



CESSION AND LEGAL EFFECTS ON THE DEBTOR'S SECURITY OBJECTS IN SETTLEMENT BAD CREDIT (Case study of Pekanbaru District Court Decision No. 129/Pdt.G/2016/PN.Pbr)

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Abstract

One way to resolve bad credit is carried out by banks by buying and selling receivables and transferring rights to them (cession). Based on District Court decision No.129/Pdt.G/2016/PN.Pbr; this is by means of a lawsuit by assignees who had purchased receivables from PT Bank Tabungan Negara (Persero) Tbk which had bad credit. Redirection receivables stated in 2 (two) Notarial Deeds, namely the Receivables Sale and Purchase Agreement and Transfer cession. In announcing the verdict stated that the Pekanbaru District Court permitted the transfer of the Land Ownership Certificate which was used as collateral for the debtor above no assignees). The problem formulation is: 1. Can the sale and purchase of receivables and the transfer of rights to receivables (cession) provide legal certainty for cession buyers? 2. What are the legal consequences for the debtor's guarantee based on the decision of the Pekanbaru District Court Number 129/Pdt.G/2016/PN.Pbr? And study This aims to know and understand and provide answers to the problem formulation the. The type of research in this research is included in normative (doctrinal) legal research, namely research on legal aspects, legal principles, studying law which is conceptualized as norms or rules that apply in society and analyzing legal rules contained in legislation and also contained in unwritten legal norms that live and develop in society and the type of data used is secondary data sourced from materials law primer, material law secondary and materials law tertiary. From study This can be concluded that buying and selling receivables and transfer cession does not result in the end of the credit agreement made assignor with emergence This is a transfer and delivery of receivables from assignor to assignees and transfer of collateral emergence must be based on a decision through a lawsuit at the local District Court. And in this case there is no buying and selling of receivables and transfers cession is legal and does not violate the provisions of the legal terms of the agreement, in the consideration of the panel of judges that the collateral is owned emergence If the right of liability is not installed, then the item is guaranteed emergence can be used as debt repayment by changing the name to assignees, This also does not violate property stipulation what is meant by Article 1154 of the Civil Code.

Keywords : *Buying and Selling Receivables, Cession, the cession of the assignee*

1. INTRODUCTION

Bank as one of the institutions financing field housing based on State Minister for Public Housing Regulation Number 06/Permen/2007 concerning Housing Procurement and Settlement With the support of Housing Subsidy Facilities through Subsidized Sharia KPRS/Micro KPRS,

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Simple Healthy Home Ownership Credit (KPRSH) is credit or financing issued by the Issuing Institution or financing which includes subsidized KPR, Subsidized KPRS/Micro KPRS, or KPR Sarusun Subsidized, intended for low-income people.

Based on Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking : "Banking is everything that concerns banks, including institutions, business activities as well as methods and processes in carrying out business activities and business entities that collect funds from the public in the form of deposits and distribute them to the public in the form of credit and/or other forms in order to increase the standard of living of many people."

The definition of credit is formulated in Article 11 Paragraph (1) of the Banking Law Number 10 of 1998 which states that "Credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between the bank and another party, which requires the borrower to pay off the debt after a certain period of time with interest."

Debt repayment can be done by payment which is one way to end a credit or agreement, including ending receivables arising from the right to claim. So the right to the claim can change between creditor, debtor, or the object of the obligation. There is the possibility of a triangular legal relationship or three parties being involved in one legal relationship. These legal events can cause problems and require deeper thinking, as is the case with buying and selling receivables, transferring rights to receivables. (cession) and legal consequences for the debtor's collateral. This also happens a lot in the banking world and is a legal institution that is not simple.

Terminating an agreement followed by payment is regulated in Book Three, Chapter Four "Concerning the Abolition of Engagements" Fulfillment of obligations (nekomen) and payment (batalen) and the implementation of promises (comply with) referring to the same thing is the implementation of achievements in accordance with the contents of the agreement, the carrying out of certain legal acts. In the sale and purchase of receivables and transfer of rights to receivables (cession) is the transfer or assignment of rights to receivables which in the Civil Code uses the term "delivery of receivables on behalf of" which has a dualistic nature. It means Cession regulated in Book II of the Civil Code, "concerning objects" apart from being a form of delivery (delivery) and transfer of movable objects is also carried out due to obtaining ownership rights. However cession When viewed from a legal perspective, engagements can be categorized as the same as institutions and legal means where creditor replacement occurs, such as subrogation and active subjective novation (creditor replacement). Subrogation and novation are regulated in Book III of the Civil Code "Concerning Engagements". Subrogation can occur because of laws and agreements, while novation occurs because of agreements.

