

Application for Bankruptcy Declaration or Suspension of Debt Payment Obligation for Developers Viewed from the Principles of Balance and Justice

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Abstract

The aim of this research is to examine the implications of bankruptcy petition or postponement of debt payment obligations on developers in Indonesia, considering legal principles, particularly the principles of balance and justice within the framework of the Bankruptcy and Debt Payment Obligation Postponement Act (UU Kepailitan & PKPU). The background of this study encompasses the importance of legal certainty for consumers and developers in the context of fair and efficient financial settlements. The research methodology employs a legal document analysis approach, involving literature review and case interpretation to evaluate the application of the Bankruptcy and PKPU Act on developers, and to analyze the impact of Supreme Court Regulation No. 03/2023 on court interpretations in relevant cases. The findings indicate that the Bankruptcy and PKPU Act provides a crucial legal framework to protect the interests of consumers and developers, but its application must carefully consider legal principles, particularly in proving facts or circumstances influencing decisions on bankruptcy or PKPU petitions. The implications of these findings underscore the need for courts to maintain a balance between creditors' rights and protection for debtors experiencing financial difficulties. Proposed recommendations include the necessity for clarity in legal interpretations, consistent implementation of the Bankruptcy and PKPU Act, and an approach favoring justice in every bankruptcy or PKPU petition decision. __

1. Introduction

The Supreme Court, based on Circular Letter Number 3 of 2023 regarding the Implementation of Formulations Resulting from the Plenary Session of the Supreme Court Chambers in 2023 as Guidelines for Judicial Duties, convened a Plenary Session from November 19, 2023, to November 21, 2023, discussing technical and non-technical judicial issues that arose in each chamber. The formulation resulting from the Civil Chamber Plenary Session in specific civil cases produced a formulation stating that petitions for bankruptcy or Suspension of Debt Payment Obligations (PKPU) against apartment and/or condominium developers do not meet the criteria as simple evidence as referred to in Article 8 paragraph (4) of the Bankruptcy and PKPU Law. This formulation by the Supreme Court's Circular Letter is considered contradictory to Law Number 37 of 2004 concerning Bankruptcy and PKPU.

In Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), it is stipulated that a Debtor may be declared bankrupt or placed under PKPU by a Court decision if they have two or more Creditors and fail to pay at least one debt that has matured and is due for collection, whether at their own request or at the request of one or more of their creditors, provided that such facts can be straightforwardly proven during the trial. The formulation in SEMA 03/2023 potentially creates legal uncertainty as it diverges from the Bankruptcy and PKPU Law. If SEMA 03/2023 is applied, developers may not be declared bankrupt or placed under PKPU because they do not meet the criteria for simple proof, even if the petitioner for bankruptcy or PKPU can straightforwardly prove the existence of two or more Creditors and the fact that the debt has matured and remains unpaid.

According to SEMA 03/2023, developers who have sold apartment units but have not completed construction due to financial difficulties cannot restructure their debts through a debt payment postponement request. However, under Article 225 of the Bankruptcy and PKPU Law, the court must approve a PKPU petition filed by the debtor within a maximum of 3 (three) days. Essentially, such a petition must meet the requirement of having two or more creditors, with at least one debt already matured and collectible.

The legal formulation differences between the Bankruptcy and PKPU Law and SEMA 03/2023 should not hinder judges from delivering a fair and balanced verdict for developers and consumers. In the general explanation of the Bankruptcy and PKPU Law, it mentions four fundamental principles: balance, business continuity, justice, and integration. The principles of balance and justice are applied to analyze issues related to bankruptcy and PKPU petitions against developers.

The principle of balance is implemented to prevent the misuse of bankruptcy institutions and mechanisms by dishonest debtors, while simultaneously preventing

creditors with malicious intent from exploiting these institutions. The principle of justice ensures that bankruptcy provisions uphold fairness for all parties involved. This principle of justice aims to prevent arbitrary actions by creditors seeking repayment of their debts, disregarding the interests of other creditors.

Based on these issues, this paper examines the positive legal system in bankruptcy law and its principles concerning bankruptcy and PKPU petitions. Legal principles serve to establish coherence within the positive legal system, ensuring alignment with legal ideals. Moreover, legal principles are crucial for judges as guidelines in adjudicating bankruptcy and PKPU cases.

