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Legal Protection for Debtors with Non-Performance Debtors Due to Cessie Practices in Banking Agreements

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Abstract

The debtor defaulted while the creditor desired that the receivables owned be received immediately, aka no longer having to collect from the debtor, who is most likely unable to pay off the credit. This Cessie action is considered legal and can be carried out in Indonesia. However, no single rule regulates its implementation so that it is not carried out arbitrarily. Because the implementation of Cessie in practice is sometimes very detrimental to the debtor, especially debtors whose remaining debt is not much or has little remaining, it is necessary to know the legal regulations related to the transfer of receivables (cession) in resolving bad debts in Indonesia, and what form of legal protection for debtors who are harmed by the implementation of cession according to positive law. This study uses a normative research method with an analytical descriptive analysis method. The regulation of cession is generally regulated in the civil code, precisely in book three concerning obligations and in several special laws such as the Mortgage Law and the Fiduciary Law, and Bank Indonesia regulations in general, cession is permitted as long as the parties agree on it by making a new agreement. Meanwhile, the legal protection for the harmed debtor is a cession agreement that the debtor is not informed of. It can be categorized as an invalid agreement because the object still belongs to the debtor, so it can be canceled or null and void by law.

Keywords: *Bad credit; Cessie/ Debt Transfer; Creditor; Debtor*

1. Introduction

The process of asset withdrawal carried out by creditors on defaulting debtors with collateral in the form of house or land certificates can be done in several ways, including voluntary surrender, namely being sold immediately if the debtor wishes or agrees, another way is to auction the assets if the debtor does not wish to surrender voluntarily or the sale of assets is not immediately sold, in asset auctions, creditors are required to follow the processes correctly so that later they do not receive lawsuits from

debtors who feel disadvantaged when the auction of collateral assets is not carried out correctly in the stages of the implementation process. Another way is if the creditor wants their debt paid off quickly. Generally, the creditor sells the debtor's receivables to a third party using a cession. However, this method is not clear enough regarding the rules for the implementation processes. In Indonesia's legal regulations, there are not many very clear legal regulations that regulate the implementation of cession so that it can be implemented properly.

The assignment itself is only regulated in Article 613 of the Civil Code, which states:

> "*The transfer of receivables in the name of any other goods that are not physical is carried out by doing an authentic deed or underhand which transfers the rights to the goods to another person. This transfer has no consequences for the debtor before the transfer is notified to him, approved in writing, or acknowledged. The transfer of debt instruments to bearer is carried out by giving them; the transfer of debt instruments to order is carried out by giving them together with the document's endorsement"*.

The cession implemented in Indonesia is generally for bad banking credits where the debtor has defaulted. At the same time, the creditor wants the receivables to be received immediately so they no longer have to collect from the debtor, who is most likely unable to pay off the credit. This cession therapy is considered valid and can be done in Indonesia. However, no rule regulates its implementation so that it is not carried out arbitrarily. The implementation of cession in practice is sometimes very detrimental to the debtor, especially debtors whose remaining debt is not much or whose remaining debt is small because, generally, the creditor will transfer their receivables to a third party only according to the remaining principal of the debtor's debt plus the costs that must be paid. Generally, this cession action makes the defaulting debtor almost unable to obtain his rights because the cession buyer will generally try to ask for the debtor's house either voluntarily or by force or generally at least will be asked for a certain amount of money from the costs that have been paid to the old creditor. However, this is usually considered very burdensome for the defaulting debtor and detrimental to the debtor's rights.

An example of a case occurred with a debtor of a state-owned bank in Surabaya with the initials Mrs. S, where Mrs. S had a home ownership credit (KPR) at the state-owned bank where the credit liability that Mrs. S had to pay in installments every month had to be completed for a period of up to 15 years. However, in the eighth year of installments, there was a problem with Mrs. S's finances, so she could not fulfill her obligation to pay installments every month. Finally, she applied for payment relief at the state-owned bank and was given relief by reducing the installments every month. However, what a shame that the reduction in installments was considered insignificant. Mrs. S was again unable to pay the installments every month. She had experienced installment arrears for several months and wanted to restructure the second time. However, the creditor or bank rejected the application, so finally, Mrs. S's credit experienced bad credit for a long time. Because it was felt that the credit was no longer paid and without any communication without providing any solution, the creditor or Bank finally carried out a cession on Mrs. S's receivables, namely selling the remaining principal of Mrs. S's outstanding receivables to a third party (new creditor). After the cession process was carried out, the cession buyer then came to Mrs. S and asked Mrs. S to pay her receivables by selling her house with a fantastic amount or price according to the wishes of the new creditor, the requested value reached up to more than 3 times the remaining principal of Mrs. S's debt so that in this case Mrs. S was certainly very disadvantaged as a debtor.

