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## **LEGAL CONSEQUENCES OF DEVELOPER BANKRUPTCY ON THE FULFILMENT OF SALE AND PURCHASE OBJECTS**

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### **ABSTRACT**

Private sector-driven housing development through instalment payment systems such as PPJB is one of the pillars of fulfilling the right to housing and economic growth. However, this practice poses legal risks when developers face bankruptcy. The Supreme Court Decision Number 24 K/Pdt.Sus-Pailit/2025 highlights the conflict between the rights of consumers who have paid in full and taken possession of their housing units and the principle of bankruptcy, which places all developer assets in the bankruptcy estate. The absence of certificates and formal transfer of rights creates legal uncertainty, raising fundamental questions about the legal status of uncertified houses, the protection of consumers' good faith, and the balance between creditors' rights and legal certainty for buyers. This study aims to analyse the implications of developer bankruptcy on the fulfilment of consumer civil rights, focusing on the case study of Supreme Court Decision Number 24K/Pdt.Sus-Pailit/2025. This analysis is expected to contribute to strengthening consumer legal protection while offering a fair perspective in balancing the interests of creditors and the rights of buyers of houses acting in good faith. The research method used is normative legal research with a legislative and case approach. The results of the study show that consumers' substantive ownership must be recognised if the payment has been settled and physical control of the house has been fulfilled, even if the formalities of the certificate have not been completed. Houses that have been taken possession of by consumers should not be included in the bankruptcy estate, as this disregards the principles of good faith, substantive justice, and consumer protection. The Supreme Court's decision is an important precedent for balancing legal certainty, distributive and corrective justice, and encouraging regulatory reform of housing developer bankruptcy.

**Keywords:** Bankruptcy; Developer; Sale and Purchase.

### **INTRODUCTION**

Housing sector development is an important indicator in driving national economic growth and fulfilling the basic right of the people to adequate housing.<sup>1</sup> In practice, the provision of housing by the private sector, particularly the National Housing Corporation through property developers, plays a dominant role in providing landed houses, flats, and commercial housing for the community.<sup>2</sup> The common transaction pattern is the purchase of houses in stages based on an inden or pre-project

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<sup>1</sup> Muhammad Sadam et al., "Efektivitas Kebijakan Pemerintah Pembangunan Sejuta Rumah (Analisis Pembangunan Hunian Layak Di Kabupaten Bantul Tahun 2019)," *Community : Pengawas Dinamika Sosial* 10, no. 1 (2024): 23, <https://doi.org/10.35308/jcpds.v10i1.7836>.

<sup>2</sup> Urip Santoso, *Hukum Perumahan* (Jakarta: Prenada Media, 2017).

selling system, where buyers make payments before the house is completed, even before the house has a certificate or proof of legal title in the buyer's name.<sup>3</sup>

In recent times, many instances have emerged where property developers were unable to fulfill their commitments to deliver housing units, largely because of bankruptcy. Bankruptcy refers to a legal condition in which a debtor is officially recognized as incapable of paying debts that are due and enforceable, as stipulated under Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU Law). Based on a ruling from the commercial court, such bankruptcy leads to the transfer of control over all debtor's assets to a curator, who is responsible for managing and distributing them to creditors.

Developers who encounter financial distress that eventually culminates in a bankruptcy declaration by the commercial court often face a halt in both construction activities and the delivery of housing units to purchasers. As a result, even though buyers have paid most or even all of the price of the house, they do not obtain the physical rights or certificate to the house. This situation is not only economically detrimental but also creates legal uncertainty regarding the ownership status of the agreed-upon house.

The problem becomes even more complex when the purchased property does not yet have a certificate or has not been transferred to the buyer's name, meaning that the consumer does not yet have legal ownership rights.<sup>4</sup> In civil law, ownership rights can only be fully proven if they have been registered.<sup>5</sup> However, in practice, sales agreements, proof of payment, and physical possession often form the basis of consumers' claims to the house. When a developer goes bankrupt, all of its assets, including uncertified houses, are included in the bankruptcy estate to be distributed to creditors.<sup>6</sup>

The lack of clear regulation concerning the legal position of uncertified houses in bankruptcy cases leaves wide room for differing interpretations and exposes consumers to potential financial harm.<sup>7</sup> The current national legal framework has not yet provided comprehensive protection for homebuyers in this context.<sup>8</sup> While Law No. 8 of 1999 on Consumer Protection (UUPK) upholds consumers' rights to safety, comfort, and legal certainty in their transactions, the PKPU Law, on the other hand, prioritizes the principle of equal treatment among creditors, without distinguishing homebuyers from other creditor groups. This situation gives rise to tension between the principles of civil justice and bankruptcy law.

