



Problematics of Property Companies Experiencing Bankruptcy

Heru Sugiyono

Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta, Indonesia

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Abstract

Suppose a property company is incapable of repaying its creditors' debts after being declared bankrupt by the court; all of the debtor's assets will be utilized to settle its outstanding debts. The assets of the debtor will be included in the bankruptcy estate. Naturally, this will give rise to its own set of issues when a house that has been purchased and fully paid for is also included in the bankrupt estate. The purpose of this research is to explore the legal safeguards available to consumers when a property company goes bankrupt and determine the responsibilities of the company if a consumer's purchased and paid-for house becomes part of the bankruptcy proceedings. The author employs a normative juridical research method, primarily relying on literature reviews as the primary research source. The findings of the study indicate that consumer protection resulting from the bankruptcy of a property company entails entitlement to compensation, reimbursement, and/or restitution. However, to exercise these rights, consumers must initiate legal proceedings by filing a claim through the Consumer Dispute Settlement Agency (BPSK) or by pursuing default lawsuits in court. The Government also proposes to prevent a company from becoming bankrupt by conciliating. As for the responsibility of the property company to consumers, if the house that has been purchased and paid for is declared bankrupt, it has good faith to remove the house that has been purchased and paid for by the consumer from a bankrupt bank.

Keywords: *Problematics; Property Company; Bankrupt*

Introduction

Property refers to assets such as land, buildings, as well as associated facilities and infrastructure, which are essential components of the designated land and/or building.¹ It is a tangible entity that can be legally transferred from one individual or entity to another.² On this basis, a property which was originally only a shelter was then transformed into an opportunity to generate profits in the form of

¹ Departemen Pendidikan Nasional, Kamus Besar Bahasa Indonesia, Edisi Keempat, Gramedia Pustaka Utama, Jakarta, 2013, 1701, p. 1106.

² Waluyo Hadi, and Dini Hastuti, Kamus Terbaru Ekonomi dan Bisnis, Reality Publisher Surabaya, 2011, 608, p. 458.

investment.³ The community's need for housing continues to increase, so the existence of the property business will also increase rapidly.⁴

The property business developed until a property company was formed, namely as a developer (*developer*) offering property investment. Developers are individuals or organizations involved in transforming undeveloped land or areas into habitable residential spaces that hold economic worth, allowing them to be marketed and sold to the general public. Developers can also work on building or changing existing housing or buildings so that they become newer housing or buildings and have higher economic value.⁵

Implementation of the property business in legal regulations sometimes brings out the *crystal side and mud* (crystals and sludge). The *crystal side* (a kind of good side) is a kind of Law that applies strictly to property and is based on *common legal doctrines law*. However, it's the same thing that there is a *mud side* (a kind of bad side) which is blurry, ambiguous and unclear.⁶

The rapid development of economic mechanisms has penetrated into the property business, so it becomes a necessity for laws to regulate. Consumer protection is essential for the continuity of national development because, as stated in the preamble of the 1945 Constitution of the Republic of Indonesia, the Indonesian state government aims to safeguard the entire Indonesian nation and its prosperity. In this context, individuals within society can be regarded as consumers. Consumers play a crucial role as both participants in development and providers of capital for development projects. Therefore, to ensure the sustainable progress of the nation, it is necessary to prioritize consumer protection.⁷ In fact, the Law cannot work effectively by itself. To enforce the Law effectively, the role of the environment and history is needed, even though these rules are not comprehensive, temporary, and do not apply forever.⁸ Therefore, an environmental and historical situation is needed, everyone feels disadvantaged by regulation, so they have to create more effective rules.

In its development, many property companies have made rapid progress in managing the property business so that they can run their businesses in a sustainable manner; on the other hand, there are several property companies that have gone bankrupt and have been declared bankrupt by their creditors, namely their own customers. Bankruptcy proceedings, as outlined in Article 2, Paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (KPPU Law), entail the declaration of bankruptcy by a court decision for debtors who have multiple creditors and fail to repay at least one matured and billable debt. Bankruptcy can be initiated either at the debtor's own request or at the request of one or more creditors.

The prerequisites for initiating a bankruptcy declaration against a debtor are as follows: a) The debtor must have two or more creditors; b) The debtor fails to settle at least one debt owed to one of the creditors; c) The unpaid debts must be due and capable of being collected.⁹

It is worth noting that bankruptcy filings and Suspension of Debt Payment Obligation (PKPU) applications, unlike in the case of Securities Companies, Stock Exchanges, Clearing Guarantee

³Budi Santoso, *Provit Berlipat: Investasi Tanah dan Rumah (Panduan Investasi yang tak Pernah Mati)*, Edisi Revisi, Cetakan Kelima, Alex Media Komputindo, Jakarta, p. 5.

⁴Dhaniswara K. Harjono, *Hukum Properti, Pusat Pengembangan Hukum dan Bisnis Indonesia*, Jakarta, 2016, 498, p. 1.

