**KRTHA BHAYANGKARA, Vol. 19, No. 1 (2025), pp. 318-332**
ISSN 1978-8991 (print) | ISSN 2721-5784 (online)
Available online at: http://ejurnal.ubharajaya.ac.id/index.php/KRTHA

# Fulfillment of Simple Proof Requirements on Bankruptcy Application Based on Sema Number 03 of 2023

**Unggul Wibawa Widhayaka[1], Sonyendah Retnaningsih[2], Muhammad Rizqi Alfarizi Ramadhan[3]**
Faculty of Law, University of Pancasila, Indonesia
Faculty of Law, University of Indonesia, Indonesia
Faculty of Law, University of Malaya, Malaysia
Email: unggul.ww@gmail.com, ade.retno.1993@gmail.com, muhammad.rizq1249@gmail.com
**corresponding author*

**Article info**

| Received: Jan 14, 2025 | Revised: March 25, 2025 | Accepted: April 29, 2025 |
|---|---|---|

DOI: https://doi.org/10.31599/krtha.v19i1.3784

**Abstract :** *The Supreme Court has issued Circular Letter Number (SEMA) 3 of 2023 which stipulates that simple proof cannot be applied in bankruptcy against apartment and/or flat developers. The circular is predicted to protect consumer interests and eliminate legal remedies in the form of bankruptcy applications to the commercial court, so that they must be submitted as lawsuits to the district court. The circular is not in accordance with the principle of integration in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (KPKPU Law). The KPKPU Law has clearly defined the matter of simple proof, and does not provide special protection for apartment and/or flat developers. Normative research is carried out with doctrinal research and tests the level of synchronization of regulations. The research is evaluative, examining cases that have occurred, based on comparative law. From this study it is concluded that proof is categorized as simple if there is a debt that is due and unpaid and there are two or more creditors. The requirement for simple proof does not consider the complexity of its impact on consumers. SEMA is a policy regulation, so if it conflicts with the regulations above it, the principle of lex superior derogat legi inferiori will apply. SEMA 03 of 2023 cannot change the provisions of the law, so simple proof can still be implemented against apartment developers. SEMA 03 of 2023 is not in line with the KPKPU Law so that by law it should be cancelled.*

**Keywords :** *Supreme Court, Circular Letter, Simple Proof, Apartment Developer, Integration*

**Abstrak :** Mahkamah Agung telah menerbitkan Surat Edaran (SEMA) Nomor 3 tahun 2023 yang mengatur bahwa pembuktian sederhana tidak dapat diterapkan dalam kepailitan terhadap pengembang apartemen dan/atau rumah susun. Surat edaran tersebut diprediksi untuk melindungi kepentingan konsumen dan meniadakan upaya hukum berupa permohonan kepailitan kepada pengadilan niaga, sehingga harus diajukan sebagai gugatan kepada pengadilan negeri. Surat edaran tersebut tidak sesuai dengan asas integrasi dalam UU Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (UU KPKPU). UU KPKPU telah mendefinisikan dengan jelas perihal pembuktian sederhana, dan tidak memberikan perlindungan khusus terhadap pengembang apartemen dan/atau rumah susun. Penelitian normatif dilakukan dengan doctrinal research dan menguji taraf sinkronisasi peraturan perundang-undangan. Penelitian berbentuk evaluatif, meneliti kasus yang pernah terjadi, berdasarkan perbandingan

hukum. Dari penelitian ini disimpulkan bahwa pembuktian dikategorikan sederhana apabila terdapat utang yang telah jatuh tempo dan tidak dibayar serta terdapat dua atau lebih kreditor. Syarat pembuktian sederhana tidak mempertimbangkan kompleksitas dampaknya kepada konsumen. SEMA merupakan peraturan kebijaksanaan, sehingga bila bertentangan dengan peraturan di atasnya akan berlaku prinsip Lex superior derogat legi inferiori. SEMA 03 Tahun 2023 tidak dapat mengubah ketentuan undang-undang, sehingga pembuktian sederhana tetap dapat dilaksanakan terhadap pengembang apartemen. SEMA 03 Tahun 2023 tidak sejalan dengan UU KPKPU sehingga demi hukum sebaiknya dibatalkan.

**Kata kunci :** Mahkamah Agung, Surat Edaran, Pembuktian Sederhana, Pengembang Apartemen, Integrasi

## I. INTRODUCTION

The Supreme Court on December 29, 2023 has issued a circular to the heads of the appellate courts and first instance courts throughout Indonesia. Circular of the Supreme Court Number 3 of 2023 (SEMA 03 of 2023) is a guideline for the courts to implement the formulation of the results of the plenary meeting of the chamber at the Supreme Court in 2023. The plenary meeting of the civil chamber in the scope of special civil cases stated that simple proof cannot be applied in Bankruptcy or Suspension of Debt Payment Obligations (KPKPU), which are requested against apartment and/or flat developers (hereinafter referred to as apartment). The simple proof referred to is the proof as referred to in Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (KPKPU Law).[1]Based on the circular, the Supreme Court through the Special Civil Chamber has formulated provisions regarding simple proof in KPKPU applications, which must be applied in the commercial court as the first instance court. With the stipulation of SEMA 03 of 2023, it can be interpreted that if there is a bankruptcy application against an apartment developer, the commercial court is required to state that the application does not meet the requirements for simple proof as stipulated in the KPKPU Law, so that the proof is no longer carried out by the commercial court but by the district court.[2]