As in the case of Supreme Court Decision Number 24K/Pdt.Sus-Pailit/2025, this is one of the developer bankruptcy cases regarding the fulfilment of the object of sale and purchase. It is known

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<sup>3</sup> Universitas Tarumanagara, "Hubungan Hukum Antara Perusahaan Properti Dan Konsumen Dalam Jual Beli Rumah Melalui Sistem Pre-Project Selling," *Rewang Rencang: Jurnal Hukum Lex Generalis*. Vol.5. 5, no. 9 (2024): 1–22, <https://ojs.rewangrencang.com/index.php/JHLG/article/view/629/295>.

<sup>4</sup> Khaidir Nasution, Ahmad Fauzi, and Ramlan, "Perspektif Hukum Pembebanan Hak Tanggungan Atas Sertifikat Hak Milik Satuan Rumah Susun Sebagai Jaminan Kredit Perbankan," *Doktrina: Journal of Law* 5, no. 2 (2022): 237–67, <https://doi.org/10.31289/doktrina.v5i2.7439>.

<sup>5</sup> Ilma Zhafirah Albar, "Kepastian Hukum Sertifikat Hak Milik Atas Tanah Bekas Hak Milik Adat Yang Penguasaannya Diklaim Oleh Subjek Hukum Lain (Studi Putusan Mahkamah Agung Nomor 1012 K/Pdt/2023)," *Indonesian Notary* 6, no. 4 (2024): 49–68, <https://doi.org/10.21143/notary.vol6.no4.49>.

<sup>6</sup> Keysa Aulia Syifa, "Perlindungan Hukum Pembeli Dalam PPJB Lunas Dalam Hal Objek PPJB Lunas Masuk Dalam Daftar Harta Pailit Developer," *Jurnal Hukum Indonesia* 5, no. 1 (2019): 28–38, <https://doi.org/10.58344/jhi.v5i1.1698>.

<sup>7</sup> Agus Wibowo, *Hukum Kepailitan* (Semarang: Penerbit Yayasan Prima Agus Teknik, 2025).

<sup>8</sup> Muhammad Alifah Ratno, "Tanggung Jawab Pengembang Pada Pemenuhan Hak Atas Prasarana, Sarana Dan Utilitas Umum Perumahan KPR Bersubsidi" (Universitas Hasanuddin, 2022).

that in the case in question are Tusy Augustine Adibroto, Murniyati, Nurbaiti, Jo Tjong Seng, Hendravita Setyasantika, Elies Muliati, Hengky Husly, Rudi Kresnawan Tan, Yulianto Adityawan, Lestari Budiarto, Agustina Ristiani, Lilik Unggul Raharjo, and Hunter Roberto (the Petitioners), all of whom are owners of residential units in the Lavanya Hills Residence housing complex. They purchased residential units from PT Graha Cipta Suksestama and PT Niman Internusa as developers (Respondents) between 2013 and 2018. The purchase transactions were carried out through a Sale and Purchase Agreement (PPJB) mechanism, which was then followed by gradual payments until full payment, with most of the Petitioners having fulfilled their obligations between 2016 and 2021. The Petitioners not only have proof of PPJB, payment receipts, and statements of full payment, but have also received the Deed of Handover (BAST) for the housing units from the developers. This shows that, legally, the Petitioners have valid rights to the housing units they purchased. However, even though the payments have been settled and the houses have been handed over, the sale and purchase deeds and certificate transfers cannot be processed due to the developer's negligence in not settling its debt obligations to BRI Agro. This situation has resulted in the master certificate not being able to be split, so that the consumers' ownership rights cannot be formalised through the issuance of certificates in the name of each buyer.

