

Legal Analysis of Legal Protection for New Creditors (Cessionaries) Related to Obligation Recording on the Mortgage Certificate for Transfer Receivables (Cessie) When the Debtor Defaults

¹ Putra Hutomo, ² Jose Andreawan

¹putrahutomo90@gmail.com, ²jose.andreawan@gmail.com

Jayabaya University, Jakarta, Indonesia

ABSTRACT

Study This aim For analyze base laws, procedures and implications juridical obligation recording diversion receivables on certificates right liability as form protection law for creditors new, and study consequence law if recording the No done before debtor default. The research method used is study juridical normative with approach legislation, approach conceptual approach analytical and approach case. Data sources obtained through studies literature to regulation legislation, doctrine law, as well as decision court related dispute right liability and transfer receivables. Research results show that recording transition right creditors in certificate right liability is instrument law of a legal nature constitutive For ensure certainty law and publication to party third. Without recording, creditors new No own legitimacy full For execute object right liability, so that cause risk disappearance priority rights and potential lost in dispute with other creditors or buyer good faith auction good. Therefore tha, protection law for creditors new must realized through obligation recording that is done quick after diversion receivables, as well as strengthening arrangement in UUHT for anticipate potential default debtors in the middle of the transition process.

Keywords: Transfer of Receivables (Cessie), Debts, Mortgage Rights, Mortgage Rights Certificate.

Introduction

In an era of globalization and increasingly dynamic economic development, investment plays a crucial role in a country's economic growth. Investment is not only a driving force for business growth and job creation, but also a means for businesses to increase production capacity, innovation, and competitiveness in both domestic and international markets. Therefore, they require support in the form of capital. which cannot always be met internally. The role of banking institutions in driving national economic growth is significant, particularly through their financial intermediation function, which is realized through the provision of credit facilities. Credit is one of the primary instruments used by banks to channel funds to the public, particularly businesses, both small, medium, and large. In practice, credit facilities are provided as a form of banking support for working capital needs, investment, and financing of productive asset ownership.

The definition of a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit or financing and/or other forms in order to improve the standard of living of the people (Law Number 4 of 2023). In this case, the bank provides access to funding for investment activities, business expansion and increasing production, in addition, the bank helps facilitate economic growth and encourages investment and business growth by growing the economy as a whole through credit facilities. Banks are considered safe financial institutions in carrying out various financial activities (Ismail, 2010). Credit is the provision of funds or bills that can be equated with it, based on an agreement or loan agreement between the Bank and another

party that requires the borrower to repay the debt after a certain period of time with interest. This means that legally, the relationship between individual companies and banking in the context of providing credit is a civil legal relationship based on an agreement (contract) and based on the components of trust, risk and future economic exchange (Johannes Ibrahim, 2004). In providing credit by a bank there are several elements, namely:

1. Trust means a belief for the creditor that the bank provided (whether in the form of money, goods or services) will actually be received back in the future based on the credit period granted by the bank as the main basis for a credit being given and the credit installment repayment deadline agreed upon by both parties. Under certain conditions, this time period can be extended as needed.
2. Agreement means that the agreement between the bank and the debtor is set out in a contract agreement containing their rights and obligations which are set out in a credit agreement, evidenced by a credit agreement.
3. Risk means that due to the grace period, repayment of a loan can result in the possibility of uncollectible or defaulted loans. This risk is borne by the bank, for example, if the customer's business goes bankrupt without any other deliberate element, resulting in the customer being unable to repay the loan.
4. Remuneration, meaning that for banks, remuneration is the profit or income from providing credit, known as interest in conventional banks. Whereas for banks based on Sharia principles, remuneration is determined by profit sharing. In addition, there are administrative fees, which constitute the bank's profit. For banks based on Sharia principles, remuneration is determined by profit sharing.

