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LEGAL RESPONSIBILITY FOR DEVELOPERS OF FLATS FILED FOR BANKRUPTCY IN THE PERSPECTIVE OF SEMA NUMBER 3 OF 2023

This paper discusses the legal position of flat developers who have two or more creditors and are unable to fulfill their obligations to pay debts that are due. Under the provisions in the Bankruptcy Law, a debtor who is unable to pay its debts that have matured may be declared bankrupt by a court decision, provided that the requirements outlined in Article 8 paragraph (4) are fulfilled, namely, that the debt is directly provable. If the debt can be simply proven, the court is obliged to grant the bankruptcy application. However, the Supreme Court has adopted a policy in the form of a circular providing guidance. In particular, Supreme Court Circular No. 3 of 2023, in subparagraph (2) of paragraph 2 of letter B, states that bankruptcy or suspension of debt payment applications against unqualified developers cannot be categorised as cases supported by mere evidence. This research employs normative legal methods using a statute-based approach. The findings of the study indicate that a Supreme Court circular has a lower hierarchical position than a law, and its legal force depends on its compliance with the law. Therefore, if a circular is found to be contrary to higher law, it may be invalidated and any decision based solely on such a circular may be appealed. In practice, developers or debtors who fail to meet their obligations to creditors will have their assets treated as bankruptcy estate, distributed based on the principle of equal treatment among creditors. Ultimately, this paper concludes that bankruptcy law remains the most efficient legal solution due to the simple mechanism of proof it offers, and that the Supreme Court circular letter has no authority to override the law as established by statutory law.

Keywords: *legal liability, flat developer, debt default, bankruptcy law, judicial interpretation, simple evidence, creditor protection.*

Original article

INTRODUCTION. According to Law Number 20 of 2011, a flat (rumah susun) is a multi-storey building constructed within a functionally structured environment, either horizontally or vertically. It consists of units that can be individually owned and used separately, primarily serving as residential dwellings, and is equipped with shared parts, shared objects, and shared land. Flats are categorized into several types, including public flats intended for low-income communities, special flats built for specific needs such as housing disaster victims, state flats owned by the government and used as residences and facilities to support the duties of civil servants and public officials, and commercial flats developed with the aim of generating profit through sales or rentals.

From the various definitions of flats in Indonesian Law No. 20 of 2011 has the main function for primary human needs, namely as a safe and comfortable place to live and shelter. Today, sales

for products in the form of property such as flats have almost dominated the property market in Indonesian cities, with this business in the property sector growing rapidly in recent years due to several factors, namely: 1) the growing human population, 2) limited land, 3) high demand for housing, 4) the price of landed houses is getting higher and apartments or flats are used as a solution, 5) market potential for developers.

Despite such an important function of a house or residence for human life, there are still many members of the community who are homeless, including decent housing. Due to the increasing population growth rate in Indonesia, Dr Ir. Agustinus Adib Abadi, M.Sc., from the SAPPK Housing and Settlement Expertise Group, said that as of 2020, according to BPS, the number of productive age people is 140 million out of a total population of 270.20 million Indonesians, while in 2045 it is projected to reach 317 million people with the productive age group between 20 and 65 years old dominating.

The sale and purchase of flats between developers and consumers is part of an agreement that has bound one party to submit or provide a property and has bound the other parties to pay the price at a price that is in accordance with the agreement (Van Gestel, De Poorter, 2016). Legal regulations that have a relationship with the terms of the sale purchase binding agreement contained in Article 1457 of the Civil Code which reads "sale and purchase is an agreement by which one party binds himself to deliver a property and the other party to pay a predetermined price".

