Journal of Law & Social Politics
Volume 4, Issue 2, 218-226
e_ISSN: 2807-6311
https://jolastic.id/index.php/jlsp/index
DOI: doi.org/10.59261/jlsp.v4i2.110

Legal Protection of Secured Creditors in *PKPU* Homologation: Balancing Collective Debt Restructuring with Individual Creditor Rights

Jonathan Marpaung*
Universitas Indonesia, Indonesia

Parulian P. Aritonang
Universitas Indonesia, Indonesia

***Corresponding author:**
Jonathan Marpaung, Universitas Indonesia, Indonesia. ✉Jonathan.marpaung41@ui.ac.id

Article Info:
Article history:
Received: May 08, 2026
Revised: June 20, 2026
Accepted: July 01, 2026

Keywords:
PKPU; Homologation; Separatist Creditor; Consensualism; Collectivity; Haircut; Adequate Protection.

Abstract

Background: In insolvency restructuring under *PKPU*, a fundamental tension exists between the collectivity principle and the protection of secured creditors' proprietary rights. The Indonesian Insolvency Law lacks explicit mechanisms such as the best-interest-of-creditors test, adequate protection, or differentiated creditor classification, mechanisms proven effective in comparative legal systems (Germany, Netherlands, United States).
Objective: This article examines the legal implications of a homologation decision in Suspension of Debt Payment Obligations (*PKPU*) on separatist creditors who reject a principal debt reduction.
Methods: This research uses a doctrinal legal research methodology, focusing on the examination of norms, principles, legislation, and legal doctrines through interpretation and systematic analysis.
Results: The analysis focuses on three issues: (1) the juridical legitimacy of including a principal debt haircut in a homologation decision against non-participating separatist creditors; (2) the tension between the principle of collectivity in *PKPU* and the principle of consensualism in contract law; and (3) a model of balanced legal protection for separatist creditors within the framework of Indonesian insolvency law. The case studies used are the Homologation Decision of PT Bahtera Niaga Indonesia (Number 408/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst) and the Supreme Court Judicial Review Decision Number 10 PK/Pdt.Sus-Pailit/2022.
Conclusion: Although a homologation decision is normatively binding on all creditors based on the principle of *lex specialis* under insolvency law, the application of a haircut to separatist creditors is limited by the best-interest-of-creditors test principle and must not result in the separatist creditor receiving a value lower than the realization value of their collateral.

To cite this article: Marpaung, J., & Aritonang, P. P. (2026). Legal Protection of Secured Creditors in *PKPU* Homologation: Balancing Collective Debt Restructuring with Individual Creditor Rights. *Journal of Law & Social Politics*, 4(2), 218-226. https://doi.org/10.59261/jlsp.v4i2.110

INTRODUCTION

Law is a discipline that places itself between reality and ideals (Abidin, 2026; Purbacaraka & Soekanto, 1979). This view aptly describes the tension occurring in the practice of *PKPU* in Indonesia, particularly when the idealism of contract law clashes with the reality of collective debt settlement.

In an effort to enhance academic contribution in the legal field through the publication of scientific work in accredited Science and Technology Index (SINTA) 1 or 2 journals, selecting topics derived from actual cases with permanent legal force (*inkracht van gewijsde*) becomes very important. The study of *inkracht* cases not only provides a deep understanding of the application of positive law but also evaluates the accuracy and fairness of judicial practice, as well as offers practical guidance for judges, lawyers, *PKPU* administrators, and other relevant parties in addressing similar issues in the future (*Buku Panduan Penulisan Karya Ilmiah*, 2023).

PKPU is a legal mechanism regulated under (Akyas, 2022; *Undang-Undang (UU) Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, 2004*) concerning Bankruptcy and *PKPU* (hereinafter referred to as the "Insolvency Law"), which serves as a forum that allows debtors and creditors to reach a peace agreement to avoid bankruptcy. If the proposed peace plan by the debtor is approved by the majority of creditors according to the specified quorum and there are no legal grounds for rejection, the court is obliged to ratify the peace agreement in the form of homologation, which subsequently obtains binding force equivalent to a court decision (Khairunisaa, 2026; *Undang-Undang (UU) Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, 2004)*. The main objective of the PKPU process is to provide an opportunity for the debtor to restructure debts fairly with the collective approval of creditors, so that the debtor avoids bankruptcy and creditors receive better payment than would occur in bankruptcy (Sunarmi, 2017; Wibowo, 2025).

