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The Implications of Supreme Court Circular Letter No. 3 of 2023 on the Application of the *Paritas Creditorium* Principle in the Bankruptcy of Apartment Developers

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Paritas *Creditorium*; Bankruptcy Law; Apartment Developers; SEMA No. 3 of 2023; Legal Certainty.

Abstract
This study examines the implications of the Supreme Court Circular Letter (SEMA) No. 3 of 2023 on the application of the *paritas creditorium* principle in bankruptcy cases involving apartment developers in Indonesia. The regulation has created a normative tension between the universal nature of bankruptcy law under Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligation and the judicial restriction imposed by SEMA, which states that bankruptcy petitions against apartment developers do not fulfill the requirement of simple proof. Using a normative juridical methodology with descriptive-analytical specifications, this research is grounded in literature studies of primary, secondary, and tertiary legal sources, supported by case analysis and expert interviews. The findings reveal that SEMA No. 3 of 2023 substantially degrades the implementation of the *paritas creditorium* principle, limits creditors' access to collective debt resolution mechanisms, and creates legal uncertainty through dualism of norms between statutory provisions and judicial circulars. As a result, creditors—particularly consumer creditors—are compelled to seek alternative legal remedies through civil litigation, including class action lawsuits accompanied by *conservatoir beslag* and execution mechanisms. This study contributes to the development of bankruptcy law discourse and offers practical recommendations to restore fairness, certainty, and effectiveness in resolving debt disputes involving apartment developers.

INTRODUCTION

National economic development today aims to realize a just and prosperous society that is equitable both materially and spiritually, based on the principle of economic democracy within the framework of Pancasila and the 1945 Constitution. As one of the pillars of economic activity, business actors today are required to be creative in responding to the challenges of development in the era of globalization, so that they can support the growth of a business sector capable of producing goods and services of value, thereby contributing to improving the welfare of the broader community.

Entering the current era, along with the accelerating pace of economic activity, there is also an increase in population growth (Sutanto & Prasetyo, 2021; Lee & Kim, 2020). This phenomenon certainly affects the need for housing for the community, which is fundamentally a basic human need that must be fulfilled, considering its significant influence on the formation of the nation's character (Thompson et al., 2021; Hendra & Mulyani, 2019). Even though the increase in housing demand is often not in line with the available land supply (Poh, 2022; Satria, 2020). Therefore, to address these problems and meet housing needs, many legal entity

business actors innovate in their business activities, particularly by offering housing in the form of flats or apartments (Setiawan, 2021; Kusnadi & Sitorus, 2020).

Apartment construction is one of the alternative solutions to housing and settlement needs, especially in urban areas where the population continues to grow over time (Abebe, 2024; Abidin et al., 2023; Josh, 2025; Lawal et al., 2024). As quoted from the Indonesian Information Portal page, the new government under President Prabowo Subianto continues to demonstrate its commitment to advancing national development in various sectors. In terms of economic equity, one of the efforts is accelerating the provision of housing for the people.

The 3 million houses per year program is one of the priority programs launched by the government for the 2024–2029 period (Indonesian Ministry of Public Works and Housing, 2023; Santoso & Rahardjo, 2021). The government will provide housing for the community, especially low-income people (MBR), through the construction of two million houses in rural areas and one million apartments in urban areas (Yusuf & Ghozali, 2022; Fajri & Andriani, 2020). However, the significant burden borne by apartment developers as business actors requires them to present business concepts that provide decent apartments at prices that are affordable for the wider community, especially low-income groups (Kurniawan & Yuliawati, 2021; Rahmawati et al., 2021). Therefore, there is now a paradigm shift in society regarding apartment designation, which is no longer limited to middle- and upper-income groups but is also directed toward low-income groups (Dewi & Agustina, 2020; Sukmawati & Firdaus, 2021).

Apartment developers, as business actors, in carrying out apartment development activities often enter legal relationships with third parties, including banking institutions and/or non-bank financial institutions as sources of financing. In addition, apartment developers also establish legal relationships with consumers as buyers of apartment units, usually through pre-orders, which are then stated in preliminary agreements or sale and purchase agreements, commonly known as the Binding Sale and Purchase Agreement (PPJB), as referred to in Article 1457 of the Civil Code.

