

## HERMENEUTIC ANALYSIS OF ARTICLES 281 AND 286 OF THE LAW ON BANKRUPTCY AND SUSPENSION OF DEBT PAYMENT OBLIGATIONS FROM THE PERSPECTIVE OF LEGAL CERTAINTY

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### Abstract

This study analyses the conflict between the absolute rights of separate creditors under the Law on Mortgage Rights (UUHT) and the collective mechanisms under the Law on Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), particularly in relation to the implementation of Articles 281 and 286. The main problem arises when separate creditors who reject the settlement plan are still forced to accept the results of majority voting, thereby degrading absolute security rights into mere quasi-secured claims. Using normative juridical methods and Gadamer's fusion of horizons legal hermeneutics, this study examines the interpretative tensions and legislative gaps that deviate from the original intent of the 2004 law. The results of this study show that this inconsistency in norms creates legal uncertainty that has a systemic impact on the banking sector through portfolio risk escalation and increased cost of funds, which ultimately erodes the stability of the national investment climate. This study recommends amending the UUK-PKPU to include the Objection Right and Opt-Out Right mechanisms, and standardising the substantive justice test applied by commercial judges to ensure the protection of the economic value of collateral. This regulatory reconstruction is crucial to restoring the spirit of legal certainty and strengthening Indonesia's global economic competitiveness.

**Keywords:** Legal Hermeneutics, Separate Creditors, UUK-PKPU, Legal Certainty

## INTRODUCTION

The bankruptcy and Debt Payment Suspension legal system in Indonesia was developed primarily as a tool for collective debt settlement, emphasizing speed, efficiency, and fairness for all parties (Sjahdeini, 2021). However, during its implementation for more than 20 years, unresolved normative tensions have persisted, particularly regarding the legal position of separate creditors as holders of absolute security rights (Azzahra & Santoso, 2024). Separate creditors often find themselves in an unfavourable position when faced with settlement plans proposed by debtors or the majority of other creditors. This situation raises fundamental questions about the extent to which the state protects absolute property rights within the PKPU collective mechanism (Christiawan, 2024).

Normatively, the position of separate creditors, particularly holders of security rights, is a key pillar of the national financing system. Based on the Law on Mortgage Rights (UUHT), creditors have priority rights (*droit de préférence*) and the right to follow the collateral object in the hands of whoever holds the object. Articles 6 and 20 of the UUHT give mortgage holders full authority to carry out independent execution if the debtor defaults. This principle provides creditors with a rational expectation that their collateral will not be affected by the debtor's financial condition or by third-party intervention.

However, the implementation of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU) weakens the exclusivity of the UUHT (Fauzi & Gunawan, 2023).. Tension arises when the PKPU mechanism, which aims to provide debtors with space to restructure their debts for business continuity, actually limits creditors' rights of execution through a grace period and a voting scheme. A crucial issue arises in the implementation of Articles 281 and 286 of the UUK-PKPU: separate creditors who reject the settlement plan are still 'dragged' into a restructuring scheme they disagree with. This issue creates a legal paradox: rights derived from absolute collateral are forced to submit to a contractual collective consensus.

The impact of this inconsistency is keenly felt by the banking sector, which is the leading credit provider. Uncertainty about collateral protection disrupts the banking intermediation function by weakening risk-mitigation instruments (Wardani, 2023). When a prolonged PKPU process hampers the bank's right of execution without clear protection of the collateral's value, this increases the cost of funds. This increase in the cost of funds occurs because banks must raise their risk reserves and factor in the moral hazard risk of debtors when setting their lending rates.

In the long term, uncertainty about collateral enforcement under the PKPU regime reduces financial institutions' willingness to extend credit, creating credit market dysfunction that hinders the national industrial development agenda. This normative ambiguity makes it difficult for banks to predict the certainty of debt repayment, which ultimately increases national capital costs and weakens industrial competitiveness in the global market.

The minutes of the 2004 law discussions show that policymakers never intended to reduce the degree of protection of separate rights in PKPU forums. However, the formulation of Articles 281 and 286 does not provide adequate protection or objection mechanisms for creditors who reject the settlement, thus creating a legislative gap. This study aims to dissect this conflict of norms through a legal hermeneutic approach, specifically Gadamer's theory (1989). of the fusion of horizons. Through in-depth interpretative analysis, this study will explore how Articles 281 and 286 of the PKPU Law should be interpreted to align with the principles of legal certainty and absolute rights in the UUHT, thereby ensuring the stability of the national financing system.

