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Protection of the Rights of Secured Creditors Who Reject the Composition in the Suspension of Debt Payment Obligations: An Analysis of Articles 281 and 286 of the Law on Bankruptcy and Suspension of Debt Payment Obligations from the Perspective of Legal Politics and Legal Certainty

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Abstract: This research analyzes the legal position of secured creditors who reject the composition in the Suspension of Debt Payment Obligations (PKPU) process, particularly in relation to the normative conflict between the Law on Mortgage Rights (UUHT) and the Law on Bankruptcy and Suspension of Debt Payment Obligations (UUK PKPU). The UUHT provides absolute protection through the principles of *droit de préférence* and *droit de suite*, whereas the PKPU limits these rights through the stay period and the voting mechanism of the composition plan. Tension arises when secured creditors who reject the composition remain bound by the voting outcome, even though their rights originate from proprietary security rights that constitute real rights. By using a normative juridical method enriched with a legal hermeneutic approach, a limited comparative analysis, and a legal-political analysis, this research finds that Articles 281 and 286 of the UUK PKPU do not provide adequate protection mechanisms for secured creditors. The minutes of the Working Committee of the House of Representatives of the Republic of Indonesia (DPR-RI) in 2004 indicate that the lawmakers did not intend to downgrade the status of proprietary rights; thus, the current normative design of the PKPU creates a legislative gap that deviates from the original objectives of its formation. The lack of synchronization between the Law on Mortgage Rights (UUHT) and the Law on Bankruptcy and Suspension of Debt Payment Obligations (UUK PKPU) creates legal uncertainty, undermines substantive justice, and has serious implications for the investment climate and national financial stability. This research recommends regulatory harmonization through objection procedures, opt-out mechanisms, protection of collateral value, and the revision of Article 286 of the UUK PKPU to align with the principles of proprietary rights and international standards of creditor protection.

Keywords: Mortgage rights, legal certainty, secured creditors, Suspension of Debt Payment Obligations (PKPU)

INTRODUCTION

The legal system of bankruptcy and the Suspension of Debt Payment Obligations (Indonesian: *Penundaan Kewajiban Pembayaran Utang*; PKPU) is essentially designed as an instrument for collective debt settlement that prioritizes the principles of speed, efficiency, and justice for all parties involved.[1]

28, no. 3 (2021): 412–430.. However, developments in practice over more than two decades indicate unresolved normative tensions, particularly regarding the legal position of secured creditors holding mortgage rights. In many cases, secured creditors are placed in a less favorable position when confronted with composition plans proposed by the debtor or by other majority creditors, thereby raising fundamental questions about the extent to which the state provides protection for absolute proprietary rights. The conduct of modern business relies heavily on guarantees of legal certainty, especially for creditors who provide financing secured by proprietary rights.

In the Indonesian context, the position of secured creditors, particularly holders of Mortgage Rights, constitutes one of the main pillars of the national financing system. The right of secured creditors to independently execute the collateral object is affirmed through the principles of *droit de préférence* (right of priority) and *droit de suite* (right of follow-up) under the Law on Mortgage Rights concerning Mortgage Rights over Land and Objects Related to Land (*Hak Tanggungan atas Tanah Beserta Benda-Benda yang Berkaitan dengan Tanah*; UUHT), which places proprietary security as an absolute right and one that does not depend on the condition of the debtor[2].

According to the principle of *droit de préférence* as regulated in Article 1 paragraph (1) of the UUHT, which states: "Mortgage Rights over land and objects related to land, hereinafter referred to as Mortgage Rights, are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, with or without other objects that constitute an integral part of the land, for the settlement of a specific debt, which grant a preferred position to certain creditors over other creditors"; the existence of this principle grants priority rights to the holders of mortgage rights to receive repayment first from the proceeds of the sale of the object of mortgage rights, setting aside other creditors as explained in point 4 of the General Explanation of the UUHT.

That with the existence of the right of priority, creditors holding mortgage rights may carry out self execution by using the executorial clause contained in the Mortgage Certificate, namely *For the Sake of Justice Based on the One and Only God* (Article 14 paragraph (1) of the UUHT). Such executive power is based on Article 6, in conjunction with Article 20 of the UUHT. Article 6 of the UUHT stipulates that if the debtor is in default, the first Mortgage holder has the right to sell the object of the Mortgage on its own authority through a public auction and to obtain repayment of its receivable from the proceeds of such sale. Likewise, Article 20 of the UUHT stipulates that if the debtor is in default, then based on: a) the right of the first Mortgage Rights holder to sell the object of the Mortgage Rights as referred to in Article 6; or b) the executorial title contained in the Mortgage Rights certificate as referred to in Article 14 paragraph (2), whereby the object of the Mortgage Rights is sold through a public auction in accordance with the procedures stipulated in the prevailing laws and regulations for the settlement of the receivable of the Mortgage Rights holder with priority over other creditors, and paragraph (2) provides that based on the agreement between the

[1] Yudha Hernoko, "Efisiensi dalam Penyelesaian Sengketa Perdata Melalui PKPU," Jurnal Hukum IUS QUIA IUSTUM
28, no. 3 (2021): 412–430.

[2] Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan atas Tanah Beserta Benda-Benda yang Berkaitan
dengan Tanah, Pasal 6 dan Pasal 20.

grantor and the holder of the Mortgage Rights, the sale of the object of the Mortgage Rights may be carried out by private sale if such a method enables the highest price to be obtained for the benefit of all parties.

In addition to the principle of *droit de préférence*, the principle of *droit de suite* is also recognized as regulated in Article 7 of the UUHT, which states: “Mortgage Rights shall continue to follow the object in whosever hands the object is located.” This constitutes an explicit provision concerning *droit de suite*, emphasizing that if the debtor is in default, the object of the mortgage rights may be sold, even if it has changed hands, because the mortgage rights follow the object. Therefore, the existence of secured creditors is not merely a technical issue, but rather concerns the fundamental structure of legal protection within the economy.

However, the enactment of Law Number 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations (UUK PKPU) appears to have weakened the previously enacted UUHT. When the Suspension of Debt Payment Obligations (PKPU) mechanism was introduced as an instrument for collective debt restructuring, a tension emerged between secured creditors' execution rights and the PKPU's objective of providing debtors with space to continue their business operations. This tension becomes increasingly evident when secured creditors reject the composition, yet remain “drawn into” a voting and restructuring scheme to which they did not consent. The issue becomes crucial: can the rights of secured creditors be compromised through the PKPU mechanism under Articles 281 and 286 of the UUK PKPU, even though their rights originate from proprietary security rights that are absolute in nature[3]? According to Article 281 paragraph (2), which states that “Creditors as referred to in paragraph (1) letter b who do not approve the composition plan are granted compensation in the amount of the lowest value between the value of the collateral or the actual value of the loan that is directly secured by proprietary collateral rights.” Furthermore, under Article 286, a composition that has been ratified is binding on all Creditors, except those who do not approve the composition plan under Article 281, paragraph (2).

