

The Legality of Repeated Cession and Legal Protection for the Buyer

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ABSTRACT

The legality of an agreement needed to provide protection for the parties. The diverting of receivable of title has been made by the parties through the *cession* agreement. The *cession* agreement has been diverting more than once, through sales and purchase agreements. On process of repeated *cession*, the legality was ambiguity. In Article 1313 Indonesian Civil Code state "An agreement is an act pursuant to which one or more individuals commit themselves to one another". It means that the agreement creates rights and obligations among the parties. Legal protection is needed for the parties. The decree of Supreme Court No. 268 / K / PDT, does not provide protection for the buyer of repeated cession. On Article 28D paragraph 1 of The 1945 Constitution of The Republic of Indonesia "Every person shall be entitled to recognition, guaranty, protection, and equitable legal certainty as well as equal treatment before the law". This study aims to determine of legal protection for the buyer on repeated cession also for to find out the legality of repeated cession. This research uses a normative judicial method. This research aims to discover the legality and legal protection for the buyer of repeated cession. This research concludes that the repeated cession are legal, and legal protection for buyer are provide by the law. The decree of supreme court has deviation the agreements/ law.

Keywords: *legality of cession; legal protection; repeated*

1. INTRODUCTION

Living a life as a society, needs one and other to fulfill their needs. Everyone needs protection in their lives. Law has a common role to protect the societies. Each other need a helping hand to fulfill their needs. When happen to made some plan like doing an expansion on business, will need to gain more capital. Let said, if the asset didn't enough to cover the expense, of course it will ruin the plan. Some banking institutions are ready like a helping hand for the societies who needs more capital in order for the expansion. Called as credit, here's some explanation about credit.

On Article 1 paragraph 2 act the Republic of Indonesia Number 7 of 1992 concerning Banking as Amended by Act Number 10 of 1998 Bank is "a corporate entity mobilizing funds from the public in the forms of Deposits and channeling them to the public in the forms of Credit and/or other forms in order to improve the living standards of the common people".

The terminology of *creditas* etymologically, is *credere*, it comes from the Latin which means trust. The payment of the credit to the debtor / client by the bank has gained the bank's trust in the debtor, called as client. In the credit agreements there are terms and conditions that have been

agreed by the debtor, which means that the debtor would have to made the payment of the credit. Banks that pull out the loans shall use the precautionary principle and the principle of trust, which means that the bank has a belief that the debtor will be able to repay the loan on time, it means when its decided by them already.[1] When the bank gives credit to their client, bank will demand for collateral.[2]

Collateral object needed to prevent the risk that might arise. On Article 1313 Indonesian Civil Code, agreement is "An agreement is an act pursuant to which one or more individuals commit themselves to one another". Thus, these rights and obligations arise between the parties who make the agreements. The legal consequences of the debtor / customer who default on the credit agreement by binding the collateral object with the *cession*. The principle's of *cession* is sale and purchase of receivables, because these receivables can be divert to the third party. In addition, *cession* can also be used as a debt guarantees. [3]

The agreement are made by the parties cause the legal relation and has legal consequences. The consequences of the legal occurrence count as a legal consequences because it caused by legal proceeding. A legal act also causes a legal relation. Thus, the emergence of legal act / legal relations causes legal consequences.[4]

Based on the decree of supreme court number 268/K/PDT/2020 Mediarto Prawiro is the 5th buyer of *cession*, from the divert of receivables that occurred 5 (five) times.

On January 31th 1996 Debtor / Randy Parsaoran Panggabean purchased a land and building located in the Kedaton Private Golf Estate Housing Complex, Pondok Damar Sector, Kaveling No. I-7, Land Area 928 M2 Sukaharja Village, Pasar Kemis District, Tangerang Regency to the Developer / PT. Realtindo Jaya Ambassador. However, the debtor cannot make payments to the developer. Thus, the debtor makes credit application to PT Bank Danamon Indonesia. Bank Danamon Indonesia as creditor submits a credit agreement to the client/ debtor / Randy Panggabean containing the provision of credit facilities in the form of land and building ownership (KPR) on March 7th 1996 within *cession* agreement. For providing guarantees to banks for the credit facilities, requires and involves approval from the developer. Approval needed because the object was under control by the developer. The developer provides a letter of approval to the creditor. The approval letter contains the submission of guarantees to the creditor, if only the creditor has paid off the land/ collateral object used credit from the bank. Approval is given by the developer to the creditor without any coercion. Then upon the agreement that has been made by the parties, the debtor / Randy Parsaoran Panggabean, Developer / PT. Duta Realtindo Jaya, and the creditor / PT Bank Danamon Indonesia, credit facilities are given to debtor. But the collateral object for guarantee still under developer control, and haven't given to the bank.