2. Research Method

This study employs a legal research methodology utilizing both a statutory approach and a conceptual approach. The statutory approach involves examining laws or regulations relevant to the legal issues under investigation. Specifically, this research will analyse Law Number 37 of 2004 concerning Bankruptcy and PKPU (Suspension of Debt Payment Obligations) and Supreme Court Circular Letter Number 3 of 2023 regarding the Implementation of Formulations Resulting from the Plenary Meeting of the Supreme Court Chambers. The conceptual approach integrates practical concepts that can be implemented to provide a specific perspective and serve as a solution to the issues. This conceptual approach emphasizes that judges, in delivering judgments, must uphold fairness and balance in accordance with the principles of bankruptcy law.

The data used in this study consists of primary legal materials and secondary legal sources. Primary legal materials include Law Number 37 of 2004 concerning Bankruptcy and PKPU and Supreme Court Circular Letter Number 3 of 2023. Secondary legal sources utilized in this research include legal journals, research findings, and relevant books. Data collection techniques involve literature review and document observation. The analysis employs qualitative juridical analysis, focusing on legal interpretation, reasoning, and legal argumentation (Marzuki, 2019).

3. Results and Discussion

Bankruptcy and Suspension of Debt Payment Obligations Petitions by Consumers or Developers

A.V. Dicey introduced the concept of the rule of law, which emphasizes placing legal supremacy in all aspects of state administration. This principle ensures equality before the law for all individuals. Protection of human rights is not only enshrined in the constitution but also upheld through judicial decisions. From this concept, the rule of law embodies several principles: 1) The principle of legality, where any restriction on citizens' freedoms by the government must be based on laws enacted as general rules. Legal orders must safeguard citizens from arbitrary and unjust actions, and government actions must conform to written laws, i.e., formal laws; 2) Protection of

human rights; 3) Government accountability to the law; 4) Government's monopoly on the use of force to ensure law enforcement; and 5) Judicial oversight over governmental bodies in implementing and upholding legal rules (Rokilah, 2020).

In Indonesia's constitutional system, the concept of a rule of law state is an integral part of the country's statehood development since independence. The Constitution of 1945 explicitly affirms Indonesia's adherence to the idea of a 'rechtsstaat', rather than a 'machtsstaat'. This principle was formally stated in the RIS Constitution of 1949 and the UUDS of 1950. In the third amendment of 2001 to the Constitution of the Republic of Indonesia of 1945, the formulation that Indonesia is a rule of law state was firmly embedded in Article 1 paragraph (3), which reads: "The State of Indonesia is a Rule of Law State." According to Prof. Jimly Asshiddiqie (Hakim, 2023), the characteristics of a rule of law state based on Article 1 paragraph (3) of the Constitution of the Republic of Indonesia of 1945 can be understood through 13 distinct criteria bellows:

1. Supremacy of Law refers to the normative and empirical recognition of the principle that all issues are resolved in accordance with the law as the highest guide. Normative recognition of the supremacy of law is reflected in legal formulations and/or constitutions, while empirical recognition is reflected in the behavior of the majority of society. In the perspective of the supremacy of law, the true highest authority of the state is not human, but the constitution that reflects the highest law.
2. Equality before the Law ensures that everyone is treated equally under the law and governance, recognized normatively and implemented empirically. According to this principle, all discriminatory attitudes and actions in all forms and manifestations are recognized as prohibited, except for specific and temporary actions known as "affirmative actions" aimed at promoting and accelerating certain groups or segments of society to achieve parity with more advanced groups. Examples include indigenous peoples or certain customary law communities that are disadvantaged. Special treatment for specific segments of society should not be discriminatory, such as women or disadvantaged children.
3. Due Process of Law mandates that all government actions must be based on valid and written laws and regulations. These legislative regulations must exist and be in effect prior to or ahead of any administrative actions or deeds.
4. Separation of Powers entails limiting state power and state organs through vertical division of powers or horizontal separation. Powers must be compartmentalized through horizontal checks and balances among equal branches to counterbalance and control one another. This division prevents power from being centralized in one organ, which could lead to abuses, as noted by Lord Acton's famous adage: "power tends to corrupt, and absolute power corrupts absolutely."
5. Independent Mixed Institutions are crucial to limiting power, such as independent institutional regulations like the Human Rights Commission, the General Election Commission (KPU), the Corruption Eradication Commission (KPK), among others. The independence of these institutions is vital for safeguarding democracy, as their functions can be misused by governments to perpetuate power.
6. Independent and Impartial Judiciary ensures that judges perform their duties without influence from any party, be it political or economic.

