



## CESSIE IN THE GUARANTEE OF RIGHTS OF RESPONSIBILITY REVIEWED FROM THE CIVIL CODE

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**Keywords:**  
cessie; debitur;  
kreditur; kpr;  
kepastian hukum

### ABSTRACT

**Background:** Home Ownership Credit (KPR) activities are generally held by the Bank. However, often in mortgage practices there are often conflicts, one of which is bad debt. One solution that is often used by banks as creditors is to transfer receivables (cessie) to the mortgage object. But on the other hand, using the implementation of the cessie causes new problems, namely customers as debtors often object to the decision of the cessie.

**Purpose:** The purpose of the study is to find out and analyze the legal certainty of the cessie without the consent and knowledge of the debtor connected with the Civil Code and to know and review the description of the procedure of the cessie creditor against third parties as new creditors based on the Civil Code.

**Methods:** The method used is normative juridical, using analytical descriptive specifications, through literature studies and field studies, as well as data collection techniques, followed by data analysis.

**Results:** Pengaturan mengenai perbuatan cessie atas nama di Indonesia telah diatur di dalam Pasal 613 KUHP. namun demikian, definisi mengenai cessie tidaklah disebutkan dan /atau hukumnya menggunakan lugas serta jelas pada peraturan perundang-undangan tersebut, yang mana pembicaraan tentang Pasal 613 terletak pada Bagian ke 2 Bab Ketiga, buku II KUHP.

**Conclusion:** Certainty of Cessie rules without the consent and knowledge of the debtor Connected using the KUHP still does not regulate specifically regarding cessies, especially related to the implementation mechanism, so that this causes new conflicts such as the other error, not infrequently there are multiple interpretations in the implementation of cessie, especially in mortgage practice. Legal certainty of cessie still relies on Article 613 of the Civil Code to be the basis for the creditor's cessie. but on the other hand, the existence of multiple interpretations in interpreting Article 613 of the Civil Code causes objections made by debtors as cessus both through litigation and non-litigation.

### INTRODUCTION

Housing is a basic human need, of course, has a very strategic role in shaping the character and personality of the nation, the need for a house to be an appropriate place to live for a healthy, safe, harmonious and sustainable life can build Indonesian people as a whole, who are self-identified, independent and productive (La Tenritata et al., 2022). The role of the government in protecting the entire Indonesian nation through organizing housing and residential areas so that people can live and live in decent and affordable housing does not only play a role in providing and making it easy for people to own homes, but the government as a regulator through financial service institutions that

located in Indonesia can facilitate the convenience of citizens so they can buy the desired house, namely by making special rules that can protect the interests of the parties. The above is in line with the government's national program, namely "One Million Residences" (Simanungkalit & Hasni, 2019). The Ministry of Public Works and Public Housing (PUPR) noted that, until early December 2020, the realization of the One Million Residence program had reached 777,708 units of the target of 900,00 housing units. The One Million Houses program continues to be held so that every Indonesian citizen can own and live in a livable home. Therefore, several financial institutions such as banks have played a role in encouraging the national event "One Million Houses" by providing Residential Ownership Credit (KPR) events. on society (Zathira, 2015).

Banks as financial service institutions, have been able to capture one of the government's goals in creating a society that can live in by bridging the interests of home buyers and sellers by providing mortgage facilities, because most people are unable to buy a house in cash (cash). The definition of KPR according to the Financial Services Authority Regulation number 4/Pojk.05/2018 concerning Secondary Housing Financing Companies (POJK 05/2018) means a credit facility for ownership of landed houses and/or flats issued by creditors to buy ready-to-live houses, including those carried out according to sharia principles, but there are also those who interpret KPR as a form of original consumer credit known as Housing Loans which are given to consumers who need housing, are used for personal, family or household needs and not for commercial purposes and have no accruals the value of goods and services in the citizens of three.