Based on the above explanation, the following are the issues:

1. How does the interpretative tension between the absolute rights of separate creditors in the UUHT and the mechanism for restricting rights in Articles 281 and 286 of the UUK-PKPU arise when viewed from the theory of fusion of horizons?
2. How far are the texts of Articles 281 and 286 of the UUK-PKPU reflective of the legislative intent of the lawmakers in providing legal certainty for holders of security interests?
3. What are the implications of the inconsistency in meaning between Articles 281 and 286 of the UUK-PKPU on the degradation of the principle of legal certainty for separate creditors in the financing system in Indonesia?

This study aims to analyse the conflict between these norms through a legal hermeneutic approach, specifically by drawing on Gadamer's theory of the fusion of horizons. Through in-depth interpretative analysis, this paper will explore how Articles 281 and 286 of the UUK-PKPU should be interpreted to align with the principles of legal certainty and absolute rights in the UUHT. Thus, this reconstruction of meaning is expected to provide a basis for strengthening creditor protection without neglecting the objective of business rescue under the PKPU regime.

## RESEARCH METHOD

This study uses a normative juridical method, with an emphasis on the vertical and horizontal synchronisation of legal norms (Soekanto & Mamudji, 2014). Given that the focus of the study is an in-depth interpretation of the text of the law, the approaches used include:

1. **Statutory Approach** This approach not only involves cataloguing legal rules, but also critically analysing contradictions between norms (antinomy of norms) that are both vertical and horizontal in nature. The primary focus is on the conflict between the absolute right of execution guaranteed in Articles 6 and 20 of the UUHT (as a form of *droit de préférence*) and the restrictions imposed by Articles 281 and 286 of the UUK-PKPU. Through this approach, the extent to which the principle of *lex specialis derogat legi generali* can be applied when two special laws overlap in regulating property rights will be examined.

2. **Legislative History Approach**

This approach is widely used as a legal 'excavation' to trace the original intent of the legislators. By thoroughly analysing the 2004 DPR Session Minutes, this study seeks to reconstruct policymakers' mindset when formulating the PKPU Design. This approach is crucial to determining whether the binding of separate creditors to the settlement plan reflects legislative intent or is a residue of regulatory inconsistency that disregards property rights.

3. **Legal Hermeneutic Approach**

As the main approach, legal hermeneutics serves as an instrument for going beyond mere grammatical interpretation. This approach is used to bridge the interpretative gap between the rigid text of the UUK-PKPU and the need for substantive legal certainty. Through a hermeneutic cycle that connects text, context, and reader, this study seeks to find the fairest meaning for separate creditors. The aim is to ensure that the application of Articles 281 and 286 does not merely become a formal voting procedure, but remains in line with the value of justice that protects creditors' constitutional rights over their debt collateral (Suseno, 2010).

The analysis of legal materials in this study was conducted qualitatively and comprehensively by adopting Gadamerian hermeneutics. This approach was chosen because the law is not merely a dead text, but a living entity that requires contextual interpretation. The analysis steps were as follows:

1. **Textual Analysis**

The initial stage began with an examination of the linguistic and grammatical aspects of the diction contained in Articles 281 and 286 of the UUK-PKPU. This analysis aimed to identify semantic ambiguities that arise when the text confronts the absolute norm of property rights. The researcher dissects how terms such as 'binding' and 'consent' in the peace process often clash with the essence of the absolute rights of separate creditors, creating normative tensions that require further explanation.

2. **Fusion of Horizons**

This step is the core of Gadamerian analysis, in which the researcher engages in a dialectical dialogue among three horizons of time and meaning. First, the Horizon of the Text, which is understanding what is explicitly stated in the current norms of the UUK-PKPU. Second, the Horizon of History, which traces the prejudices or preconceptions of the legislators in the 2004 DPR Minutes to understand the socio-political background in which the article was created. And third, the Horizon of the Present, which considers the urgent need for legal certainty in the modern investment and financing ecosystem. Through the fusion of these three horizons, researchers seek new meanings that are more relevant to overcome the interpretative gap that has been occurring.

3. **Legal Certainty Test**

At this stage, the interpretation's results are tested for consistency with fundamental legal principles, particularly the *erga omnes* nature of property rights. Researchers assess whether existing norms provide predictability for separate creditors. The primary focus is to measure the extent to which the law protects individual rights from the 'tyranny of the majority' in peace voting, ensuring that legal certainty is not sacrificed for procedural efficiency alone.

