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LEGAL PROTECTION FOR BANKS AS SEPARATED CREDITORS IN BANKRUPTCY CASES THROUGH A NATURAL LAW THEORY APPROACH

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Abstract

Banks as separatist creditors holding mortgage rights are parties that should be outside the bankruptcy estate when a peron or legal enrtity is declared bankrupt. The bank as the holder of the mortgage is a creditor who long before the bankruptcy of a person or legal entity has been bound through an agreement with the person or legal entity that is bankrupt. However, in practice the bank's mortgage is in the hands of the curator, which means that the bank cannot execute it when the mortgage provider is unable to pay. This has resulted in banks as separatist creditors not getting adequate legal protection. The development progress achieved by a country, sepecially in the economic sector, cannot be separated from the role of bankin. This role is able to affect the pace of economic development in a country, one og whin is indonesia. In indonesia, banks have a fuction to collect founds from the public in the form of deposits and distribute them to the public in the form of credit and/or other forms.

INTRODUCTION

Banks always require collateral when granting loans. The collateral for securing the loan is immovable property, such as land and/or buildings, because the economic value of land and/or buildings continues to increase over time. This contrasts with movable property, such as motor vehicles, whose economic value continues to depreciate. Collateral in the form of land and/or buildings is specifically regulated and unified in Law Number 4 of 1996 concerning Mortgage Rights on Land and Land-Related Objects. This resulted in the abolition of mortgage and credit verband guarantees, and the establishment of mortgage rights as a strong security encumbered by land rights.

This means that mortgage rights are the sole form of security for land. Mortgage rights for land and land-related objects can be ownership rights (HM), building use rights (HGB), cultivation rights (HGU), or use rights (Hak Pakai (HP). Among these objects, one that banks are particularly interested in, in addition to property rights (because ownership rights are more flexible and have no time limit), is the right to build, although it does not require the possibility of a right to cultivate or a right to use.

The right to build, which has been encumbered with a mortgage, then becomes a subsidiary agreement or accessory to the main agreement, namely the credit agreement. This gives the bank a primary position as creditor, displacing other creditors (if any) in debt repayment if the debtor (debtor) defaults on their debt. In other words, the holder of the primary mortgage has preference over other creditors.

The downside is that this right to build is built on land that is not theirs and has a term of 30 years with a 20-year extension period. Upon expiration, the right to build is revoked (unless an extension or renewal is made possibly upgraded to ownership), then the mortgage is also extinguished. This situation weakens the bank's position. If the debtor, as the mortgagee, fails to extend or renew the loan, the loan granted by the bank will continue without any guarantee of repayment, increasing the bank's risk.

This is further exacerbated by the debtor's default, whether intentionally or due to financial inability to repay. This is exacerbated by the debtor's difficulty in meeting, indifference, or evasive behavior. Therefore, the role of the Deed of Granting of Mortgage Rights (APHT) is crucial, given the clauses within the APHT that can serve as a legal basis for securing the mortgage object by extending or renewing it. These clauses are facultative or optional promises, not limited. In practice, problems arise again when the debtor is declared bankrupt, and all assets, including the mortgage rights, and all future claims, become the bankruptcy estate. This means that the assets in the bankruptcy estate are under the management and authority of the curator, who is tasked with settling the bankruptcy estate and paying the debtor's debts. In fact, the mortgage is the debtor's asset pledged as collateral to the bank as creditor, bound by an APHT (Deed of Assignment), and a mortgage certificate issued to the recipient/holder of the mortgage. Therefore, the mortgage should not be included in the bankruptcy estate. The reasoning is that the debtor and creditor are bound by an agreement under Article 1320 of the Civil Code, which exempts the creditor from conducting an auction based on the mortgage, as stipulated in Law Number 4 of 1996.

Legal protection should be provided to the bank as the creditor (separatist). According to Soerjono Soekanto, talking about legal protection is talking about lagging behind development Law, when compared to social change, occurs only in dynamic situations, where social changes are not accompanied by parallel legal adjustments. Besides the issue of the law lagging behind social changes, another potential problem is the lag in societal development due to changes in the law, or the inability of society to keep pace with the changes intended by law. These are some of the problems that may arise within the framework of the relationship between law and social change. To provide possible solutions, it is necessary to link them to the main points of opinion put forward by H.C. Bredemeier in his work entitled "Law as an Integrative Mechanism."