7. State Administrative Courts provide citizens with the opportunity to challenge decisions made by state administrative officials and have them enforced by state administrative court judges. This is crucial to ensuring that citizens oppressed by decisions of powerful administrative officials have a legal avenue to seek justice.
8. Constitutional Courts are fundamental in modern constitutional systems to reinforce checks and balances among branches of power, crucial for democracy.
9. Protection of Human Rights recognizes that human rights are inherent, universal, and perpetual rights that must be protected, respected, upheld, and not diminished, reduced, or seized by anyone.
10. Democratic Principles ensure the principles of democracy and popular sovereignty, ensuring societal participation in state decision-making processes, and the establishment and enforcement of all laws and regulations reflecting the values of justice that thrive within society.
11. Instrumental Function as a State Welfare ensures that law serves as a means to achieve common ideals. Legal aspirations are intended to enhance public welfare, as articulated in Indonesia's national aspirations outlined in the preamble of the 1945 Constitution.
12. Transparency and Social Control require open transparency and social control over all legal processes, allowing for direct public participation to complement the formal institutional mechanisms to ensure justice and truth.
13. Belief in One Almighty God, rooted in Pancasila, which recognizes the principle of the supremacy of law while respecting beliefs regarding the supremacy of One Almighty God.

One characteristic of the rule of law in the Republic of Indonesia is the limitation of state power. Montesquieu divided state power into three branches: executive, legislative, and judicial. The legislative power represents the sovereignty of the people because, in a democratic state, laws governing the relationships between citizens and/or citizens with the government must be enacted by lawmakers who are representatives of the people, namely the legislative power. On the other hand, the judicial power is the institution responsible for resolving disputes between citizens and/or citizens with the government by applying valid and binding laws. The judicial power must adhere strictly to the law in resolving cases. Judicial power is the authority of the judiciary to administer justice to uphold the law and ensure justice.

Judicial power is a fundamental characteristic of a *Rechtsstaat* (Rule of Law) and the principle of the rule of law. According to the constitutional system of Indonesia, judicial power is regulated in Article 24 paragraphs (1), (2), and (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which stipulates that: 1) Judicial power is an independent authority to administer justice in order to uphold the law and justice; 2) Judicial power is exercised by a Supreme Court and subordinate courts within the general judiciary, religious judiciary, military judiciary, administrative court judiciary, and by a Constitutional Court; 3) Other bodies whose functions are related to judicial power are regulated by law.

Mahkamah Agung serves as the highest court of the state among the judicial bodies within the general judiciary, religious judiciary, military judiciary, and administrative

court judiciary. The Supreme Court has the authority to: 1) Review cases on cassation against judgments issued at the final level by courts under all judicial environments subordinate to the Supreme Court, unless otherwise stipulated by law; 2) Examine legislation against the constitution, under the law; 3) Exercise other powers as prescribed by law.

The legal basis for additional authority granted by law is found in Article 32 paragraph (4) and Article 79 of Law Number 14 of 2009 concerning the Supreme Court. These provisions empower the Supreme Court to create regulations to fill legal gaps and deficiencies where existing laws are insufficient. The Supreme Court also has the authority to provide guidance, warnings, or necessary admonitions to the courts within all judicial jurisdictions. Based on this, the Supreme Court can establish policy regulations (*beleidsregel*) under the discretionary authority vested in state administration to address gaps and deficiencies in the law (Santoso, 2023). Circulars issued by the Supreme Court constitute policy regulations mandated by law to provide guidance and directives to subordinate judicial bodies under its jurisdiction. While not classified within the hierarchy of statutory regulations, these circulars are nonetheless recognized and possess legally binding force as mandated by statutory provisions outlined in Article 32 paragraph (4) and Article 79 of Law Number 14 of 2009 concerning the Supreme Court.

The Supreme Court issued Circular Letter (SEMA) Number 3 of 2023 concerning the Implementation of the Formulations Resulting from the 2023 Plenary Chamber Meeting of the Supreme Court as Guidelines for Court Duties. In the legal formulation from the plenary meeting of the civil chamber on special civil matters, it was stated that bankruptcy or Suspension of Debt Payment Obligations (PKPU) petitions against developers of apartments and/or condominiums do not meet the requirements for simple proof as stipulated in Article 8 paragraph (4) of Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations. This SEMA establishes a new legal formulation within the Bankruptcy and PKPU Law for judges handling bankruptcy and PKPU cases. Consequently, any bankruptcy or PKPU petition against developers must be rejected due to the lack of simple proof.