In receiving credit from a banking institution through a credit agreement, the legal relationship between the debtor and creditor which is a contract becomes the basis for one of the parties. For demand something performance from party other Which obliged For fulfilling the demands of another party or vice versa. demanding a performance from another party who is obliged to fulfill the demands of another party or vice versa. According to Subekti's opinion, whatever form the provision of credit takes, in essence what occurs is a loan agreement as regulated by the Civil Code (hereinafter referred to as "KUHPerdata") as regulated in Articles 1754 to 1769 of the Civil Code and according to Remy Sjahdeini's opinion, it says that agreement credit own understanding in a way special (Subekti, 1982). namely agreement between bank as creditor with debtor customers regarding the provision of money or bills that can be equated with That Which obligatory customers debtor to pay off debts after a certain period of time with interest, compensation, or profit sharing (Sutan Remy Sjahdeini, 1993).

In providing credit facilities, there are risks, both for debtors and creditors. An agreement or credit contract is made between the bank and the customer which requires the return or repayment of debt along with interest costs within a specified period (Iin Selvina, Tjempaka, 2024). Therefore, banks in distributing credit are required to pay attention to the 5 Cs, namely:

1. *Character* : The prospective customer (debtor) must possess good morals and traits, allowing them to assess their honesty and integrity. Banks can assess this information based on their resume and business history.
2. *Capacity* : The potential customer (debtor) has the ability to manage their business activities and foresee the future, ensuring their business will run smoothly and generate profits, guaranteeing they can repay their debt within the specified amount and timeframe. Banks can assess this information based on the balance sheet, profit and loss statement, and *cash flow* statements from the past few years.

3. *Capital* : Prospective customers (debtors) are assessed based on the amount of capital (assets) they have to run their business. Banks can also assess this information based on balance sheets, profit and loss statements, capital structure, etc.
4. *Collateral*: A prospective customer (debtor) is assessed based on the debtor's collateral, which will be used as security for repayment if the debtor is unable to repay the debt to the creditor. This information can be obtained by the bank based on the movable and immovable assets used as collateral for the debt, and in practice, is assessed or appraised by the bank or other authorized parties.
5. *Condition*, namely prospective customers (debtors) are assessed based on the current economic conditions in relation to the business prospects of the prospective debtor.

In the case of a debtor being unable to pay debts to creditors, one of the efforts to resolve this is by selling the receivables owned by the creditor or what is known as *cession*, namely the old creditor sells the receivables to a person who then becomes a new creditor, but the legal relationship of the debt is never for a second removed, but is transferred entirely to the new creditor (Subekti, 1998). The definition of *cession* based on Article 613 of the Civil Code states that "the transfer of receivables in the name and other goods that are not physical, is carried out by making 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 or approved in writing or acknowledged. The transfer of debt letters on bearer is done by giving them; the transfer of debt letters on orders is done by giving them together with the endorsement of the letter, so that based on the provisions in Article 613 of the Civil Code, *cession* is given the following definition:

1. The transfer of receivables in the name of and other intangible objects where the rights to the object are transferred to another person is carried out by making an authentic or private deed;
2. Submission right bill from old creditors to creditors new;
3. Such a transfer has no consequences for the debtor, except after the transfer has been notified to him, or in writing agreed to and acknowledged.

In the case phenomenon related to *cession* and banking, it can be studied based on:

- a. Decision Number 233/Pdt.G/2020/PN Blb *juncto* 409/PDT/2021/PT BGB that IW as the debtor has made a home ownership credit agreement with PT Bank BTN as the creditor, then in 2019 PT Bank BTN made and signed a sale and purchase agreement for receivables and transfer with PT BPN. The collateral is SHGB 2867. In this case the recipient of the transfer (*cessionary*) filed a lawsuit against the debtor to make payments on his debt, but the debtor was not notified in writing regarding the transfer of receivables from the old creditor *ceddent* PT Bank BTN to *the cessionary* and for the collateral object there was no recording of changes in legal data in the land title certificate and mortgage certificate;
- b. Decision Number 410/Pdt.G/2024/PN Mks *juncto* 120/PDT/2025/PT MKs that HW as the debtor has made a debt acknowledgment with Bank R which was then transferred back to Bank Dnm and then transferred back to MR as *the cessionary*. In this case, the collateral object was not recorded as a change in legal data in the land title certificate and mortgage certificate, so that it becomes a concern regarding the legal protection of the creditor along with the collateral when a default occurs.