Apartment developers build and sell apartment units to consumers and are bound by a PPJB (Sales and Purchase Agreement). PPJB is a legal agreement between developers and consumers based on a legal relationship in the form of buying and selling apartments.[3]In the implementation of apartment construction, there is a possibility of financial problems in the form of the developer's inability to pay debts, the developer does not pay off debts to construction service contractors or loans to banks. In this condition, there is a potential that the apartment developer is filed for bankruptcy by its creditors. Creditors in this case can be in the form of banks, providers of goods and services or consumers who have purchased apartments. The consumers feel disadvantaged because the developer did not complete the construction of the apartment so that the apartment units could not be

[1] Mahkamah Agung Republik Indonesia. "SEMA Nomor 3 Tahun 2023." https://jdih.mahkamahagung.go.id/legal-product/sema-nomor-3-tahun-2023/detail.
[2] Ibid
[3] Sri Redjeki Slamet and Fitria Olivia. "Permohonan Kepailitan Atas Developer Apartemen Tidak Memenuhi Persyaratan Fakta Yang Terbukti Secara Sederhana Suatu Kajian Keadilan Dan Kepastian Hukum." *Lex Jurnalica* 21, no. 1 (2024). https://doi.org/10.47007/lj.v21i1.7667.

handed over to consumers. A bankruptcy application by the Creditor to the commercial court will raise its own problems, considering that proving the emergence of debt is very complex and involves many parties, namely consumers who have purchased in full (have a Deed of Sale and Purchase/AJB) and consumers who only have a PPJB, while the KPKPU Law requires simple proof in this case.[4]

Apartment developers often experience debt disputes, both those that arise during the construction process and disputes with consumers. Disputes with consumers can be in the form of breach of promise during the key handover stage, delays or failure to achieve the realization of apartment construction. Consumers in this dispute have made partial or full payments of the value stated in the sale and purchase agreement. As a civil dispute related to partial or full payment of the value in the sale and purchase agreement, it should be resolved by the bankruptcy institution, but with the issuance of SEMA 03 of 2023, there are obstacles in resolving bankruptcy.[5]The Panel of Judges needs to ensure that the debt referred to in the application is a debt to hand over the apartment or a debt to make a refund that has been received by the developer. The bankruptcy application submitted to the apartment developer does not meet the requirements of simple proof, allegedly because there is no clarity on the type of debt and the impact of bankruptcy that must be borne by many apartment consumers.

The Surabaya Commercial Court has issued Decision Number 84/Pdt.Sus-PKPU/2023/PN Niaga Sby, with the applicants being MAG and WG, while the bankrupt respondent is CNP (PT GOLD). The bankrupt applicants have ordered apartment units, but the bankrupt respondent has not yet handed over the apartment units. The panel of judges rejected the petition of the bankruptcy applicants. The Panel of Judges in its consideration stated that in the order letter signed by both parties, there was no rule that if the bankrupt respondent was late in handing over the apartment unit to the bankrupt petitioner, then the delay would immediately be declared a debt. The panel of judges considered that there was an unclear type of debt from the bankrupt respondent to the bankrupt petitioners, to make a handover or return the funds that had been paid. Based on these conditions, according to the panel of judges, the existence of the fact that there were two or more creditors and the existence of debts that had matured and were not paid could not be proven simply.[6]

The commercial court has issued Decision Number 97/Pdt.Sus-PKPU/2024/PN Niaga Central Jakarta by considering SEMA 03 of 2023. This decision is related to the bankruptcy petition filed by SHJO, which is an operational collaboration between PT DEI and CSCE Co. Ltd. The defendant in bankruptcy is PT SGP. According to the applicant, the defendant still has an obligation to pay the decoration work contract related to the SH BSD Phase One Project and the Additional Agreement related to the main building of

[4] Dian Apriandini and Amad Sudiro. "Kekuatan Hukum Perjanjian Pengikatan Jual Beli (PPJB) Lunas yang Belum Mendapatkan Pemecahan Sertipikat dari Developer yang Dipailitkan." *Binamulia Hukum* 2, no. 1. https://doi.org/10.37893/jbh.v12i1.435.

[5] Hukumonline.com. "Sebut Pengembang Tak Bisa Dipailit PKPU, SEMA 3/2023 Dinilai Tak Sejalan UU Kepailitan," last modified March 11, 2024, ttps://www.hukumonline.com/berita/a/sebut-pengembang-tak-bisa-dipailit-pkpu--sema-3-2023-dinilai-tak-sejalan-uu-kepailitan-lt65eee651b9ad2/.

[6] Dedy Kurniadi. "Pembuktian Sederhana Dalam Permohonan PKPU Terhadap Pengembang." https://dedykurniadi.com/pembuktian-sederhana-dalam-permohonan-pkpu-terhadap-pengembang.html.

the SH BSD Phase Two Project. The panel of judges used SEMA 03 of 2023 as a consideration, that the bankruptcy petition and PKPU against the apartment developer did not meet the requirements as simple proof as referred to Article 8 paragraph (4) of the KPKPU Law. The panel of judges in their decision based on witness statements that the apartment units had been purchased by consumers and had also been occupied by their owners, so that the formal requirements for the bankruptcy petition were not met. The panel of judges decided to reject the bankruptcy petition filed by SHJO against PT SGP.[7]

