

Analysis of the Legal Liability of Bankrupt Developers as a Form of Fulfilling Consumer Rights in Apartment Unit Sale and Purchase Disputes (Case Study of Decision No. 4716 K/Pdt/2023)

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Abstract. *The increasing demand for vertical housing amidst limited urban land has driven the rise of apartment developments with a pre-sale system, but this model often leads to default issues by developers. The case between PT Multi Karya Utama Abadi (MKUA) and Nina Herlina in the Bandung Technoplex Living (BTL) project shows that consumers have made full payments but have not received the handover of the unit, while the developer is experiencing financial difficulties, making it difficult to implement the legally binding decision. This study aims to analyze the judge's ratio decidendi in Decision Number 4716 K/Pdt/2023 based on Article 1239 of the Civil Code and examine the form of legal responsibility of developers through the Suspension of Debt Payment Obligations (PKPU) mechanism. The study uses normative legal methods with a statutory approach, a conceptual approach, and a case approach through an analysis of related decisions at the first, appeal, and cassation levels. The results show that the judge stated that the developer had broken his promise and was obliged to compensate for losses, but settlement could not be carried out partially because the default issue was related to the company's financial failure. Therefore, PKPU is a relevant mechanism to ensure the fulfillment of consumer rights through debt restructuring that involves all creditors proportionally, thus functioning as a dual instrument for business rescue and legal protection for consumers.*

Keywords: Evidence; Persecution; Visum et Repertum.

1. Introduction

In modern times, a house is no longer merely a place of shelter or residence. It is one of the basic human needs, as essential as food and clothing. A house is not only a simple dwelling for building a family but can also serve as a source of income for some people by being rented or leased. Year after year, Indonesia's population continues to grow, especially in urban areas. This phenomenon has caused a sharp increase in the demand for housing. Unfortunately, this growing demand is not matched by sufficient land availability. Vacant land for building landed houses is increasingly scarce, while land and property prices continue to soar. This condition makes it difficult for lower- and middle-income groups to own their own homes. The lack of

adequate housing can reduce public welfare and even affect the overall economic condition of the country.

The urgent need for proper housing has led to the proliferation of apartment development projects in Indonesia. An apartment, or *rumah susun* as it is legally defined, refers to a multi-story building constructed within an area, divided into sections that are functionally structured, where each unit is individually owned, but the land is jointly owned. Commonly known in modern society as apartments, these vertical housing solutions are considered more efficient in addressing the problem of limited urban land. Apart from providing proper housing within a healthy environment, apartments also contribute to creating orderly, harmonious, and aesthetically pleasing residential areas. Legally, apartments are recognized and regulated under Law Number 20 of 2011 concerning Apartment Buildings (*Rumah Susun*), which stipulates their functions, purposes, residents' rights and obligations, and management procedures. Some of the notable developers engaged in apartment construction include PT Lippo Cikarang Tbk, PT Summarecon Agung, and PT PP Properti Pekayon, among others.

In practice, developers market their apartment projects using a *pre-project selling* (PPS) system. This system is carried out by the developer's marketing division through an *Agreement for Sale and Purchase Commitment* (*Perjanjian Pendahuluan Jual Beli* or PPJB) offered to potential buyers. Under this system, buyers are required to make installment payments even before the building is completed or, in some cases, before construction begins. The PPJB serves as a means for the developer to finance the ongoing construction. The rights of buyers are protected by the Decree of the Minister of Housing Affairs of the Republic of Indonesia Number 11/KPTS/1994 concerning Guidelines for Sale and Purchase Agreements of Apartment Units (*Kepmenpera No. 11/1994*). This regulation stipulates that all sale and purchase commitments for apartment units must conform to its provisions.