Basically, if a credit has been classified as bad credit because the debtor is having trouble repaying the credit, either intentionally or as a result of outside circumstances beyond the debtor's control, such as unusual delays starting, unexpected inquiries into the client are launched by other credit institutions upon receiving financial reports, installment payments, or other documentation. The Bank may sell its receivables to new creditors through *Cessie*. If the debtor's credit stage has met these

requirements, the credit may be classified as bad credit. In this scenario, the Bank is permitted to transfer receivables in the debtor's name through Cessie. (Syana Tifanabila, Suraji, Yudho Taruno Muryanto, 2023). Thus, when the cession is carried out, it should also be followed up with a change in the name of the creditor in the land title certificate and the mortgage certificate. This aims to provide legal protection, especially related to mortgage rights (the principle of publicity) when the debtor is in default and will discuss the debtor's approval when the cession is carried out, so as not to harm the interests of the Bank. For this reason, the title of this research is Legal Analysis of Legal Protection for New Creditors (cessionaries) Related to the Obligation to Record in the Mortgage Certificate for the Transfer of Receivables (cessionaries) When the Debtor is in Default. How is the legal protection for new creditors (cessionaries) related to the obligation to record in the mortgage certificate for the transfer of receivables (cessionaries) related to the debtor's default?

Research methods

A study is foundation main For develop knowledge purposeful knowledge For disclose truth in a way systematic, methodological and consistent (Zainuddin Ali, 2016), whereas method study law is as method Work scientists, one of whom marked with use method. Method is the way that has been think good and orderly For reach something meaning (in knowledge knowledge) (Jhon Surjadi Hartanto, 1998). Knowledge knowledge from *sui generis*, That means knowledge law is also a knowledge certain ones that have character typical, normative and natural. Methods and procedures research that is natural and social in nature no can implemented in study field studies law. A study law is a process for find rule laws, principles law, as well as doctrines law to answer issues the law faced (Peter Mahmud Marzuki, 2011).

As for the types study is juridical normative that is study the law that lays down law as normative system. The normative system in question is about principles, norms, rules from regulation legislation, as well as doctrine (teachings) (Mukti Fajar and Yulianto Ahmad, 2010). Object study in study law normative is on the law that is conceptualized as a norm or rules. Norms that become object his study covering laws, regulations government etc. (Salim HS and Erlies Septiana Nurbani, 2013).

Research methods studies law is with use approach law normative, with use approach juridical normative, including reviews and various analysis material laws and issues law in connection with current problem analyzed. Research This held For solve problems that arise and the results that will occur obtained from study This can used For solve various problems in the field law Through method study A regulation applicable legislation from various aspect like aspect theory, concept, principles law, philosophy, comparison, structure/composition, consistency, explanation general and explanation of each articles, formalities and powers tie something Constitution as well as language used is Language The laws and regulations are used as a basic framework in this research which is connected with other supporting materials.

The approach used in this research includes a statutory regulatory approach. This is done by analyzing laws and regulations relevant to the legal issue being researched. A legislative approach will provide researchers with the opportunity to study the provisions and conformity between one law and another, in order to explain and examine various legal rules and/or principles.

A conceptual approach begins with the development of legislation and doctrines in legal science, using an approach that begins with opinions and doctrines in legal research.

These opinions and doctrines will uncover ideas that produce legal understanding, legal concepts, and legal principles related to the legal issues identified in this research.

The case study approach in normative legal research aims to study legal norms or rules in legal practice. This is done to understand the current real-world situation or conditions and to support the objectives of this paper. The historical approach in normative legal research aims to understand the changes and developments in the philosophy of legal rules in depth, including examining the background of the legal issues faced and the analytical approach, namely by analyzing legal materials to find out the meaning and significance contained in the terms in statutory regulations conceptually and to find out their application in practice and legal decisions.

Source study originate from material primary law and materials law secondary that is with learn material primary, secondary and tertiary law. Collection material law done with method studies literature that is collect with do review material bibliography and further material analyzed with approach theory law.