The sale and purchase agreement according to the Civil Code (KUHPerdata) is binding, which means that the agreement has not transferred one's property rights. Property rights will transfer after the act of delivery or levering. In other words, in the Civil Code system, levering is a juridical act to transfer property rights (transfer of ownership) (Subekti, 1996, p. 80). The existence of developers does not necessarily make it easier for the community to meet their needs for housing, but it also creates new problems. Every legal relationship that arises in people's lives is inseparable from the possibility of problems or disputes arising, which can vary from small scale to large scale. In this case, it occurs in the Sale and Purchase Binding Agreement between the developer and the consumer or buyer of flats or can also be called property. Legal entities that are also involved in the construction of housing projects are commonly called real estate developers (Yu, He, 2018). The Company is engaged in housing or residential development which includes various types such as housing, apartments, flats, and the like. Every developer in running his business always tries to apply the principle of prudence in order to avoid bankruptcy, which means that a developer ends up being bankrupted based on a court decision (Al-Amaren, Aletein, Tejomurti, 2022).

Article 1 paragraph (1) of Law Number 37 Year 2004 on Bankruptcy and PKPU explains bankruptcy, which is defined as a legal action in the form of public seizure of all assets of the Bankrupt Debtor. The management and settlement of bankruptcy is carried out by a Curator who is under the direct supervision of the Supervisory Judge, in accordance with the provisions stipulated in this law. In order for a person or an institution or company to be included in the Bankruptcy Law, which also determines the requirements that must be met according to Article 2 paragraph (1) of the Bankruptcy Law, the business actor or we can call it a debtor, then the debtor is unable to pay a debt can be subject to a bankruptcy decision by the court, either from his own application or at the request of one or more creditors. Not only that article, but also the requirements in Article 8 paragraph (4) of the Bankruptcy Law must be met, namely the fact of debt that can be proven simply and if the fact of debt is fulfilled, the judge must grant the request for a bankruptcy statement.

Modern Bankruptcy Law is designed to provide a way out for debtors who have experienced financial distress, so that they are not constantly pressured by their creditors to fulfill their obligations. On the other hand, the law also provides creditors with the opportunity to obtain their rights and/or control over all of the debtor's assets that have been left over to fulfill the repayment of their obligations, even though the repayment is often not fulfilled.

Until now, bankruptcy law has often been seen as a solution to the problem of debts or consumers and developers who are no longer able to fulfil their obligations to consumers. But the bankruptcy institution plays a very important role, as it is the implementation of two main articles of the Civil Code related to the debtor's liability for its debts, which are also regulated by Articles 1131 and 1132. Both articles provide for the principle of guarantees to ensure that payments under the transactions that have been carried out are received (Olabarrieta, San-Jose, Araujo, 2023).

The Civil Code (KUHPer) explains that it is possible for a developer to be suspected of violating the law. This is because Article 1365 of the Civil Code stipulates that if an act violates the law and causes harm to another person, the party who commits the act due to negligence is obliged

to compensate for the losses incurred. In "Law Number 20 of 2011 concerning Flat Houses (Flat Law)", due to its relation to licensing matters. One of the rules in the Law is that it allows developers to conduct an early marketing process or commonly referred to as pre-project selling. In this scenario, the potential risk borne by consumers is expected to be very high if the developer fails to fulfill its commitments.

Consumers affected by the actions of developers may file claims that violate or do not comply with Article 8(1) of the 1999 Law No. 8 of 1999 on Consumer Protection, which states that all efforts to ensure legal certainty in consumer protection are considered consumer protection. In resolving a case, a lawsuit may be brought before a district court by consumers, the government, institutions, non-governmental organizations (NGOs) or groups of consumers with similar interests. This provision is regulated by Article 46 of the Law on Consumer Protection.

Article 1 paragraph (1) states that consumer protection is all efforts that ensure legal certainty to provide protection to consumers, and it can be emphasized that legal protection of consumers is an obligation that must be carried out by the state as a constitutional right of citizens to obtain legal protection, legal certainty and justice. Without legal protection, certainty and justice for consumers, it will lead to legal conflicts between consumers and producers, because there are parties who feel disadvantaged.

In connection with the announcement on December 29, 2023, the Chief Justice of the Supreme Court of the Republic of Indonesia, Muhammad Syarifuddin, issued and announced Circular Letter Number 3 of 2023. This circular letter regulates the application of the formulation of the results of the Plenary Meeting of the Supreme Court Chamber in 2023 as guidelines, in accordance with the provisions of Article 8 paragraph (4) of the Bankruptcy Law. This Circular Letter is a summary of the results of the Plenary Meeting held on November 19 to 21, 2023, and is compiled in the form of guidelines contained in Supreme Court Circular Letter Number 3 of 2023.