Bredemeier's explanation is based on the framework developed by Talcott Parsons, which is based on four main functional processes within a social system: "adaptation," "goal pursuit," "pattern maintenance," and "integration." By "adaptation" is meant the economic process; "Goal pursuit" is a political process, "pattern maintenance" can simply be defined as the socialization process, while "integration" is a legal process.

In his explanation, Bredemeier takes law as his starting point, only here he equates law with the judicial process, since the function of law is to resolve conflicts in an orderly manner. This judicial process is then linked to the three main functional processes in a social system, the relationship of which is a cause-and-effect relationship analyzed based on the inputs and outputs of the judicial process.

First, the judicial process requires a cause-and-effect analysis. This requirement is based on establishing the past relationship between the actions of the accuser and the accused, as well as the future relationship between the court's decision and the activities of the accuser and the accused. The input comes from the process of "adaptation," while the output is organic solidarity (as distinguished from mechanical solidarity based on Durkheim's division of labor theory). The second is that the judiciary needs a basis for the purpose of the division of labor, the purpose of the system, and what conditions should be created or maintained by the exercise of power. In other words, the judiciary needs benchmarks to be able to evaluate conflicts that occur and to anticipate the effects and decisions taken to the role structure. Its input comes from the political process ("goal-pursuance"), while its output is the interpretation of societal ideals, embodied in legislative products. Ultimately, the judiciary requires recognition from justice seekers of its function as a mechanism for resolving conflicts. This recognition is motivated by input from the socialization system or process ("pattern maintenance"), and its output is justice. Justice is a priority in the implementation of an agreement.

One such promise is a promise granting the mortgage holder the authority to secure the mortgaged object if necessary for execution or to prevent the termination or cancellation of the mortgaged right due to non-fulfillment or violation of statutory provisions. Therefore, unless otherwise agreed, the authority to request an extension or renewal of the mortgaged object is inherent in the APHT (Deed of Establishment). This allows creditors to prevent the building use right, the object of the mortgaged right, from being terminated and returning to the control of the state, the management rights holder, or the land ownership.

Through this promise, the creditor declares that he has received the authority, and therefore the power, to, at the debtor's expense, take the necessary actions to safeguard, maintain, and save the object of the mortgage for the purpose of execution and prevent the cancellation of the object of the mortgage and, if necessary, to manage the extension of the term and renewal of the rights to the land that is the object of the mortgage.

According to Article 1 number (1) of the Mortgage Rights Law, the definition of a Mortgage Right is as follows: "A Mortgage Right is a security right imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, whether or not it includes other objects that are an integral part of the land, for the repayment of certain debts that give a certain creditor a priority position over other creditors."

This definition implies that Mortgage Rights are identical to security rights, which when imposed on land with Ownership Rights, land with Building Use Rights and/or land with Cultivation Use Rights provide a primary position to certain creditors who will displace other creditors in the event that the debtor defaults or defaults in paying their debts, in other words it can be said that the first mortgage holder is more Preferred over other creditors. This is further emphasized in Article 6 of Law Number 4 of 1996, which states "if the debtor defaults, the first mortgage holder has the right to sell the mortgage object at his own power through a public auction, and take the proceeds from the sale of the mortgage object to pay off his debt." One of the processes for obtaining creditor rights against debtors who default is through the bankruptcy mechanism as regulated in Law Number 37 of 2004 concerning Bankruptcy and PKPU. The term "bankruptcy" essentially refers to a situation where a debtor (the party with the debt) stops paying or fails to pay their debts to creditors (the parties who lent them). Stopping payment does not mean a complete absence of payment, but rather, for some reason, the debt payments are not proceeding as expected. Therefore, if a debtor files for bankruptcy, they are unable to pay their debts or no longer have income for their company to meet their debt repayments.

Bankruptcy is a general seizure of all the assets of the bankrupt debtor, managed and settled by a receiver under the supervision of a supervisory judge. The bankruptcy assets are distributed in proportion to the creditors' claims. This principle of bankruptcy embodies the provisions of Articles 1131 and 1132 of the Civil Code, which stipulate that the debtor's assets serve as collateral for all creditors, distributed according to the principle of equality or "pari pasu pro rata parte."