⁵*Ibid.*

⁶Carol M. Rose, *Crystals and Mud in Property Law*, *Stanford Law Review*, Vol. 40, No.3, 1998, 577-610, doi: <https://doi.org/10.2307/1228813>, p. 578.

⁷Arfian Setiantoro, Fayreizha Destika Putri, Anisah Novitarani, and Rinitami Njatrijani, *Urgensi Perlindungan Hukum Konsumen dan Penyelesaian Sengketa E-Commerce di Era Masyarakat Ekonomi ASEAN*, *Jurnal RechtVinding*, Vol. 7, No.1, 2018, 1-17, <https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/220/175>, p. 2.

⁸Nicole Graham, *Landscape: Property, Environment, Law*, Routledge Taylor & Francis Group, New York, 2011, 223, p. 3.

⁹Sutan Remy Sjahdeini, *Sejarah, Asas, dan Teori Hukum Kepailitan: Memahami UU No.37 Tahun 2004 tentang Kepailitan dan Kewajiban Penundaan Pembayaran Utang*, Edisi Kedua, Kencana Prenadamedia Group, Jakarta, 2016, 630, p. 128.

Institutions, Depository and Settlement Institutions, Insurance Companies, Reinsurance Companies, Pension Funds, and State-Owned Enterprises (SOEs), are subject to limitations under the authority of the Financial Services Authority (OJK). Consequently, this facilitates the process of submitting bankruptcy and PKPU requests by debtors operating outside the aforementioned sectors, including property companies, in this specific scenario.

The impact on the ease of filing for bankruptcy has an impact on consumers as well in the end because if a debtor is declared bankrupt, all obligations to consumers (creditors) of property are settled after all preferred obligations are settled.¹⁰ The word preference comes from the word *preference* or *preference*, namely the owner of the main right,¹¹ He is prioritized because of the nature of the receivables, given special rights based on the provisions of the legislation. On the other hand, concurrent creditors are creditors who do not hold material collateral rights. So that the position of the debtor of a property company that is experiencing bankruptcy¹² It will ultimately harm not only one consumer but en masse. Instead of fulfilling their obligations to consumers, the position of obligations to consumers is the last position to be fulfilled, especially for consumers who have paid off property payments but are included in the bankrupt *boedel* (assets). The bankrupt Boedel is the debtor's assets in the form of movable and immovable goods, both those that already exist and those that will exist in the future, as collateral for each individual agreement, as referred to in Article 1131 of the Civil Code.¹³

As experienced by PT. Cowell Development Tbk, one of the property companies in Indonesia, was declared bankrupt. Consumers are also threatened with difficulties in obtaining their rights. PT Cowell Development Tbk is a housing developer of five residential properties, namely Melati Mas Residence, Serpong Terrace, Laverde, Borneo Paradiso, and Taman Serpong. Including multi-storey buildings such as Westmark, The Oasis, and Lexington Residence. PT. Cowell Development Tbk was declared bankrupt based on the decision of the Central Jakarta District Court (PN) with register Number: 21/Pdt. Sus/Bankrupt/2020/PN.Niaga.Jkt.Pst, which was previously proposed by creditors on behalf of PT Multi Cakra Kencana Abadi.¹⁴ The bankruptcy decision will certainly have an impact on the fate of the consumers who have purchased the property.

When a company is unable to repay its creditors' debts and is declared bankrupt by the court, all of the debtor's assets will be utilized to settle the outstanding debts. These assets will be included in the bankruptcy estate. However, it is essential to provide legal protection for consumers who have fully paid or fulfilled the terms of their house purchase agreements with the seller. Therefore, efforts are required to ensure that the assets included in the bankrupt estate are legally released to safeguard the rights of these consumers.

The distribution of the debtor's assets that have been confiscated due to bankruptcy status by the commercial court solely to pay off the debtor's obligations is obtained through an auction for the bankruptcy estate plus the proceeds from the collection of the bankrupt's receivables, reduced by bankruptcy costs and debts of the bankruptcy estate.¹⁵

¹⁰cnbcindonesia.com, Rahajeng Kusumo Hastuti (ed.), Kasus Pailit Properti Marak, Pengembang dan Konsumen Rugi, accessed pada 21 Mei 2023, <https://www.cnbcindonesia.com/tech/20200921081220-37-188113/case-bankruptcy-property-lively-developer-consumer-loss>.

¹¹Sudarsono, Kamus Hukum, Rineka Cipta, Jakarta, 2015, 620, p. 369.

¹²Business-law.binus.ac.id, Erni Herawati (ed.), Kreditur Preferen dalam KUH Perdata, accessed on 28th May 2023, <https://business-law.binus.ac.id/2018/12/19/kreditur-preferen-in-KUH-Perdata/#:~:text=In%20general,%20can%20be%20explained%20that,%20holds%20rights%20guarantee%20objects>.

