CONSUMER PROTECTION ARRANGEMENTS FOR FLAT HOUSES IN THE BANKRUPTCY REGULATION REGIME IN INDONESIA

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Abstract *- Bankruptcy is a process caused by the debtor's inability to pay off his debts to his creditors. Problems arise when apartment consumers only adhere to the Sale and Purchase Agreement. Consumers have the potential to lose their rights to flats in the developer's bankruptcy. Based on these, This research formulates the problem of how the concept of changes in bankruptcy law regulations in Indonesia affects the legal protection of apartment consumers in developer bankruptcy compared to the Netherlands and the United States. This research uses normative-empirical methods. The results of the research show that Indonesian bankruptcy regulations must prioritize the interests of creditors, in this case apartment consumers and the economic continuity of debtors. Just as the Netherlands and the United States prioritize debtor business continuity. The results of the research show that Indonesian bankruptcy regulations must prioritize the interests of creditors, in this case apartment consumers and the economic continuity of debtors. Just as the Netherlands and the United States prioritize debtor business continuity. The results of the research show that Indonesian bankruptcy regulations must prioritize the interests of creditors. Just as the Netherlands and the United States prioritize debtor business continuity.*

Keywords: *consumer protection, flat houses, bankruptcy;*

INTRODUCTION

Bankruptcy is a process caused by the debtor's inability to pay off his debts to his creditors. Bankruptcy law was created to allow people with debts in inadequate financial circumstances to avoid paying them off periodically. At the same time, this law also gives creditors the opportunity to control the debtor's existing assets, even though these assets cannot be used to pay off all debts.(Retnaningsih, 2018). The main objective of the bankruptcy process is to divide the debtor's assets (assets) to his creditors, to be completed by the curator after the bankruptcy decision.(Kartoningrat, RB, & Andayani, 2018). The use of coercive measures by agencies in resolving bankruptcy decisions decided by commercial courts is one way for creditors to recover their receivables.

The aim of bankruptcy institutions in Indonesia is to protect the interests of creditors through general confiscation of all debtor assets. Bankruptcy regulations, through Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, are important for restructuring debtors' debts towards their creditors. The liquidation process is carried out while still considering the business processes carried out by the debtor, but also fulfilling the rights of creditors. One of the research results has shown that in the future, bankruptcy law in Indonesia must be based on the philosophy of bankruptcy or return it to its essence. That bankruptcy must then pay attention to the safety aspects of the three parties. The three are the debtor itself, creditors, and other stakeholders.

Bankruptcy in Indonesia can be applied to business entities or individuals. Business entities that are bankrupted in this research will refer to business entities engaged in construction services and development of commercial flats or apartments (Developers). Bankruptcy experienced by developers has been recorded in several case facts in Indonesia through inkracht district court decisions. For example, the Surabaya Commercial District Court Decision Number 20/Pailit/2011/PN.Niaga.Sby which decided PT Dwimas Andalan Bali was bankrupt. However, in the process of implementing the decision there were parties who suffered losses, namely consumers

who owned commercial apartment units developed by PT Dwimas Andalan Bali. The consumers sued the court and the court gave a decision through decision number 06/Plw/Pailit/2015/PN.Niaga.

The two decisions mentioned above show that the bankruptcy procedure is running, and the parties carry out their respective legal obligations in good faith, which will save the conditions of the parties. Apart from the case examples above, bankruptcy procedures that are also carried out in good faith will always result in balanced profits, which is reflected in the case experienced by PT Cowell Development. The Central Jakarta Commercial District Court declared PT Cowell Development bankrupt through decision number 21/Pdt-Sus-Pailit/2020/PN.Niaga.Jkt.Pst. This decision was carried out by PT Cowell Development, although after it was pronounced, PT Cowell Development continued to open up the possibility of peace with its creditors in order to protect the interests of PT Cowell Development consumers. Besides that,

The legal consequence of someone being declared bankrupt is that the debtor's assets are placed under general confiscation (automatic stay) which causes the debtor to be unable to take care of or manage his assets. Indonesia's national bankruptcy law is a form of implementation of the creditorium parity principle and the pari passu prorate parte principle in the property law regime (vermogentsrechts). The principle of pari passu prorate parte is that the assets owned by a person will become collateral for all of his creditors, where the proceeds from the collection of these assets must be distributed evenly and proportionally, except if there are creditors whose receivables must be prioritized according to law.(Subhan, 2008). This principle is applied in accordance with the general explanation in Indonesian bankruptcy law which states that bankruptcy will not release someone who has been categorized as bankrupt because of their achievements in paying off their debts. Thus, the bankruptcy debtor's debt will always exist and it is possible that they will file for bankruptcy more than once.

