

INTISARI

PERLINDUNGAN HUKUM TERHADAP KREDITOR PEMBELI UNIT APARTEMEN SECARA LUNAS DALAM DEBITOR PAILIT DENGAN STATUS SHGB BELUM DIPECAH (STUDI PUTUSAN NOMOR: 311 K/PDT.SUS-PAILIT-2024. JO NOMOR: 17/PDT.SUS-GUGATAN LAIN-LAIN/2023/PN.NIAGA.JKT.PST)

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Penelitian ini bertujuan untuk mengkaji tanggung jawab debitor pailit atas hak kreditor pembeli unit apartemen yang telah lunasi pembayaran secara penuh, meskipun status SHGB masih induk yang belum dipecah menjadi SHMRS. Selain itu, penelitian juga mengeksplorasi bentuk perlindungan hukum bagi kreditor tersebut ketika unit apartemen dimasukkan ke dalam boedel pailit, dengan fokus pada studi putusan Mahkamah Agung Nomor 311 K/Pdt.Sus-Pailit/2024 jo. Nomor 17/Pdt.Sus-Gugatan Lain-Lain/2023/PN.Niaga.Jkt.Pst. Tujuan utama yaitu memberikan rekomendasi kebijakan hukum untuk meningkatkan kepastian hak konsumen dalam transaksi properti yang melibatkan risiko kepailitan developer, sekaligus menganalisis peralihan tanggung jawab dari debitor ke kurator dalam perspektif hukum perdata dan kepailitan.

Penelitian ini menggunakan pendekatan yuridis normatif-empiris, yang menggabungkan analisis norma hukum dengan data lapangan. Pendekatan utama meliputi *statute approach* (kajian peraturan perundang-undangan seperti UU No. 37 Tahun 2004 tentang Kepailitan dan PKPU, UU No. 20 Tahun 2011 tentang Rumah Susun, serta UUPA), *case approach* (studi putusan pengadilan terkait) dan *conceptual approach* (analisis doktrin hukum dan yurisprudensi seperti SEMA No. 4 Tahun 2016). Data dikumpulkan melalui studi pustaka (bahan primer, sekunder, tersier) serta penelitian lapangan berupa wawancara dengan narasumber seperti kurator serta notaris/PPAT. Analisis data dilakukan secara kualitatif dengan metode preskriptif untuk merumuskan solusi hukum.

Hasil penelitian menunjukkan debitor pailit tetap bertanggung jawab atas hak pembeli apartemen lunas, tetapi SHGB yang belum dipecah menjadikan pembeli sebagai kreditor konkuren tanpa hak kebendaan penuh, sehingga unit dapat masuk boedel pailit dan dikelola kurator. Putusan MA No. 311 K/Pdt.Sus-Pailit/2024 memberikan perlindungan progresif melalui larangan penjualan ulang unit terjual, pemecahan SHGB dari hasil jual unit kosong, serta penyerahan SHMRS mencakup aspek preventif dan represif. Perlindungan ini bersifat kasuistik dan bergantung kurator, sehingga diperlukan reformasi seperti revisi UU Kepailitan untuk status preferen konsumen terbatas, penguatan regulasi pertanahan, dan optimalisasi peran kurator guna kepastian hukum komprehensif bagi konsumen properti.

Kata Kunci : *Perlindungan Hukum, Kreditor, Pembeli Unit Apartemen, Debitor Pailit.*

ABSTRACT

LEGAL PROTECTION FOR CREDITOR PURCHASERS OF APARTMENT UNITS PAID IN FULL IN THE EVENT OF BANKRUPTCY OF THE DEBTOR WITH UNDIVIDED SHGB STATUS (STUDY OF DECISION NUMBER: 311 K/PDT.SUS-PAILIT-2024. JO NUMBER: 17/PDT.SUS-OTHER LAWSUITS/2023/PN.NIAGA.JKT.PST)

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This research aims to examine the bankrupt debtor's responsibility toward the rights of creditors who have fully paid for apartment units, despite the SHGB remaining as an undivided master certificate not yet split into SHMRS. Additionally, it explores forms of legal protection for such creditors when the apartment units are included in the bankruptcy estate, focusing on the study of Supreme Court Decision No. 311 K/Pdt.Sus-Pailit/2024 jo. No. 17/Pdt.Sus-Other Lawsuits/2023/PN.Niaga.Jkt.Pst. The primary objective is to provide legal policy recommendations to enhance certainty of consumer rights in property transactions involving developer bankruptcy risks, while analyzing the transfer of responsibility from the debtor to the curator from the perspectives of civil and bankruptcy law.

The study employs a normative-empirical juridical approach, combining legal norm analysis with field data. Key methods include the statute approach (examination of regulations such as Law No. 37 of 2004 on Bankruptcy and PKPU, Law No. 20 of 2011 on Apartments, and the Basic Agrarian Law), case approach (study of relevant court decisions), and conceptual approach (analysis of legal doctrines and jurisprudence such as SEMA No. 4 of 2016). Data were collected through library research (primary: laws and decisions; secondary: books and journals; tertiary: legal dictionaries) and field research via interviews with informants such as curators and notaries/PPAT. Data analysis is qualitative and prescriptive to formulate legal solutions.

The findings indicate that the bankrupt debtor remains responsible for the rights of fully paid apartment buyers, but the undivided SHGB positions buyers as concurrent creditors without full proprietary rights, allowing units to enter the bankruptcy estate and be managed by the curator. The Supreme Court Decision No. 311 K/Pdt.Sus-Pailit/2024 provides progressive protection by prohibiting the resale of sold units, mandating SHGB division funded by sales of vacant units, and requiring SHMRS issuance to paid buyers, encompassing preventive and repressive aspects. However, this protection is casuistic and curator-dependent, necessitating reforms such as revising the Bankruptcy Law to grant limited preferential status to consumers, strengthening land regulations, and optimizing the curator's role to ensure comprehensive legal certainty for property consumers.

Keywords: *Legal Protection, Creditor, Apartment Unit Buyers, Bankrupt Debtor.*