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Nature of Simple Proof as a Condition for Application for Postponement of Debt Payment Obligations and Bankruptcy Against Developers (*developers*) of Apartments and / or Flats After Supreme Court Circular Letter Number 3 of 2023

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Abstract: The issuance of Supreme Court Circular Letter (SEMA) Number 3 of 2023 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2023 as Guidelines for the Implementation of Duties for the Courts, raises legal problems when correlated with the provisions on the principle of simple proof as a condition for postponement of debt payment obligations and bankruptcy as stipulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations Article 8 paragraph (4). This paper uses normative legal research method with statutory approach and conceptual approach. The results of the research show that the SEMA in question is not a product of legislation and has implications that are not binding in general, only applies to the internal environment of the Supreme Court, but the consequences of the circular letter are guidelines for judges to be able to reject bankruptcy applications and postponement of debt payment obligations against developers (*developers*) of apartments, flats.

Keyword: Simple Proof, PKPU, Bankruptcy, Developer Bankruptcy, Flat Bankruptcy, SEMA.

INTRODUCTION

Bankruptcy is a general confiscation of all assets of a bankrupt debtor whose management and management are carried out by a curator under the supervision of a supervisory judge as regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law). Meanwhile, "Simple proof" as stated in Article 8 paragraph (4) of the Bankruptcy Law, is "An application for a declaration of bankruptcy must be granted if there are facts or circumstances that are proven simply that

the requirements to be declared bankrupt as referred to in Article 2 paragraph (1) have been fulfilled." (emphasis added). Referring to this provision, it is clear that what must be proven simply is the bankruptcy requirement in Article 2 paragraph (1) of the Bankruptcy Law.

Article 2 paragraph (1) of the Bankruptcy and PKPU Law regulates the requirements for bankruptcy with simple proof, namely the debtor has two or more creditors and does not pay in full at least one debt that has fallen due and collectible. So, if the bankruptcy requirements can be proven simply, then the supervisory judge must declare bankruptcy for the debtor, regardless of whether the debtor is *solvent* or *insolvent*. Bankruptcy itself is a situation where the debtor is unable to make payments on the debts of his creditors. The state of inability to pay is usually caused by the *financial distress* of the debtor's business which has experienced a decline. Meanwhile, bankruptcy is a court decision that results in general confiscation of all assets of the bankrupt debtor, both existing and future. The management and administration of bankruptcy is carried out by a curator under the supervision of a supervisory judge with the main objective of using the proceeds from the sale of the property to pay all debts of the bankrupt debtor in proportion (*prorate parte*) and in accordance with the creditor structure.

In the bankruptcy process, the law only determines in Article 8 paragraph (4) of the Bankruptcy Law that the application can be proven simply as referred to in Article 2 paragraph (1) of the Bankruptcy Law has been fulfilled. However, the Bankruptcy Law does not provide a detailed explanation of how simple proof is carried out, so that implementation and interpretation are carried out entirely by the panel of judges who examine and decide the bankruptcy case concerned. A debtor is declared bankrupt if he or she is proven to have simply fulfilled the requirements of the bankruptcy petition. In several Court decisions, the application for bankruptcy declaration is categorized as not simple proof, so that the application submitted cannot be accepted, because not simple proof is not the competence of the Commercial Court.

In the event of developers who build housing and flats along with the marketing and sales carried out the construction of apartments goes according to plan. However, there are often obstacles that hinder development, namely some developers experiencing financial problems or being unable to pay their debts before completing the construction of the apartment. Of the various factors, one of the main causes is that there are obstacles in financial screening (either carried out by the company accordingly or in bad faith in conducting these finances) or may experience company setbacks which result in the developer company being unable to pay the company's overdue bills (loans to banks, construction services, workers and others).

In resolving this problem, one of the steps that can be taken is through the process of postponement of debt payment obligations, hereinafter referred to as "PKPU" or even bankruptcy as part of the *debt collection* principle regulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, hereinafter referred to as "KPKPU Law". Bankruptcy is a situation where the debtor (in this case a developer) is unable to make payments on the debts of its creditors (stakeholders in the flats business, including contractors, buyers of apartment units / flats), which in this case can mean the event of non-payment of developer bills to contractors, non-transfer of flats to buyers, and various other legal events that can be categorized as debt in the KPKPU Law.

On December 29, 2023 the Supreme Court issued Supreme Court Circular Letter No.03 of 2023 Regarding the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2023 as Guidelines for the Implementation of Court Duties, in particular in the Special Civil Chamber letter a point (2) notifying that "*The application for a bankruptcy statement or PKPU against the developer (developer) of apartments and / or flats does not meet the requirements as simple proof as*

referred to in the provisions of Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations".

