

Application of Bankruptcy Provisions to Condominium HT Objects and their Relation to the Binding Power of Preferent Rights Under the Bankruptcy Law

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Submitted : 20/02/2024 Reviewed: 20/03/2024 Accepted: 28/03/2024

Abstract: *This research examines the application of bankruptcy provisions to condominium Mortgage Rights (HT) objects and their relationship with the binding power of preference rights based on the Bankruptcy Law. Condominiums as a unique form of property ownership, with the characteristics of joint shares, joint objects, and joint land, create their complexities when faced with a bankruptcy situation. This research uses normative juridical methods with statutory and conceptual approaches to analyze these problems. The research results show that the application of bankruptcy provisions to condominium HT objects has several specificities. First, the curator must make a clear separation between the bankruptcy assets which are part*

of the individual apartment units and the common parts, joint objects and joint land. Second, the bankruptcy process and HT execution must still pay attention to the rights of other residents in the condominium, as regulated in the Condominium Law. Third, intensive coordination is required between the curator and the Association of Owners and Residents of Flats (PPPSRS) in the bankruptcy process. Regarding the binding power of preferential rights, this research found that the preferred rights of creditors of condominium HT holders are still recognized in the bankruptcy process as regulated in Article 55 paragraph (1) of the Bankruptcy Law. However, its implementation has several limitations and special considerations. HT execution only can done to part unit House individual arrangement, not including part together, thing together, and land together. Additionally, fulfillment obligations to PPPSRS, such as dues management and maintenance, must prioritized For guard continuity function condo. Study This conclusion required harmonization between the Bankruptcy Law, the Mortgage Law, and the Condominium Law to give certainty law for all parties involved in the case of bankruptcy condominium HT object. Proposed recommendations cover preparation rules for more implementers Specifically about mechanism bankruptcy condominium HT objects and improvements in coordination between institutions related to handling cases similar.

Keywords: *bankruptcy; rights encumbrances; condominiums; rights preferred*

INTRODUCTION

Development sector property in Indonesia has experienced significant progress in several decades. One of manifestation development is increasing development and ownership of condos or House stacking, especially in urban areas. Condos, a form of residence vertical, offer solutions to limitations land in urban areas and become increasingly alterna-

tives popular for modern ¹society.

The unique characteristic of condominium ownership lies in the shared ownership concept attached to it. Condo unit owners not only have exclusive rights to their residential units but also have joint rights to common shares, common objects, and common land. ²

¹ Santoso, Urip. Housing Law. Jakarta: Kencana, 2014, p. 76-79.

² Hutagalung, Arie S. Condos and their problems. Jakarta: Publishing Agency, Faculty of Law, University

This complexity brings its legal implications, especially when the condominium unit is used as a collateral object in a credit transaction.

In property financing practices, condominium units are often burdened with Mortgage Rights (HT) as collateral for credit provided by financial institutions. Mortgage Rights, as regulated in Law Number 4 of 1996 concerning Mortgage Rights, give priority positions or preferential rights to HT holders over other creditors.³ However, the application of HT to condominium units has special characteristics considering the element of shared ownership that cannot be separated.

The problem becomes even more complex when the condominium unit owner who is burdened with HT experiences bankruptcy. Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Bankruptcy Law) regulates the

mechanism for resolving debts when a debtor is declared bankrupt.⁴ In this context, questions arise regarding how to apply bankruptcy provisions to condominium HT objects and how this relates to the binding power of preferential rights held by creditors holding HT.

This article aims to comprehensively examine the application of bankruptcy provisions to condominium HT objects and analyze their relationship to the binding power of preference rights based on the Bankruptcy Law. The discussion will include the special characteristics of HT in condominiums, the mechanism for implementing bankruptcy provisions, as well as the legal implications that arise for the preferential rights of creditors of HT holders.

This study is important considering that there is no comprehensive harmonization between the Condominium Law, the Mortgage Law and the Bankruptcy Law in regulating

of Indonesia, 2007, p. 7-10.

³ Harsono, Boedi. *Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Its Content and Implementation*. Jakarta: Djangkat, 2008, p. 416-418.

⁴ Shubhan, M. Hadi. *Bankruptcy Law: Principles, Norms and Practices in Court*. Jakarta: Kencana, 2015, p. 1-5.

this issue. This lack of clarity has the potential to create legal uncertainty for the parties involved, both debtors who own condominium units, creditors who hold HT, and other residents in the condominium complex ⁵.

Through normative juridical analysis and legislative and conceptual approaches, it is hoped that this article can contribute to the development of bankruptcy law and guarantee law in Indonesia, especially in the context of condominium ownership. It is also hoped that the results of this study can become a reference for policymakers in formulating more comprehensive and harmonious regulations regarding this issue in the future.