Legal Analysis of Legal Protection for New Creditors (*cessionaries*) Related to Obligation Recording on the Mortgage Certificate for Transfer Receivables (*cessie*) When the Debtor Default.

In a legal system, *legal systems are generally deficient in each of these areas. The message has little chance of reaching its intended recipients and needs reinforcement through education and parallel communication* (Allot, Antony, 1981) . Therefore, *cessions* are often used in banking as a means to transfer collection rights, for example in cases of bad debt or credit portfolio restructuring. Thus, *cession* becomes an important instrument in the risk and liquidity management of financial institutions. In principle, all *assignment transfers* are based on an agreement which is the basis of the parties' obligations, as referred to in Article 1313 of the Civil Code, which states that an agreement is an act in which one or more persons bind themselves to one or more other persons. This agreement regulates legal relations by regulating the obligations and rights of each party, therefore, attention must be paid to the valid conditions of the agreement:

1. the agreement of those who bind themselves;
2. the ability to make a contract;
3. a particular subject matter;
4. one reason that is not prohibited.

Regarding ability and agreement are subjective requirements (if not fulfilled then the agreement can be canceled) and a certain thing and a lawful cause are objective requirements (if not fulfilled then the agreement is null and void). Agreement is the agreement of the statement of will for the parties that gives rise to a bond and will (Salim HS, 2005) . The statement of the agreement is free from error, fraud or coercion (as referred to in Article 1321 and 1322 of the Civil Code), coercion, fraud (as referred to in Article 1328 of the Civil Code) or abuse of circumstances. Ability is the ability of the parties to carry out a legal act (as referred to in Article 1329 and 1330 of the Civil Code), and pay attention to the age of adults or those under guardianship. Furthermore, a certain thing refers to the object of the agreement that contains the rights and obligations that arise based on the agreement made by the parties and the existence of a lawful cause is that the agreement does not conflict with the law, morality and public order.

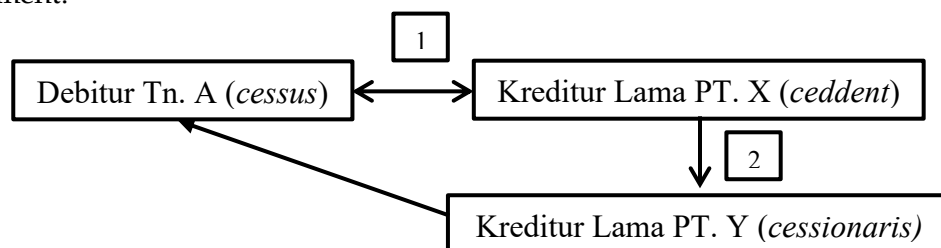
In an agreement there are principles that become the basis for the parties, including:

1. The principle of freedom of contract *as* regulated in Article 1338 paragraph (1) of the Civil Code, means that the parties are free to enter into and make an agreement, however,

freedom of contract (not absolute) is limited by applicable law, and does not conflict with public order and morality.

2. The principle of binding as law (*pacta sunt servanda*) states that the agreement made by the parties must be obeyed and implemented according to the agreed provisions, and the agreement is protected by law. Therefore, the party in default must exercise their rights and obligations as stipulated in the agreement or even pay compensation.
3. The principle of good faith as regulated in Article 1338 paragraph (3) of the Civil Code means that the parties in making an agreement must act based on honesty, trust and sincerity in carrying out an agreement.
4. The principle of consensualism as regulated in Article 1320 paragraph (1) of the Civil Code, an agreement is born when there is an agreement between the parties.
5. The principle of trust is that the parties agree to bind themselves to an agreement which has binding force as law for both (Mariam Darus Badzulzaman, 2001) .