Letter B point 2 paragraph (2) which reads that, an application in the form of a bankruptcy statement or PKPU against a developer of flats that does not qualify as evidence in a simple manner, as stipulated in the provisions of Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Over time, developers involved in the construction of flats often face debt disputes, both those that arise during the construction process and those that arise between developers and property consumers. These disputes are generally caused by defaults, such as delays in the handover of keys, delays in the completion of construction, or the inability to realize the promised housing project or flats. This happens even though consumers or bookers have made payments, even paying off all their obligations in accordance with the sale and purchase agreement. In addition, developers can also face the problem of more than one debt that is due and must be paid immediately, which leads to default. In this case, disputes regarding these debts can be resolved through existing legal institutions in accordance with the regulations of the Bankruptcy Law Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and PKPU stipulates that bankruptcy applications can only be submitted with simple proof.

In the law, there are three conditions that must be met to file a bankruptcy petition. These conditions are: a. Having a debt that is due and collectible; b. Having two or more creditors; c. The debt can be proven simply. However, in connection with the decision of the Chief Justice of the Supreme Court to issue the SEMA, it is certainly very much a question of why and how the basis of the application for a bankruptcy statement or PKPU against the developer of flats that cannot be considered to meet the requirements as simple proof. And with the enactment of SEMA No. 3 of 2023 also limiting debt settlement for developers through bankruptcy or PKPU, this raises legal issues that the authors will examine in this paper entitled Legal Responsibility for Susunah Developers who are Appealed for Pailit in the Perspective of Sema Number 3 Of 2023.

PURPOSE AND OBJECTIVES OF THE RESEARCH. The main purpose of this study is to critically examine the legal standing and implications of the Supreme Court Circular Number 3 of 2023 in relation to bankruptcy applications against apartment developers who are unable to fulfill their debt obligations. This research seeks to determine whether the circular is consistent with the prevailing legal framework and to what extent it may influence judicial decisions in bankruptcy proceedings. In order to achieve this purpose, the study aims to analyze the normative provisions of the Bankruptcy Law, particularly concerning the requirements for declaring a debtor bankrupt through the concept of simple evidence. It also evaluates the legal hierarchy and binding nature of circulars issued by the Supreme Court in relation to statutory laws and constitutional principles. Additionally, the study assesses the impact of this circular on the rights of creditors and the integrity of the bankruptcy process.

Finally, it formulates critical arguments regarding the legal validity of relying solely on such circulars when they potentially contradict formal legislation. Through these objectives, this research aspires to contribute to the advancement of legal scholarship, particularly concerning the authority and limitations of non-legislative judicial instruments in commercial dispute resolution.

METHODOLOGY. This research employs a normative juridical method, focusing on the analysis of the application of positive legal norms. It uses two approaches: the statute approach and a systematic review of legal concepts. Legal materials consist of primary sources such as legislation and jurisprudence, secondary sources including legal literature and academic writings, and tertiary sources like legal dictionaries and reference books.

RESULTS AND DISCUSSION

Position of SEMA No. 3 Year 2023 against Law No. 37 Year 2004 on Bankruptcy and PKPU

1. Ratio Legis SEMA No. 3 of 2023 Letter B point 2 paragraph (2)

Ratio legis is a legal norm from legal principles, as Satjipto Raharho once said that "legal principles are the heart of legal regulations and it is the broadest foundation for the birth of a legal regulation, which means that legal regulations will ultimately be returned to these principles" (Rahardjo, 2014, p. 14). Then Sudikno Mertokusumo said that legal principles are not concrete rules, but are basic thoughts that are general in nature or are the background of concrete rules. but in practice many legal principles are realized in concrete regulations such as the principle of "nullum delictum nulla poena sine praevia lege poenali" contained in Article 1 of the Criminal Code (Mertokusumo, 2007, p. 34).