Based on the two rejection decisions above, the panel of judges used different considerations. The first decision used the consideration of the unclear type of debt, namely to hand over the apartment unit or to return the funds that had been paid. The second decision was based on considerations regarding the impact of the decision, related to the apartment unit that had been purchased and occupied by the consumer. When connected with SEMA 03 of 2023, the consideration of the rejection decision due to the unclear type of debt can be considered inappropriate, considering that the KPKPU Law has defined the concept of debt and simple proof. If the decision is based on considerations of the complexity of the impact of bankruptcy, namely the large number of apartment buyers, then this consideration is also considered inappropriate. The simple definition in Article 8 paragraph (4) of the KPKPU Law is related to proof, not the impact of bankruptcy or an agreement between the developer and another party. Simple proof is proof that is not vague and must be visible, namely having a debt that is due and can be collected and the requirement for the existence of two or more creditors. The issuance of SEMA 03 of 2023 is considered to be detrimental to apartment consumers themselves and create legal uncertainty if the apartment construction project is stalled, even though the KPKPU Law is intended to ensure that enforcing contracts are more secure. SEMA 03 of 2023 can be suspected of being inconsistent with the objectives of the KPKPU Law.[8]

Article 1 paragraph 1 of the KPKPU Law defines bankruptcy as a general seizure of all assets owned by a debtor who has been declared bankrupt by the commercial court. The management and settlement of all bankrupt assets is the responsibility of the curator under the supervision of the supervisory judge. With the existence of the general seizure, the debtor has lost the right to manage assets and all bankrupt assets are under the custody of the curator.[9]The KPKPU Law has stated that, in order to be declared bankrupt, the provisions in Article 2 paragraph 1 must be met, namely the existence of two or more creditors and the debtor does not make full payment of at least one debt that has matured and can be collected. In addition, a bankruptcy application must meet the provisions in

[7] Daffa Fahrizky Mahardika, "Tinjauan SEMA No. 3 Tahun 2023: Pembuktian Sederhana terhadap Permohonan Kepailitan/PKPU Perusahaan Pengembang Apartemen/Rumah Susun," last modified May 30, 2024, https://blog.lekslawyer.com/tinjauan-sema-no-3-tahun-2023-pembuktian-sederhana-terhadap-permohonan-kepailitan-pkpu-perusahaan-pengembang-apartemen-rumah-susun/

[8] Hukumonline.com, "Sebut Pengembang Tak Bisa Dipailit/PKPU, SEMA 3/2023 Dinilai Tak Sejalan UU Kepailitan."

[9] Devi Andani and Wiwin Budi Pratiwi. "Prinsip Pembuktian Sederhana dalam Permohonan Penundaan Kewajiban Pembayaran Utang." *Jurnal Hukum Iur Quia Iustum* 8, no. 2 (2021). https://doi.org/10.20885/iustum.vol28.iss3.art9.

Article 8 paragraph (4) of the KPKPU Law, namely the existence of circumstances or facts that can be proven simply that the requirements in Article 2 paragraph (1) have been met. The explanation of Article 8 paragraph (4) of the KPKPU Law emphasizes that the difference in the amount of debt submitted by the bankruptcy applicant and the bankrupt respondent is not an obstacle for the commercial court to issue a bankruptcy decision.

Article 2 paragraphs 3, 4 and 5 of the KPKPU Law provide limitations on the types of businesses that receive special protection when a bankruptcy dispute occurs by determining certain parties in the government that can file a bankruptcy petition. Bank debtors can only be filed for bankruptcy by Bank Indonesia. Business institutions that can only be filed for bankruptcy by the Capital Market Supervisory Agency include debtors related to securities, clearing, guarantees, storage and settlement. Debtors engaged in insurance, reinsurance, pension funds and BUMN that manage public interests can only be filed for bankruptcy by the minister of finance. special protection is given on the basis that the activities of these business institutions are related to the investment of funds originating from public funds in very large amounts. Special protection is needed to increase public trust in these business institutions and their strategic position in the development and economic process. Apartment developers are not included in the business institutions that receive special protection from the government.[10]The provisions in the KPKPU Law are contrary to SEMA 03 of 2023 which can be implicitly interpreted as protecting apartment developers from going bankrupt.

The KPKPU Law was drafted as a legal means needed to support national economic development. This national legal product is expected to guarantee legal certainty. Legal certainty is stated in laws and regulations and requires certain requirements related to the internal structure of legal norms. The requirements needed include clarity of legal concepts and clarity of the hierarchy of authority of institutions that form and enforce laws.[11]A legal provision that is publicly binding must be made clear and firm and must not contain any double meanings that could give rise to other interpretations.[12]The KPKPU Law requires integration so that there is a complete unity of the civil law system with national civil procedural law, covering material law and its formal legal system, including the legal products of the supreme court.[13]With all the above considerations, it is deemed necessary to conduct a study entitled Fulfillment of Simple Proof Requirements for Bankruptcy Applications Based on SEMA Number 3/2023. The problems raised in this study include the criteria for simple proof according to the KPKPU Law and the application of simple proof requirements to apartment developers based on SEMA 03 of 2023.

---

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

[11] Kendry Tan and Hari Sutra Disemadi. "Politik Hukum Pembentukan Hukum Yang Responsif Dalam Mewujudkan Tujuan Negara Indonesia." *Jurnal Meta-Yuridis* (Semarang: Fakultas Hukum Universitas PGRI Semarang, 2022). https://doi.org/10.26877/m-y.v5i1.8803.

[12] I Gusti Ngurah Bagus Maha Iswara, Simon Nahak, and Ni Luh Made Mahendrawati. "Kepastian Hukum Pengenaan Pajak Penghasilan Transaksi Jual Beli Tanah dan/atau Bangunan." *Jurnal Hukum Prasada* 6, no. 1 (2019). https://doi.org/10.22225/jhp.6.1.2019.42-51.

[13] Malik Wahyu Kurniawan. "Prinsip Kepastian Hukum Jatuh Pailit Terhadap Notaris." *Jurnal Rechtens* 10, no. 2 (2021). https://doi.org/10.56013/rechtens.v10i2.1034.

