

## LEGAL CERTAINTY OF DEBT PAYMENT OBLIGATION SUSPENSION APPLICATIONS FOR APARTMENT DEVELOPER DEBTORS

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### Abstract

*This study aims to examine the legal certainty aspects of debt payment obligation petitions against apartment developer debtors. In the context of bankruptcy law, legal certainty is crucial to protect creditors' rights while also providing adequate protection for debtors experiencing financial distress. However, several issues arise regarding legal certainty in debt payment suspension petitions involving apartment developers. One example is the case of an apartment developer in the Commercial Court Decision No. 97/Pdt.Sus-PKPU/2024/PN Niaga Jkt Pst. This research explores the legal certainty surrounding the suspension of debt payment obligation petitions against apartment developer debtors, as governed by Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations. The study finds that the court's decision demonstrates legal protection for debtors by taking into account factual conditions and creditors' rights. This ruling has significant implications for the development of bankruptcy law in Indonesia, particularly in resolving the debts of financially distressed apartment developers. In conclusion, legal certainty in the suspension of debt payment obligation petitions involving apartment developers must be grounded in the principle of justice, ensuring protection for all parties involved in the dispute while maintaining a balance between the rights of debtors and creditors.*

**Keywords:** *Apartment Developer; Bankruptcy; Suspension of Debt Payment Obligations*

### 1. INTRODUCTION

In the era of rapid globalization, the property sector, especially apartment development, has become one of the industries that attracts the interest of many investors and developers. However, fluctuating market dynamics, accompanied by regulatory challenges, have resulted in a complex situation for apartment developers in running their businesses. Apartment developers often face significant financial risks, including the possibility of liquidity difficulties that can disrupt their ability to meet debt payment obligations to creditors. In this context, the application for a suspension of debt payment obligations (PKPU) is a relevant solution to help apartment developers continue to operate and maintain the sustainability of the projects they are running. (B. Simanjuntak, 2023). In practice, this mechanism aims to provide debtors with the opportunity to undertake financial restructuring, renegotiate debt terms, and seek solutions that are beneficial to all parties involved. (G. Putri et al., 2024). However, the implementation of PKPU in the context of apartment developers often encounters complex legal challenges. This is related to legal uncertainty regarding the requirements and procedures that must be met by debtors to apply for PKPU, as well as the potential for conflict between the interests of debtors and creditors.

Legal certainty is one of the fundamental aspects in the legal system that supports economic activities. In the context of PKPU, legal certainty is very necessary to protect the rights of creditors while providing adequate protection for debtors experiencing financial difficulties. (Aprita & Qosim, 2022). However, in reality, there are a number of issues that need to be considered regarding legal certainty in the application for a moratorium on debt payments to apartment developers. One of the main issues is the lack of clarity in the laws and regulations governing the moratorium. Although there are a number of regulations governing debt issues such as Law Number 37 of 2004 concerning Bankruptcy and PKPU (UUK-PKPU), the implementation and enforcement of the law often experience

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obstacles, both in terms of procedure and substance.(Sirait et al., 2023). Some argue that the moratorium should only be intended for debtors who have met certain criteria, such as having good faith and showing concrete efforts to resolve financial problems. On the other hand, there are also arguments that support that the moratorium should be more inclusive, so that it can be accessed by various groups of debtors who are experiencing difficulties, including apartment developers operating in a competitive market. This uncertainty creates a confusing situation for developers, because they do not always know whether they are eligible to apply for a moratorium. Furthermore, the issue of legal certainty includes the aspect of consumer protection where developers have a responsibility to fulfill commitments to consumers who have purchased apartment units. If a developer applies for a postponement of debt payment obligations, there is a risk that consumers will not receive the apartment units that have been paid for, or even be threatened with losing the money they have invested. Therefore, it is important to consider how legal certainty can be guaranteed so that consumer interests remain protected, even in difficult situations faced by developers.

The Circular of the Supreme Court (SEMA) Number 3 of 2023 issued by the Special Civil Chamber provides guidance on submitting PKPU, especially for apartment developers. This SEMA emphasizes that apartment developers cannot be submitted to PKPU if they do not meet the simple requirements in the proof as stipulated in the UUK-PKPU(Jenifer, 2024). This view contradicts the simple principle set out in the UUK-PKPU, which prioritizes debts that are due and collectible. Therefore, this SEMA has caused debate among legal practitioners because it is considered contradictory to higher regulations, namely the UUK-PKPU, which provides space for the submission of PKPU against any entity as long as the formal requirements are met.