The agreement has to be fulfilled continue in the future. It means it must still be complied with every requirement, even if there's a change in circumstances or an uncertain time in the future, then the condition are remains the same.[5] The debtor's debt to PT Bank Danamon Indonesia has matured and can be collected. However, when a billing / warning is made regarding this matter, the debtor does not pay attention to the warning, on the debt bill from the creditor. Banks also needs capital to maintain the health of a bank. The Bank as the old creditor do the diverting of receivable / *cession* to the new creditor / third party. The third party as the new creditor / buyer who receives the diverting of receivables is the National Bank Restructuring Agency (IBRA). With the diverting of receivables / *cession* with the sale and purchase of *cession*, the deed is made by a Notary. Thus, there are 2 (two) important documents, as the authentic Deed, the Sale and Purchase Agreement on Receivables / *cession* and receivable of title / *cession*.

The debtor/ Randy Parsaoran Panggabean still cannot paid the debt to the creditor, so that the divert of receivables / *cession* is happen again for the 2nd (second) time to the third party/PT. NISP Securities as a buyer. The debtor does not fulfill his obligations, so the receivables of title / *cession* are made. The 3rd (third) times *Cession* to Fontienne Capital Limited, the 4th (fourth) times *cession* to PT. Rindang Sejahtera Finance, and the 5th (fifth) *cession* as the last buyerto Mediarto Prawiro.

The decree of Supreme Court side with the debtor, of course it's very jeopardizing for the buyer. Debtors with various reasons cannot make payments to the new creditor. Among other things, just making promises, asking for an extension of time because there is no income, and in the end the debtor is unavailable to reach, or run away. The debtor does not appear to have a good intention to fulfill his obligations on time, the buyer who made the diverting of receivable of *cession* needs to get legal protection from the *cession* process, especially *forcession* that occur repeatedly. The divert of a receivable (*cession*) with a guarantee, cannot provide a full protection for the buyer. Moreover, the collateral object is not given to the creditors. The object is still under the Developer control. Neither the debtor, nor the developer, in entering into this agreement had good faith.

On Article 1338 Indonesian civil code it's explained that "All legally executed agreements shall bind the individuals who have concluded them by law. They cannot be revoked otherwise than by mutual agreement, or pursuant to reasons which are legally declared to be sufficient. They shall be executed in good faith". Of course, to be able to implement this agreement requires a good faith from the parties. Not just one party or several parties but all of the parties involved in the agreement. Good faith is needed so that in making a contract it does not jeopardizing the other parties. With the bad deeds committed by the debtor and developer, to the buyer indirectly the developer and the debtor or *cession* have defaulted. The granting of collateral objects is required in granting credit. To guarantee if there is a payment failure by the debtor to the creditor or bank. If the granting of the object of the guarantee cannot provide a compensation for the actions of the debtor or *cession*. Of course, this is also jeopardizing for the buyer. The value of an object of collateral which is not proportional to the value of the receivables.

On article 28D Paragraph 1 of The 1945 Constitution of The Republic of Indonesia "Every person shall be entitled to recognition, guaranty, protection, and equitable legal certainty as well as equal treatment before the law". It means law has been made for protect the societies. Sometime the law didn't happen as how it shall be. Problems arise regarding on Does repeated *cession* are legal? What kind of legal protection can be applied for the buyer?

2. METHOD

The research methodology used in this research is normative legal or literature research method. This research studies literature or secondary research materials. Legal research on legal literature or normative juridical includes research on existing legal principles and norms. This research uses a statutory approach and conceptual approach.

The research on the legislation is to looking for the Legal protection as a place that accommodates the societies in carrying out their activities. The study examines

regulations, identifies, and adapts to laws and regulations related to banks field and the buyer. The analysis is also carried out on the systematics of existing laws and regulations, vertical and horizontal synchronization between applicable laws and regulations related to supreme court verdict.

Research materials with a normative legal approach are primary legal materials, supporting legal materials, such as secondary and tertiary materials, or other supporting materials. The primary legal materials examined in this study are the 1945 Constitution of the Republic of Indonesia and Indonesian civil code, other laws and regulations related to the purpose of this research. The supporting legal materials studied are literature reviews in books, published legal, scientific journals associated with this writing, conference/proceeding results, and other scientific articles. Tertiary supporting legal research materials are materials that explain the primary legal materials and supporting legal materials. These supporting materials include news coverage on the internet and other materials that are available publicly.

