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# Legal Protection for Consumers Acting in Good Faith in the Event of a Housing Developer's Bankruptcy

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**Abstract**

In the context of housing, the guarantee of the right to a place to live and to a healthy environment, as enshrined in Article 28H(1) of the 1945 Constitution, forms an important basis for the state to introduce regulations that provide legal protection to consumers. Regulations concerning the provision of housing are set out in Law No. 1 of 2011 on Housing and Residential Areas, whilst consumer protection is governed by Law No. 8 of 1999 on Consumer Protection. Furthermore, matters of insolvency are governed by Law No. 37 of 2004 on Insolvency and PKPU, which regulates the distribution of the insolvent estate to creditors. Problems arise when a developer, as a business operator, faces financial difficulties and is declared insolvent by the Commercial Court. In practice, it is common to find developers who pledge land or house titles to banks as collateral for debt without the consumers' knowledge. Consequently, when the developer is declared bankrupt, consumers who have completed their payments do not receive the title deeds and face the risk of losing their homes as these become part of the bankruptcy estate. This study aims to analyse the forms of legal protection available to homebuyers should the seller or developer be declared bankrupt, as well as to examine the legal standing of consumers within the bankruptcy proceedings. The research method employed is a normative legal study using a legislative approach and case studies. This situation places consumers in a vulnerable position, particularly as they are classified as unsecured creditors who possess neither preferential rights nor rights of separation.

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## INTRODUCTION

A creditor acting in good faith is a creditor who takes legal actions that should be based on the principle of prudence and with the intention of protecting their rights whilst respecting the rights of the debtor. In a debt agreement, a creditor acting in good faith means not taking

advantage of the situation or weakness of the debtor to gain an unfair advantage or cause harm to the debtor. The principle of good faith is regulated in various legal provisions in Indonesia, including:

a. Civil Code: Article 1338 paragraph (3) of the Civil Code states that all agreements must be made in good faith.
b. Law No. 8 of 1999 on Consumer Protection: Although it focuses on consumer protection, this law also emphasizes the importance of good faith in buying and selling transactions.
c. Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU): In the event that creditors and debtors face bankruptcy, they are expected to act in good faith to achieve a fair and reasonable settlement.

As creditors in good faith, they must be prepared to account for their actions in every transaction. If creditors act in good faith, but a dispute arises, they can demonstrate that they have fulfilled their obligations in accordance with the provisions of applicable law.[1] The doctrine refers to the expression "good faith" which means in this case "The buyer in good faith must be protected by the law" the principle of good faith which has a common function in the law of things, when the material right (bezit) has been obtained in good faith it must be protected by law. Sale and purchase, like a gift or the creation of a security interest in property, is essentially a means of transferring property rights, whereby the recipient subsequently gains control over the relevant property. Similarly, the buyer acquires property rights through the sale and purchase transaction they undertake. Legal protection for a buyer acting in good faith, therefore, is essentially the legal protection afforded to the buyer, as they acquire property rights in good faith.[2]

The provisions of Article 531 of the Civil Code state: “Possession in good faith occurs when the possessor acquires the goods by obtaining ownership without knowing of any defects therein.” Meanwhile, Article 532 of the Civil Code states: “Possession in bad faith occurs when the possessor knows that the goods in their possession are not their property. If the possessor is sued before a judge and loses the case, they are deemed to have acted in bad faith from the moment the case was filed.[3] In civil law, good faith is presumed to exist unless proven otherwise. Article 533 of the Civil Code expressly provides that every possessor is presumed to act in good faith, and any allegation of bad faith must be proven by the party making the claim. Accordingly, the key distinction between good-faith and bad-faith possession lies in the possessor’s knowledge of the validity of the ownership right acquired.[4]

In principle, every holder of possession (bezit) is presumed to act in good faith unless bad faith is proven in court. This reflects the legal principle that honesty is presumed, while dishonesty must be established by evidence. In land transactions, protection for good-faith buyers

[1] Sandrarina Hertanto and Gunawan Djajaputra, “Tinjauan Yuridis Terhadap Penyelesaian Wanprestasi dalam Perjanjian Jual Beli,” *UNNES Law Review* 6, no. 4 (2024), https://doi.org/10.31933/unesrev.v6i4.1905.