Over time, apartment construction activities often encounter obstacles that hinder the development process. These obstacles are frequently experienced by apartment developers due to the complexity of licensing regulations, which slows down development. This results in delays in product sales activities and impacts financial conditions, even causing developers, as debtors, to be unable to pay debts to creditors such as financial institutions, construction service providers, and laborers, including an inability to hand over apartment units to consumers.

The study notes that, in addition to the regulatory complexity, mismanagement or inappropriate business strategies, particularly in financial management, are fundamental factors contributing to financial difficulties. This, of course, becomes a source of problems in business sustainability, causing apartment developers to experience financial crises. If a company has substantial debt and its income is lower than its obligations, then the company becomes unable to fulfill its debt payments.

As a solution to this problem, creditors of apartment development companies and/or the developers themselves, as debtors in a position unable to settle their debts, may resolve the issue through the legal framework of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy and PKPU

Law). This framework is expected to actively serve as a solution for resolving the problems of apartment developers.

Basically, the philosophy behind the Bankruptcy Law and PKPU, according to Man S. Sastrawidjaja, is that it is a legal institution that must be widely socialized to all business actors, including apartment developers, serving as a way out for business actors experiencing financial distress that prevents them from fulfilling their debt obligations to creditors.

The concept of bankruptcy declaration under the Bankruptcy Law and PKPU is essentially derived from Article 1131 of the Civil Code. This article states that all movable and immovable assets belonging to the debtor, both existing and those that will exist in the future, serve as collateral for the debtor's obligations. This implies that, even if not expressly agreed, all assets belonging to a debtor—whether movable or immovable, tangible or intangible, existing or future—are responsible for the debtor's obligations.

Bankruptcy under the Bankruptcy Law and PKPU is fundamentally a general seizure of the assets of the bankrupt debtor. The requirements for filing a bankruptcy petition, as stipulated in Article 2 paragraph (1), require that the debtor has two or more creditors and has failed to pay at least one due and payable debt. This provision embodies the principle of *paritas creditorum*, which guarantees the equality of creditors' positions, where all the debtor's assets, both present and future, are bound for the settlement of obligations. This principle reflects the idea that it is unfair if the debtor retains assets while debts to creditors remain unpaid.

In practice, the implementation of the *paritas creditorum* principle faces significant challenges in bankruptcy cases involving apartment developers. The case of PT Sekar Artha Sentosa (developer of Niffaro Park), which was initially declared bankrupt by the Central Jakarta Commercial Court, was later overturned by the Supreme Court through Cassation Decision Number 1349 K/Pdt.Sus-Pailit/2023. The Supreme Court held that because the object of the case involves apartment units with separate ownership, the evidence is not simple as required under Article 8 paragraph (4) of the Bankruptcy Law and PKPU, and therefore a bankruptcy petition cannot be filed against the apartment developer. A similar outcome occurred in the case of PT Sunny Garden Property, where the PKPU application was rejected on similar grounds.

The issuance of SEMA No. 3 of 2023, which states that bankruptcy or PKPU applications against apartment developers do not meet simple evidentiary requirements, creates a gap between the ideal objectives of the law (*das sollen*) and its practical implementation (*das sein*). Although initially intended to address inconsistencies in court decisions, SEMA in practice limits access to bankruptcy mechanisms as a means of debt settlement. On one hand, debtors cannot use bankruptcy instruments for restructuring; on the other hand, creditors lose clarity regarding the status of purchased units. The principle of *paritas creditorum*, which should ensure equal treatment of creditors, is weakened in practice, creating legal uncertainty for all parties.

Normatively, Article 8 paragraph (4) of the Bankruptcy Law and PKPU only requires simple proof of the existence of at least two creditors and one due debt, without limiting debtors based on specific business sectors. However, the implementation of SEMA No. 3 of 2023 creates inconsistency with the principle of universality in bankruptcy law and hinders creditors from obtaining legal certainty in debt settlement. For apartment developers experiencing financial distress, restrictions on access to bankruptcy mechanisms hinder structured resolution

of financial crises. Consumers, as creditors, also face legal uncertainty regarding ownership rights over fully paid units, particularly when developer operations cease due to financial difficulties.

