

Abuse of Process in Extreme Grace Period Clauses in Debt Suspension Settlements

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Abstract

This study aims to analyze the legal construction of extreme grace period clauses in Suspension of Debt Payment Obligations (PKPU) settlement proposals and to assess whether such clauses constitute abuse of process despite formal procedural compliance. Using doctrinal legal research with statutory and conceptual approaches, this study examines Law Number 37 of 2004 and develops a normative framework based on proportionality, good faith, and creditor protection through qualitative interpretive analysis. The findings reveal a critical normative gap in Indonesian insolvency law, namely the absence of clear parameters governing the reasonableness of grace periods, which enables debtors to strategically design excessively long and selectively applied deferral clauses that disproportionately burden non-dominant creditors. Although formally validated through the PKPU voting mechanism and homologation process, such clauses undermine the substantive objective of PKPU as a balanced collective restructuring instrument by eroding the economic value of creditor claims. This study establishes that extreme grace period clauses may be classified as a structural form of abuse of process when they exploit procedural legitimacy to achieve substantively unjust outcomes. The novelty of this research lies in conceptualizing extreme grace period clauses as a distinct doctrinal category within the abuse of process framework in Indonesian bankruptcy law, as well as in developing operational indicators—proportionality, non-discrimination, and compensatory mechanisms—for assessing their legality. The study contributes theoretically by advancing a shift from procedural legality to substantive justice in insolvency law, and practically by proposing proportionality-based judicial review and regulatory reform to strengthen creditor protection and ensure the integrity of the PKPU mechanism.

Keywords: Abuse of Process; Creditor Protection; Good Faith; Grace Period Clause

1. INTRODUCTION

Suspension of Debt Payment Obligations (PKPU) constitutes one of the central instruments in Indonesian insolvency law, functioning as a court-supervised collective mechanism designed to enable financially distressed debtors to negotiate and implement a restructuring plan while preserving the going concern value of their business.¹ Under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, PKPU serves as a legal negotiation forum through which debtors and creditors may reach a court-ratified composition agreement (homologation) as an alternative to bankruptcy liquidation.² The normative architecture of PKPU is premised on a delicate balance: it must simultaneously accommodate the debtor's need for financial rehabilitation while safeguarding creditors' collective economic interests through structured, court-supervised decision-making.

¹ Rahmad Prasetyo and Megawati Barthos, "Legal Uncertainty in the Application of Simple Proof in Bankruptcy Cases and Suspension of Debt Payment Obligations," *Asian Journal of Social and Humanities* 3, no. 2 (2024): 382–96, <https://doi.org/10.59888/ajosh.v3i2.444>.

² Izzy Al Kautsar and Danang Wahyu Muhammad, "Sistem Hukum Modern Lawrence M. Friedman: Budaya Hukum Dan Perubahan Sosial Masyarakat Dari Industrial Ke Digital," *Sapientia Et Virtus* 7, no. 2 (2022): 84–99, <https://doi.org/https://doi.org/10.37477/sev.v7i2.358>.

Central to the PKPU framework is a fundamental normative tension between the principle of freedom of contract and the imperative of creditor protection. Debtors are entitled to design the content of their restructuring proposals, including rescheduling, debt reduction, and the granting of grace periods, with considerable latitude.³ This flexibility reflects the legislator's recognition that debt restructuring demands contextual, case-specific solutions. However, the same flexibility that enables creative restructuring also opens space for its misuse. The statute prescribes neither quantitative nor qualitative limits on the duration of grace periods, leaving their determination largely to creditor approval through voting and subsequent judicial ratification. In a creditor structure dominated by a particular group, this mechanism can be exploited to secure majority approval for terms that substantially disadvantage minority creditors lacking bargaining power.

In Indonesian PKPU practice, this structural vulnerability has manifested in the inclusion of grace period clauses extending for periods of five, ten, or even fifteen years—far exceeding what can be economically justified by any realistic business recovery timeline.⁴ Such extreme grace period clauses are often strategically calibrated to the composition of the creditor voting structure: creditors with dominant positions receive comparatively favorable repayment terms, while legitimate creditors outside that dominant position are bound by disproportionately prolonged deferral schemes. Because PKPU voting is calculated by the value of receivables, creditors with smaller claims or limited participation often have minimal influence over the outcome, enabling a formal majority to legitimize substantively inequitable terms.⁵ The economic consequence for affected creditors is severe: prolonged payment deferral without compensatory mechanisms effectively erodes the real value of receivables, constituting a de facto impairment of rights carried out through a formally valid legal process.

This situation exposes a critical normative gap in Indonesian bankruptcy law. Article 285 paragraph (2) of Law Number 37 of 2004 authorizes judges to refuse ratification if a proposal is not made in good faith, yet the law provides no measurable criteria for determining when a grace period clause violates this standard. Judicial practice has largely confined its scrutiny to overt fraud or collusion, allowing substantively unfair clauses to survive homologation so long as procedural requirements are formally satisfied. The result is a structurally embedded asymmetry between formal legality and substantive justice—one that risks reducing PKPU from a balanced restructuring mechanism to a vehicle for the

³ Yohanes Alexander Kenting and Hizkia Dapot Parulian, “Kedudukan Kreditor Separatis Terhadap Rencana Perdamaian Dalam Proses Penundaan Kewajiban Pembayaran Utang,” *Jurnal Ilmu Hukum: ALETHEA* 5, no. 2 (June 29, 2022): 91–110, <https://doi.org/10.24246/alethea.vol5.no2.p91-110>.

⁴ Maniah Maniah, “Rekonstruksi Regulasi Perlindungan Hukum Bagi Kreditor Konkuren Dalam Penyelesaian Kewajiban Debitor Pada Penundaan Kewajiban Pembayaran Utang Berbasis Nilai Keadilan.” (Universitas Islam Sultan Agung, 2022).

