



Dispute Resolution Strategy for the Transfer of Receivables Collection Rights (Cessie) Within a Credit Agreement in Indonesia Supporting Economic Growth

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ABSTRACT

One of the strategies for resolving non-performing loans carried out by banks is by way of cessie, which transfers all rights and obligations of the old Creditor over the debtor to the new Creditor. However, banking institutions that have a strategic role in supporting the implementation of national economic development will not be separated from the problem of bad credit, which can one day lead to disputes in social life. The research method in this research is normative juridical and descriptive analysis. The research was conducted with a statutory and case approach. The data collection technique is done by literature and field studies. As in decision Number 18/Pdt.G/2017/Pnkgw, the results of this research are the Arrangement of Settlement of Bad Credit Banking through the Transfer of Receivables Collection Rights (Cessie) which is regulated in Article 613 of the Civil Code and The form of dispute is known that the Defendant has defaulted on his obligations which are used as an analysis of the judge's considerations and decisions related to the problematic transfer of receivables collection rights through cessie in the judicial process.

Keywords: cessie, collateral, transfer of receivables

1. Introduction

The banking sector is one institution that has a strategic role in advancing the implementation of national economic development. Banks carry out this role, especially considering their primary task as efficient and effective distributors and collectors of public funds. Any distribution method these financial institutions use to distribute money relates to the community's interests as it includes public funding. Therefore, bank financing must be prudently with recognized and reliable mathematical projections.

No bank can escape the impact of bad loans. Society as a whole is affected by them. Since banking financial institutions are the center of the nation's economic activities, it is essential to research efforts to overcome bank bad debts, especially considering the impact generated by bad debts is very large for the economy's survival. Cessie is one of the ways banks resolve non-performing loans.

The regulation of lousy debt settlement through cessie is contained in Article 613 of the Civil Code. However, the word cessie is not explicitly found in the applicable laws in Indonesia. Article 613 of the Civil Code states that:

The assignment of debts in name and other immovable property is done by making an authentic deed or underhand, by which the rights to the property are transferred to another person. Such assignment for the debtor has no effect except after the assignment is notified to him or in writing approved and acknowledged. The delivery of the letter shall effect the assignment of any receivable under a bearer letter; the assignment of any receivable under a letter of appointment shall be effected by the delivery of the letter accompanied by an endorsement.

The transfer of rights to debt (cessie) is receivable in name, namely receivables whose payment is made to the party whose name is written in the receivable letter, namely the old Creditor. However, with the notification of receivables on the debtor's behalf, the debtor is bound to pay the new Creditor and not the old Creditor. [1] As the lawsuit filed by the cessionary to his cessus contained in Decision Number 18/Pdt.G/2017/Pnkgw, where the cessionary named Menik Rachmawati filed a lawsuit against Hajjah Sri Wahyuningsih as the Defendant.

The dispute occurred due to the absence of good faith from Defendant to settle the payment of the debt to the Plaintiff because as a result of the cessie, all the receivable rights or receivables for the debt of Hajjah Sri Wahyuningsih (Defendant) legally belonged to Menik Rachmawati (Plaintiff).

The Panel of Judges considered and decided that the Deed of Credit Agreement, along with all the Extension Agreements and Amendments to the Credit Agreement are documents attached to and form an integral part of the Deed of Credit Agreement, all of which are valid according to law, Stating that according to the law the transfer of Receivables (cessie) on the Defendant's debt from PT Bank Danamon Indonesia, Tbk. to the Plaintiff, based on the Notarial Deed of Transfer of Receivables (cessie), is valid according to law. That with the transfer of receivables from PT Bank Danamon Indonesia, Tbk. to Plaintiff based on the cessie, Plaintiff is a new creditor who has all the rights as befits a creditor for his debt against the Defendant.

The problem formulation in this research is:

1. How is the regulation of the settlement of bad credit through the transfer of receivables collection rights (cessie)?
2. How is the form of a dispute over receivable collection rights (cessie) based on decision No. 18/Pdt.G/2017/Pnkgw?
3. How is the analysis of the considerations and decisions of judges related to the problematic transfer of receivables collection rights (cessie) in decision number 18/Pdt.G/2017/Pnkgw?