In order to realize the mortgage process, the bank will certainly involve several parties, be it the customer as the debtor (buyer), the developer as the provider or seller of the residential unit, and the bank itself as a provider of financial services called creditors. The parties involved in the mortgage process are of course bound by an agreement that has been agreed upon, in order to disclose the rights and obligations of each party, which if an error occurs and the parties violate the agreement then the parties can be declared to have committed an act of default and if the the process of implementing an agreement between the parties violates the applicable law according to the Civil Code (KUHPer) and related laws and regulations, then the said party can be declared to have committed an unlawful act (PMH) (Yangin, 2016).

Agreements related to using business sometimes have complex problems and are in the form of a standard contract, as a result, one of the parties (who needs it), like it or not, like it or not, is obliged to Agree to the agreement that has been made (standard). For example, a mortgage agreement designed by the bank for its customer (debtor) has made the bank as a creditor have a more advantageous position, because the clauses designed in the agreement are not a discussion of the parties in choosing their rights and obligations. Clauses such as interest rates, interest calculation systems, credit repayments, arrears penalties, extra payments, accelerated repayment, domination or sale (penalties) of collateral and other matters are influenced by the banking sector. This situation indicates that every customer who applies for a mortgage is not in a profitable bargaining position, because the agreement forms were not designed in front of both parties but were already there beforehand by one of the parties, in this case the bank. Basically, customers are only given two choices, namely accept or reject it (take it or leave it) (Balperik et al., 2019).

Specifically in terms of mastery as well as the sale (execution) of collateral in the event of bad credit, the bank will take action to use it through an auction process or through a transfer of receivables (cessie), as stated in the credit agreement that has been signed and agreed upon between the creditor and the debtor, where the terms cessie itself is not used in legislation (Yulfasni & Hamler, 2023). Cessie means a word created by doctrine, to refer to the act of submitting invoices on behalf of those regulated by Article 613 BW (burgelijk wetboek) where submissions are made by drawing up a deed. According to Prof. Subekti's model, Cessie means the transfer of credit rights, which is

actually the replacement of an old creditor, who in this case is called a cedent, with a new debtor, who in this context is called a cessionaris.

According to Mariam Daruz Badruzaman, written by Princess Natalia Sari, expressed her opinion about Cessie, which is an agreement in which the creditor transfers his receivables (on behalf of) to another party. Cessie is a material agreement preceded by a "title" which is an obligatory agreement. Based on the views put forward, it is clear that a cessie is a way of transferring and/or handing over rights to a receivable on behalf of. In short, when transferring receivables on behalf of a cessie there are 3 parties, namely the Cedent as the old creditor who owns the bill. receivables on behalf of, then Cessionaris as the new creditor who accepts the transfer of receivables on behalf of and Cessus as the debtor in this case only being a party (Satrio, 1991).

In short, in the transfer of receivables on behalf of the cessie, there are three parties, namely Cedent who becomes an obsolete creditor who has receivables on behalf of, then Cessionaris becomes a new creditor who gets the transfer of receivables on behalf of and Cessus becomes a debtor in this case only as a party who gets notification or give approval to the cessie agreement made between cedent and cessionaris. In Indonesia, arrangements regarding the act of transferring receivables on behalf of are regulated in Article 613 of the Civil Code. however, the definition of cessie is not stated and/or explained in a straightforward and obvious manner in the aforementioned statutory regulations. Article 613 of the Criminal Code reads: "Delivery of receivables on behalf of and other goods that are not bodily, is carried out by means of producing an authentic deed or underhanded which delegates the rights over the goods to other people. This surrender has no consequences for the debtor before the surrender is notified to him or agreed in writing or acknowledged by him. Submission of debt securities upon appointment is carried out by giving them; the delivery of debt securities by order is carried out by providing it along with the endorsement of the letter "