Buying and selling receivables and handing over rights to receivables (cession) In resolving problematic credit, problems in granting credit by banks occur if the borrower (debtor) does not pay the monthly installments as agreed, the bank has the right to demand repayment in the form of principal, interest and fines for the loan provided. The bank can do this by ending the credit period and can immediately collect a lump sum payment for all remaining debts from the debtor or take other legal measures to resolve the credit. Transfer and/or delivery of receivables in the name as intended in Article 613 of the Civil Code.

Article 613 of the Civil Code states that "Delivery of receivables in the name of and other immaterial objects is carried out by making an authentic or private deed, whereby the rights to the property are transferred to another person; For the debtor, such a delivery has no consequences, unless the delivery is notified to him or he is approved and acknowledged in writing; Delivery of



each receivable due to a carrying letter is carried out by handing over the letter; delivery of each receivable due to the designated letter is carried out by handing over the letter accompanied by an endorsement".

Resolving problematic credit is generally achieved in 2 (two) ways, namely credit rescue and credit settlement. What is meant by credit rescue is a step to resolve problem credit through renegotiation between the bank as creditor and the borrower customer as debtor, while credit settlement is a step to resolve problem credit through legal institutions. However, currently, one way of resolving problematic credit or what is better known as bad credit is carried out by banks to save the funds they have distributed, namely through cession.

In process cession in resolving problem loans which is carried out when the bank transfers the rights to the collection (cession) All that is needed is a buyer for the receivables, which is then followed by signing the transfer of rights to the receivables (cession) notarized as proof of transfer of receivables, the right to collect the receivables directly passes to the buyer cession. The process provides a relatively short time which results in the bank receiving funds quickly, so that funds can be circulated at that time. Buyer cession only have the deed cession only as proof of the transfer of receivables from the bank to the buyer assignment, where is the buyer cession cannot claim complete ownership of the debtor's collateral even though they have signed the deed assignment, because what is transferred is only the right to claim from the debtor in accordance with the Mortgage Rights Law Number 4 of 1996 Article 16 that, the buyer cession can and has the right to only collect receivables (replacing the Bank as creditor) and not as the complete owner of the land rights.

One of the reasons the bank as a creditor transfers the rights to the claim (cession) to new creditors is to remove existing bad debts. The right to the claim can be transferred by the creditor as long as the claim is truly his and can be collected from the debtor. With the transfer cession This results in a sale and purchase of receivables between the original creditor and the new creditor, where this sale and purchase is stated in the form of an authentic deed or private deed.

B. Problem Formulation

Based on the background explained above, the problem can be formulated as follows:

1. Can the sale and purchase of receivables and the transfer of rights to receivables (cessie) provide legal certainty for assignees ?
2. What are the legal consequences for the debtor's guarantee based on the decision of the Pekanbaru District Court Number 129/Pdt.G/2016/PN.Pbr?

2. IMPLEMENTATION METHOD

This type of research is included in normative legal research (*doctrines*) namely research into legal aspects, legal principles, studying law which is conceptualized as norms or rules that apply in society and analyzing legal rules contained in legislation and also contained in unwritten legal norms that live and develop in society.¹ This research is of a nature *descriptive*, This means research that describes the object being studied so that it can systematically explain the facts or characteristics of what is being

¹ Mukti Fajar ND and Yulianto Achmad, 2010, *Dualism of Normative and Empirical Legal Research*, Yogyakarta, Student Library, p. 34

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studied factually and carefully.² This research merely describes an object to draw generally applicable conclusions.³

The type of data used in this research is secondary data which is a source of research data obtained by researchers indirectly through legislation, literature, court decisions, journals, documents, opinions of legal experts and library materials or other legal materials. related to this research.⁴

The secondary data in this research is sourced from:

1. Primary legal materials are binding legal materials, which consist of norms or basic rules, basic regulations, statutory regulations, uncodified legal materials, jurisprudence, treaties, and other legal materials that are still valid as positive law that has authority in relation to this research, such as: Law Number 10 of 1998 concerning banking, the Civil Code (KUH Civil), and the decision of the Pekanbaru District Court Number 129/Pdt.G/2016/PN. Pbr.
2. Secondary legal materials, namely legal materials that provide explanations of primary legal materials, such as books, theses, draft laws, research results, journals, and documents and library materials and use the opinions of legal experts and , the work of legal circles about *cession*.
3. Tertiary legal materials, namely materials that provide instructions and explanations for primary and secondary legal materials; for example dictionaries, encyclopedias, cumulative indexes.⁵

Data analysis was carried out using a qualitative method, namely an analysis carried out without numbers but based on descriptions connected to relevant laws and regulations, available documents, expert opinions, and scientific papers that support this research and finally a conclusion was drawn. conclusions as answers to the problems in this research using a deductive method, namely by drawing conclusions from general problems to specific ones.⁶

3. RESULTS AND DISCUSSION

1. Sale and Purchase of Receivables and Transfer of Rights to receivables (*cession*) can provide legal certainty for *assignees*

Redirection *cession* It can be seen that there are 3 (three) types of legal relationships that occur, namely: a. Relationship between old creditors (*assignor*) with

² Sarifuddin Azwar, 2004, *Research methods*, Yogyakarta, Student Library, p. 7

³ Sutrisno Hadi, 1986, *Research Methodology I*, Yogyakarta, Fak Publishing Foundation. UGM Psychology, p. 3

⁴ RH. Wiwoho, 2017, *Contract Justice*, Penaku, Jakarta, p. 230

⁵ Soerjono Soekanto, 1986, *Introduction to Legal Research*, Jakarta, UI Press, p. 121

⁶ *Ibid*, p. 98



debtors (*progress*); b. Relationship between old creditors (*assignor*) with new creditors (*assignees*); c. Relationship between debtors (*progress*) with new creditors (*assignees*).⁷

The legal relationship between the debtor and the old creditor or bank is stated in the credit agreement, clause regarding *cession* is one of the contents of the bank credit agreement which is then agreed upon by the debtor, which states that at any time, if the bank requires it, it can transfer the rights to the claim. (*cession*) bank towards debtors including debtor credit guarantees to third parties. This means that if the debtor agrees and is willing to sign the credit agreement, then a debt and receivable legal relationship immediately arises between the debtor and creditor, which is the initial relationship before the event occurs. *cession*.

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, repayment period, repayment schedule, payment schedule, credit guarantee, conditions that must be met before disbursement, customer obligations during credit has not been repaid, as well as the rights that the bank has as long as the credit has not been repaid⁸. This includes clauses regarding existence *cession*. The bank stipulates in the credit agreement that the debtor agrees and agrees to give the bank full rights to hand over the receivables (*cession*) and/or transfer of bank claims to the debtor along with all accessory promises, including rights to credit guarantees to other parties as determined by the bank itself at any time if required by the bank. Thus, it is related to the transfer of receivables *cession* because the bank regulates it in the credit agreement it makes, and this binds the debtor as the party requesting credit and signing the credit agreement.

Before the transfer takes place *cession* and make sales and purchases of receivables by the bank to a third party, thus a legal relationship arises between the bank, which is then called the old creditor, and the third party (buyer). *cession* who are then called new creditors. The legal relationship that then arises from *cession* is a legal relationship between a new creditor and a debtor. Since the effectiveness of the sale and purchase of receivables and transfer *cession*, the old creditor no longer has the right to receive payment and/or repayment of the debtor's debt to him. Every payment and/or settlement of the debtor's debt is the right of the new creditor and is paid by the debtor to the new creditor.

With the transfer of the rights and obligations of the old creditor towards the debtor to the new creditor, including the transfer of the holder of the debtor's collateral, what the new creditor must do regarding the debtor's collateral is to register the transfer of the debtor's collateral with the guarantee institution that binds the collateral. This transfer registration aims to ensure that the transfer of the debtor's collateral bound by the guarantee institution is binding/valid on the new creditor.

