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Legal Protection for Apartment/Condominium Consumers Post Supreme Court Circular Number 3 of 2023

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Abstract

The issue of bankruptcy in disputes over the purchase of apartments or flats remains complex to this day, often leaving consumers at a disadvantage due to actions committed by developers. A bankruptcy petition must generally meet certain prerequisites before being submitted to the Commercial Court, such as the requirement that the debtor (developer) must have at least two creditors, with at least one debt due and collectible, and the petition must be granted if there is simple proof or evidence. The Supreme Court issued SEMA No. 3/2023, which has sparked controversy as it appears to limit the context of simple evidence in bankruptcy and suspension of debt payment obligations (PKPU) petitions against apartment or flat developers. The issuance of this circular has adversely affected consumers or buyers of apartments/flats, as developers cannot be declared bankrupt, even though bankruptcy serves as a quick solution for consumers to reclaim their rights. Therefore, the author aims to explore the various legal protections and remedies available to consumers disadvantaged by the issuance of SEMA No. 3/2023. This study employs a legal research method, relying on a statute approach and a conceptual approach, analyzed through primary legal materials such as legislation and secondary legal materials. The findings indicate that apartment or flat consumers may pursue alternative legal remedies besides bankruptcy, including canceling the sale and purchase agreement, claiming compensation, and even initiating criminal charges for losses caused by the developer.

1. Introduction

Under Article 1 of Law Number 1 of 2011 concerning Housing and Residential Areas (hereinafter referred to as Law No. 1/2011), the definition of a house essentially refers to a physical structure that serves a vital role as adequate living quarters, a space for fostering family life, a reflection of the owner's dignity and status, as well as a valuable asset for its proprietor. With the rapid growth of the population, the demand for housing continues to increase, whereas its availability becomes increasingly limited[1]. To address this issue, the construction of apartments/condominiums has become one of the primary solutions[2]. The development of apartments/condominiums is typically carried out by residential construction companies, commonly referred to as Developers[3].

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[1] Andi Muhammad Rusdi and Faisal Santiago, "Business Legal Liability for Consumer Rights Breaching the Apartment," *Journal of Law, Policy and Globalization* 99 (2020), https://doi.org/10.7176/jlpg/99-14.
[2] Urip Santoso, *Hukum Perumahan*, *Kencana Prenada Media Group* (Jakarta, 2016).
[3] Panca Basuki Rahmat, Hanif Nur Widhiyanti, and Erna Anggrain, "Akibat Hukum Jual Beli Apartemen Sistem Pre Project Selling Yang Tidak Dibuat Dalam Akta Notaris," *Jurnal Suara Hukum* 4, no. 2 (2022), https://doi.org/https://doi.org/10.26740/jsh.v4n2.p379-407; Le Thi Thu Huong and Edsel E. Sajor, "Privatization, Democratic Reforms, and Micro-Governance Change in a Transition Economy: Condominium Homeowner Associations in Ho Chi Minh City, Vietnam," *Cities* 27, no. 1 (2010), https://doi.org/10.1016/j.cities.2009.11.007; Yusuf Adiwibowo, Edi Wahjuni, and Riyanti Dwi Lestari, "Legal Protection for Consumers Due to Default in Handing Over Flat Units," *International*

The legal relationship between consumers and Developers often gives rise to disputes, particularly in cases of breach of contract by the Developer, such as delays in project completion or failure to deliver the promised unit[4]. Under certain circumstances, consumers may file legal claims, including the use of bankruptcy mechanisms[5]. However, this mechanism has become more complex following the issuance of Supreme Court Circular Letter Number 3 of 2023 concerning the Implementation of the Results of the 2023 Supreme Court Plenary Chamber Meeting as Guidelines for Judicial Duties (hereinafter referred to as SEMA No. 3/2023). SEMA No. 3/2023 imposes limitations on the filing of bankruptcy petitions or Suspension of Debt Payment Obligations (PKPU) applications against apartment/condominium Developers. These limitations are outlined in the Civil Chamber's formulation regarding bankruptcy and PKPU, which states that bankruptcy or PKPU petitions against Developers cannot be granted if the element of simple proof is not satisfied. This provision differs from Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as Law No. 37/2004), which previously stipulated that a bankruptcy petition could be granted based on simple evidence. As a result of this provision, Developers cannot be declared bankrupt through the mechanism of simple proof. Consequently, consumers, as the aggrieved party, face obstacles in claiming their rights, whether related to the completion of delayed projects or the refund of payments already made[6]. The legal obstacles arising from SEMA No. 3/2023 have a significant impact on consumers. As a vulnerable party, consumers often lack alternative means to resolve disputes with Developers. This provision creates a situation where consumers face difficulties in asserting their rights, whether through bankruptcy mechanisms or other legal avenues. Therefore, further analysis is required regarding the legal protection that can be provided to consumers in addressing breaches of contract by Developers following the enactment of SEMA No. 3/2023.