By entering into a PPJB with a developer, a binding legal relationship is established between the parties. Generally, every sale and purchase involves a legally enforceable agreement. A legal relationship gives rise to legal consequences that come into effect once the parties agree upon the terms, creating reciprocal rights and obligations. Consequently, both parties are required to perform the agreement accurately and in good faith, as such agreements are binding under the principle of *pacta sunt servanda*. However, in practice, the *pre-project selling* system often encounters difficulties. Selling apartment units before completion carries relatively high risks, requiring a significant level of trust from buyers toward developers, as transactions take place while the building is incomplete or still under initial construction. Frequently, apartment projects experience significant delays or fail to be completed. These problems may stem from operational risks (technical obstacles during construction), financial management risks (ineffective handling of funds), or external factors.

When a developer fails to deliver units on time or fulfill their promises, it constitutes *wanprestasi* (breach of contract). Such breaches occur when a party fails to perform its obligations, performs them improperly, performs them late, or commits actions prohibited under the agreement. Numerous developers in Indonesia have defaulted in fulfilling their

obligations to consumers, leading to stalled projects. Notable examples include the Meikarta project, which left thousands of buyers without units, and the Gading Icon Apartment case in Jakarta, which ended in court due to delays in delivery. These situations not only cause financial losses for consumers but also erode public trust in developers.

One example is the Bandung Technoplex Living (BTL) Apartment project, whose developer failed to deliver units to its customers. What makes this case particularly interesting is that the developer not only defaulted on its consumers but also faced insolvency, struggling to meet its obligations to creditors. One of the consumers, Nina Herlina, had purchased a unit in the BTL apartment project and fully paid for it, including 48 installments, receiving a Certificate of Full Payment dated November 4, 2019. According to the agreement, PT Multi Karya Utama Abadi (PT MKUA) — the developer — was obligated to deliver the apartment unit no later than July 31, 2019. However, Nina never received the Sale and Purchase Deed (*Akta Jual Beli* or AJB) or the Handover Report (*Berita Acara Serah Terima* or BAST), nor any certainty regarding project completion. Consequently, in May 2022, she filed a lawsuit against the developer at the Bale Bandung District Court. In Decision No. 99/Pdt.G/2022/PN Blb, the court ruled that PT MKUA had indeed defaulted and was required to return the purchase payment of IDR 277,981,450 to the plaintiff. Dissatisfied, PT MKUA filed an appeal and subsequently a cassation, but the Supreme Court upheld the lower court's decision, affirming that no judicial errors had occurred.

Moreover, approximately 700 other PT MKUA consumers faced similar issues, with most having paid in full but never receiving their units. Although the court declared PT MKUA in default and ordered compensation, in practice, Nina and other buyers continued to face difficulties in obtaining their rights. This situation reveals deep financial problems within the developer. When a company cannot fulfill its financial obligations and is declared bankrupt, buyers become concurrent creditors (*kreditur konkuren*) who must compete with other creditors to recover their claims — an outcome that appears inequitable for consumers.

At a certain stage, a developer's financial inability may lead to bankruptcy or a *Suspension of Debt Payment Obligations* (*Penundaan Kewajiban Pembayaran Utang* or PKPU). Through the PKPU process, a company may propose a debt-restructuring plan to postpone payments while improving its financial position. This mechanism allows the company to continue operating while providing consumers a chance to recover their losses, albeit gradually. PKPU is governed by Law Number 37 of 2004 concerning Bankruptcy and PKPU. To qualify, a debtor must have at least two creditors and be unable to pay due debts. The main purpose of PKPU is not to evade responsibility but to provide time for restructuring, thereby preventing immediate bankruptcy. In property cases like BTL, PKPU can serve as a middle ground between developers and consumers, ensuring that debt resolution proceeds fairly without unduly harming either side.

From cases such as Bandung Technoplex Living and others, it is evident that defaults in apartment sale contracts are not merely breaches of agreement but also reflect deeper issues in business continuity. Such situations demand appropriate legal measures from developers and sufficient protection for consumers to minimize their losses. Therefore, this research aims to

further examine the legal responsibility of insolvent developers as a means of fulfilling consumer rights in apartment sale disputes.