If the debtor's collateral has a mortgage right attached to it, the transfer of the mortgage right is carried out by the new creditor at the land office in the jurisdiction

⁷ J. Satrio, 1991, *Assignment, Subrogation, Novation, Compensation & Percampuran Hutang*, Bandung, Alumni, 1991, p. 25

⁸ July Irmayanto et al, 2004, *Banks and Financial Institutions*, Jakarta, Trisakti University, p. 83

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where the object of the mortgage right is located and registered, by bringing a Deed of Sale and Purchase Agreement of Receivables and Transfer *cession* made before a Notary as well as documents belonging to the debtor which were previously under the control of the old creditor and documents relating to the credit transfer. What's different is if the debtor's collateral does not have mortgage rights attached, as in subsidized home ownership credit financing, generally only a power of attorney for mortgage loans is issued which is valid until the credit period ends. If this happens then it is for the buyer *cession* to the receivables sale and purchase agreement and transfer *cession* The debtor can use a court decision to determine the object of the debtor's collateral as debt repayment.

In resolving problematic (bad) credit by new creditors (*Assignees*) It is necessary to pay attention to the prohibition on belonging to bedding (*non-purification clause*) is direct prohibition on having collateral for debt. This means that there is a prohibition against a party (creditor) because they cannot or are not authorized to automatically take possession of someone's (debtor) collateral.

Article 1154 of the Civil Code regulates that: "*In the event that the debtor or pledgor does not fulfill his obligations, the creditor is not permitted to transfer the pawned item into his possession. Any agreement terms that conflict with these provisions are void.*"

This provision on the prohibition of ownership of bedding does not only apply to pawns, but also applies to other security institutions such as collateral encumbered by mortgages, fiduciaries and encumbrances. This prohibition is because the goods are handed over to the creditor as collateral for debt repayment, not for ownership or transfer of rights. If the collateral is burdened with this, the debt will be repaid by auctioning the collateral.⁹

2. The Legal Consequences of the Debtor's Debt Collateral Based on Pekanbaru District Court Decision Number 129/Pdt.G/2016/PN.Pbr Relating to the Sale and Purchase of Receivables and Transfer of Rights to Claims (*Cession*)

a. Case position

The problem is that the Plaintiff named Sri Dewi acted as a third party to purchase PT's receivables. BTN Pekanbaru for Irnia Lindawati who has been included in the problem credit or bad credit category. PT. BTN Pekanbaru acts as *assignor* by selling receivables and transferring rights to receivables (*cession*) to Sri Dewi as *assignees* as stated in 2 (two) Notarial Deeds entitled Receivables Sale and Purchase Agreement and Transfer *cession*. With this, all rights and obligations of PT. BTN Pekanbaru as *assignor* to Sri Dewi (*assignees*) new creditors, including the submission of Ownership Certificate Number: 1486/Tuah Karya dated 23 December 2005 and Letter of Measure Number: 01801/2005 dated 14 December 2005 covering

⁹ J. Satrio, *Op.Cit*, matter. 116



an area of 120 M² (one hundred and twenty square meters), on a plot of land standing a permanent building covering an area of 36 M² (thirty six square meters) along with other related documents. Sri Dewi filed a lawsuit at the Pekanbaru District Court to sue *emergency namely* Irna Lindawati based on the considerations and evidence submitted by the Plaintiff in the form of a Deed of Receivables Sale and Purchase Agreement and a Deed of Transfer *assignment*, The Panel of Judges was of the opinion that it was true that the Plaintiff and PT. BTN. there has been a sale and purchase of receivables and transfers *cession* against the defendant's debt, resulting in the sale and purchase of receivables and transfer *cession* between the Plaintiff and PT. BTN Pekanbaru has legal reasons for this to be granted.

The legal considerations in the petitem of the Plaintiff's lawsuit regarding the Plaintiff's demands were that the plot with Certificate of Ownership Number: 1486/Tuah Karya dated 23 December 2005 and Letter of Measurement Number: 01801/2005 dated 14 December 2005 covering an area of 120 M² (one hundred and twenty square meters), where above stands a permanent building covering an area of 36 M² (thirty six square meters) registered in the name of the Defendant (Irna Lindawati) which is legally owned by the Plaintiff and gives permission to the Plaintiff to rename the Certificate of Ownership to the name of the Plaintiff.