## II. RESEARCH METHODS

The research was conducted to test the applicable legal norms, by examining secondary data or library materials. Literature study was applied by analyzing laws and regulations, textual literature, judges' decisions, previous research, scientific articles, mass media and all sources related to the problem being researched. All materials collected were then classified based on the appropriate categories. The data obtained were arranged systematically to be studied and to obtain conclusions related to the problem. The research used a dogmatic approach (doctrinal research) by reviewing all provisions related to the legal problem being analyzed. The conceptual perspective was carried out by tracing the legal concepts and legal principles related to the problem.[14]

Normative legal research is conducted by testing the level of synchronization of laws and regulations with the aim of analyzing the suitability of the main problems contained in a regulation compared to other related regulations. Synchronization research is vertical in nature to test the level of suitability between lower laws and regulations compared to higher laws and regulations, where fundamentally there is no conflict between the two. The research is in the form of an evaluation of the implementation of a law and regulation, to be used as a basis for policies needed to resolve legal problems that are the focus of the research. With evaluative research, it is hoped that there will be a conclusion as to whether or not changes are needed to a law and regulation to meet the needs of society.[15]

The legal materials used in the research consist of primary, secondary and tertiary legal materials. Primary legal materials are the main sources of research which consist of:

1. Civil Code Book (KUHPerdata)
2. Law Number 34 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations
3. Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislation
4. Law Number 14 of 1985 concerning the Supreme Court
5. 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 a Guideline for the Implementation of Duties for the Courts

Secondary legal materials consist of various literature or scientific thinking results of researchers that are analyzed to obtain the explanations needed in relation to primary legal materials. Tertiary legal materials can be obtained in the form of dictionaries or encyclopedias that are collected to explain primary and secondary legal materials.

## III. DISCUSSION

### A. Simple Proof in The KPKPU Law

Bankruptcy is a general seizure involving a curator to manage and settle all the assets of the bankrupt debtor under the supervision of a supervising judge. The seizure is carried

[14] Irwansyah. *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*. Yogyakarta: Mirra Buana Media, 2022.
[15] Ibid.

out with the aim of dividing the assets for the payment of debtors' debts to creditors in a balanced or pari passu manner in accordance with Article 1132 of the Civil Code, unless there are creditors who are given priority due to special rights. Bankruptcy is considered as an effort to resolve debt cases fairly and effectively in the business world. The bankruptcy application submitted to the commercial court aims to obtain a bankruptcy statement that is constitutive of the debtor. With bankruptcy, it is hoped that the struggle for the debtor's assets can be avoided, if at the same time there are several creditors who collect from the debtor, so that an equal distribution is guaranteed.[16]

Bankruptcy is also intended to avoid any claims for rights from creditors holding collateral rights by selling the debtor's assets without considering the interests of the debtor or other creditors. Creditors also have the aim that the debtor does not commit an act that can cause losses to the creditor. The decision of the commercial court changes the legal status of the bankrupt debtor to not having the capacity to act legally, control and manage assets since the bankruptcy decision was pronounced. Debtors who are declared bankrupt include legal entities and natural persons. Legal entities include limited liability companies, foundations and cooperatives.

It is stated in Article 8 paragraph (4) of the KPKPU Law that a bankruptcy petition must be granted if there are circumstances or facts that can be proven simply that the bankruptcy requirements as stipulated in Article 2 paragraph (1) have been met. These requirements are a debtor who has two or more creditors and has not paid off one debt that is due and collectible. In the explanation of Article 8 paragraph (4) of the KPKPU Law, it is explained that what is meant by circumstances or facts that can be proven simply is the fact that there are two or more creditors and the fact that a debt is due and unpaid. Implicitly, from this explanation, it can be understood that basically the main provisions for the application of simple proof are the simple application of the bankruptcy requirements as stipulated in Article 2 paragraph (1). Simple proof can be implemented if the debtor or the bankrupt applicant does not submit an exception non adimpleti contractus, namely an exception that raises the question that the creditor himself was the first to fail to perform. Exception non adimpleti contractus is stated in the reciprocal agreement, which results in the existence of the debt being disputed so that simple proof cannot be carried out.[17]

Simple proof can be broken down into four parts, namely the existence of debt, debt has matured and can be collected, no payment has been made in full for the debt, and the existence of at least two creditors. Debt is an obligation that must be fulfilled, in rupiah or foreign currency, which has been stated or contingent (arising at a later date), because of an agreement or because of law. Creditors have the right to obtain fulfillment of their receivables, if not fulfilled then it will be taken from the debtor's assets. Debt in this case refers to the existence of a legal relationship between two or more parties in the scope of property, which gives rise to the obligations of a particular party. Obligations can be interpreted as an obligation to do something or not to do something or to provide

[16] Devi Andani, opcit.
[17] Chika Gunawan and Albert Tanjung. "Penerapan Prinsip Exceptio Non Adimpleti Contractus Dalam Hukum Perikatan: Berdasarkan Putusan Nomor 1796/K/Pdt/2015." *Jurnal Ilmiah Multidisiplin* 1, no. 6 (2024). https://doi.org/10.62017/merdeka.v1i6.2028.

something. Debt can arise because of an agreement or because of law, for example tax obligations. Debts that arise because of an agreement need to be distinguished whether because of an agreement with consumers or because of another agreement so that the company is in the position of a debtor.[18]

Debt can be proven by showing the agreement file as the basis for the obligation and other evidence that the debtor has neglected to fulfill the obligation within the agreed time, so that the creditor has the right to demand payment of the debt. In simple proof, debt that has matured and can be collected can be proven by showing when the debt matures which results in the debt being collectible. If the agreement has stipulated the payment time, then starting from the expiration of the period referred to in the agreement, the debt is legally due and collectible. However, if the payment period is not stipulated, then it is necessary to prove that the debtor has been given a warning by the creditor. A warning letter or summons sent by the creditor contains a warning to the debtor to do something, or not to do something or provide something in accordance with the agreement that has been made. A summons or warning letter containing when the payment must be made by the debtor is proof that the debt is due and the debtor's obligations can be collected.