In accordance with the formulation of the problem above, the objectives of this research are:

1. To analyse and know the legal basis for disputes over the transfer of receivables collection rights (cessie) in credit agreements;
2. To analyse and find out the dispute over receivables collection rights (cessie) based on decision No. 18/Pdt.G/2017/Pnkgw;
3. To analyse and find out the analysis of considerations and judges' decisions related to the problematic transfer of receivables collection rights (cessie) in decision number 18/Pdt.G/2017/Pnkgw.

2. Method

The research used in this study is a combination of normative juridical research and descriptive analysis. Normative juridical research is defined as "legal research that places the law as a building system of norms. The system of norms in question is about principles, norms, rules from laws and regulations, court decisions, agreements, and doctrines". [2] Then this research is descriptive analysis, research that takes problems or focuses on problems as they are when the research is carried out, the results of the research are then processed and analysed to draw conclusions. [3]

This research also uses a statute approach and a case approach. The statute approach is carried out by examining all regulatory laws that are related to the problem being addressed. A statutory approach is an approach using legislation and regulations. Then the case approach in normative research aims to study the application of legal norms or rules carried out in legal practice. This type of approach is usually used regarding cases that have received a decision. These cases are empirical, but in normative research, these cases can be studied to obtain an overview of the impact of the dimension of norms in a rule of law in legal practice, and use the results of the analysis for input in legal explanation. [2]

The data in this research comes from secondary data. The secondary data in this research consist of:

1. Primary legal materials, which are: Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Kitab Undang-Undang Hukum Perdata (KUHPerdata), Undang-Undang Nomor 10 Tahun 1998 tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1992 Tentang Perbankan, Decision Number 18/Pdt.G/2017/Pnkgw and so on.
2. Secondary legal materials, which are: "materials related to primary legal materials and can help analyse and understand primary legal materials, such as books whose discussions are related to the title of the researcher, journals, theses, newspapers, and articles." [2]
3. Tertiary legal materials are "in the form of materials that can support primary legal materials, consisting of legal dictionaries, large Indonesian dictionaries and the internet." [2]

In this research, data collection tools were used: Library Research (Literature Study) and Field Research (Field Study). This research activity is carried out by collecting data from various literature, which are used not only in books but also in the form of documentation materials, magazines, newspapers, and others. [4] Furthermore, this is supported by observing directly related to the transfer of receivables through cessie to bank employees. The data collection technique used is the Interview technique, which is carried out by asking several questions designed to obtain answers relevant to formulating research problems for respondents. [5]

In analysing the problem, the data obtained from field studies and document studies is analyzed qualitatively, namely after the data is collected, poured in the form of logical and systematic descriptions, then analyzed to obtain clarity of problem-solving. [5] Then deductive conclusions are drawn, namely "from general things to specific things following the problems discussed in this research." [6]

3. Result & Discussion

3.1. Legal Analysis of the Transfer of Receivables Collection Rights (Cessie) in the Civil Law Code

Banks collect public money and distribute it in the form of credit in order to fulfill their functions. The majority of bank funds come from the general public. Banks must return public funds and interest at a predetermined time or as agreed upon by the depositors. As a result, the public funds are returned in the form of loans with higher interest rates than those offered to those who deposit money in the Bank. If it turns out that the loans are wrong, which means that the Bank no longer receives its cash back and loses income but still has to pay interest and other costs to depositors, then this situation causes the Bank to suffer losses.

