



## The Legal Implications of Supreme Court Circular Letter Number 3 of 2023 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU) for Property Developers

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### Abstract

Disputes between developers and creditors in the property sector often culminate in petitions for bankruptcy and Suspension of Debt Payment Obligations (PKPU), even though in practice, many are rooted in civil breach of contract (default) disputes. This condition creates legal uncertainty and has the potential to disrupt the business continuity of developers. Consequently, the Supreme Court issued Supreme Court Circular Letter (SEMA) Number 3 of 2023 as a guideline for judges in handling bankruptcy and PKPU cases involving developers. This study aims to analyze the legal implications of SEMA No. 3 of 2023 for developers facing bankruptcy petitions and to analyze the legal protection provided to creditors and consumers against such developers based on SEMA No. 3 of 2023. The results indicate that SEMA No. 3 of 2023 tightens the application of bankruptcy and PKPU against developers by emphasizing judicial prudence in assessing the elements of due and collectible debts. Simultaneously, it maintains legal protection for creditors who can clearly prove the existence of debt, thereby creating a balance between legal certainty and justice for all parties involved.

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### 1. Introduction

The progress of a nation is inseparable from its economic growth, which must be accompanied by adequate and equitable national development. In line with this, one of the objectives of national development is an effort to realize justice and prosperity for the community based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Based on the aforementioned points, national development both in physical and non-physical forms is essential and plays a vital role in the life and journey of the nation. As a tangible effort to enhance and accelerate various development endeavors, the Government of Indonesia, as the primary implementer and driver, needs to plan and organize various forms of physical development, projects, facilities, infrastructure, and suprastructure, manifested through both new construction and rehabilitation. [1]

A crucial part of achieving equitable national development is the presence of various industries to invest in Indonesia. Indonesia continues to stimulate national economic growth through various sectors, including the property and infrastructure sectors. One strategic sub-sector in national development is the real estate sector, particularly driven by property developers through the construction of flats, apartments, and commercial housing. This sector not only plays a role in providing basic housing needs but also acts as an economic driver through job creation, investment, and contributions to the Gross Domestic Product (GDP).

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<sup>1</sup> Undrizon, Yuhelson, Y.; Prasetyo, Dedy Ardian, *Effectiveness of Legal Protection for Infrastructure Development in Supporting Strategic Industries for National Welfare*, Journal of Social and Technology, Vol. 4, No. 6, 2024, pp. 305-316.

However, in practice, not all development projects by developers proceed as planned. There are many cases where developers face financial difficulties or fail to complete projects, directly impacting consumers and creditors. This condition gives rise to various legal issues, especially regarding debt settlement involving multiple parties. In this context, the legal mechanisms of bankruptcy and the Suspension of Debt Payment Obligations (PKPU), as regulated in Law Number 37 of 2004, serve as essential instruments to ensure legal certainty and justice between debtors and creditors.

Bankruptcy and PKPU are essentially legal remedies to resolve debt issues collectively. Through these mechanisms, a debtor unable to pay their debts can be declared bankrupt or obtain a payment suspension, while creditors can collect their claims fairly and proportionally. However, in practice, not all bankruptcy and PKPU petitions are automatically granted. The law requires simple evidentiary proof of debts that are due and collectible, as well as the involvement of two or more creditors.<sup>[2]</sup>

In recent years, there has been a phenomenon of increasing bankruptcy and PKPU petitions against developers who fail to fulfill their obligations to consumers and creditors. Many consumers, as the aggrieved parties, choose the PKPU or bankruptcy route to fight for their rights collectively. This creates legal complexity because issues between consumers and developers often involve multiple parties, civil disputes, and administrative or licensing aspects.

In this context, the Supreme Court issued a policy through Supreme Court Circular Letter (SEMA) Number 3 of 2023, which explicitly states that PKPU or bankruptcy petitions against developers of flats/apartments do not meet the criteria for simple evidentiary proof (*pembuktian sederhana*); thus, in principle, they cannot be filed through such mechanisms. This SEMA has since become controversial because it substantively limits legal access for creditors or consumers to bring developers into bankruptcy or PKPU processes, even though the formal requirements of the Law have been met.