In a bankruptcy petition, the bankruptcy applicant must prove that the debtor has not made full payment of at least one debt that has matured and can be collected. As a basis for a bankruptcy petition, the debtor's obligations are clearly proven to have not been paid in full. When the debtor does not carry out the obligations as stated in the agreement, it can be possible for two reasons, because the debtor does not want to carry out the obligations or because the debtor is in reality unable to carry out the obligations. In the simple proof process, the judge does not distinguish whether the failure to carry out the obligations is due to the debtor's unwillingness or the debtor's inability. The judge does not need to decide whether simple proof can still be carried out when the debtor is considered to be taking advantage of the opportunity that there is a reality that the obligations are not carried out for a certain reason. The judge does not need to look for facts that these conditions require separate proof so that the entire bankruptcy dispute seems complex and not simple.[19]

In bankruptcy proceedings in the commercial court, the bankruptcy applicant is required to be able to prove the existence of other creditors who also have receivables from the debtor and whose obligations have not been fulfilled. The applicant needs to provide proof by asking other creditors to be present in the trial process. The other creditors are expected to be willing to provide statements of testimony that it can be proven that there is a debt relationship that has not been paid by the debtor. The applicant can also provide proof of the existence of other creditors by showing in the trial the existence of a document file of an agreement that provides the basis for the existence of a debt relationship between the debtor and other creditors. The bankruptcy applicant can also

[18] Rulman Ignatius Rongkonusa, Yuhelson, and Cicilia Julyani Tondy. "Diskresi Penentuan Pembuktian Sederhana Dalam Persidangan Permohonan Kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU)." *Seikat Jurnal Ilmu Sosial, Politik dan Hukum* 2, no. 2 (2023). https://doi.org/10.55681/seikat.v2i2.466.
[19] Ibid

show in the trial a list of bills owned by other creditors. The debtor's financial report obtained by the creditor from reliable sources such as a public accounting office, can be submitted to the panel of judges as simple evidence. The bankruptcy applicant can show a certificate from Bank Indonesia (BI Checking), as evidence of the existence of other creditors. A court decision stating that the defendant is bankrupt and is also a debtor in another bankruptcy dispute can also be brought by the bankruptcy applicant as evidence in court.[20]

To ensure legal certainty, in the process of examination to the decision of bankruptcy disputes, the panel of judges of the commercial court must absolutely refer to the provisions of the KPKPU Law Article 2 paragraph (1). This is based on the consideration that bankruptcy is a petition for a declaration of bankruptcy, so that the panel of judges only has the task of conducting an examination and applying the provisions of the law that the petition has met the requirements for bankruptcy or not. Aspects other than the law are not the concern of the panel of judges in providing considerations, including aspects of the level of financial health of the bankrupt applicant. If it has been proven simply that the petition has met the elements of bankruptcy as required in Article 2 paragraph (1), then the panel of judges has no reason not to decide on bankruptcy for the applicant. If there is a difference in the amount of debt between the bankrupt applicant and the bankruptcy applicant, it does not become an obstacle for the panel of judges to issue a bankruptcy decision, as regulated in Article 8 paragraph (4).[21]

The provisions of proof in Article 8 paragraph (4) cannot be the basis for the reason that when in a bankruptcy application there are no circumstances or facts that can be proven simply, then the commercial court cannot conduct an examination and cannot determine a verdict. If these provisions are interpreted otherwise, then complicated debt disputes (very complicated) such as bank syndicated credit disputes, it becomes impossible for creditors to file a bankruptcy application. If the complicated debt dispute cannot be submitted to the commercial court, then the source of bankruptcy law, namely Article 1131 of the Civil Code which states that all debtor assets are collateral for all obligations, becomes invalid. Article 8 paragraph (4) of the KPKPU Law aims so that the panel of judges does not reject or in other words is obliged to grant a bankruptcy application if the bankruptcy dispute can be proven simply, namely the existence of facts as determined in Article 2 paragraph (1).[22]

If the facts are the opposite, that simple proof cannot be done, it does not necessarily mean that the Commercial Court is obliged to refuse to examine the case. This condition also does not mean that the process of examining and deciding the dispute becomes the authority of the district court, so that it becomes an ordinary civil dispute process. it is not the authority of the commercial court to invite the disputing parties to first request a decision from the commercial court regarding the main facts of the case. in short, even though the existing circumstances or facts cannot be done by simple proof, it remains the responsibility of the commercial court to examine and decide on the bankruptcy

[20] Ibid
[21] Sutan Remy Sjahdeini. *Sejarah, Asas dan Teori Hukum Kepailitan: Memahami Undang-undang No 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.* 2nd ed. Jakarta: Prenamedia Group. 2016.
[22]Ibid

application. Article 8 paragraph (4) of the KPKPU Law states the requirements for granting a bankruptcy application, it does not state the opposite regarding the requirements for the rejection of a bankruptcy application by the commercial court.[23]

**B. Implementation of Simple Proof Requirements for Apartment Developers**

The application of simple proof requirements to apartment developers requires discussion from the perspective of the implementation of simple proof and the position of SEMA 03 of 2023 in the laws and regulations. By considering the provisions in Article 2 paragraphs 3, 4 and 5 of the KPKPU Law, that the apartment developer business sector is not included in the business sector that receives special protection in the event of bankruptcy, the simple proof requirements must still be applied. The four main parts, namely the existence of debt, the debt has matured and can be collected, no payment has been made in full for the debt, and the existence of at least two creditors are the main topics of discussion in the implementation of simple proof against apartment developers. Apartment developer debts can come from agreements or from laws. Developers can enter into agreements with consumers as apartment buyers which are stated in the PPJB (Sales and Purchase Agreement) or with vendors providing goods and services to build apartments. The existence of debt in the form of obligations that have not been carried out according to the agreement in this case is very real and can be proven by the agreement file as the basis for the agreement.