In general, creditors carry out cession cases to immediately get back the credit (money) lent to debtors who have defaulted so that no losses occur to the creditor (Rahmadinata, 2022). However, such treatment is generally detrimental to the debtor whose rights are never considered by the creditor, and often, the money is never returned because the debtor's debt payment request requested by the new

creditor is mostly inhumane and illogical. Based on this background, the problem formulation that arises is how the legal arrangements related to the transfer of receivables (cession) in settlement of bad credit in Indonesia, as well as how the form of legal protection for debtors who are harmed by the implementation of cessie according to positive law.

2. Research Methods

This research method is normative research with a statutory, case, and conceptual approach using secondary data from primary, secondary, and tertiary legal materials. The collection method uses literature study techniques, and legal material analysis techniques use analytical descriptive techniques.

3. Research Discussion

Legal Regulations Regarding the Transfer of Receivables (Cessie) in Settlement of Bad Debts in Indonesia

The credit collectability conditions are classified according to the provisions of Bank Indonesia, as outlined in Article 12, paragraph (3) of Bank Indonesia Regulation No. 7/2/PBI/2005 concerning the Assessment of the Quality of General Bank Assets. There are five types of credit collectability. First, Current Credit refers to credit where installment payments, both for principal and interest, are made on time. Additionally, it requires mutations in an active permanent account or the credit portion guaranteed by cash collateral. Second, Credit under Special Attention is for debtors who meet certain criteria, such as having installment arrears not exceeding 90 days, occasional overdrafts, or relatively low mutations on their accounts. It may also include debtors who have not frequently violated the agreed contract or have been supported by new loans.

Third, Non-Smooth Credit is characterized by criteria such as installment arrears exceeding 90 days, frequent overdrafts, low account mutations, or a history of contract violations. Additionally, signs of financial difficulties or weakened loan documentation can indicate this status. Fourth, Doubtful Credit applies to debtors with installment arrears on both principal and interest exceeding 180 days or who frequently experience permanent overdrafts. This category also includes debtors who have defaulted or violated the contract for more than 180 days or whose legal documentation, including the credit agreement and collateral, has become weak. Fifth, Bad Credit refers to debtors with arrears on principal and interest exceeding 270 days or those whose operational losses are covered by new loans. Furthermore, the credit is classified as bad if a legal or market assessment indicates the collateral can no longer be liquidated at a reasonable value.

According to Subekti (1998), cession is a method of transferring receivables in the name of which later the receivables are sold from the previous creditor to another party, which will later be referred to as the new creditor. However, the legal relationship of the debt agreement between the debtor and the old creditor is not considered lost or deleted but will be transferred entirely to the new creditor. To explain the word invoice in the name, it means an invoice whose creditor is said to be certain, and, of course, the creditor is well known by the debtor. It is different again if it is mentioned as an invoice on bearer (aan toonder), which can be interpreted as an invoice whose creditor is not certain; another meaning is that the creditor is deliberately created, the purpose of which is to facilitate the transfer if the debtor has problems (Subekti, 1998).

A cession, which involves the transfer of receivables, typically includes three parties. The first part is the old creditor, the cedent, who transfers their right to collect or sell their receivables to a third party. The second part is the new creditor, also called the cessionary, who purchases the receivables or

receives the transfer of collection rights. The third party is the debtor, or cessus, who owes the loan to the creditor. In most cases, the census is seen merely as a party that receives a notification or provides approval for the agreement or cession action made between the cedent and the cessionary (Fitriana et al., 2021).