¹³Bendesa Gede Mas Indriyanigraha Arjaya, I Gusti Ketut Ariawan, Penetapan Boedel Pailit dan Pengeluaran Benda dari Boedel Pailit: Analisis Yuridis terhadap Putusan Nomor: 5/Pdt.Sus.Gugatan Lain-lain/2017/PN. Niaga Sby Jo. Nomor 2/Pdt. Sus. Pailit/2017/ PN. Niaga Sby., Kertha Semaya: Jurnal Ilmu Hukum, Vol 2, No.1, 2014, 15, page 9.

¹⁴ Putusan Pengadilan Niaga Nomor 21/Pdt.Sus-Pailit/2020/PN Niaga Jkt.Pst, 2020

¹⁵CST Kansil, Christine ST Kansil, Pokok-pokok Pengetahuan Hukum Dagang, Sinar Grafika, Jakarta, 2013, 554, p. 176.

Ideally, the rules regarding bankruptcy law are solely to apply for general confiscation of the debtor's wealth so that it is not used arbitrarily for the benefit of all people who have the right to be fulfilled, namely creditors fairly; however, the percentage that creditors receive from bankrupt boedels is very small. Or privilege holders who benefit from concurrent creditors in the event of bankruptcy.¹⁶

The author is interested in carrying out based on the legal issues above in this study with the aim of knowing 1) Consumer legal protection due to a property company going bankrupt and 2) the responsibility of a property company if a house that has been paid for by a consumer goes *bankrupt*.

Research Methods

The writing method that the writer uses is the method of normative legal writers or normative juridical research. The continuous efforts the writer will make are conducting literature studies or literature studies to obtain secondary data as the main source in this research. This secondary data comprises various legal sources that provide supporting information. These legal sources can be categorized into primary, secondary, and tertiary legal materials. The approach in this study will be used by the author in a statutory approach, and then any data that the author has obtained will be analyzed in a descriptive-analytical manner.

Results and Discussion

1. Consumer Legal Protection Due to Property Companies Going Bankrupt

As defined in Article 1 point 1 of Law No. 8 of 1999 regarding Consumer Protection (UUPK), consumer protection, as explained in the Elucidation of the UUPK article, encompasses all endeavours that ensure legal certainty and offer safeguards to consumers. The scope of protection in the UUPK itself is still limited to the final consumer, namely the user or party who gets the final benefit of a product (consumption). According to Adrian Sutedi, the final consumer uses the product he has purchased in order to meet his own, family or home needs. However,¹⁷ Property consumers have two possibilities; namely, they can become end-level consumers or even intermediate consumers. In this case, intermediate consumers have the same definition as final-level consumers; only the difference lies in the use and utilization of products that have been purchased from previous manufacturers to be made into other products or re-traded products for commercial purposes. This limitation on the scope of the end consumer provides a warning for intermediate or final-level consumers who are in the property sector to be more careful, considering that protection for property consumers is not expressly within the scope of UUPK.

Based on the provisions of Article 1131, Jo. Article 1132 of the Civil Code provides for the possibility that creditors will not receive 100% repayment of obligations by debtors, so the existence of the KPKPU Law is expected to provide justice for creditors to obtain their rights in paying off their debts.¹⁸ It becomes a big question related to 'whether it is true that the KPKPU Law has provided justice for all creditors. What about the fate of concurrent creditors whose rights are the last acquisition after deducting other obligations?'

Property companies going bankrupt are one of the other causes that can lead to property disputes. The dispute is caused by a conflict between two or more parties which originates from different perceptions between interests or ownership rights to land, which can lead to legal consequences for the

¹⁶Rina Antasari, Fauziah, Muhamad Said Is (ed.), *hukum Bisnis*, Setara Press, Malang, 2018, 176, p. 124.

¹⁷Adrian Sutedi, Akhria (ed.), *Tanggung Jawab Produk Dalam Hukum Perlindungan Konsumen*, Ghalia Indonesia, Bogor, 2008, 326, p. 10.

¹⁸Elsi Kartika Sari and Advendi Simanunsong, *Hukum dalam Ekonomi*, Edisi Kedua Grasindo, Jakarta, 2017, 217, p. 184.

parties.¹⁹ Consumer protection is needed in these disputes, especially for consumers affected by property companies that are experiencing bankruptcy. In addition to protection, it turns out that consumer empowerment is also needed so that consumers are independently aware of and have the ability to elevate their personal dignity of consumers so as to avoid negative access, one of which is the bankruptcy of a property company which results in fulfilling obligations to consumers,²⁰ Such as completing the construction of consumer-owned properties or even those that have been paid off but the management has not been completed so that they are still the company's assets, then entering the bankrupt *boedel*. Consumer protection is a development of human rights, so the aspect of consumer protection is very appropriate to defend their rights in a business transaction.²¹

