LEGAL IMPLICATIONS OF TRANSFER OF RECEIVABLES (CESSIE) WITHOUT NOTIFICATION TO DEBTORS

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ABSTRACT

Purpose: To discover the legal implications of transferring receivables (cessie) without notification to the debtor.

Theoretical framework: The foundation for building a theoretical framework is the content of personal finance knowledge in this study, including (i) creditors (cedent), (ii) debtors (cessus), and (iii) credit agreements.

Methods: The research method is that the literature applied to the data normatively consists of primary, secondary, and tertiary legal materials sourced from laws and regulations and relevant literature, which will be described and analyzed systematically. Household heads, as well as secondary data collected from respondents' profiles.

Results and conclusions: The research results were based on Decision Number.127/Pdt.G/2020/ PN.Mks, there had been a transfer of receivables from Co-Defendant I as the old creditor to the plaintiff as the new creditor, which was carried out without the consent of the Defendant as the debtor resulting in legal problems. The transfer of receivables with a cessie mechanism is regulated in Article 613 of the Civil Code, which stipulates that such a handover for the debtor (the debtor) has no consequences except after the handover is notified to him or approved in writing or acknowledged by him.

Keywords: Cessie, Receivable Transfer, Sale and Purchase Receivables.

IMPLICAÇÕES LEGAIS DA TRANSFERÊNCIA DE RECEBÍVEIS (CESSIE) SEM NOTIFICAÇÃO AOS DEVEDORES

RESUMO

Objetivo: Descobrir as implicações legais da transferência de recebíveis (cessie) sem notificação ao devedor.

Estrutura teórica: A base para a construção de uma estrutura teórica é o conteúdo do conhecimento de finanças pessoais neste estudo, incluindo (i) credores (cedente), (ii) devedores (cessus) e (iii) contratos de crédito.

Métodos: O método de pesquisa é que a literatura aplicada aos dados normativamente consiste em materiais legais primários, secundários e terciários provenientes de leis e regulamentos e da literatura relevante, que serão descritos e analisados sistematicamente. Os dados serão coletados com os chefes de família, bem como dados secundários coletados dos perfis dos entrevistados.

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1 INTRODUCTION

The legal action of lending and borrowing credit between creditors and debtors is outlined in a credit agreement which can be equated with a debt agreement. The agreement has been regulated in Article 1313 of the Civil Code, that an agreement or agreement is an act with one or more people binding themselves to one or more other people. For further juridical consequences, the agreement must be implemented. In good faith and cannot be canceled unilaterally (unilaterally unavoidable).

In agreeing, sometimes, due to specific problems in the implementation of a job or achievement as stated in the agreement, the parties agreeing agree to transfer the contract previously made to other parties.

In Book III of the Civil Code, there are no specific provisions governing credit agreements. However, based on the principle of freedom of contract, the parties are free to determine the contents of the credit agreement as long as it does not conflict with the law, public order, decency and propriety. With the agreement and signing of the credit agreement by the parties, from that moment, the agreement was born and binds the parties who make it into law.

Credit agreements are one way to provide funds to customers who need them by fulfilling predetermined conditions. In reality, credit agreements that occur between creditors and debtors often experience problems. Where the debtor has difficulty paying off the loan given by the creditor in accordance with the contents of the debt agreement that has been agreed beforehand. Credit, in general, is a loan in the form of money and/or other documents provided through an agreement with a term and interest.

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debtor will fulfill his repayment obligations properly. With the provision of credit facilities received by debtors, they are generally asked to submit collateral to creditors to guarantee repayment of their debts. Regarding the injured legal entity, one should indicate its exact name and legal address, as well as the nature of the detriment (property or business reputation), its size and the final assessment of detriment to the rights and interests of the organization protected by law.

Receivables arising from the provision of credit made is a bill on behalf of. The bill involves two parties, namely, the creditor and the debtor. The existence of a bill caused by a certain debtor having a debt to a certain creditor, which is then transferred to another creditor or called a new creditor, causes a transfer of rights and obligations from the old creditor to the new creditor; this has been stated in the credit agreement that has been signed and agreed between creditors and debtors. Transferring or handing over receivables on behalf of that name can be called a cessie. Subekti provides a definition of cessie, saying that cessie is a way of transferring receivables on behalf of which are then sold by the old creditor to a person who will later become a new creditor, and the legal relationship of the debt and credit is not erased for a second, but in its entirety is transferred to the new creditor.