In carrying out the transfer of ownership rights, Indonesia follows the causal system (causal system), which states that ownership rights are not considered to have been transferred before a transfer occurs. Furthermore, in the causal system, the transfer's validity or otherwise depends on the obligatory agreement, which will be the basis for the transfer. From this system, it is explained that the new agreement will create a right and obligation between the parties so that they can sue each other if one of the parties breaks a promise (Wanprestasi), while in the case of the transfer of ownership rights, it must be continued by making a transfer. So, specifically for receivables in the name of the transfer, it is done using a cession. From the transfer through the cession method, apart from having a legal basis, the transfer must be carried out by those with the authority to transfer the bill (Anisah, 2009).

The owners of the goods need not exercise the authority, but of course, it can be exercised by the recipients of a power of attorney granted by those in authority. The legal basis for the rights and authority for the transfer of ownership rights has been regulated in Article 584 of the Civil Code. According to the provisions of Article 613 paragraph (1) of the Civil Code (KUHPer), the transfer of receivables must be carried out in the form of a deed, meaning that receivables in the name of the person to be transferred must be carried out by making a written agreement authentically or privately. However, this is very different from an obligatory agreement where the basis or basis of the right to treat the cession does not need to be made in writing, but is sufficient to use the general method of agreeing.

There are two types of agreements involved in cession transactions: the sale and purchase agreement, which serves as the obligatory agreement, and the cession agreement, which is a form of transferring receivables in the name. The cession agreement is considered an accession to the sale and purchase agreement, which forms the basis of the rights. Therefore, there can be no cession agreement without an obligatory agreement. If the obligatory agreement is deemed invalid or void, the cession agreement will also be considered invalid or void. Although the deed of cession may have been executed and the cession process might appear valid, for the transfer of collection rights to be binding on the debtor (cessus), it must be notified to the debtor or acknowledged and approved by them by Article 613, paragraph (2) of the Civil Code. Failure to provide this information to the debtor may result in the payment made by the debtor to the original creditor (cedent) being considered valid as long as the debtor continues to acknowledge the cedent as the creditor (Vollmar, 1990).

In practice, cession agreements can also serve as collateral for debts, particularly when the debtor faces financial difficulties, provided a joint agreement is established before the cession. However, it is common for cession sales to be carried out without involving the debtor as the collateral owner. As a result, debtors often only become aware of the cession when a new creditor approaches them to collect the debt. Since cession transactions typically do not wait for the debtor's approval, it is rare for the debtor to voluntarily agree to or acknowledge the cession after it has been completed.

The purpose of cession is the sale and purchase of a receivable, either to be transferred to a third party or as collateral for someone's debt so that, in this case, if the debtor fails to pay, the creditor will transfer the debtor's receivable to the new creditor so that the old creditor feels safe. In the transfer of receivables, there are two things related to this, the first is an outright sale (assets sales without recourse), the meaning of this is that the seller of the receivables, after the sale is made, no longer must buy back the receivables not collected by the buyer of the receivables or the new creditor. This transaction will generally be carried out in pure factoring through a sales procedure where any risk the seller owns for the receivables that have been sold is transferred to the new buyer or creditor. The second is an outright sale

(assets sales with recourse). What is meant by an outright sale is the sale of assets with an agreement that the old creditor is still obliged to buy back the receivables within a specified period. Generally, the purpose of a non-disclosure sale is to provide temporary financing, where the sale of the receivables is not intended to be sold but is only intended as a guarantee to obtain a temporary loan (Widjaja et al., 2006).

The rules for implementing a cession in Article 613, paragraph (1) of the Civil Code state that it must be done by doing a deed, either authentically or in a private manner. In this case, the purpose of doing the deed in question is writing deliberately to prove that an event has occurred, and of course, the deed must be signed (Maslikan & Sukarmi, 2018). The provisions of Article 1868 of the Civil Code state: "An authentic deed is a deed made in a form determined by law by or before a public official authorized to do so at the place where the deed was done."

Deeds made underhand by the cession actors must be made and signed. For the signature to be recognized as true, the parties who acknowledge signing should do so by applicable legal regulations, if necessary, taking an oath. Some theories explain this. The first theory is called the causal theory, which means that a transfer will be considered valid entirely depending on its rights. This means that the transfer is considered valid if the basis of its rights is also valid, and vice versa, so the existing title must be real. The second theory is the abstract theory, which means that the transfer and the basis of rights are separate things, where a valid transfer does not have to depend on real rights. Moreover, the transfer will still be considered valid even if the title is invalid or has no title.