According to the KPKPU Law, particularly Article 1 Number 1, bankruptcy refers to the comprehensive seizure of all assets belonging to a Debtor who has been declared bankrupt. The management and settlement of these assets are conducted by a Curator under the supervision of a Supervisory Judge, as stipulated in the same Law. On the other hand, according to Black's Law, bankruptcy is a legal process that provides financial relief to a debtor (typically facing insolvency). This process involves either reorganizing the debtor's affairs or liquidating their assets to fulfil obligations to creditors.²² The term "insolvency" denotes a state where a debtor is incapable of repaying debts to their creditors.²³

These general confiscation activities will later be fully used to fulfil debt payment obligations to creditors. However, creditors are divided into several classifications; in this case, the fulfilment of these obligations takes precedence, and some get the rest after the main obligation is paid.

The sequence of fulfilling obligations starts with separatist creditors, then preferred creditors, then finally concurrent creditors.²⁴ This aligns with the ruling of the Constitutional Court of the Republic of Indonesia, Case Number 67/PUU-XI/2013, which states that the payment of owed wages to workers and labourers takes precedence over all other types of creditors, including claims from separatist creditors, state rights, auction offices, and public bodies established by the Government. Additionally, the payment of workers' and labourers' rights is given priority over all claims, except for claims from separatist creditors.

Regarding property consumers within bankruptcy law, who are classified as concurrent creditors rather than special creditors, they are positioned at the lowest level.²⁵ As concurrent creditors, their claims are addressed after deductions are made for creditors who hold collateral rights (separatist creditors) and creditors with preferential privileges, with the remaining amount proportionally distributed among concurrent creditors based on the ratio of each creditor's receivables (shared *pari passu* or *pro rata parte*).²⁶

Consumers are said to be concurrent creditors because they do not have a special position or material guarantee rights against the debtor, in this case, a property company. This privilege can only be

¹⁹Ali Achmad Chomzah, *Seri Hukum Pertanahan III: Penyelesaian Sengketa Hak atas Tanah dan Seri Pertanahan IV: Pengadaan Tanah Instansi Pemerintah*, Prestasi Pustaka, Jakarta, 2003, p. 14.

²⁰Elsa Melinda Saputri, Waspiyah, and Ridwan Arifin, *Perlindungan Hukum Terhadap Konsumen dalam Hal Pengembang (Developer) Apartemen dinyatakan Pailit*, *Jurnal Hukum Bisnis Bonum Commune*, Vol.2, No.2, 154-161, <https://core.ac.uk/download/pdf/229337906.pdf>, p. 154.

²¹Geraint Howells, Iain Ramsay, Thomas Wilhelmsson, and David Kraft, *Handbook of Research on International Consumer Law*, Edward Elgar Publishing Limited, USA, 602, doi: 10.4337/9781849806312, p. 19.

²²Bryan Garner, *Black's Law*, 8th Edition, West Publishing Company, USA, 2004, 5426, p 442.

²³Sutan Remy Sjahdeini, *Op.Cit.*, p. 155.

²⁴Elsa Melinda Saputri, Waspiyah, and Ridwan Arifin, *Op.Cit.*, p. 155.

²⁵Illona, and Anna Maria Tri Anggraini, *Perlindungan Hukum Konsumen dalam Hal Pelaku Usaha Pengembang Rumah Susun yang sudah dinyatakan Pailit: Studi terhadap Kemanggis Residence*, *Jurnal Hukum Adigama*, Vol. 1, No. 1, 2018, 25, doi: <http://dx.doi.org/10.24912/adigama.v1i1.2202>, p. 5

²⁶Sutan Remy Sjahdeini, *Op.Cit.*, p. 16.

granted by laws and regulations. While the position of the consumer as a creditor in bankruptcy law is not clearly regulated either in the KPKPU Law, the UUPK, or the Civil Code, thus implicitly, the position of the consumer is equated with concurrent creditors.²⁷

Consumer protection as a creditor in the context of property companies facing bankruptcy is implicitly outlined in Article 4 of the UUPK, which states that consumers have the entitlement to receive compensation, reimbursement, and/or restitution if the goods and/or services they receive do not align with the agreed terms or fail to meet expected standards. Additionally, consumers possess other rights established by relevant laws and regulations. Furthermore, Article 7 of the UUPK emphasizes the obligation of business entities to act in good faith when conducting their business activities and to provide compensation, reimbursement, and/or restitution if the goods or services provided or utilized do not adhere to the agreed terms.

In the case of buying and selling property, there is an agreement that regulates the object clause that will be owned by the consumer, and payments made by the consumer to own the property, if, in practice, the object has not been built in whole or in part, even though the consumer has made payments either in part or has already been paid, is a loss that is obtained by the consumer, because the object promised is not in accordance with what is obtained by the consumer.

