) and Paragraph (3) as well as Article 115 Paragraph (1) and Paragraph (2), will be strengthened by Article 1365 of the Civil Code which allows consumers to use it as a legal remedy to enforce its rights that have been violated by the developer and the developer is in a state of bankruptcy

Based on several efforts that can be taken to fulfill housing consumer rights as described above, the authors consider that the efforts of the corporate legal regime, consumer protection legal regime and efforts to review the Bankruptcy Law against the UUPK are less profitable for consumers because consumers need to prepare costs, time and effort including legal counsel who can assist consumers in the process. Of course, this is quite burdensome for consumers, although it can be done through class action. Efforts to fulfill housing consumer rights through SEMA Number 4 of 2016 can be a logical and effective choice for consumers because the Supreme Court through a Circular clearly states that for consumers who hold PPJB paid off can be interpreted the same as consumers who hold Certificates and/or SHMSRS so that the position of consumers as creditors with privileges under the law. [30] Therefore, against the developer's bankruptcy decision, the consumer rights of the PPJB holder in full are protected for the fulfillment of their rights as housing consumers. For that we need good support from law enforcement officers, in this case the judges in implementing SEMA No. 4 of 2016 including practitioners as legal counsel for consumers.

4. CONCLUSION AND RECOMMENDATION

The existence of a Bankruptcy Decision by a Commercial Court Judge against Developers, the position of consumers being concurrent creditors (Ordinary Creditors) due to most housing consumers do not have/hold proof of ownership in the form of Certificates and only have proof of sale and purchase binding agreement (PPJB). The solution in fulfilling consumer rights is to position the consumer (the holder of the paid off PPJB) to be equated as a creditor with special rights on the basis of the law as stated in Circular Letter of the Supreme Court No. 4 of 2016 and the Constitutional Court's Decision No.21 of 2015. Another effort, consumers (holders of paid off PPJB) can take efforts through corporate law permits and consumer protection laws through corporate and/or personal accountability efforts from the Board of Directors if they are indeed bankrupt due to the

actions of the Board of Directors that harm the company so that the company cannot fulfill its obligations.

In addition to efforts to amend the consumer protection law and the Bankruptcy Law. It is necessary to amend consumer protection law by including the position of housing consumers in bankruptcy the developer is a consumer who has special rights granted by law and the State guarantees the fulfillment of the rights of housing consumers as a result of the developer's bankruptcy decision. It is necessary to amend the Bankruptcy Law by including provisions on the position and order of creditors due to bankruptcy decisions, where housing consumers are included in creditors with special rights. Strengthening the role of law enforcement and also the function of guidance and supervision in the housing sector in order to enforce the law on consumer protection in the housing sector. There is a need for intensive and massive education on an ongoing basis to the community as consumers, including optimizing the role of non-governmental consumer protection agency as a consumer companion.

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