In relation to the second part of simple proof, namely that the debt is due and collectible, the bankruptcy applicant needs to show when the debt is due so that collection can be carried out. The apartment buyer as a creditor can show when the work must be completed by showing the signed PPJB file. If the term set in the agreement is exceeded by the apartment developer, then by law it can be declared due and collectible. The bankruptcy applicant can show the panel of judges the agreement document as information when payment of the vendor's bill must be made. The vendor providing goods and services as a creditor can show when payment by the apartment developer must be made based on the agreement or information in the bill. If the agreement does not specify a time period, the consumer or vendor providing goods and services must first send a warning letter or summons to the apartment developer. With the existence of the warning letter or summons, it automatically shows that the apartment developer has not carried out the work as promised or has not paid the debt to the vendor in full.

In a trial in a commercial court, a bankruptcy applicant can prepare simple evidence by proving that there are other creditors who also have receivables from the debtor and whose obligations have not been settled. As creditors, consumers or vendors providing goods and services can ask other creditors to attend the trial, to provide testimony that there is a debt relationship that has not been settled by the apartment developer. In addition to inviting other creditors, the bankruptcy applicant can show in the trial a document of an agreement between the bankrupt respondent and other creditors that proves the existence of a legal relationship in the form of debts and receivables. In addition to the agreement document, the bankruptcy applicant can also submit evidence in the form of bills from other creditors. The bankruptcy applicant can show a list of

[23]Ibid

debts contained in the notes to the financial statements which are part of the report of the public accounting firm that has audited the bankrupt respondent according to the year the bankruptcy petition was filed, and obtain confirmation of the debt balance from the counterparty to the bankrupt respondent's transaction.

SEMA is a formal order issued by the Supreme Court of the Republic of Indonesia, which generally contains directions or guidelines for judges and courts in carrying out their duties. Although SEMA is not equivalent to a law, the circular has a role as an internal guideline within the scope of the judiciary.[24]The supreme court circular is a policy regulation (policy rules, beleidsregel, pseudowetgeving) formed based on the authority arising from freies ermessen, which can be interpreted as the authority delegated to the state administration in achieving certain legally valid purposes. The SEMA cannot be classified as an ordinary legal document, considering its function as a guideline set by the supreme court for all interested parties in the justice system. The SEMA not only functions as a practical guide, but also reflects the interpretation and legal views of the supreme court which can influence court decisions, especially cases that have a major impact on society. The SEMA is an important factor influencing the formation of legal decisions.[25]

SEMA is a policy regulation when viewed from the form of the letter, naming and object of its norms. From the perspective of the form of the letter, SEMA does not have an official form that is generally similar to statutory regulations, namely the presence of naming, opening description, details of the body and closing. In SEMA, there are no complete parts of the regulations, so from a formal perspective it can be concluded that SEMA is not a statutory regulation. When viewed from the perspective of naming by considering the legal basis for the implementation of each circular, it can be concluded that SEMA is a policy regulation or quasi legislation. From the review of the object of the norm, SEMA is intended for judges, court chairmen, clerks and officials within the scope of the judiciary so that it is in line with the objectives of the policy regulation that regulates internal. As a policy regulation, SEMA has legal relevance, which is not directly binding on the law. SEMA provides an opportunity for state administrative bodies to implement beschiking bevoegheid (government authority) related to the government's authority to use descretionaire.[26]

To determine the position of the SEMA in the level of legislation, it must be based on the contents of each SEMA. The provisions in Article 79 of the Supreme Court Law stipulate that the supreme court may issue further regulations on all matters necessary for the smooth administration of justice if there are legal instruments that are not yet fully regulated by law. SEMA which is positioned under the law is only binding for the judicial environment, while the law is binding for all citizens. Based on Article 32 of the Supreme Court Law, SEMA is issued to determine instructions, warnings or reprimands to courts under the scope of the judiciary. SEMA can be interpreted as a circular from the

[24] Ibid
[25] Fernando Situmorang, Ramlanilina Sinaulan, and Mohamad Ismed. "Kajian Hukum Tentang Kedudukan SEMA Nomor 1 Tahun 2022 Atas Undang-Undang Kepailitan Nomor 37 Tahun 2004." *Jurnal Studi Interdisipliner Perspektif* 22, no. 2 (2023). https://ejournal-jayabaya.id/Perspektif/article/view/100.
[26] Ibid

leadership of the supreme court to all levels of the judiciary containing guidance on the administrative implementation of justice and certain provisions that are considered urgent and important. SEMA cannot be subject to a material test because it is a beleidsregel or policy regulation, but SEMA whose normative substance has a general concrete nature can be sued to the PTUN.[27]

the supreme court issues SEMA as a legal product that serves as a guideline in implementing the law for law enforcement officers and judges in carrying out their duties and functions. SEMA does not have binding force as statutory regulations, but has a fairly strong persuasive power because it is positioned as an explanation and interpretation of statutory regulations. According to Law Number 14 of 1985 concerning the Supreme Court, specifically in Article 47 paragraph (2), SEMA is compiled with the aim of providing an understanding of the implementation of laws for courts under the supreme court. SEMA can be determined for various types of legal disputes, including bankruptcy disputes to be a guideline for judges and all parties involved in resolving bankruptcy applications. However, SEMA cannot change the contents of statutory regulations that have been determined. SEMA must still refer to the law in determining decisions.[28]

