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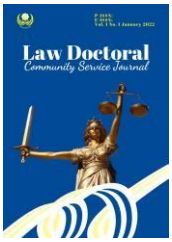

Transfer of Receivables to Third Parties through Cessie

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ABSTRACT

Cessie is a transfer of rights over intangible movable goods which are usually in the form of receivables on behalf of third parties, where a person sells his claim rights to another person. In activities at the cessie travel bank, it starts with the working capital needs of a company due to a breakdown in accounts receivable and receipts. So, to bridge the gap, a factoring business emerged in return for commission fees based on the cessie. The purpose of this study is to determine the form of transfer of receivables. This type of study uses a normative juridical research method that is analyzed descriptively. The results of this study can be concluded that Cessie is a term coined by doctrine, to refer to the act of submitting invoices on behalf of, as stipulated by Article 613 BW (burgelijk wetbook) which submission is carried out by making a deed. The deed of submission of invoices on behalf of is called a cessie deed.

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1. INTRODUCTION

From this business story, let's call him Joni (not his real name), an entrepreneur and a corruption fugitive from Indonesia. In short, in 2020, he was arrested in Malaysia and managed to escape to several countries. Mr. J was successfully captured and imprisoned for his involvement in the Bank Bali corruption scandal related to "cessie" (receivables rights). The author illustrates this mega banking scandal to serve as a lesson for the banking community, so that such issues do not occur again. Understandably, this scandal has implicated prominent figures, including the Governor of Bank Indonesia (BI), government officials, and politicians from the Golkar Party. The value of this cessie scandal is tremendous, amounting to Rp 3 trillion.

Thus, what is Cessie or receivables rights? Cessie refers to the transfer of rights over intangible movable assets (intangible goods), usually in the form of receivables in the name of a third party, where someone sells their receivables rights to another person. Specifically, in banking terms, cessie is the transfer of rights resulting in a change of creditors for certain reasons. It can be said that cessie is a legal product that underlies an agreement to transfer the rights of debt collection from one company (A) to another company (B) by transferring funds equal to the transferred receivables from company (B) to company (A). In essence, cessie means the replacement of an old creditor with a new creditor. However, A (the bank/creditor) transfers its debt to C by assigning or selling the debt to C, making C the rightful owner of the debt, while B becomes the debtor.

Quoting from the official page of the Directorate General of State Assets (DJKN) of the Ministry of Finance on Sunday, June 4, 2023, cessie or receivables rights emerge because credit agreements are equated with loan agreements or credit agreements (Susilo, 2023). Article 1313 of the Civil Code states that a credit agreement is an act by which one or more parties bind themselves to another person. In a credit agreement, a creditor has the right to claim from the debtor. Fundamentally, receivables rights can be secured by fiduciary collateral. Receivables (debts) can be assigned to a new creditor, and such transfer is commonly done through cessie.

Article 3, number 1 of Law Number 42 of 1999 concerning Fiduciary Collateral provides a definition of receivables (receivables rights)

as the right to receive payment. Receivables can be pledged with fiduciary collateral. Article 9, paragraph (1) explains that fiduciary collateral can be given for one or more units or types of goods, including receivables, whether existing at the time the collateral is granted or acquired later.

In summary, the author wants to explain that receivables rights can be transferred to a new creditor through cessie, as regulated in Article 613 of the Civil Code. In legal practice, cessie is carried out through an authentic deed (made in the presence of a public notary) or through a private agreement. It is rare to hear about the transfer (sale) of receivables rights being conducted through auctions. However, auction minutes are also considered authentic deeds.

The journey of cessie starts with the need for working capital in a company due to stalled receivables and income. To bridge this gap, the factoring business emerged, providing commission-based services based on cessie. Cessie is a term coined by doctrine to refer to the act of transferring receivables in the name of another person, as regulated by Article 613 of the Civil Code, where the transfer is made through a deed. The deed for the transfer of receivables in the name is called a cessie deed. However, since Article 613 of the Civil Code also regulates the "transfer of other intangible goods," people often fail to distinguish the use of the term cessie for the transfer of receivables in the name from the deed that transfers "other intangible goods."