The situation became even more complex when PT Graha Cipta Suksestama and PT Niman Internusa were finally declared bankrupt based on the Commercial Court Decision at the Central Jakarta District Court Number 311/Pdt.Sus-PKPU/2021/PN Niaga.Jkt.Pst dated 10 May 2022, so that the management of the assets of the two companies was transferred to the Curator Team as the Defendant. The Curator Team then included the houses that had been purchased and controlled by the Applicants in the bankruptcy estate list, which meant that the houses were still considered part of the bankrupt company's assets. This action gave rise to a dispute because the Applicants argued that the houses should not be included in the bankruptcy estate. This was based on Supreme Court Circular Letter (SEMA) Number 4 of 2016, which states that the transfer of land rights based on a PPJB is valid if the buyer has paid in full and taken possession of the object in good faith. With these conditions fulfilled, the Petitioners consider the curator's actions to be wrong and demand that their houses be removed from the list of bankruptcy assets to ensure legal certainty regarding the civil rights of consumers as buyers acting in good faith.

This situation raises a fundamental question: what is the legal position of buyers of uncertified houses when the developer is declared bankrupt? Can the PPJB, payment in full, and physical possession be equated with property rights that should be protected by law? To what extent can the principle of good faith and consumer protection be used as a basis for demanding the exclusion of consumers' houses from the bankruptcy estate? These questions are the focus of this study.

Therefore, this study aims to analyse the implications of developer bankruptcy on the fulfilment of the civil rights of home buyers, with a focus on the case study of Supreme Court Decision Number 24 K/Pdt.Sus-Pailit/2025. This analysis is expected to contribute to strengthening legal protection for consumers in property transactions, while offering a more equitable perspective in balancing the interests of creditors with the rights of home buyers as bona fide parties amid the dynamics of the economy and national housing development practices.

## METHODS

The research method used is normative legal research.<sup>9</sup> Normative legal research is research that emphasises understanding in obtaining answers based on the principles and foundations of law applied to regulate the sovereignty of a country and efforts to resolve issues regulated in national and international legal instruments, reviewed from regulations to obtain a comprehensive understanding in analysing the issues in this research.<sup>10</sup> This research was conducted through a legislative approach and a case approach by examining Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, as well as Supreme Court Circular Letter (SEMA) Number 4 of 2016, which form the legal basis for assessing the validity of the transfer of land rights through a Sale and Purchase Agreement (PPJB). Thus, this study aims to comprehensively describe the legal issues that arise in housing developer bankruptcy disputes, while also providing a critical analysis of the protection of civil rights of consumers as home buyers.

## RESULTS AND DISCUSSION

The legal position of consumers in the context of housing developer bankruptcy cannot be separated from the theory of property rights (*zakelijke rechten*) in civil law. Property rights are absolute, giving their holders direct authority to control and enjoy an object, and can be defended against anyone (*erga omnes*). In the Indonesian legal system, ownership of land and buildings is only legally recognised if there has been a formal transfer of rights through a Deed of Sale and Purchase (AJB) made before a Land Deed Official (PPAT) and registration of the transfer of title at the land office. The legal basis for this is regulated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration (PP PT), which states that the transfer of rights over land can only be registered with a PPAT deed.<sup>11</sup> However, in practice, many house sale and purchase transactions stop at the stage of the Sale and Purchase Agreement (PPJB). The PPJB is a preliminary agreement that is obligatory in nature, not a property agreement. This means that the PPJB only creates rights and obligations to buy and sell in the future, but does not yet transfer legal ownership of the property. Even though consumers have paid the price of the house and received physical handover of the unit, they have not yet obtained formal ownership because the AJB and transfer of title have not been carried out.

This condition generates friction between formal ownership rights and substantive rights. From a formal standpoint, ownership has not yet shifted because the Deed of Sale and Purchase (AJB) and the official transfer of title have not been completed. Nonetheless, in practice, consumers already hold ownership in both economic and social terms. When a developer is declared bankrupt under Article 1 paragraph (1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU Law), all of the developer's asset including land and buildings that have not been legally transferred are deemed part of the bankruptcy estate. Articles 2 and 113 of the PKPU Law

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<sup>9</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan* (Jakarta: Raja Grafindo Persada, 2010).

<sup>10</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2008).