One of the cases related to this is the Decision of the Central Jakarta District Court Number 97/Pdt.Sus-PKPU/2024/PN Niaga Jkt Pst filed by SKY HOUSE JO, a joint operation between China State Construction Engineering Co. Ltd. and PT. Dacheng Engineering Indonesia. The chronology of the case began on March 25, 2024, when the applicant submitted a letter of application for a postponement of debt payment obligations to the Commercial Court. The application was accepted and registered at the Clerk's Office on March 27, 2024. In the application, the applicant stated that PT SUNNY GARDEN PROPERTY, as the debtor, was unable to fulfill its payment obligations for debts that had matured, so a postponement was needed to provide an opportunity for the debtor to submit a peace plan. Through the applicant, the creditors emphasized that the debtor had debts that had matured and were not paid, so that in accordance with the provisions of Article 222 paragraph (3) of the UUK-PKPU, they had the right to file a PKPU. In the application process, the applicant also attaches supporting evidence showing that the debtor is unable to fulfill his debt payment obligations.

From the debtor's side, PT SUNNY GARDEN PROPERTY, represented by President Director Guanghe Li, has appointed legal counsel to defend their interests in court. The debtor argued that they were restructuring their debt and needed time to develop an appropriate payment plan. On April 2, 2024, the debtor submitted a special power of attorney to the legal team who were ready to defend their position in court. Both parties were then summoned to hear each other's statements and arguments in a hearing held by the panel of judges. In the hearing, the applicant presented evidence of debts that had not been paid by the debtor, while the debtor explained their financial situation and the reasons why a delay in debt payments was necessary. The chronology of this case reflects the dynamics between creditors and debtors in the context of filing a PKPU, where the legal interests of both parties must be considered proportionally. The court as an authorized institution must ensure that the legal process is carried out fairly, and provide space for debtors to improve their financial situation in order to settle their debt obligations to creditors.(Puspitasari et al., 2021).

This study has a different research object from the research conducted by Pulungan (2024) which examined the default of the developer PT Surya Bumimegah Sejahtera who did not hand over the apartment unit to the buyer.(Pulungan, 2024). Therefore, buyers who are in the position of PKPU applicants must pay more attention in carrying out legal relations with developers so as to prevent losses experienced by buyers. This study is also different from that carried out by Samosir (2023) which used the Medan Court Decision Number 24/Pdt.Sus.PKPU/2021/PN Medan where the judge granted the application on the grounds that it was in accordance with the requirements as a PKPU applicant.(Samosir, 2023). In addition, this study also has a different scope from other studies expressed by Slamet and Olivia (2024) regarding the application for a bankruptcy statement against an

apartment developer who does not meet the requirements for simple proof because the type of debt is unclear so that the debt requires proof through the District Court.(Slamet & Olivia, 2024). The three previous studies discussed did not discuss any regulatory updates to debt payment regulations. The UUK-PKPU has not been comprehensively regulated regarding the postponement of debt payments. However, based on the three studies, there is often ambiguity in the debtor's debt payment system. So that it emphasizes the debtor to be obliged to pay the debt by any means. This is a potential for national development where clearer regulations are related to the conditions for postponing debt payment obligations. If the conditions regarding the postponement of debt payments have been clearly regulated and are more lenient for debtors, then debtors can pay their debt payment obligations by other methods. The purpose of the regulatory update is to provide legal certainty for debtors and fill the legal vacuum in Indonesia.

Based on the problems mentioned above, the author further reviews the legal certainty aspect of the application for postponement of debt payment obligations against debtors who are apartment developers based on the UUK-PKPU and the legal certainty of the application for postponement of debt payment obligations against debtors who are apartment developers based on the Commercial Court Decision Number 97/Pdt.sus-PKPU/2024/PN Niaga Jkt Pst. This study aims to examine the legal certainty aspect of the application for debt payment obligations against apartment developer debtors. In the context of bankruptcy law, legal certainty is very important to protect the rights of creditors while providing adequate protection for debtors who are experiencing financial difficulties.

## 2. METHOD

The research method used in this research is the normative research method.(Ali, 2013). In this study, the use of SEMA Number 3 of 2023 is also important as one of the legal bases governing the postponement of debt payment obligations. This SEMA serves as a guideline for judges in handling cases related to PKPU applications, including the procedures and criteria that must be considered in deciding the application. By referring to this SEMA, researchers can analyze the extent to which the provisions stipulated in the UUK-PKPU are implemented effectively in court practice. This also allows researchers to assess the consistency and clarity in the application of the law and provide recommendations for the improvement and refinement of existing legal practices, thereby providing legal certainty for debtors and creditors in the process of postponing debt payment obligations.