The research novelty consists of three main contributions. First, this study provides a comprehensive analysis of the degradation of the *paritas creditorum* principle due to SEMA No. 3 of 2023, which has not been widely examined in previous studies. Second, this research offers a practical alternative legal framework for creditors through class action lawsuits combined with *conservatoir beslag*, thereby recontextualizing collective justice within civil procedural law. Third, this study contributes to the theoretical discourse on the hierarchy of legal norms in Indonesia, particularly regarding the inappropriate use of SEMA to create substantive legal restrictions. The purpose of this research is to analyze the implementation of the *paritas creditorum* principle in bankruptcy applications against apartment developers after the enactment of SEMA No. 3 of 2023 and to identify legal remedies available to creditors in settling their claims.

This study examines the implementation of the *paritas creditorum* principle in the bankruptcy of apartment development companies after the enactment of SEMA No. 3 of 2023, with a different focus from previous research. The issues raised are how the *paritas creditorum* principle is implemented in bankruptcy applications against apartment developers under the Bankruptcy Law and PKPU, and what legal actions creditors may take in settling their claims after the issuance of SEMA. This research aims to contribute to bankruptcy law scholarship as well as provide practical input for business actors and creditors in addressing legal uncertainty caused by SEMA No. 3 of 2023.

METHOD

This research method was prepared methodologically, systematically, and consistently using descriptive-analytical research specifications based on normative legal research to provide a comprehensive overview of the implementation of the principle of *paritas creditorum* in applications for bankruptcy declarations against apartment developers after the enactment of SEMA No. 3 of 2023. The approach used was normative juridical, with an emphasis on literature study through the examination of primary, secondary, and tertiary legal materials, including relevant laws and regulations, doctrines, journals, and legal literature, which were then analyzed systematically. The data collection technique was conducted through library research, which was strengthened by interviews with bankruptcy experts and practitioners, while data analysis was carried out using qualitative juridical analysis methods based on positive legal norms, principles, and provisions, without the use of mathematical formulas. This research was conducted by collecting data from the Mochtar Kusumaatmadja Library, Faculty of Law, Padjadjaran University, and the Central Jakarta District Court, Class I A Special.

RESULT AND DISCUSSION

The Implementation of the *Paritas creditorium* Principle in Applying for a Bankruptcy Declaration against Apartment Developers After the Enactment of SEMA No. 3 of 2023 is Reviewed Based on the Bankruptcy and PKPU Law.

Indonesia's legal development aims to realize a state of law in accordance with the 1945 Constitution. This means that the state must act fairly and democratically through a legal system that serves the interests of the people, improves welfare, and upholds social justice based on Pancasila. This concept is related to economic development law, which is a legal framework to improve the national economy in a planned manner. According to Mochtar Kusumaatmadja, the law is not only a rule, but also an institution and a process to realize it. This view is in line with Hans Kelsen, who sees law as a complete system of rules, so it must be understood as a whole.

Within the framework of legal development and the national economy, law plays a dynamic role as a dynamic instrument that not only regulates, but also encourages stable and equitable economic growth. National economic development, as the legal ideal, requires the creation of a conducive business climate and an effective dispute resolution system. The concept of law as a tool of social engineering as further articulated by Prof. Mochtar Kusumaatmadja emphasized that the actualization of law as a means of building society is realized in the form of a law that is responsive to socio-economic dynamics, including in protecting various interests that arise from development activities themselves. Community development in the property sector, in particular, requires business actors to innovate to present vertical housing such as apartments as an answer to land limitations and urbanization.

However, apartment developers certainly do not always run well, and often face problems, one of which is financial difficulties that can be caused by various macro and microeconomic factors. These financial difficulties often result in losses from third parties, among which the most vulnerable are creditors who have paid part or all of the price of the unit but have not received their rights to the unit.

It is in this context that the law functions to solve the problem through the bankruptcy legal system. Basically, the philosophy of the birth of the Bankruptcy Law and PKPU according to Man S Sastrawidjadja is a legal institution that must be massively socialized to all business actors, including apartment developers whose existence is a way out for business actors to get out of a situation of financial distress which results in not being able to carry out obligations for the legal relationship of their debts and receivables to creditors.