<sup>11</sup> Ghea Iffat Zayyan Perwiro, "Perlindungan Konsumen Yang Terikat Perjanjian Pengikatan Jual Beli (PPJB) Apabila Pengembang (Developer) Apartemen Dinyatakan Pailit (Studi Terhadap Apartemen Candiland)" (Universitas Islam Sultan Agung Semarang., 2023).

provide that upon a bankruptcy decision, the debtor's assets collectively become property shared among creditors. Consequently, bankruptcy has an automatic and comprehensive effect over all debtor-owned assets, even those still under another party's factual control but not yet formally transferred. This principle is reaffirmed in Supreme Court Decision No. 24K/Pdt.Sus-Pailit/2025, which states that the bankruptcy estate encompasses all assets of the debtor, while the consumers' actual possession may serve as a foundation for asserting substantive ownership rights.

As a result, a house that has been effectively controlled by a consumer is still considered an asset of the debtor, so that the consumer loses legal certainty over their rights. This phenomenon shows a gap between formal property rights (*rechtstitel*) and factual substantive rights (*bezitsrecht*), which creates injustice in the bankruptcy mechanism. In this situation, the trustee has the authority to take over and manage all of the debtor's assets in the interests of the creditors, so that the house that has been controlled by the consumer remains part of the bankruptcy estate, causing legal uncertainty and potential material losses for the buyer, who loses certainty regarding their rights to the house that has been paid for in full. Doctrinally, this condition shows a gap between formal property rights (*rechtstitel*) and substantive factual rights (*bezitsrecht*). In many modern legal systems, such as in the Netherlands and Germany, factual possession is recognised as the basis for protection for parties acting in good faith through the doctrine of protection of third parties acting in good faith (*derdenbescherming*), while in Indonesia this type of protection is still limited and highly dependent on the interpretation of judges.

From a civil law perspective, this situation creates a dilemma between the application of rigid legal formalities and the principle of substantive justice, whereby actual ownership that has been transferred in fact should be recognised, but procedurally has not yet been realised through a PPAT deed and transfer of title registration. As a result, consumers who have fulfilled all their contractual obligations are in a weak and vulnerable position, facing the risk of having the house they control become an asset of the debtor without compensation, thus creating an urgent need to balance legal formalities, the principle of legal certainty, and the protection of consumers acting in good faith. This conflict highlights the importance of a legal approach that does not solely assess ownership based on formal documents, but also considers the reality of possession and fulfilment of contractual obligations as key indicators of consumers' substantive rights, so that the resolution of developer bankruptcy disputes must be able to accommodate both dimensions fairly and proportionally.

The case of the Petitioners, who are owners of housing units in the Lavanya Hills Residence Housing Complex, reflects the real tension between the principle of legal certainty in bankruptcy mechanisms and the protection of consumers who have fulfilled their contractual obligations in good faith. The Petitioners purchased housing units from PT Graha Cipta Suksestama and PT Niman Internusa between 2013 and 2018 through a Sale and Purchase Agreement (PPJB), as stipulated in Article 1313 of the Civil Code, which emphasises that every agreement creates a legal obligation that is binding on the parties. All payments by the Applicants have been settled in full, with most transactions completed between 2016 and 2021, and they have received a Deed of Handover (BAST) signifying factual control and ownership of the housing units. However, the formal process required for the transfer of property rights, namely the deed of sale and purchase before a Land Deed Official

(PPAT) and the registration of the certificate transfer at the land office, could not be carried out due to the developer's negligence in settling its debt obligations to BRI Agro, so that the master certificate could not be split. This situation creates uncertainty regarding ownership rights for consumers, even though they have fulfilled all their contractual obligations in full, thereby creating tension between the substantive rights of consumers and the unfulfilled formalities of agrarian law. The situation became even more complex when PT Graha Cipta Suksestama and PT Niman Internusa were declared bankrupt through the Central Jakarta District Court Commercial Court Decision Number 311/Pdt.Sus-PKPU/2021 dated 10 May 2022, because based on Article 1 paragraph 1 of the PKPU Law, all of the debtor's assets, both movable and immovable, automatically become part of the bankruptcy estate from the moment the decision is handed down. The curator is then given the mandate to manage and settle the debtor's assets in accordance with the provisions of Article 112 of the PKPU Law, with the *pari passu prorata parte* principle requiring equal treatment for all creditors. In practice, the rigid application of this principle causes substantial injustice, because consumers who have fulfilled their contractual obligations in full are treated the same as other financial creditors who have no direct connection to the property, so that the rights of consumers acting in good faith are at risk of being ignored. This situation creates a significant legal dilemma, where consumer protection, which should guarantee the certainty and security of property transactions, clashes with bankruptcy mechanisms that focus on equal treatment between creditors, thus presenting a conflict between legal formalities and substantive justice that must be considered by the court in assessing each claim on the debtor's assets.