## 3. RESULTS AND DISCUSSION

### 3.1 Regulations on Application for Postponement of Debt Payment Obligations Against Debtors as Apartment Developers Based on Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations

Legal certainty is one of the fundamental principles in the legal system which ensures that all individuals and legal entities have certainty regarding their rights and obligations.(Ridwan, 2018). In the context of PKPU applications, legal certainty is very important to provide protection to debtors and creditors, as well as to create a healthy investment climate, especially for apartment developers who are often involved in various construction and property development projects. UUK-PKPU is the legal basis that regulates this process, including the requirements that must be met by debtors who wish to submit a PKPU application.(Kiemas et al., 2023). However, with the issuance of SEMA Number 3 of 2023, legal uncertainty has emerged that needs to be analyzed in depth.

SEMA Number 3 of 2023 states that apartment developers cannot apply for PKPU because they are considered not to meet the requirements as simple proof. This raises questions regarding the harmony between the provisions in the SEMA and the provisions stipulated in Law No. 37 of 2004. In the a quo law, there are no provisions that explicitly prohibit apartment developers from applying for PKPU, as long as they meet the specified requirements. For example, developers must have debts that are due and collectible, and there must be more than one creditor. Therefore, a conflict arises between the principle of legal certainty that is upheld and the interpretation taken in the SEMA.(Saputri et al., 2019). In analyzing this provision, it is important to look at the context in which apartment developers operate. The property industry, especially apartment development, has unique characteristics, including

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high risk and long investment return periods. Apartment developers often rely on funds from unit buyers or investors to fund their projects. In situations where they are experiencing financial difficulties, a PKPU application can be a solution to get additional time to restructure debt and continue the project without having to face pressure from creditors. This is in accordance with the purpose of PKPU, which is to provide debtors with the opportunity to plan debt payments and protect the interests of creditors in a balanced manner.

The ambiguity in the SEMA prohibiting apartment developers from filing a PKPU application may have implications for detrimental legal practices. For example, if developers are not given access to file a PKPU, they may be forced to liquidate their assets without the opportunity to restructure their debts. This will not only harm developers, but also creditors, who may not recover their debts in full. In addition, this decision may create uncertainty for potential investors and parties involved in apartment development projects, which in turn may affect the investment climate in this sector. (Madreani & Madjid, 2024). In fact, the principles of bankruptcy and PKPU are designed to address situations where debtors experience financial difficulties, without discrimination based on the type of business. Objective and fact-based assessments must be the basis for deciding on PKPU applications. SEMA, which considers apartment developers as an unqualified group, has the potential to create a negative stigma against this industry, even though there are many developers who operate transparently and responsibly.

Based on the provisions of Article 222 of the UUK-PKPU, a PKPU application can be submitted by a creditor who believes that the debtor cannot continue to pay his debt. This shows that the law provides room for debtors, including apartment developers, to submit this application if they meet the specified requirements. In this case, SEMA should not conflict with higher laws, (Situmorang et al., 2023) but rather must be a guide that supports the implementation of fair and transparent law. Properly, if SEMA has the potential to conflict with the provisions of the law, then a review is needed. The court must ensure that the legal interpretation taken is not only consistent with the provisions of the applicable laws, but also supports the principles of justice and legal certainty. In this context, the active participation of all stakeholders, including legal practitioners, academics, and industry, is very important to produce sustainable solutions. (Rahmani, 2018).

In an effort to maintain legal certainty and protect the rights of all parties involved, it is important to emphasize that apartment developers, like all other debtors, must be given the same rights to file a PKPU application. Thus, steps towards reform or clarification of SEMA need to be taken so as not to create barriers for developers in facing financial difficulties. This process must involve constructive dialogue between related parties to produce better regulations and support the sustainability of the property industry in Indonesia.

Legal certainty in this context is highly dependent on the clarity and consistency between existing regulations. Considering the purpose of PKPU to provide debtors with the opportunity to restructure their debts, apartment developers must remain part of the discussion regarding fairness and equal legal protection. In the long term, efforts to review and revise existing policies will be essential to create a legal framework that supports economic growth and the stability of the property sector in Indonesia, as well as providing fair legal protection for all stakeholders involved. (Situmorang et al., 2023).

### **3.2 Legal Certainty of the Application for Postponement of Debt Payment Obligations Against Debtors Who Are Apartment Developers in the Commercial Court Decision Number 97/Pdt.Sus-PKPU/2024/PN Niaga Jkt Pst**

In the context of a PKPU application for a debtor who is an apartment developer, the Commercial Court Decision Number 97/Pdt.Sus-PKPU/2024/PN Niaga Jkt Pst provides clear and significant direction regarding how the law can provide protection for debtors facing financial difficulties. This decision is also an important reference in understanding the relationship between bankruptcy principles and applicable legal provisions in Indonesia, especially in the context of the UUK-PKPU. In the decision, the court ruled that apartment developers who are experiencing difficulties in paying their debts have the right to file a PKPU application. This shows that the court recognizes that there is room for developers to obtain legal protection in the face of unpaid debts. The important point in this decision is that apartment developers, even though they operate in an industry that has risks, still have the same rights as other debtors to request a PKPU. This affirmation creates legal certainty for

developers who are struggling to resolve their financial problems, while protecting the rights of creditors.

