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The Debtor's Construction of an Extreme Grace Period Clause in a Debt Payment Suspension Settlement Proposal as a Form of Abuse of Process

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Abstract: The Suspension of Debt Payment Obligations (PKPU) under Indonesian Law Number 37 of 2004 is conceived as a collective debt restructuring mechanism aimed at preserving business continuity while ensuring balanced protection for creditors. Normatively, PKPU grants debtors the freedom to propose composition plans, including grace period clauses, which are legitimized through creditor voting and court homologation. However, the absence of clear statutory parameters regarding the length and reasonableness of grace periods has created a normative vacuum that may be strategically exploited by debtors. In practice, this flexibility has facilitated the inclusion of extreme grace period clauses that postpone debt repayment for disproportionately long periods, particularly disadvantaging legitimate creditors who lack a dominant position within the voting structure. This research analyzes the legal construction and basis for the inclusion of extreme grace period clauses in PKPU settlement proposals and assesses whether such practices constitute an abuse of process despite formal compliance with procedural requirements. Using doctrinal legal research, the study applies statutory and conceptual approaches, supported by qualitative analysis of primary and secondary legal materials through grammatical, systematic, and teleological interpretation. The findings demonstrate that extreme and selective grace periods undermine the substantive objectives of PKPU by transforming it from a balanced restructuring mechanism into a strategic tool favoring debtors. Such practices may therefore be classified as abuse of process, highlighting the need for clearer normative standards and a more substantive judicial interpretation of good faith to strengthen creditor protection and maintain the integrity of the PKPU regime.

Keyword: Extreme Grace Period; Abuse of Process; Creditor Protection; Good Faith; Debt Restructuring

INTRODUCTION

Suspension of Debt Payment Obligations (PKPU) is a legal instrument designed as a business rescue mechanism for debtors experiencing financial difficulties, while still focusing on protecting the interests of creditors collectively (Sjahdeini, 2010). In the normative construction of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt

Payment Obligations (Bankruptcy Law and PKPU), PKPU is positioned as a legal negotiation space that allows for the achievement of a peace plan between debtors and creditors to avoid bankruptcy (Silalahi, 2023). Through this mechanism, Indonesian bankruptcy law theoretically attempts to balance the principle of going concern with the principle of justice and the balance of interests of the parties involved (Sutjahjo, 2023). Normatively, the PKPU (Commission of Debt Payment) provides debtors with the opportunity to submit a composition proposal containing a debt restructuring scheme, including provisions regarding payment terms, debt reduction, and a grace period (Rifani et al., 2021). The Bankruptcy Law and the PKPU do not specify quantitative or qualitative limits on the length of the grace period that can be included in a composition proposal. This arrangement is essentially left to the agreement between the debtor and creditors, which is then institutionalized through a voting mechanism and ratification by the court in the form of a homologation decision (Pahlevi, 2024).

The structure is intended to provide debtors' flexibility in developing a composition proposal that is realistic and appropriate to their financial situation. However, in practice, this flexibility is often exploited strategically by debtors to design composition proposals that formally meet legal requirements but potentially substantially harm certain creditor groups. One practice that raises serious issues is the inclusion of extreme grace period clauses, which postpone debt payments for an extremely long period of time that is disproportionate to the nature of the debt, the debtor's capacity, or the interests of the creditors concerned (Simbolon, 2024). The problem becomes even more complex when these extreme grace period clauses are applied to legitimate creditors who are not in a dominant position in the reconciliation agreement mechanism (Wijayanta et al., 2024). In the context of a PKPU (Commercial Debt Payment Suspension), the voting mechanism places creditors in a majority-based decision-making structure, as stipulated in Article 281 of the Bankruptcy and PKPU Laws. Consequently, creditors who are not in a dominant position, whether due to the relatively small value of their receivables, late registration of claims, or limited participation in the PKPU process, often lack significant influence over the outcome of the reconciliation proposal (Kenting and Parulian, 2022). In such circumstances, debtors who are aware of the creditor voting structure have the potential to adjust the contents of the reconciliation proposal in such a way as to obtain majority approval, while simultaneously imposing a disproportionate burden on creditors who did not determine the direction of the agreement. Extreme grace period clauses then become formally valid instruments, but substantially create unequal legal protection for certain creditors. This situation raises fundamental questions about whether this practice still aligns with the purpose of the PKPU (Debt Settlement Order) as a fair debt settlement mechanism, or whether it constitutes an abuse of legal process by the debtor (Maniah, 2022).