From a consumer protection perspective, this case can be analysed through the provisions stipulated in Article 4 letter a and Article 19 of the UUPK, which emphasise that every consumer has the right to legal certainty, security, and comfort in every transaction, while also emphasising the obligation of business actors to take full responsibility for any losses that may arise from the goods or services provided. In the context of housing developer bankruptcy, the Petitioners who have paid in full and received physical handover of the housing units demonstrate good faith behaviour that should receive substantial legal protection. However, the position of consumers becomes very vulnerable when the bankruptcy system prioritises the interests of financial creditors, so that houses that have been paid for in full and are controlled by consumers are still included in the bankruptcy estate, causing uncertainty and potential losses that should not occur.<sup>12</sup> The inclusion of consumers' houses as debtor assets in the bankruptcy estate clearly disregards the principle of substantive justice, which should provide protection to parties who have fulfilled their obligations in full and in good faith.<sup>13</sup> This is in line with the principle of good faith as stipulated in Article 1338 paragraph (3) of the Civil Code, which emphasises that every agreement must be carried out in good faith and must not arbitrarily harm other parties, so that the curator's action of including the house in the bankruptcy estate can be considered contrary to the principles of contractual justice and consumer legal protection.

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<sup>12</sup> Muhammad Boma Adichandra and Reni Budi Setianingrum, "Bentuk Perlindungan Hukum Terhadap Pembeli Rumah Dalam Penyelesaian Sengketa Kepailitan Pengembang," *Media of Law and Sharia* 3, no. 1 (2022): 1–20, <https://doi.org/10.18196/mls.v3i1.13222>.

<sup>13</sup> Darmawan Febri Padmono, "Perlindungan Konsumen Dalam Perjanjian Jual-Beli Perumahan Subsidi Pada PKPU Di Pengadilan Niaga Semarang (Studi Kasus Terhadap Putusan PKPU Pengadilan Niaga Semarang Nomor 50/Pdt. Sus-PKPU/2021/PN. SMG)" (Universitas Islam Indonesia, 2023).

Thus, this case highlights the need for a balance between bankruptcy mechanisms that prioritize creditors and substantive protection for consumers who have fulfilled all their contractual obligations, so that the principles of justice and legal certainty can be upheld simultaneously. In Indonesian legal practice, several commercial court decisions have considered the status of bona fide consumers in bankruptcy cases, including Supreme Court Decision Number 24K/Pdt.Sus-Pailit/2025, which set a precedent that bankruptcy cannot completely ignore the substantive rights of third parties who have made payments and gained physical possession.

Supreme Court Circular Letter (SEMA) Number 4 of 2016, section on General Civil Law Point 7, emphasises that the transfer of land rights through a Sale and Purchase Agreement (PPJB) can be considered valid if the buyer has fulfilled all their obligations, has actual control over the object, and has acted in good faith. Thus making the principle of good faith a crucial requirement in recognising the substantive rights of the buyer. Although SEMA does not have the same status as a law, this instrument has significant interpretative power for judges, as it provides guidelines for upholding legal certainty while protecting the rights of consumers who have acted in good faith in property transactions. In judicial practice, SEMA serves as a normative reference that can balance the formalities of agrarian law and the substantive reality of ownership, so that judges can consider aspects of physical control and fulfilment of contractual obligations as the basis for decision-making.<sup>14</sup> In the context of the Petitioners' case, SEMA became a strategic legal basis for demanding the removal of the house from the bankruptcy estate list, because the house had met the criteria for substantive transfer of rights even though the formalities of the certificate of transfer of ownership had not been carried out. This is in line with the provisions of Article 4 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration (PP PT), which emphasises the importance of formal registration procedures as an administrative mechanism, but must be read in conjunction with the principle of good faith as stipulated in Article 1338 of the Civil Code.