3. DISCUSSION

3.1. The Legality of Repeated Cession

On Article 584 Indonesian Civil Code, states "Ownership of assets cannot be acquired in any manner other than by appropriation, attachment, prescription, legal or testamentary succession, and by assignment or delivery pursuant to a transfer of legal title, originating from the individual who was entitled to dispose of the property". The receivables on title of being diverted, the seller's right to the price transferred, the receivables being diverted, and the right to compensation being transferred to the new creditor/cessionary.[6]

Cession arise from a legal relationship of obligatory agreement, that agreement used to protect the interest of the parties.[7] There are 3 kinds of legal relations caused by *cession*, first the relationship between the old creditors with the debtor caused by the debt and receivable, second the relationship of the diverting of receivables of title between the old creditor with the third party, and last the relationship between the third party/ new creditor with the debtor.[8]

Article 613 Paragraph 1 Indonesian Civil code, state "The transfer of registered debts and other intangible assets, shall be effected by using an authentic or private deed, in which the rights to such objects shall be transferred to another individual". Thereceivable of title/*cession* has been made based on the Article 613 Indonesia Civil code, which has been made with an authentic deed before a Notary, here's the details:

- a. PT. Bank Danamon Indonesia sells, the receivable of title and do the diverting and/or submits some of its receivables, including receivables of title of the debtor to the Indonesian Bank Restructuring Agency (IBRA), with Sale and Purchase Agreement and

Receivables of title/ *cession* agreement No: SP-184/IBRA/ 0501, on May 2nd, 2001.

- b. The receivable of title / *cession* by the Indonesian Bank Restructuring Agency (IBRA) was sold to, PT. NISP SEKURITAS, with an agreement of receivable of title/ *cession* deed No : 20, on June 17th, 2003, see also, Sale and Purchase Agreement of Receivable of title No: 3/VI/2003/duplo, on June 17th, 2003, was made by and/or before a Notary in Jakarta, Liliana ArifGondoutomo, SH.,
- c. Then PT. NISP SEKURITAS sold the receivable of title to FONTIENNE CAPITAL LIMITED, with an agreement of receivable of title/ *cession* deed No: 18, on 2nd September 2008, also see Sale and Purchase Agreement of Receivable of title, on 23rd September 2008, was made by and/or before a Notary in Jakarta, Liliana ArifGondoutomo, SH.,
- d. FONTIENNE CAPITAL LIMITED sold the receivable of title/ *cession* to PT. RINDANG SEJAHTERA FINANCE, with an agreement of receivable of title/ *cession* deed No: 1 on 23rd September, 2008, see also. Sale and Purchase Agreement of Receivable of title, on 23rd September 2008 was made by and/or before a Notary in Jakarta, Liliana ArifGondoutomo, S.H.
- e. PT. RINDANG SEJAHTERA FINANCE sold the receivable of title/ *cession* to MEDIARTO PRAWIRO as the last creditor/ buyer, with an agreement of receivable of title/ *cession* deed No: 06, on 8th August 2011, also see Sale and Purchase Agreement of Receivable of title, on 8th August 2011.

On article 613 paragraph 2 Indonesian Civil code "Such transfer shall have no consequences with respect to the debtor, until he has been notified thereof, or if he has accepted the transfer in writing or has acknowledged it." PT. RINDANG SEJAHTERA FINANCE with MEDIARTO PRAWIRO as the last creditor/ buyer, on 8th August 2011 had been sent the letter to the debtor about the notified of the diverting of receivable / *cession* with Announcement of Merdeka People's Newspaper. Those notified count as a legal notice. On article 613 paragraph 3 Indonesian Civil code "The delivery of bearer claims for indebtedness shall take place by handover, the bearer claims for indebtedness by submission and endorsement of the paper".

PT Rindang Finance as the old creditor with MEDIARTO PRAWIRO has done notified the debtor about the diverting of receivable of title/ *cession* also the letter of unfulfilled obligation to pay. The notified has been done with process server on February 17th, 2016 to Tangerang District Court.

According to the Expert Elijana Tansah S.H., related about the notification, Article 613 paragraph (2) of the Indonesian Civil Code "the notification shall be by the process server" but in Prof. Subekti opinion, "the notification doesn't have to publication". As long as the debtor got notified by about the diverting of receivable of title, the notification can be written with the letter. The receivable of title can be sold more than once and if it's

haven't be notified, the last diverting shall be notified by the creditor/buyer. So the debtor knows to whom need to fulfilled the obligations. Without any approval from the debtor, the receivable of title/ *cession* will remain valid.