cession agreement is an agreement based on a principal agreement, an agreement is an event where someone promises to another person, or where two people promise each other to carry out something (Subekti, 2001) . If it is related to banking, then based on a credit agreement which is a derivative of a loan agreement as regulated in Article 1754 of the Civil Code, it is stated that a loan for use is an agreement, which determines that the first party submits a number of goods that can be used up to the second party on the condition that the second party will return the same type of goods to the first party in the same amount and condition. Based on the provisions of Article 1754 of the Civil Code, a legal subject who borrows money or certain goods from another legal subject, then there is an obligation to return the money or goods based on the agreed agreement, when linked to Article 1765 of the Civil Code it is stated that debt arising from borrowing money, only consists of the amount of money outlined in the agreement. If before the debt is repaid the value of the currency rises or falls, or there is a change in the circulation of money, then the repayment of the money borrowed must be made with money that is valid at the time of repayment in the amount of money that has been borrowed, calculated according to the official value at the time of repayment.



Based on the scheme above, the legal subjects in *the cession* are:

- a. *Ceddent* (original/initial creditor), namely the person who hands over/transfers his/her claim rights in the name of;
- b. *Cessionary* (new creditor), namely the party who receives the transfer of the billing rights/the party who replaces the rights of the old creditor to the bill received by him.
- c. *Cessus* , namely the debtor for receivables that are transferred.

The legal relationship that occurs based on the scheme above is

- a. Between the debtor (*cessus*) and the original creditor (*cedent*) is an original relationship that arose before there was a legal act, namely *cession*, based on:
 - i). agreement principal (recognition) debt or agreement credit);
 - ii). followed with agreement additional (agreement *accessories*) in the form of a Deed of Granting of Mortgage Rights (APHT), fiduciary guarantee, pawn, mortgage, etc.

- b. After There is *cession* (the receivables transferred must be receivables in the name, not receivables under design or bearer), then arise connection the second law, namely connection between old creditor (*cedent*) with creditors new (*cessionaris*), so that give birth to connection law between creditors new (*cessionaris*) with debtor (*cessus*) based on:
 - i). agreement diversion receivables and sales buy receivables made in front of Notary Public or under hand (made in writing) and contains the identities of the parties involved, details of the receivables, and the rights and obligations of each party;
 - ii). Notification in a way written from old creditors to debtor or agreement written from the debtor (in the master agreement, the parties regulate the procedures for *the assignment agreement*). This is so that the debtor must be notified in writing regarding the transfer of the right to collect so that the transfer has legal consequences for the debtor.
 - iii). Has the nature of *accessories* on a incident the law that gives rise to obligation handover (*levering*);
 - iv). By signing the deed of cession, the cession is complete and valid, meaning that the right to collect from the old creditor (*cedent*) to the new creditor (*cessionary*) has been legally transferred and has the legal consequence that *the cedent* does not have the right to collect receivables that have been transferred to *the cessionary*. who has the right to collect receivables from debtors in accordance with applicable provisions, and **for cessus**, it is mandatory to pay the debt to the cessionary after being notified or approved in writing regarding the transfer.

The term credit comes from the Latin "*credere*" meaning trust (in English *faith* and *trust*) (Rachmadi Usman, 2001), for that reason, between creditors and debtors is based on trust with agreed procedures and conditions in relation to credit. The definition of credit in a broad sense is based on the components of trust, risk and economic exchange the future (Johannes Ibrahim, 2004). In something giving financing credit there is risk default or failure debtor in fulfil his obligations. For reduce risk In this case, the guarantee is given as a means of protection for creditors so that the debt given is paid. still can paid off. Function main guarantee is ensure payment debt if debtor default, that is No pay off or fulfil obligation according to the agreement. Certain objects are handed over by the debtor to the creditor as collateral for the loan or credit facility provided by the creditor to the debtor. until the debtor pays off the loan, if the debtor defaults, certain assets the will assessed with money (Rachmadi (Usman, 2008). The importance of collateral is not only as a form of protection for the bank, but also as a legal basis that strengthens the creditor's position in execution if the debtor defaults. Therefore, in the context of providing credit facilities, the legal aspects and legal certainty regarding the legal relationship between creditors and debtors are very vital.

