



# Juridical analysis of the settlement of the transfer of receivables by Cessie Between UOB Bank and Linda Soetanto

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## ABSTRACT

The transfer of receivables by cessie between UOB Bank and Mrs. Linda still raises issues related to legal issues and the settlement of the cessie lawsuit. Legal Effects of Transfer of Receivables by Cessie Against Collateral that has been given Mortgage Rights Based on Court Decision No 370/Pdt.G/2019/PN Jkt.Pst and Civil Settlement of Transfer of Cessie Receivables in Court Based on Court Decision No 370/Pdt.G/2019/PN Jkt.Pst. Using normative legal research methods with qualitative analysis by using primary and secondary legal materials conducted using literature studies and through a case approach. The results of the study illustrate that UOB bank as a creditor has the legal power of proof of the legal event of a transfer of receivables in cessie to Chyntia as a third party and also, in this case, UOB bank as a creditor has the power of proof to Mrs. Linda Soetanto as a debtor related to the transfer of receivables. The plaintiff's lawsuit cannot be accepted because the formality of the lawsuit is not perfect, therefore all costs incurred in this case are charged to Mrs. Linda as the plaintiff for Rp. 1,041,000. The settlement regarding the transfer of receivables by cessie is carried out between Cyntia as the new creditor as well as the holder of Mrs. Linda's receivables, so everything regarding the settlement of Mrs. Linda's credit, Cyntia has the right and obligation to execute against the object of collateral belonging to Mrs. Linda.

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## 1. INTRODUCTION

The banking industry has an important role in the growth of the Indonesian economy as a financial intermediary (Wiguna & Viverita, 2021), which collects and distributes public funds and provides other services commonly performed by banks in payment traffic (Nagian & Goh, 2022). In addition, banks also maintain the stability of the value of money, encourage economic activity, and support the implementation of national development to increase equitable economic growth and national stability towards improving the welfare of the people throughout Indonesia (Bhegawati & Utama, 2020). The relationship between bank loan growth and economic growth is also influenced by the bank ownership variable (Kirikkaleli et al., 2022).

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 (Rahmadina, 2022). The

definition of credit is stated in the provisions of Article 1 number 11 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Basic Banking, stating that "Credit is the provision of money or bills that can be equated with it, based on an agreement or borrowing and lending agreement between a bank and another party that requires the borrower to repay his debt after a certain period of time with interest" (Atahiah & Karli, 2022). Credit, in general, is a loan in the form of money and/or other documents provided through an agreement with a term and interest (Cita et al., 2018). It is given mainly based on the debtor's integrity or personality that creates a feeling of confidence in the creditor that the debtor will fulfill his repayment obligations properly (Asian, 2020).

A debtor is a person who receives credit from a bank, and the terms of this credit are set out in an agreement between the bank, the creditor, and the customer. Banks are willing to grant credit to their customers as debtors when they see that the customer has fulfilled all the loan requirements, such as being clear about why they need the money and having something to pledge as collateral.

Credit agreements are one way to provide funds to customers who need them by fulfilling predetermined conditions. Credit agreement is also called the principal agreement (Mulyoto, 2012). In reality, credit agreements that occur between creditors and debtors often experience problems. Where the debtor has difficulty paying off the loan given in accordance with the contents of the debt agreement that has been agreed beforehand (Manurung, 2019).

The establishment of a receivables transfer institution through a cessie scheme ensures that the financing activities obtained by the debtor do not come to a sudden halt. Cessie is a method of rebranding receivables. Cessie has a dualistic nature, meaning that cessie can be viewed from two different angles, namely from the point of view of object law and from the point of view of contract law (Anisah et al., 2022). Cessie is a method of transferring and/or handing over receivables on behalf of as referred to above in Article 613 of the Civil Code. However, Cessie's words are not found in the laws in force in Indonesia, Cessie is only known from legal doctrines and jurisprudence (Pagatian et al., 2022; Dharsana & Kresnadjaja, 2023). Cessie or receivables rights emerge because credit agreements are equated with loan agreements or credit agreements (Susilo, 2018).

The change occurs due to a legal transaction, such as a sale and purchase agreement between two creditors. Instead of writing off the previous debts in cessie, a third party is added as a creditor (Sari, 2010). 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 (Krisna & Udiana., 2016). In a cessie, the party who transfers or submits is called a cedent, while the party who receives the transfer or delivery is called a cessionary, then the Debtor of the bill that is transferred or submitted is called a census (Budiono, 2010; Saputro & Prihatinah, 2022).

