

## The Effects of Bankruptcy on PT Megakarya Maju Sentosa, Ciputat, South Tangerang

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### KEYWORDS

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Responsibility, Concurrent  
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### ABSTRACT

Capital, which refers to cost, is one consideration in building low-cost apartments. Because of this developers can utilize the finance provided by banks. However, financing can be gained by selling the units before the low-cost apartment is built. This is as meant by Article 42 of the Law No. 20 of 2011 on low-cost apartment building, which allows the property units to be marketed before it is built (pre-project selling). However, before conducting the sales, there are some requirements to meet. This is contained in Article 43 of the Law No. 20 of 2011 on low-cost apartment buildings which states that the process of sale and purchase of unit before the unit is completely built can be conducted through Sale and Purchase Agreement (PPJB) made before a Notary. The PPJB stipulated by Paragraph 1 is executed after there is legal certainty over; a. landownership, b. ownership of building permit, c. the availability of facilities, infrastructures, and public utility, d. 20% (twenty percent) minimally constructed, and e. the agreed terms. To manage the gained capital, it is necessary to correctly calculate everything in order to avoid bankruptcy. This research analyzes the effects of bankruptcy, which causes the auction on land and building. The issues discussed in this research are bankruptcy which leads to the auction of land and building assets, bankruptcy estate, and Limited Liability Company (PT)'s legal responsibility on its concurrent creditors. This research applies normative approach. The data were collected from documents or other references. They were analyzed qualitatively. The findings of this research show that the funds resulted from the auction was used to handle the auction fee, to pay both preferred and separatist creditors. Therefore, the concurrent creditors were not provided compensations as the results of the sold debtor's assets. PT's legal responsibility was to settle agreement only with the separatist creditors without involving concurrent creditors. Meanwhile, in building the low-cost apartment, concurrent also played great role to provide capital assistance by purchasing the unit of low-cost apartment. In fact, the settlement was only conducted with the separatist creditors. As a result, the concurrent creditors serve as the weakest party.

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## Introduction

In building a low-cost apartment and in order to manage the business, an individual or an organization frequently puts capital into calculation in the very beginning. Thus, business plan will perform well and the company can certainly estimate the cost needed to run the business. By doing so, the company will also monitor and minimize unexpected occurrences that are possible to happen in the future (Fitriadi, 2022).

In running its business, one of many aims of the property developer is to make profit. This is why the company promotes and sells apartment units. This, however, is strongly related to the permits regulated by The Law of Low-Cost Apartment. One of the regulations is pre-project selling, which allows the developer selling before building (Kosasih & SH, 2021). According to Article 42 Paragraph 1 of Law of Low-Cost Apartment, a developer is allowed to market the units before the low-cost apartment is built.

Next, in Article 42 Paragraph 2 of Law of Low-Cost Apartment, it is stated that marketing the units before building the low-cost apartment is allowed. The developer, and as what is meant by Paragraph 1, must meet these conditions:

1. The certain designation of space allocation
2. The legal certainty of rights to land
3. The status of possession of low-cost apartment
4. Building permit of the low-cost apartment and guarantee for the low-cost apartment by the guaranty institution

Article 43 also states that sale and purchase can proceed before the Notary before the building is finished through Sale and Purchase Agreement (PPJB). This Sale and Purchase Agreement is under the condition that all requirements mentioned in Article 43 have been fulfilled. Still, marketing is also a way to gain funds, besides the bank loan, in order to extend their capital to build the low-cost apartment. In addition, a developer can also gain financial assistance from other parties to run their business. However, in a debt-receivable agreement, it frequently happens when a debtor cannot pay off their debt until the maturity date (Adichandra & Setianingrum, 2021).

