

Transfer Of Billing Rights To Third Parties In The Banking System

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Abstract

In the banking world, the implementation of Cessie is generally due to Old creditors requiring financing so that the operational implementation of their business continues to run. In the provision of bank credit should be made in a written form, and the bank must have confidence in the ability and ability of the debtor customer obtained from the results of both internal and external assessments , capabilities, both capital,as well as collateral and business prospects of the debtor customer. The implementation of cessie according to Article 613 of the Civil Code is carried out on receivables on behalf of the old creditor, to the new creditor on the debt of the debtor by making a cessie deed, either an authentic deed or a deed under the hand with the obligation to be notified to the debtor or in writing approved and recognized by the debtor. With legal consequences receivables switch from the old creditor to the new creditor.

Keywords: Legal System; Diversion; Cessie

1. INTRODUCTION

Factors that are very important for the development and progress of the bank as well as maintaining public trust one of them Capital, any creation of assets, in addition to the potential to generate profits also has the potential to cause risk. Usually capital can be used to maintain the possibility of risk of loss on assets and investment in assets, especially those from third party funds or the public. Increasing the role of assets as profit generators must be simultaneously accompanied by consideration of risks that may arise in order to protect the interests of fund owners. If the bank is already operating then the capital is one factor that is very important for business development and accommodate the risk of loss. Capital is defined as something that represents the interests of owners in a company. Based on Book Value, Capital is defined as net worth, which is the difference between the book value of assets minus the book value of liabilities.¹

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¹ Zainul Arifin, *Dasar-Dasar Manajemen Perbankan Syariah*. Jakarta: Alfabeta, 2002, p. 157 lihat juga Hamidi, Sabela Gayo, Ariman Sitompul, *Juridical Analysis on The Procurement Of Goods/Service Of The Government To Realize Good Governance (Research Studies In The Department Of Human Settlement and Layout Batam City)*. International Journal Of Research and Review, Vol. 8 No.1 ,2021,pp.75

At the beginning of the establishment, the capital of the bank was obtained from the founders and the shareholders. Shareholders place their capital in the bank in the hope of obtaining profits in the future. The source of capital from the shareholders also affects its position in the balance sheet. In the balance sheet, the source of capital is seen on the passive side of the bank, namely the capital and reserve accounts. The capital account comes from the deposits of the shareholders, while the reserve account is derived from the part of the profits that are not distributed to the shareholders, which is used for certain purposes such as for business expansion and to maintain liquidity due to doubtful credits or leading to default.²

In the civil code, from the past until now, the contract must contain elements of *pacta sunt servanda* which means that the promise is binding. In terms of how it is made in Roman law known 2 (two) kinds of contracts, namely: formal contracts, and informal contracts. Formal contracts are carried out in two ways, namely, in a sacred way, namely by reciting the contract using the sacred words *spondeo* which is believed that God recorded the contract. Then by performing a public ceremony, which symbolizes a contract that is carried out in front of the community.

In Indonesia, the Civil Code or so-called *Burgerlijk Wetboek* (abbreviated as BW) came into force since 1848 based on the principle of concordance. The main principles of contract law according to the Civil Code are as follows : freedom of contract, consensual principle, *Obligatoir* principle, and *Pacta Sunt Servanda* principle. In the making of a contract sometimes due to certain problems in the performance of a job or achievement as mentioned in the contract, the parties who make the contract agree to transfer the contract that has been made previously to other parties, one example is *Cessie*.

Arrangements regarding the transfer of receivables on behalf of regulated in Article 613 of the Civil Code. However, the definition of *cessie* is not stated and / or clearly spelled out in the legislation. This can be seen from Article 613 paragraph (1) of the Civil Code, which reads as follows: "the delivery of receivables in the name and other intangible material, is carried out by making an authentic deed or under the hand, with which the rights to the material are delegated to others." Article 613 of the Civil Code states that receivables regulated in Article 613 of the Civil Code are receivables or bills in the name.

In the bill on behalf, the debtor knows exactly who the creditor is. One of the characteristics that a bill in the name has is that the bill in the name has no form. When a loan is made, then the debt letter is only valid as evidence only. This is because the existence of debt securities in any form is

² Achmad Setiawan dan J Satrio, *Penjelasan Hukum tentang Cessie. Nasional Lembaga Legal Reform*. Jakarta: Nasional Lembaga Legal, 2001, pp. 1

not something that is important from a bill in the name. If so, it is in the form of a bill of lading. Based on the preliminary description above, the problems that will be described in this paper are related to how the transfer of collection rights to third parties in the banking system?