The issuance of this SEMA carries several legal implications, including potential conflicts of norms between the SEMA and the Bankruptcy Law. This conflict lies in the basic principle of filing for bankruptcy; while the Bankruptcy Law explains that bankruptcy petitions can be filed through a simple evidentiary process to facilitate the proceedings, SEMA No. 3 of 2023 stipulates that such petitions cannot utilize simple proof, meaning the evidentiary process requires a more complex procedure. This leads to legal uncertainty for creditors or consumers and a shift in the court's function in examining substantive evidence. Furthermore, it raises questions regarding the legal protection for creditors or consumers as parties who should be protected in high-value, mass-scale property transactions.

Based on the background described above, the authors formulate two core problems as follows: what are the legal implications of Supreme Court Circular Letter Number 3 of

2023 on bankruptcy and the Suspension of Debt Payment Obligations (PKPU) for developers facing bankruptcy petitions? And how is the legal protection of creditors and consumers ensured against developers facing bankruptcy petitions based on SEMA No. 3 of 2023?

## 2. Research Method

The type of research conducted by the authors is normative legal research. Normative legal research is an approach within legal science that views law as a set of rules or norms governing human behavior in society. It emphasizes the analysis of written legal norms, such as laws, regulations, court decisions, and other legal documents, rather than actual social behavior.<sup>[3]</sup>

According to Soerjono Soekanto, normative legal research treats law as a system of norms the rules that serve as benchmarks for behavior and are prescriptive in nature (determining what ought to be done). Meanwhile, Peter Mahmud Marzuki states that normative legal research is "research conducted by examining library materials or secondary data, also referred to as library research."<sup>[4]</sup>

To examine the issues in this study, the following approaches are utilized:<sup>[5]</sup>

1. **Statute Approach** The statute approach is conducted by reviewing all laws and regulations relevant to the legal issue at hand, which in this case pertains to the liability of developers in construction projects. By using this approach, the authors will analyze whether there are conflicts between regulations, or any ambiguity or vacuum of norms within the laws related to the issues in this research.
2. **Conceptual Approach** In this study, the authors employ a conceptual approach by examining views and doctrines evolving within legal science, which subsequently give rise to legal definitions, concepts, and principles relevant to the researched problem.<sup>[6]</sup>
3. **Case Approach** The case approach is a method in normative legal research conducted by reviewing court decisions that have attained permanent legal force (*inkracht*) to discover the *ratio decidendi*, the judge's legal reasoning, and the application of norms in concrete events. Through this approach, researchers do not merely analyze statutory provisions textually but also examine how those norms are interpreted and applied in judicial practice. Thus, the case approach allows for a more comprehensive understanding of the consistency of legal principles, the construction of judicial arguments, and the evolution of legal interpretation within the justice system.<sup>[7]</sup> In this study, the technique for gathering materials involves identifying the legal issues that are the focus of the research; inventorying and collecting relevant laws and regulations; searching scientific literature such as law books, journals, and articles discussing related doctrines; and performing a systematic analysis of legal materials to draw legal

<sup>2</sup> Eka Putri Amalia Sari, *Legal Certainty of Simple Evidentiary Proof of Debtor's Debt in the Suspension of Debt Payment Obligations (PKPU)*, Undergraduate Thesis, Faculty of Law, University of Jember, 2023, pp. 35-40.

<sup>3</sup> Muhammad Abdulkadir, *Hukum dan Penelitian Hukum* (Law and Legal Research), PT Citra Aditya Bakti, Bandung, 2004, p. 134.

<sup>4</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Normative Legal Research: A Brief Overview), RajaGrafindo Persada, Jakarta, 2001, p. 14.

<sup>5</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Legal Research), Kencana Prenada Media Group, Jakarta, 2010, p. 35.

