



TRANSFER OF RIGHTS TO COLLECT (CESSIE) AND LEGAL CONSEQUENCES ON DEBTOR COLLATERAL ITEMS IN RESOLVING NON-PERFORMING CREDIT (Case study on Pekanbaru District Court Decision No. 129/Pdt.G/2016/PN.Pbr)

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Abstract

Banks can deal with negative credit by purchasing, selling, and transferring the rights to receivables (cessie). According to the District Court's ruling in case No. 129/Pdt.G/2016/ PN.Pbr, the lawsuit was filed by a cessionary who had acquired receivables from the troubled PT Bank Tabungan Negara (Persero) Tbk. The Receivables Sale Purchase Agreement and Transfer of Cessie are the two (two) Notarial Deeds that include the terms of the transfer of receivables. According to the ruling, the Pekanbaru District Court approved the transfer of Land Ownership Certificates that had been pledged as security for the debtor (cessionaris). The problem is stated as follows: 1. Can the sale and purchase of receivables and the transfer of claim rights (cessie) give buyers of cessie legal certainty? 2. What are the legal ramifications of the debtor's assurance in light of Pekanbaru District Court Decision Number 129/Pdt.G/2016/PN.Pbr? and the purpose of this study is to comprehend the problem's genesis and offer solutions. The research method used in this study is known as normative legal research (doctrinaire), and it entails research on legal principles, legal aspects, and law as it is conceptualized as norms or rules that apply in society. It also includes an analysis of both written and unwritten legal rules that exist and develop in society, and it makes use of secondary data derived from primary, secondary, and tertiary legal materials. It is clear from this study that the sale and purchase of receivables and the transfer of cessie do not terminate the credit agreement between the cedent and cessus; rather, it is a transfer and delivery of receivables from the cedent to the cessionaris, and the transfer of cessus collateral must be based on a ruling made through litigation at the local District Court. And in this case, the transfer of Cessie and the sale and purchase of receivables are legal and do not violate the terms of the agreement. The judges' panel also believes that since the Cessus guarantee is not secured by a mortgage, the Cessus collateral object may be used to repay the debt by reclaiming the cessionaris name. Neither of these situations violates the rights to the bedding described in Article 1154 of the Civil Code.

Keywords: *Receivables Sale and Purchase, Cissie, Cessus, and Cesionaris.*

1. INTRODUCTION

According to the Regulation of the Minister of State for Public Housing Number 06/Permen/2007 concerning Procurement of Housing and Settlements Supported by Subsidized Housing Facilities Through Subsidized Micro Sharia KPRS/KPRS, Simple Healthy Home Ownership Credit (KPRSH) is credit or financing issued by Issuing Institutions or financing which includes subsidized KPR, Subsidized Micro KPRS/KPRS, or Subsidized.

Transfer Of Rights To Collect (Cessie) And Legal Consequences On Debtor Collateral Items In Resolving Non-Performing Credit Case Study On Pekanbaru District Court Decision No. 129/Pdt.G/2016/Pn.Pbr)

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According to Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 Concerning Banking¹, "Banking is everything related to banks, including institutions, business activities, methods, and processes in carrying out their business activities, and business entities that raise funds from the public in the form of savings and channel them to the public in the form of credit and/or other forms in the context of improving the standard of living of the common people."

Credit is defined as "the provision of money or claims that can be equated with it, based on a loan agreement or agreement between a bank and another party, which requires the borrower to repay the debt after a certain period of time by giving interest" in Article 11 Paragraph (1) of the Banking Act Number 10 of 1998.

One means to cancel a credit or engagement, as well as the receivables resulting from the right to claim, is to return the debt through payment. Then, the claimant's right to modify the debtor, the debt, or the subject of the engagement. There is a chance that three persons will be included in one legal connection, or a triangular one. As with the buying and selling of receivables, the transfer of claim rights (cessie), and the legal ramifications for debtor collateral items, these legal occurrences might be problematic and necessitate further consideration. This is a frequent occurrence and a complex legal institution in the banking industry.

The Third Book, Chapter Four, "concerning the Abolition of Engagements," regulates the termination of an engagement followed by payment. The terms "fulfillment of obligations" (nekomen), "fulfillment of payments" (batalen), and "implementation of promises" (voldoen aan) all refer to the same action, namely the accomplishment of results in accordance with the terms of the agreement by carrying out a specific legal action². The term "delivery of receivables on behalf of" is used in the Civil Code and has a dualistic aspect when referring to the sale and purchase of receivables and the transfer of rights to collect (cessie). The Civil Code's Book II is where Cessie takes place, In addition to being a sort of surrender (leveraging), "about material things" is also done to moveable goods because they are given property rights³. However, when seen from a legal standpoint, cessies can be grouped as organizations and channels of the law where creditor replacement takes place, such as subrogation and active subjective novation (creditor replacement)⁴. The Civil Code's Book III, "Concerning Engagement," contains regulations on subrogation and novation. Laws and agreements can give rise to subrogation, whereas agreements can give rise to novation.