In the procedural law and bankruptcy law, the practice of drafting a settlement proposal that strategically utilizes the procedural structure of the PKPU raises issues that extend beyond formal compliance with statutory provisions (Wibowo, 2025). Doctrinally, the law assesses the validity of an action not only from a procedural perspective, but also from the purpose and function of using the legal mechanism (Mertokusumo, 2009). It is where the concept of abuse of process becomes relevant in assessing debtor actions that are formally legitimate but substantially deviate from the legal protection objectives pursued by the PKPU.

Abuse of process is generally understood as the use of a legal process for purposes inconsistent with its intended purpose. In the context of a debt settlement agreement (PKPU), the negotiation and voting process on a settlement proposal should serve as a collective means to achieve a fair and rational debt restructuring. However, when debtors consciously design extreme grace period clauses, taking into account the configuration of creditor votes, the PKPU mechanism has the potential to be reduced to a formal legitimization tool for a scheme that inherently exploits certain parties. The problem is further exacerbated by the Bankruptcy and

PKPU Laws not providing clear parameters for assessing the reasonableness of the substance of a reconciliation proposal, particularly regarding the length of the grace period. The provisions regarding good faith in Article 285 paragraph (2) of the Bankruptcy and PKPU Laws authorize judges to reject ratification of a reconciliation proposal if it is not made in good faith. However, this provision is not accompanied by measurable normative indicators for assessing whether a clause in a reconciliation proposal, including the grace period, can be deemed a violation of good faith.

In practice, the assessment of good faith is often narrowed to the presence or absence of visible collusion, fraud, or manipulation. As a result, clauses that substantially burden certain creditors, but are agreed upon through a legitimate voting mechanism, tend to escape critical scrutiny by the courts. Homologation is then treated as a form of final legitimacy for the entire reconciliation proposal, without in-depth examination of the clause's impact on substantive justice for all creditors. This situation creates tension between the principles of legal certainty and justice in bankruptcy law. On the one hand, respect for the voting results and homologation decisions is necessary to maintain the certainty and effectiveness of the PKPU process. However, on the other hand, allowing the inclusion of extreme grace period clauses has the potential to erode legal protection for legitimate creditors outside of dominant positions and reduce the PKPU to an instrument that benefits the debtor more than a balanced debt resolution mechanism.

Furthermore, the lack of an effective objection mechanism for creditors who only learn of the PKPU after homologation exacerbates their legal situation. The legal fiction surrounding the announcement of a PKPU, as stipulated in the law, often does not guarantee factual knowledge of all creditors (Shubhan, 2015). In such situations, legitimate creditors may be bound by a reconciliation proposal containing an extreme grace period without ever having a real opportunity to influence its content or approval. It underscores the importance of critically examining the construction of extreme grace period clauses as a legal phenomenon that should not be assessed solely from a procedural perspective, but also from the perspective of abuse of the legal process.

The inclusion of extreme grace period clauses in PKPU reconciliation proposals demonstrates a shift in the function of PKPU from a debt settlement mechanism oriented toward balancing interests to a strategic instrument that debtors can exploit to unilaterally secure their interests. In this context, the grace period no longer functions as an instrument for temporary adjustments to the debtor's repayment capacity, but rather as a tool to delay the fulfillment of creditors' rights for an unreasonable period (Fuady, 2014). This shift in function has the potential to undermine the primary objectives of the PKPU (Debt Settlement Order) as formulated by the law's creators.