Simple proof is related to whether a bankruptcy or PKPU petition can be granted. Simple proof in bankruptcy and PKPU cases is regulated in Article 8 paragraph (4) of the Bankruptcy and PKPU Law, where a bankruptcy petition must be granted if there are facts or circumstances that are simply proven. "Facts or circumstances that are simply proven" refer to the existence of two or more creditors and an overdue debt that has not been paid. As explained in Article 2 paragraph (1) of the Bankruptcy and PKPU Law, the requirement for being declared bankrupt is that the debtor has two or more creditors and does not pay at least one debt that is due and payable, either upon the debtor's request or upon the request of one or more creditors. Therefore, a bankruptcy petition must be granted if it can be proven that the debtor has two or more creditors and has not paid at least one debt that is due and payable, either upon the debtor's request or the creditor's request (Andani, 2021).

A PKPU petition is essentially filed by a debtor along with a proposed settlement plan,

which includes offers to repay all or part of the debtor's debts to the creditors. The content of the settlement plan can include: a) rescheduling the repayment of debts, which may include granting a new grace period or imposing statutory interest (moratorium interest) on the debtor; b) reconditioning the terms of the agreement; c) reducing the principal amount of the debt (hair-cut); and d) reducing or waiving the amount of accrued interest, penalties, and other costs (Fitria, 2018).

A settlement plan can be accepted based on the approval of more than half of the concurrent creditors whose claims are recognized or temporarily recognized, who are present at the creditors' meeting and collectively represent at least two-thirds of the total recognized or temporarily recognized claims of the concurrent creditors or their proxies present at the meeting. Additionally, it requires the approval of more than half of the creditors whose debts are secured by pledge, fiduciary security, mortgage, hypothec, or other security rights over property, who are present and represent at least two-thirds of the total claims of these secured creditors or their proxies present at the meeting.

Creditors entitled to vote on a settlement plan in PKPU proceedings are the separatist and concurrent creditors. Article 1132 of the Indonesian Civil Code emphasizes that all creditors have equal standing, unless otherwise specified by law for legitimate reasons granting priority over other creditors. Creditors are categorized based on the priority of their rights to debt repayment relative to other creditors. The types of creditors in bankruptcy include separatist creditors, preferred creditors, and concurrent creditors. Separatist creditors hold secured rights over property and can act independently. This category of creditors is unaffected by a bankruptcy declaration, meaning they retain the right to execute claims as if the debtor were not bankrupt (Silalahi, 2020). Preferred creditors have special or priority rights, conferred by law, giving them a higher rank than other creditors. Concurrent creditors, on the other hand, do not have any special privileges and therefore share equal standing with one another (Saputra, 2020).

If the settlement plan is approved by the creditors, the court is required to issue a ruling to ratify the approved settlement plan (homologation). Conversely, if the settlement plan is rejected by the creditors, the court must declare the debtor bankrupt. In bankruptcy proceedings, the order of debt repayment begins with the separatist creditors, followed by the preferred creditors, and finally the concurrent creditors. Concurrent creditors are paid only if there are remaining funds after the debts to separatist and preferred creditors have been settled. This situation indicates that consumers are in a weak and last position, with no guarantee of receiving their debt payments. Therefore, the Bankruptcy and PKPU Law must ensure legal certainty and fairness for debtors, creditors, and third parties.

The Principle of Balance and the Principle of Justice in the Bankruptcy Law and Suspension of Debt Payment Obligations (PKPU).

Bankruptcy law has a long history dating back to Ancient Egypt. The earliest bankruptcy regulations can be found in the Code of Hammurabi from 1750 BCE, which

included provisions for bankruptcy and creditor protection. In Ancient Greece, bankruptcy practices were governed by Solon's laws in the sixth century BCE. In Ancient Rome, bankruptcy law outlined procedures for liquidation and mechanisms for the repayment of a debtor's obligations. During the Middle Ages, the Catholic Church played a significant role in the development of bankruptcy law. Canonical law principles, which focused on debt forgiveness and moral rehabilitation, became the foundation for resolving bankruptcies. However, the concept of bankruptcy at that time was more associated with moral failure than financial difficulty (Nyaman, 2023).