Due to the monetary crisis in 1998 which disrupted Indonesia's monetary stability, bankruptcy law began to develop in Indonesia. This financial crisis has had a negative impact on business, especially in terms of settling debts and receivables in its operations, thereby causing losses for the Indonesian people(Sinaga, NA, &Sulisrudatin, 2018). Business actors who act as debtors face difficulties in fulfilling their promises to their creditors to pay debts that can be collected as they are due. As a result of this crisis situation, the International Monetary Fund is urging the Indonesian government to change bankruptcy law to resolve bankruptcy problems involving companies in Indonesia, both national and multinational. The IMF believes that the bankruptcy regulations used by Indonesia at that time originated from the Dutch rule and were inadequate to meet legal requirements as time progressed.(Khair, 2018).

The Indonesian government in power at that time finally revoked the implementation of the Debt and Receivable Settlement Regulations because it was deemed unable to adapt to the demands and needs that arose due to legal developments regarding the settlement of debt and receivable cases. Then a Government Regulation in Lieu of Law Number 1 of 1998 was issued, which was then ratified by parliament as Law Number 4 of 1998. It turned out that there were weaknesses in its implementation; one of them is that this law does not clearly explain what debt is, which has led to many interpretations of what debtors, creditors, and debt are. Undoubtedly, uncertainty in legal practice will be caused by uncertainty in these laws.(Kapero, 2018).

Several other studies have been conducted related to the issues the author raises. However, it all boils down to the classification of commercial apartment owners as concurrent creditors. Apart from that, consumers are advised to take two lawsuit options, namely a lawsuit based on Law Number 8 of 1999 concerning Consumer Protection or filing a cassation legal action against the bankruptcy decision handed down to a developer who has a legal relationship with consumers.

This research will focus more on providing alternative proposed concepts for changes to Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations that better protect commercial apartment consumers from bankruptcy experienced by developers. This research will also compare the bankruptcy concept implemented by Indonesia with other countries. The country that will be used as a comparison is the Netherlands, as a logical consequence that Indonesia and the Netherlands apply the same legal system.

Bearing in mind that Indonesia and the Netherlands have the same legal system, different principles in bankruptcy law will certainly have both good and bad effects. In terms of this comparison of the development of bankruptcy law, it will be more important to emphasize what is written about bankruptcy requirements in Indonesia and the Netherlands and the differences in how bankruptcy debtors settle their remaining debts. The proposed change concept is a specific arrangement in cases of consumer rights violations when the developer is insolvent or even declared bankrupt. Based on all of the background explanations, this research formulates the problem of how the concept of changes in bankruptcy regulations in Indonesia regarding the protection of apartment consumers compares with the concept of bankruptcy regulations in the Netherlands and the United States.

RESEARCH METHODS

The research was conducted using normative-empirical legal research methods. This method is a legal research method that places law as a building system of norms. Normative-empirical legal research, which can also be called normative-applied legal research (applied law research), is legal research that examines the factual implementation or implementation of positive legal provisions (legislation) and contracts in each specific legal event that occurs in society. in order to achieve predetermined goals(Muhammad, 2004). Research is carried out by examining legal phenomena or issues based on literature analysis patterns and comparisons with empirical facts in the field. The literature used by the author comes from reference books and scientific journals, while empirical facts were obtained by the author through interviews with several bankruptcy curators and the Central Jakarta District Court. Apart from that, in this research, the author also compares the legal concepts applied by the Netherlands and England. The comparative approach is one of the methods used in normative research which is used to compare or compare one legal institution (legal institution) from a legal system with legal institutions from another legal system or in another country.(Muh. Aspar, 2015)

1. Sub Indonesia's Bankruptcy Regulatory Regime for Protection of Flats Consumers

As part of history, Indonesian bankruptcy laws have undergone changes and replacements. Changes and replacements are made to adapt to needs that arise during a certain period of time in order to achieve the objectives of making the law. These changes, among other things, concern the interests of regulated parties and parties involved in implementing the law, ensuring certainty, justice and order. By knowing the history of the development of existing bankruptcy laws, if you make changes or create new bankruptcy laws, you can better position them as legal instruments that can meet development needs that are rooted in the values upheld in the way of life as a country.(Remy, 2010)

The bankruptcy institution is a legal institution that has an important function as the realization of two important articles in the Civil Code, namely article 1131 and article 1132 concerning the debtor's responsibility for his debts. According to article 1131, all of the debtor's property, both movable and immovable, whether existing or new in the future, is borne by all personal obligations. Article 1132, these objects become joint collateral for all those who owe them. The income from the sale of these objects is divided according to the balance, namely according to the size of their respective receivables unless there are valid reasons for priority among the debtors. .(Hartini, 2002)

The two articles mentioned above provide a guarantee of certainty to the creditor that the debtor's obligations will continue to be fulfilled or paid off with collateral from the debtor's assets, both existing and those that will exist in the future. These two articles embody the principle of guaranteeing certainty of payment for legal relationships that have emerged.

