

LEGAL PROTECTION FOR DEBTORS ACTING IN GOOD FAITH IN FULFILLING OBLIGATIONS TO UNIDENTIFIED CREDITORS

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Abstract

The transfer of receivables (cession) in mortgage loan agreements without prior notice to the debtor has led to legal uncertainty and poses a risk of harm to debtors acting in good faith. This study aims to analyze the legal standing of debtors in cases of cession conducted without notification, as well as to identify forms of legal protection available to such debtors. The research adopts a normative juridical approach, relying on the analysis of statutory regulations and a case study of the Tangerang District Court Decision No. 1238/Pdt.G/2022/PNTng. The findings indicate that although Article 613 of the Indonesian Civil Code requires notification to the debtor in the event of cession, the absence of sanctions for creditors who fail to comply allows the practice of transferring receivables without debtor notification to persist. As a result, debtors are often exposed to the risks of double payment or being considered in default by the new creditor. This research recommends strengthening regulations concerning the mandatory notification of cession and encouraging the active role of financial authorities in ensuring transparency and protection for debtors. The implications of this study underscore the need for legal reform to establish a fairer and more legally certain system for the transfer of receivables.

Keywords: Cession, Debtor, Legal Protection, Mortgage Loan, Legal Certainty

INTRODUCTION

The development of the banking and financial industries has given rise to various legal mechanisms in credit transactions, one of which is the assignment of receivables through cession (Basri, 2020). Cession is a legal mechanism that allows the original creditor (cedent) to transfer their receivable rights to a new creditor (cessionary), as stipulated under Article 613 of the Indonesian Civil Code (Hamler, 2022). This transfer may be carried out without the debtor's consent; however, as a matter of principle, notification is required so that the debtor is aware of whom the obligation must be fulfilled to. In practice, receivable transfers are often conducted without notifying the debtor, leading to legal uncertainty for debtors who continue to act in good faith in fulfilling their obligations (Mastang & Muskihah, 2022). This situation has the potential to trigger legal disputes, especially in cases where the debtor has made payments to the original creditor who no longer has the legal authority to receive such payments.

The principle of good faith is a fundamental concept governing the relationship between creditors and debtors. A debtor who has fulfilled their obligations under the agreement should be entitled to legal protection, particularly in cases where the debtor is unaware of the transfer of receivables to another party (Syahrani, 2010). In the practice of non-transparent cession (assignment of receivables), the debtor may suffer both legal and economic losses due to payments that are deemed invalid by the new creditor. This situation highlights the imbalance in legal protection between creditors and debtors, where the debtor's position becomes more vulnerable due to limited access to information regarding creditor changes.

This phenomenon is particularly significant in the mortgage sector, where banks and financial institutions frequently transfer their receivables to securitization companies or other financial entities. According to the Cushman & Wakefield MarketBeat Reports for Q2 2023, transactions involving home purchases through installment payments accounted for 15.2%, followed by full cash payments at 10.7%, while the highest share, at 74.1%, involved mortgage loans (Ferry Sandi, 2023). This suggests an increasing likelihood of receivables transfer through cession in this sector, posing a risk to good-faith debtors who may face legal problems, especially if the payments they made to the previous creditor are deemed invalid by the new creditor. The debtor's lack of knowledge regarding the creditor change may lead to the risk of double payment, where the debtor is forced to pay again to a creditor they were never aware of. Legal issues arising from the cession practice also impact legal certainty and consumer protection. In civil law, every obligation should reflect a balance between the rights and duties of the parties involved (Suyono, 2016). The practice of cession without notification to the debtor undermines the debtor's right to know precisely to whom they are obligated to make payments. This situation contradicts the principles of transparency and contractual fairness, which should form the basis of any credit agreement. Therefore, a deeper study is required to explore the forms of legal protection that can be offered to debtors in such situations.