[2] Muhammad Amin et al., “Perlindungan Hukum Terhadap Pembeli Beritikad Baik Pada Jual Beli Hak Atas Tanah,” *Collegium Studiosum Journal* 6, no. 2 (2023): 479–91, https://doi.org/10.56301/csj.v6i2.1099.

[3] Priansya and Dira, “Analisis Putusan Hakim Kasus Noor 22/Pdt. G/2021/PN KLT Tentang Proses Peralihan Hak Yang Belum Sempurna” (Diss. Universitas BATANGHARI, Universitas BATANGHARI, 2024).

[4] Yuliza Anisa Fitri, “Perlindungan Hukum Bagi Debitur Yang Beritikad Baik Dalam Perjanjian Over Kredit,” *Jurnal Hukum Lex Generalis* 5, no. 4 (2024).

arises because the transfer of land rights requires a valid transfer of title, not merely physical possession. Accordingly, buyers who are unaware of defects in the transaction or the seller's authority are entitled to legal protection based on their good faith.[5]

Bankruptcy law creates an imbalance between secured creditors and housing consumers. While consumer protection theory requires the state to protect the weaker party, consumers who have fully paid for their homes are often classified as unsecured creditors and therefore lack priority rights in bankruptcy proceedings. Consequently, they remain in a vulnerable position despite having fulfilled their contractual:

a) Consumers do not receive title deeds.
b) Homes that have been paid for may become part of the bankruptcy estate.
c) Consumers face the risk of losing the property they have, in fact, taken possession of.

Unlike bank creditors:

a) Banks possess the capacity for risk analysis.
b) Banks have collateral instruments.
c) Banks are professional business entities.

Placing consumers on an equal footing with unsecured creditors demonstrates a failure to apply the principle of balance. Consumers acting in good faith are entitled to receive goods in accordance with the agreement, to legal certainty regarding the transaction, and not to be disadvantaged by circumstances of which they are unaware; if the goods are included in the bankruptcy estate, this constitutes a violation of consumer rights and results in structural injustice.

Bankruptcy law and consumer protection law should operate harmoniously to safeguard consumer rights. While bankruptcy law seeks to distribute the debtor's assets proportionally according to creditor classifications, based on the principles of *paritas creditorum* and *pari passu prorata parte*, such distribution should not undermine the protection owed to consumers acting in good faith.

## RESEARCH METHODS

The method of writing used in this journal is the normative legal research method. Normative legal research is conducted by examining legislation and legal doctrine. This method is used to examine statutory regulations and legal literature relating to legal liability for customers towards companies that have gone bankrupt.[6] Data analysis was carried out qualitatively, by describing the data in a structured, coherent, logical, non-overlapping and effective manner, thereby facilitating the understanding and interpretation of the data.[7] Conclusions were drawn using inductive-deductive reasoning, by applying reasoning to a general situation applicable to a specific and concrete phenomenon encountered. The process occurring in deduction is

[5] Apriyani and Nurul Aulia, "Perlindungan Hukum Bagi Pihak Penjual Terhadap Pihak Pembeli Yang Melakukan Wanprestasi Dalam Perjanjian Pengikatan Jual Beli Tanah" (Diss. Universitas Islam Sultan Agung Semarang, Universitas Islam Sultan Agung Semarang, 2024).

[6] Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, 1 (Mirra Buana Media, 2020).

[7] Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum* (PT. Citra Aditya Bakti, 2004).

concretisation, as matters formulated in general terms remain within specific contexts. General legal principles are elaborated (concretised) into concrete legal provisions, thereby enabling interpretation and the derivation of conclusions from the discussion as an effort to identify solutions to the issues addressed in this article.[8]

## ANALYSIS AND DISCUSSION

### 1. Legal Remedies of a Home Buyer Acting in Good Faith Regarding Payments Already Made to the Property Developer

Consumer protection refers to efforts aimed at safeguarding consumer rights in transactions. From a civil law perspective, it regulates the legal relationship between consumers and businesses, particularly in addressing imbalances in bargaining power. Civil law also provides mechanisms for resolving disputes through both litigation and non-litigation processes.