The researcher will include several scholarly works from previous studies that share similarities and are relevant to this research. The first study, titled "*Permohonan Kepailitan Atas Developer Apartemen Tidak Memenuhi Persyaratan Fakta Yang Terbukti Secara Sederhana Suatu Kajian Keadilan dan Kepastian Hukum*," authored by Sri Redjeki Slamet and Fitria Olivia[7],

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Journal of Social Science and Education Research Studies 3, no. 11 (2023), https://doi.org/10.55677/ijssers/v03i11y2023-04.

[4] Suwardi, "Legal Protection for Apartment Buyers Due to Action of the Default Developer," *Prizren Social Science Journal* 3, no. 2 (2019), https://doi.org/10.32936/pssj.v3i2.105; Elza Syarief, Lu Sudirman, and Yan Pin, "Legal Protection For Apartment Consumers Relating To The Facilities Promised By Developers (Case Study In Batam City)," *Journal of Law and Policy Transformation* 7, no. 1 (2022), https://doi.org/10.37253/jlpt.v7i1.6731.

[5] Evelyn Millechen and Rasji, "Tanggung Jawab Hukum Pengembang Properti Yang Dinyatakan Pailit Terhadap Pemenuhan Kewajiban Kepada Konsumen Ditinjau Dari Teori Kepastian Hukum," *Unes Law Review* 6, no. 4 (2024), https://doi.org/https://doi.org/10.31933/unesrev.v6i4.2046.

[6] Yudi Kornelis and Florianus Yudhi Priyo Amboro, "Implementasi Restrukturisasi Dalam Prosesi Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Di Indonesia," *Jurnal Hukum Adigama* 7, no. 2 (2020), https://doi.org/https://doi.org/10.31629/selat.v7i2.1739.

[7] Sri Redjeki Slamet and Fitria Olivia, "Permohonan Kepailitan Atas Developer Apartemen Tidak Memenuhi Persyaratan Fakta Yang Terbukti Secara Sederhana Suatu Kajian Keadilan Dan Kepastian Hukum," *Lex Jurnalica* 21, no. 1 (2024), https://ejurnal.esaunggul.ac.id/index.php/Lex/article/view/7667/4130.

explains that bankruptcy petitions against Developers fail to meet the requirements for simple proof due to ambiguity in the type of debt—whether it pertains to the obligation to deliver the unit or to refund payments made. As a result, such claims must be adjudicated through the District Court. The second study, titled "*Pembatasan Syarat Pembuktian Secara Sederhana Dalam Kepailitan Melalui Surat Edaran Mahkamah Agung Nomor 3 Tahun 2023*," by Alfit Jenifer[8], analyzes the legal position of SEMA No. 3/2023 by comparing its provisions with those in Law No. 37/2004. The study concludes that SEMA No. 3/2023 introduces a new norm regarding simple proof requirements in Law No. 37/2004. The final study, titled "*Perlindungan Hukum bagi Konsumen Akibat Terjadinya Wanprestasi dalam Perjanjian Jual Beli Unit Apartemen yang Dilakukan oleh Pelaku Usaha*," authored by Shen Hilda Sulis and Husni Syawali[9], discusses the legal protection available to consumers in cases of breach of contract involving apartment development by Developers. It concludes that any discrepancy between what was promised and delivered can be categorized as a breach of contract, granting consumers the right to claim compensation.