2. RESEARCH METHOD

The research method in this paper is carried out with a normative juridical approach, namely by analyzing problems through the approach of legal principles and knowing the legal norms contained in the law. The material used is the primary law, the binding legal material, contained in the Constitution of 1945, law - laws in the form of the Civil Code, The Book of laws, article 613 jo 584 of the Civil Code on the terms of the validity of an agreement, secondary legal materials in the form of books related to Narcotics Criminal Acts, articles, research results, reports and also brief legal materials, namely supporting legal materials that are basic primary legal materials, secondary legal materials such as general dictionaries, legal dictionaries, magazines, scientific journals, and materials outside the relevant field and can be used to complete documents .

3. RESULT AND ANALYSIS

Cessie means the transfer of rights resulting in a change of creditors. The basis for such a transfer of Rights is a certain commercial interest. In your case, the bank debtor needs to transfer the bills/receivables to the bank so that the bank debtor can carry out his debt payment obligations. In terms of the interests of the bank, cessie bank debtor bill transactions are necessary to ensure the implementation or fulfillment of debt payment obligations of the bank debtor in a timely manner and as appropriate. Thus, a cessie transaction in relation to a crediting transaction is an accessoir transaction or agreement (which follows the existence of the principal transaction or agreement). Legal aspects that need to be considered in a legitimate cessie transaction are the requirements for the creation of a cessie deed (following the terms of the validity of an agreement) and the notification to the debtor of the debtor bank (article 613 jo 584 of the Civil Code).

In practice, the Bank is of course willing that the credit it gives does not become problematic credit in the future. Therefore, before granting credit, banks must make a careful assessment of:³

1. Character
2. Capacity
3. Capital (capital)
4. Collateral
5. Business prospects of debtor Customers (condition of economy),

³ Munir Fuady. *Hukum Perkreditan Kontemporer*. Bandung: Citra Aditya Bakti, 1996, pp. 23.

important condition of the agreement is: the ability of the parties to make an agreement.

The definition of acting skills is the ability to perform legal acts, where acts that cause legal consequences for an adult, physically and spiritually healthy person are considered competent. This indicates that there is an ability or promise to pay the debt. As a debtor, all obligations required by the agreement must be carried out or fulfilled so as not to have an impact on unlawful acts. If the debtor inkar promise(default), then the creditor will make a legal effort to avoid bad debts, or overdue deposit obligations by the debtor.

In the bank credit agreement is an agreement based on the agreement or agreement between the bank and the prospective debtor in accordance with freedom of contract. In banking practice, in an effort to secure credit, credit agreements are generally written in written form and in standard agreements (standards contracts). The function of the credit agreement itself is as a principal agreement, meaning that the credit agreement is something that determines the null and void of other agreements that follow it. In addition, it also serves as evidence regarding 10 of the Civil Code Article 1320 on agreements. Limitations on the rights and obligations of both parties and serves as a guide for the bank in planning, implementing, organizing and supervising the granting of credit. If there is a problem of receivables in which the debtor has pledged, the bank will transfer the receivables (cessie) to a third party, after processing the requirements.

Thus the transfer of receivables (cessie) to third parties according to the Civil Code as it is known that cessie is a way of transferring receivables or bills, and rights arising from an agreement in the form of an authentic deed or under the hand can be transferred to other parties. So that the transfer of rights from contracts or receivables or what is often referred to as cessie is regulated and justified by the Civil Code and is regulated in Article 613 of the Civil Code. However, the rights arising from an unlawful act by another person, may not be transferred because it is contrary to public order. In order for cessie to be implemented, cessie must be notified to cessus (the debtor of the receivable on behalf of). In the model form issued by the bank, listed cessie as collateral among several other guarantees (liens, and liens).⁵

The term cessie is regulated and justified by the Civil Code and is provided for in Article 613 of the Civil Code. However, the rights arising from an unlawful act by another person, may not be transferred because it is contrary to public order. In order for cessie to be implemented, cessie must be established to cessus (the debtor of receivables on behalf of). In the model

⁵ I Gede Etha Prianjaya, "Pemberian Kredit Bank Dengan Jaminan Hak Guna Bangunan Yang Jangka Waktunya Telah Berakhir Sedangkan Perjanjian Kreditnya Belum Berakhir", Volume 2 No.01, Acta Comitatus Jurnal Hukum Kenoratifan Fakultas Hukum Universitas Udayana, 2017, pp. 128

form issued by the bank, listed cessie as collateral among several other guarantees (liens, and liens).