<sup>6</sup> Salim H.S and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi* (Application of Legal Theory in Thesis and Dissertation Research), 1st Ed, 4th Print, Raja Grafindo Persada, Jakarta, 2016, pp. 17-18.

<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Legal Research), 12th Print, Kencana Prenada Media Group, Jakarta, 2016, p. 133.

conclusions.<sup>[8]</sup> In addition to identifying legal issues, the authors also utilize library research as a data collection technique. Library research involves reviewing various written sources relevant to the research topic, such as books, scientific journals, research reports, articles, official documents, and credible online sources. This technique aims to establish a theoretical foundation, strengthen arguments, and identify existing research gaps.<sup>[9]</sup> In the context of scientific research, library research is not merely about reading or citing sources but involves a critical process of selecting, understanding, and integrating information from various references.<sup>[10]</sup>

The legal materials that have been collected and categorized are then examined using the conceptual, statutory, and other approaches to obtain a clear picture or answer to the problems focused on in this study. The management of legal materials in normative research is conducted through systematization selecting, classifying according to legal material categories, and organizing them to achieve systematic and logical results. This ensures a coherent connection between various legal materials to provide a comprehensive answer to the research findings.<sup>[11]</sup>

### 3. Discussion

#### 3.1. The Legal Implications of SEMA Number 3 of 2023 on Bankruptcy and PKPU for Developers Facing Bankruptcy Petitions

The discussion regarding the legal implications of Supreme Court Circular Letter (SEMA) Number 3 of 2023 on bankruptcy and Suspension of Debt Payment Obligations (PKPU) proceedings in developer disputes cannot be separated from the unique character of bankruptcy law as a procedural regime that is swift, simple, and collective, as well as the dynamics of judicial practice arising from the increase in disputes between developers and consumers. The issuance of SEMA No. 3 of 2023 reflects the Supreme Court's response to the phenomenon of using bankruptcy and PKPU as instruments of leverage in complex civil disputes, particularly in the property sector, which has the potential to cause injustice and business instability. Therefore, an analysis of this SEMA is crucial not only to evaluate its normative implications for the Bankruptcy Law but also to examine its theoretical foundation, consistency with legal principles, and its impact on judicial practice, in order to comprehensively understand the position of SEMA No. 3 of 2023 within the Indonesian bankruptcy law system.

The presence of SEMA Number 3 of 2023 carries significant implications for commercial court practices, both at the normative level and in daily judicial implementation. Conceptually, this SEMA strengthens the paradigm shift in Indonesian bankruptcy law from a formalistic approach

toward one that is more substantive, proportional, and oriented toward the balance of interests.

In the previous regime, the application of Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and PKPU Law) was often interpreted textually: it was sufficient to prove the existence of two creditors and one debt that was due and collectible. Consequently, the standard of "simple proof" was frequently utilized as a basis for filing bankruptcy petitions in commercial disputes that essentially still contained substantial debate regarding the existence of the debt.<sup>[12]</sup>

Through SEMA Number 3 of 2023, the Supreme Court encourages judges to conduct a deeper assessment of the context and substance of the parties' legal relationship. Thus, there is a reinforcement of the "prudential approach," which impacts several aspects as follows:<sup>[13]</sup>

#### 1. Transformation of Evidentiary Standards from Formal to Substantive

Although the Bankruptcy and PKPU Law still adheres to the principle of simple proof, this SEMA clarifies that "simplicity" must not be interpreted as an invitation to ignore substance. Judges are encouraged to ensure that the debt underlying the petition is truly manifest, due, and not subject to complex disputes. Consequently, cases involving deep contractual disputes or requiring complicated evidence may no longer be automatically processed through bankruptcy mechanisms. This encourages a clearer differentiation between:<sup>[14]</sup>

- Ordinary civil disputes;
- Disputes that truly reflect an insolvency context.

This change in approach indirectly improves the quality of legal reasoning in bankruptcy decisions and reduces the risk of rulings that are premature yet carry broad impacts.