The aforementioned studies focus primarily on simple proof under SEMA No. 3/2023 and legal protection in the form of compensation for business actors committing breaches of contract. Unlike previous research, this study does not solely concentrate on simple proof or the aspect of compensation. Instead, it provides a broader analysis of consumer legal protection in addressing breaches of contract by apartment or condominium Developers following the enactment of SEMA No. 3/2023. This study also examines various legal remedies available to consumers, including the possibility of criminal charges against Developers proven to have committed negligence or breaches of contract. Based on this context, the researcher formulates the following research question: What legal protection can consumers pursue to uphold their rights following the enactment of SEMA No. 3/2023? This study aims to identify the various legal protections and remedies available to consumers for losses incurred as a result of the issuance of SEMA No. 3/2023.

2. Methods

This study is a legal research that utilizes a statute approach and a conceptual approach[10], which is analyzed through primary legal materials, namely SEMA No. 3/2023, Law No. 37/2004, Minister of Public Works and Public Housing Regulation No. 11/PRT/M/2019 on the System of Preliminary Sale and Purchase Agreements for Houses (Permen PUPR No. 11/PRT/M/2019), Law No. 20 of 2011 on Apartments (Law No. 20/2011), and Law No. 8 of 1999 on Consumer Protection (Law No. 8/1999). Additionally, books, expert opinions, and academic articles related to the research are used as secondary legal materials.

3. Results and Discussion

3.1. The Process of Resolving Bankruptcy Disputes Involving Apartment/Condominium Developers

[8] Alfit Jenifer, "Pembatasan Syarat Pembuktian Secara Sederhana Dalam Kepailitan Melalui Surat Edaran Mahkamah Agung Nomor 3 Tahun 2023," *IURIS STUDIA: Jurnal Kajian Hukum* 5, no. 3 (2024), https://doi.org/https://doi.org/10.55357/is.v5i3.661.

[9] Shen Hilda Sulis and Husni Syawali, "Perlindungan Hukum Bagi Konsumen Akibat Terjadinya Wanprestasi Dalam Perjanjian Jual Beli Unit Apartemen Yang Dilakukan Oleh Pelaku Usaha," *Bandung Conference Series: Law Studies* 3, no. 1 (2023), https://doi.org/https://doi.org/10.29313/bcsls.v3i1.5021.

[10] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2013).

An apartment is a modern residential concept that allows individuals to live in multi-story buildings under a vertical ownership system[11]. Apartment buildings consist of multiple units designed to be used or occupied separately by owners or tenants[12]. The construction of apartments is undertaken by Developers, who then sell the apartment units to buyers through a Sale and Purchase Binding Agreement (Perjanjian Pengikatan Jual Beli or PPJB)[13]. Consequently, the legal relationship between apartment unit buyers and Developers is based on a valid PPJB, as stipulated in the agreement. This contract binds both parties regarding their respective rights and obligations related to the delivery and payment of the apartment units[14]. The development of apartments generally involves purchases by consumers through advance payments, even though construction has not yet been completed. This process is conducted through a booking mechanism bound by a Sale and Purchase Binding Agreement PPJB. According to the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata), the PPJB is an obligatory agreement, meaning that it imposes an obligation on one party to pay or deliver something[15]. The transfer of ownership rights over the condominium unit occurs only after the levering (delivery) is completed.

Ownership transfer is deemed valid only if the consumer acts in good faith by fully settling the payment. Therefore, the PPJB serves merely as the basis for payment and does not constitute valid evidence of ownership transfer. Until the payment is fully completed, ownership of the apartment unit remains with the Developer. However, legal ownership is transferred to the buyer once a Deed of Sale and Purchase (Akta Jual Beli or AJB) is executed, and the buyer's name is officially recorded as the owner. At this point, the ownership of the apartment unit is considered to have shifted from the Developer to the buyer, and the status of the unit is formally recognized as the property of the consumer[16].