In consumer protection law in Indonesia, namely Law Number 8 of 1999, there are 3 (three) stages, of which the pre-transaction stage is the first stage and is only carried out by business actors before a relationship between consumers and business actors occurs. Developers at this stage carry out their commercial activities before the buying and selling stage to consumers. At this stage the

developer resolves licensing issues that are administrative in nature and determined by applicable regulations. Then one of the commercial activities carried out by developers is initial marketing (pre-sales). The second stage is the stage where transactions are carried out by both the developer and the consumer, where a legal relationship begins to exist between the developer and the consumer.

The Sale and Purchase Agreement is an agreement that creates a reciprocal achievement between the developer and the consumer. The developer receives an initial payment for the sale of the unit (commercial flat or other) and is obliged to complete the construction to completion. The consumer is entitled to the unit that has been paid for as a preliminary agreement and is obliged to pay the remainder in full according to the agreed price.

A Sales and Purchase Agreement cannot guarantee the transfer of rights from the developer to the consumer. The final stage, namely the stage after the transaction is carried out by the developer or consumer, this stage is the fulfillment of achievements after the agreement is made at the transaction stage. However, many disputes occur between consumers due to developers not being successful in fulfilling their obligations, namely completing the construction of the objects agreed upon when agreeing to the Sale and Purchase Agreement.(Sidabalok, 2014)At the stage after this, this research focuses on conditions where the developer is declared bankrupt before the fulfillment of its obligations as stated in the Sale and Purchase Agreement is fulfilled.

Currently Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations regulates all bankruptcy procedures and postponement of debt payment obligations in Indonesia. In relation to the bankruptcy of a developer who in the process still has a legal relationship with consumers through a Sale and Purchase Agreement, article 36 states explicitly that in the event that at the time the bankruptcy decision is pronounced, there is a reciprocal agreement that has not been or has only been partially fulfilled, the party entering into the agreement with The debtor can ask the curator to provide certainty regarding the continued implementation of the agreement within the time period agreed by the curator and the party. However, in practice, everything depends on the curator's willingness.

Based on interviews conducted by the author with curators who have handled several bankruptcy cases in Indonesia, the curator chose not to prioritize the continuation of the implementation of the agreement referred to in Article 36. The Sale and Purchase Agreement between consumers and developers who are declared bankrupt is a representation of this article. When the curator has issued a List of Permanent Receivables, consumers, in the case of only having a legal relationship through a Sale and Purchase Agreement with the bankrupt developer, will be included in the category of concurrent creditors, which has an impact on the final fulfillment of their receivables as well as the unpromising portion (depending on the condition of the bankrupt developer's assets).

Representations from the Central Jakarta District Court, based on the results of the author's interviews with relevant stakeholders, also provide information that the Court cannot rely on aspects that are not stated in positive law. This is also a logical consequence of the implementation of the Civil Law legal system in Indonesia. Handling of bankruptcy cases in the Commercial Court which is guaranteed by the Bankruptcy Law. In other cases of enforcing bankruptcy law, the principle of fair debt restitution can be seen as the underlying form of injustice. That is; from the bankruptcy principle regarding the response to injustice is the principle of Creditorium Parity even though it is a response to the injustice.

If the Creditorium Parity principle is applied to the letter, it will give rise to injustice. The unfairness of the Creditorium Parity principle is that creditors are in the same position as other creditors. The Creditorium Parity Principle does not differentiate between the treatment of creditors' conditions, whether creditors who have large receivables or creditors who have small receivables, both creditors who hold collateral and creditors who do not hold collateral.(Subhan, 2008).

Supreme Court Circular Letter Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the 2016 Supreme Court Chamber Plenary Meeting as a Guide to the Implementation of Duties for the Court in the civil and general civil chamber formulation section

number 7 states that "The transfer of land rights based on the Sale and Purchase Agreement legally occurs if the buyer has paid the price of the land in full and has control of the object of sale and purchase and is done in good faith." The following Supreme Court Circular indicates that the transfer of sale and purchase objects bound by a Sale and Purchase Agreement can only legally occur if payment has been made.