2. Research Methods

This study uses a normative (doctrinal) legal research method focusing on legal principles, legislation, and doctrines concerning the liability of insolvent developers for defaults in apartment sales. The research is descriptive-analytical, aiming to describe and analyze legal facts and the application of relevant norms in accordance with justice, consumer protection, and developer responsibility. It relies on secondary data, including primary legal sources (KUHPerdata, Law No. 8/1999, Law No. 37/2004, Law No. 20/2011, and court decisions) and secondary materials (books, journals, and literature). Data are collected through literature and document studies. The study applies statute, case, and conceptual approaches, analyzing decisions No. 99/Pdt.G/2022/PN Blb, No. 155/Pdt/2023/PT BDG, and No. 4716 K/Pdt/2023. Data are analyzed qualitatively using a deductive method, comparing legal norms with factual realities to determine the developer's legal responsibility toward consumers in insolvency situations.

3. Result and Discussion

3.1. The Ratio Decidendi of the Judges in Decision No. 4716 K/Pdt/2023 Based on Article 1239 of the Indonesian Civil Code

In the common law system, the term *ratio decidendi* is well known. It refers to the reason or legal principle underlying a judicial decision ("the reason for the decision"). Michael Zander, in *The Law-Making Process* (2004), defines it as "*a proposition of law which decides the case, in the light or in the context of the material facts,*" meaning a legal proposition that determines the outcome of a case based on and in consideration of the relevant material facts. The *ratio decidendi* represents the core legal reasoning employed by judges to reach a decision, derived from their evaluation of the proven facts presented in court.

The *ratio decidendi* of a judgment typically appears in the form of a legal proposition or juridical reasoning, which serves as a logical premise reflecting the judge's analytical process. This reasoning may be stated explicitly or implied, depending on the judge's writing style and legal argumentation technique. Essentially, it illustrates the judge's logical reasoning in connecting facts, legal norms, and conclusions.

In examining the *ratio decidendi* of Decision No. 4716 K/Pdt/2023, the judges first analyzed and verified the evidence submitted during trial—from the reading of the complaint to the evidentiary stage. Before rendering a decision, judges are obliged to ensure that the facts and testimonies presented are truthful and not fabricated. They must then determine whether the proven events establish a legal relationship between the parties, which is subsequently reflected in their judicial considerations and the operative part of the judgment (*amar putusan*).

The judges' reasoning in Decision No. 4716 K/Pdt/2023 was based on the finding that PT Multi Karya Utama Abadi (the Defendant) had committed *wanprestasi* (breach of contract) against the Plaintiff, under the Deed of Agreement No. 43 dated November 26, 2015, concerning the sale and purchase of a unit in the *Bandung Technoplex Living* apartment project. The court established that the Plaintiff had fulfilled all contractual obligations by fully paying IDR 235,577,500 for the unit, whereas the Defendant failed to deliver the apartment unit and provided no clarification or progress update regarding the project's completion. This constituted a violation of a legally binding agreement as stipulated in Article 1338 of the Civil Code, which states that "*all legally made agreements shall bind the parties as law.*"

Under Article 1239 of the Indonesian Civil Code, any debtor who fails to perform an obligation properly is required to compensate for costs, damages, and interest arising from such default. The court held that the Defendant's failure to deliver the agreed object not only breached the contract but also caused financial loss to the Plaintiff. Accordingly, the judges found it proper to order the Defendant to refund the purchase payment in full, along with applicable penalties, as stipulated in the agreement.

The judgment also reflected the application of the principle of good faith (Article 1338 paragraph 3 of the Civil Code). The court observed that the Defendant had acted in bad faith by neglecting to make reasonable efforts to resolve the issue or communicate transparently with the Plaintiff. This demonstrated that the Defendant's conduct not only constituted a contractual breach but also violated the principles of fairness and legal certainty in civil relations.