Thus, the SEMA not only affirms the substantive rights of buyers, but also serves as a progressive legal instrument that integrates legal certainty, substantive justice, and consumer protection in the settlement of developer bankruptcy disputes, thereby providing a strong basis for judges to make fair and proportionate decisions in the context of home ownership that has been paid in full and is actually controlled by consumers. The legal basis for bankruptcy related to this SEMA allows judges to balance the provisions of Articles 1 and 2 of the PKPU Law regarding the inclusion of the debtor's assets in the bankruptcy estate with the principle of consumer good faith, so that the substantive ownership of consumers can be recognised even if the administrative formalities have not been fulfilled.

The collaboration and harmony between civil law, agrarian law, the PKPU Law, and the UUPK show that consumer protection in the context of developer bankruptcy cannot be limited to the formal perspective of bankruptcy alone. Consumers who have completed full payment and actually control the house object have substantive rights that must be recognised and protected, in line with the principles of distributive justice and corrective justice according to Aristotle's view, which emphasises the need to reward contributions and restore the rights of injured parties. In practice, the curator's

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<sup>14</sup> Elita Rahmi, "Pembuktian Sertifikat Tanah Dan Kapita Selektta Hukum Agraria" (Universitas Jambi, 2021).

action of including consumers' houses in the bankruptcy estate is a procedural and substantial error, as it disregards the rights of consumers who have acted in good faith and fulfilled their contractual obligations.<sup>15</sup>

Therefore, the court is obliged to use SEMA as an interpretative guideline, which recognises the transfer of substantive rights when consumers have paid in full and taken possession of the object, even if the formalities of the certificate have not been fulfilled. This approach not only affirms legal certainty but also strengthens the principles of substantive justice and consumer protection, so that every court decision can balance the interests of creditors with consumer rights as stipulated in Article 113 of the PKPU Law, which regulates the authority of the trustee in managing and settling bankruptcy assets, Article 114 of the PKPU Law concerning the rights of creditors to file claims, and Article 115 of the PKPU Law concerning the return of assets that have been wrongfully included in the bankruptcy estate. In the context of this case, consumers who have factual control over the house can file a request for the house to be removed from the estate based on the principles of good faith and substantive ownership.

Thus, Supreme Court Decision Number 24K/Pdt.Sus-Pailit/2025 is an important precedent that shows that the settlement of developer bankruptcy disputes must consider the substantive rights of consumers, while also harmonising the *pari passu* principle as stipulated in Article 112 of the PKPU Law, which emphasises equal treatment for all creditors. However, the Supreme Court ruling emphasises that this equal treatment must be interpreted with due regard to the rights of third parties acting in good faith, so that consumers who have made full payments are not disadvantaged.

From the perspective of Aristoteles legal philosophy, the principle of justice is divided into two complementary dimensions, namely distributive justice and corrective justice,<sup>16</sup> both of which have significant relevance in the case of housing developer bankruptcy. Distributive justice emphasises that rights and benefits must be given in accordance with the contribution or participation of each party, so that consumers who have paid off all their housing obligations should be recognised as the substantive owners of the units they have purchased. On the other hand, corrective justice focuses on restoring the rights of parties who have been harmed by the negligence of other parties, in this case the developer's failure to fulfil its obligations to third parties, such as creditors or financial institutions that prevent the division of land certificates. This dual approach emphasises that the recognition of consumer rights is not only distributive but also corrective, ensuring that they are not harmed by the mistakes or negligence of parties that are economically stronger.

The legal basis for the application of this principle is found in Article 1338 paragraph (1) of the Civil Code, which emphasises that every valid agreement is binding as law upon the parties who made it, as well as Article 4 letter a of the UUPK, which emphasises consumers' rights to legal certainty, security, and comfort in every transaction. Thus, consumers are not only entitled to substantive recognition of ownership, but also to the removal of their homes from the bankruptcy estate list, so

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<sup>15</sup> Prita Sahada Salsabila, "Tanggung Jawab Kurator Terhadap Pemberesan Boedel Pailit Developer Yang Telah dikuasai Pembeli Rumah" (Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2024).