Regarding the Supreme Court Circular Letter itself, Indonesian law has determined that types of statutory regulations other than those mentioned in Article 7 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations are also considered regulations, one of which is the Supreme Court Circular Letter. The Supreme Court Circular is a form of circular from the leadership of the Supreme Court to all levels of the judiciary which contains guidance in the administration of justice, which is more administrative in nature.(Panggabean, 2001). Policy regulations function as part of the operational implementation of government tasks, so they cannot change or deviate from statutory regulations. The policy regulations of the Supreme Court Circular are a kind of shadow law of the law so that it is called psudo-wetgeving or pseudo-legislation(Ridwan, 2011). According to Bagir Manan, policy regulations are not directly legally binding, but contain legal relevance. Policy regulations are aimed at the state administration itself, so that the first person to implement these provisions is the state administration body or official. Thus, policy regulations cannot affect society in general(Ridwan, 2011). So it can be said that the position of the Supreme Court Circular on the issues raised by the author is not strong enough to provide legitimacy to the judge that in the bankruptcy of the debtor (developer), the judge must then prioritize the interests of consumers who only have a Sale and Purchase Agreement relationship with the developer.

The concept applied in Law no. 37 of 2004 and Law no. 4 of 1998 also adopted debt collection. This saw a shift in concept where those who were bankrupted were not only insolvent companies, but also solvent companies that did not pay debts. This is reflected in the requirements for bankruptcy applications regulated in this law. The concept of creditor bargain theory aims to provide protection to creditors in collecting debts from bankrupt debtors. Gerard Glenn(Tabb, 2002)states that in fact the essence of bankruptcy law is to avoid fraud and control debtors (revention of farud and control of the debtor) in the following ways(Al., 2001):

1. First, there will always be debtors who cheat: further, the idea of bankruptcy law includes the concept that debtors must be under the supervision of the court. Bankruptcy law controls debtors. For this reason, bankruptcy law must contain two things, namely, it must be able to return the bill in full by correctly determining the bankruptcy budget and the method of distribution. To guarantee this, not only the bankruptcy budget but also the debtor personally must be under the supervision of the court. In this way, fraudulent transfer of bankruptcy funds can be discovered and creditors can get their receivables back. However, in fact, its essence is misused. Max Radin shares the same opinion as Gerrad Glenn, stating that the essence of bankruptcy law is to prevent debtors from eliminating or hiding their assets from creditors. For this reason, secondly, bankruptcy law must add something new to the form of these procedures or bankruptcy law is considered to have never existed.
2. Second, bankruptcy law must protect the interests of creditors where creditors will obtain their rights collectively (individual rights in a collective way proceeding). The main concept is to protect the taking of the debtor's wealth separately or individually by his creditors, so that creditors must receive collective protection. Thus, bankruptcy law functions as debt collection.

Judging from the history of the birth of bankruptcy law itself, bankruptcy law essentially aims to protect the interests of creditors by liquidating debtor assets, then the proceeds from the liquidation of these assets are distributed to creditors on a pro rata basis. However, the category of creditors in the bankruptcy regulatory regime in Indonesia is only parties who have receivables and are recognized in the Register of Permanent Receivables by the curator. Apart from that, the receivables owned must be simple to prove and have material (money) value. Although in practice, the results of the author's interviews show that one curator will have different preferences from another, this will depend on case by case.

The trend that will be easier to implement in accordance with Article 36 of the Indonesian Bankruptcy Law is that the judiciary is procedurally obliged to follow the provisions in the Supreme Court Circular Letter. If this is not the case, then consumers who are only bound by the Sale and Purchase Agreement will potentially only be placed in accordance with the hierarchical categorization of creditors, namely concurrent creditors. You will still get a share of the bankrupt debtor's assets, but in the last position and in an unpromising portion.

Meanwhile, in the legal conception in Indonesia, the Supreme Court Circular Letter has legal (binding) force that is not strong enough when compared to other types of statutory regulations, especially laws, as explained above. Apart from that, if we return to the meaning of debt in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, debt is an obligation that is expressed or can be expressed in amounts of money both in Indonesian currency and foreign currency, either directly or indirectly. which will arise at a later date or is contingent, which arises due to an agreement or law and which must be fulfilled by the Debtor and if not fulfilled gives the Creditor the right to obtain fulfillment from the Debtor's assets.

The conditions mentioned above are obstacles in themselves beyond the legal interest in protecting consumers so that ownership rights to building units promised by the developer are transferred legally according to law. In fact, if viewed on the contrary, an obligation that can be expressed as a monetary amount is a consumer obligation in the context of a Sales and Purchase Agreement, meaning that the consumer is obliged to pay a certain amount of money to the developer based on the developer's obligation settlement process. This dilemma must be able to be accommodated by law in order to protect the interests of consumers who are facing developer bankruptcy.