The process of apartment construction often faces various obstacles, particularly financial challenges, which result in Developers being unable to settle their debts to creditors, including apartment consumers[17]. This situation leads to delays or even failures by Developers

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[11] Adam Ramadhan et al., "Asas Keadilan Putusan Pengadilan Dalam Gugatan Wanprestasi Perjanjian Pengikatan Jual Beli Apartemen," *Indonesian Journal of Law and Justice* 1, no. 4 (2024): 1–15, https://doi.org/https://doi.org/10.47134/ijlj.v1i4.2667.

[12] Purbandari, *Hukum Agraria Di Indonesia* (Hartomo Media Pustaka, 2013).

[13] Abel Agustian, "Pembatalan Perjanjian Pengikatan Jual Beli (PPJB) Kondominium Akibat Wanprestasi," *Recital Review* 2, no. 2 (2020), https://doi.org/https://doi.org/10.22437/rr.v2i2.9125.

[14] Christina Derita Risquanty, "Akibat Hukum Kepailitan Bagi Pengembang Terhadap Pembeli (Konsumen) Satuan Rumah Susun (Apartemen)," *Jurnal Education and Development Institut Pendidikan Tapanuli Selatan* 10, no. 3 (2022), https://doi.org/https://doi.org/10.37081/ed.v10i3.3709.

[15] Tivonli Kirtan et al., "Analisis Yuridis Pencantuman Klausul Force Majeure Dalam Perjanjian Sewa Menyewa Dan Pengelolaan Hak Milik Atas Satuan Rumah Susun Untuk Meneguhkan Kepastian Hukum (Studi Penelitian Di Kota Batam)," *Unes Law Review* 6, no. 1 (2023), https://doi.org/https://doi.org/10.31933/unesrev.v6i1.1154.

[16] Budiarjo Auta, "Bentuk Penyuluhan Hukum Notaris Terhadap Jual Beli Apartemen Sebagai Wujud Perlindungan Konsumen," *Officium Notarium* 2, no. 3 (2023): 449–56, https://doi.org/https://doi.org/10.20885/JON.vol2.iss3.art7.

[17] Brian Webb and Steven Webber, "The Implications of Condominium Neighbourhoods for Long-Term Urban Revitalisation," *Cities* 61 (2017), https://doi.org/10.1016/j.cities.2016.11.006.

in delivering apartment units after consumers have completed their bookings or payments[18]. Additionally, issues surrounding apartment projects frequently involve disputes over land ownership for the construction site[19]. This situation further complicates the debts arising from the legal relationship between Developers and other parties[20]. Such conditions create the potential for Developers to be subject to bankruptcy or Suspension of Debt Payment Obligations (PKPU) petitions by creditors harmed by the unfinished construction of apartments. Thus, bankruptcy and PKPU mechanisms are considered effective alternatives for resolving debt-related disputes.

Filing a bankruptcy petition must meet the requirement of having at least two creditors, one of whom has a debt that has become due and must be paid. This requirement is generally subject to simple proof[21]. The debt that serves as the basis for the bankruptcy or PKPU petition by the apartment Developer must be proven through clear facts or evidence. According to Rio Christiawan, as cited by Dedi Kurniadi, debt proof in Commercial Court proceedings begins with formal evidence, namely a debt agreement, as without such an agreement, a debt dispute cannot be formally resolved through the commercial court, whether through PKPU or bankruptcy. The nature of simple proof in PKPU or bankruptcy cases is the acknowledgment of the debt agreement by both the creditor and the debtor. Therefore, a debt agreement that is disputed or not recognized by the creditor and debtor does not fulfill the requirement of simple proof[22].

However, in practice, this often becomes an issue in apartment bankruptcy cases because the causes of the debt are typically complex. According to Hadi Subhan, the rule concerning simple proof (or vague proof) is intended to simplify the requirements for filing a bankruptcy petition[23]. When interpreted in its general meaning, the debt arising from the legal relationship between the apartment buyer and the Developer also falls within the definition of debt. However, given the unclear nature of the debt, proof through the District Court is required to determine whether a debt truly exists. This is why disputes related to apartment Developers do not fall under simple debt disputes. Therefore, in the bankruptcy or PKPU proceedings involving apartment Developers, the proof of the existence of a debt cannot be established through simple evidence. Through the bankruptcy process, the order of debt settlement begins with payments to secured creditors, followed by preferential creditors, and finally, to

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[18] Patrick Winson Salim, Clayment Claudio Jap, and Margareth Trisya Adefinola Naru, "Pemenuhan Hak Konsumen Dalam Sengketa Perdata Lahan Meikarta," *Jurnal Cahaya Mandalika* 3, no. 1 (2023), https://doi.org/https://doi.org/10.36312/jcm.v3i1.1961.