⁵ Rafaella Pahlevi, “Legalitas Perdamaian Setelah Debitor Pailit Akibat Tidak Tercapai Perdamaian Dalam Kerangka Penundaan Kewajiban Pembayaran Utang.” (Universitas Islam Indonesia, 2023).

unilateral deferral of obligations.⁶ The legal and economic stakes are significant: creditors unable to recover receivables within a commercially viable timeframe face compounding losses, while the erosion of confidence in the PKPU mechanism heightens systemic risk in the Indonesian credit market.⁷

Existing scholarship has engaged with dimensions of this problem, yet none has directly addressed the construction and legal classification of extreme grace period clauses as a distinct form of abuse of process. Pradipta valuably highlights procedural efficiency within PKPU's majority-based voting system, but leaves the vulnerability of minority creditors to disproportionate restructuring terms unexamined.⁸ Hasibuan and Rangsimanop provide a doctrinal mapping of good faith under Article 285 paragraph (2), yet do not extend their analysis to identify how specific contractual clauses may constitute subtle procedural abuse beyond explicit fraud.⁹ Deviana and Gunadi contribute practical recommendations for improving disclosure, yet fall short of critically evaluating the substantive proportionality of restructuring content.¹⁰ Kadafi et al. develop a conceptual framework for abuse of rights in Indonesian commercial law, but do not extend it to insolvency proceedings.¹¹ Satino's empirical analysis confirms the dominance of formalistic judicial reasoning in homologation decisions, yet articulates no normative benchmarks for identifying when restructuring clauses exceed acceptable limits.¹²

In the international literature, the abuse of process doctrine in insolvency contexts has received more systematic treatment. Liakopoulos traces the evolution of abuse of process in Anglo-Saxon legal systems and identifies its defining characteristic as the exploitation of formally valid procedures to achieve substantively illegitimate ends—a construction directly applicable to the PKPU context.¹³ Fahdil et al. demonstrate from a comparative perspective that balancing restructuring efficiency with creditor protection constitutes a foundational

⁶ Tabah Penemuan Silalahi, “Upaya Hukum Kasasi Terhadap Putusan Penundaan Kewajiban Pembayaran Utang (PKPU) Pasca Putusan Mahkamah Konstitusi Nomor 23/PUU-XIX/2021” (Universitas Nasional, 2023).

⁷ Timotius Tumbur Simbolon, “Rekonstruksi Hak Kreditor Konkuren Di Dalam Undang-Undang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Untuk Keseimbangan Hak Para Kreditor= Reconstruction of The Concurrent Creditor Right in The Bankruptcy Law and Suspension of Debt Payment Obliga” (Universitas Kristen Indonesia, 2024).

⁸ Arga Mahawira Pradipta, “The Position of Election Law in Ensuring Regional Political Justice and Stability,” *Journal of Law and Humanity Studies* 2, no. 1 (2025): 15–22, <https://doi.org/10.59613/vfzg8f05>.

⁹ Fauzie Yusuf Hasibuan and Pattharawadee Rangsimanop, “Judicial Discretion and the Limits of Homologation in Cross-Border Insolvency: Rethinking Legal Certainty and Creditor Protection from a Comparative Perspective,” *Journal Evidence Of Law* 4, no. 2 (2025): 983–92, <https://doi.org/10.59066/jel.v4i2.1596>.

¹⁰ Nabila Tiara Deviana and Ariawan Gunadi, “Legal Protection for Creditors in Suspension of Debt Payment Obligations (PKPU): A Critique of the Implementation of Law Number 37 of 2004 on Bankruptcy,” *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 17, no. 1 (2025): 339–53, <https://doi.org/10.32505/jurisprudensi.v17i1.11364>.

¹¹ Alsa Ahmad Kadafi, Rina Hastuti, and Mohammad Iqbal, “A Juridical Review of Breach of Contract in Commercial Cooperation Agreements in Indonesia,” *Justicia Insight* 1, no. 2 (2025): 50–55, <https://doi.org/10.70716/justin.v1i2.160>.

¹² Satino Satino, “Legal Protection for Minority Shareholders in Bankruptcy (Case Study of Decision Number 1345 K/Pdt. Sus-Pailit/2024),” *Lambung Mangkurat Law Journal* 10, no. 2 (2025): 427–41, <https://doi.org/10.32801/abc.v10i2.262>.

¹³ Dimitris Liakopoulos, “The Abuse of Process Doctrine in the Anglo-Saxon System: A Reconstruction at the Antipodes of the European System.,” *Revista Eletrônica de Direito Processual* 26, no. 2 (2025).

principle of modern insolvency law.¹⁴ Rahou et al. further argue that contemporary bankruptcy law reforms increasingly demand substantive judicial oversight of restructuring terms, moving beyond procedural compliance as the sole criterion of validity.¹⁵ Collectively, these studies establish that the tension between formal legality and substantive fairness in insolvency proceedings is a structurally recognized problem in comparative law, one that Indonesian scholarship has yet to address with respect to extreme grace period clauses specifically.

This review reveals a consistent and consequential research gap: no existing study has systematically classified extreme grace period clauses as a legal category within the abuse of process doctrine, nor has any prior work developed normative criteria for assessing their proportionality within the PKPU homologation framework. Addressing this gap, this research pursues two principal objectives: first, to analyze the legal construction of extreme grace period clauses in PKPU settlement proposals under Law Number 37 of 2004; and second, to assess whether their inclusion despite formal procedural compliance may be classified as abuse of process. The scientific proposition advanced is that extreme grace period clauses, when selectively applied and disproportionate to economic rationale, constitute a structural manifestation of abuse of process, exploiting the gap between procedural legitimacy and substantive justice.

The analysis is organized around three interrelated conceptual axes. The first concerns the normative construction of grace period clauses within the PKPU framework, examined through the principles of freedom of contract and their limitations under good faith and proportionality. The second addresses the doctrine of abuse of process, understood teleologically as the misuse of formally valid legal mechanisms to achieve outcomes inconsistent with their normative purpose. The third focuses on creditor protection, particularly the structural position of legitimate creditors outside dominant voting coalitions and the implications of extreme grace periods for the equitable distribution of restructuring burdens. These three axes constitute the analytical framework through which this study evaluates the legality and legitimacy of extreme grace period clauses in Indonesian bankruptcy law.

2. METHOD

This research employs doctrinal legal research (*normative juridical research*), which positions law as an autonomous normative system whose coherence, principles, and objectives are examined through systematic analysis of legal texts and doctrines.¹⁶ This approach is deliberately chosen because the central problem of this study, whether extreme

¹⁴ Husam Nawfal Fahdil et al., “Corporate Bankruptcy and Financial Restructuring,” *Journal of Ecohumanism* 3, no. 5 (2024): 234–48.

¹⁵ El hassania Rahou et al., “Innovative Reforms in Bankruptcy Law for Corporate Financial Recovery,” in *International Conference on Advanced Intelligent Systems for Sustainable Development* (Springer, 2024), 245–53.

¹⁶ Enan Nova Solihin, Pristika Handayani, and Rizki Tri Anugrah Bhakti, “Analisis Hukum Perdata Terhadap Klausul Baku Dalam Kontrak Bisnis Industri Manufaktur,” *Jurnal Usm Law Review* 8, no. 3 (2025): 1533–45, <https://doi.org/10.26623/julr.v8i3.12781>.

grace period clauses in PKPU settlement proposals constitute abuse of process, is fundamentally a normative question that requires interpretive and argumentative legal reasoning, rather than empirical measurement. It thereby enables the study to move beyond descriptive mapping toward a critical normative evaluation of whether existing legal arrangements adequately prevent the misuse of procedural flexibility within the PKPU framework.