On the other hand, various legislative drafting records from 2004 indicate that the lawmakers never intended to lower the status of separatist rights within the PKPU forum[4]. The lack of synchronization between these normative objectives and their implementation in practice reveals an interpretative gap that needs to be seriously evaluated through a comprehensive and analytical methodological approach.

Normatively, the PKPU is designed as a consensual forum to provide debtors with an opportunity to restructure their obligations before entering the bankruptcy stage[5]. The primary objective of the PKPU is to prioritize business rescue by encouraging the formulation of a composition plan approved by the creditors. Nevertheless, in practice, a conflict occurs between the principle of business rescue and the protection of the proprietary rights of secured creditors, which are normatively *erga omnes* (“applicable to all persons” or “binding on all parties”) and cannot be infringed by collective mechanisms, except within the limits that have been determined by law.

Textually, the UUHT grants direct execution rights, whereas the UUK PKPU restricts such execution rights through the stay period and the voting scheme. The provisions of Article 281 of the UUK PKPU do not provide a specific protection mechanism for secured creditors who reject the composition, while Article 286 of the UUK PKPU regulates

[3] Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, Pasal 281
dan Pasal 286.

[4] Risalah Rapat Panitia Kerja RUU Kepailitan dan PKPU, DPR RI, 2004.

[5] Rio Christiawan, “PKPU sebagai Mekanisme Business Rescue,” Jurnal Hukum dan Peradilan 7, no. 1 (2018).

nullification by operation of law, which likewise does not address situations in which secured creditors have never approved the composition from the outset[6]. This conflict concerns not only normative aspects but also the consistency of the legal system, contractual justice, and the political legitimacy of the lawmaker's legal policy.

When examined from the minutes of deliberations on the PKPU Bill in 2004, several members of the Working Committee (Panja) of the the House of Representatives of the Republic of Indonesia (DPR-RI) expressed concern that the PKPU could become a means of abuse by debtors to delay their payment obligations. The Government, through the Minister of Justice, also emphasized that the PKPU was intended to ensure efficiency in debt settlement and the rescue of the debtor's business, not to reduce or suspend the proprietary rights of security holders[7]. Even in the Government's official explanation, it was emphasized that the PKPU should function only as a restructuring mechanism, not as a means to curtail the execution rights ordinarily held by secured creditors[8]. However, this idealization is not fully reflected in the formulation of the provisions. According to Frans Magnis Suseno, this is precisely where a hermeneutic approach becomes relevant to interpret the horizon of understanding of the lawmakers, namely the relationship between the text, the context, and the values intended to be achieved by the regulation[9].

In addition to legislative issues, problems of interpretation also constitute the root of normative tension. Within the framework of legal hermeneutics, particularly the hermeneutical coherence approach, legal norms must not be interpreted in isolation, but rather must be understood within the network of meaning of the legal system[10].

Although there are several studies on the position of secured creditors, most analyses stop at traditional normative interpretation or at the examination of particular court decisions. There is almost no research that specifically examines the position of secured creditors who reject the composition, as well as its implications within the PKPU voting mechanism. In addition, studies that connect this issue with the legal politics underlying the formation of the UUK PKPU and its impact on the business climate and investor confidence remain very limited. This article seeks to address this research gap.

This issue has strategic relevance in the context of the Indonesian economy. Amid the government's efforts to promote industrialization and increase investment inflows, legal certainty regarding creditors' proprietary rights is a key pillar of financial stability. Investors, both domestic and foreign, pay close attention to the effectiveness of the execution of proprietary security in the event of default. If the PKPU regime places secured creditors in a vulnerable position, this may reduce investor confidence and increase financing costs (cost of funds), which in turn affects the competitiveness and growth of the national industry[11].

A financing system that does not provide guarantees of legal certainty for proprietary security rights will increase the cost of capital (cost of funds), reduce the willingness of financial institutions to extend credit, and ultimately hinder the industrial development agenda that constitutes a national priority[12]. In the context of national economic policy, particularly in efforts to promote industrial transformation and attract long-term investment flows, legal certainty for secured creditors constitutes a non-negotiable requirement.

This article focuses its analysis on three research questions:

[6] Lihat juga pembahasan sistem PKPU dalam Munir Fuady, Hukum Pailit (Bandung: Citra Aditya Bakti, 2005), 77–85.

[7] Risalah Rapat Panitia Kerja RUU Kepailitan dan PKPU, DPR RI, 2004

[8] Keterangan Pemerintah atas RUU Kepailitan, 2004.

[9] Frans Magnis-Suseno, Etika dan Hermeneutik dalam Filsafat Hukum, 2010.

[10] Hans-Georg Gadamer, Truth and Method (New York: Continuum, 1989), 291–310.

[11] Rio Christiawan, Hukum Kepailitan (Jakarta: Prenadamedia, 2019), 102–105.

[12] World Bank, Secured Transactions and Investment Climate, 2020.

1. What is the legal position of secured creditors within the PKPU mechanism, particularly when they reject the composition?
2. How should the legal political interpretation of Articles 281 and 286 of the UUK PKPU be understood in light of the lawmakers' intent and the characteristics of proprietary rights under the UUHT?
3. What are the implications of this normative inconsistency for legal certainty, creditor protection, and the investment climate in Indonesia?

Accordingly, this article aims to examine the legal conflict between the UUHT and the UUK PKPU, to interpret the lawmakers' horizon of understanding using a thin hermeneutic approach, and to formulate legal policy recommendations to strengthen the protection of secured creditors without disregarding the objectives of the PKPU. This legal conflict, in essence, cannot be resolved merely by applying principles commonly used to address disputes between regulations of equal hierarchy, as observed in the core analysis of the undergraduate thesis by Mesa Indra Naiborhu[13].

RESEARCH METHODOLOGY

This research used a normative juridical method, along with conceptual, statutory, historical, legislative, legal hermeneutic, and limited comparative approaches. These approaches were selected because the issue of the legal position of secured creditors who reject the composition in the PKPU constitutes a matter situated at the intersection of the dogmatics of proprietary security law, the legislative techniques underlying the formation of the UUK PKPU, and the dynamics of legal certainty within the national investment and financing climate.

The normative juridical method positions law as written norms and doctrine. Peter Mahmud Marzuki explains that normative legal research is not only descriptive but also produces prescriptive arguments concerning what ought to be according to law[14]. Accordingly, the study focuses not on social behavior but on the validity, coherence, and consistency of legal norms. This approach is relevant when assessing the relationship between Articles 6 and 20 of the UUHT and Articles 281 and 286 of the UUK PKPU.

Johnny Ibrahim also emphasizes that normative legal research is grounded in three primary sources: legislation, doctrine, and court decisions, all of which must be systematically analyzed to formulate legal prescriptions that can be academically and legally justified[15]. This approach reinforces the use of the statute approach as the foundation of the analysis.

As explained by Theo Huijbers, normative concepts such as proprietary rights and legal certainty can only be fully understood when they are situated within a legal philosophical framework that views law not merely as positive rules, but also as an expression of societal values and moral structures[16].