In practice, Cessie often causes feuds between the parties. Many of Cessie's problems occur, especially between customers and the Bank. The researcher explored the model of the case that had been experienced by one of the customers as a debtor (hereinafter referred to as Debtor X) in a mortgage agreement with a bank in Bandung (hereinafter referred to as Bank Y) as a creditor. Briefly chronologically, in 2011 Debtor X entered into a credit agreement with Bank Y for a mortgage program. but in the middle of the agreement application, Debtor X was in arrears in paying his credit installments, so Bank Y decided to make a Cessie to the new creditor (cessionaris) without Debtor X's knowledge by referring to the KPR agreement between Debtor X and Bank Y namely in Article 20 paragraph ( two) the agreement between Debtor X and Bank Y which reads: "The bank does not have to notify the debtor regarding the execution of a cessie to other parties, So that if later the party who gets the cessie exercises his rights as a creditor, then this can be stated in full solely according to the agreement designed between the bank and the party receiving the submission of the receivables and the existence of this cessie does not affect the application of the debtor's obligations in accordance with the credit agreement." then with the cessie action carried out by Bank Y, it made Debtor X feel objection because Debtor X felt that this action was without his knowledge and approval. In addition, the cessie's actions caused Debtor X to be confused when he was going to make payments on his mortgage arrears. when Debtor X contacts Bank Y, Bank Y seems to have lost his hand, in a sense.

Has handed over the mortgage battle to the cessionaris as the new creditor. but on the other hand, when Debtor X asked for documents related to Cessie such as the deed of the sale and purchase agreement for receivables and/or the deed of agreement for the transfer of receivables, Bank Y did not provide them at all. Even the cessionary did not contact Debtor X at all (Erlina & Gunawan, 2022). An example of another problem is according to the Supreme Court Decision number 1811 K/Pdt/2018, namely the case between Ester Lilik Wahyuni and PT Bank Tabungan Negara (Bank BTN). In the earlier case, Esther Lilik Wahyuni (hereinafter referred to as Ms. Esther) as the debtor and legal

owner of a plot of land and a residential building located in the Kecap Wetan Village, Lakarsantri District, Surabaya City (Perum Forest Mansion B-26), as recorded in Certificate number 6915 covering an area of 128M2, on behalf of Esther Lilik Wahyuni (Cahyono, 2004).

The object was purchased by Ms. Esther through the residential ownership credit system funded by Bank BTN, as per the credit financing number 0000220120816000016 which was made on October 8 2012, and confirmed by a notarial deed according to the credit agreement number 159/L/2012/Duplicate 3. The credit agreement was then subject to the deed of imposition of mortgage rights designed by the notary Anita Lucia Kendarto, Bachelor of Law, Magister of Notary on February 7 2013 where the deed of imposition of mortgage rights was then registered on March 28 2013 which was recorded and issued by the office Surabaya City National Land Agency (BPN). Therefore, the mortgage right is currently being assigned to the object using the 2005/2013 figure. after during the credit travel period, it turned out that Ms. Ester experienced a decline in its ability to pay, so that the plaintiff has repeatedly tried to negotiate with Bank BTN, but has not found a common ground. on November 16 2015, through letter number 953/S/RAS/KC.Sby/XI/2015, Bank BTN then notified that Cessie had occurred, on KPR-BTN loans on behalf of Sdri. Ester has transferred its receivables to A.S Effendi as Cessor (Sari, 2010).

For this incident, Mr. Ester objected and made a subpoena to the Surabaya city district court because it was not in accordance with Law number 4 of 1996 regarding Mortgage Rights (UU Mortgage Rights). when viewed from the origin of the problem above, the KPR program is closely related to Mortgage Rights. of the Mortgage Law Article 1, Mortgage means the guarantee right which is imposed on land rights as referred to in Law number five of 1960 concerning the Basic Agrarian Regulations (UUPA), together with or without other objects which are one -a union with the land for the settlement of certain debts, which gives priority to certain creditors over other creditors. Based on the description put forward, the study aims to examines (1) How is legal certainty of cessie without the consent and knowledge of the debtor linked to the Civil Code? and (2) what is the creditor cessie procedure for third parties as a new creditor based on the Civil Code?

## RESEARCH METHODS

In this article the author uses the method of quantitative juridical data analysis, which is a way to draw conclusions from the collected research results. Juridical, bearing in mind that this research is based on the origin of existing statutory regulations which become normative legal customs (Moleong, 2010). Quantitative, more sensitive and able to adjust to a lot of sharpening the shared impact on the patterns of values encountered. Particularly with regard to using the position of the cessie rule without the consent and knowledge of the debtor linked to the Criminal Code as well as the creditor's cessie procedure for third parties to become a new creditor according to the Civil Code (Suherman & Satrio, 2010).