Furthermore, in the Pekanbaru High Court decision Number 59/PDT.G/2017/PT. PBR declared the sale and purchase of receivables and transfer valid *cession* which has been carried out by the defendant/claimant of the Compensation/Defendant of the Counterfeit to Bank Tabungan Negara (Persero) Tbk. Pekanbaru before Notary Agustina Dermawati, SH, MKn on 1 April 2015 Number 05 is valid and based on law and strengthens the decision of the Pekanbaru District Court Number 129/Pdt.G/2016/PN.Pbr dated 9 November 2016 which is being appealed.

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

Regarding the case of Sri Dewi (Plaintiff) vs. Irna Lindawati (Defendant), it is based on a lawsuit against the debtor's collateral object which does not have a mortgage right so that in paying off the debt the debtor's collateral object can be used, this is done by filing a lawsuit so that it does not violate property. *stipulation* What is meant by Article 1154 of the Civil Code is that parties are prohibited or not permitted to agree on property clauses. *stipulation* in the agreement. If this happens, in the event of failure to fulfill its obligations, or default as required in the agreement, then the beding's clause is null and void. This provision prohibits the existence of bed property clauses in order to protect the debtor's interests. True ownership agreement *stipulation* contained in the promises in the mortgage right, while the case is related to collateral *emergence* no dependent rights are attached so that it is not prohibited to *sessional* filed a lawsuit through the court asking the plaintiff as the owner..

To be able to change the name of the certificate, the buyer *cession* at the National Land Agency (BPN), the BPN did not want to accept the deed *cession* only



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as a basis for changing the name in the certificate, so that the buyer *cession* must file a lawsuit with the District Court first, so that the District Court's decision can become the basis for changing the name (in its decision, the District Court ordered BPN to be able to transfer the name written on the certificate to the name of the buyer *cession* in accordance with Article 621 of the Civil Code) based on a circular letter from the Supreme Court which ordered (SEMA/PERMA No. 3 of 2016) that applications for transfer of rights must be based on the results of decisions, not decisions, unless transfer of rights is for the public interest by the State.

The process of registering and transferring land rights 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 Implementation Provisions of PP No. 24 of 1997 concerning Land registration is a change in juridical data in the form of a change in land registration data based on a court decision or determination by the Chief of Court which has permanent legal force, so the court decision can be used as the basis for the transfer of land rights which are then recorded by the Head of the local district/city Land Office in the Land Book. and the name in the certificate is changed from the old land owner to the new land owner.

Legal certainty in land registration contains 2 (two) meanings, namely first, the existence of general rules that make individuals know what actions they may or may not do, and second, in the form of legal security for individuals from government arbitrariness, because with the existence of general legal rules Individuals can know what the state can impose or do on individuals. Legal certainty is not only in the form of articles in laws but also consistency in judges' decisions between one judge's decision and another judge's decision for similar cases that have been decided.¹⁰

4. CONCLUSION

1. Buying and selling receivables and transfers *cession* does not result in the end of the credit agreement made between *assignor* with *emergence* (debtor), only results in the transfer of rights to claims or receivables from the debtor in question to a third party who then replaces the position of the old creditor. (*assignor*) as a new creditor (*assignees*), including the transfer of the debtor's collateral which is used to guarantee the repayment of the debt. If the guarantee is attached with a mortgage right *assignees* must register the transfer of collateral *emergence* to the local land office to replace the mortgage holder and if the mortgage is not installed then file a lawsuit through the district court to obtain a court decision that has permanent legal force.

¹⁰ Peter Mahmud Marzuki, 2008, *Introduction to Legal Science*, Kencana Pranada Media Group, Jakarta, p. 158



2. The consideration of the panel of judges stated that the purchase of PT's receivables was valid. BTN Pekanbaru by the Plaintiff because it did not violate the provisions of the legal terms of the agreement in Article 1320 of the Civil Code, and permission to change the name of the collateral was granted by the Panel of Judges, with the consideration that because the collateral does not have a mortgage attached then in paying off the debt the debtor's collateral can be used in this case not violating property *stipulation* referred to in Article 1154 of the Civil Code, the parties are prohibited or not permitted to agree on the property clause *stipulation* in the agreement. Real property agreement *stipulation* contained in the promises in the mortgage right, while the case is related to collateral *emergence* no dependent rights are attached so that it is not prohibited to *sessional* have collateral objects with file a lawsuit through court.

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use of a power of attorney to impose mortgage rights to guarantee the
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