In the realm of contract law, the principle of consensualism applies as a fundamental doctrine stating that an agreement is legally valid and binding from the moment consensus is reached between the parties (Aswar, 2026; Subekti, 2014). This principle is reflected in Article 1320 of the Indonesian Civil Code regarding the four requirements for a valid agreement. Article 1338 of the Civil Code further emphasizes the principle of *pacta sunt servanda*. Badrulzaman (2001) stated that Indonesian law adheres to the principle of consensualism, where an agreement is sufficiently formed by consent, except in certain cases determined by law to require writing or formal requirements (Badrulzaman et al., 2001; Nuraida et al., 2025). The legal issue at the focus of this research originates from the fact that in the *PKPU* case of PT Bahtera Niaga Indonesia, which ended with homologation of the peace agreement on February 25, 2021, the peace plan stipulated a principal debt *haircut* of 85% (eighty-five percent), resulting in an estimated loss for creditors of at least USD18,625,000.- (eighteen million six hundred twenty-five thousand US Dollars), plus the elimination of all interest and fines (*Pengadilan Niaga Jakarta Pusat, Putusan Nomor 408/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst, 25 Februari 2021*). Separate creditors, i.e., creditors holding material security, chose not to register their claims because they rejected the substance of the peace plan, but the homologation decision still included a clause affirming that the *haircut* applies to all creditors without exception.

The legal issue described above fundamentally reflects a conflict between two principles that both have juridical legitimacy: the collectivity principle in *PKPU*, which mandates that the decision of the majority of creditors binds all parties for the sake of collective certainty and justice, versus the consensualism principle in contract law, which guarantees that no one can be forced to be bound by an obligation they never agreed to. This research is important to analyze the legal status of PKPU homologation against separate creditors who are absent because they reject the principal debt haircut, and to formulate a resolution model that achieves a balance between the legal certainty of collective restructuring and the protection of separate creditors' rights.

This research possesses an element of *novelty* because it raises a perspective not widely discussed in previous literature, specifically concerning the implications of *PKPU* homologation on separate creditors who are not involved in the peace agreement due to rejection of the principal debt haircut. Two previous studies from 2024 are used for comparison: (1) Ritonga (2024) examined the annulment of a peace agreement (homologation) as a legal remedy for creditors against a debtor in default. The focus of that research was on the post-homologation stage, when the debtor fails to implement the ratified peace agreement. Ritonga studied the procedure and legal basis for annulling homologation through the commercial court according to Article 170 paragraph (1) of the Insolvency Law. Ritonga's research does not address situations where creditors reject the content of the peace agreement from the outset; it assumes the peace agreement binds all creditors and examines the consequences of debtor default (Ritonga, 2024). Moreover, (2) Irayadi (2024) discussed legal protection for debtors in post-*PKPU* homologation. This research focuses on the phase after homologation is ratified, specifically how legal mechanisms protect the debtor from threats of annulment by creditors. Irayadi (2024) emphasizes debtor protection and the stages of annulment due to default, not on the validity of the peace agreement against specific creditors (Irayadi, 2024).

The comparison above shows that both existing literatures discuss homologation in the context of a debtor in default post-homologation. The novelty of the proposed research lies in its study within the pre/post-homologation context concerning non-participating separate creditors. This research questions whether the ratified peace agreement automatically binds separate creditors who did not agree to the principal debt haircut and fills the gap in the literature by analyzing the fundamental conflict between separate creditor rights and the outcome of the PKPU peace agreement. Thus, this research offers an original contribution in the form of recommendations for balancing the principles of consensualism and collectivity in Indonesian insolvency law.