## RESULTS AND DISCUSSION

### **Cessie's Legal Certainty Without the Consent and Knowledge of the Debtor Linked to the Civil Code**

Arrangements regarding cessie acts on behalf of Indonesia have been regulated in Article 613 of the Civil Code. however, the definition of cessie is not stated and/or explained in a straightforward and clear manner in these laws and regulations, where discussion of Article 613 is located in Part 2 of Chapter Three, book II of the Civil Code. book II of the Criminal Code regulates the discourse of "objects", from the usual rules.

The cessie itself is regulated in book II of the Civil Code Article 613 to 624, with the elements of a cessie being:

1. Must use an authentic deed as well as a deed under the hand.
2. There is delegation of receivables in the name of and other goods that do not have a body to other people.

Judging from the elements above, it can be said that cessie bills on behalf. It should be understood, what is meant by "bills on behalf of" are bills whose creditor is exclusive and well known to the debtor. This is not the same as bills on appointment (aan toonder), which are bills whose creditors (intentionally made, for the sake of facilitating transfer) are not certain. In addition, those who are considered to use bills, do not always have to be bills for a sum of money. What is meant by bills here are bills for achievements, which are intangible objects. So, if you say cessie means submitting a bill on your behalf, it doesn't mean it has to be a bill for an amount of money, although generally it is about an amount of money. So, what is meant by using a bill on behalf is a bill for the performance of the agreement, in which the creditor means exclusive (known to the debtor).

The author is of the opinion, according to the description above, that Cessie only transfers the rights, not the object. In this case, the right transferred is the right of credit which was originally with the cedent (old creditor) to Cessionaris (new creditor). For example, in mortgage practice, when bad credit occurs, the debtor can take cessie action to overcome the bad credit, so the bank is looking for a new creditor to transfer the receivables by transferring the mortgage on the credited residence, so that it can be said that the one who has switched only the Mortgage Right, while the object in this case the residence does not automatically belong to Cessionaris.

Whereas in the Mortgage it has been clearly and explicitly regulated, that the object of guarantee for the imposition of the Mortgage can be carried out in the form of a Mortgage Certificate which is recorded and vomited by the BPN, this is obvious and the legal process and provisions, so that the legal correlation between the debtor and the creditor must According to the Mortgage Law, in practice in the implementation of mortgages, it is not sporadic that the creditor does a cessie if bad credit occurs, while the regulations regarding cessies in Indonesia have not been specifically regulated both procedurally and technically in preparing documents and so on, as a result causing multiple interpretations in their implementation. . without exception, using the cessie action carried out by the creditor caused new problems between the parties. Especially for debtors who often feel aggrieved by the creditor's cessie action.

With the objections raised by the Debtor, cases related to cessies emerged which were resolved through litigation. Among other things, similar to what has been described in the introductory sub-chapter, there are several cessie problems that occur among residents. using the existence of these cases, describes that there are often multiple interpretations related to the implementation of the cessie, including the practice of the mortgage program that was held. Legal certainty is one of the goals of legal origin. With the certainty of rules, all applications of legal actions can run in an orderly manner and can be accounted for. but on the contrary, if an activity or act of regulation does not have legal certainty it will create a new polemic that is difficult to avoid among the people.

One of the models means the Cessie phenomenon, especially in the midst of mortgage practices. using only relatively less capital in Article 613 of the Civil Code to regulate Cessie applications in practice. Often the disparity of opinion in interpreting cessie causes disputes between debtors and creditors. the model that occurred in the first case experienced by Debtor X. Debtor X can be said to be in default because he is in arrears on the mortgage that has been taken. On this basis and according to the credit agreement contained in the clause "The bank is not obliged to notify the debtor regarding the implementation of a cessie to other parties" when viewed in the agreement, the author

is of the opinion that the Clause regarding Cessie in the agreement between Debtor X and Bank Y contradicts using Article 613 of the Civil Code .