Indonesia has several legal instruments available to protect debtors in credit agreements (Iriawan, 2005), such as Law No. 8 of 1999 on Consumer Protection and Financial Services Authority Regulation No. 10/POJK.03/2022 on Transparency of Financial Products and Services. However, the absence of explicit provisions requiring notification to debtors in the practice of assigning receivables through cession has left significant legal gaps that may harm debtors. Several court decisions, such as the Tangerang District Court Decision No. 1238/Pdt.G/2022/PNTng, stem from a case beginning on January 16, 1997, when a debtor purchased land and a building in a housing complex in Tangerang Regency, using a Mortgage Loan facility from a private bank. The financial crisis that struck Indonesia led the government to establish the Indonesian Bank Restructuring Agency through Presidential Decree No. 27 of 1998 to stabilize the banking sector. It turned out that the bank involved was one of those included in the restructuring program, causing all of its rights and obligations, including receivables from debtor loans, to be transferred to Bank Restructuring Agency without notification to the debtor. Subsequently, on September 29, 2000, Bank Restructuring Agency transferred the receivables under the credit agreement to another bank, which had also been transferred to Bank Restructuring Agency, through Cession Deed No. 14. This transfer of receivables continued without notification to the debtor, until it was eventually transferred to a new debtor through the Deed of Agreement on Transfer of Rights over Land No. 06 on May 23, 2019, made before a notary in Jakarta. The new debtor only became aware of this transfer upon receiving a court summons from the Tangerang District Court regarding the case, where the panel of judges partially upheld the plaintiff's claim. This case highlights the need for further examination of cession practices to determine the extent to which the court provides legal protection for good-faith debtors.

Research on debtor protection in the assignment of receivables through cession is highly relevant to fill the gap in civil law studies related to transparency in receivables transfer. Although numerous

studies have addressed cession in the context of banking and credit agreements, few have specifically examined the legal protections available for good-faith debtors who are unaware of cession transfers. This research is expected to contribute to the development of contract law, particularly in consumer protection and legal certainty in credit agreements, and provide recommendations for regulators, banks, and financial institutions in formulating clearer policies related to transparency in the assignment of receivables. With regulations requiring cession notification to debtors, the potential for disputes arising from debtor ignorance of creditor changes may be reduced. Better legal protection for debtors will also enhance public trust in the banking and financial systems, ultimately contributing to the overall stability of the financial industry.

Based on these issues, this research seeks to answer questions regarding the legal status of debtors in credit agreements whose receivables have been assigned through cession without notification, and what form of legal protection can be provided to good-faith debtors in fulfilling their obligations to unknown creditors due to cession. This research aims to examine the legal implications of receivables transfer without notification on the debtor's position and to provide recommendations for regulatory improvements and policies to enhance transparency in cession practices, so as not to disadvantage debtors. The findings of this study are expected to contribute to the development of legal scholarship, particularly in the context of consumer protection and legal certainty in credit agreements, and offer practical solutions for policymakers and industry players in addressing legal issues arising from non-transparent cession transfers.

The debtor's ignorance of the receivables transfer also has implications that may harm the debtor both administratively and reputationally (Ginting, 2016). If the debtor is considered to have failed to meet their obligations by the new creditor, they may be blacklisted in the Financial Information Service System managed by the Financial Services Authority, which could obstruct their future access to credit services. Therefore, legal protection for debtors must encompass not only payment aspects but also the restoration of their reputation and legal status within the banking and financial systems. Strengthening regulations that mandate official and documented cession notification can serve as a solution to prevent recurring legal uncertainty. As such, legal protection for good-faith debtors should be a primary concern in civil law systems, particularly in cases of receivables transfer through cession without notification. Stricter regulations on notification obligations and legal certainty in case law can strengthen the position of debtors, ensuring they are not disadvantaged by non-transparent cession practices. Moreover, a more proactive approach by financial authorities in overseeing receivables transfer practices will further safeguard debtor rights and maintain balance in the creditor-debtor relationship.