On decree of supreme court No. 2403 K/Pdt/2000 on 13th July, 2007 "the receivable of title/ *cession* doesn't require approval from the debtor, it only needs to be notified to the debtor" also see the supreme court decree No. 364 K/Pdt/2002 on March 13th, 2007 "the notification is only for the debtor knows to whom needs to fulfilled the payments".

The repeated diverting of receivable of title / *cession* it's legal because, it has been made with an authentic deed and has notified the debtor with a legal notice and process server.

3.2. Legal Protection For the Buyer On Repeated Cession

An obligatory agreement is an agreement that occurs rights and obligations of the parties. The basis of occurrence or *rechtstitel* is the basis for the emergence of engagements between the parties. Thus, the basis of occurrence (*rechtstitel*) is an obligatory relations that forms the basis of the *cession*. A method for diverta receivables called *cession* is regulated in Article 613 of Indonesian Civil Code. Article 613 paragraph 1 of Indonesian Civil Code states "The transfer of registered debts and other intangible assets, shall be effected by using an authentic or private deed, in which the rights to such objects shall be transferred to another individual."

Subekti's view, regarding *cession* is "a divert of a receivable, sold by the old creditor / *cedent* to the third party who will become the new creditor / *cessionary*, but it doesn't terminate the legal relations of debt and receivables, the whole is only transferred to the new creditor / buyer" [9]

The credit agreement remains valid after the diverting of receivables/*cession*. It because *cession* is an *accessor* agreement. Also the collateral object will transferred to the new creditor due to the *cession* matter. Thus, the *cession* transaction has a relations in providing a credit. Called as an *accessor* agreement that will follows the existence of the main agreement. [10]

The legal protection for the buyer of *cession* is contained in Article 613 Indonesian Civil Code which explains "The transfer of registered debts and other intangible assets, shall be effected by using an authentic or private deed, in which the rights to such objects shall be transferred to another individual" With the existence of a *cession* deed that made with authentically for capturing the collateral object, it is a form of legal protection against default that has been rise by the debtor / *cessus* to the buyer as the new creditor and because it has perfect evidentiary power before the law. Such protection must be given fairly, not impartially.

In practice, a *cession* agreement is made before the parties. Means attended by debtors, old creditors and new creditors/buyer to made a *cession* agreement.[11] The

authentic deed of the *cession* shall be valid and strong enough to provide protection for the buyer.

Legal protection for the buyer is the existence of an authentic deed from a notary to the debtor/*cessus*, namely sale and purchase agreement and *cession* deed. With the existence of the authentic deed, it is clear the divert of receivable of title / *levering* has occurred. After a *cession* is made with an authentic deed made before the notary, the buyer has the right to get power over the collateral object to the debtor / *cessus* because that right has been given, which is a form of protection for the buyer.

Based on Supreme Court verdict number 268/K/PDT/2020 "the buyer is not entitled to the collateral belonging to the debtor, because the intended object is unclear. Whereas the object of the credit agreement is invalid because it does not mention a specific object, nor does it involve Defendant II / PT Duta Realtindo Jaya as developer".

Look back to the supreme court decree it said "an agreement that has been made between the debtor and PT Bank Danamon Indonesia / creditor in the credit agreement number: PK/KPR/Pim-KNG/173/III/96, on March 7th 1996 and/or Deed of Recognition of Debt No. 60, on March 7th 1996 has bound the collateral as a guarantee for the payment of the debtor / *cessus* to the creditor. The *Cession* Deed as Guarantee agreement No: 60, dated March 7th, 1996, all of which were made by and before a Notary in Jakarta, Adam Kasdarmadji, SH., as the *accessor* agreement. Then the debtor provides collateral in the form of a plot of land located in the Kedaton Private Golf Estate Housing Complex, Pondok Damar Sector, Kaveling No. I-7, Land Area 928 M2 Sukaharja Village, Pasar Kemis District, Regency, but the collateral object is still under the developer's control. The diverting of receivable of title happen up to 5 times". Mediar to Prawiro is the last buyer of the diverting of receivables / *cession* which means he is entitled to a guarantee or collateral because the debtor has defaulted.

The buyer/Mediar to's has already mention the credit agreement, *cession* deed and the collateral object which still under developer control with the specific date. It means the object already clear. On district court decree number 777/PDT/G/2017/PN.TNG the buyer/Mediar to's also has already mention the developer as Defendant II / PT Duta Realtindo Jaya when filed the lawsuit. It means all of the judgement that made are not proven.