If the borrower (debtor) does not pay the monthly installments as promised, the bank has the right to seek payback in the form of principal, interest, and late fees on the loan that is issued. This can be done by selling or purchasing receivables or transferring the rights to claim (cessie). To do this, banks can either cancel the credit period and promptly collect payment for all of the debtor's outstanding debts at once, or they can take other legal actions to settle the credit. As stated in Article 613 of the Civil Code, transfer and/or delivery of receivables on behalf of.

According to Section 613 of the Civil Code, "Delivery of receivables on behalf of and other incorporeal objects, is carried out by making an authentic or private deed, by which the rights to the objects are delegated to another person; Such surrender for the debtor has no consequences, except after the surrender has been notified to him or has been approved and acknowledged in writing; Submission of each receivable due to a delivery note is carried out by delivery of said.

Credit settlement and credit rescue are the two (two) main approaches used to resolve non-performing loans. Credit settlement is a step for addressing issue loans through a legal institution, whereas credit rescue is a process for solving problem loans by renegotiation between the bank as a

¹ Undang-Undang Republik Indonesia Nomor 10 Tahun 1998 tentang Perbankan Pasal 1 ayat 1 dan 2.

² Dr. Herlin Budiono, 2014, *Ajaran Umum Hukum Perjanjian dan Penerapan di Bidang Kenotariatan*, PT. Citra Aditya Bakti, Bandung, hlm 167.

³ Lihat H.L.E. Verhagen & M.H.E. Rongen, 2000, *Cessie, De overdracht van vorderigen op naam*, Kluwer, Deventer, hlm 5, yang dikutip oleh Dr. Herlin Budiono, 2013, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, PT. Citra Aditya Bakti, Bandung, hlm 36.

⁴ *Ibid*,

creditor and the borrowing consumer as a debtor⁵. To save the money they have invested, banks currently use a cessie as one of the methods to resolve non-performing loans, or better known as bad loans.

When the bank transfers rights to claim (cessie) to resolve non-performing loans, all that is required is a buyer of receivables, which is then followed by the notarial signing of the transfer of rights to claim (cessie) as proof of transfer of receivables, and then the right to claim is directly the receivables are transferred to the cessie buyer. In order to allow for the circulation of funds at that time, the process provides a very short duration that affects how quickly payments are received by the bank. Even though he has signed the cessie deed, the cessie buyer cannot claim full ownership of the debtor's guarantee because what is transferred is only the right to claim the debtor in accordance with the law Mortgage No. 4 of 1996 Article 16, which states that a cessie buyer can only and has the right to collect his receivables (replacing the Bank as a creditor).

In order to eliminate past-due debts, the bank, as a creditor, transfers the right to collect (cessie) to a new creditor. As long as the bill is legitimately the creditor's and can be charged to the debtor, the right to claim may be assigned by the creditor. With this cessie transfer, receivables are sold and bought by the original creditor and the new creditor, and this sale and buy is documented by an authentic deed or private deed.

1.1 STATEMENT OF PROBLEM

The issue can be stated as follows based on the background provided above:

1. Can the sale and purchase of receivables and the transfer of claim rights (cessie) give cessionaries legal security?
2. In light of Pekanbaru District Court Decision Number 129/Pdt.G/2016/PN.Pbr, what are the legal ramifications of the debtor's guarantee?

2. RESEARCH METHOD

This kind of research is included in normative legal research (doctrinaire), which also includes research on legal principles, legal aspects, and law as it is conceptualized as norms or rules that apply in society. It also includes examining legal rules that are contained in both written laws and unwritten laws that exist and develop in society⁶. This study is descriptive in nature, which means it explains the subject of the study in order to methodically explain its facts or features in a factual and meticulous manner⁷. This study only discusses the subject in order to make generalizations⁸.

The type of data used in this study is secondary data, which refers to information that was discovered indirectly by researchers through literature, court rulings, journals, papers, expert legal views, and other literary or legal materials relevant to the topic⁹.