METHOD

This research employed a doctrinal legal research methodology, focusing on the examination of norms, principles, legislation, and legal doctrines through interpretation and systematic analysis. The approaches employed included: (1) an analytical approach, to deconstruct the normative construction of the Insolvency Law and the Civil Code; (2) a historical approach, to trace the background of the formation of the Insolvency Law; (3) a comparative approach, to compare similar regulations in the insolvency law systems of Germany (*Insolvenzordnung*), the Netherlands (*Faillissementswet*), and the United States (Bankruptcy Code Chapter 11); and (4) a case approach, to analyze the court decisions that served as the object of the research (Akbar & Trihastuti, 2025; Irayadi, 2024).

The mechanism for collecting and analyzing legal materials was carried out through the following stages: Conducting a comprehensive literature review on the concept of homologation, PKPU, and separate creditor rights in Indonesian and comparative insolvency law; Analyzing relevant legal documents, including the Homologation Decision of PT Bahtera Niaga Indonesia Number 408/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst and the Supreme Court Judicial Review Decision Number 10 PK/Pdt.Sus-Pailit/2022, along with the judicial review memorandum and other legal remedy documents; Conducting a juridical analysis of agreements involving secured creditors and related parties in the a quo case; and Formulating normative recommendations to ensure the protection of secured creditors' rights in the homologation process based on the results of the comparative analysis.

Primary legal materials were authoritative and binding legal sources, including the Indonesian Civil Code, specifically Articles 1320 and 1338; (Akyas, 2022; *Undang-Undang (UU) Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, 2004*). concerning Bankruptcy and *PKPU*, specifically Articles 55–57, 222–293, and 286; the Central Jakarta Commercial Court Decision Number 408/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst dated February 25, 2021; and the Supreme Court of the Republic of Indonesia Decision Number 10 PK/Pdt.Sus-Pailit/2022.

Secondary legal materials provided explanations of primary materials and consisted of: (1) textbooks on insolvency law (Shubhan, Sjahdeni, Fuady, Supramono (2011); (2) accredited scientific journal articles, including Ritonga (2024), Irayadi (2024), Sibagariang (2021), and Hartini (2020); and (3) international insolvency law reports and guidelines from UNCITRAL, the World Bank, and comparative literature on the *Insolvenzordnung, Faillissementswet*, and Chapter 11 of the Bankruptcy Code (Sidik & Januarita, 2025).

Tertiary Legal Materials: Tertiary legal materials included legal dictionaries and encyclopedias for definitions of terms such as homologation, insolvency, and adequate protection, as well as trusted online legal portals (Hukumonline and the official website of the Supreme Court of the Republic of Indonesia) to ensure the accuracy of factual case data. These tertiary materials were used to a limited extent as supplementary references.

RESULTS AND DISCUSSION

Case Chronology and Legal Position of the Parties

PT Bahtera Niaga Indonesia (hereinafter referred to as "Debtor" or "PT BNI") is a limited liability company engaged in sea transportation services and maritime logistics. In the course of its operations, the Debtor experienced structural financial difficulties leading to the filing of a

PKPU application to the Central Jakarta Commercial Court in 2020, registered under case number 408/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst.

The peace plan proposed by the Debtor included a principal debt *haircut* of 85% (eighty-five percent) of the total principal debt value to creditors, so creditors would only receive payment of 15% of their principal claim value, plus the elimination of all interest and fines. Cumulatively, the application of this haircut resulted in a potential loss for creditors of at least USD 18,625,000.- (eighteen million six hundred twenty-five thousand US Dollars).

The group of separate creditors consisting of banking institutions holding mortgage and/or fiduciary rights over the Debtor's main assets chose not to register their claims in the PKPU process. This choice was motivated by rejection of the substance of the peace plan deemed disproportionately detrimental, as well as the belief that their material security rights provided a sufficiently strong legal position to demand full payment outside the *PKPU* mechanism. Nevertheless, the Panel of Judges of the Central Jakarta Commercial Court assessed that the approval quorum from participating creditors had been met according to Article 281 paragraph (1) of the Insolvency Law, so the peace plan was ratified through a Homologation Decision on February 25, 2021 (Akyas, 2022; *Undang-Undang (UU) Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, 2004*).

Unaccepting of the impact of the homologation decision, the separate creditors then filed a Judicial Review (*PK*) application to the Supreme Court of RI, decided through Decision Number 10 PK/Pdt.Sus-Pailit/2022, in addition to pursuing civil lawsuits in general courts based on the existing underlying credit agreements.