The transfer of "other intangible goods" is indeed done through a deed, similar to the transfer of receivables in the name, but in doctrine, it is not referred to as a cessie deed. This distinction is necessary because if not differentiated, we can no longer say that cessie is completed in the sense that the cessie object has been transferred to the ownership of the cessionaries (the recipient/new creditor) by signing the cessie deed. Transferring shares as intangible goods through a share transfer deed, even though signed, does not transfer ownership rights to the buyer because a change of ownership in the share register is still required.

In Indonesia, as mentioned earlier, the regulation regarding the transfer of receivables in the name is governed by Article 613 of the Civil Code. However, the definition of cessie is not explicitly stated or elaborated in the legislation. This can be seen from Article 613, paragraph (1) of the Civil Code, which states: "The transfer of receivables in the name and other intangible goods shall be done by means of an authentic deed or a private agreement, through which the rights to those intangible goods are transferred to another person." Article 613 of the Civil Code mentions that the receivables referred to in this article are receivables or claims in the name. In a claim in the name, the debtor knows exactly who the creditor is. One characteristic of a claim in the name is that it does not have a physical form.

If a promissory note is created, it serves as evidence only. This is because any form of promissory note is not essential for a claim in the name. Thus, if a claim in the name is documented in the form of a promissory note, the physical delivery of the promissory note does not transfer the rights proven by the document.

To transfer a claim in the name, a deed for the transfer of receivables in the name, commonly referred to as a cessie deed in doctrine and jurisprudence, is required. Through cessie, ownership rights are transferred, and with the creation of the cessie deed, the transfer (levering) of the rights in the name is completed. The receivables referred to in Article 613 of the Civil Code are the right to claim arising from the legal relationship of borrowing and lending money from the credit facility provided by a bank as the creditor to its debtor. These receivables or claims arising from borrowing and lending money or from the provision of bank credit facilities can be assigned to a third party through cessie.

According to Prof. Dr. Kholidin, SH, M. Hum, CN, cessie is not technically considered a form of collateral, but in banking practice, it is included as one of the new forms of collateral. In the banking sector, cessie is regarded as a way to transfer collateral goods to settle certain debts, such as deposits, savings, and third-party claims. For example, a bank provides a loan to a customer (debtor) with a deposit certificate as collateral, accompanied by an authorization letter for withdrawal. If the debtor fails to repay the loan as agreed, the bank can liquidate the deposit certificate to settle the debtor's debt along with the interest.

Prof. Kholidin believes that treating cessie as a new form of collateral is not right, because a cessie is actually a transfer of bills, the procedure for which has been regulated by law. Yangin (2016) discuss about the legal analysis of the transfer of receivables (cessie) to third parties according to article 613 of the

civil code. Hamier (2022) discuss about the legal protection of debtors in the transfer of receivables (Cessie) to third parties without notification to debtors on household load credit (KPR). Padmasari (2012) discuss about legal protection for parties in the transfer of receivables (Cessie) through a notary deed. Tenritata (2022) discuss about legal certainty related to the transfer of receivables (Cessie) in the practice of home ownership credit judging from the civil code. The purpose of this research is to determine the forms of debt transfer.

2. RESEARCH METHOD

This research is normative legal research, specifically examining the transfer of receivables to third parties through a cessie. Because it is normative legal research, primary, secondary and tertiary legal materials are used, using a statutory approach. Legal material is analyzed using statutory interpretation, with a deductive thinking method.

3. RESULTS AND DISCUSSION

Cessie is a method of transferring debts and other intangible assets by creating a cessie agreement to transfer the rights to these assets to another person. This transfer has no effect on the debtor until it is notified to them or approved in writing or acknowledged by them. The legal source of cessie is Book II of the Civil Code, from Article 613 to Article 624.