The primary legal materials used in this study are:

- a. Primary legal materials, or binding legal materials, such as basic norms or rules, basic regulations, statutory regulations, non-codified legal materials, jurisprudence, treaties, and other legal materials that still have legal authority and are relevant to this research, such as the Pekanbaru District Court decision and Law Number 10 of 1998 concerning banking, the Civil Code, and the Pekanbaru District Court decision Number 129/Pdt.G/2016/PN. Pbr.
- b. Secondary legal materials, which are those that explain primary legal materials like books, theses, draft laws, research findings, journal articles, and papers and library items that draw on the views of legal professionals and the activity of the legal community on a particular topic.

⁵ Hermansyah, 2006, *Hukum Perbankan Nasional Indonesia*, Jakarta, Kencana, hal. 76

⁶ Mukti Fajar ND dan Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Normatif dan Empiris*, Yogyakarta, Pustaka Pelajar, hal. 34

⁷ Sarifuddin Azwar, 2004, *Metode Penelitian*, Yogyakarta, Pustaka Pelajar, hal. 7

⁸ Sutrisno Hadi, 1986, *Metodologi Research I*, Yogyakarta, Yayasan Penerbitan Fak. Psikologi UGM, hlm. 3

⁹ RH. Wiwoho, 2017, *Keadilan Berkontrak*, Penaku, Jakarta, hlm. 230

- c. Tertiary legal resources, such as dictionaries, encyclopedias, and cumulative indexes, which give guidance and explanations for primary and secondary legal resources¹⁰.

Data analysis is carried out using a qualitative method, namely an analysis is carried out without numbers but based on descriptions that are linked to related laws and regulations, available documents, expert opinions, and scientific papers that support this research and finally a conclusion is drawn as an answer to the problems in this study using the deductive method, namely by drawing conclusions from the problem general to the particular¹¹.

3. RESULTS OF RESEARCH AND DISCUSSION

3.1 Buying and Selling Receivables and Transfer of Rights to bills (cessie) andpat Provide Legal Certainty for Cessionaris

The transfer of cessie shows that there are 3 (three) kinds of legal relations that occur, namely: a) The relationship between the old creditor (cedent) and the debtor (cessus); b) The relationship between the old creditor (cedent) and the new creditor (cessionaris); c) The relationship between the debtor (cessus) and the new creditor (cessionaris)¹².

The legal relationship between the debtor and the old creditor or bank is stated in the credit agreement, the clause regarding cessie is one of the contents of the bank credit agreement which is then agreed upon by the debtor containing where the bank at any time if the bank needs to be able to transfer the right to charge (cessie) Banks against debtors include guarantees of debtor credit to third parties. This means that if the debtor agrees and is willing to sign the credit agreement, then immediately a legal relationship of debt receivable arises between the debtor and the creditor which is the initial relationship before the cessie event.

A bank credit agreement, generally contains the purpose of providing credit, the amount of credit provided by the bank, the credit interest rate, other costs, the payback period, the return schedule, the payment schedule, credit guarantees, the conditions that must be met before disbursement, the customer's obligations as long as the credit has not been repaid, and the rights that the bank has as long as the credit has not been paid off¹³. It contains clause a regarding the cessie. The Bank provides in the credit agreement that the debtor agrees and agrees to give the bank full right to hand over receivables (cessie) and or transfer of bank bills against the debtor following all its accessoir promises, including the rights to credit guarantees to other parties set by the bank itself at any time if required by the bank. Thus it relates to the transfer of receivables cessie because the bank regulates them in the credit agreements it makes, and this binds the debtor as the party who applied for credit and signed the credit agreement.

Prior to the transfer of cessie and the sale and purchase of receivables by the bank to a third party, thus a legal relationship arose between the bank which was then called the old creditor and the third party (buyer) of cessie which was then called the new creditor. The legal relationship that subsequently emerged from the cessie is the legal relationship between the new creditor and the debtor. Since the effectiveness of a sale and purchase of receivables and the transfer of cessie, the old creditor is no longer entitled to receive payment and/or repayment of the debtor's debt to him. Every payment and/or repayment of the debtor's debt is the right of the new creditor and is paid by the debtor to the new creditor.

By the transfer of the rights and obligations of the old creditor to the debtor to the new creditor, including the transfer of the debtor's guarantee holder, so that what the new creditor must do regarding the debtor's guarantee is to register the transfer of the debtor's guarantee to the collateral institution that binds the guarantee. This transitional registration is intended so that the

¹⁰ Soerjono Soekanto, 1986, *Pengantar Penelitian Hukum*, Jakarta, UI Press, hal. 121

¹¹ *Ibid*, hlm. 98

¹² J. Satrio, 1991, *Cessie, Subrogatie, Novatie, Kompensatie & Percampuran Hutang*, Bandung, Alumni, 1991, hal. 25

¹³ Juli Irmayanto dkk, 2004, *Bank dan Lembaga Keuangan*, Jakarta, Universitas Trisakti, hlm. 83

transfer of the debtor's guarantee bound by the guarantee institution is binding/applicable to the new creditor.