<sup>16</sup> Salman Tiara and Arrie Budhiartie, "Analisis Konsep Keadilan Dalam Pandangan Filsafat Hukum Aristoteles Dan Relevansinya Di Indonesia," *Jurnal Nalar Keadilan* 19, no. 2 (2024): 1–9.

that they can enjoy their rights without being disturbed by bankruptcy mechanisms that do not take good faith into consideration. Ignoring these principles of distributive and corrective justice means setting aside the principle of substantive justice, which is the moral and philosophical foundation of law, and undermining the purpose of legal protection, which should ensure a balance between legal certainty and justice for parties who have fulfilled their obligations in full. Thus, Aristoteles's perspective not only provides a philosophical basis for the enforcement of consumer rights, but also guides modern legal practice to ensure that consumers who act in good faith are not sacrificed for the sake of formal bankruptcy mechanisms that are purely procedural in nature.

The administrative approach as stipulated in Government Regulation Number 24 of 1997 concerning Land Registration emphasises that recognition of land rights only occurs through a PPAT deed and registration of a change of name, indicating an orientation towards procedural compliance and formal documentation. This approach places administrative aspects as the benchmark for the validity of ownership, without considering the substantial realities on the ground, including physical control by consumers and full fulfilment of contractual obligations. However, progressive legal theory asserts that the law should not stop at procedural compliance alone, but must prioritise the objectives of justice, balance, and benefit for the parties involved. In the context of the Petitioners, a rigid administrative approach actually causes losses for consumers, because even though they have completed all payment obligations and received the handover of the housing units, their rights are substantially hampered by unfulfilled administrative procedures. When this is combined with the provisions of Article 1(1) of the PKPU Law, which includes all of the debtor's assets in the bankruptcy estate, consumers who have a direct connection to the property object experience real injustice. Thus, an excessive emphasis on administrative procedures without regard for the substantive rights of consumers demonstrates the need for a more flexible, humane, and fair legal approach that favours those who have acted in good faith, so that the purpose of the law is not merely a formality, but truly upholds justice and protection for the community.

Supreme Court Decision Number 24K/Pdt.Sus-Pailit/2025 affirms the application of the concept of substantive ownership in the context of housing developer bankruptcy, which assesses ownership rights not solely based on formal documents such as deeds of sale and purchase before a PPAT or registration of land certificate transfers, but also considers physical control of the object and fulfilment of all contractual obligations by consumers. In this case, proof of full payment, the Sale and Purchase Agreement (PPJB), a letter of clearance, and the Handover Report (BAST) are clear indicators that substantive ownership of the housing unit has been transferred to the consumer, so that the rights to the house have been factually recognised and exercised.

Based on this principle, houses that have been taken possession of by consumers should not be included in the bankruptcy estate, as such treatment would ignore the substantive rights of parties acting in good faith and could potentially lead to injustice in the application of bankruptcy mechanisms. This approach strengthens consumer protection as stipulated in Article 19 of the UUPK, which requires business actors to be responsible for losses arising from the use of goods or services, while bridging the gap between agrarian legal formalities and the principle of substantive justice.

In the practice of developer bankruptcy, the adoption of substantive ownership by the Supreme Court has become a progressive legal instrument that ensures that consumers who have fulfilled all their obligations are not disadvantaged by administrative procedures or negligence on the part of the developer, so that ownership rights that have been realised in practice can be legally recognised and legal protection can be provided proportionally with reference to Articles 1, 2, 112, and 115 of the PKPU Law, as well as SEMA Number 4 of 2016, which forms the legal framework for the recognition of consumers' substantive rights in bankruptcy. This also confirms that the law does not only function as an instrument of administrative formality, but also as a means to uphold substantive justice, provide real legal certainty, and accommodate the interests of consumers as the weaker party in contractual relationships with developers, so that the decision has important precedent value in property bankruptcy jurisprudence in Indonesia.