The latest case currently occurring in Indonesia is the bankruptcy process of the development company, namely PT Tunas Alam Realti, which is developing the Mahaka Platinum housing complex in Depok, West Java, Indonesia. Consumers suddenly received information on September 22 2023, that the developer had moved the domicile of its business entity to Semarang, Central Java, Indonesia. To obtain their rights, a number of Mahaka Platinum housing consumers authorized the Law Office of Dedy Kurniadi and Co Lawyers to reveal the alleged practice of engineering the ongoing bankruptcy case at the Commercial Court at the Semarang District Court which is scheduled for 27 September 2023. If the petition is granted and goes to in general bankruptcy confiscation,

The case above provides a reflection that the application process and requirements for bankruptcy applications based on the bankruptcy law regime in Indonesia still have the potential to be misused. Due to the monetary crisis in 1998 which disrupted Indonesia's monetary stability, bankruptcy law began to develop in Indonesia. This financial crisis has had a negative impact on business, especially in terms of settlement of debts and receivables in its implementation, causing losses for the Indonesian people(Sinaga, NA, &Sulisrudatin, 2018).

2. Comparison of the Insolvency Regulatory Regime in the Netherlands

Unlike Indonesia, the Netherlands has had bankruptcy regulations since 1811. Initially, Dutch bankruptcy law was regulated by the Code de Commerce, which differentiated the status of traders from non-traders. In 1838, the Wetboek van Koophandel Nederland replaced the Code de Commerce, and in 1893, the Faillissementswet 1893 became the Dutch bankruptcy code, which came into effect on 1 September 1896. This code applied to everyone, and the Faillissementswet 1893 no longer differentiated between merchants and not a trader. Until now, Faillissementswet is still used to resolve bankruptcy problems in the Netherlands. However, Dutch bankruptcy law, now known as the Dutch Bankruptcy Act, has undergone some changes, but remains essentially the same.(Astiti, 2017).

Another difference between Indonesia and the Netherlands in the regulatory regime for bankruptcy institutions is the bankruptcy application process. Chapter I Article 1 and Article 2 of the Dutch Bankruptcy Act states that a person is declared bankrupt when a debtor has stopped paying debts that he should pay by a court decision. Bankruptcy decisions can also be made at the request of the public interest or at the request of the Bankruptcy Prosecutor. This also happens when creditors

who apply for bankruptcy must also be able to prove the same thing. For example, if a creditor files a bankruptcy petition against a debtor, they cannot simply say that the debtor failed to pay their debt by the due date. They have to look for other creditors who also fail to pay their debts on time,
Article 4 of the Dutch Bankruptcy Law regulates the formal requirements that must be fulfilled in order for a debtor to be declared bankrupt, including:

1. An application for a bankruptcy order is made and the petition is therefore filed with the secretary of the Regional Court and must be heard in chambers as soon as possible. The District Attorney's Office should be heard on the request. If the application for a bankruptcy order is made by the debtor himself and he is a natural person, then the spokesperson of the district court must immediately inform him that he can apply to apply the Debt Payment System as mentioned in Article 284, without affecting Article 15b (1).
2. A debtor who is married or has entered into a registered partnership can only apply for the abolition of obligations for himself or herself with the cooperation of their respective husband/wife or registered partner, unless there is a unity of property that has been excluded between the spouses or, respondent, the registered partner.
3. In the case of a general partnership (vennootschap onder firm)*), the application for liquidation of liability must indicate the name and address of each partner who is jointly and severally liable for the debts of the partnership.
4. The application for a bankruptcy order must contain information that enables the court to determine whether it has jurisdiction under the European Regulations mentioned in Article 5 paragraph (3).

Based on Dutch bankruptcy regulations, formal requirements are a strategic step to ensure that the bankruptcy declaration is not based on assumptions or circumstances of manipulation based on bad faith. It is very clear that individuals, individuals bound by marriage, and individuals bound to a registered business entity must fulfill a number of formal requirements, as indicated in Article 4 of the Dutch Bankruptcy Act. A debtor can be declared bankrupt by a judge if the conditions mentioned above are met and the reasons put forward are reasonable.

3. A Comparison of Bankruptcy Regulatory Regimes in the United States

The development of economic globalization is influenced by the very rapid growth of Indonesian economic law. The development of economic law causes the transfer of rules or legal systems from one country to another. This can be seen in the history of the development of Indonesian law, which has occurred since the colonial era and developed rapidly during the era of globalization. In the field of bankruptcy law, the Dutch colonial government implemented Failissemenst Verordening against Europeans based on Article 131 IS Jo. 163 IS. In practice, this bankruptcy law is also applied to native people. Government Regulation in Lieu of Law Number 1 of 1998, which later became Law, replaced the bankruptcy law after the Indonesian economy collapsed (crisis).
If we pay attention to the history of the development of bankruptcy regulations in Indonesia more broadly, we can analyze them based on their content. The content referred to in this case is the pattern that influences the development of the arrangement. The law regarding bankruptcy itself has existed since Roman times. In Roman Italian cities such as Genoa, Florence, and Venice, execution of debtors' property to pay off debts was a common practice. Supervision of debt repayment—creditors' debts originating from the debtor's assets—is carried out by a judge who ensures that each creditor's debt is repaid proportionally according to the amount of the bill(Warren, 1993).
If we look at its development, the style of regulation regarding bankruptcy has historically been more inclined towards the development of continental European law. Literally, the term "bankrupt" (Eng: bankrupt), comes from Italian law, namely "banca rupta". At that time, in Venice, Italy there was a tradition, where the banco (bench) of lenders (bankers) who were no longer able to pay their