If the debtor's guarantee is attached to the dependent right, the transfer of dependent rights is carried out by the new creditor at the land office in the jurisdiction where the object of the guarantee of the dependent right is located and registered, by bringing the Deed of Agreement on Sale and Purchase of Receivables and Transfer cessie made before the Notary as well as documents belonging to the debtor who was previously in the possession of the old creditor and documents relating to the transfer of credit aforementioned. What is different if the debtor's guarantee is not attached to the dependent rights as in the financing of subsidized home ownership loans, generally only a power of attorney is made to collect the right of protection that is valid until the credit period ends, if this happens then for the cessie buyer to the receivables sale and purchase agreement and the transfer of cessie the debtor can go through a court decision that in determining the object of the debtor's guarantee as repayment.

In the settlement of non-performing (bad) loans by new creditors (Cessionaris) it should be noted that the prohibition of belonging to *beding* (*beding van niet zuivering*) is the prohibition of directly owning collateral goods on debts. This means that there is a prohibition against a party (creditor) because it cannot or is not authorized to own someone's collateral object (debtor) automatically.

Clause 1154 of the Civil Code provides that: "In the event that the debtor or lien does not fulfill the obligations, the creditor is not allowed to transfer the mortgaged goods into his possession. Any terms of the agreement contrary to this provision are void".

This prohibition provision applies not only to *lieens*, but also applies to other collateral institutions such as mortgage-encumbered guarantees, fiduciaries, and dependent rights. This prohibition is because the goods are handed over to creditors as collateral for debt repayment, not to be owned or transferred rights. If the guarantee is burdened with this, the repayment of the debt is carried out by auctioning the pledged goods¹⁴.

3.2 Legal Consequences of Debtor Debt Guarantee Based on Pekanbaru District Court Decision Number 129/Pdt.G/2016/PN.Pbr Relating to Sale and Purchase of Receivables and Transfer of Rights to Bill (Cessie)

3.2.1 Case posis

It is problematic that the Plaintiff named Sri Dewi acted as a third party to purchase PT's receivables. BPekanbaru National Park for Irnia Lindawati who has been included in the category of non-performing loans or bad debts. PT. BTN Pekanbaru acts as cedent by selling receivables and transferring the right to bills (*cessie*) to Sri Dewi as cessionary as stated in 2 (two) Notarial Deeds entitled Agreement for Sale and Purchase of Receivables and Transfer *cessie*. Thus, transfer all rights and obligations of PT. BTN Pekanbaru as cedent to Sri Dewi (*cessionaris*) new creditors, including submitted *setificat Hak Milik* Number: 1486 / *Tuah Karya* dated December 23, 2005 and Measuring Letter Number: 01801 / 2005 dated December 14, 2005 covering an area of 120 M² (one hundred and twenty square meters), on a piece of land stands a permanent building covering an area of 36 M² (thirty-six square meters) along with other related documents. Sri Dewi filed a lawsuit with the Pekanbaru District Court to sue her *cessus*, namely Irnia Lindawati, based on the consideration and evidence submitted by the Plaintiff in the form of a Deed of Sale and Purchase Agreement for Receivables and a Deed of Transfer of *cessie*, the Panel of Judges held that it was true between the Plaintiff and PT. BTN. there has been a sale and purchase of receivables and the transfer of *cessie* to the debt, resulting in the sale and purchase of receivables and the transfer of *cessie* between the Plaintiff and the PT. BTN Pekanbaru has legal grounds to be granted.

Legal considerations in the *petitum* of the Plaintiff's suit regarding the claim of the Plaintiff majies the judge stated that a plot with the Certificate of Property Rights Number : 1486 / *Tuah Karya* dated December 23, 2005 and Measuring Letter Number : 01801 / 2005 dated

¹⁴ J. Satrio, *Op.Cit*, hal. 116

December 14, 2005 covering an area of 120 M2 (one hundred and twenty square meters), on which stood a permanent building covering an area of 36 M2 (thirty-six square meters) registered in the name of the Defendant (Irna Lindawati) was valid property of the Plaintiff and granting permission to Plaintiff to reverse the name of the Title Certificate onto plaintiff's name.