In relation to the transfer and rights arising from a contract, article 613 of the civil code determines that, the delivery of receivables in the name and other intangible material, is carried out by making an authentic deed or under the hand, by which the rights to the material are delegated to another person. Such surrender for the debtor has no effect, but after the surrender is notified to him or in writing approved and acknowledged. Submission of each receivable because the letter is carried with the submission of the letter; submission of each receivable because the letter is designated dilakukan with the submission of a letter accompanied by endorsements.

In Article 613 of the Civil Code, it states that “the delivery of receivables in the name and other intangible material, is carried out by making an authentic deed or under the hand, with which the rights to the material are delegated to another person”. Such submission for the debtor (debtor) has no effect, but after the submission is notified to him or in writing approved and acknowledged. The submission of each receivable due to the carrying letter is carried out with the submission of the letter, the submission of each receivable due to the designated letter is carried out with the submission of a letter accompanied by an endorsement. Elements that can be concluded under Article 613 of the Civil Code in an act of cessie, namely:⁶

1. Made authentic deed or deed under the hand.
2. The rights attached to the receivables in the name are transferred to the assignee.
3. Cessie only has legal effect on the debtor if it has been notified to him or in writing approved and acknowledged by him.

Because cessie is regulated in the second book of the Civil Code, the institution of cessie by law is included in the area of legal work of objects. This is reasonable considering cessie is a way of transferring rights, namely the right to receivables. However, because once a receivable Switch then of course the creditor also changed from the old creditor to the new creditor so that in terms of the replacement of the creditor cessie also tennasuk into the law of agreement so regulated also by the third book of the Civil Code.

Cessie or transfer of collection rights on the transfer of receivables can be viewed from 2 (two) aspects, namely :

1. As a legal institution of engagement, namely as a change of creditor (contract between creditors).
2. As part of the law of objects, namely as a way of transferring property rights.

⁶ Hassanayin Haikal, “Perlindungan Hukum Bagi Debitur Akibat Cessie Jaminan Yang dilakukan Oleh BPR Tanpa Ijin Debitur Sebelum Terjadinya Likuidasi”. *Dialogia Juridica*, Volume 10 Nomor 1, 2018,pp. 38

Although actually cessie (transfer of receivables) must be distinguished from Novation (debt renewal), delegation (transfer of debtor obligations), subrogation (payment by a third party) and beneficiary (contract for a third party). Juridically cessie is a transfer of receivables on behalf of the debtor (cessus) from the old creditor (cedent) to the new creditor (cessionaris), in a manner regulated by law, namely by making a cessic deed both authentic deed and deed under the hand and with the obligation of notification to the debtor, or in writing approved and recognized by the debtor. The elements that can be concluded based on Article 613 of the Civil Code in an act of cessie, namely first made an authentic deed under the hand, the second the rights attached to receivables in the name of transferred/ transferred. To the assignee, and thirdly that is, Cessie is only of legal effect to the debtor if it has been notified to him or in writing approved and acknowledged.⁷

In this cessie process, the act of surrender does not stand alone, the act is always a further consequence of a legal event, which obliges people to surrender something. The legal relationship that requires submission here is referred to as the obligatoir legal relationship, which can arise from agreements or from laws. Obligatoir legal relations in the cessie process include those arising from the agreement as they arise as they were concluded between the parties. We know an obligatoir agreement is an agreement that gives rise to rights and obligations between the parties.⁸ the event on which the surrender is based, which is called a civil event or rechtstitel, is an event that gives rise to engagements between two parties, where one is the creditor and the other is the debtor. So the Civil event (rechtstitel) is the obligatoir relationship on which cessie is based. In this case, the rechtstitel or civil event on which cessie is based is known as the sale and Purchase Agreement and transfer of receivables.⁸

In the delivery of receivables on behalf by means of cessie, there are three parties, namely Cedent as the old creditor who has a bill of receivables on behalf, then Cessionaris as the new creditor who receives the transfer of receivables on behalf and Cessus as the debtor in this case only as a party who receives notification or gives approval to the cessie agreement made between cedent and Cessionaris. Because Cessie is a form of delivery of receivables on behalf of, then for the delivery must be based on the basis of rights (Rechtstitel) which is a civil relationship underlying the transfer of

⁷ Subekti, *Hukum Perjanjian*. Jakarta: Intermassa, 1998, pp.71 lihat juga Ariman Sitompul, E-Procurement System in the Mechanism of Procurement of Goods and Service Electronically. International Asia of Law and Money Laundering, Vol. 1, No.1, 2020, pp 58