The debtor's consent is not necessary to replace the creditor. This is because, as long as the total amount and terms of repayment remain the same, the debtor does not really care to whom his obligations must be paid unless there is an agreement stating that the debtor must give prior permission before the creditor may transfer his receivables, then the debtor's consent is necessary so that the transfer can be carried out (J, 1999).

The previous study by Slamet et al., (2023), knowing and understanding the legal implications of transferring receivables (cessie) without notification to the debtor. Yangin, (2016) discuss about the legal analysis of the transfer of receivables (cessie) to third parties according to article 613 of the civil code. The study discovers the legal implications of transferring receivables (cessie) while this study analyzed the lawsuit by Mrs. Linda Soetanto against PT Bank UOB related to the issue about transferring receivables (cessie).

## 2. RESEARCH METHOD

This qualitative research uses normative legal research with a case approach method by examining cases related to the issue at hand which have become court decisions that have permanent legal force related to the transfer of receivables by cessie based on Court Decision No.

370/Pdt.G/2019/Pn Jkt.Pst. The technique of collecting legal materials uses literature studies (Marzuki, 2017).

### 3. RESULTS AND DISCUSSIONS

An authentic deed is made by an authorized public official that contains or authentically describes an action taken or a situation that has been seen or witnessed by the public official who did the deed (Setiyowati, 2021; Rafli, 2022). The case in the district court decision number 370/PDT.G.2019/PN JKT.PST began on 17th June 2019. The plaintiff, Mrs. Linda Soetanto, filed a lawsuit against PT Bank UOB Indonesia as the defendant and Notary Dr. Ir. Yohanes Willion S.E., S.H., M.M as a co-defendant, that on 3 August 2015, Mrs. Linda Soetanto and Bank UOB Indonesia entered into a Multi-Purpose Credit Facility Agreement for the Purchase of Property (KMG PP UOB and binding of Mortgage Rights before Notary Dr. Ir. Yohanes Wilion S.H., M.kn as stated in the Deed of Credit Agreement Number 8 jo. Deed of Granting Mortgage Rights Number 233/2015.

With a maximum loan value of Rp. 13,450,000,000.00 for a period of 10 years or 120 months from August 3, 2015 to August 3, 2025 with an interest rate of 9.99%, provision of 0.3%, an administration fee of 0.5% with the collateral of a plot of land and building with title in the form of Certificate of Title Number 3857/Kelapa Gading Barat, covering an area of 420 M<sup>2</sup> square meters registered in the name of Mrs. Linda Soetanto.

Prior to the late payment of installments, the plaintiff had submitted a credit restructuring request to the defendant from 2 March 2017 to 19 January 2018, including sending 3 debtor income declaration forms via E-mail, but all of the Credit Restructuring Request letters were never responded.

On 12 June 2018, the plaintiff made a cash deposit of Rp 25,000,000 to account number 5413000662. Then on 3 July 2018 the plaintiff transferred payment of the KMG PP UOB installment for Rp. 160,000,000 and on 4 July 2018 the plaintiff made a payment of Rp. 345,000,000 but the deposit was "refused" to be accepted by the defendant because the account had been blocked unilaterally and without any notice.

As a result of the refusal to pay installments of Rp. 505,000,000 by the defendant, the plaintiff then took the initiative to apply for credit repayment to the defendant Company on 11 July 2018, but it was not approved by the defendant through UOB letter Number 18/COL/7047 dated 17 July.

Based on the aforementioned, according to the plaintiff, the defendant has committed an unlawful act because it has deliberately blocked the existence of the Loan Account A/c. 5413000662, unilaterally and without any notice to the plaintiff, so that the plaintiff could not perform his obligations properly and this situation had been wrongfully exploited by the defendant so that the Credit Quality status of the plaintiff changed to "NPL (Non-performing Loan)", even though it was clear and obvious that the plaintiff had and was still in good faith to settle the KMG-PP UOB installment payment obligations and even requested credit repayment.

#### **Relationship between Transfer of Receivables by Cessie and Credit Agreement at the Bank**

Credit is a loan agreement between a bank and another party that requires the debtor to repay the debt after a certain period of time with interest, fees or profit sharing. Credit agreements do not have a general accepted form, usually what is included in the credit agreement regarding the parties to the credit agreement, the amount of credit, the purpose of granting credit, the amount of interest given, the amount of instalments that must be paid each month, the credit period, credit guarantee, other fees, conditions that must be met before funds are disbursed, the obligations of the debtor during the credit agreement, the rights of the bank as long as the credit has not been paid off, and also regarding the transfer of receivables if the debtor defaults (Djumhana, 2000)

Based on the credit agreement and general terms of credit agreement (SUPK) between UOB Bank and Mrs. Linda Soetanto, the credit agreement contains a clause related to the transfer of receivables to third parties. As stated in the credit agreement article 16 number 8 letters a, b, and c.