In general, bankruptcy is considered by the public as a verdict that smells of criminal acts and is a legal defect on the subject of law. Whereas in essence bankruptcy is a commercial solution to get out of debt and credit problems that are choking a debtor, where the debtor no longer has the ability to pay these debts to his creditors. In resolving a bankruptcy case itself has been known in Indonesia since the Colonial era, where at this time the applicable regulation is Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law) which is an update of Law Number 4 of 1998 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 1998 concerning Amendments to the Law on Bankruptcy into Law, which initially used the Failissement verordening (Staatsblad 1905:217 juncto Staatsblad 1906:348) which is a legal product from the Netherlands that has been applied in Indonesia since the Colonial era (Sjahdeini, 2009, p. 71). In resolving a bankruptcy case there are several principles that must be considered, this is used as a basis, namely:

a. The principle of "Paritas Creditorium" (equality of position of creditors), which states that a creditor has the same rights to all assets of the debtor. If the creditor cannot or refuses to pay the debt, then the debtor's assets in the form of movable and immovable goods and assets currently existing and goods that will be owned by the debtor in the future will be bound by the settlement of the debtor's obligations (Shubhan, 2008, p. 95).

b. The principle of "Pari pasu prorate parte", is present to complement the principle of Paritas Creditorium where the principle only states that each creditor has the same rights to the debtor's assets, then the Pari passu prorarta parte principle states that the debtor's assets are joint collateral where the results must be divided proportionally between each debtor. This principle emphasizes a more equitable distribution of the debtor's assets in accordance with the proportional manner.

c. The "Structured Creditors" principle, which categorizes various types of debtors according to their level. In Bankruptcy, a creditor is divided into three types, namely sparatis creditors, preferred creditors, and concurrent creditors.

d. The principle of Debt, in bankruptcy means that it is one of the main factors that are very decisive. That is because if there is no debt, there will be no case regarding bankruptcy, without the absence of debt, bankruptcy will never exist. Because bankruptcy is a place to liquidate the debtor's assets with the aim of paying debts from a debtor to his creditors.

e. The principle of "Debt Collection", is the concept of a creditor retaliating against a bankruptcy debtor by collecting his or her judgment against the debtor's assets or the debtor himself. In ancient times, it was associated with slavery and cutting off parts of the debtor's body, but in modern bankruptcy law, this principle itself is more dominant in the form of liquidation of a debtor's assets (Shubhan, 2008, p. 83). Security seizures or bankruptcy petitions are unusual procedures because they are only provided as a means of pressure to compel a debtor to fulfill an obligation. This principle also emphasizes that the debtor must pay his debts as soon as possible to avoid mistreatment of the debtor himself by hiding his assets which are a general guarantee for creditors (Triantini, Laksana, 2020, p. 954).

f. The principle of "Debt Forgiveness", means that bankruptcy is not only identical as a tool for

defamation against the pressure of a debtor, but can be used for the opposite, which can also be a tool that can ease the burden on the debtor and the responsibility of the debtor who has experienced financial difficulties that make the debtor unable to make payments on his debts to a creditor. The output of this principle is the existence of PKPU or postponement of debt payment obligations, because no business can be free from resiku, but all businesses have the potential to lose.

g. The Universal Principle and the Territorial Principle, the bankruptcy judgment of a court in a country will be valid in the country and also valid abroad is the meaning of the universal principle. In general, most legal systems adopted by many countries do not allow the courts of their country to execute foreign court decisions, it applies in civil law and also common law, this will make the universal principle immediately applicable in foreign countries. So that a bankruptcy decision in a country to open its doors from the territorial principle (Shubhan, 2008, p. 97).

h. The principle of "Commercial Exit from Financial Distress", a situation where the company experiences bankruptcy so that there is a deterioration in the company's adaptation to the environment which leads to low performance for a certain period of time and sustainable until finally making the company itself lose its resources and funds.

So, it can be concluded, the issuance of circular letters issued by the Supreme Court, it can be said that it is still not found what is the basis by the Supreme Court in the issuance of the SEMA which causes overlap with the applicable laws. And the presence of the SEMA is not a way out or a bright spot in the field of bankruptcy in Indonesia today.