This ruling also provides an in-depth analysis of the requirements that must be met by a debtor in order to file a PKPU. The court emphasized that the debtor must have a debt that is due and collectible, and there must be more than one creditor. In this case, apartment developers who apply for a PKPU must show that they are unable to meet their debt payment obligations that have matured and provide evidence that there is more than one creditor involved. The court acts as a mediator in this process, ensuring that all parties, both debtors and creditors, receive fair and balanced treatment. (CPH Putri, 2024).

One interesting aspect of this ruling is the court's consideration of the potential for debt restructuring. In this ruling, the court gave developers the opportunity to restructure their debts, with the hope that they would be able to continue operating their businesses. Debt restructuring not only provides a second chance for debtors, but it can also increase the chances for creditors to recover their debts, although in amounts that may be smaller than expected. (Fatahillah & Winanti, 2023). By providing this opportunity, the court helps create a balance between the interests of debtors and creditors, which is an important foundation in the business world. It is important to note that this decision not only provides legal certainty for apartment developers, but also has a positive effect on the property industry as a whole. In the context of a fluctuating economy, a decision that gives developers room to breathe and restructure their debts is important. This can boost the confidence of investors and potential buyers, which in turn will strengthen the property sector in Indonesia. Thus, the legal certainty resulting from this decision can be a driving factor for broader economic growth.

Legal certainty is also closely related to the transparency of the legal process. In this Commercial Court decision, transparency can be seen from how the court considered various evidence and arguments submitted by both parties. An open and fair decision-making process will create trust among the public and industry players. Thus, the decisions taken are not only based on applicable law, but also on the principles of justice and compliance with established legal norms. (Muharrir et al., 2023). Commercial Court Decision Number 97/Pdt.Sus-PKPU/2024/PN Niaga Jkt Pst also highlights the importance of the role of mediation in dispute resolution. In many cases, mediation-based settlements can produce more satisfactory results for all parties. The court can provide mediation facilities, where debtors and creditors can discuss to reach a mutually beneficial agreement. This is also a strategic step to reduce the burden on the court, while creating a more constructive atmosphere in dispute resolution. Therefore, this decision opens up opportunities for the court to act as a proactive mediator in resolving debt problems faced by apartment developers.

The legal certainty created by this ruling can also encourage apartment developers to be more careful in their financial management. With the assurance that they have the right to apply for PKPU, developers are expected to pay more attention to financial planning and risk management. In the future, this can reduce the possibility of unpaid debts and create healthier business practices. On the other hand, creditors are also expected to better understand the risks associated with their investments, so that they can take appropriate mitigation steps. However, although this ruling provides many benefits, challenges remain. For example, if many apartment developers apply for PKPU simultaneously, this can put pressure on the legal system and the courts. Therefore, the courts need to have an efficient mechanism to handle the increasing number of applications. In addition, there is a need to educate developers about their rights and obligations in the PKPU process, so that they can make the right decisions and not be hasty. (Lufti Nasution et al., 2023).

Therefore, it is important to acknowledge that legal certainty in the context of the application for a postponement of debt payment obligations for apartment developers is a positive step towards resolving financial problems. Commercial Court Decision Number 97/Pdt.Sus-PKPU/2024/PN Niaga Jkt Pst emphasizes that the law not only functions as a tool to uphold justice, but also as an instrument to support the growth and development of the property sector. With clear legal certainty, it is hoped that a conducive environment will be created for business development, as well as fair protection for all stakeholders in this industry. This is important to ensure that the property industry in Indonesia can continue to grow and contribute positively to the national economy.

**4. CONCLUSION**

Overall, this decision confirms that a developer still has the right to file a PKPU application even though there is SEMA Number 3 of 2023 which seems to limit this right. The court in this case shows a wise attitude by considering the interests of both parties—both creditors and debtors. On the one hand, this decision provides the necessary legal protection for debtors who are facing financial pressure. On the other hand, the rights of creditors are also not ignored, so that a fair balance is created in the process of settling debt obligations. Moreover, this decision plays an important role in providing legal certainty that can strengthen investor confidence, especially in the property sector, by making transparency and mediation important elements in resolving financial disputes.

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