Normative Analysis Findings

A normative review of the Insolvency Law yields several important findings. *First*, Article 286 of the Insolvency Law explicitly states that the ratified peace agreement binds all creditors without exception a deliberate legislative choice to provide absolute legal certainty for the outcome of collective restructuring (Akyas, 2022; *BPK RI, 2004*; *Undang-Undang (UU) Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, 2004*). *Second*, Article 55 paragraph (1) in conjunction with Article 56 of the Insolvency Law grants separate creditors the privilege to execute their collateral, but this right is suspended during the PKPU moratorium (Akyas, 2022; *Undang-Undang (UU) Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, 2004*). If a peace agreement is ratified during this suspension period, the window of opportunity for separate creditors to "exit" the peace system becomes closed.

Third, this research identifies three *lacuna legis* in the Insolvency Law: (a) the absence of a structured *opt-out* mechanism allowing separate creditors to retain their execution rights without losing any legal protection; (b) the absence of a best interest of creditors test as a minimum standard for the value each creditor receives from the peace agreement; and (c) the absence of an adequate protection obligation requiring the peace plan to include a mechanism for adequate protection of collateral value.

Findings from Analysis of Judicial Review Decision No. 10 PK/Pdt.Sus-Pailit/2022

The Supreme Court in Judicial Review Decision Number 10 PK/Pdt.Sus-Pailit/2022 affirmed the principle that a homologation decision that is *inkracht van gewijsde* (final and binding) can only be annulled if it meets limited conditions: (1) there is a judicial error or obvious mistake in the application of law; or (2) there is a *novum* new, decisive evidence. In the *a quo* case, these conditions were deemed not met, so the PK application was rejected and the homologation decision remained in force (*Mahkamah Agung Republik Indonesia, Putusan Nomor 10 PK/Pdt.Sus-Pailit/2022*).

Nevertheless, the legal considerations in this PK decision implicitly acknowledge the specificity of the separate creditor's legal position and open a legitimate avenue for argumentation regarding normative reform of the Insolvency Law.

Comparative Analysis Findings

Specifically for the Netherlands, it should be noted that since January 1, 2021, the Wet *Homologatie Onderhands Akkoord* (WHOA) has been in effect, representing a significant reform of the *Faillissementswet*. WHOA adopts several important principles:

1) Mandatory creditor classification (Article 374 WHOA) where secured creditors must be placed in a separate class from unsecured creditors;
2) A Best Interest Test requiring each creditor to receive a minimum value equal to what they would receive in liquidation (Article 384 paragraph 3 WHOA);
3) A Cross-Class Cram-Down mechanism allowing the court to ratify a peace plan even if one or more classes reject it, provided the rejecting classes are not disproportionately disadvantaged (Article 384 paragraph 4 WHOA);
4) Protection of collateral value requiring secured creditors to receive a minimum value equal to the liquidation value of their collateral. This reform shows that even civil law jurisdictions like the Netherlands have moved towards more comprehensive protection of separate creditors and can serve as a model for Indonesia.

To gain a broader perspective, this research conducts a comparative analysis of three relevant insolvency law systems, with the following results:

Table 1. Comparison of Separate Creditor Protection in International Insolvency Law

Aspect	**US (Ch. 11)**	**Netherlands (WHOA 2021)**	**Germany (InsO)**	**Indonesia (Law 37/2004)**
Creditor Class	Mandatory (secured/unsecured)	Mandatory (Art. 374 WHOA)	Mandatory (§222 InsO)	Not explicitly regulated
Best Interest Test	Mandatory (§1129(a)(7))	Mandatory (Art. 384(3) WHOA)	Recognized in doctrine	None (lacuna legis)
Adequate Protection	Mandatory (§361, §363)	Implicit (collateral value)	Similar (§166 InsO)	None
Cross-class Cram-down	Yes (§1129(b))	Yes (Art. 384(4) WHOA)	Yes (§245 InsO)	None
Haircut Limit	Limited by collateral value	Limited by liquidation value	Limited by collateral value	No minimum limit

From the comparison in table 1, it appears that the three jurisdictions studied have developed more detailed protection mechanisms for secured creditors. The Indonesian Insolvency Law is in the weakest position regarding normative protection for separate creditors, especially due to the absence of a *best interest test*, *adequate protection*, or clear creditor class regulation (Al-Hussien & Alzubi, 2026; United Nations Commission on International Trade Law, 2005).