One of the strategies carried out by banks in resolving bad debts is to carry out cessie steps. Cessie is "a method of transfer and/or delivery of receivables on behalf of as referred to in Article 613 of the Civil Code". [1] In Indonesia, one of the definitions of Cessie was put forward by Subekti. In Subekti's opinion, Cessie is "A way of transferring receivables on behalf of which the receivables are sold by the old creditor to the person who will later become the new creditor, but the legal relationship of the debt and credit is not erased for a second, but in its entirety, it is transferred to the new creditor." [7]

Banking has a massive role in carrying out one of its functions as a financing institution to channel credit to the community, which is directly proportional to the risks that must be faced when there is a default, in this case, bad credit, so that it can encourage banks to anticipate to minimize the risk of non-performing loans, which aims to save bad credit or non-performing loans, which are carried out by banks (creditors), namely by executing collateralized objects, one of which is by conducting cessie or transfer of receivables. [8] In general, the implementation of Cessie is because the old lender (the Creditor) needs financing so that the operation of its business continues to run well. [9]

Regulations regarding the transfer of receivables on behalf of are regulated in Article 613 of the Civil Code. This can be seen from Article 613 of the Civil Code: "Delivery of receivables on behalf of and other intangible property, carried out by making an authentic deed or underhand, by which the rights to the property are delegated to others. Such submission for the debtor has no effect, except after the submission is notified to him or in writing approved and recognized."

In cessie, there are at least 3 parties involved, which are: [10]

1. The party presenting the bill on behalf of (the original Creditor), called the cedent.
2. The party receiving the assignment (the new Creditor), is called the cessionary.
3. The party with the debt (the debtor), is called the cessus.

Article 613 of the Civil Code states, "cessie must be made by making a deed of cessie". The arrangement in Article 613 of the Civil Code concerns the transfer of receivables in name and other intangible objects. In connection with that, only creditors can transfer their receivables, while debtors are not entitled to transfer their debts. The provisions stipulated in Article 613 of the Civil Code can only be carried out to replace creditors. [11]

With the transfer of receivables in cessie, the third party becomes the new Creditor who replaces the old Creditor, followed by transferring all rights and obligations of the old Creditor against the debtor to the third party as the new Creditor. [12]

Cessie is a form of transfer of receivables on behalf of; then, for the transfer to occur, it must be based on the existence of a suitable base (*Rechtstitel*), which is a civil relationship underlying the transfer of rights. The main requirement for the validity of the transfer of receivables in cessie requires 4 (four) conditions, which are: [13]

1. Agreement,
2. Capacity to act,
3. Specific object, and
4. Fulfilling statutory provisions, decency, and decency / halal causes.

Under Article 613 of the Civil Code, cessie can be executed without the knowledge and consent of the debtor. The original and new Creditors simply execute Cessie, and the cessie is completed by signing the cessie deed. This means that the title to the bill on the debtor's behalf has been transferred from the original Creditor to the new Creditor. [10] However, as also explained in Article 613 of the Civil Code, for the transfer of receivables agreement made by the original Creditor and the new Creditor to have legal consequences on the debtor, the transfer of receivables must be notified to the debtor or in writing approved or acknowledged by the debtor concerned. [14]

The seller can sell the receivables at a price below the value of the receivables in the sale and purchase of receivables. This is because there is a risk that must be borne by the buyer of receivables or the new Creditor if it turns out that the debtor cannot pay off his debt. In addition, the buyer of receivables also wants to make a profit from the sale and purchase of receivables. However, what needs to be underlined here is that the value of the receivables or collection rights transferred to the new Creditor must follow the old Creditor's collection rights. So that the value of the receivables is the basis for the new Creditor to demand payment from the debtor. [15]

The elements that can be concluded based on Article 613 of the Civil Code in an act of cessie, which is:

1. An authentic deed or deed under hand is made.
2. The rights attached to the receivables in the name are transferred/transferred to the transferee, and
3. The Cessie only has legal effect on the debtor if it has been notified to him or in writing approved and acknowledged by him. [7]

