

JURIDICAL ANALYSIS OF TRANSFER OF MORTGAGE RIGHTS GUARANTEE THROUGH CESSIE FROM THE PERSPECTIVE OF CONSUMER PROTECTION LAW

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Abstract

Disparities in financial capabilities in society have resulted in many credit agreements being entered into between consumers as debtors and banks as creditors or lenders, which are also accompanied by collateral in the form of mortgage rights which are used as collateral for payment of receivables by the debtor if he is unable to pay his debts to the creditor. The scope related to credit agreements is increasingly expanding when the model develops that credit agreements can be transferred to third parties through a cessie or receivable transfer agreement which of course poses risks for both creditors and debtors because in principle, when receivables are transferred to the cessie buyer, then the mortgage rights as collateral are also transferred, including in terms of claim rights by new creditors. Therefore, this issue is interesting to discuss from the perspective of debtor protection as consumers of banking institutions, especially regarding the procedures and requirements that need to be understood regarding the transfer of mortgage collateral through a cessie or receivable transfer agreement. Apart from that, debtors also need to know what legal remedies can be submitted if the credit agreement or receivable transfer procedure causes losses for the debtor. In this research, the author uses a normative juridical research method using literature study and a legal approach. The results of the research show that based on the Consumer Protection Law and Financial Services Authority regulation, the Debtor as a consumer has the right to know clear and accurate information regarding the procedures and requirements of credit agreements including receivable transfer or cessie agreements and the legal consequences for the mortgage rights which he uses as collateral, including filing a complaint to Otoritas Jasa Keuangan. Apart from that, in essence, OJK Regulations mandate the filing of non-litigation legal remedies as the first effort in resolving the problem of losses experienced by debtors. However, if this is not achieved, then debtors can file legal action for litigation. The government needs to aggressively carry out outreach regarding all applicable regulations regarding credit agreements.

Keywords: Consumer Protection, Debtor, Cessie, Mortgage Right

INTRODUCTION

In daily life, many individuals still struggle to meet their basic needs, such as clothing, food, and shelter. One of the main factors is the disparity in individuals' financial capabilities. People with weak financial conditions often face difficulties in securing housing and meeting their essential needs. One solution to address this problem is through the practice of borrowing and lending. This concept is regulated by Article 1754 of the Civil Code, which states that borrowing and lending is an agreement where one party provides a certain amount of goods to another party with the condition that the second party will return the same amount and condition of goods. Therefore, in the eyes of the community, the practice of borrowing money has become essential to support economic activities and improve living standards (Bahsan, 2020).

According to Wirjono Prodjodikoro, a money lending agreement has a concrete implication, as reflected in the phrase "the first party transfers funds to another party," rather than "commits to transferring funds" (Prodjodikoro, 2011). This indicates that an agreement is only formed after both parties have come to an agreement and the goods or money have been handed over. The parties involved in a lending transaction are the lender (creditor) and the borrower (debtor). The debtor is responsible for repaying the debt to the creditor. Each party has rights and obligations; for example, the borrower becomes the owner of the borrowed goods or money, and if the goods are damaged, it remains their responsibility according to Article 1755 of the Civil Code. Many services are now available that offer financial assistance within local communities. One such service is financial institutions like banks, which aim to support national development projects, with the goals of enhancing development equity and outcomes, economic growth, and national stability, to improve the welfare of the broader community (Otoritas Jasa Keuangan Republik Indonesia, 2024). One form of assistance offered by banks is credit, which involves the provision of funds or claims based on a lending agreement between the bank and another party. The debtor is obligated to repay the loan within a specified period, along with interest payments as regulated by law. This provision of credit helps meet various financial needs of the community, ranging from daily consumption needs and home purchases on credit to working capital and business development, among other things.

Before gaining access to credit, prospective debtors typically need to meet certain requirements set by the financial institution, one of which is providing collateral. The purpose of collateral is to give the financial institution the flexibility to recover payments through the pledged assets if the debtor fails to fulfill their obligations or defaults on the loan as stipulated in the contract. Therefore, every credit transaction must be documented through an agreement between the creditor and the debtor. Collateral can take the form of rights to specific assets, giving the creditor a priority position, such as liens, fiduciary rights, mortgages, and hypothecations. This means the holders of these securities have a preferential position in debt repayment, known as Preferential Rights. For debtors pledging rights to property such as land ownership, building usage rights, cultivation rights, and usage rights, these can be linked to security rights according to Article 1 paragraph 1 of Law Number 4 of 1996 on Land and Related Objects. The security agreement is not standalone but part of another agreement known as the principal agreement. The principal agreement is usually a debt or credit agreement that creates the debt secured by the security rights. Thus, the security agreement can be considered an accessory agreement related to the principal agreement.