A bankruptcy petition is essentially a request submitted to the Commercial Court by certain parties or their legal advisors due to their inability to pay their debts to other parties. The parties who can file a bankruptcy petition are the debtor, creditor, the Attorney General's Office for public interest purposes, Bank Indonesia for the debtor being a bank, the Capital Market Supervisory Agency for the debtor being a securities company, and the Minister of Finance for the debtor being an Insurance Company, Reinsurance Company, Pension Fund, or State-Owned Enterprise operating in the public interest. The debtor can file a bankruptcy petition A bankruptcy petition can be filed if two or more creditors are unable to fulfill their obligations, namely paying debts and interest as they fall due.

Legal protection should be provided to banks as separatist creditors in the event of bankruptcy of their debtors. This legal protection doctrine is applied to banking creditors in order to provide legal certainty for the collateral rights obtained by the bank in the event of bankruptcy. Legal certainty in this study utilizes natural law theory as an analytical tool in the legal protection doctrine.
According to Soedjono Dirdjosisworo, the functions of natural law theory influence positive law as follows:
1. Natural law serves as a means of correction for positive law.
2. Natural law forms the core of positive law, such as international law.
3. Natural law serves as a justification for human rights.

According to Friedman in Satjipto Rahardjo, the functions of natural law are as follows: The primary instrument when ancient Roman civil law was transformed into a broad international system. It became a weapon used by both parties (the church and the monarchy) in their interactions. The validity of international law is upheld in the name of natural law. It serves as a foundation when people wage a struggle for individual liberty against absolutism. It is a weapon used by American judges when interpreting their constitution, rejecting state intervention through legislation aimed at imposing economic restrictions.

METHOD

1. Research Type
This research is a sociological, normative juridical research, emphasizing the use of written legal norms and supported by interviews with sources and informants, as well as field research on bankruptcy practice.
2. Research Type
This research is descriptive and analytical in nature, describing prevailing facts and commercial court decisions in bankruptcy cases involving secured creditors, namely banks, in conjunction with natural law theories in their practical implementation. These theories are then analyzed and described/illustrated as a reflection of the implementation of laws and regulations and legal principles associated with natural law theories and their practical implementation.
3. Data Type
The data used are primary and secondary data, namely data obtained directly from the source and data obtained through literature searches or official documents, namely books on legal theory, legal philosophy, justice theory, books on bankruptcy and mortgage rights in general.
4. Types of Legal Materials
a. Primary Legal Materials
These are legal sources that serve as binding/legal basis, such as: Law Number 10 of 1998 concerning Banking, Law Number 4 of 1996 concerning Mortgage Rights, Law Number 37 of 2004 concerning Bankruptcy and PKPU.
b. Secondary Legal Materials
These are materials that provide explanations regarding primary legal sources, such as books, newspapers/magazines, and scientific papers in the fields of banking, mortgage rights, and bankruptcy, including books on legal theory, particularly natural law.
5. Data Collection
There are two types of data collection methods:
a. Library Research

This literature study involves studying and reading books on legal theory and banking law, as well as books on mortgage rights and bankruptcy law, so that these materials can be related to the issues addressed in this research.
b. Interview
Interviews were conducted by collecting data directly from parties who know legal theory and banking law which was carried out through the interview method.

6. Data Analysis Method
In an effort to answer or solve the problems raised in this research, a qualitative data analysis method was used, because the data obtained is quality, not quantity. After data collection, analysis is then carried out so that conclusions can be drawn that can be scientifically justified.
7. Form of research results
The form of research results corresponds to the type of research which is descriptive analysis, which is research that produces solutions that focus on problems.

RESULTS
1. Legal Protection
The concept of legal protection can be seen from the objectives of the laws in force in a country. Based on modern legal teachings, this can be seen from the following two teachings:
1. The Doctrine of Standard Priorities
Gustav Radbruch, a German legal philosopher, taught the concept of three basic legal elements, which some experts identify as the three objectives of law. In other words, the objectives of law are:
a. justice;
b. utility; and
c. legal certainty.