Furthermore, in the decision of the Pekanbaru High Court Number 59 / PDT. G/2017/PT. PBR declared the validity of the sale and purchase of receivables and the transfer of cessie that had been carried out by the appellant / Kopensi plaintiff / Reconpesi Defendant to the State Savings Bank (Persero) Tbk. Pekanbaru before Notary Agustina Dermawati, SH, MKn on April 1, 2015 Number 05 was valid and based on law and strengthened the decision of the Pekanbaru District Court Number 129 / Pdt.G / 2016 / PN.Pbr dated November 9, 2016 which was requested by the appeal.

3.2.2 Case Analysis from PN No. 129/Pdt.G/2016/PN.Pbr

Related to the case of Sri Dewi (Plaintiff) vs Irna Lindawati (Defendant), based on the lawsuit against the object of the debtor's guarantee that the right of dependents is not installed so that in repayment of the debt can use the debtor's collateral object, it is done by filing a lawsuit so that it does not violate the property of the beding referred to in Article 1154 of the Civil Code, it is said that the parties are prohibited or not allowed to promise the property clause beding in the agreement. If this is to the foregoing, in the event of non-fulfillment of its obligations, or default as required by the agreement, then such a clause is null and void. The provisions prohibiting the existence of this beding clause in order to protect the interests of the debtor. Actually, the agreement of the beding is contained in the promises in the dependent right while the case is that the cessus guarantee is not installed the dependent right so it is not prohibited for the sessionary to file a lawsuit through the court asking the plaintiff as the owner. .

To be able to change the name of the certificate, the buyer of the cessie at the National Land Agency (BPN), the BPN does not want to accept the cessie deed alone as the basis for the name change in the certificate, so the cessie buyer must file a lawsuit with the District Court first, so that the District Court Decision can be the basis for the name change (in its decision, PN ordered BPN to be able to transferred the name written on the certificate to the name of the purchaser of the cessie in accordance with P621 of the Penal Code) under the circular of the Supreme Court ordering (SEMA/PERMA No. 3 of 2016) that the application for transfer of rights should be based on the result of the judgment not the determination, except the transfer of rights in the public interest by the State.

The process of registration and transfer of rights to the land requires a court decision to be justified based on Article 55 of Government Regulation Number 24 of 1997. And according to the provisions of Article 94 paragraph (2) point h PMNA / National Land Agency Number 39 of 1997 concerning Provisions for the Implementation of PP No. 24 of 1997 concerning Land Registration, a change in juridical data in the form of changes in land registration data based on court decisions or the determination of the Chief Justice who has permanent legal force then, the court decision can be used as the basis for the transfer of land rights which is then by the Head of the Land Office local districts/cities to be recorded in the Land book and a name change is made in the certificate from the old landowner to the new landowner.

Regarding legal certainty in land registration, it has two (two) definitions: first, the existence of general rules that inform people of what actions may or may not be taken; and second, in the form of legal security protecting people from the arbitrary actions of the government because, thanks to the existence of general legal rules, people are aware of what the state may impose on them or do to them. Legal certainty includes both the articles of the law and the consistency of the rulings of the judges in instances that are comparable to those that have already been determined¹⁵.

¹⁵ Peter Mahmud Marzuki, 2008, *Pengantar Ilmu Hukum*, Kencana Pranada Media Group, Jakarta, hlm. 158

4. CONCLUSION

- a. The sale and purchase of receivables and the transfer of cessie does not result in the expiration of the credit agreement entered into between cedent and cessus (debtor), only results in the transfer of rights to bills or receivables of the debtor concerned to a third party who then replaces the position of the old creditor (cedent) as the new creditor (cessionaris), including the transfer of debtor guarantees used to guarantee the repayment of their debts. If the guarantee is attached to the dependent right cessionaris must register the transfer of the cessus guarantee to the local land office for the waiting of the dependent rights holder and if the dependent rights are not installed then file a lawsuit through the district court to obtain a court decision with permanent legal force.
- b. The tribunal's consideration declared valid for the purchase of PT's receivables. BTN Pekanbaru by the Plaintiff for not violating the provisions of the legal terms of the agreement in Article 1320 of the Civil Code, and permission to reverse the name of the guarantee was granted by the Panel of Judges, considering that because the guarantee was not installed, the right of dependents was installed then in the repayment of the debt can use the debtor's collateral object in this case does not violate the beding's property referred to in Article 1154 of the Civil Code, the parties are prohibited or not allowed to promise a clause belonging to the beding in the agreement. Actually, the agreement of the beding is contained in the promises in the right of dependents while the case is that the guarantee of cessus is not installed the right of dependents so it is not prohibited for the sessionary to have the object of bail by filing a lawsuit through the court.

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