#### 2. Reinforcement of the Public Interest Dimension in Bankruptcy

SEMA Number 3 of 2023 also implies an acknowledgment that bankruptcy cases do not solely have a private dimension. A bankruptcy declaration has consequences that extend beyond the debtor-creditor relationship, including:<sup>[15]</sup>

- a. The potential for mass layoffs;
- b. Disruptions to supply chain stability;
- c. Risks to the financial sector;
- d. A decline in investor and market confidence.

By increasing the standard of prudence, judges are implicitly asked to consider broader economic impacts.

<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Legal Research), Kencana Prenada Media Group, Jakarta, 2010, p. 133.

<sup>9</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Legal Research), 14th Print, Kencana, Jakarta, 2021, pp. 158–160.

<sup>10</sup> Sugiyono, *Metode Penelitian Pendidikan (Pendekatan Kuantitatif, Kualitatif, dan R&D)* (Educational Research Methods: Quantitative, Qualitative, and R&D Approaches), Alfabeta, Bandung, 2019, p. 291.

<sup>11</sup> Muhaimin, *Metode Penelitian Hukum* (Legal Research Methods), Mataram University Press, Mataram, 2020, pp. 67–68.

<sup>12</sup> Febrian Dirgantara, *The Role of Bankruptcy and Suspension of Debt Payment Obligations Law in Resolving Debt Disputes in Indonesia*, *Jurnal Lex Stricta* Vol. 4, No. 1, 2025, p. 155.

<sup>13</sup> Febby Aulia Dwi Sagita, *Regulation of Legal Standing and Implementation of Supreme Court Circular Letter Number 3 of 2023 on the Discretion of Commercial Court Judges in Assessing Simple Proof for Apartment PKPU Petitions (Study of Decision Number 97/Pdt.Sus-PKPU/2024/PN Niaga Jkt. Pst.)*, 2025, Thesis, Gadjah Mada University, p. 56.

<sup>14</sup> Dimas Andaru, *Non-Simple Proof in Apartment Developer Bankruptcy under SEMA 3 of 2023*, *Journal of Law and Justice*, Vol. 3 No. 1, 2025, p. 4.

<sup>15</sup> *Ibid.*

This indicates that bankruptcy is understood as part of national economic governance, rather than merely an asset distribution mechanism.

### 3. Strengthening the Function of PKPU as a Corporate Rescue Mechanism

In practice, PKPU often becomes a gateway to bankruptcy if a composition plan is not approved. SEMA Number 3 of 2023 seeks to return PKPU to its original purpose as an instrument for restructuring and corporate rescue. The practical implications include:<sup>[16]</sup>

- a) Judges being more selective in granting temporary PKPU if there are indications of abuse.
- b) The assessment of the composition plan is no longer merely a formal quorum issue but also includes economic rationality and feasibility.
- c) Creditors are encouraged to participate more rationally in the voting process, rather than focusing solely on short-term interests.

This approach strengthens the orientation toward the *going concern* principle preserving business continuity for viable prospects rather than immediately pushing for liquidation.

### 4. Prevention of Abuse of Process and Forum Shopping

This SEMA also serves as a control instrument against the practice of misusing bankruptcy as a negotiation pressure tool. In previous practices, bankruptcy petitions were sometimes filed to force debtors into payments or compromises, even if they were not substantially insolvent. With the affirmation of stricter evaluation standards, the space for such practices becomes limited. This enhances the integrity of the Commercial Court and reduces the potential for using bankruptcy as a "litigation strategy tool."<sup>[17]</sup> Conversely, the procedural certainty emphasized in the SEMA also minimizes efforts to disproportionately prolong the process. Finality and efficiency remain preserved as the primary characteristics of commercial justice.

### 3.2. Legal Protection for Creditors and Consumers Against Developers Facing Bankruptcy Petitions Based on SEMA Number 3 of 2023

Legal protection is one of the fundamental theories in legal science, explaining how the law functions to protect the interests of legal subjects from arbitrary actions, whether by the state or fellow citizens. Legal protection is rooted in the concept of the "rule of law" (*negara hukum*), which positions the law as an instrument for limiting power while simultaneously safeguarding the rights of citizens.