Bankruptcy law faced challenges in the 18th century due to significant socio-economic changes brought about by the Industrial Revolution and the development of the modern banking system. In England, the first laws regulating bankruptcy procedures were established under the Insolvent Debtors Act of 1705. These regulations were later revised with the Insolvency Act of 1869 and the Bankruptcy Act of 1883. In the United States, it wasn't until the 19th century that the first federal bankruptcy laws were enacted with the Bankruptcy Act of 1800. With the growth of the global economy in the 20th century, the United States updated its bankruptcy laws with the Bankruptcy Reform Act of 1978 (Nyaman, 2023).

Bankruptcy regulations were introduced to Indonesia along with the *Wetboek van Koophandel* (Commercial Code). These regulations were initially included in Book III of the KUHD but were later repealed and replaced by standalone regulations. These new bankruptcy rules were known as the *Faillissementsverordening*, based on *Staatsblad* Numbers 276 of 1905 and 348 of 1906. This Dutch colonial bankruptcy law remained in effect for a significant period, from 1905 to 1998, a span of 93 years. During the Japanese occupation, this law was suspended, and the Japanese administration enacted emergency legislation on bankruptcy. However, once the Japanese left Indonesia, the Dutch colonial bankruptcy regulations were reinstated. The economic crisis of 1998 led to a surge in bankruptcy cases. The Dutch-era bankruptcy law was deemed inadequate for the economic conditions at that time, prompting the creation of Government Regulation in Lieu of Law No. 1 of 1998, which was later enacted as Law No. 4 of 1998. Subsequently, Law No. 4 of 1998 was amended by Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, which remains in effect to this day (Yuhelson, 2019).

The objectives of bankruptcy law are: (Sjadeni, 2009) 1) To protect concurrent creditors in obtaining their rights concerning the principle of guarantee as stated in Article 1131 of the Civil Code, which stipulates that all the debtor's assets, both movable and immovable, existing and future, serve as collateral for the debtor's obligations. Bankruptcy law prevents disputes among creditors over the debtor's assets in relation to this guarantee principle. Without bankruptcy law, stronger creditors would obtain a larger share than weaker creditors; 2) To ensure the distribution of the debtor's assets among creditors in accordance with the *pari passu* principle by proportionally dividing the debtor's assets among concurrent creditors or unsecured creditors based on the size of each creditor's claim; 3) To prevent the debtor from engaging in actions that could harm the interests of the creditors. By

declaring a debtor bankrupt, the debtor loses the authority to manage and transfer their assets, as the legal status of the debtor's assets becomes bankrupt estate.

The function of bankruptcy and PKPU regulations is to protect the interests of creditors, debtors, and third parties. The interests protected must be balanced between creditors and debtors. The rights of the debtor are safeguarded, such as avoiding self-help actions by creditors, preventing creditors from seizing the debtor's assets as they are under the curator's control, and allowing the possibility of a settlement. On the other hand, creditors' rights are also guaranteed and protected from actions by the debtor that could harm the creditors (Disemadi, 2021).

To avoid bankruptcy, a debtor can file for Suspension of Debt Payment Obligations (PKPU). According to Kartini Mulyadi, PKPU is the opportunity given to the debtor to restructure its debts with concurrent creditors. If the PKPU ends with a settlement, the debtor can ultimately continue its business (Lontoh, 2001). The purpose of PKPU is to improve the financial condition and economic capability of the debtor by restructuring its debts through an agreement between the debtor and creditors, which is approved by the Court (Simanjuntak, 2023).

The Bankruptcy Law and PKPU provide legal certainty that developers can be declared bankrupt or undergo PKPU if there are proven simple facts or circumstances. "Proven simple facts or circumstances" refer to the presence of two or more creditors and overdue debts that remain unpaid. Conversely, the Supreme Court issued SEMA 03/2023, which states that apartment and/or condominium developers cannot be declared bankrupt or undergo PKPU by the Court because they do not meet the criteria as proven simply as referred to in Article 8 paragraph (4) of the Bankruptcy Law and PKPU. The formulation of SEMA 03/2023 introduces a new legal norm that exempts apartment and/or condominium developers from being declared bankrupt or undergoing PKPU.

The issue arises when a developer has sold apartment units but has not completed construction due to financial difficulties. The developer seeks to restructure its debts, but on the other hand, cannot file for bankruptcy or PKPU because it does not meet the criteria as proven simply as stipulated in SEMA 03/2023. According to the Bankruptcy Law and PKPU, however, the developer can apply for a debt payment deferment to restructure its obligations with creditors. The PKPU application by the developer must demonstrate simply proven facts such as the existence of two or more creditors and overdue debts. Subsequently, the court must approve the temporary PKPU application within a maximum of 3 days and appoint a supervisory judge and administrators to manage the developer's assets.