1. Statutory Approach

   The statutory approach is employed to systematically analyze the provisions of the UUHT and the UUK PKPU. The analysis focuses on Articles 6, 20, and 21 of the UUHT (execution rights, *droit de préférence*, *droit de suite*) and Articles 222, 281, 282, and 286

[13] Mesa Indra Naiborhu, Kedudukan Asas Lex Posterior Derogat Legi Prirori dalam Konflik Norma terhadap Hak
Pemegang Hak Tanggungan atas Keadilan dalam UU Nomor 37 Tahun 2004 dengan UU Nomor 4 Tahun 1996, Skripsi,
Universitas 17 Agustus 1945 Jakarta, 2024.
[14] Peter Mahmud Marzuki, Penelitian Hukum (Jakarta: Kencana, 2017), 35–44.
[15] ohnny Ibrahim, Teori dan Metodologi Penelitian Hukum Normatif (Malang: Bayumedia, 2006), 57–60.
[16] Huijbers, Filsafat Hukum, Kanisius, 1982.

of the UUK PKPU (PKPU mechanism, voting, nullification by operation of law). The statute approach is necessary because the two statutes originate from different legal regimes: the UUHT represents the principle of absolute proprietary rights, whereas the UUK PKPU represents the principle of collective business rescue. The systematic tension between these two regimes constitutes the main focal point of analysis in this research[17].

2. Conceptual Approach

The conceptual approach is used to examine core concepts such as proprietary rights, secured creditors, preference, debt security, legal certainty, and legal protection. These concepts are derived from the doctrines of scholars such as Radbruch, Kelsen, Sjahdeini, and Rio Christiawan[18].

Soerjono Soekanto and Sri Mamudji state that normative legal research also requires an analysis of legal principles, because principles constitute a structure of reasoning that binds legal norms and concepts[19]. Accordingly, the principles of preference, paritas creditorum, and legal certainty serve as the foundation for examining the conflict between the UUHT and the PKPU.

3. Historical Legislative Approach (Legislative History Approach)

This approach is employed to trace the intent of the lawmakers (legislative intent) through: the minutes of the Working Committee (Panja) meetings on the Bankruptcy and PKPU Bill (2004), working meeting minutes, public hearing records, reports of Level II deliberations, and the final opinions of the DPR factions.

These documents show that the PKPU was intended not to deprive secured creditors of their rights, but rather to provide space for the rescue of the debtor's business without extinguishing proprietary rights[20]. This historical approach is important for assessing the conformity of the formulation of Articles 281 and 286 with the PKPU's original objectives.

Lawrence Friedman emphasizes that understanding a statute requires an understanding of the social, economic, and political context at the time of its enactment[21]. Accordingly, legislative history becomes a vital instrument for understanding the lawmakers' horizon.

4. Legal Hermeneutic Approach

This research employs legal hermeneutics in a thin yet strategic manner, particularly Gadamer's theory of the fusion of horizons. Hermeneutics is applied when there is a gap between the UUHT text and the PKPU, the lawmakers' intent, and the demands of the contemporary economic system.

Gadamer explains that legal understanding occurs through a dialogue between the past and the present, namely, a process of the fusion of horizons[22]. Josef Esser adds that interpretation always involves the interpreter's pre-understanding, particularly when interpreting norms that are mutually conflicting[23]. Ricoeur reminds us that legal

[17] Undang-Undang Nomor 4 Tahun 1996; Undang-Undang Nomor 37 Tahun 2004.

[18] Undang-Undang Nomor 4 Tahun 1996; Undang-Undang Nomor 37 Tahun 2004.

[19] Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif (Jakarta: Rajawali Pers, 2014), 23–30.

[20] Risalah Panja RUU Kepailitan dan PKPU, DPR RI, 2004.

[21] Lawrence M. Friedman, The Legal System: A Social Science Perspective (New York: Russell Sage Foundation, 1975),
60–72.

[22] Hans-Georg Gadamer, Truth and Method (New York: Continuum, 1989), 291–310.

[23] Josef Esser, Preunderstanding and Sources of Law (Frankfurt: Vittorio Klostermann, 1961), 14–22.

interpretation is not merely a search for literal meaning, but for possible meaning based on the purpose of the norm[24]. Through hermeneutics, this research can reinterpret the function of the PKPU and the rights of secured creditors not solely based on textual provisions, but also on legal objectives and the lawmakers' horizon.

5. Comparative Approach (Limited)

   This research conducts a brief comparison with: (1) the United States (Chapter 11 Bankruptcy Code) → protection of collateral value through cramdown protection; and (2) Japan (Civil Rehabilitation Act) → the concept of the right of separate satisfaction, which is closely aligned with the notion of secured creditors in civil law systems. This comparison is not dominant, but is used as an international mirror to assess whether the protection of secured creditors within Indonesia's PKPU framework meets an appropriate standard for a modern financing system[25].

6. Legal Materials Collection Techniques

   The collection of legal materials was conducted through: (1) primary legal materials, which include the UUHT, the UUK PKPU, Government Regulation in Lieu of Law Number 1 of 1998 (Perpu 1/1998), DPR minutes, and selected commercial court decisions (limited); (2) secondary legal materials, consisting of legal textbooks (Sjahdeini, Fuady, Christiawan, Radbruch, Kelsen, Gadamer, and others), SINTA 2 and Scopus indexed journals, and the academic manuscripts of the Bankruptcy Bill of 2017 and 2018; and (3) tertiary legal materials, which include legal dictionaries, legal encyclopedias, and economic publications such as those of the World Bank and the OECD (for the investor related discussion).

7. Legal Materials Analysis Techniques

   The analysis was conducted through qualitative descriptive analysis, systematic interpretation, deductive inductive analysis, historical interpretation (DPR minutes), teleological interpretation (the objective of creditor protection), and the fusion of horizons approach (when the text and the objectives are not aligned). The ultimate objectives are: (1) to identify the normative position of secured creditors who reject the composition; (2) to explain the conflict between the UUHT and the UUK PKPU; (3) to assess the legal implications for legal certainty and investment; and (4) to provide recommendations for regulatory synchronization.

RESULTS AND DISCUSSION

The discussion in this section begins by examining the basic construction of the legal position of secured creditors within the Indonesian legal system. This is important because the normative conflict between the UUHT and the UUK PKPU can only be clearly understood if the theoretical foundation of proprietary rights is first placed within an appropriate framework. The PKPU essentially constitutes a collective business rescue regime, whereas Mortgage Rights represent an individual protection regime that is absolute in nature[26]. It is the tension between these two regimes that often gives rise to differences in interpretation, both in practice and in judicial decisions.

Furthermore, the limitation of the rights of secured creditors within the PKPU must be

[24] Paul Ricoeur, Interpretation Theory: Discourse and the Surplus of Meaning (Fort Worth: TCU Press, 1976), 5–12.

[25] Thomas H. Jackson, The Logic and Limits of Bankruptcy Law (Harvard University Press, 1986), 125–140.

[26] Sutan Remy Sjahdeini, Sejarah, Asas, dan Teori Kepailitan (Jakarta: Kencana, 2016), 204–210.

examined in the context of the original objectives underlying the enactment of the UUK PKPU, as reflected in the minutes of the DPR Working Committee meetings in 2004. These documents indicate that the PKPU was not intended to eliminate proprietary rights, but rather to create space for business restructuring without extinguishing creditor security rights[27]. In other words, the PKPU was established not as a mechanism to subordinate secured rights, but as an instrument that must be harmonized with the principle of preference under the UUHT.