At the cassation level, the Supreme Court affirmed that the *Judex Facti*—namely, the Bale Bandung District Court and the Bandung High Court—had correctly applied the law. The lower courts had declared that the Defendant committed *wanprestasi* and ordered payment of the purchase amount plus a penalty of IDR 42,403,950, totaling IDR 277,981,450. The Supreme Court found no error in the application of law and therefore rejected all cassation arguments submitted by PT Multi Karya Utama Abadi. This reaffirmed the judiciary's commitment to upholding legal certainty and justice for aggrieved consumers and reinforcing the importance of contractual liability.

Based on the totality of evidence and reasoning, the *ratio decidendi* of this decision clearly reflects the application of Article 1239 of the Civil Code—that a party who fails to fulfill an obligation under a valid contract is legally required to compensate the aggrieved party. The judges concluded that the Defendant's failure to deliver the apartment unit constituted a breach of a lawful contractual relationship, and therefore the Defendant was liable to pay damages. The court's reasoning and final ruling are consistent with the intent and provisions of Article 1239 KUHPerdata, demonstrating a sound and lawful judicial interpretation.

3.2. Form of Liability for the Fulfillment of Consumer Rights Due to Developer Default Through the Suspension of Debt Payment Obligations (PKPU) Mechanism

In the dispute over the stalled Bandung Technoplex Living (BTL) apartment project between PT Multi Karya Utama Abadi (MKUA) as the developer and Nina Herlina as the buyer, the Supreme Court, through Decision No. 4716 K/Pdt/2023, rejected the developer's cassation petition and upheld the judgments of the Bale Bandung District Court and the Bandung High Court. The lower courts had found that the developer had committed *wanprestasi* (breach of contract) for failing to deliver the apartment unit under Deed No. 43 dated November 26, 2015, despite the buyer having paid in full IDR 235,577,500. The court ordered the developer to refund the purchase amount along with a penalty of 1‰ per day for every six months, totaling IDR 277,981,450, and to pay all court fees. Upon final review, the Supreme Court confirmed that the *judex facti* correctly applied the law, making the decision final and binding (*inkracht van gewijsde*), thus establishing the developer's legal obligation to fulfill its responsibilities toward the buyer.

However, the implementation of this ruling faced obstacles due to PT MKUA's deteriorating financial condition, which placed the company on the brink of insolvency. The developer owed obligations not only to consumers but also to contractors and financial institutions. Under such circumstances, the Suspension of Debt Payment Obligations (PKPU) mechanism serves as a viable legal instrument to ensure the developer's liabilities are fulfilled fairly, without causing broader economic or social disruption. Immediate bankruptcy (*pailit*) could trigger mass layoffs and economic instability; therefore, PKPU operates as a preventive and restorative approach that preserves business continuity while protecting creditor rights.

The PKPU mechanism (suspension of payment or *surseance van betaling*) provides the debtor an opportunity to propose a composition plan, outlining a structured repayment scheme for all creditors—including affected consumers. Through a decision by the commercial court, PKPU status allows the company to restructure its debts under the supervision of administrators (*pengurus*) and a supervising judge (*hakim pengawas*) rather than facing direct liquidation. This enables the execution of civil court rulings, such as refund orders or specific performance, by allowing phased restitution or project completion to deliver the apartment units as initially promised. The implementation of PKPU in the BTL case is justified on several grounds:

1. Continuity of Business Principle — PKPU grants the developer an opportunity to rehabilitate its financial position before asset liquidation. Through an *insolvency test*, the court assesses whether the debtor can feasibly restore operations, allowing ongoing projects to be completed and consumer rights protected.
2. Justice Principle — PKPU ensures fairness by consolidating all creditors—secured and unsecured—into one legal forum where repayment distribution is proportionate to the debtor's capacity.
3. Efficiency of Legal Process — PKPU avoids multiple fragmented civil lawsuits that might yield inconsistent judgments and complicate enforcement.

4. Consumer Protection Principle — PKPU legally recognizes consumers as concurrent creditors (*kreditur konkuren*), granting them voting rights in the composition plan, thereby ensuring their participation in decision-making.