Discussion

Juridical Legitimacy of the Haircut in Homologation Decisions against Non-Participating Separate Creditors

1. Homologation as a Court Decision with Erga Omnes Binding Force

   Homologation is not merely the ratification of an ordinary civil agreement; it is a *court decision* that has a public character and binding force like a ruling of a state judicial institution. Unlike civil agreements that only bind the signing parties based on the *privity of contract* principle, court decisions have *erga omnes* binding force that transcends those contractual boundaries. In the PKPU context, this binding force is explicitly regulated by Article 286 of the Insolvency Law, which is a logical consequence of the collective and public nature of the PKPU process designed to resolve debt relationships on a scale impossible to resolve through individual consensus (Shubhan, 2009; Rahayu, 2020; Rusdiannor, 2022).

2. Lex Specialis Construction and Collective Action Problem Theory

   The consensualism principle in the Civil Code is a general norm (*lex generalis*) governing obligations under normal business conditions. The Insolvency Law, as a special norm (*lex specialis*), legitimately overrides the requirement for individual consensus to achieve effective collective resolution (Munir, 2011; Sartono et al., 2026; Soekanto, 2004). The philosophical justification for this override is found in the theory of the *collective action problem*: without a mechanism binding all creditors, each creditor would rationally be driven to compete for the debtor's assets individually, which ultimately erodes the total asset value available to all creditors (Elizabeth, 2009).

3. Constitutional Limits: Proportionality Test

   The normative legitimacy of the *haircut* through homologation is not absolute. There are two constitutional limits that must be respected: *first*, the *haircut* must not be confiscatory the value each creditor receives must not be lower than the value they would receive if the debtor were declared bankrupt and its assets liquidated (*liquidation value test*). This principle is implicitly contained in the value of justice (*Gerechtigkeit*) as intended by Gustav Radbruch's theory (Borowski, 2024; Radbruch, 2006). *Second*, the voting mechanism must be ensured free from procedural defects and must not contain an *abuse of process*.

   Considering these arguments, this research concludes that the *haircut* through homologation is juridically-formally valid based on the *lex specialis* construction of the Insolvency Law and the *erga omnes* doctrine of court decisions, provided that its application is not confiscatory and the underlying PKPU process is free from substantial procedural defects.

Conflict between the PKPU Collectivity Principle and the Consensualism Principle in Contract Law

1. Juridical Arguments of the Pro-Homologation Party

   The pro-homologation party builds its arguments on four juridical pillars. *First*, the supremacy of the Insolvency Law as *lex specialis*: Article 286 of the Insolvency Law states that the ratified peace agreement binds all creditors (Akyas, 2022; *BPK RI, 2004; Undang-Undang (UU) Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, 2004*). *Second*, the principle of restructuring legal certainty: if separate creditors could freely choose not to be bound by homologation, no debtor could obtain certainty that their restructuring is truly final. *Third*, a deliberate strategic choice: separate creditors actually have the option to register their claims, exercise voting rights, and file a request for suspension of execution based on Article 56 paragraph (3) of the Insolvency Law (BPK RI, 2004; Nugroho, 2019; Sitinjak et al., 2022). *Fourth*, protection of *pari passu* interests: an exception for separate creditors would unfairly impose the restructuring burden only on the weaker unsecured creditors (Sidik & Januarita, 2025; Sjahdeni, 2011).

2. Juridical Arguments of the Separate Creditor

   Separate creditors build an equally strong argument, resting on three juridical foundations. *First*, the principle of *pacta sunt servanda* and protection of *vested rights*: credit agreements legally formed based on Article 1320 of the Civil Code apply as law for those who make them (Article 1338 of the Civil Code). Modifying obligations in a valid agreement through a third-party voting mechanism violates the doctrine of *vested rights* (Aswar, 2026; Subekti, 2014). *Second*, the absolute proprietary nature of security rights: mortgage and fiduciary rights are proprietary rights (*zakelijk recht*) that are absolute and can be asserted against anyone (*droit de suite*), and cannot be extinguished through a majority mechanism of a peace agreement (Munir, 2011; Sartono et al., 2026). *Third*, absence as non-submission to jurisdiction: separate creditors who do not register their claims argue that they never "entered" the PKPU process and therefore cannot be bound by the outcome of that process.