The Civil Code does not recognize the term cessie but rather the transfer of rights over intangible goods, usually in the form of receivables on behalf of a third party. Given that there is a connection between cessie and agreement, it does not mean that cessie arrangements are only regulated in Book II of the Civil Code. The cessie institution by law is included in the regulation of objects; this is reasonable considering that a cessie transfers rights, namely the right to receivables (intangible objects).

The definition of cessie is not stated and/or spelled out explicitly in the Civil Code. This can be seen from Article 613 paragraph (1) of the Civil Code, which reads as follows: "Delivery of receivables on behalf of and other incorporeal objects, is carried out by making an authentic deed or underhanded, by which the rights to the material it is delegated to others. Article 613 of the Civil Code states that regulated receivables are receivables or bills on behalf of. In bills in the name, the debtor knows precisely who the creditor is. One of the characteristics possessed by a bill on behalf of is that bills on behalf have no form. If a debenture is made, then the debenture is only valid as evidence. This is because the existence of debentures in any form is not essential from a bill on behalf. Thus, if a bill on behalf of the debt is stated in the form of a

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note, then the physical delivery of the debt certificate has not transferred the claim rights, as evidenced by the letter in question.\footnote{Feronika Y. Yangin. Á“Legal analysis of Transfer of Receivables (Cessie) to Third Parties according to Article 613 of the Civil Code”. Lex Privatetum, Vol. IV/No.5/June/2016.}{21}

In this cessie process, the act of submission does not stand alone; the action is always a further consequence of a legal event, which obliges people to surrender something. The legal relationship that requires submission here is an obligatory legal relationship, which can arise from an agreement or from law. Obligatory legal relations in the cessie process include those that arise from agreements. After all, they arise because they were agreed between the parties. We know that an obligatory agreement is an agreement that creates rights and obligations between the parties.\footnote{Widya Padmasari. “Legal Protection for Parties in the Transfer of Receivables (Cessie) Through a Notary Deed.” Journal of Notary Law, Vol. 2, No. 2, August 2018.}{22} Events that form the basis of submissions, called civil events or \textit{rechtstitel}, are events that give rise to agreements between two parties, where one party has the position of creditor and the other party has the role of debtor. So the civil event (\textit{rechtstitel}) is an obligatory relationship that is the basis of the cessie. In this case, the \textit{rechtstitel} or civil event that forms the basis of a cessie is a sale and purchase agreement and transfer of receivables.\footnote{Anggun Lestari Suryamizon, Syuryani, loc.cit.}{23}

Claim rights are stated to have undergone a transfer when the cessie deed was drawn up and signed. The transferred receivables are the remaining receivables contained in the credit agreement at the time of signing the cessie deed authentically before a notary official. However, problems arise when the party buying the cessie or the debtor does not know the transfer is authentic. Ordinary people only see that a third party has purchased this transfer of receivables without the debtor's knowledge. Therefore, the cessie deed made by a notary can be questioned regarding its perfection and integrity in providing legal certainty for the party buying the cessie associated with all guarantees of the Mortgage.\footnote{Hamler. “Legal Protection of Debtors in the Transfer of Receivables (Cessie) to Third Parties Without Notification to Debtors on Home Ownership Credit (KPR).” Joel: Journal of Educational and Language Research, Vol. 2, No. 1, August 2022.}{24}

The problem is that when the debtor's position is in a state of default, the bank (the old creditor) is still required to notify the debtor in writing of the cessie activity. Therefore, this will cause legal consequences and problems, as in Decision Number 127/Pdt.G/2020/PN Mks. In this case, the debtor (Defendant) is deemed to have defaulted on the Creditor (Co-Defendant I) so that the creditor buys and sells receivables to the Recipient of the cessie (Plaintiff) without prior notification to the debtor, while the object of dispute (collateral) is in Defendant's powers. Because of these problems, knowing and understanding the legal implications of transferring receivables (cessie) without notification to the debtor is necessary.

\section*{2 THEORETICAL FRAMEWORK}

The existence of a cessie process is motivated by the appearance of an act of default. Where the debtor cannot carry out his obligations in making credit installment payments and chooses to leave (no news) so that the creditor is forced to execute the collateral object, one of which is by going through a \textit{cessie process}. This step was taken because the creditors, in this case the banks, had a negative impact from the default, namely the bank's bank's flow of funds which became hampered. So to cover the shortfall, the creditor must immediately obtain funds by the amount of debt that has not been paid from the debtor who is in default. The cessie collateral that is transferred in the form of a land certificate will usually continue with the process of transferring the name of the certificate back from the name of the previous debtor to

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the name of the new creditor (cessie buyer) to obtain legal certainty, but this transition process is no longer within the authority of the bank.25