⁸ Widya Padmasari, "Perlindungan Hukum Bagi Para Pihak Dalam Pengalihan Piutang (Cessie) Melalui Akta Notaris". *Jurnal Hukum Kenotariatan*, Volume 2 Nomor 2 Agustus 2018, pp. 267 lihat juga Hamidi, S Gayo, A Sitompul. (2021). Juridical Analysis on The Procurement Of Goods/Service Of The Government To Realize Good Governance (Research Studies In The Department Of Human Settlement and Layout Batam City). International Journal Of Research and Review 8 (11).

rights. The base of the right occurs due to the existence of an obligatoir relationship or a relationship that transfers the right to the receivable. In general, the obligatoir relationship is in the form of a sale and purchase agreement for receivables or bills. Thus there are two legal acts in the delivery of receivables on behalf of the sale-purchase agreement which is the basis of rights and cessie agreement as a form of delivery of receivables on behalf of the agreement.⁹

Cessie is a legal act or contract that is real / real. What is meant by a real contract (Real) is a contract that is only considered to occur after the object that is the object of the contract is transferred to another party (the party who receives the transfer). Before the transfer is made, the contract is considered non-existent. In connection with this act of cessie, based on the principle of a real contract, the new cessie exists and is binding at the time the receivables are transferred.

Based on the principle of this real contract if someone undertakes to transfer his receivables in the future, even though such an agreement is already binding obligatoir article 1333 jo article 1334 of the Civil Code), but cessie has not occurred, although the receivables May at the time made already exist and already belong to the party who will transfer it.

Overall cessie transaction process, there are three kinds of legal relationships that occur, namely, as the old debt and receivable relationship between the old creditor with the debtor, the transfer of receivables between the old creditor with the new creditor. As well as the new debt-receivable relationship between the new creditor and the debtor. In Article 613 paragraph 2 of the Civil Code, there is a provision regarding the notification to cessus, the cessionaris gets power of attorney from cedent. The deed contains the following provision that the First party hereby authorizes the second party to notify anyone about this cessie including notifying by a letter of bailiff to anyone who owes money to the First party; on behalf of the First party, the second party shall be entitled to do everything necessary or required so that the receivables of the First party can be reversed into the name of the second party and accepted by the second party.¹⁰

Cessie must be made either authentic or under-handed deed. But the base of the rights of cessie, that is, there are bills that do not demand the base of the rights of the bill in writing, it could be that the bill occurs due to a legal act made orally. Written form, for example in the form of debt recognition or a promise to pay a debt. In Article 1385 of the Civil Code it is

⁹ Ahmad Budi Cahyono, "Cessie Sebagai Bentuk Pengalihan Piutang Atas Nama". *Lex Jurnalical*, Vol.2, NO.1,2004,pp.16

¹⁰ Anak Agung Putu Krisna dan I Made Udiana, 2016, "Pengaturan Pengalihan Piutang dari Klien Kepada Perusahaan Factor Dalam Kegiatan Anjak Piutang", Volumen 5 No.1 :23-31, Jurnal Magister Hukum Udayana Universitas Udayana, pp. 27

stated that the payment must be made to the creditor or to his proxy or a person appointed by the judge. But if the bill is in the form of a letter of acknowledgment of debt, if the debtor pays to the one who brought the letter, then the payment is valid.

The provision on cessie in Article 613 of the civil code determines on cessie against receivables. Thus, the existing mechanism in the Civil Code is if the object of transfer is already in the form of receivables. It is therefore not possible in principle if there is a transfer against the rights arising from a contract, whereby the contract itself is still not drawn up at all. Because in this case the receivables are still not there. Even so, in certain cases the outstanding receivables are quite feasible to be transferred.

4. CONCLUSION

The process of transferring collection rights to third parties in the banking system according to the Civil Code is called cessie, as it is known that cessie is a way of transferring receivables or bills, and rights arising from an agreement in the form of an authentic deed or under the hand can be transferred to other parties. So that the transfer of rights from contracts or receivables or what is often referred to as cessie is regulated and justified by the Civil Code and is regulated in Article 613 of the Civil Code. However, the rights arising from an unlawful act by another person, may not be transferred because it is contrary to public order. In order for cessie to be implemented, cessie must be notified to cessus (the debtor of the receivable on behalf of). In the model form issued by the bank, listed cessie as collateral among several other guarantees (liens, and liens).

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