In the Indonesian context, the principle of the rule of law is affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a constitutional state. Consequently, all governmental actions and relationships between legal subjects must be subject to the law, ensuring the protection of constitutionally recognized rights.

Legal protection is essentially an effort to provide guarantees of certainty, justice, and utility to legal subjects through normative instruments and law enforcement mechanisms.

From a legal theory perspective, legal protection is not only repressive (occurring after a violation) but also preventive (aimed at prevention before a violation occurs).

Philipus M. Hadjon distinguishes legal protection into two primary forms:

1. Preventive Legal Protection: Protection provided before a dispute occurs, with the aim of preventing the violation of rights. This is manifested through clear normative regulations, administrative grievance mechanisms, and public participation in decision-making processes.
2. Repressive Legal Protection: Protection provided after a dispute or violation has occurred, through judicial mechanisms or other dispute resolution methods.

According to Hadjon, legal protection is a manifestation of the recognition and respect for human rights within a constitutional state.

A. Legal Protection for Creditors and Consumers Against Developers Facing Bankruptcy Based on Law Number 37 of 2004

Bankruptcy petitions against developers in the property sector carry complex legal implications, as they involve not only the legal relationship between debtor and creditor in a financing context but also the interests of consumers as purchasers of property units. In this situation, the bankruptcy regime must be able to provide balanced legal protection for all parties based on the principle of *concursum creditorum* and the principle of justice.

#### 1. Legal Protection for Creditors

In the bankruptcy system according to Law No. 37 of 2004, creditors obtain protection through the mechanism of general attachment (*sita umum*) over all the debtor's assets. From the moment the bankruptcy judgment is pronounced, all of the debtor's assets become the bankruptcy estate (*boedel*), managed by a receiver (*kurator*) under the supervision of a supervisory judge. Protection for creditors is realized through several mechanisms:<sup>[18]</sup>

- Principles of Concursum Creditorum and Pari Passu Pro Rata Parte: Bankruptcy prevents individual execution actions by creditors and replaces them with a collective mechanism. All creditors must file their claims through a verification process. The distribution of the liquidated assets is carried out proportionally according to each creditor's standing.
- Categorization of Creditors: Law No. 37 of 2004 distinguishes creditors into:
- *Secured Creditors (Separatis)*: Holders of collateral rights such as mortgages (*Hak Tanggungan*), fiduciary security, pledges, or hypothecs.
- *Preferred Creditors*: Those who hold privileges based on law.
- *Unsecured Creditors (Konkuren)*: Those without specific collateral rights.

In the context of property developers, financing banks usually act as secured creditors because they hold mortgages over the land or projects. This position grants them the right to execute the collateral despite the stay period regulated by law.

- PKPU Mechanism as an Alternative Protection: Before

<sup>16</sup> *Ibid.*, p. 5.

<sup>17</sup> Febby Aulia Dwi Sagita, *Loc. Cit.*

<sup>18</sup> Credo Woruntu, *Legal Protection for Creditors Against Bankruptcy Rulings According to the Bankruptcy Law*, 2013, Vol. 1 No. 16, p. 117.

reaching the liquidation stage, creditors also obtain protection through the Suspension of Debt Payment Obligations (PKPU) mechanism, which allows for debt restructuring through a composition plan. Thus, creditors have the opportunity to obtain more optimal payments compared to liquidation.