Consumer protection is sought to consist of policies and actions (sometimes it can be in the form of intervention) carried out by the Government to ensure the guarantee of consumer rights so that they get what they really want according to their income, obtain information that is actually related to a product by business actors, consumer protection has scope for goods, services whether they are owned by the public or private. protection against certain unscrupulous parties (unscrupulous sellers, civil servants who don't care), protection against the consequences of a market that is damaged in several ways (too few sellers and too little competition leading to a monopoly on the price of goods or coercion of buyers on a voluntary basis) packages or price games), protection against price and quality information that could be wrong, biased, or incomplete, and protection from regulations, laws, and regulatory agencies that are more biased towards manufacturers.²⁸

Consumer protection is required to consistently promote the welfare of consumers.²⁹ Consumer protection can be maximized through dispute resolution, both referring to consumer protection law,³⁰ And referring to ordinary civil Law. The UUPK regulates dispute resolution through the Consumer Dispute Settlement Agency (BPSK) either by conciliation, mediation or arbitration.

According to Article 1 Numbers 9, 10, and 11 of the Decree of the Minister of Industry and Trade of the Republic of Indonesia Number: 350/MPP/Kep/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Settlement Agency, conciliation and mediation have similar meanings. Both refer to the process of resolving consumer disputes outside of court through the Consumer Dispute Settlement Agency (BPSK). In conciliation, the BPSK facilitates a meeting between the disputing parties, while the settlement is left to the parties themselves. On the other hand, in mediation, the BPSK serves as an advisor, assisting the parties in reaching a settlement. Arbitration, on

²⁷I Komang Ari Buana Nusantara Panasea, and Ida Ayu Sukihana, Pengaturan Kedudukan Konsumen sebagai Kreditor dalam Perspektif Hukum Kepailitan, *Jurnal Kertha Wicana*, Vol. 9, No.8, 2020, 1-12, <https://ocs.unud.ac.id/index.php/kerthawicara/article/view/62050>, pp. 8-12

²⁸E. Scott Maynes, Consumer Protection: The Issues, *Journal of Consumer Policy*, Vol. 3, No.2, 1979, 97-109, DOI <https://doi.org/10.1007/BF02278743>, p. 97.

²⁹Timothy J. Muris, The Interface of Competition and Consumer Protection, The Fordham Corporate Law Institute's Twenty-Ninth Annual Conference on International Antitrust Law and Policy, New York City, 2002, 30, https://www.ftc.gov/sites/default/files/documents/public_statements/interface-competition-and-consumer-protection/021031fordham.pdf, p. 5.

³⁰Heri Hartanto, Perlindungan Hak Konsumen terhadap Pelaku Usaha yang dinyatakan Pailit, *Jurnal Hukum Acara Perdata*, Vol. 2, No.2, 2016, 315-328, <https://jhaper.org/index.php/JHAPER/article/view/38/45#>, p. 322.

the other hand, is a process of resolving consumer disputes outside of court where the parties fully entrust the resolution of the dispute to the BPSK.

Another option is for consumers to file lawsuits either individually or jointly through *class action lawsuits* through the District Court in a civil manner in an effort to protect and fight for consumer rights caused by a default by property companies. The two forms of dispute resolution through the BPSK and through the District Court can be more relevant for defending consumer rights because the arrangements for declaring a company bankrupt or PKPU status do not protect consumer rights; moreover, consumers are made creditors in the final position.

The interests of both debtors and creditors must reach a middle ground, namely paying attention to the debtor's inability to pay and paying attention to creditors' difficulties so that their rights are fulfilled. It is hoped that there will also be a good first step as a good new start for the debtor.³¹ In response to this, it is better to settle debts and not only settle them by declaring the debtor in a state of bankruptcy because if so, losses will also hit concurrent creditors, one of which is consumers. Debt restructuring steps towards consumers or efforts to fulfil achievements by increasing the time period are urgently needed.

The protection of consumers is an important matter. Moreover, the position of consumers who are often in a lower position requiring protection, this low position is due to the low level of consumer awareness of their rights, the unconditioned consumer society because they do not know their rights and are confused about channelling their rights if they get difficulties or lack of standard goods or services that are reasonable, the consumer society has not yet been conditioned to become a society that has the will to demand their rights, the judicial process is difficult and time-consuming, the consumer's position requires producers.³²

Article 144 of the KPKPU Law explains that debtors who have been declared bankrupt have the right to offer peace to all creditors. This submission for reconciliation is usually an attempt by the Majority Creditors (the most numerous/consumers) who disagree with the bankruptcy decision submitted by minority creditors because the application for a bankruptcy statement does not include the majority creditors; those creditors still consider the debtor to be still in a solvent state (able to pay their debts). Peace efforts are a step to prevent debtors from going bankrupt, even though, in reality, these repressive efforts are very difficult to achieve; apart from the different interests of creditors, solvent calculations from debtors, which can be debated at conciliation meetings between curators, debtors and creditors.³³