Based on the Circular Letter issued by the Supreme Court, it can be interpreted that the application for a bankruptcy statement or postponement of debt payment obligations against developers of apartments and / or flats has been categorized as not part of the simple proof requirements, so that if either the creditor or the debtor submits an application for PKPU or Bankruptcy, the application must be rejected because it does not meet the simple proof requirements as referred to in Article 8 paragraph (4) of the KPKPU Law which states "An application for a declaration of bankruptcy must be granted if there are facts or circumstances that are simply proven that the requirements for being declared bankrupt as referred to in Article 2 paragraph (1) have been fulfilled". Meanwhile, Article 2 paragraph (1) of the KPKPU Law states "Debtors who have two or more Creditors and do not pay in full at least one debt that has fallen due and collectible, are declared bankrupt by a Court decision, either at their own request or at the request of one or more of their creditors".

This is of interest to the author because it is clear that the KPKPU Law does not distinguish or separate the application for PKPU and bankruptcy against a particular object of issue or against a particular type of business field, while the simple evidentiary requirements are only based on debtors who have two or more creditors and do not pay in full at least one debt that is due and collectible, either at their own request or at the request of one or more creditors.

Based on the background of the problems described above, the following problem formulation can be determined:

1. The position of Supreme Court Circular Letter Number 3 Year 2023 in the national legal system.
2. The legal implications of Supreme Court Circular Letter No. 3 of 2023 in the application for postponement of debt payment obligations and bankruptcy against *developers of apartments and / or flats*.

METHOD

This research uses a typical legal research method / *sui generis*, which is a process of finding legal rules, legal principles, and legal doctrines to answer the legal issues at hand. This research uses several approaches, namely a statutory approach and a conceptual approach, a statutory approach, namely an approach carried out by examining all laws and regulations relating to this research, namely the application for postponement of debt payment obligations and bankruptcy and a conceptual approach oriented to principles, views and doctrines, concepts, or principles that develop in law and are related to this research, namely the concept of simple proof in the application PKPU and bankruptcy. The legal materials used are divided into two types, namely primary legal materials and secondary legal materials. Then the legal material is then managed and analyzed based on the subject matter so that the final conclusion is drawn to answer the problem in this study.

RESULTS AND DISCUSSION

The Legal Position of Supreme Court Circular Letter Number 3 Year 2023 in Legislative Regulations

According to Harjono, legal position is a situation in which a party or a person who is determined to have met the requirements to submit an application to resolve a problem in the Constitutional Court. A problem in question is not only an action but can concern problems in legal products for state regulations. State regulations (*staatsregelings*), according to M. Solly Lubis are written regulations issued by official agencies, both in the sense of institutions and officials. Such regulations include laws, government regulations in lieu of laws, presidential regulations, ministerial regulations, regional regulations, instructions, circulars,

announcements, and decision letters, and others. Thus, a Circular Letter is a written regulation that can be accounted for.

A Supreme Court Circular Letter (SEMA) is a legal instrument to provide guidance or direction regarding judicial procedures or certain legal issues by the Supreme Court in Indonesia. The Supreme Court is the highest judicial institution in Indonesia so the circular letters it issues set guidelines or directions for courts across the country. SEMA can be used to harmonize law enforcement across the country by clarifying or providing guidance on certain judicial procedures. This can avoid different interpretations of the law among courts in different regions. They may also provide guidance to judges, court staff or other interested parties in performing their duties with ethical and legal standards.

The provision regarding the legal basis for the issuance of Supreme Court Circulars is regulated in Article 32 Paragraph (4) of Law No. 14 of 1985. which states: *"The Supreme Court is authorized to give instructions, reprimands, or warnings deemed necessary to courts in all judicial circles."* So, it can be interpreted that in terms of giving such instructions, it can be in the form of a separate letter or circular letter within the judicial environment, namely the courts and judges.

In Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 concerning the Formation of Legislation in Article 7 paragraph (1) of Law No. 12 of 2011 concerning the Formation of Legislation as amended by Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Formation of Legislation (hereinafter referred to as UU P3). The types and hierarchy of laws and regulations in Article 7 paragraph (1) of Law P3 consist of:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Law / Government Regulation in Lieu of Law;
4. Government Regulation;
5. Presidential Regulation;
6. Provincial Regional Regulations; and
7. District/City Regional Regulation.

That there are other types of laws and regulations that are not included in Article 7 paragraph (1) of the P3 Law above, namely the provisions in Article 8 paragraph (1) of the P3 Law which states that *"other types of laws and regulations other than those referred to in Article 7 paragraph (1) include regulations formed and stipulated by, the House of Representatives (DPR), the People's Consultative Assembly (MPR), the Regional Representative Council (DPD), Constitutional Court (MK), Supreme Court (MA), Supreme Audit Agency (BPK), Judicial Commission (KY), Bank Indonesia (BI), Ministers, institutions, agencies, or commissions of the same level established by Law or Government by order of Law, Provincial People's Representative Council, Governor, Regency / City Regional People's Representative Council, Regent / Mayor, Village Head or equivalent"*.