The settlement of debts and receivables of apartment developer creditors who use bankruptcy law is of course in which there are basic foundations, both stated and implicitly in the Bankruptcy Law and PKPU. The principles of Indonesian bankruptcy law are an inseparable part of the principles of Civil Law, because bankruptcy law is a subsystem of national civil law which is part of civil law and national civil procedure law. Broadly speaking, Indonesia's bankruptcy law contains material that regulates confiscation and execution, this is as well as regulated in the civil procedure law.

The bankruptcy law system in Indonesia is philosophically based on the principle of *paritas creditorium* and the principle of *pari passu prorate parte* which is the actualization of the general guaranteed regime in property law. The principle of *paritas creditorium* emphasizes

that all debtors' assets, both current and future, both movable and immovable, are a common guarantee for all creditors without exception.

This principle is the embodiment of justice that rejects the monopoly of rights by one particular creditor. Meanwhile, the principle of *pari passu prorate parte* ensures that the proceeds of the estate are distributed proportionately among all creditors, unless there are privileges granted by law, such as in the case of separatist creditors. Therefore, this principle is manifested in Articles 1131 and 1132 of the Civil Code and becomes the normative foundation in Article 1 paragraph (1), Article 2 paragraph (1) and Article 21 of the Bankruptcy Law and PKPU to ensure the equality of the rights of creditors to their debtors both in terms of filing a bankruptcy lawsuit and in terms of debt repayment prosecution.

In its implementation, the realization of *paritas creditorium* in the context of filing a bankruptcy declaration for apartment developers when they want to access the Bankruptcy Law and PKPU in a limited manner has simple proof requirements as stipulated in Article 8 paragraph (4), namely it is sufficient to prove the existence of two or more creditors and the existence of debts that have matured and are not paid. This approach is intended to enable the settlement of debts and receivables in a collective, orderly, and equitable manner, without discriminating between debtors or creditors, including apartment developers and their creditors such as financial institutions, consumers, and business partners.

Similarly, the explanation of Article 8 paragraph (4) of the Bankruptcy Law and PKPU which means "facts or circumstances that are proven simply" is the existence of the fact of two or more creditors and the fact of the debt that has become due and has not been paid. Meanwhile, the difference in the amount of debt transferred by the bankruptcy applicant and the bankruptcy respondent does not prevent the issuance of a bankruptcy declaration decision. Thus, legally formal regarding simple proof in its explanation only explains what is meant by facts or circumstances that are proven simply, namely the fact of 2 (two) or more creditors and the fact that the debt has been due and has not been paid. From this explanation, it can be implicitly known that in principle the essence of the application of simple proof is the application of the bankruptcy conditions of Article 2 paragraph (1) which is carried out simply. Of course, this is procedurally in line with the spirit of the Bankruptcy Law and PKPU which incidentally is a special institution for the settlement of debtors' debts collectively to all creditors.

However, the implementation of the principle of credit parity has been significantly degraded with the issuance of the Supreme Court Circular Letter (SEMA) Number 3 of 2023. This SEMA, which specifically regulates bankruptcy and PKPU applications against apartment developers, states that the application does not meet the simple evidentiary requirements as referred to in Article 8 paragraph (4) of the Bankruptcy and PKPU Law. Normatively, this raises legal problems because SEMA, which is supposed to function as an administrative and technical guideline for the judiciary (based on Article 79 of Law No. 14/1985 concerning the Supreme Court), actually creates substantive legal material that limits the enactment of the law. The SEMA effectively establishes a new exception for certain categories of debtors (apartment developers) that are not regulated in the Bankruptcy Law and PKPU, thereby degrading the universality of the bankruptcy institution which should be accessible to all creditors or debtors to be able to resolve their debts collectively.

As a result, the access of apartment developer creditors (including consumers who have not received units) to the collective and equal debt settlement mechanism has been hampered, even though the legal framework has formally met the requirements set by law. Furthermore, the existence of SEMA No. 3 of 2023 causes incongruence between general laws and regulations and internal guidelines of judicial institutions. This inconsistency has the potential to cause disparity in decisions and legal uncertainty in the judicial environment.

On the one hand, judges can stick to the literal provisions of the Bankruptcy Law and PKPU which provide wide access, while on the other hand, judges can follow SEMA which is restrictive. This situation threatens the principle of uniformity of law and creates procedural injustice for creditors dealing with similar debtors in different jurisdictions.