2. Analysis of the Position of SEMA No. 3 Year 2023 against Law No. 37 Year 2004 on Bankruptcy and PKPU

Supreme Court Circular Letter is based on Article 12 paragraph 3 of Law Number 1 of 1950 concerning the Structure, Powers and Procedures of the Supreme Court of Indonesia, where the Supreme Court has the right to give warnings, warnings and instructions deemed necessary and useful to the court and the Judges, either by separate letter or by circular letter. Circular Letters are included in policy rules (bleidsregel), because SEMA itself is usually addressed to judges, clerks, and other positions in the court (Sibuea, 2010, p. 101).

Basically, circular letters have the principle that they only apply internally to the institution that makes them. As is generally known, circular letters are not included in the hierarchy of laws and regulations stipulated in the Law on the Formation of Laws and Regulations. SEMA is formed by the Supreme Court which has this authority, in forming SEMA the Supreme Court has the aim of filling the shortcomings or vacancies and legal gaps in existing or non-existing regulations. In this case, the presence of SEMA that is not in line with the applicable laws and regulations, such as the Bankruptcy and PKPU Law under study, creates a conflict and is a worrying condition in Indonesian law and results in confusion and fatal consequences in the scope of the court.

The legal position and power of SEMA can be summarized as an instruction or direction, and not a regulation that must be obeyed by Judges with legal consequences if SEMA is not followed. Therefore, SEMA does not have the power to bind Judges to obey SEMA, but SEMA can have an influence and be debated in specific cases that may face tension between SEMA and different interpretations of the law. Therefore, SEMA's influence on Judges' decisions may vary depending on various factors and the specific context of each case. In the position of SEMA No. 3 Tahu against Law No. 37 Year 2004, it would be better if the SEMA can elaborate in detail and can be understood in accordance with the criteria or standards that must be considered by judges in deciding cases regarding bankruptcy and PKPU applications, especially for apartment developers.

Legal consequences for developers who have two or more creditors if their overdue obligations are not immediately fulfilled

1. Responsibilities of Developers Who Have Obligations That Are Not Fulfilled Immediately

In a law there is a relationship called a legal relationship, meaning that it is a relationship between two or more legal subjects where in this legal relationship the rights and obligations of one party face the rights and obligations of the other party. We already know that the law is to regulate the relationship between one person and another, namely between a person and society, between one society and another society. Consequently, it may be concluded that all relations in society are regulated by law. Anyone who violates or neglects these relations can be forced by law to comply with them (Soeroso, 2005, p. 269).

If there is a legal basis and legal events, it will give rise to a legal engagement, which is a legal relationship between a number of legal subjects and in connection with it, one or several of them bind themselves to do or not do something against the other party (Zaeni, Arief, 2016, p. 66).

Default is a violation of the rights and obligations carried out by a person in an agreement. As a result of default committed by a debtor or someone who has an obligation to carry out an

achievement in an agreement, it will be able to cause a loss to the creditor or someone who has the right to receive the achievement (Abdulkdir, 1982, p. 24). The parties if they make a default can be from the first party, namely the creditor or the second party, namely the debtor or the party providing funds or receiving funds and others, but in the problem here the author limits that where if a debtor is a developer who defaults. An act will have an effect, so the legal consequences for the debtor or someone who has an obligation to carry out the performance in the agreement but is negligent in the agreement, then there is a default, namely:

a. Debtors have the obligation to pay compensation suffered by creditors or someone who has the right to receive achievements, in Article 1243 of the Civil Code;

b. The debtor must accept the decision of the agreement along with paying compensation, in Article 1267 of the Civil Code;

c. The debtor must accept the transfer of risk from the time of default, in Article 1237 paragraph (2) of the Civil Code;

d. The debtor is obliged to fulfill an obligation if it can still be done or cancellation accompanied by compensation, in Article 1267 of the Civil Code; e. Those who make defaults must pay court costs if they are brought before the Court, in Article 181 paragraph (1) HIR.