3.2. Analysis Of the Dispute of the Right to Collect Debt (Cessie) Based on Decision No. 18/Pdt.G/2017/Pnkgw
Many elements and things contribute to bad debts that cannot be predicted in advance. In banking practice, signs of bad debts can be found in various situations, one of which is that debtor customers begin to rarely make deposits and the existence of domestic disputes or litigation. Such as the dispute that occurred in Decision No. 18/Pdt.G/2017/Pnkgw which argued that Hajjah Sri Wahyuningsih (Defendant) had made a credit agreement with PT Bank Danamon Indonesia, Tbk, but then PT Bank Danamon Indonesia, Tbk transferred it to Menik Rachmawati (Plaintiff) based on Deed of Transfer of Receivables Number 23 dated November 26, 2015. So that Menik Rachawati (Plaintiff) has the right to collect or receivables on behalf of PT Bank Danamon Indonesia, Tbk, as the new Creditor against the credit agreement between Hajjah Sri Wahyuningsih (Defendant) and PT Bank Danamon Indonesia, Tbk, so there is a transfer of legal position in the form of Cessie from PT Bank Danamon Indonesia, Tbk, to Menik Rachmawati (Plaintiff).

The transfer of receivables by cessie is valid because a Deed of Transfer of Receivables has been made which has been notified to the debtor. However, a dispute arose due to the absence of good faith from the Defendant to settle the payment of his debt to the Plaintiff, because as a result of the cessie, all billing rights or receivables for the debt of Hajjah Sri Wahyuningsih (Defendant) according to the law legally belonged to Menik

Rachmawati (Plaintiff), all receivable rights owned by PT Bank Danamon Indonesia, Tbk. on the Defendant both legally and mutatis mutandis have been transferred to the Plaintiff with all the juridical consequences. The problem arising from this cessie is that the Defendant stated that no notification was given to the Defendant regarding the transfer of the collection of receivables. There was no approval and acknowledgment from the Defendant regarding the transfer of the collection of receivables. However, the Bank regulates in the credit agreement that the debtor agrees and agrees to give the Bank the full right to submit receivables (cessie) and/or bank bills against the debtor along with all accessory promises, including rights to credit guarantees to other parties determined by the Bank itself at any time if needed by the Bank. Thus, the transfer of receivables by cessie is related because the Bank regulates it in the credit agreement it makes, and this is binding on the debtor as a party who applies for credit and signs the credit agreement. Therefore, Defendant consciously agreed to the transfer of receivables made by the Bank when Defendant signed the Deed of Credit Agreement at the beginning.

The notification has also been made after the transfer of receivables collection is made by Plaintiff submitting a notification letter regarding the transfer (cessie) of receivables and a warning letter to pay off debt payment obligations. Based on Decision No. 18/Pdt.G/2017/Pnkgw, the Defendant, namely Hajjah Sri Wahyuningsih, has defaulted on her obligations as a debtor in settlement of debts by cessie to the Plaintiff, namely Menik Rachmawati.

Banks prefer cessie to execution because cessie is generally sold by banks at a lower price than the debtor's outstanding debt, whereas if they buy the debtor's collateral through an auction process, there are procedures that must be fulfilled, especially the auction process takes time and the highest bidder is declared to be the auction buyer. [16] In addition, by doing cessie, the turnover of money is faster where the Bank gets paid from new creditors and does not need to wait for a lengthy auction process.

“An unstable financial system tends to be vulnerable to various fluctuations that disrupt the rotation of the economy. Banking has a strategic value in economic life; besides that, banking is an intermediary for parties who have excess funds with parties who lack funds. Banks prefer cessie to auction because the process is not as long as the auction”. [17]

“Cessie is the transfer of receivable rights to the old person with a new person with a deed. Meanwhile, the auction is buying and selling goods by offering higher prices. In addition, cessie is suitable for creditors who are experts in negotiating. The auction itself is important because it must first check the goods to be auctioned. The difference is pronounced. In addition, the Bank wants a fast turnover of money, not long like the auction process which takes a long time”. [17]

“Cessie is an option in banking for the settlement of receivables, when the previous processes are unsuccessful and even when the auction process is difficult to sell, the bank will carry out cessie as a last resort in settling receivables.” [17]

“The bank wants a faster turnover of money, its capital, with the cessie, the turnover of money is faster, the bank gets payment from the new creditor, and there is no need to wait for the auction results, if the auction takes time, not to mention if during the auction, there are no participants, the auction is still carried out, but there are no results, automatically the guarantee cannot pay off the debt, why banks choose cessie because practically banks need a faster turnover of money”. [17]