The substantive impact is the weakening of the effectiveness of the principle of *paritas creditorium*, because the property of the debtor of the apartment developer can no longer be easily used as an object of public confiscation (*boedelafstand*) through bankruptcy for the benefit of all creditors proportionately. This is contrary to the spirit of the *paritas creditorium* principle which requires all commercial creditors (including buyers whose legal status is creditors under PPJB) to have the same position to file for bankruptcy if formal and material conditions are met.

Similarly, the existence of SEMA No. 3 of 2023 is also contrary to the principle of legal certainty because it adds restrictions that are not regulated in the Bankruptcy and PKPU Law. Furthermore, this also results in creating inconsistency with the purpose of bankruptcy law which in fact aims to settle all debtors' debts in one process for efficiency, prevent disparity in judgments, and avoid the disposal of debtors' assets to finance many separate legal processes.

In principle, the purpose of issuing SEMA No. 3 of 2023 is as a response to the Supreme Court's response to the phenomenon of apartment developer bankruptcy which often harms consumers and prevents the abuse of the bankruptcy process for improper interests. This is especially when the developer is experiencing internal financial problems. The Court has an obligation to protect consumers who have purchased units from problematic developers so that they are not easily harmed, considering the position of consumers in the bankruptcy process only as concurrent creditors, namely creditors who do not have priority or special rights in settling receivables. However, Hadi Subhan emphasized that the presence of SEMA No. 3 of 2023 can actually harm consumers and developers themselves, and does not provide legal certainty if the housing project fails. In fact, the main purpose of bankruptcy or PKPU is to guarantee enforcing contracts. This problem arises because although the legal relationship in apartment ownership loans should be simple and firm, in practice problems often arise when developers pledge the same assets to other parties. Therefore, especially for consumers who have paid off payments, they should not be included in the bankruptcy bank.

From the results of the author's research, the study noted that the existence of SEMA No. 3 of 2023 in the field of judicial practice has caused problems as the author found that in 2023 it is known that PT SKA submitted a voluntary application for Postponement of Debt Payment Obligations (PKPU) through the Commercial Court at the Central Jakarta District Court Special Class IA and based on Decision Number 320/Pdt.Sus-PKPU/2022/PN. Niaga.Jkt.Pst. dated August 8, 2023 stated that the Debtor of PT. SKA is bankrupt with all its legal consequences with the following considerations:

"Considering, that based on the data mentioned above, it is known that 79% of the creditors present did not agree with the peace proposal from the Debtor and 21% agreed with the peace proposal from the debtor, then based on article 281 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations so that the results of the vote on the peace plan of PT. Sekar Artha Sentosa does not meet the requirements for the achievement of peace (homologation), so the recommendation from the management and supervisory judges declares the debtor bankrupt."

Furthermore, after the decision of the Commercial Court which declared PT SKA bankrupt with all its legal consequences. On December 7, 2023, through an Appeal of Cassation filed by Creditor Andre Jerrico Legoh as another Creditor of PT SKA, it was granted by the Supreme Court of the Republic of Indonesia as per the Decision of the Supreme Court of the Republic of Indonesia Number 1349 K/Pdt.Sus-Pailit/2023 which granted the cassation application from the Cassation Petitioner Andre Jerrico Legoh and Canceled the Decision of the Commercial Court at the Central Jakarta District Court Number 320/Pdt.Sus-PKPU/2022/PN Niaga. Jkt. Pst., August 8, 2023. The legal considerations of the decision are:

That because the Debtor of PT SKA is a developer/developer of apartments/flats and the object of the bankruptcy case a quo is an apartment building whose ownership status of each unit is the ownership of a unit of flats with each apartment unit from each different owner and different ownership status, the proof is not simple as referred to in the provisions of Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and PKPU, so that the PKPU application and the application for a bankruptcy declaration cannot be submitted against the developer/developer of apartments/flats and for these problems cannot be resolved through the Commercial Court"

Based on the case of PT. SKA above, the company's bankruptcy was filed due to the will of the creditors. This is evidenced by the voting results of the peace plan, where 79% of the creditors present rejected the peace proposal from the Debtor, while only 21% agreed. In accordance with Article 281 paragraph (1) of the Bankruptcy and PKPU Law, the results of the vote are not eligible for the achievement of peace (homologation). Therefore, based on the recommendation of the management and supervisory judges, the debtor was declared bankrupt.