[19] Agnieszka Zalejska-Jonsson, "Stated WTP and Rational WTP: Willingness to Pay for Green Apartments in Sweden," *Sustainable Cities and Society* 13 (2014), https://doi.org/10.1016/j.scs.2014.04.007.

[20] Imanuel Rahmani, "Perlindungan Hukum Kepada Pembeli Dalam Kepailitan Developer(Developer) Rumah Susun," *Jurnal Hukum Bisnis Bonum Commune* 1, no. 1 (2018), https://doi.org/https://doi.org/10.30996/jhbbc.v0i0.1758.

[21] Devi Andani and Wiwin Budi Pratiwi, "Prinsip Pembuktian Sederhana Dalam Permohonan Penundaan Kewajiban Pembayaran Utang," *Jurnal Hukum Ius Quia Iustum* 28, no. 3 (2021), https://doi.org/https://doi.org/10.20885/iustum.vol28.iss3.art9.

[22] Dedy Kurniadi, "Pembuktian Sederhana Dalam Permohonan PKPU Terhadap Pengembang," Dedy Kurniadi & Co Lawyers, 2024, https://dedykurniadi.com/pembuktian-sederhana-dalam-permohonan-pkpu-terhadap-pengembang.html.

[23] M. Hadi Subhan, *Hukum Kepailitan Prinsip, Norma, Dan Praktik Peradilan*, *Kencana*, 2009.

unsecured creditors[24]. Payments to unsecured creditors are made last, after the debts to secured and preferential creditors have been fully settled, provided there are remaining assets available for distribution. Based on the Sale and Purchase Binding Agreement PPJB in apartment/condominium transactions, the legal relationship between the buyer of a condominium unit and the Developer is that of a creditor and debtor. The apartment/condominium buyer does not have any form of collateral security, and thus can be classified as an unsecured creditor.

Consumers who purchase apartment units in bankruptcy proceedings are classified as unsecured creditors and occupy the weakest position, as they are the last in the order of debt settlement. This situation significantly harms the consumers. When the Developer is declared bankrupt, all its assets become part of the collective security for creditors. The liquidation proceeds from these assets must then be distributed fairly according to the applicable regulations, which tend to favor secured and preferential creditors, as they are prioritized. This situation underscores the urgency of exploring additional legal protections for consumers. For instance, the implementation of an escrow account mechanism to hold consumer funds until construction is completed could provide greater security for consumer funds. Another alternative is the use of property buyer insurance, which guarantees compensation for losses if the Developer fails to fulfill its obligations. Most apartment sale transactions are carried out through installment payments during the construction process. If the Developer faces financial difficulties leading to the failure to complete the project, the legal question that arises is whether consumers have the right to cancel the agreement and demand a refund, or whether they have the right to claim the unit they have partially paid for. In this case, the Developer's obligation to complete the project or refund the consumer's funds is largely dependent on the provisions stated in the Sale and Purchase Binding Agreement PPJB.

However, in a bankruptcy situation, fulfilling this obligation becomes challenging because the Developer's assets are seized as part of the bankruptcy estate. Consumers, as parties without collateral security, cannot directly claim their units or funds. This highlights the need for the establishment of additional legal protection mechanisms that can more effectively safeguard consumers' rights, either through specific legislation or complementary policies, such as separate fund management in apartment construction projects.