The analysis in this discussion is constructed sequentially: (1) first, to understand the position of secured creditors under the UUHT; (2) then, to examine the operation of such security when it enters the PKPU framework; and (3) finally, to assess whether the limitations imposed by the PKPU operate in harmony with the principles of legal certainty and justice.

The urgency of this topic becomes increasingly evident in the context of national economic growth. Modern financing systems, whether through banking or non-bank financial institutions, rely on the strength of proprietary security as a risk-mitigation instrument. If the PKPU, both normatively and in practice, weakens the position of secured creditors, this has the potential to undermine investor confidence, increase credit costs, and reduce financial market stability[28]. Therefore, the discussion of this issue is not merely a doctrinal study but is directly related to the direction of Indonesia's legal policy to strengthen legal certainty and the investment climate.

With this background, the first discussion will focus on elaborating the position of secured creditors under the UUHT as a foundation for understanding the normative and philosophical conflict with the PKPU mechanism.

The Position of Secured Creditors under the UUHT

Secured creditors are legal entities that obtain privileged rights by virtue of proprietary security over debts owed to the debtor. In the context of Indonesian law, the position of secured creditors is explicitly regulated under Law Number 4 of 1996 on Mortgage Rights (UUHT), which affirms that holders of Mortgage Rights possess the right of priority (*droit de préférence*) and the right to continue to follow the collateral object in whosoever hands it may be (*droit de suite*)[29]. These two principles constitute the main pillars of the construction of proprietary security within the Indonesian civil law system.

The UUHT grants secured creditors a strong, absolute, and independent position. Absolute in the sense that their rights are proprietary in nature (real rights), rather than merely personal rights (personal rights) arising from a contractual relationship with the debtor. It is this proprietary character that ensures that secured rights do not lapse even if the debtor changes, experiences changes in financial condition, or becomes subject to certain legal proceedings[30]. In other words, the UUHT establishes a highly rigid protection regime for secured creditors' rights of execution.

Normatively, Article 6 of the UUHT grants the holder of a Mortgage Right the authority to sell the collateral object on its own power through parate executie. This mechanism is intended to ensure that creditors are not required to undergo lengthy litigation processes that consume time and costs[31]. On the other hand, Article 20 paragraph (1) affirms that if the debtor is in default, the secured creditor is entitled to execute: (1) parate executie; (2) private sale; and or (3) auction through the auction office.

This shows that the UUHT not only protects substantive rights but also provides

[27] Risalah Panja RUU Kepailitan dan PKPU, DPR RI, 2004.
[28] Rio Christiawan, Hukum Kepailitan (Jakarta: Prenadamedia, 2019), 102–105.
[29] Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan, Pasal 6 dan Pasal 20.
[30] Agus Yudha Hernoko, Hukum Perikatan (Jakarta: Kencana, 2014), 141–150.
[31] bid., 153–155.

efficient, expeditious mechanisms for their enforcement.

From a doctrinal perspective, Sutan Remy Sjahdeini explains that secured rights possess a degree of preference that cannot be interfered with by the interests of other creditors, as long as the value of the collateral is sufficient[32]. Accordingly, the position of secured creditors within the Indonesian legal system is that of parties who possess "legal priority that is not subject to the general distribution mechanism." This doctrine is consistent with Radbruch's view on the protection of legal certainty as a primary aspect of the stability of economic transactions[33].

Furthermore, Rio Christiawan emphasizes that secured rights constitute a crucial instrument in the financing sector because they guarantee rational expectations among creditors regarding the value of collateral when the risk of default occurs[34]. Without strong proprietary security, financing becomes costly because creditors must account for the debtor's moral hazard risk. Therefore, the system of proprietary security is not merely a legal institution, but also an economic foundation.

Philosophically, the concept of proprietary rights under the UUHT is constructed to create legal certainty for business actors. This certainty arises because proprietary rights are permanent, follow the object to which they attach, and can be enforced without depending on the consent of other parties. Kelsen explains that a normative structure that grants preference to holders of proprietary rights is hierarchical and coercive, because such norms are intended to regulate the distribution of rights systematically[35]. Dengan kata lain, UUHT menciptakan *order of priority* yang dimaksudkan untuk meminimalkan ketidakpastian dalam hubungan hukum debitur–kreditur.

The implication of the entire construction above is that the position of secured creditors within the context of the UUHT is not merely that of parties holding security rights, but rather that of "subjects with an independent legal status" that cannot be reduced to the level of ordinary creditors. Secured rights cannot be conflated with collective settlement mechanisms, except where there exist very strong legal grounds. Therefore, within the context of the PKPU, any limitation on secured rights must be construed as an exception that is subject to strict interpretation.

Thus, the position of secured creditors under the UUHT provides three important foundations: (1) absolute rights and priority in the execution of collateral; (2) execution rights that are independent in nature and free from interference by collective mechanisms; and (3) rational expectations that serve as the foundation of trust in financing transactions.

This foundation will serve as the point of comparison in the subsequent analysis of the normative conflict with the UUK PKPU. When the UUK PKPU restricts secured rights during the stay period through voting mechanisms and composition schemes, a fundamental question arises: do these restrictions align with, or contradict, the philosophy and structure of protection established under the UUHT?

Normative Conflict between the UUHT and the UUK PKPU Concerning the Position of Secured Creditors

The relationship between the UUHT and the UUK PKPU raises a fundamental issue regarding the treatment of secured creditors' absolute rights when a debtor enters the Suspension of Debt Payment Obligations (PKPU) process. Conceptually, the PKPU is a reorganization mechanism intended to rescue the debtor's business through debt

[32] Sutan Remy Sjahdeini, Sejarah, Asas, dan Teori Kepailitan (Jakarta: Kencana, 2016), 204–210.
[33] Gustav Radbruch, Legal Philosophy (Harvard University Press, 1950), 47–59.
[34] Rio Christiawan, Hukum Kepailitan (Jakarta: Prenadamedia, 2019), 99–105.
[35] Hans Kelsen, General Theory of Law and State (Cambridge: Harvard University Press, 1949), 113–118.

restructuring. Meanwhile, the UUHT constitutes a proprietary security regime that grants preferential rights and independent execution rights to secured creditors[36]. Accordingly, these two legal regimes have fundamentally different orientations and may be potentially conflicting.

The normative conflict arises primarily in Articles 281 and 286 of the UUK PKPU. Article 281 sets out the requirements for approval of a composition, while Article 286 governs nullification by operation of law when certain requirements are not met. The problem is that these two provisions do not explicitly regulate the position of secured creditors who reject the composition from the outset. In principle, however, secured rights originate from proprietary security rights rather than from collective consensus[37].

Recent research by Putro and Badriyah also shows that uncertainty in the protection of Mortgage Rights holders within the PKPU process may give rise to serious consequences for the legal position of secured creditors, particularly when the composition scheme involves a reduction in the value of the collateral[38].