However, the bankruptcy ruling against PT. The SKA was then canceled by the Supreme Court through Decision Number 1349 K/Pdt.Sus-Parilit/2023. The Supreme Court's consideration is that PT. SKA has the status of an apartment/apartment developer, where each apartment unit is owned by a different party with separate ownership rights. As a result, the evidence in this case is considered not simple.

From this case, the implementation of the principle of *paritas creditorium* where the equality of creditors in accessing bankruptcy law for apartment developer debtors has been degraded due to the enactment of SEMA No. 3 of 2023. As a result, the creditors of PT. SKA no longer obtain legal certainty in settling their receivables against debtors through the bankruptcy mechanism.

Similarly, the author can also find that in the 2024 case, it is known that PT SGP as the Debtor for the Construction of the SH BSD Apartment project submitted an application for Suspension of Debt Payment Obligations (PKPU) by the Applicant SH BSD as a Creditor who is positioned as the Construction Contractor of the SH BSD Apartment project. In this case, the Commercial Court at the Central Jakarta District Court Special Class IA and based on

Decision Number 97/Pdt.Sus-PKPU/2024/PN. Commerce. Jkt.Pst. dated April 25, 2024 stated that the PKPU application from the Applicant was rejected. In this case, there are some things that are subject to legal consideration, namely:

"Considering, that based on the postulates of the Applicant's application and based on the testimony of the witnesses, the legal relationship between the Applicant and the Respondent is in the context of the construction of the Sky House apartment project where the Applicant is the working party and the Respondent is the developer. That based on the testimony of witness Stefanus Adi Purnomo stated that the Sky House apartment units have some buyers and have also been inhabited by their owners."

"Considering, that based on the position of the Respondent as the developer, the application a quo does not meet the formal requirements for the respondent's submission in the PKPU a quo case"

"Considering, that based on the description of the considerations mentioned above, the Panel of Judges is of the opinion that the Applicant's application for postponement of debt payment obligations does not meet the provisions of the Supreme Court Circular Letter Number 3 of 2023 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2023 as a guideline for the implementation of duties for the court and Article 8 paragraph (4) of Law Number 37 of 2024 concerning Bankruptcy and Postponement of Debt Payment Obligations, so that the application for a delay in the temporary debt payment obligation from the Applicant must be rejected"

Based on the case mentioned above, factually SEMA No. 3 of 2023 has also degraded the implementation of principle I (equality of position of creditors) in PKPU applications against apartment developer debtors. The intention of SH BSD as the Creditor of the PKPU Applicant against PT SGP as the Debtor, as stated in the legal considerations of Decision Number 97/Pdt.Sus-PKPU/2024/PN. Commerce. Jkt.Pst. dated April 25, 2024, is as follows:

The main point is regarding the application to declare the Respondent in a state of Delay of Debt Payment Obligations because the Respondent has not paid its debt that has become due and can be billed to the Applicant with the following details:

Table 1 demonstrates a clear shift in judicial outcomes

Remaining Phase 1 Contract payment obligations	IDR 8,628,400,977,-
Remaining Phase 2 Contract payment obligations	IDR 78,232,174,476 , -
The remainder of the PKPU Respondent's payment obligation to the PKPU Applicant	IDR 86,860,575,453,-

Therefore, based on the description of the case as mentioned above, it shows that the existence of SEMA No. 3 of 2023 eliminates or negates the rights of Creditors as protected by the Bankruptcy Law and PKPU to be able to use the bankruptcy legal framework as a means to be able to obtain certainty in the settlement of their debts.

Based on the description as mentioned above, according to the author, if the Supreme Court considers that the impact of bankruptcy or PKPU causes complexity for apartment developers so that they cannot access the bankruptcy legal framework, of course this is not appropriate considering that as long as the simple proof in the application for a declaration of bankruptcy by the apartment developer has been fulfilled as required in Article 8 paragraph (4)

of the Bankruptcy and PKPU Law, then the judge should have granting the bankruptcy/PKPU application against the apartment development company.