In cases where a consumer has paid in full but assets such as land or buildings are included in the bankruptcy estate of a housing developer, there is a procedure that can be followed to exclude the consumer's certificate or rights from the bankruptcy estate, namely by filing a separate claim (Renvooi Procedure).

1) Renvoi Procedure

   If the liquidator includes assets that have been fully paid into the bankruptcy estate, consumers can file an objection before the supervisory judge and request that the assets be excluded from the bankruptcy estate, because ownership has been effectively transferred through the fully paid sale. To support their claim, consumers can submit evidence such as proof of payment and a legalized Binding Sales and Purchase Agreement (PPJB). Based on Article 3 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU, consumers can also file other claims with the Commercial Court to challenge the inclusion of third party assets into the bankruptcy estate by the curator.

2) Separation of Assets (Exclusion from the Bankruptcy Estate)

   Under Indonesian law, assets owned by third parties but held by a bankrupt debtor must be returned to their rightful owners. This principle, commonly known as the right of separation or exclusion of assets, provides a legal basis for removing assets improperly included in the bankruptcy estate. Law No. 37 of 2004 on Bankruptcy and PKPU, particularly Articles 59, 67, and 68, protects third-party ownership rights by requiring trustees to return property that does not belong to the debtor. Accordingly, trustees may only administer the debtor's assets and not property merely under the debtor's control or custody.

Before pursuing litigation or alternative dispute resolution, consumers may submit complaints to the National Consumer Protection Agency (BPKN) regarding losses suffered, including those experienced by consumers of the Istana Arofatuna housing project. Although BPKN cannot adjudicate disputes, it facilitates dialogue between consumers and business actors

[8] Arikunto, *Manajemen Penelitian* (Rineka Cipta, 2009).

to reach an amicable settlement. If no agreement is achieved, the dispute may be referred to the Consumer Dispute Settlement Agency (BPSK) or the District Court for resolution in accordance with applicable procedural law.[9]

Consumers may resolve disputes outside the courts under the Consumer Protection Act and Article 1365 of the Civil Code, including through class actions, NGOs, or the Consumer Dispute Settlement Agency (BPSK).[10] Alternative out-of-court dispute resolution through the BPSK is regulated in Articles 45 and 47 of the Consumer Protection Act. The BPSK may resolve disputes with the consent of the parties through mediation, conciliation, and arbitration. In the context of insolvency, the BPSK route can:

1) Seek a compromise solution.
2) Postpone certain enforcement actions.
3) Seeking a fairer resolution scheme for consumers.

Under the Consumer Protection Act, out-of-court settlements may be handled by the Consumer Dispute Resolution Body (BPSK).[11] The BPSK has three methods for resolving consumer disputes, namely arbitration, mediation, and conciliation. The resolution of consumer disputes by the BPSK through mediation, conciliation, or arbitration is carried out based on the choice and consent of the parties concerned. This consumer dispute resolution is not a tiered dispute resolution process. Consumer dispute resolution by conciliation is conducted by the disputing parties themselves, assisted by a panel acting in a passive capacity as conciliators.[12]

Consumer disputes may be resolved through mediation, arbitration, BPSK, or complaints to BPKN. These non-litigation mechanisms promote fair settlements between consumers and developers, offer faster and more efficient resolution, and may prevent the immediate execution of bankruptcy assets. Consumers acting in good faith may also seek legal protection through litigation. Under Article 45(2) of the Consumer Protection Act, consumer disputes may be resolved through the courts, particularly the District Court, which applies the general rules of civil procedure in adjudicating such claims.[13]

A developer's bankruptcy has serious consequences for consumers who have fully paid for land but have not yet received title deeds. Once declared bankrupt, all of the developer's assets become subject to bankruptcy proceedings for the settlement of creditors' claims. As a result, consumers suffer significant losses because their rights remain unfulfilled due to the developer's failure to meet its obligations[14]

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[9] Rida Ista Sitepu and Hana Muhamad, *Efektifitas Badan Penyelesaian Sengketa Konsumen (Bpsk) Sebagai Lembaga Penyelesaian Sengketa Konsumen Di Indonesia*, 3, no. 2 (2021).