_Cessie _must be made clear, firm, and in writing. With the transfer of receivables in a cessie manner, the third party becomes a new creditor who replaces the old creditor, which is followed by the transfer of all the rights and obligations of the old creditor towards the debtor to a third party as the new creditor. This is because the transfer of receivables by cessie does not result in the termination of the existing agreement made between the creditor and the debtor.26_

The legal relationship between the debtor and creditor based on a pre-existing credit agreement is not terminated, so that a new legal relationship does not replace the old legal relationship. The old agreement still exists and is valid and binds the debtor and creditor who received the transfer of the intended receivables. With a _cessie_, the most important legal consequences are as follows:27

1. Notify anyone about this cessie including notifying with a bailiff letter to anyone who owes the first party;

2. On behalf of the first party, the second party has the right to do whatever is necessary or required so that the receivables of the first party can be reversed on behalf of the second party.

With the transfer of receivables on behalf of (cessie) by the bank to a third party, a legal relationship arises between the bank, which is then called the old creditor, and the third party, which is then called the new creditor.28 The legal consequences of the _Cessor Receivable Buyer_ from the entire cessie transaction process, there are three kinds of legal relationships that occur, namely as follows:29

a. Relationship of old debts between old creditors (cedent) and debtors (cessus).

b. The relationship between the transfer of receivables between the old creditor (cedent) and the new creditor (cessionary).

c. Relationship of new debts between new creditors (cessionary) and debtors (cessus)."

Article 584 of the Civil Code regulates how to obtain property rights, where a cessie must be preceded by a civil event or what is called an underlying transaction. Underlying transactions, in this case, are the sale and purchase of receivables conducted by the bank as the old creditor with a third party as the new creditor. So, the cessie here is a follow-up of the legal event of buying and selling these receivables. In buying and selling receivables, the seller can sell his receivables at a price below the value of his receivables. This is because there is a risk that must be borne by the buyer of receivables or a new creditor if it turns out that the debtor cannot pay off his debt. In addition, the buyer of receivables also wants to benefit from the sale and purchase of these receivables. However, what needs to be underlined here is that the value of receivables or collection rights transferred to the new creditor must be by the collection rights owned by the old creditor. So that the value of these receivables is the basis for new creditors to demand payment from debtors.30
Advantage of a cessie is when the creditor needs funds for a certain purpose, but the receivable is not yet due, so it cannot be billed to the debtor. The way out is that the receivables are sold to other parties below the nominal price of the debt, and then the buyer of the receivables at maturity will collect payment from the debtor according to the nominal. Thus the old creditors will get the necessary funding requirements, and the new debtors will benefit from the difference in the purchase price of the receivables with the nominal receivables they will receive.  

Article 613 of the Civil Code states that the transfer of receivables must be carried out by making an authentic / private deed and will not have consequences for the debtor if there is no notification or written approval and recognition. Article 613 Paragraph (2) of the Civil Code, in which it is formulated that: 'Such surrender for the debtor has no consequences. But after the handover was formally notified to him or in writing agreed and acknowledged by him. Elements that need to be considered are formal notification (written) to the debtor to be known. This element implies that the creditor's notification of the transfer of receivables to a third party can be carried out with authentic evidence in the form of a notification letter to the debtor, which is then taken into consideration for the attention of the debtor before the occurrence of a transfer of receivables from the old creditor to the new creditor. When the old creditor carries out the transfer of rights to the new creditor, the transfer is in accordance with applicable legal procedures and transparency of data on debts that have been paid and the remaining debts. The debtor must know and understand to whom the debt is transferred so that it is not misused. Therefore, it is necessary to have an authentic deed signed by both parties on a more independent notarial deed to avoid fraud and misunderstandings in understanding the problems of the applicable credit agreement.

With a cessie, there is a relationship between the creditor and the debtor. This relationship is created because there is an obligation of the cessionary to notify the cessus of the existence of the cessie (as required by Article 613 paragraph 2 of the Civil Code) so that it will bind the cessus if there has been notification or in writing it has been approved and acknowledged. While this relationship exists because the creditor surrenders (cedent) his claim rights to the new creditor. If the parties want to cancel the submission of the claim rights, it must be done by doing another cessie deed, which is called a retro cessie. Therefore notification or approval from the cessus is very important for the cessionary because the cessus may pay the cedent because it does not know that there has been a change in the creditor. There must be a principle of good faith in carrying out such matters. This means that if it is suspected that it is true that the cessus does not know that a cessie exists even from outsiders (also without notification from the cessionary), and the cessus pays to its creditors, then he (cessus) gets legal protection. This means that he is free from debt. The existence of a cessie agreement made either authentically or under the hand will not be binding and or give any legal consequences to the debtor if the matter regarding the transfer of receivables by cessie is not notified to the debtor or in writing is not acknowledged or approved by him.