The principle of good faith as stipulated in Article 1338 paragraph (3) of the Civil Code is an important foundation in modern contract theory and emphasises that every agreement must be carried out in good faith, respecting the rights and obligations of each party proportionally. In the context of housing developer bankruptcy, consumers have fulfilled all their contractual obligations by paying the full price of the housing unit in accordance with the Preliminary Sale and Purchase Agreement and receiving physical handover of the unit, which demonstrates the actual fulfilment of rights and obligations. Conversely, the developer has failed to fulfil its obligations to third parties, including the settlement of debts to the bank, which has resulted in the impossibility of certificate division and the formal transfer of ownership process. As a result, houses that have been paid in full by consumers are still included in the bankruptcy estate, so that parties who have acted in good faith are substantially disadvantaged, contrary to the principle of contractual justice that should protect consumers. Furthermore, Article 1339 of the Civil Code stipulates that all agreements must be carried out in good faith and not contrary to morality, so that the developer's neglect of its obligations and the inclusion of consumers' houses in the bankruptcy estate can be categorised as a violation of contractual principles and substantive justice. In addition, Article 115 of the PKPU Law grants third parties acting in good faith the right to request the removal of assets from the bankruptcy estate, so that consumers who have paid in full can demand that the houses they occupy be removed from the estate. Article 116 of the PKPU Law also affirms the rights of creditors and third parties to object to the curator's decision if the debtor's assets included in the estate are not in accordance with their legal rights.

The trustee's action of including the house in the estate, even though consumers had fulfilled all their obligations, demonstrates an imbalance between legal protection for parties acting in good faith and the application of formal bankruptcy mechanisms, thereby giving rise to serious implications for legal certainty and consumer rights protection in developer bankruptcy practices. Thus, this case emphasises the importance of consistently applying the principle of good faith, not only as a theoretical principle but as a practical legal instrument to ensure that consumers' contractual rights are not sacrificed for the sake of procedural interests or other creditors.

Thus, the social perspective emphasises that housing is a basic human need, not merely an economic asset, as guaranteed by Article 28H of the 1945 Constitution. The loss of housing due to

developer bankruptcy deprives consumers of their right to adequate housing, directly impacting their welfare and security. Beyond constitutional aspects, bankruptcy law provides room for consumer protection through court rulings to recognise substantive ownership and exclude homes from the bankruptcy estate, aligning with the principle of good-faith consumer protection under Article 4(a) and Article 19 of the Consumer Protection Law.

Supreme Court Decision Number 24K/Pdt.Sus-Pailit/2025 emphasises the need for an integrative dispute resolution, combining the theories of property rights, bankruptcy, consumer protection, justice, progressive law, and basic human needs, so that legal certainty, substantive justice, and benefits can be realised in a balanced manner. This decision also emphasises the application of humane bankruptcy principles, whereby the formal bankruptcy mechanisms as stipulated in Articles 1, 112, 113, 115, and 116 of the PKPU Law must be harmonised with the protection of the substantive rights of third parties acting in good faith, thus becoming an important precedent and momentum for regulatory reform to balance the principles of bankruptcy with the rights of consumers acting in good faith and substantive justice for home buyers.

With a comprehensive legal basis for bankruptcy and the interpretation of the Supreme Court, this case demonstrates the need for a legal approach that balances formality and substance, ensuring that consumers who have fulfilled all their contractual obligations are not disadvantaged, while also providing a strong legal precedent for future developer bankruptcy disputes.

## **CONCLUSION**

Based on the results of the above research, it can be concluded that consumers who have paid in full and factually control the housing unit face legal uncertainty due to the formalities of transfer of rights through the AJB and the transfer of ownership that have not been fulfilled. Formally, the house remains part of the bankruptcy estate, while substantively, consumers have acted in good faith and have economic and social rights to the unit. The Petitioners' case demonstrates the tension between the principles of formal legal certainty, protection of consumers acting in good faith, and substantive justice, as affirmed in the PKPU Law, the UUPK, Article 1338 of the Civil Code, and SEMA Number 4 of 2016. Supreme Court Decision Number 24K/Pdt.Sus-Pailit/2025 affirms the recognition of substantive ownership, where evidence of physical control, full payment, PPJB, and BAST are indicators of the validity of consumer rights even though the administrative formalities have not been completed. In conclusion, the resolution of developer bankruptcy disputes must balance legal formalities, the protection of the substantive rights of bona fide parties, and the principles of distributive and corrective justice, so that legal certainty, consumer protection, and the objectives of bankruptcy can be achieved proportionally.

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