However, it must also be recognized that each specific area of law has its own specific objectives. For example, Criminal Law certainly has a specific objective compared to Private Law; likewise, Formal Law has a specific objective compared to Substantive Law. The same applies to other areas of law.
For Radbruch, these three elements collectively constitute the objectives of law: justice, utility, and legal certainty. However, The question then arises: doesn't this create problems in reality? As we know, in reality, there is often a conflict or tension between legal certainty and justice; or a conflict between certainty and expediency, or between justice and expediency. Radbruch recognized this. For example, in certain legal cases, if a judge desires a just decision (according to the judge's own perception of justice, of course) for the plaintiff, defendant, or accused, the result is often detrimental to the public good. Conversely, if the public good is satisfied, the sense of justice for certain individuals is sacrificed. Therefore, it is very interesting to discuss the actual relationship between justice, expediency, and certainty.
Radbruch teaches that we must use the principle of priority, where justice comes first, then expediency, and finally, certainty. Thus, the principle of priority offered by Radbruch is a standard principle of priority. Based on Radbruch's standard principle of priority, justice must always be prioritized. When a judge must choose between justice and expediency, the choice must be justice. Likewise, when a judge must choose between expediency and certainty, the choice must be made in favor of expediency.
2. The Doctrine of Casuistic Priority
Initially, Gustav Radbruch's standardized doctrine of priority was perceived as far more advanced and wise than the more extreme ethical, utilitarian, and normative-dogmatic doctrines. However, over time, due to the increasing complexity of human life in the modern era, the standardized choice of priority

sometimes conflicts with legal requirements in certain cases. This is because, sometimes in a case, justice takes priority over expediency and certainty, but sometimes this is not necessarily the case. Perhaps in other cases, expediency takes priority over justice and certainty. It is also possible that in still other cases, certainty should be prioritized over justice and expediency. Ultimately, the most advanced doctrine emerged, which we can call "casuistic priority."

So legal protection can be interpreted as a legal effort to provide guarantees of justice, benefits and legal certainty regarding a reality that exists in society.

2. Mortgage Rights

The enactment of Law Number 4 of 1996 concerning Mortgage Rights is expected to provide legal certainty regarding the binding of collateral to land and related objects as collateral, which has previously been regulated using the Creditverband provisions in the Civil Code (KUHPerdata). Mortgage rights are the sole form of security rights over land. Mortgage Rights regulated in the UUHT are essentially Mortgage Rights imposed on land rights. However, in reality, objects such as buildings, plants, and works of art that are permanently integrated with the land used as collateral are often also pledged as collateral. As is known, National Land Law is based on customary law, which applies the Principle of Horizontal Separation, which explains that every legal act concerning land rights does not automatically encompass these objects.

The Civil Law Principles of the Civil Code adhere to the Principle of Vertical Attachment, which states that ownership rights to a plot of land entail ownership of everything on and within the land (Article 571 of the Civil Code). Therefore, to avoid any doubt regarding this matter, Article 4 paragraph (4) of the UUHT requires a clear statement in the Deed of Granting Mortgage Rights (APHT) for the land, stating whether the mortgage right is imposed on the land, including the buildings and plants thereon.

3. Natural Law

Legal experts share similar views regarding the concept of schools of thought in legal philosophy. Satjipto Rahardjo divides schools of thought into Greek and Roman theories, positivism and utilitarianism, natural law, pure legal theory, historical and anthropological approaches, and sociological approaches. Soejono Soekanto divides them into utilitarianism, the history and culture school, the formalism school, legal realism, and sociological jurisprudence. Lili Rasjidi divides them into the historical school, the natural law school, the positive law school, the sociological jurisprudence school, and pragmatic legal realism.

The natural law school is arguably the oldest and most influential paradigm in the development of legal science to this day. Legal theories developed after the natural law period are essentially developments or refinements of the natural law paradigm. In natural law theory, law is a universal value that lives within the hearts of individuals, society, and the state. This is because law must necessarily adhere to moral boundaries that serve as guidelines for the law itself. It has even been stated that above the state's positive legal system, there exists a higher legal system (lex divina), a divine one based on the reason of natural law its elf Natural law is superior to state law. This is due to the existence of legitimacy and norms that are not the meaning and actions of human will; therefore, the values they form are not arbitrary, subjective, or relative. Natural law appears as a law and human reason, channeling the desire to investigate volitional actions, and someone who acts as a moral or legal legislator.