The weakness of laws and regulations that position consumers as creditors causes the need to think about solutions besides providing advice to legislators that the formation of a new UUPK is urgently needed, the solution that can be given is to get around first to put pressure on property business actors as debtors who have not fulfilled their achievements with sending warning letters, then trying to resolve the problem through peace efforts such as debt restructuring. If it is still not successful, the settlement can be done through BPSK (by mediation, conciliation, or arbitration) and also through a civil district court. This strategy is a preventive effort that needs to be carried out because the position of consumers in general, including property consumers, is not guaranteed if their receivables are resolved through the KPKPU Law. The consumer's position is still a concurrent creditor, unlike the position of an insurance customer (policyholder or insured), which is regulated in Law No. 40 of 2014 as Preferred Creditor when the Insurance Company went bankrupt. Meanwhile, as a repressive step, consumers who already know that a property company (as a debtor) is declared bankrupt can seek peaceful means.

³¹Janet Leach Richards, A Guide to Spousal Support and Property Division Claims Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, *Family Law Quarterly*, Vol. 41, No.2, Symposium on Bankruptcy Law, 2007, 227-248, <https://sci-hub.se/https://www.jstor.org/stable/25740609>, p. 232.

³²NHT Siahaan, *Hukum Konsumen: Perlindungan Konsumen dan Tanggung Jawab Produk*, Panta Rei, Jakarta, 2005, 320, p. 42.

³³Sutan Remy Sjahdeini, *Op. City*, page 479.

2. The Responsibility of the Property Company if the House That Has Been Purchased and Paid Off by the Consumer Enters *Boedel* Bankrupt

If a property company is established as a limited liability company under Indonesian Law, the company as a legal entity has a legal personality as a legal subject.³⁴ As a legal subject, a property company is also attached to carry out a legal.³⁵ Responsibility, because a legal entity acts as a unit in every legal event like a legally competent human being. Including in the case of a property sale and purchase agreement, the company is obliged to carry out its achievements by providing and/or developing the property object that has been traded as stated in the agreement, while the consumer is required to make payments either directly or in instalments. This incident encompasses elements of assets pertaining to rights and obligations that arise for the parties involved subsequent to entering into an agreement and affixing their signatures to it.³⁶ Considering that the fulfilment of obligations within a contractual relationship is of utmost importance, particularly when the agreement is deemed valid under Article 1320 of the Civil Code, it follows that the agreement is legally binding on the parties in accordance with the principle of *pacta sunt servanda* as stated in Article 1338 of the Civil Code.³⁷

The company's responsibility is not only limited to an apology to the consumer, although indeed but an apology or regret also has the possibility of reducing penalties and can even restore relations with consumers.³⁸ There are several theories regarding liability in consumer protection law, namely in the form of liability due to elements of fraud and other crimes (an error), negligence and oversight, and responsibility without fault.³⁹ Liability of property companies that experience difficulties in fulfilling obligations to consumers related to fulfilling achievements in property sale and purchase agreements. Based on this, it can be indicated that there have been acts of default committed by the property company, so accountability is required by the company. Moreover, there are several consumers who have paid off their property objects but are included in the bankrupt *boedel*.

Creditors can make demands on debtors who have defaulted, namely: creditors only ask for the fulfilment of achievements from debtors; demand compensation accompanied by fulfilment of achievements; demand cancellation of the agreement; demand cancellation of the agreement accompanied by compensation; and sue and seek compensation, or simply sue for damages due to delays.⁴⁰ Then 'how can consumers ask for the fulfilment of achievements while the object of the agreement has been included in the bankruptcy *board*? '.

A completed payment for a purchase should result in the delivery of goods from the seller to the buyer, as stated in Article 1457 of the Civil Code. Furthermore, the transfer of goods includes the transfer of ownership rights, necessitating that all relevant ownership documents be transferred to the buyer. In this context, a "transfer of name" must occur, changing the ownership from the previous owner or seller to the buyer.⁴¹ This process is guided by Article 616 in conjunction with Article 620 of the Civil Code, which states that the surrender or appointment of immovable property is conducted by announcing the relevant deed as specified in Article 620 of the Civil Code. However, since the enactment of Law No. 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA), the handover has been completed before the PPAT (Land Deed Making Officer) at the time of signing the deed.⁴², marking the occurrence

³⁴M. Yahya Harahap, Tarmizi (ed.), *Hukum Perseroan Terbatas*, Sinar Grafika, Sinar Graphic, Jakarta, 2019, 600, p. 116.

³⁵Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, 2005, 189, page 74.

³⁶JB Daliyo (eds.), *Pengantar Hukum Indonesia*, Prehalindo, Jakarta, 2001, 266, p. 105.

³⁷R. Abdoel Djamali, *Pengantar Hukum Indonesia*, Rajawali Press, Jakarta, 2013, 240, p. 163.