Default is a contractual relationship that contains contractual responsibilities, so that default is against the agreed law, so that the purpose of default has elements including: the existence of performance, chapter II Article 1243 and 1252 of the Civil Code, legal relations desired by the parties, *breach of contract*, compensation in the form of money and subsidiary. It should be noted that Article 1365 of the Civil Code is fulfilled, then it can be held accountable and Article 1267 has 3 variables for the implementation of the agreement, cancellation of the agreement, and compensation.

Based on the Financial Services Authority Regulation (hereinafter referred to as "POJK") Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector and other related regulations (hereinafter referred to as "POJK 22/2023"). This POJK regulates the procedures for the transfer of collection rights to other parties (*cession*) by Financial Services Providers (PUJK), for which there are 2 deeds, namely the deed of transfer

and the sale and purchase of receivables that refer to the master agreement (debt acknowledgment or credit agreement) as the master agreement. For this reason, debt agreements or credit agreements require collateral or security from the debtor. One form of collateral commonly used is a mortgage on land and buildings that gives a *preferential position* to the creditor in the event of default and requires execution of the collateral object when default occurs.

One of the collaterals in credit is land and buildings as regulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (hereinafter referred to as UUHT). In the provisions of Article 16, it is stated that

- (1) If the receivables secured by the Mortgage Right transferred due to *cession*, *subrogation*, inheritance, or other reasons, the mortgage right will also be transferred by law to the new creditor.
- (2) The transfer of mortgage rights as referred to in paragraph (1) must be registered by the new creditor at the Land Office.
- (3) Registration of the transfer of Mortgage Rights as referred to in paragraph (2) is carried out by the Land Office by recording it the Mortgage Rights land book the land rights book for the land which is the object of the Mortgage Rights and copying the record on the Mortgage Rights certificate and the land rights certificate in question.
- (4) The date of recording in the land book as referred to in paragraph (3) is the seventh day after the complete receipt of required documents for registration of the transfer of Mortgage Rights and if the seventh day falls on a holiday, the record is dated the following working day.
- (5) The transfer of the Mortgage Right take effect for the third party the date of recording as referred to in paragraph (4). (*Law Number 4 of 1996*)

The definition of *cession* according to UUHT is a legal act of transferring receivables by a creditor holding a Mortgage Right to another party, because the transfer of the Mortgage Right regulated in this provision occurs by law, this does not need to be proven by a deed made before a PPAT. Recording the transfer of this Mortgage Right is sufficient based on a deed that proves the transfer of the guaranteed receivable to the new creditor, namely the sale and purchase and transfer of receivables. Associated with the theory of legal protection according to the view of Philipus M. Hadjon, who argues that legal protection for the people is a government action that is preventive and repressive. Preventive legal protection aims to prevent disputes from occurring in the future, while repressive legal protection aims to resolve disputes or handle disputes in judicial institutions (1987), so that based on 2 case phenomena in this study it has not been done:

1. Written notification from the debtor regarding the transfer of receivables from the old creditor to the new creditor;
2. Changes to legal data include recording creditor data in mortgage certificates or land title certificates as collateral for debt.

Conclusion.

Based on explanations and descriptions that have been explained above , then

Based on the provisions of Article 613 of the Civil Code, *cession* is one of the options for creditors when there is a bad credit agreement, which means the debtor is unable to make payments on performance (debt repayment) so that the transfer is carried out to a new creditor. The principal agreement will not be terminated until the debtor's entire debt is paid. Reviewed based on POJK 22/ 2023, in the deed of sale and transfer of receivables must pay attention to and refer to the principal agreement

between the debtor and the old creditor, and in the UUHT it is mandatory to make changes to the legal data in the mortgage certificate and land title certificate.

It should be creditors in sell buy and diversion receivables must For to inform in a way written to debtor For avoid *potential dispute* with no alibi know actions law between old creditors with creditors new so that There is reason No know payment receivables the party others , besides That expected creditors do recording juridical about position creditors on the certificate right liability and certificate right on land to fulfill principle publicity as intended in Article 13 of the UUHT and this aims to provide position *droit de preference* and *droit de suite* when guarantee the will be executed .

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