The primary strength and paradigm of this paradigm is not solely based on moral values but is also oriented towards achieving values of justice for society. Legal thinkers within the natural law paradigm believe that justice is an essential value and law, often identified as a single and unified value. Law has many purposes within itself, as it functions not only as a tool to uphold justice but also as a "reflection" of a nation's sense of justice and sovereignty. In the 5th century BC, law was still primitive, meaning it was still principitive, viewed as a natural necessity, both universally and naturally. However, in the 4th century BC, philosophers began to recognize the role of humans in shaping law, such as Socrates.

Socrates demanded that law enforcers heed justice as a value above all else. Similarly, Plato (427-347 BC) and Aristotle (348-322 BC) began to consider which rules should be the most just means to achieve legal goals, even though they also wanted to obey the demands of nature. This era is known as the natural law school.

In the 8th century BC, the natural law school of thought in Roman thought emerged from thinkers influenced by the ideas developing in Greece, particularly those of Socrates, Plato, and Aristotle.

One Roman figure who expounded extensively on natural law was Cicero, a jurist and statesman. Cicero taught the concept of true law, which he aligned with right reason and nature, and which is widespread among humanity and is immutable and eternal. Any law must be derived from that true law. On another occasion, Cicero said that we are born for justice, and law is not based on opinion, but on man's own nature. Besides Cicero as one of the leading thinkers of the Roman era, another famous thinker was Gaius. Gaius distinguished between ius civile and ius gentium. Ius civile is the law that is specific to a particular country, while ius gentium Natural law is a universally applicable law that originates from human reason.

The two eras, Greece and Rome, had distinct differences regarding their views on law. According to Achmad Ali, Greek thought on law was more theoretical and philosophical, while Roman thought focused more on practical matters and was related to positive law.

The development of natural law declined around the 16th century and reemerged in the 19th century, led by a German named Rudolf Stammler. Stammler outlined the following points regarding natural law:

a. All positive law is an attempt to achieve just law.

b. Natural law seeks to create a rational method that can be used to determine relative truth and law in every situation.

c. This method is expected to serve as a guide if the law fails the test and to bring it closer to its goal.

In principle, natural law is not a specific type of legal regulation, but rather a collection of ideas or concepts derived from the opinions of legal experts, then given the label natural law. This aligns with Satjipto Rahardjo's view that the term natural law has been used in various meanings by various groups and at different times. Therefore, the essence of natural law is universal and eternal. According to Friedman, the history of natural law is one of absolute justice, despite human failure to seek it. The definition of natural law changes according to changing societal mindsets and the political conditions of the time.

Friedman's opinion, as mentioned above, aligns with Dias's, who states that natural law consists of the following:

1. Ideals according to which law develops and is implemented.
2. The moral basis of law, which prevents a total separation between what is and what should be.
3. The method for finding perfect law.
4. The content and perfect law, which can be discussed through reason.
5. The conditions that must exist for the existence of law in society.

Apart from Friedman and Dias, who were the founders of the natural law school, there was also Thomas Aquinas, a philosopher who is famous for his book Summa Theologica and De Regimen Princzpum. Thomas Aquinas's ideas on natural law greatly influenced the church and even serve as the foundation of church thought to this day. Thomas Aquinas divided law into the following four categories:

a. Lex Aeterna, the reason of God himself, which governs all things and is the source of all laws. This reason is inaccessible to human senses.

b. Lex Divina, the part and reason of God that humans perceive based on the time they receive.

c. Lex Naturalis, this is natural law, namely the incarnation and lex aeterna within human reason.
d. Lex Positivista, the applicable law is the implementation and application of natural law by humans in relation to specific conditions influenced by the circumstances of the world.

If one follows the history of Natural Law, one is following the history of humanity's struggle to find absolute justice in this world and its failures. Throughout time, spanning thousands of years, right up to the present day, the idea of natural law has always emerged as a manifestation of human endeavor, namely, the longing for a higher, positive law. At times, the idea of Natural Law has emerged strongly, at others it has been neglected, but nevertheless, it has never died.
Throughout its history, Natural Law has performed and served a variety of functions, including the following:
a. It served as the primary instrument when the civil law of Ancient Rome was transformed into a vast international system.
b. It served as a weapon used by both the church and the monarchy in their relations.
c. It is in the name of natural law that legitimacy and international law are upheld.
d. It has served as a pillar when people waged a struggle for individual liberty against absolutism.