RESEARCH METHOD

This research uses a juridical-normative method with aimed at analyzing the legal norms related to debtor protection in the practice of cession without notification (Muhaimin, 2020). A normative legal approach is chosen as it focuses on the analysis of applicable regulations, legal principles, and relevant jurisprudence to gain a systematic understanding of the legal status of debtors in credit agreements where the receivables are assigned (Armia, 2022). This approach aligns with the research objective, which is to identify the legal implications of receivables assignment without notification and formulate recommendations to enhance legal protection for debtors. To obtain a more comprehensive understanding, the research also uses several additional approaches. The statute approach is employed to examine the norms set out in Article 613 of the Indonesian Civil Code, the Law No. 8 of 1999 concerning Consumer Protection, as well as regulations from the Financial Services Authority regarding transparency of information in financial transactions. The case approach is applied through the analysis of Decision No. 1238/Pdt.G/2022/PNTng of the Tangerang District Court and other rulings related to disputes over receivables assignment without notification. The conceptual approach is used to explore relevant legal principles, particularly the principle of good faith in creditor-debtor relationships and the principle of balance in credit agreements.

Data in this study is collected through library research, relying on legal sources that consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation and court decisions that serve as the basis for analysis in this research (Matheus & Gunadi, 2024). Secondary legal materials consist of legal literature, academic journals, and previous research that discusses the legal aspects related to cession and debtor protection. Tertiary legal materials include legal dictionaries and encyclopedias that provide conceptual understanding of the topic under study. The data collection process is carried out systematically through several stages. First, the identification and inventory of relevant legal sources related to the practice of receivables assignment in credit agreements. Second, the analysis of legislation and jurisprudence is conducted using legal

interpretation methods, including grammatical interpretation, systematic interpretation, and teleological interpretation to understand the substance of legal protection for debtors in the context of cession. Third, case study analysis is carried out by reviewing the Tangerang District Court decision and other relevant rulings to identify patterns of legal reasoning employed by the court in resolving disputes arising from receivables assignment without notification. Finally, the synthesis of the analysis results is conducted to formulate recommendations that can improve transparency and legal certainty in the practice of receivables assignment in Indonesia.

To ensure the validity and reliability of the data used, this study applies a legal triangulation method, which involves verifying various primary, secondary, and tertiary legal sources to draw more accurate and objective conclusions. The research uses a qualitative analysis method with a deductive approach, where conclusions are drawn based on applicable legal rules and practices that have been implemented in the Indonesian legal system as well as in the legal systems of other comparative countries. The research is expected to provide a comprehensive analysis and offer recommendations that can be used in the development of policies for legal protection of good-faith debtors in the practice of cession without notification.

RESULTS AND DISCUSSION

This study examines the legal protection of debtors against the assignment of receivables in home ownership credit agreements carried out without notification, with a case study on the decision of the Tangerang District Court No. 1238/Pdt.G/2022/PN Tng. The research findings reveal several key issues related to legal uncertainty, debtor rights, and the practice of receivables assignment through cession.

1. Legal Uncertainty in the Transfer of Receivables through Cession Without Notification

From the analysis of legal documents and case studies, it was found that the transfer of receivables (cession) without notification to the debtor potentially leads to legal uncertainty. Based on court rulings, there is a pattern where debtors who have not received notification face difficulties in determining to whom their obligations should be fulfilled. This results in the risk of double payment and the potential for legal disputes between the debtor and the new creditor.

No	Aspect	Impact of Cession Without Notification
1.	Debtor's Rights	Lack of Payment Certainty
2.	Debtor's Obligations	Potentially Paying the Wrong Party and Losing Collateral
3.	Legal Risks	Potential Disputes Between the Debtor and New Creditor
4.	Legal Protection	Still Limited and Not Explicitly Regulated

2. Debtor's Legal Status in Unnotified Cession Transactions

The assignment of receivables (cession) is a legal mechanism that allows the transfer of a creditor's rights from the original creditor (cedent) to a new creditor (cessionary), as governed by Article 613 of the Indonesian Civil Code (Setiawan & Satrio, 2010). According to this provision, the assignment of receivables must be carried out through an authentic deed or a private deed and must be notified to the debtor or approved in an official deed. However, in practice, such assignments are often made without notifying the debtor, leading to legal uncertainty regarding the party entitled to receive payment. The legal consequence of cession without notification can potentially harm the debtor, particularly in cases involving debt payments, which may give rise to disputes with the new creditor.