Two complementary approaches are employed. The statutory approach examines the legislative framework governing PKPU under Law Number 37 of 2004, particularly Article 265 on the debtor's right to submit a composition plan and Article 285 paragraph (2) on judicial authority to refuse homologation on grounds of bad faith, to identify the normative gap enabling the strategic use of extreme grace period clauses. The conceptual approach develops and operationalizes the theoretical constructs central to this study, including the doctrine of abuse of process, the principle of good faith, and the standard of proportionality, to construct the analytical framework through which extreme grace period clauses are evaluated as potential structural manifestations of procedural abuse.

The research specification is analytical-descriptive, systematically describing the normative construction of grace period clauses in PKPU settlement proposals while critically assessing their conformity with the foundational objectives of Indonesian bankruptcy law.

Legal materials are organized into three categories. Primary legal materials include Law Number 37 of 2004, the Indonesian Civil Code, and relevant Supreme Court decisions on PKPU homologation. Secondary legal materials comprise academic books, peer-reviewed journals, dissertations, and scholarly commentaries on bankruptcy law, creditor protection, and abuse of process in both Indonesian and comparative legal contexts. Tertiary legal materials, including legal dictionaries, are consulted to clarify technical terminology where definitional precision is required. These materials were collected through systematic library research, drawing on national legal databases, international academic repositories, and official legislative archives.

The materials were analyzed qualitatively through three interpretive methods that together constitute the analytical framework linking method to findings. Grammatical interpretation determines the plain meaning of statutory provisions governing grace periods and good faith. Systematic interpretation situates individual provisions within the broader normative structure of bankruptcy law, revealing tensions between procedural flexibility and substantive creditor protection. Teleological interpretation evaluates provisions and clauses against the ultimate legislative purpose of PKPU as a balanced debt restructuring mechanism. The convergence of these three methods produces the normative criteria through which this study assesses whether extreme grace period clauses, despite formal procedural validity, qualify as abuse of process.

3. RESULTS AND DISCUSSION

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

3.1.1 The Position of the Settlement Proposal within the PKPU Framework

The settlement proposal constitutes the juridical core of the PKPU process, functioning as the primary instrument through which a debtor formally proposes a collective debt restructuring scheme to creditors.¹⁷ Its legal basis is anchored in Article 265 of Law Number 37 of 2004, which grants the debtor the right to submit a composition plan to be assessed through a creditor voting mechanism. Article 266 further requires that the proposal be made available to creditors no later than the commencement of the PKPU period, ensuring that creditors have an adequate opportunity to evaluate its terms. Article 281 governs the voting threshold required for approval, stipulating agreement by more than one-half of the admitted creditors representing at least two-thirds of the total recognized claims. Together, these provisions establish the procedural architecture within which the settlement proposal operates, yet they remain silent on the substantive reasonableness of the proposal's content, particularly with respect to the duration and proportionality of grace period clauses.

From a normative standpoint, the settlement proposal represents a manifestation of contractual freedom within a court-supervised collective framework. However, this freedom is not without limits. The theory of legal protection, as developed by Hadjon posits that the state is obliged to provide both preventive and repressive protection to parties whose legal interests are threatened by the exercise of legal authority or contractual power.¹⁸ Applied to the PKPU context, this theory demands that the composition proposal, as a legally binding instrument, be subjected to substantive scrutiny to ensure that its terms do not systematically subordinate the interests of creditors who lack structural bargaining power. The formal approval of a proposal through the voting mechanism does not, in itself, satisfy this protective obligation if the substance of the proposal produces structurally unjust outcomes.

The public dimension of the settlement proposal further reinforces this argument. Unlike an ordinary bilateral contract, a composition agreement ratified through homologation binds all creditors included in the PKPU, regardless of whether they individually consented to its terms. This erga omnes effect, confirmed under Article 285 paragraph (1) of Law Number 37 of 2004, fundamentally distinguishes the settlement proposal from a private contractual arrangement and places it within a domain of quasi-public legal governance. The coercive collective character of homologation therefore, demands a correspondingly elevated standard of substantive fairness. As the theory of

¹⁷ Michael Sutjahjo, "Keadilan Dalam Putusan Pailit: Studi Terhadap Debitur Yang Masih Memiliki Prospek Usaha," *Jurnal Lentera: Kajian Keagamaan, Keilmuan Dan Teknologi* 24, no. 3 (2025): 907–18.

¹⁸ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara* (Bina Ilmu, 1987), <https://books.google.co.id/books?id=zzjaGwAACAAJ>; Jelita Sihombing, Iran Sahril, and Dhoni Martien, "Perlindungan Hukum Pihak Ketiga Sebagai Pemberi Jaminan Hak Tanggungan Terhadap Pengalihan Piutang Secara Cessie Oleh Kreditur dalam Hal Debitur Gagal Bayar," *Cendekia : Jurnal Penelitian Dan Pengkajian Ilmiah* 1, no. 8 SE-Articles (August 29, 2024): 511–19, <https://doi.org/10.62335/5fsng344>.

distributive justice requires, legal arrangements that allocate burdens and benefits among multiple parties must reflect a proportional distribution of risk and obligation, not one determined by voting power alone.¹⁹

In practice, however, a discernible gap exists between this normative ideal and the actual function of settlement proposals in Indonesian PKPU proceedings. Judicial oversight under Article 285 paragraph (2), which authorizes refusal of homologation where the proposal is not made in good faith, has been applied primarily to detect overt fraud or procedural irregularity, rather than to evaluate the substantive proportionality of restructuring terms. This formalistic tendency reveals a systemic inconsistency: while the law structurally requires the settlement proposal to serve the collective interests of all creditors, judicial practice has not developed the interpretive tools necessary to enforce that requirement at the level of clause-by-clause substantive review. The result is a structural protection deficit that leaves legitimate creditors outside dominant voting coalitions particularly exposed to disproportionate restructuring burdens, a deficit that the doctrine of abuse of process must be mobilized to address.

3.1.2 The Concept and Function of the Grace Period in a PKPU Settlement Proposal

The grace period, within the context of a PKPU settlement proposal, is a period of debt payment deferral granted to the debtor before repayment obligations commence. Theoretically, it functions as a temporary transitional instrument enabling the debtor to stabilize its financial condition, restore operational capacity, and mobilize resources to fulfill obligations to creditors. In international debt restructuring practice, grace periods are a well-established component of rational restructuring schemes and are recognized by frameworks such as the UNCITRAL Legislative Guide on Insolvency Law and the World Bank Principles for Effective Insolvency and Creditor Rights Systems. These international standards consistently treat the grace period as a time-bound, economically justified measure that must be accompanied by a credible and progressive repayment plan, serving rehabilitation rather than indefinite deferral.²⁰ This comparative context establishes a benchmark against which the Indonesian regulatory framework can be critically assessed.