Banks often require quick access to fresh funds to sustain their operations. To streamline cash flow, banks can sell their receivables to other parties whenever necessary. These receivables are typically sold at a price below their nominal value, and the new purchaser will then collect the full nominal value from the debtor (Suharnoko & Hartati, 2006). One reason banks transfer receivables is to reduce the risks associated with being a creditor, particularly when dealing with non-performing loans. This helps maintain the bank's financial stability. The process of transferring receivables from the original creditor to a new creditor is known as *cessie*, where the new creditor has the right to collect payments from the debtor. Although in principle, receivables clearly indicate the creditor entitled to receive payments, this information does not always need to be in written form (Setiawan & Satrio, 2010).

According to Rachmad Setiawan and J. Satrio, the process of transferring receivables and other intangible assets is fundamentally similar, involving the use of valid documents, whether an authentic deed or a private deed (Setiawan & Satrio, 2010). The difference lies in the transfer of receivables, which uses a *Cessie Deed*. With the signing of the *Cessie Deed*, ownership of the receivables and their guarantees is transferred directly. However, for the transfer of other intangible assets, using a *Cessie Deed* is not appropriate because the ownership of these assets does not transfer directly and requires additional steps for full ownership transfer before it can be registered. This view aligns with Article 613 of the Civil Code, which stipulates that the transfer of receivables requires a written document, whether an authentic deed or a private agreement, to establish ownership of the receivables and determine the

party responsible for debt repayment. Although the written document does not always need to specify the creditor's name, the parties involved must be aware of each other's identities to ensure that the debt can be collected from the obligated party as per the agreement. The transfer of receivables arising from credit agreements or loan systems is inseparable from the transfer of the old creditor's rights over the collateral, which is part of the debt repayment guarantee process to the new creditor.

In the case examined in this study, there was a credit agreement between the debtor, PT. Bank Danamon Indonesia, and the creditor, Afrizal Adin, amounting to Rp. 180,000,000, as well as a home loan of Rp. 230,000,000 with the wife of Afrizal Adin's house serving as collateral. The repayment of the credit was made through debit payment, where the creditor made payments to the defendant's account but they were not debited by the defendant. The defendant blocked the loan payment account and was considered by the plaintiff to be acting in bad faith, resulting in the plaintiff being blacklisted by Bank Indonesia. This indirectly rendered the plaintiff unable to make installment payments, despite having paid for 3 years. Subsequently, the defendant transferred the debt, doubling the original amount. In the transfer of receivables to a third party through *cessie*, as regulated by Article 613 of the Civil Code and commonly used by banking institutions, it must be executed in the form of an authentic deed or private agreement. It is mandatory to notify the debtor (*cessus*) in writing and obtain their acknowledgment and consent, and this mechanism applies only to existing receivables. Essentially, in the *cessie* process, the new creditor (*cessionary*) is required to inform the debtor of the transfer of receivables. If the debtor makes a payment to the old creditor without being notified, such payment is considered valid. *Cessie* does not relieve the debtor of their obligation towards the debt, but rather transfers the rights of the old creditor to the new one. Notification of the transfer of receivables is carried out to comply with Article 613 paragraph (2) of the Civil Code.

The issue of protecting banking customers remains a challenge that has yet to be fully addressed in the national banking system to date. Therefore, consumer protection and empowerment receive special attention as commitments from Bank Indonesia and all banking institutions. The primary goal of these efforts is to place consumers or customers on equal footing with banks, demonstrating awareness of the importance of safeguarding the rights and interests of customers in every banking transaction (Setiawan & Satrio, 2010). This is in line with the theory of legal protection according to Philipus M. Hadjon, which states that legal protection for the people can be defined as actions taken by the government which have two dimensions, namely preventive and repressive. Preventive legal protection is protection provided by the government aimed at taking preventive steps before a legal violation occurs. This approach is reflected in the statutory regulatory framework which is designed to anticipate potential violations and provide guidance or sanctions in carrying out obligations which are based on written statutory regulations. Meanwhile, repressive legal protection refers to law enforcement steps taken as final action after a dispute or violation of the law occurs. This involves applying sanctions such as fines, imprisonment, or additional penalties to individuals or groups who have committed violations. Repressive legal protection can be provided as long as there is legal action submitted by the aggrieved party (Phillipus M. Hadjon, 2007).

Therefore, legal protection for customers as consumers of banking services should receive special attention and should not be overlooked including those related to the application procedures to obtain the form of legal protection. In the context of the banking world, customers play a very significant role, and the sustainability of banking activities depends heavily on the participation and trust of the community or customers themselves. Therefore, the importance of providing legal protection to customers as consumers is a strategic step in maintaining fairness and security in every banking transaction. In today's era, consumer protection has become a subject of more serious attention, as evidenced by the enactment of specific legislation addressing this issue, namely Law No. 8 of 1999 concerning Consumer Protection. However, caution is still required in determining responsibility for negligence or errors that may occur in bank management or administration, so that bank customers do not suffer undue losses (Setiawan & Satrio, 2010).