With this, the credit agreement between the creditor and the debtor has been transferred to a third party by cessie, following the provisions in the credit agreement article 16 number 8 letters a, b, and c, the transfer of receivables to a third party is agreed upon by the creditor and debtor and the implementation of the transfer is legally valid and binding on the plaintiff.

So that in this case, UOB bank as a creditor has the legal power of proof for the legal event of a transfer of receivables by cessie to a third party and also, in this case, UOB bank as a debtor has the power of proof to Mrs. Linda Soetanto as a debtor regarding the transfer of receivables agreed in the credit agreement, and if the transfer of receivables is agreed in the credit agreement, UOB bank as a creditor is obliged to notify the debtor regarding the transfer of receivables to a third party if the debtor defaults.

As evidence, the deed of transfer of receivables number 37 dated 12 July 2018 made before Emmy Halim S.H., M.Kn., Notary in Jakarta, the creditor in this case as the holder of the receivable rights on the deed of credit agreement number 8 dated 3 August 2015, made before Yohanes Willion, Notary in Jakarta, has transferred all the receivable rights to Chyntia as a third party or receiver of the receivable rights. And the actions taken by the creditor following the provisions of Article 16 paragraph 8 letters a, b, and c are valid because the agreement has been agreed upon by the creditor and debtor.

#### **Legal Effects of Transfer of Receivables by Cessie Against Collateral That Has Been Given Mortgage Rights Based on Court Decision No 370/Pdt.G/2019/PN Jkt.Pst**

In the case of transfer of receivables arising from a credit agreement cannot be separated from the transfer of the old creditor's rights to the new creditor. Therefore, in a credit agreement in order to protect the interests of creditors and to ensure repayment of the debtor's debt to the old creditor, the bank as the old creditor agrees to the submission of collateral by the debtor to the bank. The submission of collateral by the debtor to the bank is regulated in the credit agreement between the debtor and the creditor to guarantee the debts owed by the debtor to the bank if one day the debtor defaults on the bank.

This is a common thing required in credit agreements based on Article 1131 of the Civil Code, all property of the debtor, both movable and immovable, existing or new ones that will exist in the future, become dependents for all individual obligations. In this case, the bank as a creditor still has security for its debt, which includes all debtor property, but the bank's position does not take precedence over other creditors who also have bills to the debtor concerned.

If in certain debt and credit relationships the debtor defaults, the creditor is authorized to execute against the collateral that the debtor has pledged to the bank to settle the debt, with the right of precedence over other creditors. This right of control is called a land security right called a mortgage right.

Mortgage encumbrance is a process consisting of two stages, the granting stage carried out by a PPAT and the registration stage carried out by the head of the Land Office. This granting stage is preceded by a promise to grant a mortgage right as a guarantee for the repayment of certain debts, which is stated and is an integral part of the credit agreement concerned. In other words, the granting of a mortgage right must be an ancillary of the main agreement, namely the credit agreement.

If the credit agreement initiates the granting of mortgage rights, then in this case it is known as an accompanying agreement or an accessory agreement, namely an agreement to impose collateral on the debtor's property which is designated as repayment of his debt in the event of default and in this case the granting of mortgage rights is stated in the form of a formal deed called the Deed of Granting Mortgage Rights. Mortgage rights are granted to guarantee the repayment of creditors' receivables. In other words, mortgage rights are *accessoir* to certain receivables. Mortgage rights can be granted for one debt originating from several legal relationships (Article 3 paragraph (1) UUHT) The creditors' receivables are secured by one mortgage right to all creditors with one APHT charged on the same land.

In connection with the registration of the transfer of a mortgage right due to the transfer of a debt secured by a mortgage right to a third party, the land office will record the transfer in the land book of the mortgage rights and in the land book of the land right that is the object of the

mortgage rights and copy the record on the certificate of the mortgage rights and the certificate of the land right concerned. So, from the date of registration, the transfer of rights is valid and binding for third parties. In the event of a transfer of mortgage rights, this also gives Chyntia as the new creditor the right to execute the debtor's collateral. Thus, it can provide legal protection to the new creditor in this case as the legal holder of the Mortgage Rights as stipulated in the laws and regulations regarding Mortgage Rights instead of filing a lawsuit at the Jakarta Pus District Court.