Within the logic of the UUHT, secured rights cannot be negotiated through voting. Their preference attaches to the collateral object, not to the will of the majority of creditors. However, within the PKPU mechanism, secured creditors are placed within a particular class, and their votes are counted in the composition voting scheme. This raises a serious question: can secured creditors be compelled to accept a composition plan they disapprove?

Textually, Article 281 of the UUK PKPU stipulates that a composition is deemed to be accepted if it is approved by: (1) more than one-half of the number of concurrent creditors; and (2) more than two-thirds of the amount of recognized claims within each class of creditors[39].

Although secured creditors are placed in a separate class, this provision allows a composition plan to be accepted even if some secured creditors reject it, provided the class criteria are met. This is where the normative conflict lies: absolute proprietary rights become subject to collective voting, which is theoretically inconsistent with the philosophy of Mortgage Rights.

Furthermore, Article 286 regulates nullification by operation of law if, after a composition has been ratified, it is found that the required conditions were not fulfilled. However, this provision does not cover situations in which secured creditors did not agree from the outset. Consequently, there is no remedial mechanism for secured creditors to preserve their execution rights when a composition detrimental to them is formally approved.

Such a construction has the potential to downgrade the status of secured rights to mere quasi-secured claims, whereas under the UUHT, their rights are absolute. Munir Fuady emphasizes that secured rights must not be placed in a subordinate position without a clear normative basis[40].

From the perspective of legal principles, this conflict tests: (1) the principle of legal certainty; (2) the protection of parties acting in good faith; and (3) justice in the distribution of risk.

Secured creditors enter into financing legal arrangements based on the expectation of protection over the collateral. When the PKPU reduces the strength of such execution rights without an explicit legal basis, substantive legal uncertainty arises.

Historically, the minutes of the deliberations on the Bankruptcy Bill in 2004 indicate that the lawmakers never intended to downgrade the level of protection afforded to secured

[36] UUHT Pasal 6 dan 20.
[37] Agus Yudha Hernoko, Hukum Perikatan (Jakarta: Kencana, 2014), 141–155.
[38] Putro & Badriyah, "Perlindungan Hukum Kreditur Separatis …", Notarius, 2024.
[39] UUK-PKPU Pasal 281 ayat (1).
[40] Munir Fuady, Hukum Pailit (Bandung: Citra Aditya Bakti, 2005), 212–219.

rights. Several members of the House of Representatives even emphasized that the PKPU should not become a means for debtors acting in bad faith to evade their obligations[41]. This means that if the resulting statutory formulation opens an ambiguous space to "compel" secured creditors to submit to the will of the majority, it constitutes a normative design flaw inconsistent with the legislative intent.

The hermeneutic approach becomes relevant in this context. The horizon of the UUHT as a regime of absolute protection collides with the horizon of the PKPU as a collective regime. From Gadamer's perspective, such a conflict requires a fusion of horizons, namely a broader reading of legal objectives to ensure that the interpretation of norms remains faithful to justice and legal certainty[42]. Accordingly, secured rights must not be interpreted reductively merely because they are situated within the PKPU forum.

Philosophically, Radbruch states that law must provide the maximum protection to legitimate interests that deserve protection[43]. In the context of financing, secured creditors are parties who have provided funds on the basis of legal trust in proprietary security. If the PKPU mechanism reduces their rights without a strong normative justification, substantive justice is thereby undermined.

From the perspective of law and economics, the weakening of secured creditors' positions will increase credit risk, thereby raising the cost of funds and reducing the competitiveness of the national industry. This runs counter to the direction of the government's legal policy, which is currently aimed at promoting industrialization and investment[44].

Accordingly, the normative conflict between the UUHT and the UUK PKPU in Articles 281 and 286 is not merely a textual issue, but also touches upon philosophical, historical, hermeneutic, and economic aspects. This analysis demonstrates the need to reexamine PKPU norms to ensure that the protection of secured creditors is not sacrificed in the name of illusory efficiency in debt restructuring.

The lack of synchronization between the UUHT and the UUK PKPU not only raises doctrinal issues regarding the position of proprietary rights but also has significant practical consequences for the stability of the financing system. Therefore, this normative conflict must be examined further in relation to legal certainty, the protection of secured creditors, and its impact on the national investment climate.

Hermeneutic Analysis, Legal Politics, and the Protection of Secured Creditors

The position of secured creditors who reject the composition in the PKPU is a crucial point for understanding how a legal system reconciles individual and collective interests. The normative conflict between the UUHT and the UUK PKPU described above cannot be viewed solely through a doctrinal approach, but must also be examined through a legal hermeneutic approach in order to understand the deeper meaning of norms that appear to be in conflict. Hermeneutics becomes essential because statutory texts do not exist in a vacuum; they are shaped by values, historical context, and the objectives of the lawmakers[45].

Sihotang et al. emphasize that the main issue within the PKPU regime lies in the absence of a mechanism that explicitly protects the execution rights of secured creditors, thereby giving rise to disharmony between the UUHT and the UUK PKPU in judicial practice[46].

[41] Risalah Panja DPR 2004, Rapat Kerja dan Rapat Dengar Pendapat.
[42] Hans-Georg Gadamer, Truth and Method (New York: Continuum, 1989), 300–312.
[43] Gustav Radbruch, Legal Philosophy (Harvard University Press, 1950), 47–59.
[44] Rio Christiawan, Hukum Kepailitan (Jakarta: Prenadamedia, 2019), 102–105.
[45] Hans-Georg Gadamer, Truth and Method (New York: Continuum, 1989), 291–310.
[46] Sihotang dkk., "Tinjauan Penerapan UUK-PKPU terhadap Hak Tanggungan," Cendekia Hukum, 2025.

1. Hermeneutics and the Meaning of Norms Concerning Secured Rights

By using Gadamerian hermeneutics, the interpretation of Articles 281 and 286 of the UUK PKPU must be conducted by taking into account the historical horizon of the lawmakers as well as the horizon of contemporary legal needs. Gadamer emphasizes that legal understanding cannot be separated from the interpreter's pre-understanding, which is shaped by the social context and values of its time[47]. Accordingly, when interpreting the position of secured creditors, judges and scholars must not merely read the text literally, but must also explore the values and legal objectives underlying it.

The minutes of the deliberations on the 2004 PKPU Bill illustrate that the lawmakers were highly aware of the strategic position of secured creditors within the national financing system. In several Working Committee (Panja) meetings, members of the DPR emphasized that the PKPU must not be used by debtors to unreasonably avoid fulfilling their obligations[48]. The Government even affirmed that protection of proprietary rights must be maintained under all circumstances. Accordingly, subjecting secured rights entirely to the composition voting mechanism without providing room for substantive objections constitutes a deviation from the original objectives underlying the formation of the UUK PKPU.

From a hermeneutic perspective, it can be argued that the provisions of the PKPU need to be reinterpreted "in the light of" the UUHT and the principle of protection of proprietary rights. Ricoeur refers to this process as refiguration, namely the adjustment of the meaning of a text based on the dialectical relationship between norms, context, and objectives[49]. If secured rights are downgraded only because they are situated within the PKPU forum, the PKPU's interpretation becomes reductive and fails to satisfy the principle of substantive justice.