## 2. Legal Protection for Consumers

The position of consumers in a developer's bankruptcy has unique characteristics. Consumers have often made partial or full payments for a unit, but the object (house/apartment) has not yet been handed over or certified. If the developer is declared bankrupt, consumers face significant risks of loss. Legal protection for consumers in this context can be analyzed through several aspects:<sup>[19]</sup>

- **Legal Status of Consumers as Creditors:** In bankruptcy practice, consumers who have purchased property units but have not received the transfer of rights over the land or building are generally categorized as unsecured creditors (*kreditur konkuren*). This means their standing is beneath secured and preferred creditors in the distribution of the bankruptcy estate. This often raises issues of justice, as consumers are essentially parties who have paid to obtain property rights, yet in bankruptcy, they are positioned equally with general unsecured creditors.
- **Protection through Consumer Protection Law:** In addition to being subject to the Bankruptcy and PKPU Law, consumers are protected by Law Number 8 of 1999 concerning Consumer Protection. This law affirms the consumer's right to correct information, transaction security, and compensation for losses. However, in a bankruptcy situation, consumer claims must still be submitted through the claim verification process. This means protection based on the Consumer Protection Law must still be harmonized with the principle of collectivity in bankruptcy law.
- **Protection of Transferred Objects:** If a valid transfer of rights occurred before the bankruptcy (e.g., through a Deed of Sale and Purchase/AJB and the transfer of title on the certificate), the object is no longer part of the bankruptcy estate. In this case, the consumer obtains full protection over their property rights. Conversely, if the transfer was not perfected, the unit remains part of the bankruptcy estate under the authority of the receiver. This is what frequently causes conflicts of interest between consumers and secured creditors.

## 3. Dimensions of Balance and Justice

Law No. 37 of 2004 was primarily designed to protect the interests of creditors through a collective distribution mechanism. However, in the practice of developer bankruptcy, there is a strong social dimension concerning the right to housing and the public interest. From the perspective of legal protection theory, the state, through the instrument of bankruptcy, must ensure:<sup>[20]</sup>

- No abuse of bankruptcy petitions against developers who are still viable;
- Consumer rights are not ignored during the verification

and settlement process;

- The bankruptcy process ensures legal certainty for creditors.

## 4. Analysis

Normatively, Law No. 37 of 2004 does not yet explicitly provide specific regulations regarding consumer protection in developer bankruptcies. Consequently, consumers often find themselves in a relatively weak position as unsecured creditors. This indicates a need for harmonization between bankruptcy law and consumer protection law so that substantive justice can be achieved. In practice, judges and receivers play a vital role in interpreting provisions proportionally to protect the interests of all parties without disregarding the principle of *concursum creditorum*.

**B. Legal Protection for Creditors and Consumers Against Developers Facing Bankruptcy Based on Supreme Court Circular Letter (SEMA) Number 3 of 2023**

Legal protection for creditors and consumers in developer bankruptcy cases based on SEMA No. 3 of 2023 is part of the Supreme Court's effort to strengthen the quality and prudence of commercial court practices. This SEMA emerged in the context of increasing bankruptcy and PKPU cases against property developers, which carry broad implications—not only for the debt relationship between debtor and creditor but also for the interests of the public as property consumers. Therefore, the approach emphasized in this SEMA is no longer merely formalistic based on simple proof but leans toward a more substantive assessment of the debtor's actual condition and the social impact of a bankruptcy ruling.

For creditors, SEMA Number 3 of 2023 provides protection by strengthening the principle of judicial prudence in evaluating bankruptcy and PKPU petitions. Judges are encouraged to ensure that such petitions are truly based on a manifest condition of default, rather than merely serving as a litigation strategy or leverage in ordinary business disputes. Consequently, creditors with valid claims continue to receive adequate legal protection, while the practice of misusing bankruptcy mechanisms as an abuse of process can be minimized. Furthermore, the emphasis on the debtor's good faith in proposing and executing a PKPU composition plan serves as a vital instrument in protecting creditors' interests. If a debtor fails to demonstrate a realistic and rational commitment to debt restructuring, judges possess a strong basis to withhold protection through the PKPU mechanism, thereby maintaining legal certainty for creditors.