[10] Titia Tauhiddah et al., "Kewenangan Penyelesaian Sengketa Konsumen Lembaga Pembiayaan Antara Badan Penyelesaian Sengketa Konsumen (Bpsk) Dengan Lembaga Alternatif Penyelesaian Sengketa (Laps))," *DE LEGA LATA: Jurnal Ilmu Hukum* 5, no. 1 (2020): 94–105, https://doi.org/10.30596/dll.v5i1.3472.

[11] Rifki Putra Perdana et al., *Implementasi Penyelesaian Sengketa Konsumen Oleh Badan Penyelesaian Sengketa Konsumen Di Yogyakarta*, 3, no. 2 (2021), https://doi.org/10.37631/widyapranata.v3i2.433.

[12] Perdana et al., *Implementasi Penyelesaian Sengketa Konsumen Oleh Badan Penyelesaian Sengketa Konsumen Di Yogyakarta*.

[13] H. Salim HS dan Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi*, Cetakan Ke-1 (Raja Grafindo Persada, 2013).

[14] *Ibid*,. 111.

Consumers may seek compensation from a bankrupt developer, but in bankruptcy proceedings they are generally treated as unsecured creditors and paid only after preferred creditors. Once bankruptcy is declared, the debtor's assets come under the control of the trustee (curator). This creates tension between the Bankruptcy Act and consumer protection principles. Although Article 19(1) of the Consumer Protection Act guarantees compensation for consumer losses, bankruptcy law relegates such claims to unsecured status, thereby limiting consumer protection and potentially undermining substantive justice.

## 2. The Urgency of Legal Protection for Buyers Acting in Good Faith in the Event of a Housing Developer's Bankruptcy

The legal relationship between a developer and a buyer arises from a binding sale and purchase agreement based on the principle of freedom of contract under Article 1338(1) of the Civil Code. The developer is obliged to deliver the house as agreed, while the buyer must pay the purchase price. Houses may be acquired through cash payments, instalments, mortgage financing (KPR), or staged construction funded personally or through financial institutions.[15]

Article 1267 of the Civil Code provides that a party affected by a breach of contract may demand performance of the agreement or seek its termination along with compensation for losses. A breach-of-contract clause in a sale and purchase agreement strengthens legal protection by clarifying the parties' rights and remedies. According to Pandam Nurwulan, a PPJB or AJB remains legally valid despite a breach, as the original deed is retained by the notary/PPAT. In housing transactions, buyers generally enter into a PPJB before obtaining a land certificate, making the PPJB the primary legal instrument protecting their rights until ownership is formally transferred.[16]

One aspect of the property business is the provision whereby land or a house may be used as security for the repayment of a debt; that is, a person who owns land and/or a house has the legal right to use their assets to guarantee the repayment of a debt.[17] The provision allowing land rights to be used as collateral for debt repayment is regulated in Law of the Republic of Indonesia No. 5 of 1960. The object of a charge, as defined in Article 1(1) of Law No. 4 of 1996 on Charges, is:

"A mortgage over land and objects related to the land, hereinafter referred to as a Mortgage, is a security right imposed on the right to land as referred to in Law No. 5 of 1960 concerning Basic Agrarian Principles, whether or not accompanied by other objects forming an integral part of the land, for the settlement of a specific debt, which grants a preferential position to a specific creditor over other creditors".[18]

Under the principle of horizontal separation adopted by Law No. 5 of 1960 on Basic Agrarian Principles, repayment of secured debt may be made in stages corresponding to the value

[15] 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.

[16] Ibid.

[17] Ibid,. 4-5.