The position of SEMA is under the law and only binds the internal environment of the judiciary. SEMA is the authority of the supreme court to inform the courts in all judicial environments as part of the supervisory policy to respond to existing developments. SEMA refers to Law Number 14 of 1985 concerning the supreme court, which stipulates the authority of rule-making power. This authority is regulated in Article 79, which stipulates that the supreme court can resolve legal problems that do not have detailed regulations in the law. In the Explanation of Article 79 of the Supreme Court Law, it has been stipulated that the supreme court has the authority to issue supplementary regulations to fill legal gaps. However, SEMA as a policy regulation issued by the Supreme Court must be distinguished from regulations issued by lawmakers. With the issuance of SEMA, the supreme court may not exceed or interfere with the regulation of the nature of evidence, assessment of evidentiary instruments and distribution of the burden of proof, as well as the rights and obligations of citizenship in general.[29]

SEMA 03 of 2023 regulates the provisions for filing bankruptcy against apartment developers. The SEMA is a form of regulation containing instructions to the courts under the supreme court regarding the position of simple evidence in bankruptcy applications, which are hierarchically below the law. From its formal form, SEMA functions as a policy regulation, so that if it conflicts with the regulations above it, the principle of lex superior derogat legi inferiori will apply. if there is a conflict with a higher legal provision with a lower legal product, then the higher legal provision must take precedence in its application. SEMA 03 of 2023 is hierarchically below the KPKPU Law. Thus, SEMA 03

[27] Ibid

[28] Raihan Andhika Santoso, Elan Jaelani, and Utang Rosidin. "Kedudukan dan Kekuatan Hukum Surat Edaran Mahkamah Agung (SEMA) Dalam Hukum Positif Indonesia." Deposisi: *Jurnal Publikasi Ilmu Hukum* 1, no. 4 (2023). https://doi.org/10.59581/deposisi.v1i4.1392.

[29] Angga Yonar Kesuma and Siti Mahmudah. "Violation of the Principle of Lex Superior Derogate Legi Inferiori in the Formation of Circular Letter of the Supreme Court of the Republic of Indonesia Number 3 of 2023." *International Journal of Multicultural and Multireligious Understanding* 11, no. 5 (2024). ttp://dx.doi.org/10.18415/ijmmu.v11i5.5770.

of 2023 should always be interpreted and implemented in line with or consistently with the KPKPU Law. SEMA 03 of 2023 cannot change the provisions in the KPKPU Law, so that simple evidence can still be implemented against apartment developers in the bankruptcy process.[30]

SEMA can be classified as a legal regulation formed by an institution based on the authority as stipulated in Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislation. Article 7 of Law Number 15 of 2019 regulates the types of laws and regulations, hierarchy and legal force according to the hierarchy. Included in the laws and regulations as regulated in article 8 of law number 15 of 2019 are regulations stipulated by the supreme court. laws and regulations have binding legal force as long as they are ordered by higher authorities and laws and regulations. In relation to the hierarchy as regulated in Article 7 Law Number 15 of 2019, SEMA has a position that is below the law. The binding power of SEMA is only applied in the judicial environment and is influenced by its compliance with the law. SEMA that is not in line with the law can be considered invalid so that it should be legally cancelled.[31]

## IV. CLOSING

The proof is defined simply according to the KPKPU Law if there is visible evidence of a debt that has not been paid in full, has matured and can be collected and there are at least two creditors. The bankruptcy applicant can simply prove the existence of the apartment developer's debt by showing the agreement file as the basis for the obligation. The document can be in the form of a PPJB belonging to the apartment consumer or an agreement with the vendor, which informs when the apartment must be completed and when the vendor's bill payment will be made. The bankruptcy applicant (consumer or vendor) needs to send a warning letter or summons first to prove that the apartment has not been completed according to the agreed time or the vendor's bill has not been paid by the developer. The bankruptcy applicant can present other creditors to attend the trial along with supporting documents such as PPJB and proof of bill, as simple proof of the existence of at least two creditors. Information provided by a third party can also be submitted in court, such as BI Checking or a list of debtors' debts provided by a public accounting firm. The written court decision of the bankrupt applicant who is also a debtor in another bankruptcy dispute can also be brought by the bankruptcy applicant as evidence in court. Simple proof can still be carried out against the apartment developer even though SEMA 03 of 2023 states otherwise. The binding force of the SEMA is influenced by its compliance with the law. A SEMA that is not in line with the law can be considered invalid so that it should be legally cancelled. SEMA 03 of 2023 cannot change the provisions in the KPKPU Law, so simple evidence can still be carried out against the apartment developer.

[30] Ibid

[31] Hendra Catur Putra. "Kedudukan SEMA Dalam Sistem Hierarki Perundang-Undangan di Indonesia." *Elqonun: Jurnal Hukum Ketatanegaraan* 1, no. 2 (2023). https://doi.org/10.19109/hajpk454.

## BIBLIOGRAPHY

### Articles

Andani, Devi and Wiwin Budi Pratiwi. "Prinsip Pembuktian Sederhana dalam Permohonan Penundaan Kewajiban Pembayaran Utang." *Jurnal Hukum Iur Quia Iustum* 8, no. 2 (2021). https://doi.org/10.20885/iustum.vol28.iss3.art9.