According to Satjipto Rahardjo, legal principles are the 'heart' of legal regulations. They are referred to as the heart because of two reasons. Firstly, legal principles provide the broadest foundation for the emergence of legal regulations. This means that legal regulations ultimately trace back to these principles. Secondly, legal principles also serve as the rationale for the birth of legal regulations. These legal principles do not lose their strength and will always remain in creating legal

regulations. Meanwhile, Soedikno Mertokusumo states that legal principles are not concrete law, but rather abstract fundamental ideas, or the background behind concrete regulations found in every legal system embodied in legislation and judicial decisions, which constitute positive law and can be identified by examining the general characteristics or features in those concrete regulations (Astomo, 2018).

The Bankruptcy and Debt Payment Suspension Obligation (PKPU) Law is based on several principles, including the principles of balance, business continuity, justice, and integration. The principle of balance governs provisions that prevent the misuse of bankruptcy provisions and institutions by dishonest debtors, while also addressing provisions that prevent misuse by creditors acting in bad faith. Implementing the principle of balance involves considering four indicators: necessity, legitimate goal of law, rational achievement, and balancing (Möller, 2012). Each indicator serves a specific purpose (Mubaroq, 2023):

1. Necessity assesses the level of legal protection needed for both creditors and debtors in bankruptcy law. Legal protection in bankruptcy law should safeguard creditors and debtors from normative weaknesses to prevent misuse of bankruptcy norms, provisions, and institutions by dishonest debtors or creditors acting in bad faith;
2. Legitimate goal of law evaluates the legitimacy of legal protections provided by the Bankruptcy Law for creditors and debtors;
3. Rational achievement tests whether the legal protections provided under existing bankruptcy laws are suitable for achieving the desired outcomes or goals;
4. Balancing assesses the balance of arguments for providing legal protection between creditors and debtors.

The principle of justice entails that bankruptcy provisions should uphold fairness for all stakeholders involved. This principle aims to prevent arbitrary actions by creditors seeking payment for their claims against the debtor, disregarding other creditors. Resolving issues between developers and consumers within bankruptcy law should adhere to the principles of the Bankruptcy and Debt Payment Suspension Obligation Law (Aprita, 2016).

Circular Number 3 of 2023 holds legally binding authority over the judiciary bodies under the Supreme Court. Conversely, judges ruling on bankruptcy cases must consider the principles of balance and justice. The principle of balance can prevent abuse of the bankruptcy system by dishonest developers and consumers acting in bad faith. Meanwhile, the principle of justice aims to ensure fairness for consumers as unsecured creditors, who are not prioritized and do not hold secured property rights guarantees.

Based on the above legal provisions, it is evident that both creditors and debtors have rights that must be protected. Therefore, judicial decisions should provide balanced protection for debtors and creditors as a manifestation of safeguarding these rights. A

good judicial decision should not only adhere to the Law or Circulars, but should also ensure that consumers receive payment for their debts and provide protection for debtors experiencing financial difficulties.

4. Conclusion

The Bankruptcy Law and PKPU provide legal certainty for developers to be declared bankrupt or undergo debt payment postponement (PKPU) if there are facts or circumstances proven simply, meaning the existence of two or more creditors and overdue unpaid debts. Conversely, the Supreme Court issued Circular Letter No. 03/2023, which explains that apartment or condominium developers cannot be declared bankrupt or undergo PKPU by the court because they do not meet the simple proof requirement as specified in Article 8 paragraph (4) of the Bankruptcy and PKPU Law. Circular Letter No. 03/2023 introduces a new legal norm exempting apartment or condominium developers from being declared bankrupt or undergoing PKPU.

Judges, in delivering judgments on bankruptcy and PKPU cases, should adhere to bankruptcy legal principles to ensure legal certainty and justice for consumers and developers. The Bankruptcy and Debt Payment Postponement Law is based on several principles, including the balance principle, business continuity principle, justice principle, and integration principle. The balance principle regulates provisions to prevent abuse of bankruptcy institutions and regulations by dishonest debtors, while provisions also prevent misuse by creditors acting in bad faith. The justice principle ensures that bankruptcy provisions uphold fairness among stakeholders. Legal principles serve as guidelines for judges in deciding bankruptcy or PKPU applications against developers. Thus, judicial decisions can provide protection to consumers to receive debt repayments and also protect debtors experiencing financial difficulties.

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