3.2. The Enachtment SEMA No. 3/2023

At the end of 2023, the Supreme Court of the Republic of Indonesia issued SEMA No. 3/2023, which was established on December 29, 2023. However, the issuance of this circular sparked a debate from various circles, ranging from academics to legal practitioners, particularly regarding the order of legal products, the principles of legal certainty, justice, limitations, and its implications in addressing current issues in the field. It was argued that the circular does not align with Law No. 37/2004. If apartment/condominium Developers are to be granted exceptions, such provisions should be regulated through legislation or by amending Law No. 37/2004. The debate surrounding SEMA No. 3/2023 has drawn attention to one of its provisions related to the prohibition of filing a PKPU or bankruptcy petition

[24] Elsa Mellinda Saputri, Waspiah, and Ridwan Arifin, "Perlindungan Hukum Terhadap Konsumen Dalam Hal Pengembang (Developer) Apartemen Dinyatakan Pailit," *Jurnal Hukum Bisnis Bonum Commune* 2, no. 2 (2019), https://doi.org/https://doi.org/10.30996/jhbbc.v2i2.1936.

against Developers. Specifically, this provision is outlined in Section B, Subsection 2, Paragraph (2) of the SEMA, which essentially states that a bankruptcy petition against a Developer cannot be accepted if it does not meet the criteria for simple proof. In response to the substance of this provision, various opinions have emerged, both in favor and against, particularly regarding the application of simple proof as a crucial component in the bankruptcy and PKPU process.

M. Hadi Subhan provided an opinion regarding the requirements for filing a bankruptcy petition under Law No. 37/2004[25]. The three requirements are: first, there must be a debt owed to creditors that has reached its payment deadline and is subject to collection; second, there must be at least two creditors; and third, the proof must be presented merely. If the complexity of the impact of bankruptcy or PKPU is used as a justification by the Supreme Court to state that an apartment/condominium Developer cannot be declared bankrupt or subject to PKPU, this Professor argues that such reasoning is incorrect. This is because the term "simple" refers to the characteristics of the proof itself, not to the legal implications of bankruptcy or even the complexity of the legal relationships between the Developer and other entities. The proof in question refers to evidence that is definitive and free from ambiguity.

The essence of simple proof lies in the existence of facts or circumstances that meet the requirements for bankruptcy and PKPU under Law No. 37/2004. However, the principle of simple proof has changed in its application, as outlined in SEMA No. 3/2023. The absence of a clear and detailed explanation regarding the concept of simple proof in Law No. 37/2004 creates an opportunity for more extensive interpretation. Judges have significant discretion in formulating the meaning of simple proof when adjudicating bankruptcy cases, given the lack of clear indicators for such proof. This situation further exacerbates the ambiguity in interpreting the boundaries of simple proof following the issuance of SEMA No. 3/2023, which does not provide detailed provisions on the matter. According to the SEMA, a Developer cannot be subjected to bankruptcy or PKPU if the debt incurred cannot be proven by simple means. As a result, consumers or buyers of units in a housing development will be affected because the Developer cannot be subjected to bankruptcy proceedings.

Article 8 paragraph (4) should not be interpreted to mean that if a bankruptcy petition does not contain facts or circumstances that can be proven simply, the case cannot be examined and decided by the Commercial Court. Article 8 paragraph (4) of Law No. 37/2004 essentially prevents judges from rejecting a bankruptcy petition if the facts and circumstances can be proven simply. In this regard, the issuance of the Chief Justice's Decision that led to the issuance of this SEMA has caused significant controversy. Furthermore, the basis for the Supreme Court issuing such an SEMA, where bankruptcy or PKPU petitions against developers are not considered simple proof, remains unclear. This reasoning has not been explained or elaborated upon in the related SEMA regulation, making it very difficult to analyze the foundation or the rationale behind the Civil Chamber's decision to issue such a provision.

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[25] Fitri Novia Heriani, "Sebut Pengembang Tak Bisa Dipailit/PKPU, SEMA 3/2023 Dinilai Tak Sejalan UU Kepailitan," Hukum Online.com, 2024, https://www.hukumonline.com/berita/a/sebut-pengembang-tak-bisa-dipailit-pkpu--sema-3-2023-dinilai-tak-sejalan-uu-kepailitan-lt65eee651b9ad2/?page=2.