According to Satjipto Rahardjo, legal protection refers to efforts aimed at providing a sense of security to the public in exercising their rights and obligations, while also preventing actions that may harm the weaker party (Rahardjo, 2021). Legal protection encompasses two aspects: preventive legal protection and repressive legal protection. In the context of cession, preventive legal protection refers to regulations that require notification to the debtor in order to avoid disputes arising from the debtor's lack of awareness regarding the change of creditor. Repressive legal protection, on the other hand, is provided through dispute resolution mechanisms in court when the debtor's rights are violated due to a cession without prior notification (Christiana et al., 2024). It also protects debtors acting in good faith from the risk of double payment and fulfills their performance obligations. Legal protection for individuals, including debtors, seeks to ensure that their rights are recognized and not impaired by non-transparent legal practices (Hadjon, 1987). In this regard, the duty to notify the debtor of the cession can be seen as part of the debtor's right to accurate and truthful information concerning the status of their receivables.

While notification to the debtor is not a validity requirement for cession, jurisprudence has shown that, in the absence of such notification, the debtor retains the right to consider the original creditor as

the party entitled to receive payment. For example, in Decision No. 1238/Pdt.G/2022/PNTng of the District Court of Tangerang, it was affirmed that a debtor who has not been notified of a cession cannot be compelled to make payment to the new creditor. This illustrates that, although legally valid, the implementation of cession must still consider the protection of the debtor's rights. In banking and finance practices, a debtor's unawareness of the assignment may result in significant legal implications. One major risk is the possibility of the debtor making payment to the former creditor who no longer holds the receivable. If the debtor is unable to prove their lack of knowledge regarding the assignment, they may be deemed in default (breach of contract) by the new creditor and required to make a second payment (Lesmana & Anindita, 2021).

The consumer protection framework and the debtor's lack of awareness of the cession may also constitute a violation of the principle of transparency, as stipulated in Law No. 8 of 1999 on Consumer Protection. Article 4 of this law affirms that consumers have the right to receive correct and clear information regarding any transaction, including assignments of receivables in credit agreements (Febrianti, 2021). Furthermore, Article 18 prohibits the inclusion of standard clauses that could harm consumers, including provisions that allow cession without notifying the debtor. Thus, the duty to notify should be regarded as part of the legal protection that safeguards the rights of debtors in financial transactions. Although cession is a legitimate legal mechanism for the transfer of receivables, the provisions on debtor notification must be clarified through regulation to prevent legal uncertainty and potential disputes. Accordingly, there is a need for regulatory reform in Indonesia that explicitly mandates the obligation to notify debtors in cases of cession, in order to protect the debtor's rights and prevent unilateral assignments that could harm them. This aligns with the theory of legal protection proposed by Philipus M. Hadjon, which emphasizes that legal certainty in cession must be upheld so that debtors are not subjected to uncertainty in fulfilling their obligations (Dameria & Djajaputra, 2024).

3. Legal Protection for Debtors in Good Faith

The principle of good faith is a fundamental principle in civil law that governs how the parties to a contract must act honestly, fairly, and without causing harm to others (Syahrani, 2010). In the context of debtor-creditor relationships, a debtor who has fulfilled their obligations honestly and in accordance with the agreement must be granted legal protection. This principle is recognized in Article 1338 paragraph (3) of the Indonesian Civil Code, which states that a contract must be performed in good faith. In cases of assignment of receivables through cession, a debtor who has not made payment to either the original or new creditor without being aware of the assignment of the receivables should not be burdened with additional obligations such as paying fines or interest to the new creditor (Alam, 2022).

Legal protection for debtors acting in good faith can be found in various statutory regulations and jurisprudence. Pursuant to Article 613 of the Indonesian Civil Code, the assignment of receivables (cession) must be notified to the debtor in order for the debtor to be aware of the change in the creditor entitled to receive payment (Sewu et al., 2019; Yusvaldi et al., 2023). Furthermore, under Law No. 8 of 1999 concerning Consumer Protection, the principles of transparency and the right to clear information affirm that debtors, as consumers in credit agreements, have the right to be informed of any changes that may affect their obligations (Sweda et al., 2024). In the event that notice of receivables assignment through cession is not provided, a debtor who has made payment to the original creditor must still be granted legal protection.