debts or had failed in their business, was broken or destroyed. Several legal principles from England were influenced by other continental countries and eventually spread to the United States. The Statute of Bankruptcy 1570 is an English bankruptcy law. The aim of this law is to crack down on and punish fraudulent debtors, including debtors who work as traders(Nur, 2015).

The common law legal tradition originated in Great Britain, in 1952 a period recorded by history. Because, in that year bankruptcy law from the Roman legal tradition was adopted by England. This event was marked by the promulgation of the "Act against such Persons as Doing Make Bankrupt" by parliament during the reign of King Henry VIII. Currently the bankruptcy law that applies in the UK is the Insolvency Act of 1986 which came into effect on December 29 1986. The history of bankruptcy law in the United States began with a constitutional dispute about the right of Congress to establish consistent bankruptcy rules. The Constitutional Convention in Philadelphia in 1787 was the beginning of this debate(Nur, 2015).

In 1800, the United States Congress then passed the first law regarding bankruptcy, the contents of which were almost the same as the British Bankruptcy Law at that time. However, in the 1800s, there were state laws known as insolvency laws that protected debtors from imprisonment for not paying their debts(Nur, 2015).

While in United States bankruptcy law, the corporate reorganization mentioned in Chapter 11 is not recognized in Indonesian bankruptcy law. After further research, Indonesian bankruptcy law does not regulate the possibility of company reorganization. However, this company reorganization institution is identical to the concept of Postponement of Debt Payment Obligations in Indonesia. This institution, in Indonesia, is not carried out based on a situation where the debtor is unable to pay his debts and also does not aim to settle the debtor's assets. The aim is so that debtors can continue their business and creditors also retain their rights to their receivables. This mechanism is also to save creditors in the most vulnerable position, namely concurrent creditors in the bankruptcy law regime in Indonesia.

The mechanism for deferring debt payment obligations is similar to the reorganization mentioned in Chapter 11 of US bankruptcy law, which gives debtors the opportunity to restructure their businesses and debts so they can survive before a judge declares them bankrupt. Business reorganization is definitely more profitable than bankruptcy. This reorganization will benefit all parties, including employee creditors, debtors, and all business owners. In cases where the overall peace process can no longer be carried out and the assets of the bankrupt party are not sufficient to meet all of its debts, even if given sufficient opportunity and time, the final step that can be taken is bankruptcy.

If we compare the two regimes, between Indonesia and the United States, it can be seen that priority orientation is the point. The United States prioritizes the sustainability of debtor businesses that have the potential to go bankrupt. Chapter 1 of the United States Bankruptcy Code, in the definition section, states in number 32 that an insolvent situation is a condition where the assets owned are greater than the debt burden. This means that these conditions are ideal if the debtor has a high potential to face bankruptcy. This difference provides the perspective that the bankruptcy regulatory regime in Indonesia provides easier space for filing bankruptcy applications compared to the United States.

4. Concept for Renewing Indonesian Bankruptcy Regulations

According to the Society for Credit Counseling, the terms bankruptcy and insolvency are often confusing if not properly understood. Although they both have different meanings, they are related to each other. "Insolvency does not necessarily lead to bankruptcy, but all bankrupt debtors are considered insolvent," said Rohan Lamprecht. In accordance with the statement above, only debtors who no longer have sufficient assets can be subject to a bankruptcy decision. Goodman Law defines insolvency as a financial condition that occurs when the debtor's debt (not just one debt) is greater than his assets. This differentiates insolvency from bankruptcy. Therefore, insolvency does not necessarily mean that the debtor becomes insolvent; instead, all entities and individuals declared bankrupt must be deemed bankrupt. If a debtor fails to pay a debt to one of their

creditors, it does not necessarily mean they cannot pay. It could be because they are deliberately unwilling to pay debts for reasons different from their inability to pay; in other words, their financial situation still allows them to pay the debt. Not necessarily because the debtor does not have the "ability to pay" (ability to pay), but because the debtor does not have the "willingness to pay" (willingness to pay) Their financial situation still allows them to pay the debt. Not necessarily because the debtor does not have the "ability to pay" (ability to pay), but because the debtor does not have the "willingness to pay" (willingness to pay) Their financial situation still allows them to pay the debt. Not necessarily because the debtor does not have the "ability to pay" (ability to pay), but because the debtor does not have the "willingness to pay" (willingness to pay)(Remy, 2010).

