

The Theory of Justice (Aristotle) Against Imperfect Collateral Binding Bad Debt Case at State-Owned Bank

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Abstract. *This study discusses the analysis theory of justice according to Aristotle regarding imperfect collateral binding in cases of bad debts at Indonesian state-owned banks. Credit is one of the main sources of income for banks, but the risk of bad debts is a significant challenge that requires protective measures, one of which is collateral. However, there are cases where collateral binding does not meet legal requirements, leaving problems related to justice for all parties. This research method is normative in qualitative descriptive analysis, exploring how Aristotle's theory of justice can be applied to evaluate this practice. The results show that Aristotle's theory of justice, which emphasizes proportion and recognition of rights, contributes to facilitating a fair relationship between banks and debtors. Increasing the use of collateral binding according to justice can contribute to creating a more fair and sustainable banking system in Indonesia.*

Keywords: *Bank; Collateral; Debt; Justice.*

1. Introduction

The main source of income for banks in Indonesia is credit provision. However, the risk of bad debt is a significant challenge, where the debtor fails to fulfill payment obligations according to the agreement. Binding collateral is an important step taken by the bank to protect its interests. Collateral serves as additional security for banks to minimize losses that may arise due to bad debt (Dianora & Ahmed, 2020).

However, imperfect collateral binding occurs when collateral does not comply with legal requirements or is not fully registered with the relevant agencies, so the bank does not have valid evidence of its collateral holdings. This results in the collateral not being able to be effectively executed. The debtor's ignorance of their rights and obligations, completeness of documents, new regulations in relevant agencies, incompetence of Notaries and PPATs, or non-transparent business activities can be the cause of this. This situation raises questions about fairness in the legal process governing collateral binding.

The theory of justice law becomes relevant in this context because it provides a framework for evaluating whether the practice of imperfect collateral binding reflects

the principle of justice for all parties involved. Justice is not only related to legal certainty but also to fair and proportional treatment of debtors and banks. In this case, it is important to analyze how the theory of justice law can be applied to understand and resolve the problems that arise due to imperfect collateral binding in cases of bad debts in state-owned banks.

Research to explore the relationship between the theory of justice law and the practice of collateral binding, and its implications for the settlement of bad debts. Therefore, this research can contribute to a more sustainable and fair banking system in Indonesia.

2. Research Methods

This normative research abstracts legal information and uses socio-legal legal methodology. The research was conducted in State-owned Enterprises and the researcher's environment. Content analysis is used for qualitative descriptive examination of legal information.

3. Results and Discussion

Aristotle believed that justice should provide equal rights, not total equality. He distinguished equal rights based on proportion. Equality of rights means treating people equally. Thus, all citizens have equal rights. Aristotle distinguished between general and particular justice. The common good and general justice are related. The law is followed when justice is done, and the law is broken when injustice occurs. Justice can mean legitimacy, fairness, or the consequences of injustice. Breaking the law and fairness. The law encourages people to behave well, therefore a just person—someone who behaves well will have moral qualities, while justice focuses on human relationships (Saputri, 2017).

Special justice, a part of social justice that promotes the good, studies the divisible goods of honor, money, and security, where one person's gain of these things brings equal loss to others. Accordingly, it is divided into several justices (Pratama, 2024):

1. Distributive justice is from services or abilities contributed (achievement);
2. Corrective justice emphasizes fixing the mistakes that occur. If distributive justice is not applied properly, then corrective justice functions to fix it. The goal is to compensate the victim and punish the perpetrator.

Once we understand distributive justice, the current development of proportional legal theory can also be applied to business aspects.

Business comes from the word "*business*" which means business activities, this activity involves buying, selling, or renting products, services, or facilities to make a profit.

According to the Great Dictionary of the Indonesian Language, business is a trading activity or commercial operation. Therefore, business generally includes trading, industrial, and financial activities. All of these activities include the production and

trade of products and services as well as financial matters. A company may be active in one area of activity or commercial matter.