### **Civil Settlement of Transfer of Cessie Receivables in Court Based on Court Decision No 370/Pdt.G/2019/PN Jkt.Pst**

Mrs. Linda as the debtor experienced a delay in payments to UOB Bank for 5 consecutive months due to financial difficulties faced by Mrs. Linda. That prior to the late payment of installment, the debtor had applied for credit restructuring to the creditor from March 2th 2017 to Januari 19th 2018, including by 3 times sending a revised debtor's income declaration by UOB bank staff e-mail but all of the letters requesting credit restructuring were never responded by the defendant company.

According to Mrs. Linda, UOB Bank deliberately blocked the loan account in the name of Mrs. Linda Soetanto unilaterally and without any notice to the debtor, so that the debtor could not perform his obligations properly and according to the debtor's statement this situation has been misused by UOB bank so that the credit quality status of the debtor changes to "NPL (Non-Performing Loan)". If the credit that has been channeled by the bank to the debtor is not paid back to the bank on time under the credit agreement, it causes the credit that has been channeled to become non-performing or problematic. In the end, the assets that have been pledged to the creditor will be executed or the credit collateral to recover the creditor's debt payments.

The number of loans that have a problem often called Non-Performing Loan (NPL) at a bank will result in disruption of the liquidity of the bank concerned. With non-performing loans, the bank is facing the risk of a bank business type of credit risk (default risk), namely the risk due to the inability of debtor customers to return the loans they receive from the bank along with interest under the predetermined period.

Non-performing loans (NPLs) in banking are a risk contained in every loan granted by the bank. This risk can be in the form of a situation where the credit cannot be returned on time. In dealing with non-performing loans, generally, the bank will try to save the non-performing loans. The rescue of non-performing loans by the bank will first look at each condition of the problematic credit.

According to UOB Bank's statement as the creditor, the debtor has defaulted by not making payments on installments as stated in the deed of credit agreement number 8 dated 3 August 2015 and the General Conditions of Credit Agreement (SUPK). UOB Bank can prove that since 8 August 2016 the defendant has sent the first warning letter number 16/COL/3890 dated 8 August 2016 regarding the first warning. Furthermore, for the plaintiff's non-payment of installments, the defendant has also sent a warning letter.

Concerning the warning letter dated 6 July 2017 Number 17/COL/7753 until the last notification letter number 18/COL/6902 dated 12 July 2018, the debtor has made late payments to the defendant for 11 (eleven) consecutive months or 180 days of delay.

And relation to restructuring in this case UOB Bank has approved the restructuring application with some facilities and relief provided by UOB Bank based on the restructuring decision dated 27 March 2018 and reply to note 17/NCOL/0596 dated 19 March 2018 and appointed letter Number 18/PSC/SPK/RDL/0101 dated 22 February 2018 with the following details: Facility Type: Multi-purpose Loan for Property Purchase; Plafond: Initial Rp13,450,000,000.00; Term: Valid from 04/08/2015 to 04/08/2025; Remaining loan: Rp11,520,791,692.00 ; Interest Rate at the time of Grace Period: 13,60%; Interest Rate After Grace Period: After the restructuring period ends, the interest rate is following the applicable provisions.

Restructure Approval: The credit period is extended by 3 years and 2 months starting from 04/08/2015 to 04/10/2028; Late fees amounting to Rp53,183,898.00 will be waived; Principal and interest arrears amounting to Rp710,698,000.00 will be paid in installments for 12 months starting from 04/04/2018 to 04/03/2019.

However, after the restructuring agreement was made, the debtor still did not carry out the restructuring obligations that had been carried out by the creditor. And with the approval of the credit restructuring requested by the plaintiff is evidence that the defendant had good faith to help resolve the credit problems experienced by the debtor at that time.

In the context of resolving this case, one of which is bad credit, can be done by applying the principle of *lex specialis derogate legi generali*. In this case, the special rule is the credit agreement, while the general rule is the Civil Code. This is because credit agreements are made specifically to regulate the legal relationship between creditors and debtors.

In addition to the law, civil law also recognizes the principle of *pacta sunt servanda*. This principle is the basis for an agreement to be valid or not because the agreement is the right of both parties or in other words, the agreement of both parties is the law for those who agree. Because a credit or financing agreement is an agreement made by the creditor and debtor, the judge must respect and not conflict with the agreement.

It is said that an agreement is a law for the parties who make it, justifying what they will do in the form of fulfillment of achievements between the two parties, provided that their agreement fulfills the conditions for the validity of the agreement in the Civil Code Article 1320, namely agreement, capability, a certain thing, and a halal causa.