Theoretically, the restructuring proposal in the PKPU should reflect the principles of proportionality and economic rationality. The payment deferral period should be linked to the debtor's projected financial capacity, business prospects, and the characteristics of the debt being restructured. When the grace period is set for an extremely long period, for example, tens of years, without adequate economic justification, the clause is questionable from the perspective of contractual fairness and good faith. Furthermore, in the context of a PKPU (Commission on Dismissal of Creditors), creditors are in a less favorable position than debtors due to their reliance on a coercive collective mechanism.

The existence of a voting mechanism in a PKPU does not necessarily guarantee that the approval of a composition proposal reflects substantive justice for all creditors. Voting in a PKPU is quantitative and based on the amount of receivables, potentially leaving the interests of creditors outside of a dominant position structurally marginalized. Under these circumstances, majority approval can serve as formal legitimacy for a composition scheme that substantially disadvantages certain creditor groups, including through the imposition of an

extreme grace period. On the other hand, the role of judges in the PKPU peace homologation process tends to be limited by the procedural compliance paradigm. Homologation decisions are often based on the fulfillment of formal requirements, such as quorum and voting results, without in-depth examination of the reasonableness of the substance of the peace proposal. In fact, Article 285 paragraph (2) of the Bankruptcy and PKPU Law explicitly authorizes judges to reject ratification of a reconciliation agreement if it is not made in good faith. The provision should allow judges to assess whether the inclusion of an extreme grace period clause constitutes an exercise of rights that exceeds reasonable limits.

The absence of clear normative standards regarding the reasonable limits of the grace period and the parameters for assessing good faith in peace proposals creates a grey area in PKPU practices. This area allows for abuse of process, namely the use of the PKPU mechanism for purposes that deviate from its function of collective creditor protection. In this context, abuse of process is not always manifested through explicit fraud or collusion, but rather through normative manipulation of legitimate procedures to produce unjust legal consequences. Therefore, a study is needed that specifically examines the construction of extreme grace period clauses in debt restructuring proposals, not only from the perspective of compliance with statutory provisions, but also from the perspective of the objectives, functions, and values of justice intended to be realized by bankruptcy law. Such a study is crucial to determine whether these practices remain within the legally protected freedom of contract or have exceeded these limits and can be classified as a form of abuse of process by the debtor.

Based on this explanation, it is clear that the issue of extreme grace period clauses in debt restructuring proposals cannot be understood narrowly as a matter of debtor freedom in formulating debt restructuring schemes. This problem lies at the intersection of the normative freedom granted by the Bankruptcy and Debt Restructuring Laws and the lack of effective control instruments to prevent the misuse of the debt restructuring mechanism. In such conditions, bankruptcy procedural law has the potential to lose its corrective function and become a means of formal legitimation for practices that are detrimental to certain creditors (Kautsar and Muhammad, 2022).

Bankruptcy law literature in Indonesia has so far tended to frame discussions of restructuring proposals within the framework of procedural compliance and the effectiveness of debt restructuring. Studies specifically highlighting the grace period clause as an instrument that can be abused by debtors are relatively limited. Even when the grace period is discussed, the focus generally revolves around the technical aspects of restructuring or the success of the restructuring in preventing bankruptcy, rather than the unequal impact it creates on creditors outside of a dominant position. Furthermore, the normative approach to Article 285 paragraph (2) of the Bankruptcy Law and the PKPU (Deferred Payment for Debt) still exhibits a formalistic tendency. The concept of good faith is often understood restrictively as the absence of explicit elements of fraud or collusion, thus ignoring the more subtle but significant dimensions of procedural abuse (Hernoko, 2014). However, in the context of modern law, good faith relates not only to subjective intent but also to the objective reasonableness of the legal consequences of an action.