The purpose of business is to make money by providing products and services to others. Overall, business activities are divided into 3 (three) categories(Kamaruddin, 2023):

1. Business, in the context of trade activities, refers to all buying and selling activities carried out by individuals or entities, both domestically and internationally, to make a profit. Examples of these business actors include manufacturers (such as factories), dealers, agents, wholesalers, shops, etc;
2. Business in the context of industrial activities refers to the process of producing or making goods that have more value than the raw materials. Examples of this industry include the forestry, plantation, mining, building, and bridge construction sectors, as well as factories that produce food, clothing, crafts, and machinery.

Meanwhile, business in the sense of service activities is an activity that provides services carried out by individuals or organizations. Examples of these services include hospitality, consulting, insurance, tourism, and professions such as lawyers, appraisers, and accountants.

The following is a further explanation of business activities based on this definition(Kamaruddin, 2023):

1. Business is an activity that is carried out regularly, considered as a job, a source of income, or even as a profession;
2. Business is an activity related to trade;
3. Business is carried out to make a profit;
4. Business can be carried out by individuals or by companies.

A strong economy comes from good trade and business. Healthy economic activity requires commercial, trade, or corporate guarantees. These business regulations or laws are important because business people need more than just promises or good intentions. Business law must also offer a legal framework for dealing with disputes if one party violates its commitments or agreements.

Since the beginning of the New Order, it has been recognized that legal ideals have several very important functions. First, legal ideals play a role in providing a deeper understanding of the law itself. Thus, law is not only seen as a set of rules but also as a system of values that reflects the hopes and aspirations of society. Second, legal ideals function to limit the scope of positive law that can be formulated so that the resulting law does not conflict with the basic principles of justice and morality held by society. Third, legal ideals play a role in assessing whether existing positive law has met the expected standards of justice, allowing society to evaluate and question the legitimacy of applicable law.

Thus, the substance of the legal ideal itself is justice, which is understood as a fundamental idea that must be the basis for every process of making and implementing laws. This justice does not only cover formal aspects but must also

reflect the social values that live in society. Therefore, it is important for every government.

The economic aspect cannot be underestimated in policy-making, whether in terms of the formation, implementation, or enforcement of laws and regulations in Indonesia. The General Guidelines for State Policy (GBHN) officially stipulates one of the policy orientations in the national development program in the legal field, namely the development of laws and regulations that support economic activities to face the era of unlimited trade. Thus, this policy direction is a strong main guideline regarding the influence and objectives of the economy in legal development in Indonesia.

According to Imaniyati, critical studies of legal paradigms or approaches have not yet developed in Indonesia. Indonesian legal scholars are less interested in theoretical studies of legal frameworks or concepts. Legal economic analysis is still being discussed.

The Indonesian economy is recovering. Businesses in Indonesia are growing rapidly. The growth of businesses in the franchise industry is also rapid. This situation explains why Indonesia has commercial law. As a social control, the law should regulate and supervise businesses in this country. Business law should help business actors avoid losses. Furthermore, corporate law should prevent monopoly tactics at an early stage. Corporate law is intended to supervise and protect corporate actors, customers, and the community. Business law is very important for business actors, the business world, and the community. How does Aristotle's proportional justice theory affect Indonesian corporate law?

The tasks of legal theory can be detailed as follows (Marzuki, 2020):

1. Explain how legal principles influence legal rules and decisions;
2. Provide guidelines for law making;
3. Guide court decisions;
4. Establish a basis for carrying out administrative responsibilities.

Legal theory combines logic and reasoning based on justice to carry out these tasks. Because justice is the embodiment of morality, justice is the essence of law.

This study describes the application of Aristotle's proportional justice theory in the business world, especially the release of credit from BUMN (State-Owned Enterprises) Banks, which involve Notaries and Land Deed Officials. The grouping or extraction of these rules includes:

Table 1. Groups or extractions of regulations.

Aristotle's Theory of Justice in the book Nicomachean Ethics	Generally, justice is defined as a balance of proportional equality, which is giving everyone what they deserve in accordance with their capabilities.
<p style="text-align: center;">Banking Law</p> <p>A. State-Owned Enterprises (BUMN) Bank B. Agreement</p>	<p>A. State-owned Bank State-owned enterprises (BUMN) are one of the main actors in the Indonesian economy,</p>

C. Collateral

along with cooperatives and private businesses. BUMN banks are state-owned enterprises engaged in banking.