The concept of bankruptcy regulation in Indonesia is currently stated by several researchers to have a negative impact in several cases. The arrangements that Indonesia currently adheres to have impacts including:(Sunarmi, S., & Hendra, 2015)

1. Barriers to Foreign Investment
2. There is no balance of protection between debtors, creditors and other related parties
3. Risks to the Stability of Economic Development

According to international standards, creditors cannot file a bankruptcy lawsuit in the Commercial Court if the debtor is still in debt but has not paid. If the debtor is still in debt but does not pay, the creditor can file an ordinary civil lawsuit at the Commercial Court(Surjanto, 2018). In Article 57 paragraph (l) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, the term "insolvency" is used, but the meaning of insolvency used in that article is not the same as the meaning of insolvency explained above. As mentioned above, insolvency is a situation where the amount of all debts to each creditor, regardless of the type of creditor, exceeds the value of all the debtor's assets (property). It is not clear whether "unable to pay" as meant in Article 57 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations is "unable to pay all his debts" or "unable to pay debts to just one of his creditors ". In accordance with legal logic, must be linked to the provisions of Article 2 paragraph (l) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, which determines that it is sufficient to fulfill the requirements if the debtor does not pay off his debt to one of his creditors when it is due, while the other creditors do not debt arrears. If you read the Explanation of Article 2 paragraph (l) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, it turns out that the law does not differentiate between the types of creditors referred to in Article 2 paragraph (Each type of creditor has the right to file a bankruptcy petition which determines that it is sufficient to meet the requirements if the debtor does not pay off his debt to one of his creditors when it is due, while the other creditors are not in arrears. If you read the Explanation of Article 2 paragraph (l) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, it turns out that the law does not differentiate between the types of creditors referred to in Article 2 paragraph (Each type of creditor has the right to file a bankruptcy petition which determines that it is sufficient to meet the requirements if the debtor does not pay off his debt to one of his creditors when it is due, while the other creditors are not in arrears. If you read the Explanation of Article 2 paragraph (l) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, it turns out that the law does not differentiate between the types of creditors referred to in Article 2 paragraph (Each type of creditor has the right to file a bankruptcy petition(Remy, 2010).

Apart from referring to the conditions experienced by debtors, bankruptcy must pay attention to the conditions of creditors. Creditors in a vulnerable position must be protected by law, namely concurrent creditors. This research puts forward how bankruptcy law in Indonesia can operate as in the Netherlands and the United States. Indonesia, as a country that has made changes to bankruptcy regulations after experiencing an economic crisis, should restore these regulations to their essence. A leading legal practitioner in Indonesia, Hotman Paris Hutapea, who also handles many bankruptcy cases outside Indonesia, stated that there are several weaknesses in bankruptcy regulations in Indonesia, namely:(Heriani, 2015)

1. Minimum requirements that must be met by creditors as bankruptcy applicants. According to Article 2 paragraph (1) of the Bankruptcy Law, if the debtor meets the following two conditions: the debtor has two or more creditors; and the debtor does not pay at least one debt that is due and collectible. Hotman Paris views this article as proof that the Bankruptcy Regulations are contrary to the principle that bankruptcy legal measures which should be carried out in the interests of all creditors are contrary to the law. In practice, when other creditors—who are not bankruptcy applicants—do not intend to take legal action to bankrupt the debtor, the result is that other creditors are forced to register as creditors. Hotman proposed that as a bankruptcy applicant, a minimum number of creditors must be included. The condition given to debtors is that they must prove that at least 75% of creditors have debts that are due and unpaid. According to Hotman, if there is only one creditor, the case can be resolved through ordinary civil lawsuits or collateral execution, as long as the civil case process is improved in terms of time.
2. Postponement of Debt Payment Obligations in the bankruptcy regulatory regime in Indonesia has a very short period of time. Providing debtors with the opportunity to reorganize their business is the main objective of Postponement of Debt Payment Obligations. Restructuring the company took a long time. According to Hotman, the time given by the Bankruptcy Law in Indonesia is only 45 days, and it is considered difficult to complete peace proposals, lobbying and business reorganization within that time.
3. Separatist creditors have the right to go bankrupt and participate in voting without losing their collateral according to bankruptcy regulations in Indonesia. This condition is not ideal, because creditors have protected their rights to the collateral they own, but bankruptcy still harms debtors. There should be a balance in practice, so that debtors can continue their business without reducing the rights of separatist creditors or other creditors.
4. The high requirements for counting votes and the cumulative voting requirements for concurrent creditors and separatist creditors regulated in Article 281 of the Indonesian Bankruptcy Law are the main reasons for the extremely cruel legal action for Suspension of Debt Payment Obligations. In fact, this is a major obstacle to peace proposals submitted by debtors and is often defeated.
5. The regulations regarding the honorarium for curators as administrators are unreasonable. The current rules for curator fees are based on the presentation of the total debt or percentage of the debtor's assets. The curator should side with both interests, not take sides with personal interests. So, the ideal is that the curator's honorarium is calculated based on the rates of professionals who work as advocates.