According to Subekti, the result of default is that the debtor can choose several possibilities, namely (Subekti, 2003, p. 60):

a. Can request implementation of the agreement even if implementation is too late;

b. Can request compensation for losses, which are losses suffered because the agreement is not or late implemented, or implemented not as it should be;

c. He may request the performance of the agreement accompanied by reimbursement of the losses suffered by him as a result of the delay in the performance of the agreement;

d. In an agreement laying reciprocal obligations the negligence of one party gives the other party the right to ask the judge so that the agreement is canceled and accompanied by a request for compensation.

Every claim in liability must have a basis, namely the thing that causes someone to be responsible and the thing that causes the birth of the obligation to be responsible. The basis of liability under civil law is divided into two forms, namely fault and risk. For this reason, liability based on fault and liability without fault are known as risk or strict liability (Sidabalok, 2014, p. 111; Sumardjono, 2001, p. 16).

Then after a sale and purchase binding agreement is made and the building/object of the agreement has received a habitable permit and the relevant local government and fulfills the requirements, namely the existence of a deed of separation of a flat unit to subsequently make a certificate of ownership of a flat unit by the relevant district or municipal land office, the developer must be responsible for preparing the sale and purchase deed and then together with the buyer signing it before a Notary / PPAT, based on the Regulation of the Minister of Public Works and Public Housing (PUPR) which regulates the preliminary agreement for the sale and purchase of houses / flats is PUPR Regulation No. 16 of 2021. The agreement can be made under the hand or notarial deed, but in this case the PPJB is required to be made before a notary based on Article 12 paragraph 2 of the Regulation of the Minister of Public Works and Public Housing on the Preliminary Agreement System for the Sale and Purchase of Houses / Flats which states that a notary is authorized to make a deed of binding for the sale and purchase of houses / flats, with that the PPJB deed is concluded by a notary who performs the following functions, in particular:

a. As evidence that the parties concerned have entered into a certain agreement;

b. As evidence for the parties that what has been written in the agreement is the purpose and desire of the parties;

c. As evidence to third parties that at the date indicated, unless otherwise specified, the parties have entered into an agreement and that the contents of the agreement are in accordance with the will of the parties (Salim, 2006, p. 43).

In the transfer of ownership of flats occurs if the buyer has made full payment and in good faith controls the object of sale so that there is leverage. If on the contrary, the payment has not been made in full, the unit will remain the property of the developer. And if the sale and purchase agreement is implemented properly and there is a change of name, the unit is considered completed and will turn into a Sale and Purchase Deed or AJB so that the unit will belong to the consumer and no longer belong to the developer.

2. Legal Remedies for Creditors Against Developers that Can Be Petitioned for Bankruptcy

It can be seen that the house is a building where humans live and live their lives, besides that the house is also a place where the socialization process takes place when a person is introduced to the norms and customs that apply in society, so it is not surprising that housing problems are an important problem for individuals.

The construction of a house or residence is one of the important instruments in the regional development strategy which involves aspects that are familiar in the field of population and are closely related to economic development and social life in the context of strengthening national resilience, and in Article 1 paragraph (2) and (7) of Law No. 1 of 2011 states that: "A house is a building that serves as a place to live, or a residence and a means of family development". "Housing is a group of houses that function as a living environment or residence equipped with infrastructure and environmental facilities where humans live and carry out their lives".

However, due to the increasingly limited land in Indonesia for people to build a place to live or have a house as a place to live is limited, and in community transactions in buying and selling a place to live, it is not uncommon for housing alone but apartment units are also an alternative for the community in determining occupancy as a place to live. Many individuals both individuals and in the form of companies that offer flats units at affordable prices and with promised facilities and strategic locations to attract a buyer. So from the concept of building flats is to overcome the limitations of a land that is not proportional to the number of residents and this makes it difficult to build houses with horizontal structures (Fitri, Djajaputra, 2019).

So, the effort of the consumers, if the developer does not fulfil or does not fulfil the promise to provide perfect buildings or things that were agreed in the PPJB for the flats, is that the consumers first of all ask for the problem to be addressed properly. If, on the contrary, they do not get a point of contact in these efforts, consumers may first send a warning/summons containing a warning to the apartment building developer to fulfill its obligations by an agreed deadline. However, if the agreed time has passed so that the rights of a consumer have not been fulfilled, it can give time for the developer, namely by postponing debt payment obligations (Zubaidah, 2019).