Under Article 222(1) of Law No. 37 of 2004 on Bankruptcy and PKPU, a PKPU petition may be filed either by the debtor or by creditors. If a creditor foresees that the debtor is unable to pay debts already due, the creditor may request PKPU from the commercial court. However, it is preferable for the debtor itself to apply for PKPU, demonstrating good faith (*itikad baik*) and a willingness to fulfill its obligations responsibly. The petition must include a list of debts, creditor names, and supporting evidence, as required by Article 224(4). The commercial court must decide within three days, provisionally granting the PKPU and appointing a supervising judge and administrators to oversee debt management.

In this mechanism, Nina and other apartment buyers are classified as concurrent creditors, i.e., creditors without collateral rights but with contractual claims against the debtor. Pursuant to Articles 1131 and 1132 of the Civil Code, all of the debtor's present and future assets serve as collateral for personal obligations, ranking concurrent creditors below secured creditors but granting them proportional rights in debt settlement. As Richard Tang, cited by Rio Christiawan, argues, concurrent creditors are often better served by supporting a PKPU composition plan rather than pursuing bankruptcy, which typically results in smaller recoveries.

The debtor's responsibilities during PKPU include:

- a. Submitting a detailed debt restructuring plan (Article 265 of Law No. 37/2004), outlining compensation forms, payment schedules, interest reduction, or extensions agreed upon with creditors.
- b. Maintaining cooperation and transparency with the appointed administrators, as any unilateral action without approval is legally invalid.
- c. Providing a comprehensive list of debts and creditors with supporting documents as required under Article 224(4) of the same law.

Since PT MKUA operates as a limited liability company (Perseroan Terbatas), the debt obligation lies solely with the corporation, not with its directors or commissioners personally, unless proven negligent. This aligns with the fiduciary duty principle under Article 97(5) of the Company Law, which protects directors acting in good faith, within authority, and in the company's best interest.

Ultimately, the most effective form of liability the debtor can demonstrate is by preparing a feasible and fair debt restructuring plan that satisfies creditor expectations while reflecting the debtor's financial capacity. Upon homologation (court approval following creditor consent), the developer is legally bound to fulfill the agreed plan. As Munir Fuady suggests, an effective debt restructuring plan should include components such as:

- a. Payment scheduling and maturity adjustments
- b. Reduction of principal and interest
- c. Extension of repayment terms
- d. Debt-to-equity swap (conversion of debt into shares)
- e. Debt forgiveness or write-off
- f. Bailout or debt assumption (e.g., government intervention)
- g. Book cancellation of uncollectible debt

Through PKPU, developers like PT MKUA retain the opportunity to honor their obligations toward consumers such as Nina Herlina, either through phased refunds or project completion, while preserving business continuity and ensuring a balanced, legally supervised resolution consistent with the principles of fairness, good faith, and legal certainty.

4. Conclusion

The developer's legal responsibility toward consumers in the Bandung Technoplex Living (BTL) apartment case underscores the fundamental importance of the principle of legal certainty (*asas kepastian hukum*) in contractual relations. The developer was proven to have committed a breach of contract (*wanprestasi*) by failing to deliver the apartment unit despite the consumer having fully fulfilled her payment obligations, thereby satisfying the element of negligence as stipulated in Article 1239 of the Indonesian Civil Code. However, the issue extends beyond mere contractual default, as it also involves the developer's financial distress and inability to pay debts to multiple creditors. This condition reveals a structural problem in the developer's business continuity, indicating that resolution cannot be achieved through partial or isolated measures. In this context, the Suspension of Debt Payment Obligations (PKPU) mechanism serves as a relevant and effective legal instrument, as it provides the developer with an opportunity to restructure its debts while simultaneously ensuring proportionate protection for consumers as concurrent creditors (*kreditur konkuren*). The interrelation between breach of contract, financial insolvency, and the PKPU mechanism demonstrates that the fulfillment of consumer rights must be viewed as part of a comprehensive resolution framework, aiming to achieve both justice and effective dispute settlement in accordance with the principles of fairness, good faith, and legal certainty.

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