Bankruptcy regulations in Indonesia should adapt to contemporary business needs. Previous changes to regulations were made when Indonesia was experiencing an economic crisis. Now, the crisis is over, and regulations must be changed immediately. Adapting to the needs of the parties, not just the party who seems to feel the most disadvantaged. Bankruptcy institutions are the last resort to fulfill the obligations of bankrupt debtors towards creditors for their debts. Bankruptcy should be a step that is not prioritized if the law provides open space for the continuity of the debtor's business. The main orientation of resolving a debtor's debt must be to face the possibility that both parties, either the debtor or the creditor, will obtain their respective rights. Apart from being related to economic sustainability, Bankruptcy institutions can also stop the economy if it is not done properly. The condition in question is when bankruptcy is used as a shortcut for debtors who deliberately create conditions that make them eligible for bankruptcy in bad faith. Debt assessment, equal position of the parties, as well as an adequate time period, are aspects that must be included in the regulatory balance. This is an effort to prioritize protection primarily for condominium consumers. The position of consumers who are only bound by a Sale and Purchase Agreement and therefore categorized as concurrent creditors in developer bankruptcy is in a vulnerable position. The condition in question is when bankruptcy is used as a shortcut for debtors who deliberately create conditions that make them eligible for bankruptcy in bad faith. Debt assessment, equal position of the parties, as well as an adequate time period, are aspects that must be included in the regulatory balance. This is an effort to prioritize protection primarily for

condominium consumers. The position of consumers who are only bound by a Sale and Purchase Agreement and therefore categorized as concurrent creditors in developer bankruptcy is in a vulnerable position. The condition in question is when bankruptcy is used as a shortcut for debtors who deliberately create conditions that make them eligible for bankruptcy in bad faith. Debt assessment, equal position of the parties, as well as an adequate time period, are aspects that must be included in the regulatory balance. This is an effort to prioritize protection primarily for condominium consumers. The position of consumers who are only bound by a Sale and Purchase Agreement and therefore categorized as concurrent creditors in developer bankruptcy is in a vulnerable position. This is an effort to prioritize protection primarily for condominium consumers. The position of consumers who are only bound by a Sale and Purchase Agreement and therefore categorized as concurrent creditors in developer bankruptcy is in a vulnerable position. This is an effort to prioritize protection primarily for condominium consumers. The position of consumers who are only bound by a Sale and Purchase Agreement and therefore categorized as concurrent creditors in developer bankruptcy is in a vulnerable position.

CONCLUSION

The presentation of all the analysis above leads the discussion to the conclusion that the bankruptcy regulatory regime in Indonesia still relies on the weakening model of bankrupt debtors. Its connection with the protection of the interests of condominium consumers in the event of debtor bankruptcy has not been guaranteed with certainty. When compared with the Netherlands and the United States, bankruptcy regulations in Indonesia should prioritize the business continuity of debtors who have the potential to go bankrupt. Thus, bankruptcy procedures are not a way out for debtors who have bad faith towards their creditors.

The bankruptcy regulatory regime in Indonesia must shift to a legal concept that is more accommodating to modern business developments. The requirements for a bankruptcy application must also be based on formal testing involving judicial institutions. If not, then the bankruptcy petition has the potential to be misused on the basis of bad faith. Protection of creditor interests must be balanced with debtor interests. Especially in the results of this research analysis, consumers in developer bankruptcy cases need a clear concept of legal protection so that changes are needed to the Indonesian Bankruptcy Law. According to the Ducth Bankruptcy Act, a debtor can be filed for bankruptcy if the debtor has debts and a debtor who is in a state of stopping paying his debts which are due and must be collected, is declared bankrupt by order of the court, either at his own request, or at the request of another person or more creditors. Meanwhile, the United States stipulates that a debtor can be said to be bankrupt if the value of his assets is less than the debt burden that must be paid.

This research is still limited to the context of protection for condominium consumers due to debtor bankruptcy. Apart from that, this research is also limited to legal comparisons which were only carried out in two countries, namely the Netherlands and the United States. Further research will be conducted by the author to provide a more comprehensive perspective on related issues. The development of bankruptcy law in the world, and in Indonesia in particular, must always be oriented towards continued economic growth. Bankruptcy institutions are not only there to settle the assets of bankrupt debtors, but also to save the position of creditors based on good faith in giving trust to bankrupt debtors in the field of assets.

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