RESEARCH METHODS

Study This use method juridical normative with approach legislation (statute approach) and approaches conceptual (conceptual approach). Juridical method normative chosen

⁵ Murniati, Rilda. "Management of Flats in the Context of Ownership of Flats." *Journal of Law and Development* 45.2 (2015): 256-276.

Because study This focuses on the analysis of related legal norms with application provision bankrupt to condominium Mortgage (HT) objects and their connections with strength tie right prefer ⁶.

A legislative approach is carried out by reviewing all laws and regulations related to the legal issue being handled. ⁷ In context study, This is the law under review includes:

1. Constitution Number 37 of 2004 concerning Bankruptcy and Postponement Obligation Debt Payment
2. Constitution Number 4 of 1996 concerning Mortgage Rights
3. Constitution Number 20 of 2011 concerning Flats

Approach concept used to understand concepts relevant laws with a study this is like draft bankruptcy, rights encumbrances, con-

⁶ Soekanto, Soerjono and Sri Mamudji. *Normative Legal Research: A Brief Overview*. Jakarta: Raja Grafindo Persada, 2015, p. 13-14.

⁷ Marzuki, Peter Mahmud. *Legal Research*. Jakarta: Kencana Prenada Media Group, 2011, p. 93.

dominiums, and rights preferred.⁸

The legal materials used in this research consist of:

1. Primary legal materials, namely ingredients binding law, include regulation relevant legislation with topic study⁹.
2. Secondary legal materials, which provide explanations of primary legal materials, such as research results, scientific works from legal circles, and legal literature¹⁰.
3. Tertiary legal materials, namely materials that provide instructions and explanations for primary and secondary legal materials, such as legal dictionaries and encyclopedias¹¹.

Collection of legal materials is carried out through library studies and searches of legal

literature. Analysis of legal materials is carried out qualitatively using systematic and teleological interpretation methods.¹² Systematic interpretation is used to understand the relationship between related laws and regulations, while teleological interpretation is used to understand the purpose of the relevant legal provisions.¹³

Through this research method, it is hoped that a comprehensive understanding can be obtained regarding the application of bankruptcy provisions to condominium HT objects and their relation to the binding power of preference rights based on the Bankruptcy Law, and solutions to existing legal problems can be formulated.

ANALYSIS AND DISCUSSION

Characteristics of Mortgage Rights on Condominiums

Mortgage Rights Theory (HT) on condo-

⁸ Ibrahim, Johnny. Normative Legal Research Theory and Methodology. Malang: Bayumedia Publishing, 2006, p. 306-307.

⁹ Soekanto, Soerjono. Introduction to Legal Research. Jakarta: UI Press, 2008, p. 52.

¹⁰ Marzuki, Peter Mahmud. Legal Research. Jakarta: Kencana Prenada Media Group, 2011, p. 141-143.

¹¹ Soekanto, Soerjono. Introduction Legal Research. Jakarta: UI Press, 2008, p. 52.

¹² Mertokusumo, Sudikno. The Discovery of Law: A Introduction. Yogyakarta: Liberty, 2009, p. 56-58.

¹³ Hadjon, Philipus M. and Tatiek Sri Djatmiati. Legal Argumentation. Yogyakarta: Gadjah Mada University Press, 2005, p. 26-27.

miniums has special characteristics that are different from HT on conventional land and buildings. Article 47 paragraph (5) of Law Number 20 of 2011 concerning Condominiums states that Ownership Rights to Condominium Units can be used as collateral for debt with the burden of HT ¹⁴. However, HT charges can only be made on parts of apartment units that are owned individually, excluding joint shares, joint objects, and joint land.

This specificity gives rise to legal implications in the application of bankruptcy provisions to condominium HT objects. HT holders should understand that their rights are limited to the individual unit and do not extend to the common shares attached to condominium ownership ¹⁵.

¹⁴Republic of Indonesia. Constitution Number 20 of 2011 concerning Flats . Republic of Indonesia State Gazette of 2011 Number 108, Article 47 paragraph (5)

¹⁵Sutedi, Adrian. Flat and Apartment Law. Jakarta: Sinar Graphics, 2010, p. 198-200.

Application Provision Bankrupt to HT Condominium Object

a. Separation Treasure Bankruptcy In case happen bankruptcy to condominium unit owners who are burdened with HT, curators must do strict separation between treasure bankruptcy which is part unit House arranged individually with part together, thing together, and land together. This matter is important For determining assets that can executed in bankruptcy ¹⁶proceedings.

b. Protection of the Rights of Other Residents
The bankruptcy process and HT execution must still notice rights of other residents inside condo the. Article 61 of the Condominium Law arranges that other permanent residents can use parts together, things together, and land together by its function ¹⁷. Curators and creditors HT holders

¹⁶Shubhan, M. Hadi. Bankruptcy Law: Principles, Norms and Practices in Court. Jakarta: Kencana, 2015, p. 162-165.