3. Synthesis: An Apparent Conflict that can be Harmonized

   Faced with two groups of arguments, both with strong juridical roots, this research argues that the conflict between the *PKPU* collectivity principle and the contract law consensualism principle is essentially an *apparent conflict*, not an *irreconcilable conflict*. Each principle governs a different dimension: the collectivity principle governs the *applicability* of the homologation decision universally, while the consensualism principle and the doctrine of *vested rights* govern the *substantive limits* of what can be imposed on separate creditors through that decision (Jatmiko, 2025; Wirawan, 2013).

The point of harmonization is: homologation binds all parties, but the magnitude of the *haircut* applicable to separate creditors is limited by the value of the collateral they hold. The arguments of the pro-homologation party are correct regarding its universal applicability, while the arguments of the separate creditor are correct regarding the substantive limits that must be respected.

Model for Resolving Normative Conflict

1. Adoption of the Best Interest of Creditors Test

   The best interest of creditors *test* principle stipulates that no creditor including those who disagree with the peace plan can receive a value lower than what they would receive in a bankruptcy and asset liquidation scenario. This principle is a minimum standard widely recognized in international insolvency law, including within the framework of the UNCITRAL Legislative Guide on Insolvency Law (Al-Hussien & Alzubi, 2026; United Nations Commission on International Trade Law, 2005). Adopting this principle into the Indonesian Insolvency Law would provide an elegant solution: homologation still binds all creditors for legal certainty, but the magnitude of the *haircut* applied to separate creditors is automatically limited by the realization value of the collateral they hold.

2. Adequate Protection Mechanism

   The adequate protection mechanism as known in Articles 361 and 363 of the United States Bankruptcy Code requires the debtor to provide adequate protection for the secured creditor's interest in the collateral, which can take the form of: (1) periodic cash payments equivalent to the decrease in collateral value; (2) a substitute lien; or (3) other protection providing the indubitable equivalent of the secured creditor's interest (United States Bankruptcy Code, 11 U.S.C. §§ 361, 363). In the Indonesian context, its implementation could be realized through a normative obligation in the Insolvency Law requiring every peace plan containing a haircut to be accompanied by an adequate protection proposal that has been assessed by an independent appraiser.

3. Structured Opt-Out Clause and Creditor Class Regulation

   This research recommends creating a structured opt-out clause that allows separate creditors to formally state their disagreement with the peace plan before voting, without losing their right to execute collateral. Furthermore, the Insolvency Law should regulate differentiated creditor classification, accompanied by a cram-down mechanism based on a best interest test per creditor class as known in the German *Insolvenzordnung* (§§222, 245). The combination of these four mechanisms will simultaneously maintain the legal certainty of collective restructuring while protecting the integrity of the proprietary rights of separate creditors, Insolvenzordnung (InsO) Jerman, §§ 222, 245 (Cram-Down).

CONCLUSION

Based on the doctrinal legal research conducted, this research formulates three main conclusions corresponding directly to the three problem statements posed. First, the application of a principal debt haircut through a homologation decision against a separate creditor who did not register their claim is juridically-formally valid, based on the *lex specialis* construction of the Insolvency Law which establishes the *erga omnes* binding force of homologation against all creditors (Article 286 of the Insolvency Law), as well as the theory of the collective action problem which provides the systemic justification for overriding the requirement for individual consensus in conditions of insolvency. However, this formal validity is not absolute: the application of the haircut must meet a proportionality test and must not result in the value received by the separate creditor being lower than the value they would obtain in a bankruptcy and regular liquidation scenario. The absence of a minimum standard for protecting collateral value is a real *lacuna legis* in the Insolvency Law.