³⁸Ameeta Patel & Lamar Reincsh, *Companies Can Apologize Corporate Apologies and Legal Liability*, *Business Communication Quarterly*, Vol.66, No.1, 2003, 9-25, doi: <https://doi.org/10.1177%2F108056990306600103>, p. 24.

³⁹Marshall S. Shapo, *A Representational Theory of Consumer Protection: Doctrine, Function, and Legal Liability for Product Disappointment*, *Virginia Law Review*, Vol.60, No.7, 1974, 1109-1388, doi <https://doi.org/10.2307/1072403>, p. 1153.

⁴⁰Salim HS *Contract Law: Teori dan Teknik Penyusunan Kontrak*, Sinar Grafika, Sinar Graphic, Jakarta, 2015, 189, p. 99.

⁴¹I Ketut Oka Setiawan, *Hukum Perikatan*, Sinar Grafika, Jakarta, 2016, 216, page 158.

⁴²*Ibid.*, pp. 164-166.

of ownership. Delivery of the goods is an obligation within a sale and purchase agreement following the repayment of the traded object.⁴³

The absence of an event of delivery of goods in the form of a house that has been paid for (property) can be caused by the main factor, namely the good faith of the seller because the buyer has paid off the purchase of the property. In this regard, the power of proof is needed to overcome legal problems. Convincing the weight of evidence will have a determination of facts regarding the truth that needs to be proven.⁴⁴ As a main part of Civil Law, ⁴⁵Property law and family law have complex arrangements in them, especially evidence. Because, in essence, evidence is information that contains facts that lead to proving the truth.⁴⁶

Although Article 1338 Paragraph (3) of the Civil Code explicitly mentions good faith, it does not provide a specific explanation of its meaning. Good faith is a requirement that must be fulfilled during the execution of an agreement. It encompasses principles of decency, customary practices, and adherence to the Law, as stated in Article 1339 of the Civil Code.⁴⁷ The fulfilment of obligations within a contractual relationship is an unequivocal obligation that arises from the legal relationship established through mutual agreement between the parties involved⁴⁸, Hence, the fulfilment of obligations towards each party in a contract is considered a demonstration of acting in good faith. Good faith is regarded as a rational expectation in the execution of an agreement.⁴⁹ As defined in the Uniform Commercial Code § 1-201 (19), good faith is the embodiment of honesty in practical terms. It is characterized by genuine honesty and adherence to commercial standards to ensure fair trade, as stated in the Uniform Commercial Code § 2-103 (1) (b). Good faith is occasionally referred to as the duty to act in good faith or the enforcement of contractual obligations. This highlights the importance of being loyal to the terms of the contract, maintaining consistency with the reasonable expectations of contract performance, and avoiding actions that would violate principles of decency, justice, and fairness. It's worth noting that the specific interpretation of good faith may vary depending on the circumstances at hand.⁵⁰ Another way to characterize good faith is as a broad expectation for sellers to prioritize the interests of consumers and refrain from acting selfishly. Good faith serves as a guiding principle in contractual relationships, encompassing the acknowledgement of rights and obligations arising from contracts, exercising caution in contract execution, and showing respect for the interests of all parties involved. This includes fostering a cooperative approach during contract negotiations and demonstrating an overall commitment to fairness and transparency.⁵¹

Regarding the explanation of good faith, there are two branches of the author's thought, namely, when the seller has good faith and bad faith. Good faith can be assumed to occur when the buyer is about to hand over the documents owned by the buyer, and the seller receives a notification that he is in a bankrupt position, then regarding this matter, there is a grant from the Panel of Judges to the petition of the Petitioner, so that all of the seller's assets as a debtor are declared confiscated (as Article 10

⁴³Ahmadi Miru, *Hukum Kontrak dan Perancangan Kontrak*, Rajawali Press, Jakarta, 2014, 167, page 133.

⁴⁴Edmund M. Morgan, *The Law of Evidence*, Harvard Law Review, Vol. 59, No.4, 1946, 481-576, doi: <https://doi.org/10.2307/1335212>, p.493.

⁴⁵MJ van Apeldoorn, *Inleiding tot de Studie vana het Nederlandse Recht*, Translation by Oetarid Sadino, Introduction to Law, Pradnya Paramita, Jakarta, 1999, 477, p. 222.

⁴⁶Adrian Keane & Paul McKeown, *The Modern Law of Evidence*, 10th Edition, Oxford University Press, United Kingdom, 2014, 709, p. 2.

⁴⁷Djaja S. Meliala, *Hukum Perdata dalam Perspektif BW*, Edisi Revisi, Nuansa Aulia, Bandung, 2014, 308, p. 177.

⁴⁸Subekti, *Pokok-Pokok Hukum Perdata*, Intermasa, Jakarta, 2011. 244, page 122.