- B. Article 1320 of the Civil Code. The conditions for a valid agreement are as follows:
1. Agreement
 2. agreement of the parties;
 3. capacity to make a contract;
 4. A certain subject matter;
 5. A cause that is not prohibited / a lawful cause.

C. Article 1 of Law Number 4 of 1996

1. Mortgage Rights on land and objects related to land, hereinafter referred to as Mortgage Rights, are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, with or without other objects that are an integral part of the land, for the settlement of certain debts, which give a priority position to certain creditors over other creditors;

2. Creditors are parties who owe money in a certain debt-receivable relationship;

3. Debtors are parties who owe money in a certain debt-receivable relationship;

D. Article 1 number 2 of Law Number 42 of 1999

Fiduciary Guarantee is a guarantee right for movable objects, both tangible and intangible, and immovable objects, especially buildings, which cannot be burdened with mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights, which remain in the control of the Fiduciary Provider, as collateral for the repayment of certain debts, which provides a priority position to the Fiduciary Recipient over other creditors.

Article 4

A fiduciary guarantee is a supporting agreement to a main agreement that creates an obligation for the parties to fulfill a certain performance.

Article 5

(1) The encumbrance of an object with a Fiduciary Guarantee is made by a notarial deed in Indonesian and is a Fiduciary Guarantee deed. (2) The making of a Fiduciary Guarantee deed as referred to in paragraph (1) shall be subject to a fee, the amount of which shall be further regulated by Government Regulation.

Notary Position Law

Article 1

Law no. 2 of 2014

A notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws.

Regulation of PPAT Position

Article 1

Presidential Regulation No. 24 of 2016

Land Deed Making Official, hereinafter referred to as PPAT, is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or Ownership Rights for Apartment Units.

Based on the grouping and abstraction above, Indonesian law, especially business law and the rules on related authorities and state losses, seem to adopt Aristotle's idea of justice.

According to Article 1320 of the Civil Code, the agreement is fair and proportional. The Mortgage Law states that the debtor as the credit recipient can utilize or enjoy the bank's collateral. The bank has priority in executing collateral as a creditor. This law also gives authority to the Land Deed Making Officer to make a mortgage deed. The government has made strict provisions regarding the Mortgage Grant Deed (APHT) and the Mortgage Grant Power of Attorney Deed (SKMHT). Through these laws and regulations, the government aims to realize proportional justice to maintain and regulate the rights and obligations of each party in the credit agreement. Mortgage transactions require clarity and legal protection for all parties.

The bank is authorized to store or maintain evidence of ownership and priority in this case as the creditor. The bank is authorized to store or maintain evidence of ownership and priority in this case as the creditor.

The regulation requires notaries to make fiduciary guarantee deeds. Both guarantee regulations stipulate that officials can make valid guarantee deeds, but do not include legal sanctions if officials are negligent or do not register the deed.

Banks register collateral with authorized institutions using Notaries and Land Deed Officials (PPAT) when providing credit to debtors. This method protects the interests of the bank in the event of a debtor's default and ensures that the collateral is valid and

accountable. Notaries and PPATs will register the collateral and make relevant deeds following the provisions. The cooperation agreement between the bank and government agencies (Notaries and PPATs) usually contains the rights and obligations of the parties.

The bank will usually send a letter outlining the terms and conditions of credit before credit is granted to debtors. After reaching an agreement on the terms set by the bank, the debtor will sign the letter, pay the necessary fees, and submit proof of ownership that will be used as collateral or security, then return the offer letter to the bank.

Based on this, the bank prepares an order letter or letter of request addressed to the Notary or Land Deed Making Officer (PPAT). The contents of this order letter include the type of credit agreement, the type of collateral binding, and an explanation of the collateral, accompanied by the submission of the debtor's identity, the bank's identity, and the original collateral documents. After that, the Notary and Land Deed Making Officer (PPAT) will conduct an examination and analysis, followed by the preparation of the necessary deeds.