An interesting issue for further analysis is how creditors can transfer or receive receivables through *cessie*. This study aims to provide a clearer explanation of the rights held by debtors in this transfer process, particularly in their capacity as consumers within financing companies. In-depth analysis is needed regarding the implementation of *cessie*, the transition of creditors from old to new, especially in the context of collateral rights, as well as the legality and strategies that debtors need to undertake to ensure their obligations are not affected by the risks of receivable transfer. Therefore, based on the outlined background, the author is interested in further exploring in this research how consumer legal protection extends to debtors regarding the transfer of collateral rights through *cessie* and how the handling process of losses arising from *cessie* can mitigate potential detrimental impacts on consumer rights.

RESEARCH METHOD

This research employs a normative juridical method, focusing on analyzing positive legal rules (Ibrahim, 2013). Normative law involves a series of steps to identify and discover legal rules, legal principles, and legal doctrines to answer the legal problems being studied, as stated by Peter Mahmud Marzuki (Marzuki, 2009). This research has an analytical descriptive nature. This is because this research aims to describe and provide an overview of existing legal facts, then analyze the applicable laws and regulations, and relate them to relevant legal theories (Matheus & Gunadi, 2024). The approach applied in this research is a statutory approach, which is carried out by collecting and reviewing statutory regulations relevant to the research topic. The data used in this research is secondary data obtained through literature study (Marzuki, 2009). Data was collected from various sources such as applicable laws and regulations, legal textbooks, legal research results, legal dictionaries, legal journals, the Big Indonesian Dictionary, and legal dictionaries. The materials for writing this research were obtained through literature study, so in this research the author used secondary data which includes primary, secondary and tertiary legal materials.

RESULTS AND DISCUSSION

Transfer of Mortgage Guarantee Through Cessie

Article 1 paragraph 1 of the Consumer Protection Law outlines that consumer protection involves all actions that ensure legal certainty in providing protection to consumers, with the aim of ensuring that society is protected from the consumption or use of products, goods, and services that may threaten safety and health (Widiarty, 2016). Meanwhile, Article 2 of the Consumer Protection Law regulates the principles of consumer protection, which include benefits, fairness, balance, security, consumer safety, and legal certainty. The basic principle of legal protection for consumers fundamentally involves protecting their rights.

Therefore, there are three fundamental rights that must be ensured in consumer protection, namely the right to prevent consumers from losses, both personal and financial; the right to obtain goods and/or services at a fair price; and the right to obtain a fair resolution to the issues they face (Barkatullah, 2016). The state has a significant responsibility in achieving the goal of legal protection for consumers. This includes the development and implementation of effective legal protection policies. One way to achieve this is by creating a healthy business environment where businesses and consumers can interact fairly and transparently. Additionally, it is important to develop specialized legal protection institutions for consumers, which can help and protection in cases involving violations of consumer rights. Thus, the state plays a central role in ensuring that consumer rights are respected and effectively protected (Auli, 2022).

Violations of Law Number 8 of 1999 concerning Consumer Protection against Standardized Agreements are serious issues that can threaten consumer rights in Indonesia. The law is designed to protect consumers from unethical and detrimental business practices, especially in the context of standardized agreements. Legal risks can arise from violations of consumer protection laws. Some companies may violate consumer protection provisions, such as not providing clear information about interest rates or associated fees, or not providing adequate protection to consumers experiencing financial difficulties. This can result in legal claims against lenders and significant financial losses. Therefore, as an effort to obtain legal protection in the credit borrowing process with banks, it is important for consumers to understand and be aware of the procedures for transferring debt against collateral.

Essentially, to be used as collateral with a burden on land rights, including Mortgage Rights, the object in question must meet the requirements set forth in the Mortgage Law. The Mortgage Law also allows land, along with buildings or plants on it, or just the land itself, to be encumbered. Furthermore, the Mortgage Law expands the types of land rights that can be used as debt collateral beyond those specified in Article 4 paragraph (1). Essentially, the granting of Mortgage Rights must be done through an agreement, which must meet the legal requirements of an agreement as regulated in Article 1320 of the Civil Code. One of these requirements is the capacity to enter into an agreement. Capacity to act is closely related to legal competence, where capacity involves the ability to perform legal actions, and competence relates to the legal capacity of a legal subject to carry out such legal actions or acts (Muljadi & Widjaja, 2008).