The absence of clear parameters regarding the reasonableness of the grace period and the lack of substantive testing in the homologation process create legal uncertainty for legitimate creditors who are not in a dominant position. These creditors may be bound by an extreme grace period clause without adequate legal means to challenge it, especially when they only learn of the PKPU (Deferred Payment Order) after the homologation decision has been rendered. The situation demonstrates the gap between the idealized principle of creditor protection in bankruptcy law and the reality of judicial practice. Therefore, this research is relevant and important to examine the construction and legal basis for the inclusion of an extreme grace period clause in a debtor's PKPU composition proposal, particularly when the

clause is applied to legitimate creditors who are not in a dominant position in the composition agreement mechanism. This study also aims to assess whether this practice can be classified as a form of abuse of process, even though it formally meets the voting requirements and is ratified through a court homologation decision.

By focusing on extreme grace periods, this research is expected to provide a conceptual contribution to the development of the abuse of process doctrine in Indonesian bankruptcy law. Furthermore, it is hoped that this research will offer a critical perspective on the role of judges in assessing the substance of settlement proposals and encourage the development of clearer normative standards regarding the reasonableness of the settlement terms for debt restructuring under the PKPU (Debt Payment Order). Ultimately, this research has not only academic significance but also practical relevance in strengthening legal protection for creditors and maintaining the integrity of the PKPU as a fair and balanced debt settlement instrument.

METHOD

This research is a doctrinal legal research, namely, research that aims to examine, interpret, and construct legal principles by positioning law as an autonomous system of norms (Crus, 2019). Doctrinal legal research was chosen because the focus of this research is to analyze the construction of grace period clauses in debt restructuring proposals for debtor-sponsored debt settlements (PKPU) and to assess whether the inclusion of such clauses, particularly those of an extreme nature, can be classified as an abuse of process by debtors based on the doctrines and principles of Indonesian bankruptcy law.

This research does not aim to collect empirical data on the behavior of the parties, but rather to examine the coherence of the norms, principles, and objectives of using the PKPU mechanism within the positive legal framework.

RESULTS AND DISCUSSION

Construction and Legal Basis for the Debtor's Inclusion of an Extreme Grace Period in the PKPU Settlement Proposal

In the Indonesian bankruptcy legal regime, the settlement proposal occupies a central position in the Suspension of Debt Payment Obligations (PKPU) process. A peace proposal is a legal instrument submitted by a debtor as a basis for debt restructuring and is the primary means of achieving a collective settlement between the debtor and his creditors. Through a composition proposal, the debtor offers a modified debt repayment scheme, whether in terms of value, timeframe, or method of implementation, with the goal of obtaining creditor approval and avoiding bankruptcy. Law Number 37 of 2004 does not provide an explicit definition of a composition proposal, but systematically, such proposals can be understood as a manifestation of the debtor's freedom to design debt settlement within the confines of the PKPU mechanism. Article 265 of the Bankruptcy and PKPU Law stipulates that the debtor has the right to submit a composition plan to creditors, which is then assessed through a voting mechanism. Therefore, normatively, a design proposal is considered a valid instrument and is protected by law. However, normative protection for a composition proposal is not absolute. The validity of the proposal is defined not only by compliance with formal procedures but also by its compliance with the objectives and fundamental principles of the PKPU as a fair and balanced debt settlement mechanism. Therefore, every clause included in a settlement proposal, including the grace period clause, must be analyzed within the framework of these functions and objectives.

The grace period, in the context of a PKPU settlement proposal, is essentially a period of debt payment deferral granted to the debtor before payment obligations begin to be fulfilled. Theoretically, the grace period functions as a temporary adjustment instrument that allows the debtor to stabilize its financial condition, restore business activities, and prepare resources to

meet payment obligations to creditors. In debt restructuring practices, grace periods are commonly used and recognized as part of a rational restructuring scheme. However, the Bankruptcy and PKPU Laws do not explicitly regulate the maximum limit or reasonable criteria for grace periods. The lack of regulation leaves debtors with ample discretion in formulating the contents of their restructuring proposals, including determining the length of the grace period. Doctrinally, this freedom should be limited by the principles of proportionality and good faith. A reasonable grace period must correlate with the debtor's financial capacity, business prospects, and the characteristics of the restructured debt. If the grace period is set for an excessively long period without adequate economic justification, the grace period shifts from an adjustment instrument to a means of delaying the fulfillment of creditors' rights.