In contrast, the Bankruptcy and PKPU Law of Indonesia prescribes neither a maximum duration nor qualitative criteria for the reasonableness of grace periods. This regulatory silence is not a neutral omission but a normatively consequential gap. The absence of substantive parameters effectively delegates unlimited discretion to debtors in formulating grace period terms, subject only to the formal approval of the creditor majority and judicial ratification. Such an arrangement is structurally inconsistent with the protective function that the PKPU is designed to serve: a mechanism that permits indefinitely extended deferrals without substantive scrutiny cannot credibly claim to balance debtor rehabilitation

¹⁹ John Rawls, *A Theory of Justice* (Harvard University Press, 2005), <https://doi.org/10.2307/j.ctvjf9z6v>.

²⁰ United Nations Commission on International Trade Law, "UNCITRAL Legislative Guide on Insolvency Law," 2021; World Bank, "Principles for Effective Insolvency and Creditor/Debtor Regimes," 2021, <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/391341619072648570>.

with equitable creditor protection. The gap therefore demands to be filled through purposive legal interpretation grounded in the general principles of civil law, proportionality, and good faith, rather than treated as tacit authorization for unrestricted contractual freedom.

The triangular relationship between the grace period, the principle of proportionality, and the obligation of good faith constitutes the normative core of any substantive assessment of grace period clauses. Proportionality requires that the duration of a grace period bear a demonstrable and rational relationship to the debtor's objectively assessed repayment capacity, realistic business recovery timeline, and the specific characteristics of the restructured debt. A grace period that extends far beyond what any credible financial projection can justify is disproportionate by definition, regardless of whether it obtained majority approval. Good faith, as an objective legal standard under Article 1338 of the Indonesian Civil Code and operationalized in the homologation context through Article 285 paragraph (2) of Law Number 37 of 2004, imposes an independent obligation to act reasonably and not exploit legal mechanisms to the systematic detriment of other parties. When a grace period is set for an excessive duration without compensatory mechanisms, such as accruing interest or value adjustment arrangements, the entire burden of economic risk is shifted unilaterally to creditors, eroding the real value of legally recognized receivables through inflation and prolonged uncertainty. This outcome is irreconcilable with both proportionality and good faith, and constitutes a legally cognizable deviation from the substantive objectives of the PKPU framework.

3.1.3 The Construction of Extreme Grace Periods in Peace Proposal Practice

In Indonesian PKPU practice, the inclusion of extreme grace period clauses, defined as payment deferral schemes whose duration is disproportionate to any credible economic justification for restructuring, has emerged as a structurally recurring phenomenon. A grace period may be assessed as extreme when it satisfies one or more of the following criteria: first, its duration significantly exceeds the debtor's projected business recovery timeline as reflected in any credible financial projection; second, it is selectively imposed on specific creditor groups without objective differentiation based on debt characteristics or risk profile; third, it is unaccompanied by any compensatory mechanism, such as accruing interest, value indexation, or security arrangements, that would preserve the economic value of deferred receivables; and fourth, the economic projections offered to justify the deferral lack empirical grounding and cannot withstand independent scrutiny. These criteria provide an operational framework for distinguishing legitimate restructuring flexibility from strategic procedural exploitation.

The practical manifestation of such constructions is illustrated by documented patterns in Indonesian commercial court proceedings. In several PKPU cases, debtors facing acute liquidity distress have submitted composition proposals incorporating grace periods of eight to fifteen years for unsecured creditors, while simultaneously offering substantially shorter deferral periods, or immediate partial repayment, to secured or strategically significant

creditors.²¹ This differential treatment is not calibrated to the nature or risk profile of the underlying debt, but rather to the configuration of the creditor voting structure: by securing the support of dominant creditors through favorable terms, debtors effectively obtain the majority approval necessary for homologation while imposing disproportionate burdens on creditors outside the dominant coalition. The resulting composition proposal formally complies with the procedural requirements of Articles 281 and 285 of Law Number 37 of 2004, yet its substantive design operates to neutralize creditor resistance rather than to advance genuine debt rehabilitation.

From a doctrinal standpoint, this construction represents a critical point of tension between the normative function of PKPU and its practical application. The theory of legal protection requires that the PKPU mechanism provide creditors with substantive, not merely procedural, protection against the disproportionate exercise of debtor discretion. (Prasetyo & Barthos, 2024) An extreme grace period that eliminates the real economic value of receivables over its duration constitutes a de facto impairment of creditor rights—one that the formal recognition of those rights in the composition agreement cannot remedy. Furthermore, the theory of distributive justice demands that the allocation of restructuring burdens reflect proportionality and objective rationality, rather than bargaining asymmetry. When extreme grace periods are constructed as strategic instruments calibrated to voting configurations, they distort this distributive logic, eroding the collective solidarity that constitutes the moral foundation of the PKPU mechanism. Left uncorrected, this erosion diminishes institutional confidence in the bankruptcy system as a whole and increases the systemic risk of restructuring failure when speculative business projections inevitably go unrealized.

3.1.4 Legal Basis for Including a Grace Period and Its Limitations

The legal basis for including a grace period in a PKPU composition proposal derives primarily from Article 265 of Law Number 37 of 2004, which grants the debtor the right to submit a restructuring plan to creditors. This provision reflects the foundational civil law principle of freedom of contract (*vrijheid van contract*), enshrined in Article 1338 of the Indonesian Civil Code, which recognizes the parties' autonomy to determine the content of their agreements. However, freedom of contract is not an absolute principle. Article 1338 itself conditions contractual validity on compliance with good faith, while Articles 1320 and 1337 further require that agreements not contravene statutory law, public order, or morality. In the PKPU context, these general civil law limitations are compounded by the collective and quasi-public character of the homologation process: because a ratified composition agreement binds all creditors regardless of individual consent, the exercise of contractual freedom by the debtor in drafting grace period terms carries consequences that extend well beyond a bilateral transaction and cannot be governed by private autonomy alone.

²¹ Sutan Remy Sjahdeini, *Sejarah, Asas, Dan Teori Hukum Kepailitan (Memahami Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran)* (Kencana, 2016); M. Handi Shubhan, *Hukum Kepailitan: Prinsip, Norma, Dan Praktik Di Peradilan* (Kencana, 2019).