UOB Bank's action in cessie was in accordance with the provisions in the credit agreement and SUPK. As explained in Article 18 paragraph 8 letters a, b, and c of the SUPK, the transfer of receivables to a third party is agreed upon by the plaintiff and the defendant and the implementation of the transfer is legally valid and binding on the plaintiff. UOB Bank as the old creditor no longer has rights and obligations in connection with the credit agreement and SUPK because the rights and obligations as inherent in the credit agreement have been transferred to other parties following the transfer of rights agreement number 37 dated 12 July 2018.

In Decision Number 370/Pdt.G/2019/PN.JKT.PST the Panel of Judges has sought peace between the parties through mediation as stipulated in Perma Number 1 of 2008 Jo Perma Number 1 of 2016 concerning Mediation Procedures in Court by appointing Acice Sendong, S.H., M.H., Judge of the Central Jakarta District Court as Mediator and based on the Mediator's report dated 15 October 2019 stated that Mediation had failed, then the trial continued with the reading of the Lawsuit by the Plaintiff as stated in the Lawsuit dated 17 June 2019.

After reading the considerations in Decision Number 462/Pdt.G/2018/Pn.Jkt.Pst, in essence, the formality of the lawsuit is not fulfilled due to a lack of parties so the verdict states that the plaintiff's lawsuit cannot be accepted.

Based on the considerations because the Plaintiff has withdrawn the appeal against Decision 462/Pdt.G/2018/Pn.Jkt.Pst and the decision is categorized as a lawsuit containing an *error in persona* defects, the Plaintiff has the right to resubmit the same lawsuit by improving the formality of the lawsuit so that the Plaintiff's lawsuit cannot be categorized as a premature lawsuit.

In Decision Number 462/Pdt.G/2018/PN.Jkt.Pst, it has been considered that there is a lack of parties that must be included to perfect the formality of the lawsuit. The third party must be included because of the transfer of the debtor's debt to Cynthia.

That is the case of the Plaintiff also included a third party as referred to in Decision Number 462/Pdt.G/2018/PN.Jkt.Pst, while the reason for the debtor stating that he did not know about the cessie (transfer of debt) was no longer reasonable because the debtor was aware of Decision Number 462/Pdt.G/2018/PN.Jkt.Pst.

Based on the above considerations, it is very reasonable to state that the Plaintiff's lawsuit lacks parties, so it is reasonable to declare the Plaintiff's lawsuit unacceptable (*Niet Onvankelijke Verklaard*). The judge's decision on this lawsuit states that the lawsuit cannot be accepted, so all costs incurred in this case are charged to the plaintiff for Rp. 1,041,000.

#### 4. CONCLUSION

The transfer of receivables made by UOB Bank by cessie does not result in the termination of the credit agreement made between UOB Bank as the old creditor and Mrs. Linda as the debtor, it only results in the transfer of collection rights or receivables of Mrs. Linda concerned (cedent) to Chyntia as a third party who then replaces the position of the old creditor (cessus) as the new creditor

(cessionaris), including the transfer of collateral owned by Mrs. Linda which is used to guarantee the repayment of her debt at UOB Bank.

With the transfer of the debtor's collateral due to cession, the new creditor, Chyntia, is obliged to register the transfer of the debtor's collateral with the collateral institution that binds the collateral. Registration of the transfer of mortgage rights is carried out by the new creditor at the land office in the jurisdiction where the object of the mortgage guarantee is located and registered, by submitting documents such as a written statement from the old and new mortgage holder creditors, that the mortgage rights have been transferred from the old to the new mortgage holder, the identity of the party transferring the receivables (old creditor), and the identity of the receiver of the receivables (new creditor) A copy of the deed of transfer of receivables evidencing the takeover of the mortgage holder due to cession which causes the transfer of secured receivables. Thus, it can provide legal protection to the new creditor, namely Chyntia.

The judge's decision on this lawsuit stated that the plaintiff's lawsuit number 370/PDT.G/2019/PN.JKT.PST could not be accepted, So, all costs incurred in this case were charged to the plaintiff for Rp. 1,041,000.

So that the credit agreement and deed of transfer of receivables that have been made are valid and valid, then the settlement regarding the transfer of receivables by cession, in this case, the settlement is carried out between Cyntia as the new creditor as well as the holder of Mrs. Linda's receivables, so everything regarding the settlement of Mrs. Linda's credit, Cyntia has the right and obligation to collect credit or receivables from the debtor and even execute the object of collateral belonging to Mrs. Linda.

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