On the other hand, legal protection for property-buying consumers is also a pivotal dimension in the implementation of SEMA Number 3 of 2023. In developer bankruptcy practices, consumers are often in a vulnerable position, particularly when projects are unfinished or rights to the units have not been fully transferred. If a developer is declared bankrupt without careful consideration, the project may grind to a halt, leaving consumers at risk as unsecured (*konkuren*) creditors who must compete in the distribution of the bankruptcy estate. Through a prudential approach and substantive assessment, this SEMA preventively averts premature bankruptcy against developers who actually still possess business continuity prospects. Thus, opportunities

<sup>19</sup> Ibid,

<sup>20</sup> Dewi, Ni Putu Trisna, I Nyoman Putu Budiarta, *Legal Protection for Workers in Cases of Company Bankruptcy and Suspension of Debt Payment Obligations*, Jurnal Interpretasi Hukum, 2022 Vol 3, No 1, p. 67.

remain for resolution through PKPU or restructuring, allowing projects to proceed and ensuring consumer rights remain protected.

Furthermore, SEMA Number 3 of 2023 reinforces the *going concern* principle in bankruptcy and PKPU proceedings. Judges are encouraged to consider whether the debtor's business still holds economic value and salvage potential. In the context of property developers, this consideration is crucial because the continuity of a project is directly linked to the consumers' right to housing and broader public interests.<sup>[21]</sup> By emphasizing the importance of business continuity, the SEMA not only protects the debtor but also indirectly shields creditors and consumers from greater losses resulting from premature liquidation.

The substantive approach emphasized in SEMA Number 3 of 2023 also reflects a paradigm shift in Indonesian bankruptcy practice. While previously "simple proof" (*pembuktian sederhana*) in bankruptcy cases was often strictly understood based on formal requirements—the existence of two creditors and one due debt judges are now encouraged to assess the context and substance of the parties' legal relationship. This is essential to prevent forum shopping and the use of bankruptcy as an instrument of commercial pressure. In developer cases, this approach ensures that bankruptcy truly serves as an *ultimum remedium* (a last resort), rather than a means of forced negotiation that potentially harms consumers.

Overall, SEMA Number 3 of 2023 establishes a balance between creditor protection and consumer protection in developer bankruptcy cases. Creditors maintain a guarantee of legal certainty when a debtor is clearly in default, while consumers are protected from the risks of hasty bankruptcy declarations that carry broad social impacts. Although a SEMA is not a statutory law that alters the priority structure of creditors in the distribution of a bankruptcy estate, its existence serves a strategic function in shaping the standards of prudence and the quality of judicial reasoning. Consequently, the legal protection established through this SEMA is preventive, substantive, and proportional, further strengthening the legitimacy of the commercial justice system in guaranteeing justice and legal certainty for all parties involved.

#### 4. Conclusion

Supreme Court Circular Letter (SEMA) Number 3 of 2023 significantly impacts the strengthening of judicial prudence and substantive approaches in examining bankruptcy and PKPU petitions against developers. This SEMA encourages judges to look beyond formalistic "simple proof" as conventionally practiced under Law Number 37 of 2004 and instead evaluate the debtor's actual condition, their good faith in restructuring, and the broader social and economic consequences of a bankruptcy declaration. The legal implications include an elevated substantive evidentiary standard, the prevention of premature or strategic bankruptcy (*abuse of process*), and the reinforcement of the *going concern* principle within PKPU proceedings. Consequently, bankruptcy against developers is repositioned as an *ultimum remedium* (final resort) rather than a mere instrument of leverage in commercial disputes.

SEMA Number 3 of 2023 provides a more balanced legal protection for both creditors and consumers in developer bankruptcy cases. For creditors, protection is realized through a rigorous assessment of the debtor's good faith, ensuring that PKPU mechanisms are not exploited to delay obligations without a realistic restructuring plan. Meanwhile, for property consumers, protection is provided preventively by limiting hasty bankruptcy declarations and emphasizing the continuity of project operations (*going concern*), thereby preserving the opportunity for consumers to receive their property units. Although the SEMA does not alter the priority structure of creditors in the distribution of the bankruptcy estate, this policy strengthens the judiciary's role in maintaining a balance between legal certainty, justice, and the protection of vulnerable parties affected by developer insolvency.

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