The elements of cessie must be executed through an authentic deed or a private deed. In this case, the transfer of rights to these assets is made to another person. As for the nature of cessie, it is an accessory agreement, meaning that the old creditor is not eliminated, but rather the rights are transferred to a third party as a new creditor. The old debt is not eliminated but transferred to a third party as a new creditor. In cessie, the debtor is passive, and they are only informed about the transfer and the removal of the encumbrance can be transferred due to cessie, subrogation, inheritance, or other reasons. The term "cessi" refers to the legal act of transferring debt by the creditor and holder of the encumbrance to another party (Kholidin, 2021). Subrogation is the substitution of a creditor by a third party who pays off the debt of the creditor.

To fulfill the publicity requirements, the transfer of encumbrances must be registered, in accordance with Article 16 of the Mortgage Law, "if the encumbrance is transferred, it must be registered at the Land Office." Registration is done by making a note in the encumbrance register and the land register for the land used as collateral. Regarding the removal of the encumbrance, Article 18 specifies that the encumbrance can be removed due to the following reasons.

Cessie is the transfer of debt, which is essentially the replacement of the old creditor, referred to as the cedent, with a new creditor, referred to as the cessionary. This transfer must be executed through an authentic deed or a private deed, and it cannot be done orally or simply by transferring the debt. In order for the transfer to be effective against the debtor, the cessie deed must be officially notified to them (betekend). The debt is considered to have been transferred at the time the cessie deed is made, not at the time it is notified to the debtor. Subrogation, on the other hand, is regulated in Article 1400 of the Civil Code. It is stated in this article that subrogation is the replacement of rights by a third party who pays the creditor. Subrogation can occur through an agreement or as determined by law. Subrogation must be explicitly stated because it is different from debt release. The purpose of the third party's payment to the creditor is to replace the position of the old creditor, not to relieve the debtor of the obligation to repay the debt to the creditor.

Regarding the removal of the encumbrance, Article 18 specifies that the encumbrance can be removed due to the following reasons: first, the elimination of the guaranteed debt, and second, the release of the encumbrance by the creditor, as evidenced by a written statement regarding the execution of the relevant encumbrance rights to the grantor of the encumbrance. Third, the removal of the encumbrance based on a ranking determination by the Chairman of the District Court upon the request of the land purchaser that serves as collateral. And fourth, the removal of the rights to the land that is subject to the encumbrance.

The definition of the transfer of debts and other intangible assets is carried out by creating an authentic or private deed that transfers the rights to these assets to another person. This transfer has no effect on the debtor until it is notified to them or approved in writing or acknowledged by the new creditor, so that they can make payments to the new creditor. It should be understood that for the provision of cessie, a deed is always required in banking, and cessie only applies to the debtor after notification.

In terms of individuals (Persons) who are subjects of cessie: individuals or corporations. The parties who are subjects of cessie are as follows: the cedent, who is the creditor and transfers their claim rights, the cedent who is the debtor, and the cessionary, who is the third party receiving the transfer of the claim rights from the old creditor. As for the objects of cessie, they include debts in the name of someone and other intangible assets.

In cessie, the obligations are not eliminated but transferred to a third party as a new creditor. The Civil Code does not regulate sanctions for the parties involved. In the case of appointing a new debtor, it should be understood according to Article 1416 which states, "The renewal of a debt by appointing a new debtor to replace the old one can be done without the assistance of the first debtor."

According to Prof. Dr. Mariam Darus Badrulzaman, SH, FCBArb, if we pay close attention to novation, for example, we can see similarities between subrogation and assignment, which involve replacement or transfer. The difference is that in subrogation, the transfer does not extinguish the obligation, whereas in assignment, the transfer requires a deed, while novation does not. Assignment does not require the debtor's assistance, whereas novation with creditor replacement requires assistance (Badrulzaman, 2016: 134). Furthermore, in assignment, the main rights are transferred, while in novation, they are not. Assignment always occurs through agreements between the parties, and it can also happen due to various civil events, such as a sale and purchase agreement.