The provisions in the SEMA clearly state the simple proof requirements for the debtor, the apartment/condominium developer, in bankruptcy petitions, without further explanation. This represents a distortion of the regulations in Law No. 37/2004, where, even though a bankruptcy case has not been examined and scrutinized, the SEMA will still state that the proof is not simple, thus failing to meet the bankruptcy requirements. This could serve as a shield for "rogue" developers to evade their actual responsibilities. SEMA itself is a product issued by the Supreme Court to the entire judiciary, which is administrative in nature[26]. Therefore, SEMA is not a binding piece of legislation that directly applies to the public; in other words, SEMA does not have the general applicability of a law.

The author agrees with Sutan Remy Sjahdeini, who stated that Article 8 paragraph (4) of Law No. 37/2004 should not be interpreted. This article merely aims to obligate judges not to reject a bankruptcy petition if the facts and circumstances that constitute the requirements for bankruptcy cannot be proven in a simple manner[27]. The Supreme Court, in the Limited National Working Meeting (Rakernas) held in September 2002, sought to define simple proof, arguing that in the examination of bankruptcy petitions, there is no room for exceptions, responses, rebuttals, replies, or conclusions as seen in party-based lawsuits. Therefore, the proof in bankruptcy cases is unilateral and not party-based.

In the hierarchy of legislation in Indonesia, the principle of *Lex superior derogat legi inferiori* is recognized, which means that lower regulations cannot contradict higher regulations above them. The provisions in the SEMA contradict Law No. 37/2004. In this case, SEMA is established as a regulation based on the authority derived from freies Ermessen, which is vested in the state administration to achieve a specific goal that is legally justified. On this basis, SEMA does not have the power to annul laws. Judges still need to apply their freedom of judgment in deciding a case with objective considerations.

3.3. Legal Protection for Consumers Post SEMA No. 3/2023

SEMA No. 3/2023 states that the petition for bankruptcy of a Developer does not meet the requirements for simple proof. This raises an issue, particularly for apartment/condominium consumers who are obstructed from filing for bankruptcy against the Developer in the Commercial Court. As a result, consumers are disadvantaged because they face difficulties in holding the Developer accountable through bankruptcy proceedings, which are generally considered an effective dispute resolution mechanism. Therefore, the researcher will further analyze the legal protection and alternative legal measures to enforce the rights of consumers.

Consumers in apartment transactions are in a vulnerable position, particularly in cases of default by the developer. Consumers' reliance on the developer to complete the project or deliver the apartment units makes them susceptible to the risk of loss. When the developer fails to meet their obligations, consumers often resort to bankruptcy as a mechanism to claim their rights. With the enactment of SEMA No. 3/2023, consumers lose one of the effective avenues for resolution. This provision limits consumers' access to holding the developer

[26] Henry P. Panggabean, *Fungsi Mahkamah Agung Dalam Praktik Sehari-Hari : Upaya Penanggulangan Tunggakan Perkara Dan Pemberdayaan Fungsi Pengawasan* (Jakarta: Black Stone Press, 2001).
[27] Sutan Remy Sjahdeini, *Hukum Kepailitan: Memahami Faillissementsverordening Juncto Undang-Undang No. 4 Tahun 1998* (Jakarta: PT Pustaka Utama Grafiti, 2002).

accountable through bankruptcy, forcing them to seek alternative resolutions that are often more costly and time-consuming. Consumers are often in a weaker position compared to developers, both in terms of knowledge and bargaining power. Therefore, in apartment/condominium transactions, legal protection for consumers must be enforced to ensure that they are not harmed. The party that feels disadvantaged will usually make an effort to reclaim their rights if something undesirable occurs that could harm one of the parties involved.

One of the methods commonly used in real estate transactions by developers is pre-project selling. Pre-project selling, or PPJB, is a term used in the sales strategy for residential properties such as houses, apartments, or condominium units, by marketing properties that have not yet been completed or even constructed. Typically, the property being marketed is still in the form of drawings/floor plans, the required permits have not been fully processed, and it is not uncommon for the location to be unclear during the planning stage, with land preparation still in progress.

The obligation arising between the consumer, as the occupant of the unit, and the developer is the result of an agreement. From the moment the agreement is made between the consumer and the developer, both parties acquire rights and obligations that must be carried out. This agreement means that the party who fails to fulfill their obligations may be sued by the other party to immediately perform their duties. In this case, the developer should provide a guarantee of the right to live, as the developer has received the payment for the apartment unit, which has been agreed upon by the consumer.