The relationship between contractual freedom and good faith in the PKPU framework is therefore not one of mere coexistence but of structural tension. Good faith, understood as an objective legal standard, imposes an independent obligation on the debtor to act reasonably and proportionately in designing the composition proposal, not merely to refrain from fraud or misrepresentation.²² A grace period clause that is formally agreed upon through the voting mechanism but substantively imposes a disproportionate deferral on a segment of creditors without a rational economic justification violates this objective standard, irrespective of procedural compliance. The normative gap in Law Number 37 of 2004, its failure to prescribe measurable parameters for the reasonableness of grace period duration, has, in practice, allowed good faith to be interpreted narrowly as the absence of explicit collusion, enabling substantively inequitable clauses to survive homologation.²³ This interpretive narrowing is inconsistent with the legislative purpose of Article 285 paragraph (2), which authorizes judicial refusal of ratification precisely to provide a substantive corrective mechanism against proposals that, despite procedural regularity, contravene the equitable objectives of PKPU.

The role of the judge at the homologation stage must therefore be understood as extending beyond formal verification of procedural compliance. Acting as guardian of the collective process, the judge bears a substantive oversight function: to assess whether the composition proposal, including its grace period clause, reflects a genuinely proportionate allocation of restructuring burdens among all bound creditors. This function demands the application of normative parameters for reasonableness that judicial practice and doctrine must progressively develop. Such parameters may include: whether the grace period duration corresponds to a credible, independently verifiable business recovery projection; whether creditors of comparable legal standing are treated differentially without objective justification rooted in debt characteristics rather than voting position; whether any compensatory mechanism is provided to offset the economic risk of prolonged deferral; and whether the overall restructuring scheme reflects a genuine commitment to debt rehabilitation rather than strategic obligation suspension. Judicial decisions that engage substantively with these parameters will generate interpretive standards operating both repressively, correcting abuse after the fact, and preventively, guiding debtors toward proportionate proposal design. Over time, this standard-setting function will strengthen legal certainty in PKPU practice and restore the mechanism's credibility as a balanced instrument of collective debt resolution, grounded equally in the principle of contractual freedom and the imperative of distributive justice.

²² Krista Yitawati, Adi Sulistiyono, and Pujiyono Pujiyono, "Reconstructing the Debt Restructuring Mechanism in the Indonesian Law on Bankruptcy and Suspension of Debt Payment Obligations," *Financial Engineering* 1 (June 1, 2023): 88–95, <https://doi.org/10.37394/232032.2023.1.8>.

²³ Ridwan Khairandy, *Itikad Baik Dalam Kebebasan Berkontrak* (Jakarta: Pasca Sarjana Fakultas Hukum Universitas Indonesia, 2003); Shubhan, *Hukum Kepailitan: Prinsip, Norma, Dan Praktik Di Peradilan*.

3.1.5 Legitimate Creditors Outside of a Dominant Position and Inequality in Legal Protection

The structural vulnerability of legitimate creditors outside a dominant voting position represents one of the most consequential normative deficiencies within the current PKPU framework. Under the voting mechanism prescribed by Article 281 of Law Number 37 of 2004, approval of a composition proposal is determined by a double majority calculated by the number of consenting creditors and the aggregate value of their claims. This arithmetic structure inherently privileges creditors with large claim values, enabling a numerically small coalition of dominant creditors to legitimize restructuring terms that systematically disadvantage creditors holding smaller or dispersed claims. The result is a structural power asymmetry that the law formally tolerates but substantive justice cannot endorse: creditors who are legally recognized and procedurally included in the PKPU process may nonetheless be rendered effectively powerless to resist terms that substantially impair their economic rights.

This power asymmetry is compounded by informational inequality. Dominant creditors, typically institutional lenders or major trade creditors, possess superior analytical capacity, legal resources, and access to financial information that enable them to evaluate and negotiate restructuring terms on more equal footing with the debtor.²⁴ Concurrent creditors outside the dominant coalition frequently lack equivalent resources and are therefore structurally predisposed to accept pre-formulated proposal terms without meaningful deliberation.²⁵ In this environment, the debtor's informational advantage can be leveraged to present optimistic but unverifiable business projections that justify extreme grace periods, while the creditors most adversely affected lack the capacity to effectively contest their validity. The collective voting mechanism, rather than democratizing the restructuring process, therefore risks functioning as a formal legitimation device for outcomes predetermined by bargaining asymmetry.

The legal implications of this structural inequality for the protection of concurrent creditors are significant. From the perspective of legal protection theory, the state's obligation to provide substantive protection is most acute precisely where structural vulnerability is greatest—that is, where the affected party lacks the practical capacity to protect its own interests through the available legal mechanism. A PKPU process that binds concurrent creditors to extreme grace period clauses they had no effective power to reject fails this protective obligation at the substantive level, even if procedural requirements are formally satisfied. Furthermore, the principle of equality before the law demands not merely formal equal treatment but substantively equivalent protection of legally recognized rights. When creditors of equal legal standing—holding equally valid, court-recognized claims—

²⁴ Wai Yee Wan and Casey Watters, "Mandatory Disclosure in Corporate Debt Restructuring via Schemes of Arrangement: A Comparative Approach," *International Insolvency Review* 30, no. S1 (September 5, 2021), <https://doi.org/10.1002/iir.1425>.

²⁵ Diane Lourdes Dick, "Hostile Restructurings," *Washington Law Review* 96 (2021): 1333.

are subjected to fundamentally different economic outcomes determined not by the nature of their claims but by their structural position within the voting mechanism, the principle of equality is violated in its substantive dimension. Fairness in debt restructuring, consistent with the theory of distributive justice, cannot be measured by quorum fulfillment alone; it must reflect a proportional and objectively justified allocation of restructuring burdens across all creditor classes. The development of substantive judicial parameters for assessing grace period proportionality is therefore not merely a doctrinal refinement but a structural necessity for restoring the equitable foundations of the PKPU mechanism.

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

3.2.1 Abuse of Process from a Bankruptcy Law Perspective

Abuse of process, as a doctrinal concept, refers to the use of a legally valid procedural mechanism for purposes that deviate substantively from its normative function and legislative intent.²⁶ In legal doctrine, the concept is not confined to explicit violations of written norms; rather, its defining characteristic is the instrumentalization of formally legitimate procedures to achieve outcomes inconsistent with the spirit and purpose of the mechanism's creation.²⁷ Doctrinally, abuse of process is constituted by three core elements: first, the existence of a formally valid legal procedure that has been duly complied with; second, the use of that procedure to achieve an objective that deviates from its normative purpose; and third, the production of substantively unjust outcomes, particularly to parties who are legally bound by the results without having had meaningful capacity to influence them.²⁸ Crucially, the third element does not require proof of subjective malicious intent—it is sufficient that the objective effect of the procedural use is substantively incompatible with the mechanism's declared function.²⁹

In the context of Indonesian bankruptcy law, abuse of process acquires particular salience given the collective and coercive character of the PKPU mechanism. Unlike ordinary contractual disputes, PKPU proceedings bind all admitted creditors to the homologated composition agreement, including those who voted against its approval. This erga omnes effect transforms the PKPU from a bilateral negotiation into a quasi-public governance process, in which procedural outcomes carry legally coercive consequences for

²⁶ Emmanuel Gaillard, "Abuse of Process in International Arbitration," *ICSID Review* 32, no. 1 (February 2017): 17–37, <https://doi.org/10.1093/icsidreview/siw036>; John David Branson, "The Abuse of Process Doctrine Extended: A Tool for Right Thinking People in International Arbitration," *Journal of International Arbitration* 38, no. Issue 2 (April 1, 2021): 187–214, <https://doi.org/10.54648/JOIA2021011>.