The Mortgage Agreement relates to the authority of the Mortgage Grantor to take legal action against the Mortgaged Property. The Mortgage Grantor is the landowner who agrees to encumber the land with Mortgage Rights to guarantee a certain amount of debt. Therefore, only the landowner can be the Mortgage Grantor. Banks often request land rights as collateral because land is easy to sell, its value keeps increasing, it has clear ownership evidence, it's hard to conceal, and it can be encumbered

with Mortgage Rights that provide privileges to creditors. Therefore, to ensure legal protection for the borrower as the original landowner, the borrower needs to know that encumbering Mortgage Rights to the creditor must meet the requirements and be done by the applicable law (Sutendi, 2009).

The establishment of mortgage rights is evidenced by the deed of mortgage. Mortgage holders do not have specific requirements; they can be individuals, legal entities, foreigners, or foreign legal entities operating in Indonesia or abroad, as long as the credit is used for development purposes in the territory of the Republic of Indonesia. The process of imposing Mortgage Rights is carried out in two stages: the granting of Mortgage Rights stage, done through a written agreement and documented in the Deed of Mortgage before a Land Deed Official, and the registration stage of Mortgage Rights at the Land Office (Usman, 2008). According to Article 10 paragraph (2) of the Mortgage Law, the granting of Mortgage Rights must be attended by the grantor and the Mortgage Rights holder, as well as two witnesses. This process is carried out by preparing the Deed of Mortgage drafted by the Land Deed Official according to applicable laws and regulations. The Deed of Mortgage prepared by the Land Deed Official is authentic, as explained in the General Explanation number 7 of the Mortgage Law. Additionally, Article 11 paragraph (1) of the Mortgage Law stipulates various things that must be included in the Deed of Mortgage, namely (Sutendi, 2009):

- a. The name and identity of the grantor and the Mortgage Rights holder.
- b. The parties' residence is mentioned in paragraph a, and if there are those residing outside Indonesia, then the choice of residence in Indonesia must also be stated. Clear designation of the debt or debts guaranteed for settlement with the Mortgage Rights must also include the name and identity of the related debtor.
- c. Clear description of the object of the Mortgage Rights.

Next, the Deed of Granting Mortgage Rights and the application form for granting Mortgage Rights are submitted to the National Land Agency through the land registration section for the issuance of the Mortgage Rights certificate by the National Land Agency. Usually, the process of encumbering Mortgage Rights on land begins with the main agreement, namely the loan or credit agreement. The stages that need to be carried out in the implementation of the credit agreement, also known as the credit deed, at the Land Deed Official include:

- a. The bank first sends a request to the local Notary-Land Deed Official to prepare and compile all deeds and documents required in the preparation of the Credit Agreement;
- b. After receiving the request and necessary documents, the Notary promptly prepares the deed and checks the ownership certificate used as collateral for the loan at the local National Land Agency office;
- c. When the results of the check from the National Land Agency office are available and the deeds requested by the bank have been prepared by the Notary-Land Deed Official, the Notary must inform the bank to proceed with the loan agreement by scheduling the time for the signing of the credit agreement by the debtor and creditor in the presence of the Notary-Land Deed Official.
- d. According to the agreed upon date, day, and time, both parties must be present before the Notary-Land Deed Official to execute the credit agreement. The stages that must be carried out in the credit agreement are as follows:
 1. Before signing the deed, the Notary must read and explain its contents and purposes to the parties involved.
 2. After the parties declare that they understand and agree to the contents of the deed, the deed is signed by the parties, two witnesses, and the Notary-Land Deed Official. Once the deeds are signed, the Notary-Land Deed Official will issue copies and register the Mortgage at the local BPN office.

The imposition of the Mortgage has two main differences. First, the imposition that can be directly made through the Deed of Mortgage if the certificate is already in the name of the debtor or the grantor of the Mortgage. Second, the imposition that cannot be directly made through the Deed of Mortgage Rights requires a Power of Attorney for Imposing Mortgage Rights first. The process of imposing the Mortgage is determined by the fulfillment of procedures that include two stages, namely (Badruzaman, 2004):

- a. Stage of Granting Mortgage Rights
In the context of implementing the Mortgage Right, the initial step that must be taken by the borrowing party is to submit official documents to the financial institution indicating ownership or rights of use over the property, such as Ownership Rights, Right to Cultivate, Right to Build, or Right to Use land owned by the state to be subject to the Mortgage. These documents can be owned by the borrowing party or by another designated party.
- b. Stage of Registration Mortgage Rights

The registration of Mortgage Rights, as regulated in Article 13 paragraph (1) of the Mortgage Law, must be officially conducted at the Land Office. Before the registration process, there are requirements that must be fulfilled within seven days, as well as applicable fees for the registration or placement of the Mortgage Rights as follows:

1. Original certificate;
2. Deed of Granting Mortgage Rights;
3. A duplicate of the Deed of Granting Mortgage Rights signed by the relevant Land Deed Official is intended to be certified as a copy by the authorized authority for the process of issuing the Mortgage Certificate;
4. A copy of the official identity of the Grantor of Mortgage Rights (debtor) such as ID card or official documents of establishment of a legal entity, the Receiver of Mortgage Rights (creditor), and/or their authorized representative, which has been authenticated for authenticity by the officer at the service counter.
5. The Power of Attorney document for Imposing Mortgage Rights if the Grantor of Mortgage Rights performs the transfer through power of attorney.