[18] Ketentuan Pasal 1 angka 1 Undang - Undang No.4 Tahun 1996 tentang Hak Tanggungan.

of the land rights released. Consequently, the mortgage remains attached only to the remaining land rights securing the outstanding debt.[19] Under Article 6 of Law No. 4 of 1996 on Mortgages, a first-ranking mortgage holder may sell the mortgaged property through a public auction if the debtor defaults and satisfies its claim from the sale proceeds.[20] When a developer is declared bankrupt, legal consequences arise regarding its outstanding obligations to property buyers. Despite the bankruptcy, the developer remains responsible for fulfilling buyers' rights, including the issuance of ownership certificates for purchasers who have not yet received proof of title.[21]

There are differences in the legal standing between buyers who already hold a certificate of ownership and those still under a preliminary sale and purchase agreement (PPJB). This is to clarify the buyer's position within the sale and purchase agreement, namely:

a) Buyers Using an Authentic Deed
   A Deed issued by a Land Deed Officer serves as evidence proving that the buyer is the new holder of the rights. The registration of the transfer of rights merely serves to reinforce the position of the buyer in relation to the developer as the seller. Article 37 of Government Regulation No. 24 of 1997 provides that the transfer of land rights through a sale and purchase can only be registered if evidenced by a deed executed before an authorised Land Deed Official (PPAT).[22] A transfer of land rights must be executed before a PPAT, whose deed serves as authentic evidence of ownership transfer. Where the house is completed and registered in the buyer's name, ownership fully vests in the buyer and is generally not subject to the developer's mortgage obligations. Therefore, if the developer is subsequently declared bankrupt, the property should not form part of the bankruptcy estate.[23]
b) Buyers Using a Private Agreement
   A private deed is executed solely by the parties without the involvement of a public official. Its evidentiary value is weaker because its authenticity must be proven in court, particularly when disputed. This becomes problematic where a buyer holds only a PPJB and the developer is declared bankrupt before construction is completed. As ownership has not yet been transferred, the property remains part of the developer's assets and may be included in the bankruptcy estate.[24]

The repossession of collateral requires a Deed of Sale and Purchase (AJB) transferring ownership from the debtor to the creditor. The execution of the AJB extinguishes the credit agreement through objective novation. As novation terminates an existing obligation, any cancellation must be sought through the courts. This mechanism aims to protect the parties to a

[19] Adichandra and Setianingrum, "Bentuk Perlindungan Hukum Terhadap Pembeli Rumah dalam Penyelesaian Sengketa Kepailitan Pengembang."

[20] Ketentuan Pasal 6 Undang - Undang No.4 Tahun 1996 tentang Hak Tanggungan.

[21] Adichandra and Setianingrum, "Bentuk Perlindungan Hukum Terhadap Pembeli Rumah dalam Penyelesaian Sengketa Kepailitan Pengembang."

[22] Ketentuan Pasal 37 Peraturan Pemerintah No. 24 Tahun 1997 tentang Pendaftaran Tanah.

[23] Adichandra and Setianingrum, "Bentuk Perlindungan Hukum Terhadap Pembeli Rumah dalam Penyelesaian Sengketa Kepailitan Pengembang."

[24] Ibid, hlm. 7-8.

reciprocal contract, particularly where one or both parties have already performed part of their obligations.[25]

1) Legal Imbalance between the Buyer and the Secured Creditor
   Under Law No. 37 of 2004 on Bankruptcy and PKPU, creditors are classified as secured, preferred, and unsecured creditors. Homebuyers holding only a PPJB are generally treated as unsecured creditors and therefore lack priority rights in bankruptcy proceedings. This places them in a weaker position than secured creditors, even when they have paid in full. Such inequality is inconsistent with the principle of justice and, from the perspective of Gustav Radbruch's theory, disadvantages good-faith buyers while undermining public confidence in the property sector. Accordingly, stronger legal protection for homebuyers in cases of developer bankruptcy is urgently needed.
2) The Weak Bargaining Position of PPJB Buyers in Bankruptcy
   A Preliminary Sale and Purchase Agreement (PPJB) is a preliminary agreement that has not yet legally transferred ownership rights. In practice, PPJBs are often used in housing transactions because construction is not yet complete or the title deed cannot yet be transferred. However, in the context of bankruptcy, the position of the PPJB is weakened because:
   a) It does not confer property rights on the buyer
   b) It does not grant preferential rights in the distribution of the bankrupt estate
   c) It relies on the developer's good faith