The factors causing the dispute over the transfer of rights in Decision Case No. 18/Pdt.G/2017/Pnkgw are because Hajjah Sri Wahyuningsih, who cannot pay off all her debts, has defaulted and must make compensation or Hajjah Sri Wahyuningsih must fulfill her obligations to Menik Rachmawati. Hajjah Sri Wahyuningsih must also be responsible for paying interest and penalties based on the credit agreement she has entered into. The lack of good faith from Hajjah Sri Wahyuningsih (Defendant) caused the dispute over the transfer of receivables collection rights (Cessie) in the credit agreement based on Decision No. 18/Pdt.G/2017/Pnkgw.

Based on the evidence of the Plaintiff (Menik Rachmawati) marked P-1, it is stated that the interest is 12% (twelve percent) per year and a fine of 20% (twenty percent), each of which is calculated from the total debt / principal obligation of the Defendant (Hajjah Sri Wahyuningsih), namely Rp3.984.000.000,00 (three billion nine hundred eighty-four thousand rupiahs) so that the interest amounted to Rp478.080.000,00 (four hundred

seventy-eight million eighty thousand rupiahs) and the fine amounted to Rp796.800.000,00 (seven hundred ninety-six million eight hundred thousand rupiahs) respectively.

In addition, the debtor/Defendant (Hajjah Sri Wahyuningsih) must also be responsible if he cannot fulfill or pay the debt, then 5 (five) certificates of ownership of 5 (five) plots of land, all located in Jomin Barat Village, Kota Baru Subdistrict, will be sold at auction for repayment or payment or fulfillment of the performance of the Defendant (Hajjah Sri Wahyuningsih) to the Plaintiff (Menik Rachmawati).

3.3. The Considerations and Decisions of Judges Related to the Problematic Transfer of Receivables Collection Rights in Decision Number 18/Pdt.G/2017/Pnkg

The primary role of Indonesian banking is to collect and disperse public funds to assist in the implementation of national development in order to improve equitable development and its outcomes, including economic growth and national stability, in the direction of improving the lives of many people. In order to maintain macroeconomic stability and promote national economic growth, banks must take a strategic step to improve policy coordination. Maintaining monetary stability without ensuring the financial system's stability would not do much to support long-term economic growth. As a result, banks must ensure that money continues circulating throughout the economy. Finding a quick solution to every issue brought on by the failed procedure of distributing monies to the community is imperative.

The problem that inevitably arises in banking is non-performing loans, and the last strategy to be taken by the Bank in dealing with non-performing loans is to take the case to court. If the debtor cannot complete the agreed performance or is considered in default, the Bank is forced to take legal action. Referring to Decision Number 18/Pdt.G/2017/Pnkg, the transfer is carried out in the principle of balance, which appears from the obligation to refer to decency, good faith, decency, and appropriateness in carrying out the rights and obligations arising from an agreement, where the transfer is made by an authentic deed of receivables transfer agreement (Cessie).

The judge has considered that in Decision Number 18/Pdt.G/2017/Pnkg, as for the form of exception submitted by the Defendant's Attorney in his Answer, which is:

A. Error in Persona

Hajjah Sri Wahyuningsih (Defendant) objected to the inclusion of the name Widow in the lawsuit of Menik Rachmawati (Plaintiff) where the identity / ID card of Hajjah Sri Wahyuningsih (Defendant) did not contain the name Widow.

In the judicial context, an error in persona can be interpreted as an error on the person who is filed as a defendant through a lawsuit. So if there is a mistake in writing the name of the Defendant, which results in the wrong person or mistake, then it can be categorized as an error in persona.

However, looking at the Deed of Credit Agreement No. 49 dated November 24, 2010, which states the name of the Defendant is Widow Hajjah Sri Wahyuningsih, no writing error results in the process of summoning parties and it is considered that Hajjah Sri Wahyuningsih (Defendant) knows and realizes that the writing of the name Hajjah Sri Wahyuningsih (Defendant) as in the credit agreement is correct, namely Widow Hajjah Sri Wahyuningsih, therefore the Error in Persona Exception must be rejected.