Apriandini, Dian and Amad Sudiro. "Kekuatan Hukum Perjanjian Pengikatan Jual Beli (PPJB) Lunas yang Belum Mendapatkan Pemecahan Sertifikat dari Developer yang Dipailitkan." *Binamulia Hukum* 2, no. 1 (2023). https://doi.org/10.37893/jbh.v12i1.435.

Gunawan, Chika and Albert Tanjung. "Penerapan Prinsip Exceptio Non Adimpleti Contractus Dalam Hukum Perikatan: Berdasarkan Putusan Nomor 1796/K/Pdt/2015." Jurnal Ilmiah Multidisiplin 1, no. 6 (2024). https://doi.org/10.62017/merdeka.v1i6.2028.

Iswara, I.Gusti Ngurah Bagus Maha, Simon Nahak, and Ni Luh Made Mahendrawati. "Kepastian Hukum Pengenaan Pajak Penghasilan Transaksi Jual Beli Tanah dan/atau Bangunan." *Jurnal Hukum Prasada* 6, no. 1 (2019). https://doi.org/10.22225/jhp.6.1.2019.42-51.

Kesuma, Angga Yonar, and Siti Mahmudah. "Violation of the Principle of Lex Superior Derogate Legi Inferiori in the Formation of Circular Letter of the Supreme Court of the Republic of Indonesia Number 3 of 2023." *International Journal of Multicultural and Multireligious Understanding* 11, no. 5 (2024). http://dx.doi.org/10.18415/ijmmu.v11i5.5770.

Kurniawan, Malik Wahyu. "Prinsip Kepastian Hukum Jatuh Pailit Terhadap Notaris." *Jurnal Rechtens* 10, no. 2 (2021). https://doi.org/10.56013/rechtens.v10i2.1034.

Putra, Hendra Catur. "Kedudukan SEMA Dalam Sistem Hierarki Perundang-Undangan di Indonesia." *Elqonun: Jurnal Hukum Ketatanegaraan* 1, no. 2 (2023). https://doi.org/10.19109/hajpk454.

Rongkonusa, Rulman Ignatius, Yuhelson, and Cicilia Julyani Tondy. "Diskresi Penentuan Pembuktian Sederhana Dalam Persidangan Permohonan Kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU)." *Seikat Jurnal Ilmu Sosial, Politik dan Hukum* 2, no. 2 (2023). https://doi.org/10.55681/seikat.v2i2.466.

Santoso, Raihan Andhika, Elan Jaelani, and Utang Rosidin. "Kedudukan dan Kekuatan Hukum Surat Edaran Mahkamah Agung (SEMA) Dalam Hukum Positif Indonesia." Deposisi: *Jurnal Publikasi Ilmu Hukum* 1, no. 4 (2023). https://doi.org/10.59581/deposisi.v1i4.1392.

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

Situmorang, Fernando, Ramlanilina Sinaulan, and Mohamad Ismed. "Kajian Hukum Tentang Kedudukan SEMA Nomor 1 Tahun 2022 Atas Undang-Undang Kepailitan Nomor 37 Tahun 2004." Jurnal Studi Interdisipliner Perspektif 22, no. 2 (2023). https://ejournal-jayabaya.id/Perspektif/article/view/100.

Slamet, Sri Redjeki and Fitria Olivia. "Permohonan Kepailitan Atas Developer Apartemen Tidak Memenuhi Persyaratan Fakta Yang Terbukti Secara Sederhana Suatu Kajian Keadilan Dan Kepastian Hukum." *Lex Jurnalica* 21, no. 1 (2024). https://doi.org/10.47007/lj.v21i1.7667.

Tan, Kendry and Hari Sutra Disemadi. "Politik Hukum Pembentukan Hukum Yang Responsif Dalam Mewujudkan Tujuan Negara Indonesia." *Jurnal Meta-Yuridis* (Semarang: Fakultas Hukum Universitas PGRI Semarang, 2022). https://doi.org/10.26877/m-y.v5i1.8803

**Book**

Irwansyah. "Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel." Yogyakarta: Mirra Buana Media (2022).

Sutan Remy Sjahdeini. *Sejarah, Asas dan Teori Hukum Kepailitan: Memahami Undang-undang No 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang*. 2nd ed. Jakarta: Prenamedia Group, (2016).

**Websites**

Hukumonline.com. "Sebut Pengembang Tak Bisa Dipailit PKPU, SEMA 3/2023 Dinilai Tak Sejalan UU Kepailitan." Accessed December 2, 2024. https://www.hukumonline.com/berita/a/sebut-pengembang-tak-bisa-dipailit-pkpu--sema-3-2023-dinilai-tak-sejalan-uu-kepailitan-lt65eee651b9ad2/.

Kurniadi, Dedy. "Pembuktian Sederhana dalam Permohonan PKPU terhadap Pengembang." Accessed December 2, 2024. https://dedykurniadi.com/pembuktian-sederhana-dalam-permohonan-pkpu-terhadap-pengembang.html.

Mahardika, Daffa Fahrizkry. "Tinjauan SEMA No. 3 Tahun 2023: Pembuktian Sederhana terhadap Permohonan Kepailitan PKPU Perusahaan Pengembang Apartemen Rumah Susun." Accessed December 2, 2024. https://lekslawyer.com/tinjauan-sema-no-3-tahun-2023-pembuktian-sederhana-terhadap-permohonan-kepailitan-pkpu-perusahaan-pengembang-apartemen-rumah-susun/.