²⁷ Liakopoulos, "The Abuse of Process Doctrine in the Anglo-Saxon System: A Reconstruction at the Antipodes of the European System."

²⁸ Carlotta Ceretelli, "Abuse of Process: An Impossible Dialogue Between ICJ and ICSID Tribunals?," *Journal of International Dispute Settlement* 11, no. 1 (March 1, 2020): 47–68, <https://doi.org/10.1093/jnlids/idz028>; Branson, "The Abuse of Process Doctrine Extended: A Tool for Right Thinking People in International Arbitration"; Cornell Law School – LII, "Abuse of Process," Cornell Law School - Legal Law Institute, accessed April 10, 2026, https://www.law.cornell.edu/wex/abuse_of_process.

²⁹ Gaillard, "Abuse of Process in International Arbitration."

parties who may have had no effective means of resistance.³⁰ It is precisely this coercive dimension that renders the PKPU susceptible to abuse: a debtor who successfully navigates the procedural requirements of Articles 281 and 285 of Law Number 37 of 2004 can secure the legal force of homologation for a composition proposal that, in substantive terms, disproportionately advantages certain creditors while systematically impairing the rights of others. The formal regularity of the process provides no guarantee of its substantive legitimacy.

The identification of abuse of process within the PKPU framework therefore, demands a teleological analytical approach—one that evaluates the use of the mechanism not solely against the text of procedural requirements, but against the substantive objectives that the PKPU is legislatively designed to serve: balanced collective debt resolution, genuine business rehabilitation, and equitable creditor protection.³¹ Where the deployment of PKPU procedures produces outcomes systematically at variance with these objectives—particularly through restructuring terms that eliminate the economic value of minority creditor receivables without rational justification—there exists a legally cognizable basis for classifying such conduct as abuse of process. Developing this classification within Indonesian bankruptcy law doctrine constitutes a significant theoretical contribution: it shifts the doctrinal boundary of homologation review from a purely procedural inquiry toward a substantive proportionality assessment, thereby expanding the normative reach of Article 285 paragraph (2) and enriching the theoretical foundations of Indonesian insolvency law with a structural abuse of process framework.

3.2.2 Construction of Extreme Grace Period Clauses as a Manifestation of Abuse of Process

Extreme grace period clauses in PKPU composition proposals constitute a manifestation of abuse of process when their design serves not to support rational debt rehabilitation, but to strategically neutralize creditor resistance while maintaining formal procedural compliance. The legal indicators that signal this classification are identifiable and operationally distinct. First, the grace period duration bears no rational correspondence to any credible business recovery projection, indicating that deferral—rather than rehabilitation—is the substantive objective. Second, the clause is selectively applied: materially different deferral schemes are imposed on creditors of comparable legal standing, differentiated not by the nature or risk profile of their claims but by their position within the voting configuration. Third, no compensatory mechanism—such as accruing interest, value indexation, or additional security—accompanies the deferral to offset the economic risk borne by affected creditors. Fourth, the overall proposal design demonstrates awareness of the creditor voting structure, with favorable terms calibrated to secure dominant creditor

³⁰ Muthmainnah Natsir, “The Efficacy and Determinants of Composition Schemes in Bankruptcy Resolution: A Case Study of Decision Number 10/Pdt. Sus-PKPU/2018/PN. Niaga. Mks,” *Sovereign: International Journal of Law* 6, no. 3–4 (2024): 77–87, <https://doi.org/10.37276/sijl.v6i3-4.51>.

³¹ Fahdil et al., “Corporate Bankruptcy and Financial Restructuring.”

support while the most burdensome terms are allocated to creditors whose votes are structurally insufficient to determine the outcome. The convergence of these indicators establishes a pattern of procedural instrumentalization that satisfies the doctrinal elements of abuse of process identified in the preceding explanation.

The substantive injustice produced by this construction operates along two interconnected dimensions. At the individual level, creditors subjected to extreme grace periods experience a de facto impairment of legally recognized rights: while their claims remain formally acknowledged in the composition agreement, their economic substance is progressively eroded by the combined effect of prolonged deferral, inflation, and the absence of compensatory arrangements.³² A receivable deferred for ten to fifteen years without interest or value adjustment mechanisms retains its nominal legal recognition while losing the preponderance of its real economic value—a result functionally equivalent to partial debt cancellation imposed without the creditor's meaningful consent. At the structural level, the selective application of differential grace periods across creditor classes distorts the distributive logic of the PKPU mechanism as a whole. When restructuring burdens are allocated according to voting power rather than objective debt characteristics or proportional risk, the composition proposal ceases to function as an instrument of collective debt resolution and becomes a mechanism for the legal consolidation of bargaining asymmetry. This shift—from economic rationality to legal-strategic calculation as the governing logic of restructuring design—represents the definitive doctrinal marker distinguishing legitimate exercise of contractual discretion from abuse of process within the PKPU framework. Recognizing this distinction and embedding it within the normative parameters applied by judges at the homologation stage is essential to the development of a more substantive Indonesian insolvency law doctrine capable of addressing structural abuse that operates beneath the threshold of explicit procedural violation.

3.2.3 The Relationship between the Voting Mechanism and Abuse of Debtor Discretion

The voting mechanism prescribed under Article 281 of Law Number 37 of 2004 is structurally designed as a collective decision-making instrument, premised on the assumption that majority approval reflects a reasonable consensus regarding the fairness and viability of a proposed restructuring scheme. However, the mechanism's design—calculating the required majority by aggregate claim value rather than by equal creditor representation—creates an inherent structural vulnerability. Because voting weight is proportional to the size of recognized claims, creditors holding large receivables exercise disproportionate influence over the outcome, while creditors with smaller claims are rendered structurally marginal regardless of the substantive merit of their objections.³³ This value-weighted architecture transforms the voting mechanism from an instrument of

³² Anna Bessonova, Svitlana Bessonova, and Alina Shevchenko, “Optimization of Receivables of an Enterprise as a Tool for Strengthening Financial Efficiency,” *Економіка Розвитку Систем* 6, no. 2 (2024): 146–50, <https://doi.org/10.32782/2707-8019/2024-2-20>.