Based on the provisions of P3 Law Article 7 paragraph (1) and Article 8 paragraph (1) it appears that there are no provisions regarding Circular Letters contained in the types of laws and regulations so that Circular Letters are clearly not included in Laws and Regulations. Supreme Court Circulars (SEMA) aim to harmonize judicial practice across the country, so that courts in different regions can follow the same guidelines. Although SEMA is a powerful legal instrument, in general, circulars are not mandatory or legally binding. However, in practice, they are often considered as guidelines to be followed by judges examining, hearing and deciding in a case.

In dispute resolution, SEMA may be used as a reference or legal argument by parties involved in a legal case. It is important to remember that courts, judges, and parties involved in judicial proceedings are usually expected to comply with the SEMA. If an SEMA is not complied with, it may result in legal consequences, and the court's decision may be re-

examined or revoked. Therefore, SEMA is considered to play an important role in maintaining consistency and fairness in Indonesia's judicial system.

Based on the description above, it can be concluded that the Supreme Court Circular Letter Number 3 of 2023 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2023 as Guidelines for the Implementation of Duties for Courts is not included in the legislation. It only applies and binds to the internal environment that makes the circular itself, namely courts, judges, clerks and other court officials. The SEMA serves as a guideline for court judges under the jurisdiction of the Supreme Court in carrying out their leadership and supervisory functions as well as providing clarity and insight into the interpretation of regulations to prevent errors that can lead to legal uncertainty.

Legal Implications of Supreme Court Circular Letter Number 3 of 2023 in the Application for Postponement of Debt Payment Obligations and Bankruptcy Against Developers of Apartments and / or Flats.

As explained in the sub-chapter above, it discusses the legal position of Supreme Court Circular Letter Number 3 of 2023 in the Legislation, where the Supreme Court on December 29, 2023 issued Supreme Court Circular Letter No.03 of 2023 concerning the Enforcement of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2023 as Guidelines for the Implementation of Court Duties. It can be interpreted that the issuance of the SEMA only applies to courts, judges, clerks and other court officials or only applies to the internal scope of the Supreme Court. The SEMA provides guidelines to the internal scope of the Supreme Court by providing instructions, guidelines in particular in the Special Civil Chamber letter a point (2) informs that *"The application for a bankruptcy statement or PKPU against the developer (developer) of apartments and / or flats does not qualify as simple proof as referred to in Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Delay of Debt Payment Obligations"*.

Based on Article 1 point 1 of the KPKPU Law, the definition of bankruptcy is: *"A general confiscation of all assets of the Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law"*. Bankruptcy is one of the ways to settle debts and receivables. Unlike a lawsuit for default (general civil) which only needs one creditor, bankruptcy is not for debt settlement for one creditor, but for a number of creditors (at least two creditors). Bankruptcy cases are decided within 60 days of registration at the Commercial Court, while general civil cases can take longer. There is no appeal in bankruptcy cases. After being decided by the commercial court (first level), parties who are not satisfied with the decision can file a cassation to the Supreme Court. The settlement time of bankruptcy cases in the Supreme Court is the same as the first level, namely 60 days from the time the case file is received at the Supreme Court.

Regarding the conditions of bankruptcy that can be submitted to the court, at least several elements must be met as explained in Article 2 paragraph (1) of the Bankruptcy Law which provides the following provisions *"Debtors who have 2 (two) or more creditors and do not pay in full at least one debt that has matured and can be collected, are declared bankrupt by a court decision, either at their own request or at the request of one or more creditors"*. As the explanation of Article 2 paragraph (1) of the Bankruptcy Law also implies that the judge decides based on simple evidence. The simple evidentiary process in the bankruptcy petition process must fulfill as explained in Article 8 paragraph (4) of the Law KPKPU which states as follows: *"An application for a declaration of bankruptcy must be granted if there are facts or circumstances that prove simply that the requirements to be declared bankrupt as referred to in Article 2 paragraph (1) have been met"*. However, the Bankruptcy Law does not provide a detailed explanation of how simple proof is carried out

so that the implementation and interpretation is carried out entirely by the panel of judges who examine and decide the bankruptcy case concerned.

So far, the courts, both *judex facti* and *judex juris*, as well as legal experts have different interpretations of the meaning of simple proof contained in Article 8 paragraph (4) of the Bankruptcy Law. This lack of perception in understanding the meaning of simple proof has an impact on its application, which creates legal uncertainty and injustice for the litigants. The implementation of agreements that give rise to rights and obligations for both parties, especially bills for payment of work results, still requires a more accurate assessment, so the proof is not simple. The debtor is declared bankrupt if he is proven to have simply fulfilled the requirements for a bankruptcy declaration. In several Court decisions, applications for bankruptcy statements are categorized as not simple proof, so that the submitted applications cannot be accepted, because not simple proof is not the competence of the Commercial Court.