Indonesian jurisprudence has affirmed the protection of debtors acting in good faith in cases of cession (assignment of receivables) without proper notification. For instance, in Decision No. 588/Pdt.G/2023/PN Jkt.Pst of the Central Jakarta District Court dated 27 June 2024, the panel of judges reasoned that the debtor acted in good faith in attempting to fulfill his obligation; however, the identity of the creditor was unknown to him. Therefore, the newly assigned creditor shall not be permitted to impose additional interest or penalties on the debtor, and the debtor cannot be compelled to repay the same debt to the new creditor due to the absence of a valid cession notification. This ruling reinforces the principle that a debtor cannot be considered in default if payment was made to a creditor who was, from the debtor's perspective, still the legitimate creditor. Such jurisprudence illustrates the courts' inclination to protect debtors who fulfill their obligations in good faith.

A debtor's lack of knowledge regarding the assignment of receivables may also result in administrative and reputational harm. If the new creditor considers the debt unpaid, the debtor may be listed on the Financial Information Services System, maintained by the Financial Services Authority, which could hinder the debtor's future access to credit. Therefore, legal protection for debtors must encompass not only payment-related aspects but also the restoration of the debtor's reputation and

legal standing within the financial system. Strengthening regulations that require official and documented notification of cession can serve as a preventive measure against recurring legal uncertainty. Accordingly, the protection of good-faith debtors must become a central concern in civil law, particularly in cases involving the assignment of receivables without proper notice. Stricter rules concerning notification obligations and increased legal certainty through jurisprudence can help fortify the legal position of debtors, shielding them from harm caused by non-transparent cession practices. Furthermore, a more proactive role by financial authorities in monitoring receivables assignments will further safeguard debtors' rights and uphold the balance in creditor-debtor relationships.

4. Recommendations for Strengthening Regulations

Legal uncertainty in the practice of cession (assignment of receivables) without prior notification may have adverse consequences for the debtor, particularly with regard to payment obligations and credit reputation. Therefore, a more assertive policy is required to mitigate such legal uncertainty. One proposed policy is to mandate written notification of the cession to the debtor through a verifiable mechanism, such as notification via a notary public or a legally recognized electronic system. By ensuring valid proof of notification, the debtor can clearly identify the change of creditor and avoid risks of double payment or potential legal disputes in the future.

Policies that clearly stipulate sanctions for parties who fail to notify the debtor of a cession should also be strengthened. In cases where neither the assignor (original creditor) nor the assignee (new creditor) provides such notification, the assignment of the receivable should not be enforceable against the debtor until formal notice is duly given. This policy would incentivize creditors to comply with procedural requirements and safeguard the interests of the debtor. Furthermore, stricter regulation should be introduced in credit agreements, requiring that clauses concerning the obligation to notify cession be standardized in all contracts involving the transfer of receivables.

The role of financial and legal authorities is crucial in ensuring transparency in the practice of cession. The Financial Services Authority, as the supervisory body of the financial industry, must establish rules requiring financial institutions to report any assignment of receivables into the national credit information system. This would allow debtors to easily access information about the legitimate creditor and avoid payment misunderstandings. In addition, the Central Bank of Indonesia may play a supervisory role in ensuring that banks and financial institutions comply with the principles of transparency in receivables assignments. Regulatory strengthening must also be accompanied by increased legal literacy for debtors, enabling them to better understand their rights in credit agreements (Maskanah et al., 2024).