However, there is a prohibition in assignment that the recipient of the asset should not be given a deed of transfer or separation without specific authorization from the transferring party, and any announcements contrary to this provision are void.

For debtors, assignment has no impact. This is what distinguishes it from subrogation, where in assignment, the old debt does not disappear but is transferred to a third party as the new creditor, whereas in subrogation, the old debt is extinguished and then revived for the benefit of the new creditor.

The Bank Bali mega corruption scandal case is undoubtedly an important lesson for Bank Indonesia, especially, and the banking sector in general. The question arises because factors that have led to the prevalence of corruption practices and money laundering in a country and the difficulty in successfully combating money laundering are due to the strict bank secrecy regulated by the state, which is governed in Chapters VII and VIII, Articles 40 to 47 and 47A of Law No. 11 of 1998. According to Article 40, banks are obliged to keep customer information and their deposits confidential (Sjahdeni, 2019). However, this obligation of secrecy is not without exceptions. The obligation of secrecy is exempted in cases related to tax matters, settlement of debts assigned to the Debt Collection and Auction Body or the State Debt Collection Committee (BPULN/PUPN), court proceedings in criminal cases, civil cases between banks and their customers, and the exchange of information between banks.

The law also regulates the authorized parties to submit applications, grant permits, and provide information about customer finances in accordance with the aforementioned exceptions. These exceptions are of a limited nature. Therefore, the bank is not allowed, for any reason, to disclose information regarding customer finances and deposits. The number of exceptions can only be increased if additional exceptions are included in banking or other laws (Sjahdeni, 2019).

Lastly, in this discussion, the PPAT notary is expected to provide an understanding to the parties involved regarding the stages of executing assignment in a bank as a security agreement. Indonesian Law No. 2 of 2014, Article 1, Paragraph (1) further emphasizes that a notary is a public official authorized to create authentic deeds and possesses other powers as provided by law. Furthermore, in accordance with Article 1417 of the Civil Code, concerning the transfer of debt by a new debtor, as long as the bank does not explicitly state in its statement that it releases the old debtor and transfers the debt, no debt renewal (novation) occurs (Subekti & Tjitrosudibio, 2005). Therefore, according to Article 1381 of the Civil Code, the initial credit (transferred debt) does not become extinguished or terminated, which means that a credit agreement is not canceled because of the delegation; the old debtor remains liable for the repayment of the transferred debt, even though the debt has been transferred to a new debtor.

The act of debt assignment through the aforementioned name has been transferred to the new debtor. And the act of debt assignment through the aforementioned name or transfer must be executed in a separate deed, which is inseparable from the original credit agreement and its amendments, as well as all additional

agreements (accessories) made based on the principal agreement, which shall not become void.

The following are the stages of the process of transferring a claim through assignment of collateral:

First, the cedent provides a notice of debt assignment (cession) explaining that if the cessus fails to fulfill its financing obligations to the cedent by the specified date, the cessus will transfer the debt to a third party (cessionary). Second, the cedent and cessionary agree to sell and purchase the debt by creating a debt assignment agreement and selecting a mutually agreed notary. Third, the Notary prepares a Deed of Assignment of Receivables (Cession) by creating an authentic deed that is signed in advance between the Cedent and the Cessionaris, as stipulated in Article 613, Paragraph (1) of the Civil Code which states that the transfer of certain receivables held in a specific name and other intangible assets is carried out by creating an authentic deed signed by the party transferring the rights to those assets to another individual.

The validity of the cessie occurs after the process of creating the deed and the signing of the authentic deed or private deed in the presence of an authorized officer (Notary - PPAT). Once the transfer of property rights is agreed upon, from that moment on, the right to collect the receivables has been transferred from the previous creditor (Cedent) to the new creditor (Cessionaris). The cessie deed must include: (a) the transferred receivables, (b) the names of the parties (cedent, cessus, cessionaris), (c) statements from the cessionaris and cedent regarding the transfer of the right to collect, (d) the signatures of the cedent and cessionaris, and (e) the signature of the Notary. Furthermore, the cessie deed includes the obligations and rights of each cessionaris and cedent based on the agreed-upon clauses.