³³ Friedemann Bieber and Huub Brouwer, “The Ethics of Selling Shares in Your Future Income,” *Politics, Philosophy & Economics*, 2025, 1470594X251391208, <https://doi.org/10.1177/1470594X251391208>.

genuine collective deliberation into one susceptible to strategic capture: a debtor who secures the support of a numerically small but claim-value-dominant creditor coalition can achieve homologation for a composition proposal whose terms are substantively inequitable to the remaining creditor body.

The relationship between this structural vulnerability and abuse of debtor discretion is direct and operationally significant. A debtor with knowledge of the creditor voting configuration—including the identity, claim values, and interests of dominant creditors—possesses the informational capacity to design a composition proposal that strategically accommodates dominant creditors through favorable repayment terms while allocating disproportionately burdensome grace period clauses to creditors whose aggregate claim value is insufficient to determine the voting outcome. In this construction, the debtor does not violate any explicit procedural requirement: quorum thresholds are met, voting procedures are followed, and homologation is obtained through formally legitimate channels. Yet the voting mechanism, rather than functioning as a substantive test of the proposal's reasonableness, operates as a formality that legitimizes a predetermined distributional design. The abuse of discretion is therefore embedded not in procedural non-compliance but in the strategic exploitation of the gap between the voting mechanism's formal logic and its substantive protective function.

This integrative analysis—connecting voting structure, power asymmetry, and debtor discretion—reveals that abuse of process in the PKPU context is a systemic rather than incidental phenomenon. The informational asymmetry between debtors and minority creditors further compounds this dynamic: debtors control the drafting of the composition proposal and the financial projections presented to creditors, and can selectively present optimistic but unverifiable recovery scenarios to justify extreme grace periods without exposing the underlying strategic calculation.³⁴ Minority creditors, lacking equivalent analytical resources and access to verified financial data, are structurally predisposed to accept pre-formulated terms without meaningful deliberation.³⁵ The approval obtained through such a process does not reflect informed collective consent but rather the formalization of bargaining asymmetry through procedurally valid means. Addressing this systemic vulnerability requires reconceptualizing the voting mechanism not merely as a mathematical procedure but as an ethically governed process whose legitimacy depends on substantive fairness—a reconceptualization that demands both enhanced transparency obligations during the PKPU period and more robust judicial scrutiny of proposal content at the homologation stage.

3.2.4 Good Faith as a Corrective Instrument against Abuse of Process

Article 285 paragraph (2) of Law Number 37 of 2004 authorizes judges to refuse ratification of a composition agreement that is not made in good faith, constituting the

³⁴ David A Skeel Jr, “Distorted Choice in Corporate Bankruptcy,” *The Yale Law Journal* 130 (2020): 366.

³⁵ Bo Becker and Jens Josephson, “Insolvency Resolution and the Missing High-Yield Bond Markets,” *Review of Financial Studies* 29, no. 10 (October 2016): 2814–49, <https://doi.org/10.1093/rfs/hhw014>.

primary normative entry point for judicial correction of abuse of process within the PKPU framework.³⁶ In its current application, however, good faith under this provision is predominantly interpreted in its subjective dimension—confined to the detection of explicit fraud, fabrication, or demonstrable collusion.³⁷ This narrow interpretive approach is doctrinally insufficient. Good faith as a general principle of civil law, enshrined in Article 1338 of the Indonesian Civil Code, operates as an objective standard imposing an independent obligation to act reasonably, proportionately, and without exploiting legal mechanisms to the systematic detriment of other parties—regardless of whether subjective malicious intent can be proven.³⁸ The reduction of good faith to the mere absence of fraud therefore misreads both its doctrinal scope and its legislative function within Article 285 paragraph (2), leaving structural and subtle forms of abuse of process—including extreme grace period clauses—effectively beyond the reach of judicial correction.³⁹

A progressive interpretation of Article 285 paragraph (2) demands that good faith be applied in its objective dimension at the homologation stage. Under this interpretation, the relevant judicial inquiry is not limited to whether fraud occurred, but extends to whether the composition proposal—including its grace period clause—reflects a genuinely proportionate and reasonably justified allocation of restructuring burdens across all bound creditors. Concretely, a progressive application of Article 285 paragraph (2) requires judges to assess: whether the grace period duration corresponds to a credible and independently verifiable business recovery projection; whether differential treatment among creditors of comparable legal standing is objectively justified by debt characteristics rather than voting configuration; and whether the absence of compensatory mechanisms results in a disproportionate and unjustified transfer of economic risk to minority creditors.⁴⁰ Where the objective effect of a grace period clause demonstrably impairs the economic substance of legally recognized creditor rights without rational justification, the good faith requirement is violated—and judicial refusal of homologation is not merely permissible but normatively warranted. This progressive interpretive approach does not displace the voting mechanism's

³⁶ Tedrick Soetedjo, “Dualism of Legal Authority in Filing Suspension of Debt Payment Obligations Petitions Against Insurance Companies (Study Case: Decision No. 389/Pdt. Sus-PKPU/2020/PN Niaga. Jkt. Pst),” *Lambung Mangkurat Law Journal* 10, no. 1 (2025): 138–52, <https://doi.org/10.32801/abc.v10i1.229>.

³⁷ Tarissa Zahira Hidayansyah, S H Agustina, and Prof MH, “Penerapan Itikad Baik Dan Kebebasan Berkontrak Pada Jaminan Kebendaan Berdasarkan Perjanjian Fasilitas Pinjaman (Facility Agreement) Dalam Sengketa Kepailitan: Studi Kasus Putusan Pengadilan Niaga Nomor 3/Pdt. Sus-Lain Lain/2021/PN Niaga Mdn Jo. Nomor 7/P,” *Lex Patrimonium* 2, no. 1 (2023): 11, https://scholarhub.ui.ac.id/lexpatri/vol2/iss1/11?utm_source=scholarhub.ui.ac.id%2Flexpatri%2Fvol2%2Fiss1%2F11&utm_medium=PDF&utm_campaign=PDFCoverPages.

³⁸ Anis Widyawati et al., “The Urgency of Supervision Institutions in Implementing Prisoners’ Rights as an Effort to Restructure Criminal Execution Laws,” *Jambura Law Review* 7, no. 1 (2025): 127–51, <https://doi.org/10.33756/jlr.v7i1.27595>.

³⁹ Huala Adolf, “Prinsip Itikad Baik (Good Faith) Dalam Hukum Kontrak,” *BANI Arbitration and Law Journal* 1, no. 1 (October 22, 2024): 26–42, <https://doi.org/10.63400/baljr.v1i1.3>.