This research is going to analyze the bankruptcy of Limited Liability Company (*Perseroan Terbatas*) which results in the auction of land and building located in Sub-District (*Kelurahan*) of Cipayung, District (*Kecamatan*) of Ciputat, City of South Tangerang, Province of Banten. This research is titled THE EFFECTS OF BANKRUPTCY ON PT MEGAKARYA MAJU SENTOSA, CIPUTAT, SOUTH TANGERANG (Analysis on Decree of Supreme Court No. 700 K/Pdt.Sus-Pailit/2022). The developer had financial issues when building the low-cost apartment. This caused Commercial Court of Central Jakarta to decide bankruptcy and finally put the assets of PT MEGAKARYA MAJU SENTOSA, located in Kelurahan Cipayung, Kecamatan Ciputat, South Tangerang, into the auction.

The condition in which the debtor cannot pay its debts is mostly caused by financial distress. This can be stimulated by the decreasing sale. Meanwhile, bankruptcy is a court decision which leads to general seizure over the bankrupt debtor's whole assets (Nugroho & SH, 2018).<sup>3</sup> In the Article 37 of Law of 2007 it is stated that if in an agreement meant by Article 36, the traded products agreed to be handed-over in a certain period of time, and the party who should hand over the product is declared bankrupt

before it is handed over, therefore the agreement becomes void once the bankruptcy decision is stated (Asikin, 2012). Next, in case the adverse party is disadvantaged by this decision, the concerned adverse party can submit a claim as concurrent creditors in order to gain compensation (Isnaeni, 2021).

Because of this decision, concurrent creditors are subject to bankruptcy as they already engaged in transaction. However, the auction of company's assets requires the company to return the money received as the purchase of low-cost apartment. However, the buyers as concurrent creditors serve as the weakest party since the distribution of the bankruptcy estate firstly delivered to the separatist creditors and the concurrent creditor is the last party to receive and it happens if only the debtor possesses sufficient assets (Saputri et al., 2019).

Research formulation in this study are How does bankruptcy affect the assets of PT Megakraya Maju Sentosa? And How is PT Megakraya Maju Sentosa responsible for the concurrent creditors? This research aims to find out the effects of bankruptcy on the land and building assets of PT Megakraya Maju Sentosa and to find out the responsibility of PT Megakraya Maju Sentosa on concurrent creditors who did not receive the compensation from the auction's result.

## **Research methods**

Based on the previously explained background and problem formulation, this belongs to descriptive-qualitative research. Qualitative is a research method in which the data are used qualitatively and presented descriptively. The research method was conducted by finding out, recording, formulating, until compiling the report. The researcher applied some appropriate methods in this research in order to gain the maximal results (Bachtiar, 2019).

## **Results and Discussion**

One of aims and goals to file for Suspension of Debt Payment Obligation (PKPU) by the creditors involved in a debt-and-receivable is to avoid bankruptcy. Therefore, the debtor can run its business. However, even though PKPU has been filed and proceeded, the decision of bankrupt is inevitable (Septiyeni, 2020).

Bankrupt is possible to happen if there is no reconciliation until the Temporary PKPU due or if Permanent PKPU has not been granted for the debtor. The court decides the debtor bankrupt because the PKPU is due. This is in line with what Law No. 37 of 2004 states on bankruptcy and PKPU. Bankruptcy refers to general seizure over all bankrupt debtor's assets which is managed and collected by a curator who is monitored by a supervising judge (Wibawa, 2020a).

Hadi Shuban states that bankruptcy means to discontinue any action taken over on the bankrupt assets by the debtor. Therefore, to discontinue transaction over the bankrupt debtor's assets, which are possible to disadvantage the creditors, the assets are confiscated. As a matter of law, the debtor loses the rights to manage and to act as the owner over the assets included in Bankruptcy. These terms apply because bankruptcy is only related to the debtor's assets to pay the debt off to the creditors (Dantes, 2021a).