Fourth, after the authentic deed or private deed is prepared by the Notary, the Cessie deed must be notified to the party providing the loan (Cessus) in order for them to understand to whom they should make future payments, as stated in Article 613, Paragraph (2) of the Civil Code, which stipulates that there are no consequences for the party with debt before the notification or agreement in writing or acknowledgment is given to them.

The purpose of notifying the party providing the loan (Cessus) is to ensure that they understand to whom they are obligated to make payments. Officially, this notification must be made to the debtor (Cessus). This is because, without an official notification, the debtor may legally make the payment to the previous creditor (Cedent) upon the expiration of the payment deadline.

Fifth, the Cessionaris submits the receivable assignment agreement and all related documents to the local land office to register the transfer of rights to the debtor's debt collateral. The parties involved in the agreement are the old creditor or the first party acting as the Head of Branch of Bank X, and the new creditor as the successor, replacement, and lawful buyer, representing the second party or the buyer. The Receivable Assignment Agreement is subject to various provisions agreed upon and regulated by all parties involved in the sale and purchase agreement of the receivables, as an integration and inseparable component.

In the agreement, before the Public Officer (Notary), the parties state that the accuracy of their identities is based on the identification documents provided, and they take full responsibility for preparing the deed. The parties acknowledge that they understand and comprehend the content and structure of the deed. As a result of the receivable assignment agreement, from the effective date onward, all or any part of the receivables become the property and rights of the buyer of the receivables (cessionaris) based on the agreed-upon nominal value. To ensure the proper execution of the cessie, the cessie party must inform the cessus party (the debtor of the assigned receivables).

In the bank's published form, it is stated that cessie serves as collateral, in addition to other collaterals such as personal guarantees and pledges. The Deed containing the Receivable Assignment Agreement is handed over by the old creditor (cedent) to the new creditor (cessionaris), transferring all the rights and obligations of Bank X, including the transfer of the Certificate of Land Ownership as collateral for the debt repayment given by the debtor to the old creditor during the previous credit agreement.

After the documents are handed over to the Third Party (cessionaris), they fully possess the rights to the debt collateral. The next step taken by the Cessionaris is to bring the deed to the Land Office for registration, indicating the transfer of debt collateral based on the Receivable Assignment Agreement. In the event of disputes or disagreements regarding

the implementation of the receivable assignment agreement, the parties agree to resolve such differences through consultation and mutual agreement. However, if the dispute or disagreement cannot be resolved through consultation, the parties agree that within seven days from the date the difference or dispute arises, the matter shall be resolved through legal proceedings in the agreed-upon jurisdiction.

4. CONCLUSION

1. Cessie is the transfer of rights over intangible movable property, usually in the form of debt, to a third party, where an individual sells their right to collect to someone else. In banking activities, cessie starts from the need for working capital of a company due to the stagnation of debt collection and receipts. To bridge this gap, factoring business emerges, with a commission-based fee system based on cessie.
2. The results of this research can be concluded that cessie is a term created by doctrine to refer to the act of transferring a claim on behalf of another, as regulated by Article 613 of the Civil Code (Burgelijk Wetbook), which is done by creating a deed. The deed of transfer of claims on behalf of another is called a cessie deed.
3. In cessie, the obligation is not extinguished but transferred to a third party as the New Creditor, and the Civil Code does not specifically regulate the sanctions for the parties. Regarding the appointment of a new debtor, it must be understood in accordance with Article 1416, which states, "Renewal of debt with the appointment of a new debtor to replace the old one can be carried out without the assistance of the initial debtor."
4. There is a prohibition in cessie that the recipient of the goods must not be provided with a deed of transfer or separation without specific authorization from the transferring party, and any announcements contrary to this provision are void.

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