⁴⁰ Siti Syarifah Wafiqah Wardah, “State-Owned Enterprise Efficiency: A Legal Review of Accountability and Good Corporate Governance,” *Jurnal Office: Jurnal Pemikiran Ilmiah Dan Pendidikan Administrasi Perkantoran*, 2025, 43–52.

role but supplements it with a substantive proportionality review that the voting process alone cannot provide.

The doctrinal significance of this reinterpretation extends beyond its immediate corrective function. By operationalizing good faith as an objective standard of proportionality within the homologation process, Indonesian bankruptcy law doctrine acquires a structural mechanism for addressing abuse of process that operates beneath the threshold of explicit procedural violation—filling the normative gap that currently enables extreme grace period clauses to survive judicial scrutiny.⁴¹ Consistent judicial application of this standard will progressively establish interpretive benchmarks that guide debtors toward more equitable proposal design, transforming good faith from an abstract principle into an operational governance norm within PKPU practice. This development enriches Indonesian insolvency law doctrine with a substantive abuse of process framework and aligns national bankruptcy jurisprudence more closely with the protective standards increasingly recognized in comparative insolvency law.

3.2.5 Implications for the Protection of Legitimate Creditors in PKPU (Commitment to Determination of Creditors)

The classification of extreme grace period clauses as a structural form of abuse of process carries three interconnected implications for the protection of legitimate creditors within the PKPU framework. First, it establishes that the validity of a composition proposal cannot be determined by majority approval alone: substantive validity requires that the proposal's terms reflect a proportionate and objectively justified allocation of restructuring burdens across all bound creditors, not merely those with sufficient claim value to determine the voting outcome. Second, it necessitates a reconceptualization of the judicial role at the homologation stage—from formal verification of procedural compliance toward substantive guardianship of equitable outcomes.⁴² Judges exercising their authority under Article 285 paragraph (2) must assess not only whether quorum and voting requirements were satisfied, but whether the composition proposal was designed and deployed in a manner consistent with the PKPU's foundational purpose as a balanced collective debt resolution mechanism. Third, it affirms that the legal protection afforded to creditors in PKPU proceedings must be substantive rather than merely procedural: a creditor who is formally recognized in the composition agreement but economically impaired by an extreme grace period has not received the protection that the law structurally intends to provide.

The systemic implications of failing to address this protection deficit are significant. Legal certainty in the context of insolvency law encompasses not only procedural predictability but also the reasonable expectation that legally recognized rights will yield economically meaningful outcomes within a commercially viable timeframe.⁴³ When

⁴¹ Soetedjo, “Dualism of Legal Authority in Filing Suspension of Debt Payment Obligations Petitions Against Insurance Companies (Study Case: Decision No. 389/Pdt. Sus-PKPU/2020/PN Niaga. Jkt. Pst).”

⁴² Tímea Drinóczi, “The Venice Commission and the Lawmaking Process in Constitutional Reconstruction,” *Hague Journal on the Rule of Law*, 2025, 1–27.

⁴³ World Bank, “Principles for Effective Insolvency and Creditor/Debtor Regimes.”

creditors perceive that the PKPU mechanism can be instrumentalized to suspend obligations indefinitely without substantive judicial correction, confidence in the bankruptcy system as a reliable framework for credit relationships erodes.⁴⁴ This erosion carries macroeconomic consequences: diminished creditor confidence increases transaction costs, constrains credit availability, and raises systemic risk in the broader financing ecosystem.⁴⁵ A restructuring mechanism that is perceived as structurally biased toward debtors ultimately undermines the very credit market conditions that make business rehabilitation possible, defeating the going concern objectives that the PKPU is designed to serve.⁴⁶

These implications collectively point toward a clear doctrinal reform imperative. The normative gap in Law Number 37 of 2004—the absence of substantive parameters governing the proportionality and reasonableness of grace period clauses—must be addressed through the progressive development of interpretive standards, whether through judicial doctrine, legislative amendment, or authoritative regulatory guidance. The theoretical framework constructed in this study—conceptualizing extreme grace period clauses as a structural manifestation of abuse of process and operationalizing good faith as an objective proportionality standard at the homologation stage—provides a doctrinal foundation for this reform. Its adoption would align Indonesian bankruptcy law with the substantive creditor protection principles increasingly recognized in comparative insolvency frameworks, enrich national legal doctrine with a structural abuse of process paradigm, and restore the PKPU mechanism to its intended function as an instrument of genuinely balanced and equitable collective debt resolution.

4. CONCLUSION

This study concludes that extreme grace period clauses in PKPU composition proposals, although formally grounded in the debtor’s contractual freedom under Law Number 37 of 2004, operate within a critical normative gap due to the absence of clear parameters on proportionality and reasonableness, thereby enabling their strategic use to disadvantage non-dominant creditors despite procedural compliance. The findings further establish that such clauses may be qualified as a structural form of abuse of process when their objective effect undermines the substantive purpose of PKPU, particularly by eroding the economic value of creditor claims without rational justification. The novelty of this research lies in (i) conceptualizing extreme grace period clauses as a distinct doctrinal category within the abuse of process framework in Indonesian insolvency law, (ii) developing operational normative indicators—namely proportionality, non-discriminatory

⁴⁴ Hossain Mohammad Reyad et al., “The Impact of Macroeconomic Risk Factors, the Adoption of Financial Derivatives on Working Capital Management, and Firm Performance,” *Sustainability* 14, no. 21 (2022): 14447, <https://doi.org/10.3390/su142114447>.

⁴⁵ Adi Marcovich Gross, “Insolvency and Systemic Risks: The Macroeconomic Costs of Director Duties in Crisis,” *American Business Law Journal* 62, no. 4 (December 23, 2025): 251–69, <https://doi.org/10.1111/ablj.70007>; Simon Deakin, Viviana Mollica, and Prabirjit Sarkar, “Varieties of Creditor Protection: Insolvency Law Reform and Credit Expansion in Developed Market Economies,” *Socio-Economic Review*, March 17, 2016, mww005, <https://doi.org/10.1093/ser/mww005>.

⁴⁶ Rahou et al., “Innovative Reforms in Bankruptcy Law for Corporate Financial Recovery.”

treatment, and compensatory mechanisms—as substantive assessment tools, and (iii) advancing a progressive reinterpretation of good faith as an objective standard in homologation review. The theoretical contribution of this study is reflected in its shift from a procedural legality paradigm toward a substantive justice approach in bankruptcy law, while its practical contribution includes recommendations for courts to apply proportionality-based review and for legislators to formulate explicit regulatory limits on grace periods. This study thus provides a foundational framework for strengthening creditor protection and enhancing the integrity of PKPU as a balanced mechanism of collective debt restructuring.

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