In line with Article 2 Paragraph 2 Section F and based on the prosecutor, the submission of PKPU is for civic reason. The submission of PKPU is just the same as the

bankruptcy submitted by either the debtor or the creditor with condition that bankruptcy proposal can be submitted by the prosecutor without lawyer's service. The requirements to submit PKPU are stated on Article 222 Paragraph 1 jo Article 222 Paragraph 3 of the Law of Bankruptcy and PKPU, they are:

1. PKPU is submitted by the debtor who has more than 1 (one) creditors, or by the creditors;
2. The creditors who estimate that the debtor cannot continue paying the due debt and cannot be demanded for the payment can submit PKPU for the debtor, so it enables the debtor to submit reconciliation proposal, which includes payment of some or entire debt to the creditors. Based on the provision Article 225 Paragraph 3 of The Law of Bankruptcy and PKPU which states if the creditor submits for PKPU, the court, within no more than 20 days since the PKPU is registered, must grant the Temporary PKPU and it must appoint a supervising judge from the court's judges and assign 1 or more boards to take care of debtor's assets together with the debtor.
3. Requirements which cause the asset to be auctioned is based on the Law No. 37 of 2004 on Bankruptcy and PKPU.

Auction is a form of sale in which products are sold openly for public and offered with increasing or decreasing price in order to reach the highest price. The price proposed is both in oral and in written. An auction is preceded by an announcement that there would be an auction or product sale (Sjahdeini, 2010).<sup>5</sup>

Juridically, the definition of auction can be found in the provision of Article 1 Paragraph 17 on Tax Collection with Distress Warrant as amended by the Law No. 19 of 2010, which states that auction is a public sale conducted in spoken and or by gathering potential buyers or buyer candidates. Meanwhile, based on Minister of Finance Regulation No. 213/PMK.06/2020 on Guidelines on Auction, auction is a public sale in which the prices offered in written and/or in spoken increasing or decreasing to reach the highest price, which is preceded by auction announcement. In the theory of auction, an auction can be competitive and can result in the efficient price. In this case, land and building of PT Megakarya Maju Sentosa, which were located in Kelurahan Cipayung, Kecamatan Ciputat, City of Tangerang Selatan, were auctioned because it was bankrupt and the auction is necessary to pay the debts to the creditors. The auction was held by State Assets and Auction Service Office (KPKNL) of Tangerang II on Thursday, 30 September 2019. The auction objects were lands and buildings located in Kelurahan Cipayung, Kecamatan Ciputat, Kota Tangerang Selatan, Banten with the documentary evidence of ownership, which are Certificate of Right to Build (SHGB) No. 1898 with an area of 1235 m<sup>2</sup> on behalf of PT Megakarya Maju Sentosa, which was won by Raden Malik, ST., who bid for 21,001,000,000 rupiahs. Here are the details:

No	Allocation	Nominal
1	Net Auction for seller/government institution, including the settlement for preferred and separatist creditors)	IDR 20,055,955,000
2	Seller Auction Duty 2% (seller's cost)	IDR 420,020,000
3	Income Tax 2.5%	IDR 525,025,000
4	Buyer Auction Duty	IDR 420,020,000
	Total	IDR 21,421,020,000

From the above description, it can be stated that the assets of the debtor, PT Megakarya Maju Sentosa, which is located in Kelurahan Cipayung, Kecamatan Ciputat Tangerang Selatan, was not sufficient to pay off all the creditors, especially the concurrent ones. As the buyers or consumers, the concurrent creditors are the weak party. They were disadvantaged because they were in the last line to be paid off. These creditors were not strong enough to be paid before the bankrupt developer had to pay its debt firstly to the preferred creditor and separatist creditor. In the end, the business owner cannot fulfil the legal rights of buyers. If the priority in a receivable agreement does not state which creditor has the higher preferential right than a guaranteed receivable by collateral right (pawning, fiducia, mortgage right or hypothecation), then this is the order of priority:

1. Creditors guaranteed by guaranty right (separatist creditor)
2. Creditors with the preferential rights (preferred creditors)
3. Concurrent creditors.

Therefore, concurrent creditors must manage and register to the curator respectively by themselves to a curator when they are willing to settle the assets of bankrupt company. The curator itself is supervised by a supervising judge.