Forms of Legal Protection for Debtors Who Suffer Harms Due to the Implementation of Assignment According to Positive Law in Indonesia

The transfer of receivables with a cession of the takeover of the collateral object of the mortgage is also mandatory between the old creditor and the new creditor so that if the new creditor cannot collect the debtor, the seizure of assets carried out by the provisions of the Mortgage Law can be carried out by the new creditor. However, because until now, there are no specific regulations governing the issue of the transfer of receivables, in order to take quick steps to collect debtors, generally, new creditors will come to the debtor to collect the debtor's debt according to the price desired by the new creditor. Hence, this ultimately causes a dispute between the debtor and the old creditor because, as the holder of the first agreement's rights, the conflict will also occur with the new creditor. Credit types of property that will determine the rights to the property. In the provisions of the Civil Code, the property rights recognized are mortgage rights, mortgage rights, and fiduciary rights, including the fact that immovable property credit will use mortgage rights as a collateral institution.

Mortgage rights are guaranteed rights intended for land rights regulated in Law No. 5 of 1960 concerning Agrarian Affairs. In addition to land, mortgage rights are also considered to include rights to other objects in one unit on the land. Registering credit on mortgage rights is useful for debt repayment if a credit problem occurs, so creditors also feel safe distributing credit to their customers. There are various elements in mortgage rights, including: first, Mortgage rights are used to guarantee rights to pay off debts. Second, according to UUPA's provisions, the object of mortgage rights is land rights. Third, Mortgage rights will only apply to land rights registered, including other objects included in one unit with the land. Moreover, the guaranteed debt must be a certain debt regulated by Law No. 4 of 1996 concerning Mortgage Rights (Christy et al., 2020).

Law No. 4 of 1996 concerning Mortgage Rights (UUHT) explains that if someone defaults on their credit, the holder of the main mortgage right is authorized to sell the collateral asset of the mortgage right through a public auction. The proceeds from the auction sale can be used to pay off their receivables, as stated and explained in Article 20 of the UUHT. Even if an agreement is reached and no one is harmed, the mortgage right object can be sold underhand. The provisions for the sale of the mortgage right object can be carried out if it has been running for one month, calculated from the written notification made by

the holder and/or grantor of the right to the authorized party, which for the next process will be announced in a newspaper as many as at least two types of newspapers published in the relevant area waiting until no one will file any more objections, and in executing the mortgage right will be declared null and void if the action is contrary to or not by the applicable provisions. If the sale is to be canceled, the debtor is obliged to pay off the debt to the creditor, including the execution costs that have been incurred (Nasution, 2018).

The provisions of Article 6 UUHT allow the sale of an object guaranteed by a mortgage right through conducting a public auction. In the case of a new creditor, what can be done to seize the assets of a debtor who is unable to pay his credit can be steps to execute the debtor's collateral object in several ways, including execution through a court decision or getting court assistance by conducting a trial process or by implementing the parate execution method, namely carrying out direct execution, namely if as a new creditor he has the right to sell the collateral object by his power of attorney through a public auction, the next way can be carried out execution on the collateral object that is sold privately based on an agreement between the new creditor and the debtor (Maryoso et al., 2021).

Article 613, paragraph 2 of the Civil Code on the implementation of cession contains a provision regarding notification or information to the debtor or cessus. The new creditor or cessionary will receive power of attorney from the old creditor or cedent, which generally contains the following provisions: The first party (the old creditor) hereby grants its power of attorney to the second party (the new creditor): 1. Notify anyone including about this cession action, including with this bailiff's letter notifying anyone who is considered to be indebted to the first party; 2. On behalf of the first party, the second party has the right to do anything deemed necessary or required so that the first party's receivables can be transferred to the name of the second party and can be received by the second party (Fuady, 2006).

Discussion of cession actions where if the debtor is never informed and does not even agree to the cession action that has been carried out, legal problems are prone to occur. It is proven, according to the author's research, that there are cases of dispute resolution of cession actions without the debtor's knowledge, which are finally disputed to the court, even though the judicial institution is the final mechanism for resolving various legal problems, including cession action disputes, but not a few cession actions bring new problems until finally many are brought to the Court. Meanwhile, Law No. 4 of 1996 concerning Mortgage Rights (UUHT) explains that if the debtor fails to pay, the main mortgage holder is authorized to sell the object of the mortgage guarantee using a public auction so that the proceeds from the sale obtained through the auction can be used to pay off the receivables (Rahman, 2016).