   Consequently, the buyer lacks sufficient legal standing to defend their rights over the housing property for which payment has been made.[26]
   According to the theory of legal protection put forward by Philipus M. Hadjon, legal protection should be provided both preventively and repressively. In this case, preventive protection for PPJB buyers is not yet optimal because:
   a) The absence of mechanisms to safeguard buyers' rights prior to bankruptcy
   b) Weak regulation of standard agreements drawn up by developers

   Furthermore, the buyer's bargaining position is also weak due to an information imbalance and the developer's dominance in determining the content of the agreement. Therefore, it is necessary to strengthen the legal standing of PPJB buyers so that they are not always disadvantaged in the event of bankruptcy.
3) Failure to Achieve Legal Objectives of Justice and Public Interest
   In developer bankruptcy cases, the objectives of justice, legal certainty, and public benefit are not fully realized. Good-faith buyers may suffer losses despite having paid for their homes, while secured creditors enjoy priority repayment. Furthermore, the absence of clear rules governing the status of PPJB buyers creates uncertainty

[25] Gunawan Widjaja dan Kartini Muljadi, *Pedoman Menangani Perkara Kepailitan*, Ed.Revisi-III (PT. Raja Grafindo Persada, 2005).

[26] Rizki Tri Anugrah Bhakti, "Perlindungan Hukum Konsumen Properti Atas Sistem Pre Project Selling Di Kota Batam," *Jurnal Cahaya Keadilan* 7, no. 1 (2019): 228–47, https://doi.org/10.33884/jck.v7i1.1196.

regarding the protection of their rights.[27] From the perspective of public interest, this situation has negative consequences for society, including:

1) A decline in trust in developers
2) Increased risk in property transactions
3) Potential for widespread economic loss

Thus, it can be concluded that the current bankruptcy law has not been able to accommodate the interests of home buyers in a fair and beneficial manner. This further underscores the urgency of the need for legal reform in this area.

4) Suboptimal Implementation of Consumer Protection Principles in the Property Sector
Law No. 8 of 1999 on Consumer Protection grants fundamental rights to consumers, such as the right to information, safety, and legal certainty. In this context, homebuyers can be categorised as consumers.
However, in the practice of the property sector, the implementation of consumer protection principles remains suboptimal, particularly regarding developer insolvency. Buyers often:
    1) Do not receive transparent information regarding the developer's financial condition
    2) Be bound by standard form contracts that are disadvantageous
    3) Do not receive protection when the developer goes bankrupt

Furthermore, there is a lack of harmony between insolvency law and consumer protection law. In insolvency proceedings, buyers are not treated as consumers who require protection, but rather as ordinary creditors. Yet, according to consumer protection theory, consumers are the vulnerable party and require protection from the state. Therefore, there should be integration between the principles of consumer protection and insolvency mechanisms, so that homebuyers continue to receive adequate legal protection.[28]

Based on Gustav Radbruch's theory, which emphasizes justice, legal certainty, and utility, the relationship between developers and buyers reflects an imbalance in bargaining power. Buyers may have paid in full or in installments, yet they do not obtain legal ownership until the execution of the Deed of Sale (AJB) and completion of land registration.

When a developer is declared bankrupt before ownership is transferred, a buyer holding only a PPJB is treated as an unsecured creditor, while mortgage holders enjoy priority status. This creates injustice because buyers may have fulfilled their payment obligations without obtaining legal title. Although legal certainty is provided through Article 1338 and Article 1267 of the Civil Code, Article 37 of Government Regulation No. 24 of 1997, and the Mortgage Rights Act, the PPJB does not transfer ownership and the land remains encumbered by a mortgage. As a result, existing legal certainty tends to favor creditors over buyers, highlighting the need for regulations that ensure both formal and substantive legal protection for good-faith purchasers.