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31 Nikmah Dalimunthe, Khoirun Niswah, loc. cit.
33 Hamler, loc. cit.
34 Hasanain Haykal, loc. cit.
35 Rachmad Setiawan, J. Satrio, op. cit. p. 41
3 RESEARCH METHODS

This research method uses normative. Legal research or literature, which is applied to secondary data (consisting of primary, secondary, and tertiary legal materials), is sourced from laws and regulations and relevant literature, which will be described and analyzed systematically. Analytical descriptive aims to make a systematic, factual, and accurate description or description of the facts, nature, and relationship between the phenomena studied.

4 RESEARCH RESULTS AND DISCUSSION

4.1 Legal Implications for the Transfer of Receivables (Cessie) without Notification to the Debtor in Decision Number. 127/Pdt.G/2019/ PN.Mks

Before the author outlines the implications for the transfer of receivables without notification to the debtor, the following writing outlines the main issues in the decision Number.127/Pdt.G/2020/ PN. Ms, namely:

Whereas on 15 September 2010, between the Defendant and Co-Defendant I, there was a legal relationship of debt and credit based on the credit agreement Number 00004-01-1-26719-9 in the amount of Rp. 180,000,000.- (one hundred and eighty million rupiahs), with a term of 180 months/15 years, for the purchase of land and buildings located in the Unhas Antang Lecturer's Housing Complex, Jalan Architect VI No. 100B, Biring Romang Village (formerly Bangkala Village), Manggala District, Makassar City, based on Property Rights Certificate Number 00503/Biring Romang dated 3 September 2010, Measurement Letter Number 03688/Bangkala/2010 dated 7 July 2020, with an area of 143 m2. Which house is also a guarantee of credit settlement obtained by Defendant which until now is occupied by Defendant?

In accordance with the conditions provided by Co-Defendant I to Defendant as stated in the credit agreement, the Defendant is obliged to return the credit obtained in the form of monthly installments no later than the 7th (seventh) of each month. However, Defendant no longer had good faith in settling the credit, resulting in a loss for Co-Defendant I; for this reason, it is appropriate for Co-Defendant I take the necessary actions to repay the credit he has obtained.

As a result of not paying the installments by Defendant as agreed, the Co-Defendant I visited the credit collateral several times but did not receive a positive response from Defendant in the form of installment payments as it should be. For that co-Defendant, I then gave warning letters to the Defendant. The warning letter did not receive a positive response from the Defendant, the Co-Defendant. I then made an open summons to the Defendant through the East Tribune print media, published on Friday, 30 August 2018. In the summons, Co-Defendant I allowed the Defendant to can pay off the debt no later than 10 (ten) days after the issuance of the summons; if there is no response to the summons, Co-Defendant I will provide an opportunity and will transfer the receivables to interested parties through a cessie scheme.

Later, the plaintiff came and stated that he was interested and willing to take over the receivables from Co-Defendant I with a receivables cessie scheme based on a letter dated 10

September 2010. For this reason, considering the Defendant’s non-cooperation in settlement of said credit, Co-Defendant I transferred the receivables to the plaintiff based on Deed of Sale and Purchase of Receivables Agreement Number 57 dated 23 April 2019 and Deed of Assignment of Billing Rights (Cessie) Number 58 dated 23 April 2019. With the signing of the deed as referred to, the plaintiff has the full right to replace the position of Co-Defendant I as a creditor for Defendant and is entitled to bills, and Co-Defendant I no longer has the authority to accept any payment from Defendant. But on the other hand, according to the Defendant, Co-Defendant I took protective steps to minimize the percentage of losses but did not clarify the status of the debtor by using a cessie method to transfer and/or sell his receivables to a 3rd (three) party, in this case, the plaintiff without any notification both before and after.