Thus, the enactment of SEMA No. 3 of 2023 when viewed from the perspective of legal certainty theory creates a dualism of norms that each negates each other. The existence of SEMA is intended as an administrative guide, but in practice it limits the application of the Bankruptcy Law and PKPU. Thus, this mutatis mutandis limits the implementation of the principle of *paritas creditorium* in the application for a declaration of bankruptcy or PKPU against apartment developers.

A. Legal Actions of Creditors in Settlement of Receivables Against Debtors of Apartment Development Companies After the Enactment of SEMA No. 3 of 2023.

Philosophically, the purpose of bankruptcy law as mandated in the General Explanation of the Bankruptcy Law and PKPU is to create a fair settlement, speed, transparency, and efficiency. In the context of apartment developers who are experiencing financial distress, this ideal goal should be realized in a collective effort to settle debts and receivables between the developer's debtors and their multiple creditors, ranging from banking creditors, suppliers, to end-user creditors.

This collective mechanism is not only efficient, but also fair because it ensures all parties are resolved in one integrated forum, preventing a "race of creditors" that only benefits the fastest to act. However, the legal reality after the issuance of SEMA No. 3 of 2023 which states that a bankruptcy application filed by an apartment/house buyer against a developer, on the basis of default not handing over the unit, does not meet the element of simple proof (prima facie) for the existence of a debt that has matured and can be collected as required by Article 8 paragraph (4) of the Bankruptcy and PKPU Law. As a result, based on the application of SEMA, as an example of the case described above, Creditors of PT SKA and PT SKS lose their right to access bankruptcy legal tools as a form of settlement of their debts. This closure of access raises fundamental legal issues because:

1) Contrary to the principle of universality and collectivity in bankruptcy that does not discriminate between types of debtors;
2) Creating legal uncertainty by adding material requirements that are not regulated in the law; and
3) It has the potential to violate the constitutional right to obtain justice and equality before the law as guaranteed by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Apartment development companies, in their capacity as legal subjects of business actors, inherently establish legal relationships with various third parties, including consumers who buy apartment units, banking institutions and non-banking financial institutions, in order to obtain financing that is a source of financing for its operations and business development.

Normatively, the legal relationship between the creditor and the debtor of the apartment developer is sourced from and bound by a valid agreement. This agreement contains an agreement that is juridically binding and gives birth to reciprocal rights and obligations for the parties, as stipulated in the general provisions of Article 1313 of the Civil Code regarding the definition of agreement and Article 1234 of the Civil Code regarding the object of the obligation to give something, do something, or not do something. A similar legal construction

also underlies the relationship between the creditors of the unit buyer and the developer, which is concretely outlined in the Sale and Purchase Binding Agreement (PPJB) based on the legal framework of sale and purchase in Article 1457 of the Civil Code.

However, in empirical practice, the implementation of agreements does not always go ideally. There are many cases where one of the parties in this context often the developer debtor fails to fulfill the promised achievements, or experiences a state of default. This failure not only causes material losses, but also has the potential to damage the stability of legal relations between parties and have a systemic impact on certainty and order in economic traffic.

In order to deal with this, when access to collective debt settlement mechanisms through bankruptcy institutions is restricted, the legal options available to consumer creditors shift to alternative means, both litigation and non-litigation. In the realm of non-litigation, settlement space can be sought through negotiation and mediation facilitated by the Consumer Dispute Settlement Agency (BPSK) as stipulated in Law Number 8 of 1999 concerning Consumer Protection, or through voluntary debt restructuring schemes outside the court, including arbitration.

However, according to the author, the non-litigation approach is often reduced considering the condition of developer debtors who are generally in a situation of insolvency or severe financial difficulties, thus hindering the achievement of consensus. Therefore, the most appropriate legal action for creditors to take is to file a default lawsuit with the District Court. The legal basis lies in Article 1238 of the Civil Code concerning the obligation to fulfill achievements and Article 1243 of the Civil Code concerning the obligation to pay compensation due to default. In this lawsuit, consumer creditors can sue:

1) Fulfillment of unit handover obligations; or
2) Termination of the agreement (rescission) is accompanied by a refund of the money that has been paid along with interest and compensation.

Furthermore, because the disadvantaged developer consumers are usually numerous, the most effective and efficient mechanism in the process is to file a lawsuit collectively through class actions or class action lawsuits. The main legal basis for this is Article 1 letter a of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2002 concerning the Proceedings of Class Representative Lawsuits stating that Class Representative Lawsuits are filed.