[27] Siti Nurhasanah et al., "Tanggung Jawab Hukum Kreditur Dalam Kasus Cidera Janji Perjanjian Kredit: Studi Perbandingan Kuhperdata Dan Yurisprudensi Mahkamah Agung," *Jurnal Hukum Malahayati* 6, no. 1 (2025), https://doi.org/10.33024/jhm.v6i1.20633.

[28] Elsa Mellinda Saputri et al., "PERLINDUNGAN HUKUM TERHADAP KONSUMEN DALAM HAL PENGEMBANG (DEVELOPER) APARTEMEN DINYATAKAN PAILIT," *Jurnal Hukum Bisnis Bonum Commune* 2, no. 2 (2019): 151, https://doi.org/10.30996/jhbbc.v2i2.1936.

According to Philipus M. Hadjon, legal protection consists of preventive and repressive measures. Preventive protection should include supervision of developers, restrictions on the use of consumer funds, escrow account requirements, and prohibitions on mortgaging sold land. However, in practice, land is often mortgaged, consumer funds are not segregated, and a PPJB does not transfer ownership rights, leaving buyers inadequately protected.

Repressive protection is available through breach of contract claims, bankruptcy proceedings, and creditor claims. However, PPJB buyers are generally treated as unsecured creditors, while secured creditors holding mortgage rights enjoy priority status. As a result, these remedies often fail to provide effective protection for buyers. Although homebuyers are recognized as consumers under Law No. 8 of 1999, they remain vulnerable when the property is encumbered by a mortgage and included in the bankruptcy estate. Therefore, in terms of consumer protection theory, the buyer should be treated as a specially protected creditor, rather than merely an ordinary unsecured creditor. Their position is weak and they are merely a concurrent creditor.[29] Based on the three theories above, the urgency of regulating buyer protection arises because:

1) In terms of legal objectives, to realise substantive justice and legal certainty that protects the weaker party.
2) In terms of legal protection, preventive protection is not yet optimal and repressive protection is ineffective.
3) In terms of consumer protection, home buyers have not been positioned as consumers receiving priority protection in bankruptcy.

The urgency of regulating homebuyer protection in bankruptcy stems from structural inequalities that favor secured creditors while placing buyers in a disadvantaged position. This is exacerbated by legal gaps, including the weak legal status of the PPJB and the absence of priority rights for buyers, as well as the lack of harmony between bankruptcy and consumer protection laws. Accordingly, legal reform is needed to strengthen the position of good-faith buyers, provide them with greater protection in bankruptcy proceedings, and better integrate bankruptcy and consumer protection regimes.

## CONCLUSION

The legal position of buyers acting in good faith within the bankruptcy mechanism faced by housing sellers is in a weak position and has not yet received optimal legal protection. This is because Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations (PKPU) and Law No. 8 of 1999 on Consumer Protection do not explicitly regulate the specific legal position of consumers in bankruptcy proceedings. Consequently, the legal position does not align with the normative objectives of consumer protection in their entirety. There are two legal avenues available to buyers seeking to recover the money they have paid to a housing developer declared bankrupt by the Commercial Court: preventive and repressive measures. Preventive measures are those taken before a dispute arises, and their purpose is to prevent such disputes. Preventive measures are carried out in three stages: pre-transaction, transaction, and post-

[29] Fitri, "Perlindungan Hukum Bagi Debitur Yang Beritikad Baik Dalam Perjanjian Over Kredit."

transaction. Repressive measures are those taken to resolve disputes once they have arisen. Litigation may be pursued through civil claims, other claims, and criminal claims. As for non-litigation measures, these may involve requesting the separation of the bankrupt estate's assets, through the Consumer Dispute Resolution Body (BPSK), and consumers may also lodge complaints with the National Consumer Protection Agency (BPKN). Regulations on legal protection for buyers against housing developers (Developers) declared bankrupt by the Commercial Court in the future require amendments to Law No. 37 of 2004, Article 55(1) on Consumer Bankruptcy Law regarding the position of consumers, particularly in the bankruptcy of developers, and amendments toNo. 8 of 1999 on Consumer Protection regarding compensation for consumer losses resulting from the consumption of goods or services.

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