The principles of Natural Law have been used as a weapon by American judges when interpreting their constitution, rejecting state intervention through legislation aimed at restricting economic freedom.
Natural Law is actually a concept that encompasses many theories within it. Various assumptions and opinions are grouped together These concepts of Natural Law have emerged over time. The term "Natural Law" has been interpreted in various ways by various groups and at different times. These various assumptions are outlined below.
a. It is the ideals that guide the development of law and its implementation.
b. A moral basis for law, which prevents a total separation between "what is" and "what should be."
c. A method for finding perfect law.
d. The content and the perfect law, which can be deduced through reason.
e. A condition that must exist for the existence of law.

As reflected in the points above, Natural Law can be distinguished into "natural law as method" and "natural law as substance." Natural Law as method is the oldest, recognizable from ancient times to the early Middle Ages. It is defined as an attempt to find a method that can be used to create regulations capable of dealing with diverse circumstances. Thus, it does not contain its own norms, but rather "merely" informs how to create good regulations.
Unlike the first, Natural Law, as its content, actually contains norms. Under this assumption, one can create a large number of rules that are transmitted and several absolute principles, commonly known as "human rights." This second type of Natural Law characterized the seventeenth and eighteenth centuries. It was this type of Natural Law that received sharp criticism and declined from the nineteenth century onward, replaced by Positivism. While conditions were relatively stable, positivism could thrive, but it quickly failed when upheavals occurred, such as those that occurred in the first half of the nineteenth century. It failed because it could not provide guidance amidst challenges to the social and moral beliefs of the time; it failed because it was unable to provide assistance to prevent the misuse of power and freedom that resulted. With the decline of positivism, the Law of Adam was revived, which later became known as the "revival of the doctrine of natural law."
Regarding the term "revival of Natural Law," it is said that it cannot actually be called a "revival," because it is very different from the previous Law of Adam. It adheres to a different concept of relativity and a belief in the absolute nature of the previous natural law The only connection between it and the

old natural law is that both are based on a desire to express a moral ideal. Rudolf Stammler, among them, stated that "all positive law is an attempt to achieve just law." From this, it is clear that Stammler did not reject authority and law (i.e., positive law), even if these laws failed to meet the demands of justice. He sought to create a rational method that could be used to determine relative truth and law in each situation. This method was expected to serve as a guide when the law failed its test and to bring it closer to its goal. The essence of Stammler's teaching is found in the following quote:

Law is a specific structure that gives shape to human goals and motivates human action. To discover the general principles and the formation of such a structure, we must abstract from these goals and actual social life. We must discover its origin and ask ourselves what is the essential thing we must do to understand it as a harmonious and orderly system of goals. Then, with the aid of logical analysis, we will discover certain absolutely valid principles of legal organization, which will guide us confidently in judging which goals deserve legal recognition and how these goals are legally related to each other."

The above quotation clearly demonstrates that he belongs to the Natural Law method. He demonstrates the methods that should be used to discover the "content of a particular legal norm" amidst changing situations according to time, place, and society. The content of the legal norm discovered through these methods may not fully meet the demands of ideal and absolute justice, but it adapts to the demands of social harmony in a particular situation and can therefore be called "objectively true." Thus, Stammler has presented a technique for determining what constitutes relative justice, which he calls "natural law with changing content."

Thomas Aquinas was the greatest philosopher and Scholastic of the 17th century. Middle Ages. He accepted the influence of Aristotle, but expressed it with Christian dogma, thus forming a system of thought of his own. Thomas Aquinas defined law as "a rule derived from reason for the common good, made by a person who has the duty to protect his community and to promulgate it." Since this world is governed by divine order, all of this world's society is governed by reason Divine law. Divine law is supreme. Thomas Aquinas distinguished four types of law: lex aeterna, lex naturalis, lex diina, and lex humana.