The Law on bankruptcy and PKPU stipulates that each and every creditor declared bankrupt, with no exception, is obliged to register their receivables respectively by mentioning the preferential rights. This includes but is not limited to the preferential right provided both by Articles 1139 and 1149 of Civil Code and by rights in form of collateral materials. The registration is mandated by Article 115 of the Law of Bankruptcy and PKPU; each and every creditor is obliged to submit his or her receivables curator with the estimation or other written descriptions with the legal documents or copies, in which show the characteristics and total of receivables, and a statement which states whether she or he has the preferential right, pawn right, fiducia guaranty, mortgage right, hypothecation, collateral right for other material possessions, or rights to hold something.

Therefore, auction of company's asset is the effect of bankruptcy. The fund gained was later used to pay the creditors based on the priority order(Dantes, 2021b).

### **PT Megakarya Maju Sentosa's Responsibility on Concurrent Creditors**

Theoretically, the legal emerging connection between the party demanding legal responsibility and the party demanded legal responsibility can be divided into:

1). Responsibility over error

This responsibility can emerge because of default, acts against law, and incautious acts.

2). Responsibility over risks

This responsibility must be carried as risks which a businessman has to take because of the loss of business he or she is running.

In PT Megakarya Maju Sentosa's case, the developer as the seller sold the units by pre-project selling system since it did not have sufficient capital to build in the beginning. Pre-project selling has been regulated by The Law of Low-Cost Apartment Article 42 Paragraphs 1, 2, and 3. These paragraphs state that the developer is allowed to sell before the developer builds it. The pre-project selling was executed by Sale and Purchase Agreement (PPJB) made before the notary (Damlah, 2017).

According to the Law of Low-Cost Apartment, in the case of Ciputat Resort Apartment, Sale and Purchase Agreement (PPJB) is against the Law. The seller should fulfill the requirements before it was made. Some requirements violated were the availability of facilities, infrastructure, public utility, 20% minimum construction, and other terms bound to agreement. If the PPJB was signed, its status was against the law because it violated the requirements to sign PPJB. This disadvantaged the consumers materially. As a consequence, PT Megakarya Maju Sentosa was obliged to pay compensation to the consumer.

### **Conclusion**

The auction conducted by State Assets and Auction Service Office (KPKNL) of Tangerang II had IDR 21,001,000,000 as the highest bid. The fund gained was used to pay the preferred and separatist creditors. Therefore, the fund gained was not distributed to the concurrent creditors. The researcher, therefore, states that when deciding for PT Megakarya Maju Sentosa's case, the judge did not really take the distribution of the bankrupt asset into consideration, especially for the concurrent creditors. These creditors were put on the last list after the preferred creditors, state income, and separatist creditors who had the mortgage right, and the last ones, the concurrent creditors, the consumers who bought the low-cost apartment units. In this bankruptcy, separatist creditors and concurrent creditors were involved.

However, in fact, PT Megakarya Maju Sentosa only gave its responsibility to reconcile merely to separatist creditors. It did not involve the concurrent creditors. As the consequence, the bankruptcy affected the concurrent creditors the most. These creditors were the weakest party because they had to stand by themselves. They are not institutions like bank, etc. They also needed the compensation and they had to fight themselves to have their money returned. The judge should take deeper consideration. She or he should think more about the concurrent creditors (buyers of low-cost apartment) since they were on the last list if the debtor's assets were auctioned and distributed.

The judge's decision should also guarantee that the debtor's assets were more than sufficient to pay all the creditors off. It is less appropriate if we refer to the market value

or the liquidity value because when assets are auctioned, land and building values are generally under or lower than the market price. Still, a solution should also be looked for the concurrent creditors, so they can get their money returned. It is less appropriate if the judge saw PT Megakarya Maju Sentosa's responsibility was only for the separatist creditors, which is PT Quality Tehnik. The debtor should also be responsible to return the other creditors' fund. Society should also be cautious on any developer marketing low-cost apartment within lower prices. The facts show there have been many frauds committed. As example, PT Megakarya Maju Sentosa itself did not have building permit. As the potential buyers or consumers, we have to cautiously ask about the permit. If building permit does not exist in the developer's files, sale and purchase agreement between the developer and consumer is considered against the law. When bankruptcy occurs, the consumers rarely receive the fund for compensation.

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