Based on the decree jurisprudence of the Supreme Court No. 2024 K/Pdt/1989 December 14th, 1991 "in order to prove that there was a default, there was a debtor debt that had not been paid, and the debtor debt has not been paid to the creditor, it has been proven to have committed a default. The act of the debtor that does not pay off the debt that is due and can be collected is an act of default / breaking a promise to the creditor". Accordance with Article 1243 Indonesian Civil Code There is an act of default committed by the debtor, so that the buyer, can claim fees, interest and losses arising from.

Legal notice is a warning letter that can be given by the creditor as a notification to the debtor. The warning requires the fulfillment of an achievement by the debtor

immediately to the creditor or with a certain period of time contained in the notification. Whereas for the debtor / cession debt, the new creditor / cessionary has given a legal notice and collection letter either by letter sent directly or through print media. The debtor does not make payments on his debts, as interest, fines and others. On 1st July 2014, the creditor has also given a warning to the debtor within written letter, regarding the diverting of receivable of title/ *cession* and to make payments. The debtor debts was due but the debtor still ignored the warning / legal notice made by the buyer. The act of debtor is an act of a bad faith. There is an element of *pacta sunt servanda* on agreement which means the agreements are binded to the parties who made it. [12]

Those agreements are legal because it has been made according to article 1320 and article 1338 Indonesia Civil Code. Based on articles 1243 and 1338 Indonesian civil code, the buyer has a right to get legal protection because of the debtor default based on the agreement that has been made by the parties. A legal protection have been made by between the parties through the agreements (credit and *cession*). There's a clause to maintain the risk, which has listed in the articles.

All legally executed agreements shall bind the individuals who have concluded them by law. They shall be executed in good faith. [13] Without the consideration of the agreement, there are parties who are jeopardizing. On article 1131 Indonesian Civil Code, "All movable and immovable assets of the debtor, either present or future, shall be regarded as securities for the debtor's personal agreements. All movable and immovable assets of the debtor, either present or future, shall be regarded as securities for the debtor's personal agreements". Indonesian Civil Code has provided legal protection to the buyer as guarantee holder, due to default caused by the debtor. Guarantee as a means of protection for buyers. Either guarantees in general or guarantees from the law. [14] The law has determined that a creditor who has given a loan or credit to a debtor, by law all property of the debtor except for property that has been burdened with a security right, becomes a guarantee for the repayment of the debtor's debt.

Philipus M. Hadjon view's, "legal protection is divided into preventive and repressive". [15]

Preventive legal protection means the government in making regulations must ensure legal protection for all of the parties. Regulations regarding collateral object have been regulated in Article 1131 Indonesian Civil Code, but the implementation doesn't go well with the laws. Repressive legal protection means that the government provides facilities for all of parties to take a lawsuit for any problems that might arise. The lawsuit has been taken by the buyer, but there's no chance of winning. There's no protection for the buyer for the act of lawsuit. An agreement such as credit agreement between a debtor and a creditor, with a *cession* agreement as a binding collateral, has been take as a form of prevention for the buyers.

The collateral object (land), is under of the developer control. For legal protection for the buyer it shall be charged with mortgage, but the moment of the credit was

given to the creditor the regulation of mortgage had not yet been issued. The buyer has done the right thing and followed the laws and regulations. Law enforcement such as judges even appear to be partial, unfair, and one-sided, they are expected to provide protection for the party who being jeopardizing.

4. CONCLUSION

Repeated *cession* / diverting of receivable of title are legal, if only follows the procedure on Indonesia Civil Code. For the diverting of title/ *cession* needs an authentic deed, also has to notify the debtor so the *cession* count as a valid act (article 613 Indonesian Civil Code).

Legal protection for the buyer on repeated *cession* by the law has already made. On articles 1243 and 1338 Indonesian civil code, the buyer has a right to get legal protection because of the debtor can't fulfill the obligation, so the debtor count as a default. Concerning the conditions that are required for the validity of agreements. In order to be valid, a main agreement must satisfy the following conditions on article 1320 Indonesian Civil Code. Those agreements (credit and sale and purchase of *cession*) are legal because it has been made according to article 1320.

The decree of supreme court reject the lawsuit of the buyer. Those decree are deviation from the law also the agreements made by the parties as a law (article 1338 Indonesian Civil Code). The rights of the buyer wasn't protected with the law because of those decree.

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