The transfer process of mortgage rights must be carried out by the new creditor at the land office in the area where the mortgaged property is located, using documents relevant to the credit transfer. These documents include the identities of the parties involved in the transfer (previous creditor and new creditor), the Deed of Assignment of Receivables, and documents of the debtor previously under the control of the previous creditor. The land office will register the transfer of mortgage rights by recording it in the mortgage book and related books, and replicate these records in the mortgage certificate and land certificate concerned (Padmasari, 2018). The transfer of new mortgage rights becomes valid and binding on the new creditor once it is recorded in the land book. The recording process is carried out on the seventh day after the necessary documents for transferring the mortgage rights are received in full. However, if the seventh day falls on a holiday, the recording will be done on the next working day. There is no need to remove the old mortgage record before registering the new mortgage rights through cessie. Cessie indicates the repayment of the debtor's debt to the old creditor, but the debt remains valid with the new creditor.

Therefore, the debtor's debt has not been fully settled, and new recording can be done when the debt is completely paid off. Additionally, the new creditor is required to inform the National Land Agency about the transfer of mortgage rights from the old creditor in their name (Padmasari, 2018). In theory, obtaining ownership of a property can only be done through several specific ways, including possession, attachment, expiration, inheritance according to applicable law, designation, or transfer based on specific legal events is one way to transfer ownership rights. The process of transferring debt, involving the party giving (Cedent), the party receiving (Cessionary), and the related debtor (Cessus), is done through the creation of authentic deeds, registration, or by other lawful means according to applicable regulations (Budiono, 2010). With the cessie scheme, the legal consequences are as follows:

- a. The debt transfers from the cedent to the cessionary;
- b. After the cessie process occurs, the position of the cessionary will take over the position of the cedent, so that all rights previously held by the cedent against the cessus can be fully utilized by the cessionary.

The debt transfer process in cessie grants authority to the recipient of the cessie, usually referred to as the cessionary, as the new creditor to the debtor or cessus. As a result, this new creditor has the right to take legal action against the debtor.

Debtor's Legal Protection for Transfer of Mortgage Collateral Through Cessie

Cessie is one way to acquire ownership rights. Transfer in the process of cessie involves the transfer of claims in the name from the cedent to the cessionary. It has been explained that a claim in the name refers to a claim or receivable clearly in the creditor's name (in this case, if cessie has not been performed, the claim or receivable is still in the old creditor's name). A claim in the name clearly indicates to whom the debt should be paid. In the cessie process, the act of transfer does not stand alone; it is always a further consequence of a legal event that obliges someone to transfer something.

The legal relationship that necessitates the transfer here is called an obligatory legal relationship, which can arise from either an agreement or the law. The obligatory legal relationship in the cessie process includes those arising from agreements because they are agreed upon between the parties. We know that an obligatory agreement is one that creates rights and obligations between the parties. The event that underlies the transfer, called a civil event or *rechtstitel*, is an event that creates obligations between two parties, where one party acts as the creditor and the other as the debtor. Thus, the civil event (*rechtstitel*) is the obligatory relationship that underpins cessie (Setiawan & Satrio, 2010).

Regarding cessie, it essentially means an agreement or obligation because cessie is a legal relationship that occurs due to the consent or agreement of the parties involved, a relationship that gives rise to legal consequences, namely rights and obligations. This means that a lawfully made cessie binds the parties as if it were law, and this obligation only applies to the parties concerned in the cessie agreement. Cessie is created to transfer the right to a claim, so after cessie is made and agreed upon by the parties, by law, the ownership rights to the movable property in the form of receivables in the name and other intangible property automatically transfer from the original creditor to the new creditor (Iriawan, 2005). Therefore, as consumers, debtors have the right to receive legal protection if the process of transferring the collateral rights on their debt causes them harm. Credit agreements and related institutions are regulated by the Financial Services Authority, which acts as an extension of the government in overseeing financial activities in Indonesia.

Speaking of consumer protection, the definition of consumer protection is explicitly formulated in Article 1, Number (4) of the Financial Services Authority Regulation Number 6/POJK.07/2022, as amended by POJK Number 22 of 2023 on Consumer Protection in the Financial Services Sector, which states that:

“Consumer and Community Protection refers to efforts to provide knowledge and understanding of the products and/or services of Financial Service Providers that will be used or utilized by consumers and/or the community, and efforts to provide legal certainty to protect consumers in fulfilling their rights and obligations in the financial services sector”.