In the petitum of the lawsuit, the plaintiff requests the Panel of Judges to decide:

1. Accept and grant the plaintiff's claim in its entirety;
2. Declare that the Defendant has committed a breach of contract;
3. Stating the Deed of Sale and Purchase of Receivables Agreement No. 57, 23 April 2019, and the Deed of Transfer of Billing Rights (Cessie) No. 58 dated 23 April 2019 between the Plaintiff and Co-Defendant I is legally valid and valuable;
4. State the land and house buildings located in Perum. Unhas Antang Lecturer Jalan Architect VI No.100 B, Biring Romang Village, Manggala District, Makassar City with the following boundaries: - North side: Jalan Architect VI; - East: Jalan Architect V; - Southside: Vacant land (workshop); - West side: Ahmad Fatwa's house. It belongs to the plaintiff who was obtained based on the Deed of Sale and Purchase Receivables Agreement No. 57, dated 23 April 2019, and the Deed of Transfer of Billing Rights (Cessie) No. 58, dated 23 April 2019 between the Plaintiff and Co-Defendant I;
5. Ordered Co-Defendant II (National Land Agency) Makassar City to comply with the decision to carry out the process of transferring the names of the Plaintiff to Property Rights Certificate No.00503, Biring Romang Village dated 3 September 2010, Measurement Letter No: 03688, 07-07-2010, Area 143 M2 (one hundred and forty-three square meters) based on Deed of Sale and Purchase Number. 375/2010 dated 15 September 2010;
6. Declare Co-Defendant I that the Deed of Sale and Purchase Receivables Agreement No. 57, 23 April 2019, and Deed of Transfer of Billing Rights (Cessie) No. 58 dated 23 April 2019 between the Plaintiff and Co-Defendant I also applies as a Sale and Purchase Deed;
7. Stating proof of payment of the Defendant's debt and the basis for transferring the property rights of Co-Defendant I to the plaintiff over the land and house building located in Perum. Lecturer at Unhas Antang Jalan Architect VI No.100 B, Biring Romang Village, Manggala District, Makassar City against Property Rights Certificate No.00503, Biring Romang Village dated 3 September 2010, Measurement Letter No: 03688, 07-07-2010, Area 143 M2 (one hundred and forty-three square meters) based on Deed of Sale and Purchase No. 375/2010 dated 15 September 2010;
8. Declare that the action of the Defendant, who did not hand over and vacate the object of the dispute to the plaintiff, was an unlawful act (Onrechtmatigedaad);
9. Punish the Defendant to vacate and hand over the object of the dispute to the plaintiff in an empty and perfect condition without any burden on it;
10. Declare the legal and valuable confiscation of collateral (conservatoire beslag) placed by the Makassar District Court;
11. Punish the Defendant to pay forced money (dwangsom) in the amount of Rp. 1,000,000.- (one million rupiah) for each day of delay if you fail to carry out the decision;
12. Punish the Defendant to pay the costs incurred in this case;
Currently, it is not enough for a judge, as director of the process, to know and be an expert in law; but, in the current circumstances of society, they also need to know about management, specifically, public management and processes. For this case, the panel of judges examined and decided on the case in decision Number.127/Pdt.G/2020/ PN.Mks ruled, "declared that the plaintiff's claim was unacceptable." With the legal considerations that the plaintiff's lawsuit in Petitum number 2 which stated that the Defendant had broken his promise/default, while in Petitum number 8 which stated that the actions of the Defendant who did not hand over and empty the object of the dispute to the plaintiff was an act against (onnrechtmatigedaad). According to the Panel of Judges, there are doubts about the legal basis for the plaintiff's lawsuit, whether the plaintiff's lawsuit is based on default or an unlawful act; thus causing confusion in resolving this case; considering that because it confuses, the plaintiff's claim contains an obscure liability so that it must be declared unacceptable;

Based on the description of the problem above, the transfer of debt must be accompanied by a guarantee that has been collateralized by the debtor in a bank from the old creditor to the new creditor through the cessie deed mechanism. Article 613 of the Civil Code states that "Submission 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 object 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 designated letter is carried out by submitting a letter accompanied by an endorsement. Elements that can be concluded based on Article 613 of the Civil Code in an act of cessie, namely:

1. Make an authentic deed or private deed.
2. The rights attached to the receivables on behalf of are transferred/transferred to the transferee.
3. Cessie only has legal consequences for the debtor if it has been notified to him or approved and acknowledged in writing.

5 CLOSING

Based on the research results and discussion above, it is known that based on Decision Number.127/Pdt.G/2020/ PN.Mks, there has been a transfer of receivables from Co-Defendant I as the old creditor to the plaintiff as the new creditor, which was carried out without the consent of the Defendant as the debtor, thus giving rise to legal problems. As is well known, the transfer of receivables with a cessie mechanism is regulated in Article 613 of the Civil Code, which stipulates that such a transfer for the debtor has no consequences except after the transfer has been notified to him or approved in writing or acknowledged by him. This element implies that the creditor's notification of the transfer of receivables to a third party can be carried out with authentic evidence in the form of a notification letter to the debtor, which is then taken into consideration for the debtor's knowledge before the occurrence of a transfer of receivables from the old creditor to the new creditor.

39 Hamler, loc. cit.
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