¹⁷Republic of Indonesia. Law Number 20 of 2011 concerning Flats. Republic of Indonesia State Gazette of 2011 Number 108, Article 61.

must ensure that actions they Not harm the rights of residents.

c. Coordination with Association Owners

and Occupants Flats Unit (PPPSRS) Curator needs to coordinate with PPPSRS in the bankruptcy process, esp related to management and maintenance part together, things together, and land together.¹⁸

This coordination is important to maintain the continuity of the condominium's function as a whole

The Binding Power of Preferred Rights in Condominium Bankruptcy

The preferential rights held by creditors holding HT are still recognized in the bankruptcy process as regulated in Article 55 paragraph (1) of the Bankruptcy Law.¹⁹ However,

¹⁸Hutagalung, Arie S. *Condos and their problems*. Jakarta: Publishing Agency, Faculty of Law, University of Indonesia, 2007, p. 95-98.

¹⁹Republic of Indonesia. Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. Republic of Indonesia State Gazette of 2004 Number 131, Article 55 paragraph (1).

the exercise of these preferential rights in the condominium context has several considerations:

a. Execution Limitations HT execution can only be carried out on parts of individual apartment units, excluding joint parts, joint objects, and joint land ²⁰. This limits the scope of execution and may affect the realizable value of the collateral.

b. Fulfillment of Obligations to PPPSRS Before execution is carried out, fulfillment of obligations to PPPSRS, such as management and maintenance fees, must be prioritized to maintain the continuity of the condominium's function. ²¹ This can affect the order of payments in bankruptcy proceedings.

c. Coordination with Other Creditors other creditors who have rights to the condominium unit, coordination is required to deter-

²⁰Suharnoko. *Contract Law: Theory and Case Analysis*. Jakarta: Kencana, 2004, p. 58-60.

²¹Murniati, Rilda. "Management of Flats in the Context of Ownership of Flats." *Journal of Law and Development* 45.2 (2015): 256-276.

mine the priority and proportion of payments²². This coordination is important to ensure fairness for all creditors involved.

Implications and Recommendations

The application of bankruptcy provisions to condominium HT objects raises several legal implications that need to be considered:

- a. The need for more specific implementing regulations regarding the bankruptcy mechanism for condominium HT objects.
- b. The importance of harmonization between the Bankruptcy Law, the Mortgage Law, and the Condominium Law to avoid conflicting norms.
- c. There is a need to increase the understanding of related parties, including curators and supervisory judges, regarding the special characteristics of bankruptcy of condominium HT objects.

Based on these findings, several recommendations that can be proposed include:

1. Drafting regulation the executor special arrange about application provision bankrupt to condominium HT object.
2. Enhancement coordination between institutions like the Financial Services Authority, Ministry of Agrarian Affairs and Spatial Planning, and Supreme Court, in handling cases of bankruptcy condominium HT object.
3. Development of education and training programs for practitioners of law about aspects of special bankruptcy condominium HT object

CONCLUSION

Based on the results of the research and discussions that have been carried out, several conclusions can be drawn as follows:

1. The application of bankruptcy provisions to condominium Mortgage (HT) objects has special characteristics that are different from bankruptcy to conventional HT objects. This specificity mainly lies

²²Fuady, Munir. Bankruptcy Law in Theory and Practice. Bandung: Citra Aditya Bakti, 2017, p . 103-105.

in the existence of common shares, common objects and common land attached to condominium ownership. This requires a clear separation between the part that can become the object of bankruptcy and the part that remains the collective rights of the condominium residents.

2. The binding power of the preferential rights of creditors of condominium HT holders is still recognized in the bankruptcy process, as regulated in Article 55 paragraph (1) of the Bankruptcy Law. However, its implementation has special limitations and considerations, especially related to protecting the rights of other residents and the sustainability of the condominium's function as a whole.
3. There is an urgent need for harmonization between the Bankruptcy Law, the Mortgage Law, and the Condominium Law in regulating bankruptcy issues for condominium HT objects. Incongruence be-

tween these three laws has the potential to give rise to legal uncertainty and conflict of norms in handling concrete cases.

4. The role of the curator in the bankruptcy process for condominium HT objects is very crucial. Curators must not only understand the general aspects of bankruptcy law but must also have specific knowledge regarding the characteristics of condominium ownership and their implications for the bankruptcy process.
5. Protection of the rights of other residents in a condominium complex must be the main consideration in the bankruptcy process and HT execution. This includes guaranteeing the continued use of common parts, common objects and common land, as well as fulfilling obligations to the Association of Owners and Residents of Flats (PPPSRS).

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