Before transferring land rights, the Land Deed Making Officer (PPAT) is required to check the collateral certificate, which can be done online on the application of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN).

The Land Deed Making Officer (PPAT) is required to check the Land Rights Certificate as referred to in Article 2 paragraph (2) letter a before carrying out a deed for certain legal acts regarding Land Rights/Ownership Rights of Apartment Units, in accordance with Article 4 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 5 of 2017.

The next agenda is for the Notary and Land Deed Official (PPAT), Bank, and debtor to carry out the binding (agreement) of credit and collateral. Because the process of registering collateral to the relevant agency takes time, usually the Notary issues a statement letter explaining among other things:

1. Day and date of execution of the agreement;
2. Name and domicile of the Notary and Land Deed Making Officer (PPAT);
3. Title of the credit agreement deed and its deed number;
4. Title of the guarantee deed and its deed number;
5. Ongoing processing process; and
6. Time frame for work completion.

Public officials (Notaries and PPAT) are positioned as individuals in their work with banks, as stated in Article 1320 of the Civil Code. Therefore, they may be also responsible if there is a bad debt, especially if they have not completed the registration of the collateral binding at the authorized agency. This obstacle can cause the bank to lose its privilege to receive the first payment because its execution power has not yet been born. Given that state-owned banks are state businesses, providing credit using state finances has the potential to cause losses to the state if there is a bad debt.

According to Aristotle, justice is a virtue that everyone deserves, and the principle of giving each person what they deserve remains an important part of contemporary theories of justice. Distributive justice according to Aristotle emphasizes the distribution of honor, wealth, and other goods that are accessible to society. Without the need for mathematical "proof", it can be understood that what Aristotle meant was the distribution of wealth and other valuables based on values recognized in the community. Thus, fair distribution can be interpreted as a distribution that is in line with the values of goodness, namely the values that apply in society(Bustoh, 2024).

The critique implications of Aristotle's concept of justice in the contemporary context suggest that we need to rethink justice profoundly. This critique underlines that although the concept of justice proposed by Aristotle has significant historical and philosophical value, it may not be sufficient to address the complexity of social justice issues we face today, such as economic inequality, discrimination, and human rights violations. Therefore, we must develop a more inclusive theory of justice, one that not only takes into account traditional values but is also responsive to the challenges and dynamics of contemporary society(Mimba, 2024).

Although Aristotle's concept of justice has been subject to much criticism, it is important to acknowledge that it still has relevance and value in discussions about justice. Criticism of this concept emphasizes the importance of continually revising and updating our understanding of justice to meet the challenges that arise in the modern era. Thus, despite the limitations of Aristotle's approach, his concept of justice can still provide valuable insights and serve as an important starting point in debates about justice in today's society. This encourages us to explore and integrate new perspectives that can enrich our understanding of justice so that we can create a more just and sustainable society.

4. Conclusion

This study has examined in depth the concept of proportional justice according to Aristotle, which is one of the main pillars of his ethical and political thought. Aristotle emphasized that justice is not only a matter of fair distribution but also includes recognition of the contributions and needs of individuals in a wider social context. Aristotle distinguishes between general justice and special justice in his work. General justice pertains to the common good and obedience to the law. Special justice pertains to individual interactions and resource distribution. The distributive justice theory of Aristotle provides an important framework for understanding how society should function. He argued that fair distribution should be based on proportion, with each individual receiving rights and resources in proportion to their contributions and achievements. Although Aristotle's thinking provides a solid foundation for social justice, critics are concerned this concept may not be adequate to address economic inequality, discrimination, and violations of human rights today. This critique highlights the need to revise and update our understanding of justice to make it more inclusive and responsive to contemporary challenges. Today, as social and economic dynamics become more complex, we require a theory of justice that both accounts for traditional values and accommodates diversity and special needs. Despite the limitations of Aristotle's approach, his concept of justice remains relevant and can provide valuable insights into discussions of justice in the modern era. Aristotle's thinking on justice as a

virtue underlying social relations can be an important starting point for exploring and integrating new perspectives on thinking about justice.

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