Second, the conflict between the PKPU collectivity principle and the contract law consensualism principle is an apparent conflict that can be harmonized. The collectivity principle governs the applicability of the homologation decision universally, while the consensualism principle and the vested rights doctrine govern the substantive limits of what can be imposed on separate creditors. Harmonizing both requires that homologation binds all parties and simultaneously that the magnitude of the haircut against separate creditors is limited by the realization value of their collateral. The Supreme Court Judicial Review Decision Number 10 PK/Pdt.Sus-Pailit/2022, although rejecting the PK application, implicitly acknowledges the unique legal position of separate creditors and opens an avenue for argumentation for normative reform of the Insolvency Law.

Third, the most appropriate model for resolving the normative conflict within the framework of Indonesian insolvency law is a combination of four mechanisms: (1) adoption of the best interest of creditors test as a minimum standard of value protection; (2) an adequate protection obligation; (3) a structured opt-out clause; and (4) regulation of differentiated creditor classes accompanied by a cram-down mechanism based on a best interest test per class. The combination of these four mechanisms, which comparatively have proven effective in the insolvency systems of the United States, Germany, and partially the Netherlands, will simultaneously maintain the legal certainty of collective restructuring while protecting the integrity of the proprietary rights of separate creditors.

ACKNOWLEDGEMENT

The authors would like to express their sincere gratitude to Universitas Indonesia for providing academic support and a conducive research environment throughout the completion of this study. The authors also extend appreciation to legal practitioners, scholars, and peers who provided valuable insights and discussions that contributed to the development of this research on secured creditors and PKPU homologation. Their contributions were instrumental in enriching the analysis and strengthening the findings of this study.

AUTHOR CONTRIBUTION STATEMENT

Parulian P. Aritonang contributed to the conceptualization, legal analysis, data interpretation, and drafting of the original manuscript. Jonathan Marpaung contributed to supervision, critical revision, and refinement of the legal arguments and manuscript structure. Both authors jointly developed the research framework, reviewed the final manuscript, and approved its submission, taking full responsibility for the integrity and accuracy of the work.

REFERENCES

Abidin, A. Z., & Sh, M. K. (2026). *Hukum Tata Negara*. Penerbit Kbm Indonesia.

Akbar, R. M., & Trihastuti, N. (2025). Analisis Pembatalan Homologasi Dalam Kepailitan Pan Penundaan Kewajiban Pembayaran Utang. *Jiip-Jurnal Ilmiah Ilmu Pendidikan*, *8*(1), 648–656.

Akyas, M. (2022). Eksekusi Lelang Oleh Kreditor Separatis Pada Masa Perdamaian Dalam Pkpu Dalam Kajian Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Pkpu. *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan*, *5*(2), 303–315.

Al-Hussien, S., & Alzubi, A. A. (2026). A Legal Analysis Of Insolvency Provisions In Jordanian Legislation And Their Comparative Alignment With Regional Frameworks. *Perinatal Journal*, *34*(1), 531–535.

Aswar, A. (2026). *Hukum Perjanjian*. Tohar Media.

Badrulzaman, M. D., Sjahdeini, S. R., Soepraptomo, H., Djamil, F., & Soenandar, T. (2001). Kompilasi Hukum Perikatan. *Bandung: Citra Aditya Bakti*, 180–185.

Borowski, M. (2024). Gustav Radbruch's Theory Of Legal Obligation. In *Theories Of Legal Obligation* (Pp. 99–122). Springer.

BPK RI. (2004). Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang. *Database Peraturan Bpk Ri*, 55. Https://Peraturan.BPK.Go.Id/Home/Details/40784

Buku Panduan Penulisan Karya Ilmiah (Cet. 1, Ed). (2023).

Elizabeth, W., & Westbrook, J. L. (2009). *The Law Of Debtors And Creditors* (6th Ed). Wolters Kluwer.

Hadi, S. (2009). Hukum Kepailitan: Prinsip, Norma Dan Praktek Di Peradilan. *Kencana, Jakarta*, 188.

Irayadi, M. (2024). Perlindungan Hukum Debitur Dalam Homologasi Pasca Penundaan Kewajiban Pembayaran Utang. *Hukum Responsif*, *15*(1), 128–135.

Jatmiko, E. H. (2025). Penerapan Asas Kebebasan Berkontrak Dalam Kontrak Bisnis Di Indonesia. *Hukum Inovatif: Jurnal Ilmu Hukum Sosial Dan Humaniora*, *2*(3), 91–99.