If further enlistment is carried out, the author is of the view that in the context of class action settlement, the requirements have been fulfilled in a limited manner, including:

1) Numerosity, where the number of group members (consumers) is so large that it is inefficient to be sued individually;
2) Commonality, there is a similarity of facts or legal basis that background the dispute, namely the developer's default in handing over units based on PPJB;
3) typicality, demands or compensation owned by each group member are basically typical and similar; and
4) Adequacy of Representation, where the group representative and his legal representative are able and worthy to represent the interests of all group members.

Thus, class action lawsuits as an effort to resolve disputes can provide access to justice because the burden borne by the joint to file a lawsuit in court in order to fight for the right

collectively to obtain compensation and take certain actions becomes more considered and prioritized by the court.

In the meantime, to create certainty so that the class action lawsuit does not become useless (*illusoir*) and to ensure the enforceability of the judgment in the future, a strategic step that is necessary is the submission of an application for confiscation of collateral (*conservatoir beslag*) on the assets of the developer's debtor. The legal basis for confiscating this guarantee is contained in Article 227 paragraph (1) of *Het Herziene Indonesisch Reglement* (HIR) or Article 197 of the *Reglement op de Burgerlijke Rechtsvordering* (RBg).

According to M. Yahya Harahap, the purpose of the confiscation of the collateral is so that the goods are not embezzled or alienated by the defendant during the trial process, so that when the verdict is implemented, the payment of the debt demanded by the plaintiff can be fulfilled, by selling the confiscated goods. Thus, the act of confiscating the defendant's property is not to be handed over and owned by the plaintiff (the confiscation applicant), but to pay off the payment of the defendant's debt to the plaintiff.

With the granting of collateral confiscation, the debtor's assets (such as land, other buildings, cash in banks, or movable assets) can be secured so as to guarantee the execution of the debt if the lawsuit is granted in the future. A security confiscation prevents the debtor from taking legal actions that are detrimental to the creditor, such as transferring, guaranteeing, or hiding his assets during the trial process.

Confiscation with *conservatoir beslag* can also be seen as an implementation of the spirit of the principle of *paritas creditorium* in the realm of ordinary civil law, because this action secures the debtor's assets for the benefit of all creditors who may later execute, not only for the benefit of the individual confiscator. This prevents the seizure of property in an orderly manner.

After the class action lawsuit is granted and has permanent legal force (*in kracht van gewijsde*), the final stage is execution. The court will execute the confiscated goods for the benefit of creditors for the settlement of their debts. Execution can be carried out through auction under court supervision based on the provisions of the HIR/RBg. The auction proceeds will then be distributed to creditors who already have an executory title (in this case, a court decision that has acquired permanent legal force).

Thus, although SEMA No. 3 of 2023 has delegitimized consumer creditors' direct access to bankruptcy institutions, Indonesia's legal framework still provides powerful enough legal tools for the protection of their rights. The strategic combination of class action lawsuits accompanied by a request for confiscation of collateral (*conservatoir beslag*) and ending with the execution of the judgment, is a comprehensive, effective, and still oriented dispute resolution scheme for collective justice.

CONCLUSION

The implementation of the *paritas creditorum* principle within the bankruptcy legal system is intended to provide a fair mechanism for resolving debts between creditors and apartment developers when debtors are unable to fulfill their obligations. However, SEMA No. 3 of 2023, although administrative in nature, has produced substantive implications by stating that apartment developers do not meet the requirements for simple proof, thereby restricting creditors' access to bankruptcy proceedings. This situation creates inconsistency with the

Bankruptcy Law and PKPU, potentially resulting in legal uncertainty and non-uniform judicial practices, as some judges rely on statutory provisions while others follow SEMA. As an alternative legal remedy, creditors may shift to general civil litigation through a class action mechanism accompanied by a request for *conservatoir beslag* and subsequent execution of judgment, which offers a more comprehensive and collective form of dispute resolution and reflects the spirit of *paritas creditorum* within ordinary civil enforcement law. For future research, it is recommended to further examine the long-term judicial consistency of SEMA-based restrictions and to explore comparative legal frameworks in other jurisdictions to evaluate more effective models for protecting creditor rights in property development bankruptcy cases.

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