Therefore, banks are responsible for providing legal protection to customers in the form of information services as further detailed in Article 7 of the Financial Services Authority Regulation on Consumer Protection in the Financial Services Sector, namely:

1. Financial Service Providers must provide information about products and/or services that is clear, accurate, correct, easily accessible, and not potentially misleading to consumers.
2. Financial Service Providers must use simple terms, phrases, and/or sentences in Indonesian that are easily understood by consumers in every product and/or service information document.
3. Financial Service Providers must use letters, writing, symbols, diagrams, and signs clearly legible in the documents referred to in paragraph (1).
4. Financial Service Providers must explain terms, phrases, sentences, and/or symbols, diagrams, and signs that are not understood by consumers in the documents referred to in paragraph (1).
5. Suppose the products and/or services referred to in paragraph (1) will be used by prospective customers and/or customers from foreign countries. In that case, documents regarding the products and/or services must be in Indonesian and accompanied by a foreign language.
6. Further provisions regarding the provision of information will be regulated by the Financial Services Authority.

Therefore, it is not fair to consumers if consumer interests are unbalanced and diminished. Based on this, it can be concluded that in credit agreements, the position of the debtor or customer is equated with the position of a customer whose rights and interests are protected under the Financial Services Authority Regulation Number 22 of 2023 concerning Consumer Protection in the Financial Services Sector. To protect debtor customers in credit agreements, based on the Financial Services Authority Regulation on Consumer Protection in the Financial Services Sector, the Financial Services Authority plays a role in providing consumer complaint resolution facilities (Marwah, 2018). Those provisions are regulated based on Article 67 and Article 68 of the Financial Services Authority Regulation Services Authority Regulation, stating that:

1. Financial Service Providers are prohibited from charging fees to consumers in implementing complaint policy and procedures.
2. The provisions regarding complaint services are implemented in accordance with the Financial Services Authority Regulation concerning Consumer Complaint Services in the financial services sector.
3. In the event that consumer complaint services by Financial Service Providers do not reach an agreement, consumers may seek dispute resolution outside of or through litigation.
4. Dispute resolution in the financial services sector outside of litigation as referred to in paragraph (1) is carried out through 1 Financial Services Sector ADR Institution.
5. The provisions regarding Financial Services Sector ADR Institutions are implemented in accordance with the Financial Services Authority Regulation concerning Financial Services Sector ADR Institutions.

In line with the provisions of the Financial Services Authority mentioned above, it is important for consumers as debtors to fully understand the procedures up to the determination of cessie with

collateral rights through the provision of clear, accurate, correct, easily accessible, and non-misleading information regarding the transfer of collateral rights through cessie. As for the legal protection that can protect debtors is by filing complaints with the Financial Services Authority, both for violations and disputes between parties. Debtors have the right to pursue legal remedies if the complaint does not yield results.

These legal remedies can be pursued through various means, including non-litigation and litigation. In essence, OJK Regulations mandate the filing of non-litigation legal remedies as the first effort in resolving the problem of losses experienced by debtors. However, debtors can file legal action for litigation if this is not achieved. The advantages and disadvantages of non-litigation and litigation efforts will be explained below:

1. Non-Litigation Settlement

According to Article 67 of the Financial Services Authority Regulation, dispute resolution outside the court must first be attempted. If the complaint process with the OJK does not yield results, the resolution must be pursued through the Financial Services Sector Alternative Dispute Resolution Institution. In theory, non-litigation dispute resolution options available to the parties include Negotiation, Mediation, Arbitration, and Conciliation. The term "negotiation" in English is known as "negotiate" and "negotiation." According to Henry Campbell Black, "negotiation" is presenting and considering offers until the offer can be accepted (Black, 1989). Additionally, M. Marwan and Jimmy P. propose that negotiation is the bargaining process through negotiations between disputing parties to reach a mutual agreement (Marwah, 2018). Non-litigation resolution is divided into:

a. Mediation

Mediation, according to Munir Fuady, is a conflict resolution method involving negotiation to find solutions with the assistance of a neutral and impartial third party (Fuady, 2002). This neutral party works with the disputing parties to help them find a mutually satisfactory resolution. This impartial third party is called a mediator (Fuady, 2002). Furthermore, according to Rika Lestari, mediation is a problem-solving process that is personal, confidential, and cooperative. The mediator acts as a neutral third party, assisting individuals or institutions involved in a dispute to overcome conflicts and bridge their differences. Mediation is a practical and relatively informal method compared to the court process. In many cases, mediation is more economical than resolution through the courts. During the mediation process, all parties meet directly with the mediator, either in joint or separate meetings. In these meetings, the disputing parties share information, provide testimony, and exchange documents related to the issues at hand (Lestari, 2013).