In the practice of debt restructuring agreements (PKPU), there is a tendency to include extreme grace period clauses, namely, delaying debt payments for an extremely long period of time that is disproportionate to the economic rationale of restructuring. These extreme grace periods are often designed with the creditor structure and composition in mind, particularly in the context of the voting mechanism. Debtors who are aware of the creditor voting configuration can draft a restructuring proposal that strategically accommodates the interests of creditors in a dominant position, while imposing a heavy grace period on creditors outside the dominant position in the restructuring agreement mechanism. Such a construction does not formally violate the procedural provisions of the Bankruptcy and PKPU Laws, as the proposal is still submitted, voted on, and approved in accordance with the applicable mechanisms. However, from a doctrinal perspective, this construction raises serious issues. An extreme grace period no longer functions as a restructuring instrument, but rather as a excessive burden allocation mechanism. Legitimate creditors outside of a dominant position may be bound by a payment deferral scheme that virtually eliminates the economic value of their receivables, even though they remain legally recognized.

Normally, the legal basis for including a grace period in a composition proposal can be traced to the principle of freedom of contract and the provisions of Article 265 of the Bankruptcy and PKPU Laws. However, this freedom cannot be separated from limitations stemming from the principle of good faith and the purpose of the PKPU itself. Article 285, paragraph (2) of the Bankruptcy and PKPU Law authorizes judges to reject ratification of a settlement agreement if it is not made in good faith. This provision demonstrates that the lawmakers did not intend the voting and homologation mechanisms to provide absolute legitimacy for the entire contents of the settlement agreement proposal. In other words, there is normative space to assess the reasonableness of the proposal's substance, including the grace period clause. However, the lack of clear parameters regarding the reasonableness of the grace period means that the good faith provision is often not implemented effectively. As a result, extreme grace period clauses tend to be viewed as part of the debtor's contractual freedom, even though they have the potential to substantially undermine the objectives of PKPU and creditor protection.

The extreme grace period construction becomes even more problematic when applied to legitimate creditors outside of a dominant position in the composition agreement mechanism. Creditors in this position, although legally valid and recognized, do not have significant influence over the voting results. Under these circumstances, the collective PKPU mechanism has the potential to create inequality in legal protection. Legitimate creditors outside of a dominant position may be bound by a composition proposal that is formally valid, but substantially places them in an unfair position. This situation demonstrates that the extreme grace period construction cannot be separated from structural issues within the PKPU mechanism, particularly regarding the power relations between debtors and creditors in the process of drafting and approving the composition proposal.

Extreme Grace Period Clauses as a Form of Abuse of Process in PKPU Settlement Proposals and Their Implications for the Protection of Legitimate Creditors

Abuse of Process from a Bankruptcy Law Perspective

The concept of abuse of process essentially refers to the use of a legal mechanism that is formally valid but substantively deviates from its normative purpose and function. In legal doctrine, abuse of process is not always characterized by an explicit violation of written norms, but rather by the misuse of legal procedures to achieve goals inconsistent with the spirit of the mechanism's creation. In the context of bankruptcy law, abuse of process is a relevant issue given the collective and coercive nature of the PKPU mechanism. The PKPU binds not only the parties who actively consent but also other creditors legally bound by the homologation results. Therefore, irregularities in the use of the PKPU have the potential to have systemic impacts on creditor protection and substantive justice. The use of a composition proposal as the primary instrument in a PKPU (Commission of Payment for Debt) opens up room for abuse of process when debtors exploit the normative flexibility and structural weaknesses of the voting mechanism to secure their own interests. In this situation, formally complied with procedures are used to produce substantially unfair outcomes.