Article 5 letters a to d of Law No. 8/1999 demonstrates the applicability of legal protection for consumers. Letter d explains that any form of dispute between consumers and business actors must be resolved in compliance, in this case through BPSK (Consumer Dispute Settlement Board). The institution responsible for resolving consumer disputes outside of court is BPSK, and there are three options to resolve a consumer dispute: negotiation, mediation, or arbitration. The arbitration decision issued by BPSK is final and binding.

The rights held by consumers (buyers) include demanding accountability from the Developer in accordance with applicable regulations. The initial step to be taken is to analyze the extent of the implementation of the sales agreement that has been established between the consumer and the Developer. In practice, the mechanism for apartment sales transactions is usually initiated with the PPJB in accordance with Minister of Public Works and Public Housing Regulation No. 11/PRT/M/2019. The buyer needs to pay attention to several important clauses in the PPJB, such as the payment amount (Down Payment/DP), the schedule for delivery and settlement, and the obligations that the Developer must fulfill in case of negligence. Common issues that arise include the Developer's failure to fulfill obligations before or after the signing of the PPJB, and the consumer's request for a refund of the funds already paid. According to Article 7 of the Ministerial Regulation, consumers who pay funds during the marketing process are considered part of the house price, and the Developer is required to provide information regarding the construction schedule, the signing of the PPJB and AJB, as well as the handover of the house. If the Developer is negligent, the consumer may request a refund of the funds under Article 9. This article states that the right of the prospective buyer is to cancel the purchase of the house if the Developer fails to provide

the information referred to in Article 7. All funds that have been paid by the buyer must be fully refunded. Additionally, Article 13, paragraph (1) regulates that the refund also applies if the PPJB has been agreed upon or installments have been paid based on the PPJB.

The state provides the PPJB mechanism to expedite the apartment sales process even if the construction is not yet complete. However, certain requirements must be met by the Developer before entering into the PPJB, under the provisions of Article 43 of Law No. 20/2011. The prerequisites include clarity regarding land ownership status, legitimacy of the Building Construction Permit (IMB), the presence of infrastructure, facilities, and public utilities, as well as at least 20% construction progress. If the Developer violates these provisions, criminal sanctions in the form of a maximum imprisonment of four years or a fine of up to IDR 4,000,000,000.00 may be imposed (Article 110 of Law No. 20/2011). Regardless of the issues surrounding the stalled construction of the apartment, if the consumer has paid in full, the consumer may invoke the provisions in Law No. 20/2011 and Ministerial Regulation No. 11/PRT/M/2019 to assert their rights. The delay in construction may be considered as a form of default (*wanprestasi*), thus the Developer may be subject to criminal penalties under Article 62 paragraph (2) of Law No. 8/1999. This article stipulates that the Developer who violates the provisions of Articles 11, 12, 13 paragraph (1), 14, 16, or 17 paragraph (1) letters d and f may be subject to criminal sanctions in the form of imprisonment for a maximum of two years or a fine of up to IDR 500,000,000.00. However, the author believes that the criminal sanctions in this regulation are not effective for imposing penalties on a Developer who has committed default, as the core issue lies in the obligation of the consumer to the Developer, which is the money paid, not being refunded accordingly.

4. Conclusions

Consumers are provided with legal protection under various regulations previously mentioned. In the context of apartment transactions, consumers have been granted several legal protections by the state. This becomes especially important when a petition for bankruptcy and/or PKPU against the Developer is rejected by the Commercial Court due to failure to meet the requirements for simple proof. In such situations, consumers can pursue various legal actions to challenge the negligence or recklessness of the Developer. These legal actions include: first, filing for the cancellation of the apartment sale transaction as regulated in Article 9 of Permen No. 11/PRT/M/2019; second, requesting a refund of their payment under the provisions of Article 13 of the same regulation; and lastly, taking criminal action to hold the Developer accountable for the delayed construction and the resulting losses, under the provisions of Article 110 of Law No. 20/2011 and Article 62 paragraph (2) of Law No. 8/1999.

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