The government, through relevant ministries, could collaborate with the Financial Services Authority and banking associations to educate the public on the mechanism of cession and its implications. With improved understanding, debtors can be more proactive in ensuring they are not disadvantaged by non-transparent assignments of receivables. Furthermore, enhancing access to complaint and dispute resolution services must be optimized so that debtors have effective legal recourse in dealing with cession-related issues. Through stricter and more transparent regulations, the practice of receivables assignment via cession can proceed more fairly and offer greater protection for debtors. Relevant authorities must ensure that any implemented policy does not solely benefit the creditor but also provides legal balance for the debtor, as a contracting party in the credit agreement (Juliani & Badriyah, 2023). In doing so, financial system stability can be preserved, and public trust in financial and legal institutions can be enhanced.

CONCLUSION

This study concludes that the legal standing of debtors in the context of cession (assignment of receivables) without notification is vulnerable and potentially detrimental. Under civil law, cession refers to the transfer of receivables from the original creditor to a new creditor, which ideally should be conducted with transparency and proper notification to the debtor. In practice, however, the assignment of receivables is frequently carried out without the debtor's knowledge, resulting in legal uncertainty regarding the rightful party entitled to receive payment. This may expose the debtor to risks such as double payment or being deemed in default for continuing to pay the original creditor. According to Article 613 of the Indonesian Civil Code, the assignment of receivables must be notified to or approved by the debtor in order to have binding legal effect. Unfortunately, this provision is often overlooked in the banking and financial sectors, where administrative convenience is prioritized over legal clarity. The absence of notification places debtors in a state of uncertainty, which runs counter to the principle of legal certainty enshrined in civil law. Hence, there is an urgent need for

stricter regulations requiring mandatory notification in cession transactions to uphold the rights of debtors.

The legal protection of good-faith debtors is rooted in the civil law principle of good faith, which obligates all parties in a contract to act honestly and not harm one another. A debtor who has fulfilled their obligations in good faith should be protected from the risk of double claims resulting from non-transparent cession. Judicial decisions in several cases affirm that a debtor who has not been properly informed of a cession may still refer to the original agreement with the former creditor, meaning that their obligations remain unchanged in the absence of official notification. Thus, stronger legal safeguards are needed to ensure that debtors are not adversely affected by unilateral creditor transfers. Financial authorities and regulators must ensure that all cession transactions are conducted transparently and in accordance with the principles of fairness and legal certainty. One proposed solution is to mandate that the assignor (original creditor) deliver a written notification to the debtor, accompanied by valid proof of receipt, before the assignment becomes legally effective. This would enhance legal certainty and protect the interests of debtors who act in good faith in fulfilling their contractual obligations.

This research emphasizes that the legal position of debtors in unnotified cession arrangements is highly vulnerable to both legal and financial risks. Therefore, regulatory reforms are necessary to reinforce the obligation of notification in cession transactions and to strengthen legal protection for good-faith debtors. Consistent law enforcement and oversight from relevant authorities are essential to ensure that the practice of cession does not harm debtors and remains aligned with the principles of justice and legal certainty. Legal provisions regarding cession or the assignment of receivables must be clarified to provide stronger protection and legal certainty for debtors. At present, Article 613 of the Indonesian Civil Code only stipulates the obligation of notification but does not impose penalties for non-compliance. This legal gap can potentially harm debtors who are unaware that a creditor has changed. Therefore, it is necessary to enact regulations that require notification of cession within a specified timeframe and impose clear legal consequences for violations.

Transparency must be a key component of cession practices. Both the original and new creditors should provide valid written notice to the debtor, including the identity of the new creditor, the legal basis of the cession, and updated payment instructions. Additionally, oversight by financial regulators such as the Financial Services Authority and Central Bank of Indonesia should be strengthened to ensure that receivables transfers are conducted in compliance with consumer protection standards. These authorities may also issue technical guidelines to prevent irregularities in implementation. Moreover, there must be accessible and effective dispute resolution mechanisms—whether through litigation or alternative means such as mediation or arbitration—for good-faith debtors who were not informed of the cession. To reinforce protections further, debtors must also be provided with adequate legal education and literacy regarding their rights and obligations in credit agreements, including the potential risks and consequences of receivables assignments. Such education is crucial to empower debtors to be more proactive, cautious, and capable of avoiding losses resulting from non-transparent cession practices.

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