4. **Prescriptive Synthesis**

Meaning Reconstruction and Harmonisation. As a final stage, prescriptive conclusions (providing solutions) are drawn. The researcher formulates a reconstruction of meaning or recommendations for synchronising norms through fairer legal mechanisms, such as objection procedures or protection of guaranteed values (indubitable equivalent). This synthesis aims to achieve an equitable balance between the principle of PKPU collectivity and the protection of the constitutional rights of separate creditors.

## RESULTS AND DISCUSSION

### Hermeneutic Analysis of Articles 281 and 286

From a legal hermeneutic perspective, Article 281 of the Law on Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU) is viewed as a 'problematic text'. The fundamental problem arises from this text's ambition to standardise the legal position of subjects that are fundamentally different in nature, namely, concurrent creditors and separate creditors. Textually, Article 281 forces the absolute rights of individual creditors into the voting sphere, a mechanism that is inherently collective in nature.

Property rights, which should be individual-absolute (applicable to anyone and inviolable), are forced to submit to collective-procedural logic. It gives rise to a paradoxical dualism of norms. On the one hand, Articles 6 and 20 of the UUHT grant independent execution autonomy as a form of *droit de préférence*. On the other hand, Article 281 of the UUK-PKPU absorbs this right into the class quorum mechanism. Without specific judicial safeguards, separate creditors are degraded to quasi-secured status. They become collateral holders whose rights are 'held hostage' by the will of the majority, which often has interests that are contrary to the protection of collateral value.

An excavation of the 2004 DPR Proceedings revealed that the 'spirit' or *ratio legis* of the PKPU is business rescue, not right deprivation. The government and legislators at that time explicitly stated that the PKPU should not be an instrument for degrading the economic value of collateral. However, there is a clear normative gap, the legislators' idealism to protect priority rights is not precisely accommodated in the formulation of Article 281. This design flaw creates a legal loophole that is now widely exploited in judicial practice to enforce settlements that are detrimental to preferred creditors.

The process of fusion of horizons requires us to read Article 281 through the lens of 'Balancing Justice'. Referring to Paul Ricoeur's theory of Refiguration of Meaning, the text of Article 281 must be read integrally with the principle of *droit de préférence*. A settlement plan is hermeneutically valid only if it does not reduce the economic value of the collateral. Legal certainty requires that voting rights not override priority rights. A teleological interpretation must be upheld: the quorum in Article 281 is merely an administrative procedure for achieving a settlement, but the substantive rights of separate creditors must remain firmly established based on *erga omnes*.

Article 286 of the UUK-PKPU is the 'crisis point' in bankruptcy hermeneutics. The binding effect of homologation (approval of the settlement) becomes a coercive instrument capable of violating constitutional property rights. Grammatically, the phrase 'binding on all creditors' in Article 286 is expansive and blind to the category of creditors. Without any clear exceptions or objection mechanisms for those who dissent from the outset (dissenting creditors), this article creates what is known as a 'tyranny of the majority' that is legitimised textually. As a result, security rights, which should be absolute under the UUHT, are transformed into compromisable claims even without the rights holders' explicit consent.

The 2004 Report reveals a profound disconnect in meaning. The legislators envisioned PKPU as a dignified negotiation room, not a 'room of coercion' for security holders. The legislators intended to protect the investment climate, but in practice, Article 286 closes the door to post-homologation objections. It proves the normative Design's inconsistency, which prioritises formal procedures over substantive justice.

The reconstruction of meaning for the sake of legal certainty requires judges to act as Hermeneutic Mediators. Based on Gustav Radbruch's triad of legal objectives (Certainty, Justice, and Utility), article 286 should not be interpreted literally and rigidly. The binding nature should only be considered legally valid as long as the settlement plan provides equivalent protection (indubitable equivalent).

Judges should not merely be 'rubber stamps' for the results of majority voting. Hermeneutically, judges have an obligation to examine whether a haircut (debt reduction) unilaterally harms separate creditors. National legal certainty depends heavily on creditors' confidence that their security rights will never be negotiated without their complete control. An analysis of Articles 281 and 286 of the UUK-PKPU reveals a serious normative anomaly in the Indonesian bankruptcy law system. Legal certainty for separate creditors is the backbone of the national financing system.

### Policy Recommendations

Based on a hermeneutic analysis of the disharmony between the Law on Mortgage Rights (UUHT) and the Law on Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), a comprehensive regulatory reconstruction is needed. The following are policy recommendations to strengthen legal certainty for separate creditors and the stability of the banking sector. The first fundamental step is to conduct a philosophical reconstruction of PKPU's meaning and purpose to align with the principle of absolute property rights. The General Explanation of UUK-PKPU needs to be

amended to emphasise that PKPU is an instrument for coordinating payments to rescue businesses, not a forum for reducing or eliminating the absolute rights of separate creditors without written consent. This principle of protection is crucial to maintaining the rational expectations of creditors, especially banking institutions, regarding the value of collateral agreed upon at the outset of the transaction as a form of legitimate risk mitigation.