Extreme grace period clauses in PKPU composition proposals can be classified as a form of abuse of process when they are designed not to support rational restructuring, but rather to eliminate resistance from certain creditors without violating the formal terms of the agreement. Debtors, aware of the structure and configuration of creditor votes, can strategically adjust the contents of the composition proposal in such a way that agreement is still achieved, while shifting a disproportionate burden to legitimate creditors who are not in a dominant position in the voting mechanism. In this construction, the extreme grace period functions as a disguised coercive tool. Legally, creditors remain recognized and included in the composition proposal. However, economically, these creditors' rights are suspended for such a long period that they lose their actual value. This extreme delay is essentially equivalent to a denial of rights, even if it is carried out through a seemingly legitimate mechanism. The abuse of process becomes even more apparent when this extreme grace period is selectively applied. The debtor does not apply the same delay scheme to all creditors, but rather differentiates treatment based on the creditor's position within the composition agreement structure. This differential treatment is not based on business rationality or debt characteristics, but rather on strategic calculations regarding the voting mechanism.

The voting mechanism in the PKPU is intended as an instrument for democratizing collective decision-making. However, in practice, this mechanism can become an instrument of formal legitimacy for substantially problematic proposals. Once the debtor has secured the approval of key creditors, the voting mechanism no longer functions as a means of testing the proposal's reasonableness, but rather as a formality for achieving homologation. In this context, legitimate creditors outside of a dominant position lose effective bargaining power. Although formally entitled to vote or recognized as creditors, their objections have no significant impact on the outcome. The situation creates a structural imbalance that allows debtors to abuse their discretion in drafting a reconciliation proposal. Extreme grace period clauses are one concrete example of this abuse. The debtor does not violate quorum requirements or approval requirements, but instead uses knowledge of the voting configuration to maximize their own interests. Thus, the voting mechanism, which should function as a protector of collective interests, instead becomes a means of facilitating abuse of process.

Article 285 paragraph (2) of the Bankruptcy and PKPU Law authorizes judges to reject ratification of a reconciliation if it is not made in good faith. The provision provides a normative entry point for correcting abuse of process in PKPU. However, in practice, good faith is often interpreted narrowly, limited to the existence of fraud, fabrication, or conspiracy that can be explicitly proven. Such an approach potentially overlooks structural and subtle forms of abuse

of process. Extreme grace period clauses are not always accompanied by easily demonstrable evidence of collusion or malicious intent. However, from a doctrinal perspective, good faith cannot be reduced solely to the absence of fraud but must be understood as an obligation to act appropriately, proportionately, and not abuse one's position or available legal mechanisms. Thus, an extreme grace period clause that clearly sacrifices the interests of certain legitimate creditors can be considered an indication of a lack of good faith, even if formal procedures have been met. In this context, judges should not be absolutely bound by the voting results, but rather have the latitude to assess the substance and impact of the clause.

The recognition of extreme grace period clauses as a form of abuse of process has important implications for the protection of legitimate creditors in PKPU (Commitment to Determination of Creditors). First, it emphasizes that the validity of a composition proposal depends not only on majority approval, but also on the reasonableness of its substance and impact on all creditors bound by the composition. Second, this approach encourages a shift in the judge's role from merely formal ratification to safeguarding substantive justice in the PKPU process. Judges not only assess the fulfillment of quorum and voting requirements but also assess whether the composition proposal was prepared and used in a proper, lawful manner, or whether it is being misused as a tool to abuse the legal process. Thus, the analysis of extreme grace period clauses as an abuse of process opens up space for the development of bankruptcy legal doctrine that is more oriented toward creditor protection and the fundamental purpose of the PKPU (Debt Settlement Order) as a restructuring mechanism, rather than as a means of arbitrary suspension of obligations. The problems or research hypotheses that have been formulated previously.

CONCLUSION

Although the inclusion of a grace period clause in a PKPU restructuring proposal is normatively justified under Law Number 37 of 2004 as part of the debtor's right to propose a settlement plan, the absence of clear substantive parameters regarding proportionality and reasonableness creates excessive discretion that enables the construction of extreme and selectively applied grace period clauses, which in practice shift disproportionate burdens onto non-dominant legitimate creditors, undermine the function of PKPU as a fair and balanced debt settlement mechanism, and may therefore be classified as an abuse of process that warrants substantive judicial scrutiny through a progressive and corrective interpretation of the principle of good faith.

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