The problem of cession actions that often arise is generally caused by the lack of continuation of legal regulations after the cession action is carried out, both regulating what actions must be taken by the parties, namely the old creditor, the new creditor and also what debtors must do after the cession action occurs. As explained by the author previously, cession itself is only regulated in Article 613 of the Civil Code (KUH Per) Article (I) and Article (II). Actions outside these articles are not specifically regulated, so sometimes, actions after selling receivables or cession are followed up according to the parties' wishes. This can be proven in cases the author encountered directly, where the settlement was carried out according to the creditor's wishes without considering the debtor's losses (Setiawan, 2019).

Receivables that have been transferred from the old creditor to the new creditor if the new creditor acts arbitrarily and charges the debtor with high interest, the debtor may not comply with the wishes of the new creditor. Suppose the new creditor does not carry out the administrative process of the mortgage guarantee. In that case, the mortgage guarantee will not be transferred, so the new creditor must register the mortgage transfer so that it applies to the new creditor. According to the provisions, it is necessary to complete the publicity requirements. Registration of the transfer of mortgage rights is an

implementation of fulfilling the publicity requirements for the registration of mortgage rights, if registration is not carried out, the mortgage rights will not be binding on the new creditor.

Suppose the new creditor does not register the mortgage guarantee. In that case, the application for execution of the mortgage auction submitted by the new creditor if the debtor continues to fail to pay cannot be carried out even though the new creditor has the position of legitimate creditor and also has the right to claim rights because in the UUHT regulations, article 16 paragraph (2), the mortgage guarantee must still be registered through the local Land Agency office in order to be valid. The difference in the mortgage guarantee in the name of the old creditor and the new creditor will be a problem when registering the auction execution, and it will be a problem when it is processed (Widjaja, 2018).

Although the transfer of mortgage rights is not registered, this does not make the transfer of cession receivables void in its implementation. Because of the legal consequences of the implementation of cession, it can only be canceled by submitting a decision to the local district court, which has permanent legal force (inkracht) with an act that is considered rechstitel of the act of transferring receivables (cession), so that the submission of cession with the result of levering makes it no longer valid if the application to cancel the recording of a transfer of receivables and mortgage rights is granted by the Judge, which of course will result in the cession deed also being canceled because of it. So, in this case, the new creditor will be considered invalid, so it will result in the position of the old creditor returning to the old creditor, which, of course, on the Mortgage Certificate, Land Rights Certificate, and Ownership Rights for Apartment Units (HMSRS), and land books that have been recorded as cession will be crossed out, which For its cancellation will also be recorded based on a court decision, so that in this case, of course, the new creditor will lose the right to own receivables or the right to collect from the debtor (Monada et al., 2021).

Conclusions and Suggestions

Normative provisions on legal arrangements related to the transfer of receivables (cessie) in the settlement of bad debts are regulated in Article 613 of the Civil Code, which regulates the transfer of receivables for intangible goods carried out by doing an authentic deed or underhand, which definition is linked to Article 1868 of the Civil Code (KUHPerdata) which states that an authentic deed is one made by or before a public official who has the authority. Of course, an authentic deed is a perfect evidence. No other evidence is needed, and with Article 1871, which states that all information contained in the deed is truly given or submitted to the official who made it so that all information submitted or given in the authentic deed will be considered the truth as the information expressed and desired by the person concerned.

Legal protection for debtors whom creditors harm due to the arbitrary nature of the cession implementation also does not have a rule that can be considered more specific, things that are considered to be able to protect debtors in cession actions if the creditor acts arbitrarily and are considered to be able to protect the debtor, namely from the sound of Article 613 which states that the cession action is not yet valid if the creditor has not notified the debtor and is also considered not valid if it has not received written approval from the debtor. While other legal protections, debtors can be protected by Article 1365 of the Civil Code, which explains in this article that every act that violates the law and harms others can be taken legal action in its resolution, including if it is proven that the creditor makes an error, then the cession action can be canceled legally and even compensation can be requested if the creditor is proven to have caused losses to the debtor.

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