Lex aeterna is the plan of government as established by the King of Kings. It is the divine reason that guides all movements and actions in the universe, but no human is capable of grasping lex aeterna in its entirety. One can only grasp a portion of it through the intellect bestowed upon him by God. This graspable portion is called lex naturalis. This lex naturalis directs human activity through general guidelines. The most basic guideline is that good should be done, while evil should be avoided. Regarding what constitutes good, Thomas Aquinas linked it to what constitutes natural human tendencies. First, there is the natural human instinct to preserve life. Second, there is the affinity between the sexes and the desire to raise and educate children. Third, humans have a natural desire to know God and a tendency to reject ignorance. Fourth, humans desire to live in society, and therefore it is natural for humans to avoid actions that harm those with whom they live.

In Thomas's philosophy, the lex aeterna, which contains abstract principles, is supplemented by specific instructions from God regarding how humans should live their lives. This function is carried out by the lex divina, which is contained in the sacred scriptures and the New and Old Testaments. Finally, there is the lex humane. This formulation of law is Thomas Aquinas's formulation of law, as mentioned above. Since reason is the primary source of law, it must be explained by postulates and reason. Unjust and unreasonable laws, which contradict natural norms, cannot be called laws, but rather deviant laws.

In the Thomistic conception, justice is divided into two types: distributive justice and commutative justice. The former allocates goods to individuals in proportion to their dignity. Commutative justice concerns the relationships between individuals and the adjustments that must be made when unlawful actions occur.

As previously stated, this Natural Law has always been recognizable throughout the centuries of human history, as it represents humanity's quest for ideal law and justice. In this book, we have discussed the emergence of Natural Law starting with Greek and Roman civilizations. Although this will not be discussed further, as a mere In the context of knowledge, it is also worth mentioning names associated with this idea of Natural Law from century to century. The teachings of St. Thomas Aquinas have been discussed in the Middle Ages. In the sixteenth and seventeenth centuries, names such as Grotius, Hobbes, Locke, Rousseau, Montesquieu, and Hume are known. The nineteenth century saw what was previously called the "revival of Natural Law," as seen especially in the writings of Rudolf Stammler. Another name that could be mentioned in this century is Hegel.

The twentieth century also saw ideas about Natural Law. Here, I will mention only one, Lon L. Fuller, who saw the relationship between law and morality as a necessary discussion. However, unlike previous naturalists, Fuller did not argue that a legal system must conform to a specific moral requirement or be measured by a standard derived from and external to the system. In contrast, Fuller postulated that legal regulations must be subject to internal morality.

Regarding the morality that must be reflected in the legal system itself, readers can find further details in this book, which discusses the interconnectedness of legal principles and Fuller (see the section on "Legal Systems" above). The characteristic of law, which determines the demand for ideal law and justice, is evident in Fuller's definition of law, which he saw as an "attempt to subordinate human behavior to rules." Here, we see the aspect of Natural Law as a "human struggle." This is more clearly evident in his following words: "I have always emphasized that law should be seen as a conscious effort, whose success depends on the energy, insight, intelligence, and determination of those who undertake it, and whose destiny is to fail in its efforts to achieve its goals, due to its dependence on these factors."

Natural law is also often called natural law. A characteristic of natural law is the question of a unique anxiety: what would happen if laws did not exist? This single question seems to be overlooked by adherents of natural law. Law, for them, will emerge naturally. Even if chaos and disorder were to strike at some point, law would inevitably be called upon to weave that chaos into order. Without law, relationships between people create their own laws.

The love story of Romeo and Juliet creates laws between them, such as mutual love, mutual affection, and life and death, even though they are not written in the text Even statutes or treaties. Natural law is the law of the law. Law in the form of statutes can collapse with revisions, amendments, or changes in political regimes. However, natural law is timeless.

Studying natural law, we are confronted with a unified view of law and morality. Adherents of natural law consistently assert that law is part of and part of moral discourse. They recognize two major schools of thought in natural law: theology and metaphysics. The theological school is represented by the renowned thinker Thomas Aquinas, as discussed earlier, with his magnum opus Summa Theologiae and Summa Contra Gentiles. Meanwhile, the metaphysical school is Immanuel Kant with his critique of the Reinen Vernunfh.