b. Arbitration

The term "arbitration" originates from the Latin word "arbitrare," meaning the authority to resolve a problem based on judgment. In terminology, experts have various definitions which, although different, essentially carry similar meanings. According to Subekti, arbitration is a dispute resolution method in which one or more judges, selected by the disputing parties, render a decision that must be adhered to by both parties (Subekti, 1992). Essentially, arbitration is a specific form of adjudication. The main difference between conventional court and arbitration is that courts use a permanent or standing court, while arbitration uses a tribunal formed specifically to resolve the dispute. In the arbitration process, arbitrators act as judges in the Arbitration Court, like permanent judges, although only for the specific cases being handled (Entriani, 2017).

c. Conciliation

According to Henry Campbell Black, this term is defined as the adjustment and resolution of a dispute in a friendly and non-confrontational manner (Black, 1989). M. Marwan and Jimmy P. define conciliation as an effort to reconcile the desires of disputing parties to reach an agreement to resolve the dispute amicably (Marwan & P, 2009). Munir Fuady explains that conciliation is similar to mediation, in that it is a dispute resolution process through negotiation, where a neutral third party works with the disputing parties to help find a solution in resolving the dispute (Fuady, 2002). In principle, the choice to determine which Financial Services Sector ADR Institution will be used by the parties needs to be mutually agreed upon in the credit agreement or cessie agreement signed by the parties. This also includes determining the provisions regarding fees, the venue, and the language used if the debtor is a foreign national.

2. Litigation Settlement

Dispute resolution through litigation is an attempt to resolve conflicts through the courts. Frans Hendra Winarta explains that litigation is a traditional method of dispute resolution in the business world, such as in the trading sector, banking, mining projects, oil and gas, energy, and infrastructure. In the litigation process, the involved parties are in opposing positions. Litigation is also considered as a last resort (*ultimumremidium*) when alternative dispute resolution methods fail to reach an agreement (Winarta, 2012).

The method of dispute resolution through litigation has several advantages, including court decisions that have permanent legal force, are final, and provide legal certainty with clear outcomes between the winning and losing parties (win and lose position) (Rosita, 2017). Furthermore, the implementation of the judgment can be enforced if the losing party fails to comply. However, this method also has some disadvantages, such as lengthy proceedings and uncertain and relatively higher costs. In litigation, there are several levels of legal remedies that parties can pursue, namely the first level in the District Court, Appeal in the High Court, Cassation in the Supreme Court, and Reconsideration as the final legal recourse.

Litigation resolution is carried out through the submission of contentious lawsuits or voluntary lawsuits, and its filing can also be made in religious courts or civil courts. If the cessie case involves Islamic banking, then it can be registered in the religious court according to their respective competencies as stipulated by the laws and regulations regarding their competence to adjudicate and other competencies. Then, if the cessie case involves conventional banks or other conventional banks, the lawsuit can be filed in the civil court according to their respective competencies. In the form of lawsuits filed, both voluntary lawsuits and contentious lawsuits can be used.

If there is a dispute in the cessie case, such as the old debtor refusing to vacate the residence to be purchased by the new debtor, then it can be requested to the judge in the petition of the lawsuit to vacate the house under truly vacant conditions in the court. However, if the cessie case involving the transfer of receivables does not contain any disputes, then a voluntary lawsuit can be filed or a petition can be submitted to the court according to its competence, both absolute and relative competence must be adjusted so as not to violate the laws and regulations in force (Basri, 2020).

The lawsuit filed is in the form of a lawsuit for breach of contract or violation of the credit agreement in the District Court. Based on the author's analysis, this step is considered appropriate for the following reasons:

1. The obligations in contracts as a source of performance are distinguished into two types: obligations arising from the law and obligations arising from agreements;
2. With the fulfillment of the valid requirements of the agreement, namely: a) the agreement of the parties; b) the capacity to agree; c) the existence of a certain matter; d) a valid cause. The agreement made by both parties is binding upon them;
3. The Receivable Transfer Agreement (Cessie) has been carried out by the correct rules and procedures, thus the cessie is valid and has legal consequences for the debtor;
4. The new creditor must notify the Debtor about the Cessie and proceed with debt collection;
5. Each Debtor is only obliged to compensate for the costs, losses, and interest that were expected or could reasonably have been foreseen at the time the contract was made, unless the non-fulfillment of the contract is caused by deception committed by them;
6. If the non-fulfillment of the contract is caused by the debtor's deception, then the compensation for costs, losses, and interest, which caused the creditor to suffer losses and lost profits, only covers the direct consequences of the non-performance of the contract;
7. Suppose one of the parties involved in the agreement fails to fulfill its obligations. In that case, the injured party may choose to compel that party to fulfill the agreement, if still possible, or demand the cancellation of the agreement by requesting compensation for costs, losses, and interest.