Nowadays, legal remedies are steps or efforts needed by interested parties to obtain a fair decision and the best solution. In the case of bankruptcy, there are several efforts that can be made, namely cassation resistance in accordance with Articles 11–13 of Law No. 37 of 2004 and judicial review based on Article 14 of Law No. 37 of 2004. 37 Year 2004 and judicial review based on Article 14 of Law No. 37 Year 2004. 37 Year 2004. Then if there has been a bankruptcy, and a developer or company fails to fulfill its obligations to pay off debts, consumers can also take legal action, including civil proceedings. A buyer's claim for damages against a developer may be brought either as part of an individual proceeding or as part of a class action. Consumer claims for damages against a developer or a company may be filed either as part of an individual proceeding or as part of a class action (Karianga, 2017, p. 109).

CONCLUSIONS

1. The position of SEMA is under the Law and the legal force of SEMA is highly dependent on the conformity of SEMA with the prevailing Law. Therefore, SEMA that contradicts and is not harmonious with the Law or the Constitution can be considered invalid, and decisions based on such SEMA can be debated.

2. The legal consequences for developers or debtors who fail to fulfill their obligations to pay off their debts, then all assets that become bankruptcy assets will be divided into bankruptcy assets based on the principle of pari passu prorate parte, so that the presence of regulations on Bankruptcy and PKPU Law is considered the most effective way out by proving simply, namely real and summary, so that SEMA can be concluded that it does not have the legal force to cancel the Law.

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ЮРИДИЧНА ВІДПОВІДАЛЬНІСТЬ ЗАБУДОВНИКІВ БАГАТОКВАРТИРНИХ БУДИНКІВ, СТОСОВНО ЯКИХ ПОРУШЕНО СПРАВУ ПРО БАНКРУТСТВО, В КОНТЕКСТІ ЦИРКУЛЯРНОГО ЛИСТА ВЕРХОВНОГО СУДУ № 3 ВІД 2023 РОКУ

Розглянуто правовий стан забудовників, які мають двох або більше кредиторів і не в змозі виконати свої зобов'язання щодо погашення боргів, строк сплати яких настав. Відповідно до положень Закону про банкрутство боржник, який не в змозі погасити свої борги, строк сплати яких настав, може бути визнаний банкрутом за рішенням суду за умови дотримання вимог, викладених у частині (4) статті 8, а саме якщо борг є безпосередньо доведеним. Якщо заборгованість може бути прямо доведена, суд зобов'язаний задовольнити заяву про банкрутство. Однак Верховний Суд ухвалив положення у формі циркуляра, що містить відповідні рекомендації. Зокрема, Циркуляр Верховного Суду

№ 3 від 2023 року в підпункті (2) пункту 2 літери B зазначає, що заяви про банкрутство або призупинення виплати боргу проти несумлінних забудовників не можуть бути віднесені до категорії справ, що спираються лише на докази. У дослідженні застосовано нормативно-правові методи з використанням статутного підходу. Результати дослідження свідчать, що Циркуляр Верховного Суду має нижчу ієрархічну позицію, ніж закон, і його юридична сила залежить від того, наскільки він відповідає закону. Таким чином, якщо буде встановлено, що циркуляр суперечить закону вищої юридичної сили, він може бути визнаний недійсним, а будь-яке рішення, що ґрунтується виключно на такому циркулярі, може бути оскаржене в апеляційному порядку. На практиці забудовники або боржники, які не виконують своїх зобов'язань перед кредиторами, будуть розглядатися як ліквідаційна маса, що розподіляється на основі принципу рівного ставлення до кредиторів. Зроблено висновок, що законодавство про банкрутство залишається найефективнішим правовим рішенням завдяки простому механізму доказування, який воно пропонує, а також про те, що Циркулярний лист Верховного Суду не має повноважень відміняти закон, як це встановлено статутним правом.

Ключові слова: *юридична відповідальність, забудовник, невиконання зобов'язань, законодавство про банкрутство, судове тлумачення, просте доказування, захист прав кредиторів.*

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