Some judges' decisions regarding PKPU require complicated proof, and are not simple so that the applicant's bankruptcy application does not meet the provisions of article 8 paragraph (4) so that the settlement must be carried out through the district court and not the commercial court, such as for example in decision number 84/Pdt.Sus-PKPU/2023/PN Niaga Sby. The PKPU application stems from the ordering of housing units purchased or ordered by the PKPU applicants and in fact the housing units were not delivered by the respondent to the PKPU applicants in accordance with the agreement. In its legal reasoning, the panel of judges stated, "*that because it is not clear the type of debt of the PKPU respondent to the PKPU applicant (debt to hand over the house or return the funds that have been deposited), the fact of two or more creditors and the fact of debt that has matured and not paid is not proven simply*" so that it can be interpreted that the existence of debt to hand over the house or return the funds that have been deposited is categorized as unclear type of debt so that it does not fall into the category of simple proof.

In Article 1 point 6 of the Law KPKPU, the definition of debt is as follows: "*Debt is an obligation that is expressed or can be expressed in the amount of money, both in Indonesian and foreign currencies, either directly or in the future or contingently, arising from agreements or laws and which the debtor is obliged to fulfill and if it is not fulfilled, it gives the creditor the right to get its fulfillment from the debtor's assets*". Based on the above understanding, it can be understood that debt is not only the cause of a debt-debt relationship, but also an obligation that is expressed or can be expressed in the amount of money so that the legal relationship between the buyer of a flat unit can be said to be a creditor and the developer as a debtor as referred to in Article 1 paragraph (2) of the Law KPKPU.

Supreme Court Circular Letter Number 3 of 2023 informs that "*The application for a bankruptcy statement or PKPU against the developer (developer) of apartments and / or flats does not qualify as simple proof as referred to in Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations*". Meanwhile, in principle, simple proof in Article 8 paragraph (4) of Law KPKPU only aims to oblige judges not to reject or grant applications for bankruptcy statements that can be proven simply and the article cannot be interpreted that bankruptcy applications that cannot be proven simply, the Panel of Judges at the Commercial Court must refuse to examine the case concerned.

The panel of judges at the Commercial Court is obliged to continue to examine and decide on applications for bankruptcy statements whose facts or circumstances are not proven simply. This is based on the phrase in article 8 paragraph (4) of the Bankruptcy and PKPU Law does not use the phrase "*The bankruptcy petition must be rejected by the Commercial Court if there are facts or circumstances that are not proven simply by the bankruptcy applicant*". but article 8 paragraph (4) only states "*The bankruptcy petition must be granted if there are facts or circumstances that are proven simply that the requirements as referred to in article 2 paragraph (1) have been met*". So that the presence of SEMA Number 3 of 2023

is not in line and contradicts the principle of simple proof as in the KPKPULaw in Article 8 Paragraph (4). If certain companies or business fields such as developer companies cannot be petitioned for bankruptcy or PKPU, then it should be regulated in the form of laws and regulations or make revisions to the bankruptcy law.

The implication of Supreme Court Circular Letter No.03 of 2023 on the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2023 as Guidelines for the Implementation of Court Duties, in simple proof as a condition for the application for postponement of debt payment obligations and bankruptcy against developers (*developers*) of apartments and / or flats is that it is not binding for the public, because the legal position of the circular itself is not a statutory regulation and is only binding on the internal environment that makes it, namely the courts and judges. However, the effect of the circular letter is a guideline for judges to reject bankruptcy applications and postponement of debt payment obligations against developers of apartments, flats. However, judges should not always be guided by the circular letter considering that the circular letter is not at the same level or above the law and also judges still have the freedom of judges in examining and deciding a case based on the law without having to always refer to the circular letter.

CONCLUSION

The position of Supreme Court Circular Letter Number 3 Year 2023 on the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2023 as Guidelines for the Implementation of Tasks for the Court is not included in the legislation but is included in the policy regulations (*beleidsregel*). The SEMA applies and is binding only on the internal scope of the Supreme Court.

The implication of Supreme Court Circular Letter No.03 of 2023 on the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2023 as Guidelines for the Implementation of Court Duties, in simple proof as a condition for the application for postponement of debt payment obligations and bankruptcy against developers (*developers*) of apartments and / or flats is that it is not binding for the public, because the legal position of the circular itself is not a statutory regulation and is only binding on the internal environment that makes it, namely the courts and judges. However, the effect of the circular letter is a guideline for judges to reject bankruptcy applications and postponement of debt payment obligations against developers of apartments, flats.

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