The views of natural law adherents are primarily based on theology. For example, for Thomas Aquinas, law is an inseparable part of the moral teachings of religion. Religion is a source of human knowledge with abstract and practical guidelines, encompassing supernatural and natural truths, the upper and lower layers, thus embodying God's command as "infinite being" (ipsum esse subsistens). This is what distinguishes humans from animals: the grace of reason and belief in God, the supreme being.

While religion teaches universal morals, through religion, natural law is how to implement the provisions of that religion itself. However, carrying out religious commandments is not merely a routine, but rather a matter of deep philosophy and contemplation. Thomas Aquinas is known as an Italian philosopher and theologian who successfully blended the teachings of the Christian church with Aristotelian philosophy. Aquinas synthesized Aristotle's dualism of soul and body, ultimately concluding that human existence is only possible through the glorification of the natural soul. Aquinas argued that negative aspects would arise if the rules derived from the soul's promptings, which override material elements, were not followed. The soul, comprised of thought, conscience, and religious teachings, awakens even the human subject to an unconditioned state (suppositum).

As a believer in natural law, Thomas Aquinas was a central figure in medieval philosophy, and in 1323, Pope John XXII canonized him as a saint. Coming from a noble family, his father, Count Landuif, a devout Catholic, Thomas was sent at the age of five to the Benedictine Monastery of Monte Cassino to study as a monk. This religious education from childhood, coupled with his studies at the University of Paris, made him an expert in theology and philosophy. His project, as a Thomas, of combining faith and reason, was widely considered successful, and he gained many followers.

According to Thomas, law is related to the importance of the human soul as the natural basis for every action and decision taken. The soul, taken from the teachings of Aristotle, anima, is in harmony with the intellect, imagination, memona, which have a transcendental aspect beyond the object of form. The soul is something possessed by "animals," which are original or original (arclie) moving from place to place by the principle of desire (orexis). This assumption of "animal" is what Thomas replaces with "creature." If humans are "animals" that think, then Thomas has the assumption that humans are "creatures" that think. Creatures for Thomas always have a spiritual aspect so that their condition is often associated with His power.

CONCLUSION

One of the main activities of the Bank besides collecting public funds in the form of current accounts, time deposits and savings is providing credit for working capital or investment purposes, where in providing such credit is closely related to guarantees for loan repayment. Therefore, in making a guarantee agreement there must be a principal agreement that clearly regulates the existence of a guarantee. So that the existence of a guarantee agreement is the implementation of the principal agreement. Where in binding the guarantee, the Bank will use Mortgage Rights in the legal aspect of land as a means of protection for the Bank as the Guarantee provider (creditor). Protection and legal certainty are provided on the basis of the provisions of Article 21 and in the explanation of the Mortgage Law on land and objects related to land, the Mortgage creditor has a priority position or as a separatist creditor and Article 55 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations recognizes this priority position by being able to execute his rights as if there was no bankruptcy in this case the creditor receiving the mortgage rights has the position of a separatist creditor. However, the right to execute debt collateral from secured creditors cannot be exercised at any time. Considering that a maximum of 90 (ninety) days after the bankruptcy decision (by the commercial court), secured creditors enter a waiting period (suspension) during which they may not execute the debt collateral, Article 55 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payments, based on the principles contained in Article 1134 of the Civil Code and Article 6 and Article 21 of the UUHT.

The Bank, as a secured creditor, in accordance with Article 21 and the explanation of the Law on Mortgage Rights for land and objects related to land, has granted the creditor holding the mortgage right a secured creditor status, and Article 55 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payments recognizes the position of the mortgage holder. Peace is one of the links in the bankruptcy process recognizing the position of separatist creditors, if in bankruptcy a peace plan is submitted and the peace plan is approved, for creditors who agree, for creditors who do not agree or creditors who are not present at the meeting. In the event of a bankruptcy settlement by means of peace, the position of the creditor holding the mortgage right does not have the right and is not allowed to vote or reject in the case of the peace proposed by the debtor must be decided by voting, and if the

Separatist creditor still wants to vote in the voting plan. Then the separatist creditor must waive his right to be prioritized, this is in accordance with Article 149 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. The bank holding the mortgage right, that in the peace process sometimes the object of the mortgage right is not enough to pay off the debtor's debt, but with the limitations of Article 149 of the UUK, it hinders the position of the creditor holding the mortgage right being prioritized.

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