2. Legal Politics: The Protection of Secured Creditors as a Legislative Agenda

Within the framework of legal politics, the protection of secured creditors cannot be separated from the overarching objective of the formation of commercial legislation, namely, the balance between restructuring efficiency and legal certainty in financing transactions. Mahfud MD states that legal politics constitutes the direction of legal policy that the state seeks to achieve through specific legal instruments[50]. If the direction of government policy is to strengthen the national economic structure through financial stability, then the logic of legal politics requires strengthening protections for proprietary rights.

However, the UUK PKPU creates legal uncertainty by failing to provide a specific mechanism for secured creditors who reject the composition. This situation may be categorized as a regulatory gap, namely a regulatory vacuum that renders legal norms vulnerable to multiple interpretations. Doctrine refers to this condition as a "legislative gap," which may lead to a misalignment of legal objectives[51].

From a political economy perspective, secured creditors constitute one of the pillars of industrial financing. If their rights are weakened, credit risk increases, interest rates rise, and investment costs become more expensive. The OECD notes that the quality of a proprietary security regime is one of the main indicators of investor confidence[52]. Accordingly, the formulation of PKPU policies that do not explicitly protect secured rights

[47] Josef Esser, Preunderstanding and Sources of Law (Frankfurt: Vittorio Klostermann, 1961), 14–22.
[48] Risalah Panja DPR RI RUU Kepailitan dan PKPU, 2004.
[49] Paul Ricoeur, Interpretation Theory (Fort Worth: Texas Christian University Press, 1976), 5–12.
[50] Mahfud MD, Politik Hukum di Indonesia (Jakarta: Rajawali Pers, 2009), 35–38.
[51] Soetandyo Wignjosoebroto, Hukum dalam Masyarakat (Jakarta: Huma, 2002), 122–130.
[52] OECD, Investment Policy Review: Indonesia (Paris: OECD Publishing).

is not aligned with the direction of national economic development.

3. Protection of Secured Creditors: Between Normative Design and Substantive Justice

Secured creditors enter into financing legal relationships with the expectation that their proprietary rights will be fully respected when the debtor defaults. The UUHT guarantees this expectation through the *parate executie* mechanism. When the UUK PKPU intervenes in such rights, then, according to security law theory, the state has an obligation to provide an equivalent protection mechanism[53]. However, Articles 281 and 286 do not provide such protection.

From Radbruch's perspective of justice, law must not sacrifice substantive justice merely for the sake of procedural efficiency[54]. If a composition plan is able to bind secured creditors who reject it without adequate justification, then what is sacrificed is not merely the preference in execution, but the fundamental structure of proprietary rights themselves.

In addition, within the civil law system, proprietary security is characterized by the principle of *prior tempore potior jure* (the one who is bound first is the one who is more strongly protected)[55]. The PKPU must not change this principle except in accordance with legislation that is clear and proportionate. Unfortunately, the UUK PKPU does not provide such safeguards.

4. Brief Comparison with the United States and Japan

In the United States system, Chapter 11 of the Bankruptcy Code provides strong protection for secured creditors through the concept of *cramdown*. A cramdown may only be imposed if the value of the secured creditor's collateral is not reduced, and the debtor provides payment equivalent to the value of such collateral[56]. Accordingly, secured rights cannot be forced to submit to a composition that is detrimental to them.

In the Japanese system, the Civil Rehabilitation Act regulates the *right of separate satisfaction*, which grants secured creditors the full right to obtain payment from the collateral object without being subject to the reorganization scheme, unless they voluntarily choose to participate[57]. This principle is highly consistent with the philosophy underlying the UUHT.

Compared with Indonesia, the position of secured creditors within the PKPU framework falls into a grey area. No mechanism safeguards the value of their collateral, no explicit opt-out right when they reject the composition, and no remedial instrument when a detrimental composition is nonetheless ratified. This indicates that Indonesia lags far behind modern international regimes in protecting secured rights.

Hermeneutics emphasized that a reexamination of Articles 281 and 286 must be conducted while maintaining the UUHT's horizon and the lawmakers' objectives. Legal politics requires that secured rights must not be sacrificed for illusory efficiency. An international comparison shows that Indonesia must improve the PKPU's design to align it with global standards.

Implications for Legal Certainty, Justice, and the National Investment Climate

Legal protection for secured creditors within the PKPU is not merely a technical

[53] Sutan Remy Sjahdeini, Sejarah, Asas, dan Teori Kepailitan (Jakarta: Kencana, 2016), 204–210.
[54] Gustav Radbruch, Legal Philosophy (Harvard University Press, 1950), 47–59.
[55] Boedi Harsono, Hukum Agraria Indonesia (Jakarta: UI Press, 2003), 301–306.
[56] Thomas H. Jackson, The Logic and Limits of Bankruptcy Law (Harvard University Press, 1986), 125–140.
[57] Civil Rehabilitation Act of Japan (English Translation), Ministry of Justice Japan.

procedural issue. Still, it constitutes a fundamental matter for legal certainty, substantive justice, and the stability of the national financing system. The lack of normative clarity in Articles 281 and 286 of the UUK PKPU creates a domino effect that not only affects the private relationship between debtors and creditors but also impacts the structure of the national economy, particularly in the context of investment and industrialization.

1. Legal Certainty: The Main Pillar of the Financing System

   Legal certainty (*rechtszekerheid*) constitutes a fundamental element in security-based financing transactions. Secured creditors, particularly banking institutions, perform their functions on the assumption that their proprietary rights can be executed without obstruction when the debtor defaults. The UUHT explicitly affirms this through the *parate executie* mechanism, thereby rendering mortgage rights as instruments that are stable, predictable, and provide juridical certainty[58].

   However, when the UUK PKPU creates room for multiple interpretations regarding the position of secured creditors who reject the composition, the principle of legal certainty is thereby disrupted. Secured creditors are no longer able to predict whether their execution rights can be enforced when the debtor enters the PKPU process. This ambiguity gives rise to normative uncertainty risk that may deteriorate the quality of credit portfolios, increase the risk of default, and ultimately disrupt the stability of the financial sector.

   From the perspective of legal theory, legal certainty must not be subordinated to procedural efficiency, particularly when it concerns absolute proprietary rights. Kelsen reminds that legal norms must be structured in such a manner as to provide predictability for legal subjects[59]. Normative ambiguity within the PKPU, rather than strengthening such predictability, instead weakens it.

2. Substantive Justice for Secured Creditors

   The dimension of substantive justice requires proportionality between the positions of debtors and creditors. When a composition plan in the PKPU binds secured creditors who reject it without an effective objection mechanism, this constitutes a form of structural injustice.

   Radbruch emphasizes that law which violates substantive justice is not truly law, but merely a "formal rule" that has lost its moral legitimacy[60]. In this context, compelling secured creditors to submit to a composition plan that diminishes the value of their collateral means eliminating the very essence of their proprietary rights.