To address the normative gap in Article 281 of the UUK-PKPU, it is necessary to add a formal mechanism, an objection clause (objection mechanism), that explicitly protects separate creditors who reject the settlement plan. This regulation must grant separate creditors the right to object if the settlement plan is deemed to reduce the economic value of the collateral substantially or to alter the terms of execution without equivalent compensation. In this case, the Supervisory Judge and the Deciding Judge must have the authority to examine the substance of the objection before the voting process is carried out, to ensure that a collective voting mechanism does not unilaterally annul absolute security rights. This affirmation is essential because, under the principle of legal certainty, the priority rights attached to property security cannot be overridden solely by administrative procedures.

In line with international standards, Indonesia needs to adopt an opt-out proper provision to restore the independence of the property law structure as stipulated in the UUHT. This opt-out option gives separate creditors the right to withdraw from the settlement scheme and continue to enforce their security interests independently, unless the debtor provides adequate protection. The participation of separate creditors in the PKPU settlement plan should be based on the principle of voluntariness, or on a full guarantee that the economic value of their receivables will not be impaired during the restructuring process.

Article 286 of the UUK-PKPU also requires in-depth revision to correct its overly broad binding nature, which has violated the principles of legal certainty and absolute property rights. A settlement plan approved through homologation should not automatically bind separate creditors who refuse to accept it, unless there is a full guarantee that the liquidation value of their collateral will remain protected or that the debt will be repaid in full. Explicit written consent should be an absolute requirement if the settlement plan involves a haircut or an extension of the tenor that drastically reduces the economic value of the collateral. Without clear restrictions in Article 286, the position of separate creditors, especially banks will remain in a state of normative uncertainty, hindering the effectiveness of the national financing system.

Finally, standardisation of substantive fairness tests by judges is needed to strengthen the judicial role in maintaining a balance between the interests of debtors and creditors. Judges should not only focus on voting quorums, but must also conduct a Substantive Justice Test to ensure that debtors act in good faith and that the settlement plan does not cause an unfair decline in the value of collateral. This harmonisation is a vital national strategy to reduce the risk of normative uncertainty, which can increase the cost of funds, thereby enhancing investor confidence and the stability of the financial system in the eyes of the international community.

## CONCLUSION

This study concludes that Articles 281 and 286 of the UUK-PKPU have created persistent legal uncertainty for separate creditors by forcing absolute security rights to be subject to collective voting mechanisms. This condition reduces the position of individual creditors to that of quasi-secured creditors, which fundamentally betrays the philosophy of *droit de préférence* and independent execution rights in the UUHT. This normative tension indicates a failure of the legal system to protect absolute property rights amid the pressures of PKPU procedures, which ultimately undermines the hierarchy of priority rights in debt distribution.

This inconsistency stems from a legislative loophole that reveals a sharp divergence between the legislators' original intent and the norm's resulting formulation. Based on the minutes of the 2004 House of Representatives session, legislators never intended to deprive creditors of their separate rights. Still, Articles 281 and 286 failed to provide adequate protection or objection mechanisms for creditors who rejected the settlement. As a result, there is a hermeneutic disconnect between the law's political objective of maintaining the stability of property guarantees and its technical implementation, which actually legitimises the subordination of separate rights to the will of the majority of creditors.

This inconsistency in norms has a systemic impact on the economy, particularly the banking sector, through portfolio risk escalation and increased funding costs. Uncertainty in the predictability of collateral enforcement forces financial institutions to factor debtor moral hazard risk into interest rates, which, in aggregate, disrupts the stability of the national investment climate and global industrial competitiveness. Therefore, the weakening of separate creditor protection is not merely a technical-

legal issue, but a threat to market confidence and the foundations of Indonesia's macroeconomic stability.

As a solution, the government needs to immediately amend the UUK-PKPU to include an Objection Right and Opt-Out Right mechanism to ensure that the economic value of collateral remains intact for creditors who reject the settlement. Judicially, commercial judges are required to apply the substantive justice test in the homologation process to ensure that there is no unilateral haircut and to guarantee that debtors act in good faith. Consistent harmonisation between the implementation of the UUK-PKPU and the absolute principles in the UUHT is an absolute prerequisite for restoring legal certainty and strengthening the attractiveness of long-term investment in Indonesia.

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