The law governing land transactions must comply with the provisions stipulated in Law Number 5 of 1960 concerning Basic Agrarian Principles and Government Regulation Number 10 of 1961, which has been replaced by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Condominiums, and Land Registration. Land transactions must be conducted in the presence of a Land Deed Official and recorded as a land deed (Wahid et al., 2019). If during the buying and selling process, it is easy to transfer the certificate of the land that is the object of the transaction, it is different from cessie, which surely encounters difficulties in transferring ownership at the National Land Agency. This can happen because cessie is merely a form of debt transfer without transferring ownership rights.

To carry out the transfer of the certificate name, the cessie buyer needs the National Land Agency as the government's extended arm in land management matters. However, the National Land Agency

does not accept cession deeds alone as a basis for the name transfer on the certificate. Therefore, the cession buyer must first submit an application to the District Court, so that the decision of the District Court can serve as the basis for the name transfer (in its determination, the District Court instructs the National Land Agency to change the name written on the certificate to the cession buyer's name).

Another principle is that the purchase of cession does not result in a 100% transfer of asset ownership to the cession buyer. Cession only transfers the right to claim the transferred debt, where there is an agreement on the credited certificate with the encumbered collateral. The collateral only represents the value of the asset that becomes a priority for the bank or for the holder of the encumbrance right. Therefore, the cession buyer only buys the right to claim, whereby under that guarantee, the bank or creditor or cession buyer has the right to be prioritized in taking first up to the amount of the encumbrance right imposed (Tanamal, 2024).

Essentially, consumers need to read and understand the contents of the credit agreement before signing it, including the transfer of receivables with collateral rights. If there is any discrepancy between the implementation of the credit and the signed agreement, consumers have the full right to report it to the bank, OJK, and file a lawsuit as outlined above.

CONCLUSION

Based on the policy issued by the Government, it is proper for the debtor as a consumer or customer of banking services, particularly in credit agreements, to receive legal protection with the presence of the Financial Services Authority, which plays a role in providing facilities for resolving consumer complaints if the consumer feels aggrieved by the standard clauses contained in the credit agreement. Another form of legal protection is through pursuing legal action. The legal action that can be taken by a debtor who feels disadvantaged by the security right guarantee based on the transfer of debt (cession) is to file a lawsuit for breach of contract or default against the credit agreement in the District Court.

This is based on the following considerations: a) Obligations in an obligation as a source of performance are divided into two: obligations sourced from the law and obligations sourced from agreements. b) By fulfilling the valid agreement requirements, namely: 1) The achievement of an agreement between the involved parties; 2) The parties have the legal capacity to agree; 3) There is a specific object; 4) A lawful cause. The agreement agreed upon by both parties becomes a binding rule for them; c) The Cession Agreement has been executed in accordance with the procedures and rules in force, making the cession valid and having legal consequences for the debtor; d) The new creditor is obligated to notify about the cession and collect from the debtor; e) Every debtor is only obligated to replace costs, losses, and interest that can be foreseen at the time the agreement is made, except if the inability to fulfill the agreement is caused by the debtor's fraud; f) If the inability to fulfill the agreement is caused by the debtor's fraud, the replacement costs, losses, and interest causing the creditor to suffer losses only include direct losses due to non-fulfillment of the agreement; g) The party disadvantaged by the non-fulfillment of the agreement may choose to compel the other party to fulfill the agreement if still possible, or to demand the annulment of the agreement with compensation for costs, losses, and interest.

It is also important for the debtor to understand the procedures and processes of transferring debt on the security right guarantee that apply in each banking institution, and then confirm its flow with the applicable legislation. Furthermore, it must be understood by the debtor that the party purchasing the cession must first apply to the District Court. The District Court's decision will be the basis for the name change process. In its decision, the District Court will order the National Land Agency (BPN) to change the name listed on the certificate to the name of the cession buyer, so in principle, the purchase of the cession does not result in 100% (one hundred percent) ownership of the asset being transferred to the cession buyer. The cession is only the transfer of the right to claim on the transferred debt, with the credit agreement and the security right certificate being charged. The security right is only the asset's value, which becomes the preferential right for the bank or the holder of the security right. Thus, the cession buyer only purchases the right to claim where, with that guarantee, the bank or creditor or cession buyer has the right to be prioritized in taking the charge imposed.

The Government needs to more actively socialize the procedures and processes of debt transfer, especially from the debtor's perspective, as the creditor's position has been more highlighted in terms of protection and balance of position. Both, however, have equal standing. The Government needs to be more diligent in conducting socialization by holding webinars or placing Government representatives in each banking institution who can explain and clarify all information related to the protection for debtors in credit agreements.

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