   The DPR minutes of 2004, in fact, provided a strong signal that proprietary rights must not be reduced without objective justification[61]. However, the current implementation of the PKPU often tends to lead to the subordination of secured rights in the name of majority interests. This results in injustice because: (1) secured creditors have interests that are qualitatively different from those of concurrent creditors; (2) the collateral provided by the debtor constitutes an initial consent to prioritize secured creditors; and (3) debtors must not use the PKPU forum as an instrument to delay or reduce the value of repayment of the collateral.

   Accordingly, the current design of the PKPU does not reflect equitable treatment of secured creditors.

3. Implications for the Investment Climate and Investor Confidence

   In the macroeconomic context, the existence of a PKPU regime that fails to protect

[58] Boedi Harsono, Hukum Agraria Indonesia (Jakarta: UI Press, 2003), 301–306.
[59] Hans Kelsen, General Theory of Law and State (Cambridge: Harvard University Press, 1949), 112–118.
[60] Gustav Radbruch, Legal Philosophy (Harvard University Press, 1950), 59–70.
[61] Risalah Panja RUU Kepailitan dan PKPU, DPR RI, 2004.

secured creditors adequately has significant implications for the national investment climate. The OECD has consistently emphasized that the effectiveness of proprietary security systems and certainty in insolvency processes constitute key indicators of foreign investor confidence[62]. Countries with insolvency regimes that provide strong protection for secured creditors tend to have higher investment inflows and better capital market stability.

Indonesia, as a developing country with major industrialization ambitions, depends on its ability to attract long-term investment. However, if proprietary rights can be "forced to submit" without an equivalent compensation mechanism, regulatory risk becomes very high. Foreign investors, particularly financing institutions, will perceive that proprietary security in Indonesia does not operate under an "absolute priority" principle, but can instead be forcibly renegotiated through the PKPU forum.

The World Bank's Doing Business report also lists the effectiveness of proprietary security systems and the certainty of insolvency as key indicators in assessing a country's ease of doing business. In the same report, the World Bank explicitly states that countries with strong financing regimes, particularly in protecting secured creditors, have lower capital costs[63]. This means that, for Indonesia, uncertainty within the PKPU mechanism directly increases investment costs, reduces credit appetite, and weakens industrial competitiveness.

Even Soetandyo Wignjosoebroto emphasizes that law cannot be separated from the socio-economic structure that surrounds it; a legal norm is effective only when it is aligned with the needs of society and the business world[64].

4. The Dilemma between Efficiency and the Protection of Proprietary Rights

The PKPU is indeed designed to provide space for rapid and efficient restructuring. However, efficiency must not be pursued at the expense of fundamental rights. Indonesia's legal policy must place balance as a primary principle: restructuring should facilitate business continuity, but not by weakening the rights of creditors that have been guaranteed from the outset by a specific statute.

This is where the concepts of proportionality and legitimate expectation emerge. Secured creditors enter into credit agreements with a legitimate expectation that the state will protect the collateral they receive. When the PKPU fails to provide a protective space for a legitimate rejection of a composition, the state violates that expectation[65].

5. The State's Obligation to Ensure Systemic Balance

The state has an obligation to maintain systemic balance in insolvency matters. A system that fails to protect secured rights has the potential to slow capital flows, raise interest rates on credit, reduce the effectiveness of financing distribution, create a dysfunctional credit market, and hinder the growth of industry and micro, small, and medium enterprises. Accordingly, the issue of the position of secured creditors is not merely a technical juridical matter, but a strategic issue in the management of the national economy.

Proposed Harmonization and Synchronization of the UUHT and the UUK PKPU

The absence of synchronization between the Law on Mortgage Rights (UUHT) and the Law on Bankruptcy and the Suspension of Debt Payment Obligations (UUK PKPU) constitutes the root of the problem that causes secured creditors to frequently lose protection that should be absolute in nature. By understanding this issue through hermeneutic, political,

[62] OECD, Investment Policy Review: Indonesia (Paris: OECD Publishing).
[63] World Bank, Doing Business Reports (Washington, DC: World Bank).
[64] Wignjosoebroto, Hukum dalam Masyarakat, Huma, 2002.
[65] Sutan Remy Sjahdeini, Sejarah, Asas, dan Teori Kepailitan (Jakarta: Kencana, 2016), 204–210.

and normative perspectives, the proposed solutions are not limited to revisions of technical provisions but also encompass a systemic reconstruction of the PKPU's objectives in alignment with the principles of proprietary law.

This proposed harmonization is grounded in a normative doctrinal approach, philosophical reasoning, and policy-based analysis, ensuring that the recommendations provided are not only academically relevant but also feasible to implement in future legislative processes.

1. Reconstruction of the Objectives of the PKPU in Relation to Secured Rights

   The PKPU is essentially designed as a restructuring instrument to rescue the business of a debtor with prospects. However, this objective cannot be pursued by sacrificing the proprietary rights of other parties. The minutes of the DPR in 2004 state that the PKPU is not a forum to "eliminate or reduce the absolute rights of secured creditors," but rather to "coordinate repayment within the framework of business rescue"[66].

   Accordingly, the first harmonization proposal is to reaffirm the objectives of the PKPU in the General Explanation of the UUK PKPU. The PKPU must not reduce or downgrade the status of secured rights except with the explicit, written consent of the concerned party. This reformulation of objectives will serve as a basis for interpretation for judges and curators at every stage of the PKPU process.
2. Regulation of an Objection Mechanism for Secured Creditors

   Articles 281 and 286 do not provide an equivalent *objection mechanism* for secured creditors who reject the composition. In fact, international standards such as the cramdown mechanism in the United States and the *right of separate* satisfaction in Japan show that an objection mechanism constitutes an essential element in the protection of secured creditors[67].

   The addition of a new Article concerning the "Right of Objection of Secured Creditors" is proposed as the second recommendation. The substance of this new provision would include: (1) secured creditors may submit objections to a composition plan that is detrimental to the value of the collateral; (2) the judge must examine such objections before the voting process; and (3) the judge is obliged to reject the composition plan if it reduces the value of the collateral, alters the conditions of execution, or compels restructuring without equivalent compensation.

   This mechanism ensures that proprietary rights cannot be overridden solely by a majority vote.
3. Addition of an "Opt-Out" Right for Secured Creditors

   In the Japanese system, secured creditors are subject to reorganization only if they voluntarily choose to participate[68]. Indonesia does not have such a mechanism, resulting in secured creditors being consistently bound by the voting process. The third recommendation proposes an "Opt-Out" right, granting secured creditors the right to withdraw from the composition plan and proceed with the execution of their collateral, unless the debtor guarantees full repayment or ensures that the collateral's value is not reduced.

   This opt-out right will restore the structure of proprietary law to its original position as regulated under the UUHT.
4. Harmonization of Collateral Execution Provisions between the UUHT and the UUK

[66] Risalah Rapat Panja RUU Kepailitan dan PKPU, DPR RI (2004).

[67] Thomas H. Jackson, The Logic and Limits of Bankruptcy Law (Harvard University Press, 1986), 125–140.