B. Plurium Litis Consortium

The reason why Hajjah Sri Wahyuningsih (Defendant) objected to the exclusion of PT Bank Danamon as a co-defendant, is because it was PT Bank Danamon that transferred the receivables (cessie) to Menik Rachmawati (Plaintiff).

A lawsuit for lack of parties can occur if the parties acting as plaintiffs or drawn as defendants are incomplete because there are still people who must act as plaintiffs or defendants.

However, the lawsuit is based on the Deed of Credit Agreement No. 49 dated November 24, 2010, between Hajjah Sri Wahyuningsih (Defendant) and PT Bank Danamon, where PT. Bank Danamon has transferred the receivables by cessie to Menik Rachmawati (Plaintiff) through Deed of Receivables Transfer Agreement / Cessie No. 23 Dated November 26, 2015; then all billing rights have passed to the new Creditor, namely Menik Rachmawati (Plaintiff) so that PT. Bank Danamon no longer has a legal relationship; therefore the Exception of Plurium Litis Consortium (Suit Lacking Parties) must be rejected.

C. The Plaintiff Has No Legal Standing

The reason why Hajjah Sri Wahyuningsih (Defendant) stated that Menik Rachmawati (Plaintiff) did not have Legal Standing was that Hajjah Sri Wahyuningsih (Defendant) felt that she had never entered into any legal action or agreement with Menik Rachmawati (Plaintiff) and had only entered into an agreement with PT Bank Danamon as stated in the Deed of Credit Agreement No. 49 dated November 24, 2010. 49 dated November 24, 2010, and also Hajjah Sri Wahyuningsih (Defendant) believes that based on Article 1313 of the Civil Code, which states that "An agreement is an act in which one or more people bind themselves to one or more other people" and Article 1340 of the Civil Code which states that "An agreement is only valid between the parties who make it," therefore, the one who is more appropriate to file a lawsuit for default is PT. Bank Danamon, Tbk, where in the lawsuit PT. Bank Danamon is omitted. The main element of a default lawsuit is that it must have an element of Legal Standing.

Not having Legal Standing is a form of Disqualification Exception, meaning that "the person acting as the Plaintiff is not the right person and cannot sue."

With the transfer of receivables to Menik Rachmawati (Plaintiff) based on the Deed of Assignment of Receivables/Cessie Agreement Number 23 Dated November 26, 2015, all billing rights on the receivables were transferred to Menik Rachmawati (Plaintiff) so that there was a Transfer of Legal Standing; therefore, the Exception must be rejected.

4. Conclusion

1. The regulation of the settlement of bad debts through the transfer of receivables collection rights through cessie is regulated in Article 613 of the Civil Code, where the transfer of receivables is carried out by making an authentic deed or deed underhand. With the deed of transfer of receivables, all rights attached to the receivables in the name are transferred from the old Creditor to the new Creditor. The transfer must be notified to the debtor to have legal effect.
2. The form of a dispute over the right to collect receivables (Cessie), among others, can be seen from decision No. 18/Pdt.G/2017/Pnkgw where Hajjah Sri Wahyuningsih (the Defendant), who has defaulted on her obligations as a debtor which was resolved by the Plaintiff filing a lawsuit for default or breach of promise against the Defendant for a credit agreement at the District Court.
3. Analysis of the considerations and decisions of judges related to the problematic transfer of receivable collection rights through cessie in decision number 18/Pdt. G/2017/Pnkgw in the judicial process found that due to the Plaintiff's exception stating error in persona, Plurium Litis Consortium and the Plaintiff not having legal standing, the judge thought that it was not valid because based on the Deed of Credit Agreement Number 49 dated November 24, 2010, the name of the Defendant was Widow Hajjah Sri Wahyuningsih and as has been clearly described based on the Deed of Transfer of Receivables Number 23 dated November 26, 2015, the collection rights have passed to Menik Rachmawati, so there is no lack of parties and the Plaintiff has legal standing.

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