Khairunisaa, N. (2026). Kewenangan Dan Tanggung Jawab Kurator Dalam Menangani Kasus Kepailitan Waralaba Berdasarkan Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang. *Jurnal Hukum Bisnis (J-Kumbis)*, *4*(1), 1–15.

Munir, F. (2011). *Hukum Pailit Dalam Teori Dan Praktik*. Citra Aditya Bakti.

Nugroho, R. F. D. W. I. (2019). *Hak Kreditor Separatis Menurut Pasal 55 Ayat (1) Juncto Pasal 56 Ayat (1) Dan Pasal 59 UU No 37 Tahun 2004 Tentang Kepailitan Dalam Eksekusi Barang Jaminan Milik Debitor*.

Nuraida, S. R., Putri, N., Rahmawati, I., & Bahri, M. (2025). Hukum Perikatan: Wanprestasi Dan Hapusnya Perjanjian. *Jurnal Ilmu Multidisiplin*, *3*(1), 165–173.

Undang-Undang (UU) Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, (2004).

Purbacaraka, P., & Soekanto, S. (1979). *Sendi-Sendi Ilmu Hukum Dan Tata Hukum*.

Radbruch, G. (2006). Statutory Lawlessness And Supra-Statutory Law (1946). *Oxford Journal Of Legal Studies*, *26*(1), 1–11.

Rahayu Hartini. (2020). Kedudukan Kreditur Separatis Dalam Proses Kepailitan. *Jurnal Hukum Umm*, *9*(2), 87–98.

Ritonga, F. G. (2024). Pembatalan Perjanjian Perdamaian (Homologasi) Sebagai Upaya Hukum Bagi Kreditor Terhadap Debitor Yang Lalai Memenuhi Isi Perjanjian Perdamaian. *Jurnal Hukum To-Ra: Hukum Untuk Mengatur Dan Melindungi Masyarakat*, *10*(1), 73–86.

Rusdiannor, A. (2022). *Rekonstruksi Regulasi Perlindungan Debitur Atas Hak Pemailitan Kreditur Separatis Dalam Hukum Kepailitan Yang Berbasis Nilai Keadilan*. Universitas Islam Sultan Agung (Indonesia).

Sartono Gurning, S. H., Mh, C. T. A., Chitto Cumbhadrika, S. H., Sip, M. H., & Meysita Arum Nugroho, S. H. (2026). *Hukum Kepailitan & Penundaan Kewajiban Pembayaran Utang: Teori, Praktik, Dan Perkembangan Hukum Di Indonesia*. Penerbit Kbm Indonesia.

Sidik, M. R. F., & Januarita, R. (2025). Analisis Proses Kepailitan Pt Sri Rejeki Isman Tbk.(Sritex) Dalam Perspektif Undang-Undang Kepailitan Dan Pkpu. *Bandung Conference Series: Law Studies*, *5*(2), 721–728.

Sitinjak, P. B., Mukidi, M., & Akhyar, A. (2022). Analisis Kewenangan Kurator Dalam Penyelesaian Utang Debitur Terhadap Kreditur Akibat Kepailitan Perspektif Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (Studi Putusan Mahkamah Agung No. 1021/K/Pdt. Sus-Pailit/2018). *Jurnal Ilmiah Metadata*, *4*(1), 251–271.

Sjahdeni, S. R. (2011). *Hukum Kepailitan: Memahami Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan*. Pt Pustaka Utama Grafiti.

Soekanto, S. (2004). *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*.

Subekti. (2014). *Hukum Perjanjian* (21st Ed.). Intermasa.

Sunarmi. (2017). *Hukum Kepailitan*. Prenada Media Group.

United Nations Commission On International Trade Law. (2005). Legislative Guide On Insolvency Law. *United Nations Publications*.

Wibowo, A. (2025). Hukum Kepailitan. *Penerbit Yayasan Prima Agus Teknik*.

Wirawan, I. G. A. S. (2013). Asas Konsensualisme Dalam Perjanjian Bisnis. *Jurnal Magister Hukum Udayana*, *2*(3), 1–12.