⁴⁹Robert S. Summers, "Good Faith" in *General Contract Law and the Sales Provisions of the Uniform Commercial Code*, Virginia Law Review, Vol. 54, No.2, 1968, 195-267, doi: <https://doi.org/10.2307/1071744>, p. 237.

⁵⁰RS Summers, WG McRoberts, & AL Goodhart, *The Conceptualization of Good Faith in American Contract Law*, Law and Philosophy Library, 2000, 299–319, doi:10.1007/978-94-015-9407-3_13, p. 305.

⁵¹Hugh Collins, *Good Faith in European Contract Law*, Oxford Journal of Legal Studies, Vol. 14, No.2, 1994, 229-254, <https://www.jstor.org/stable/764619>, p. 254.

Paragraph (1) of the KPKPU Law) or even has been controlled by the Curator (Articles 24-26 of the KPKPU Law), including objects belonging to buyers that have been paid in full together with all of the debtor's assets in the bankruptcy category are included in the bankrupt *boedel*. Based on this, the buyer who has paid off the house as the object of the property sale-purchase agreement can make efforts to file 'other lawsuits at the competent commercial court'.

According to Article 3 Paragraph (1) of the KPKPU Law, the court that has jurisdiction over the area where the debtor's legal domicile is located is responsible for making decisions regarding bankruptcy petitions and other matters related to and governed by this Law.⁵² The term "other matters" mentioned in the context refers to various situations or scenarios that may arise in bankruptcy cases. These include the Paulian action, which involves challenging certain transactions, resistance from third parties against asset confiscation, and legal cases involving the debtor, creditor, curator, or administrator as parties, particularly those related to the bankruptcy assets. Such cases may include lawsuits filed by the curator against the board of directors, alleging negligence or mistakes that led to the company's bankruptcy declaration. The procedural Law that applies in adjudicating cases that include "other matters" is the same as the civil procedural Law that applies to cases of requests for bankruptcy statements, including regarding the time limit for their completion.

On this basis, creditors who feel that their property rights are included in the bankrupt *boedel* can file other lawsuits at the commercial court to issue goods/assets which, according to the creditor (plaintiff), are his by Law, not the property of the bankrupt debtor. The power of absolute competence is strengthened by the Elucidation of Article 3 of the KPKPU Law. Everything depends on the strength of the plaintiff's proof. Therefore the plaintiff is obliged to submit proof of all payments either directly or in instalments in order to strengthen the arguments for the refusal to issue things belonging to creditors from the bankrupt *boedel*.

On the contrary, it is said to be in bad faith that it is known that the seller intends to embezzle the property object that has been paid off belonging to the buyer with the intention of adding to the debtor's wealth so that he can increase his wealth to pay off his obligations to other creditors. Bad faith in practice can be said to have been fulfilled for one party if it does not respond to a summons or warning letter 3 (three) times from the buyer who feels that his rights must be fulfilled by the debtor. Based on this, the buyer who has paid off the house as the object of the property sale and purchase agreement can make efforts to file a lawsuit at the commercial court on the same legal basis, only it can be added with the argument that there is no goodwill on the part of the debtor as the defendant to handing over ownership of the object in the form of a house to the party making the sale and purchase agreement supported by all proof of payment and the agreement made by the parties.

The form of the company's good faith as an effort to carry out its responsibility is to help provide testimony to the commercial court that the house included in the bankrupt *boedel* is the right of the consumer who files a lawsuit at the commercial court. This good faith has been mandated by UUPK to the company when carrying out its business activities,⁵³ thereby emphasizing that business actors can also file a lawsuit at the Commercial Court to remove creditors' property rights from bankrupt *boedel*.

Conclusion

The peaceful settlement, namely through debt restructuring, is seen as providing more legal certainty and guarantees for the fulfilment of human rights protection in the property trading sector, one of which is a house. A condition that makes consumers become concurrent creditors is very unfair and not in line with the UUPK and the 1945 Constitution of the Republic of Indonesia. The mechanism for

⁵²Bendesa Gede Mas Indriyanigraha Arjaya, *et.al.*, *Op. Cit.*, p. 11.

⁵³Rosmawati, *Pokok-pokok Hukum Perlindungan Konsumen*, Kencana Prenadamedia Group, Jakarta, 2018, 127, page 67.

settlement of debts between debtors, namely property companies and creditors, namely property consumers, can be very detrimental if it is resolved immediately by placing the debtor in bankruptcy. Bankruptcy harms not only debtors but consumers. If the reconciliation mechanism cannot be resolved quickly, then both consumers individually can submit a settlement through the BPSK or a civil lawsuit through the District Court with the argument of default.

As a form of liability of the property company to consumers who have purchased a house paid off but entered bankruptcy, the property company must assist the consumer so that the object of the house in question is removed from the bankrupt bank, namely by helping to provide evidence and testimony to support a lawsuit filed by the consumer in court. Commerce so that the panel of judges decides that the house included in the bankruptcy estate is removed because it belongs to the consumer.

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