[68] Civil Rehabilitation Act of Japan, Ministry of Justice (English Translation).

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The normative conflict arises because the UUHT grants the right of parate executie, while the UUK PKPU postpones such execution in favor of the PKPU process. This lack of clarity often leads judges to adopt an approach of "indefinite postponement."

Synchronizing the UUHT and the UUK PKPU through a limited execution clause is proposed as the fourth recommendation, with the ideal formulation as follows: "The execution of mortgage rights shall only be postponed during the PKPU if the debtor provides additional fiduciary security or an escrow account as a form of protection for the value of the collateral."

This model is consistent with the principle of adequate protection in the United States system[69]. Such harmonization will prevent debtors from exploiting the PKPU mechanism to delay execution without any consequences.

5. Refinement of Article 286 to Align with Proprietary Principles

Article 286, paragraph (2) has become controversial because it renders a composition plan binding on all creditors. This provision needs to be revised to align with the absolute nature of proprietary rights.

The revision of Article 286 based on the principle of proportionality is proposed as the fifth recommendation. The substance of the revised provision would include: (1) a composition plan may not bind secured creditors without their written consent; (2) unless the debtor fully guarantees the value of the collateral; or (3) the secured creditor chooses to participate voluntarily.

Accordingly, Article 286 would no longer operate as an overreaching norm.

6. Formulation of Judicial Safeguard Norms

Judges must not only ratify a composition based on a voting quorum, but must also conduct a substantive review of the fairness of the plan. In many PKPU decisions, judges appear reluctant to engage deeply with the substance, resulting in the ratification of composition plans that are detrimental to the rights of secured creditors.

The addition of a "Substantive Justice Test" before the Ratification of a Composition is proposed as the sixth recommendation. Judges are required to ensure that: (1) secured creditors do not suffer a haircut to the value of their collateral; (2) the payment terms are reasonable and do not impair the economic value of the collateral; and (3) the debtor acts in good faith.

This instrument constitutes an adoption of Radbruch's theory of substantive justice and Hart's test of reasonableness[70].

7. National Legislative Direction: Strengthening the Security System to Attract Investment

The synchronization of the UUHT and the PKPU is not only a technical legal matter, but constitutes a national strategy to strengthen legal certainty in financing, investor confidence, financial system stability, and the enhancement of national industrial competitiveness.

The OECD and the World Bank have repeatedly stated that countries with strong protection for secured creditors tend to attract greater levels of long-term investment[71]. Accordingly, this direction of harmonization also supports Indonesia's vision of becoming a regional industrial hub.

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[69] U.S. Bankruptcy Code (Chapter 11), 11 U.S.C. §361 (Adequate Protection).

[70] Gustav Radbruch, Legal Philosophy (Harvard University Press, 1950), 59–70.

[71] World Bank, Doing Business Report 2020: Secured Transactions and Creditors' Rights (Washington, DC: World Bank,
2020).

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Based on the research findings that have been elaborated, several conclusions can be drawn as follows:

1. The legal position of secured creditors within the PKPU remains situated within a sphere of normative uncertainty. Although the UUHT affirms the absolute rights of secured creditors through the principles of *droit de préférence* and *droit de suite*, the UUK PKPU, through the mechanisms of the stay period and composition voting, in practice limits such execution rights. In situations where secured creditors reject the composition, positive law does not provide adequate protection. As a result, the position of secured creditors is reduced to that of "quasi secured creditors," contrary to the philosophy of proprietary rights under the UUHT.
2. The legal political interpretation of Articles 281 and 286 of the UUK PKPU shows a lack of synchronization between legislative intent and normative design. The minutes of the Working Committee deliberations on the Bankruptcy and PKPU Bill in 2004 affirm that the lawmakers never intended to downgrade the position of the proprietary rights of secured creditors. However, the formulation of Articles 281 and 286 does not accommodate objections from secured creditors who reject the composition, does not provide guarantees for the protection of collateral value, and does not offer an effective remedial mechanism. This condition creates a legislative gap that causes PKPU practice to frequently deviate from the original objectives of the legal policy underlying its formation.
3. The lack of synchronization between the UUHT and the UUK PKPU has a direct impact on legal certainty, substantive justice, and the national investment climate. The absence of clear protection for secured creditors creates normative uncertainty that affects the behavior of financing institutions, increases the cost of funds, and reduces investor confidence in the stability of Indonesia's proprietary security system. From a legal-theoretical perspective, this condition fails to provide adequate legal certainty. It violates the principle of substantive justice, as proprietary rights are sacrificed for the sake of PKPU procedural efficiency. This situation has negative implications for market confidence, financial stability, and economic competitiveness.

Accordingly, it can be affirmed that the issue of secured creditors who reject the composition in the PKPU constitutes a normative structural problem that requires regulatory reconstruction and consistent interpretation to align it with the principles of proprietary rights and national economic objectives. The resolution of the lack of synchronization between the UUHT and the UUK PKPU is not only a technical agenda but also a strategic one, aimed at creating legal certainty and strengthening Indonesia's economic foundation. Without regulatory harmonization, the protection of secured creditors will remain in a grey area, create injustice, and hinder investment growth.

Recommendations

Based on the results of the analysis and the conclusions above, several recommendations may be proposed as follows:

1. It is necessary to revise the UUK PKPU, particularly Articles 281 and 286, to provide protection for secured creditors who reject the composition explicitly. The revision should incorporate provisions concerning the right of objection (*objection procedure*), protection of collateral value (*adequate protection*), and an explicit affirmation that proprietary rights may not be downgraded except based on the express consent of the secured creditor concerned.
2. The addition of an "opt-out" mechanism for secured creditors within the PKPU is necessary. As applied under Japan's Civil Rehabilitation Act, secured creditors should be

granted the right not to be bound by a composition plan if such a plan reduces, delays, or interferes with their executory rights over the collateral object. This mechanism is consistent with the principle of priority of proprietary rights under the UUHT.

3. To formulate normative harmonization through the integration of proprietary law principles and modern insolvency principles. The PKPU regime must ensure that the restructuring process does not sacrifice the value of collateral. The cramdown model under Chapter 11 of the United States Bankruptcy Code can serve as a reference to ensure that secured creditors do not suffer a reduction in the value of their collateral without equivalent compensation.
4. To strengthen the role of judges through the obligation to conduct a substantive justice test before the ratification of a composition. Judges must examine not only the fulfillment of formal voting requirements, but also substantive justice for secured creditors, including assessing whether the composition plan reduces the value of the collateral or gives rise to unequal treatment.
5. The Government needs to make the strengthening of the proprietary security system an integral part of the national economic law reform agenda. The protection of secured creditors is an important factor in attracting investment, maintaining financial sector stability, and reducing national financing costs. The synchronization of the UUHT and the PKPU must be positioned within the broader framework of economic development policy and structural reform.
6. Academics and practitioners need to encourage the development of the Indonesian insolvency doctrine that positions proprietary rights as a fundamental pillar. The development of legal hermeneutics, international comparative analysis, and legal political analysis is necessary to ensure that the interpretation of insolvency norms does not deviate from the principles of protection of proprietary rights.

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