In Article 613 of the Civil Code it is stated that “. This surrender has no consequences for the debtor before the delivery is notified to him or agreed in writing or acknowledged by him. credit agreement above, there is a statement "The bank does not have to notify the debtor about the implementation of the cessie to other parties" then this clause cannot be justified. The author is of the opinion that the agreement is null and void because it is not in accordance with the objective conditions as in Article 1320 of the Civil Code, for an agreement to be valid, four conditions are needed, namely an agreement of competence, regarding a certain matter and a lawful cause. The struggle experienced by Debtor X was almost the same as that experienced by Ms. Ester Lilik Wahyuni, namely entering into a KPR agreement with Bank BTN, where at one point there is an agreement stating ".....the bank does not have to notify the debtor" but in this case it has reached the court process and even cassation, where in the first level decision , the court canceled the Cessie deed between Bank BTN and Mr. A.S Effendi as cessionary, and returned the correlation of the credit agreement between Ms. Ester Lilik Wahyuni and Bank BTN, but at the Appeals and Cassation stages the Supreme Court annulled the district court's decision, this is a sign that problems regarding cessies still occur frequently and there are some disparities of opinion because in its implementation it only relies on Article 613 of the Criminal Code.

The author will review the consequences of cessus payments to cessionists when a cessie has occurred. Seccession payments to cessionaris can occur if there is a notification submitted by the cessionaris and cedent, as a result the payment or credit installments can be said to be legal, after the debtor (cessus) has received official information about the cessie, that notification obligation means in accordance with Article 613 paragraph (two) in the sense that Cessie can only be made according to the credit agreement designed, as long as there is a clause regarding cessie in the agreement. however, this clause may not conflict using Article 613 of the Civil Code, where the cessie must have the knowledge or approval of the debtor in writing and be proven using a deed of transfer of receivables, both authentic and underhanded. then, to avoid existing disputes and to avoid the multiple interpretations that often arise in cessie practices, especially in mortgage application programs, more specific legal certainty is needed in regulating cessies similar to the cessie application mechanism.

### **Cessie Creditor Procedures for Third Parties as New Creditors Based on the Civil Code**

The surrender of movable objects is regulated in Article 612 of the Civil Code. Meanwhile, the delivery of goods that are not involved is regulated in Article 616 of the Civil Code. There are three types of invoices namely:

1. Invoice for the order
2. Invoice on appointment
3. Billing on behalf of

The method for submitting the bill rights is regulated in Article 613 of the Civil Code. in Article 613 paragraph (three) it is stated that the submission of invoices on appointment is carried out using the submission of the invoice in question, while the submission of invoices for orders is carried out using the submission of the invoice accompanied by an endorsement. Submission of rights to claim on behalf of, including rights to other intangible objects is carried out by making a cessie deed, according to Article 613 paragraph (1). The special conditions for Cessie from Article 613 must be carried out by forming a deed and such deed, called a cessie deed. As long as this stipulation is clear, a certain form is determined for the cessie, that is, in writing, even though for obligatory relations which form the basis of the cessie, such as buying and

selling, an exclusive form is not required (able to speak, able to write, capable of being authentic).

It is enough for Cessie to put it in a good deed that is both underhand and authentic, in which it is expressly stated that the old creditor has thereby handed over his billing rights to the new creditor. The conclusion is that oral cessie is illegal, and because of that, the billing rights are not passed on to other people. but as long as what is described above should not be interpreted that a cessie without the acceptance of the other party already exists, because a unilateral statement without acceptance does not cause a cessie, based on Article 1131 of the Civil Code the principle applies, that the debtor is responsible for his debts with all of his property. Based on that, the creditor has an interest in knowing which assets are still or have been the assets of the debtor. The debtor's assets consist of all assets and liabilities, thus including all intangible objects belonging to the debtor, and the assets include bills owed by the debtor to the debtor. the procedure for submitting receivables (cessie) is not specifically regulated (Darmawi, 2011).

The Civil Code, as a result it can be said that regarding the cessie procedure there is no certainty in the rules (Sup, 2019). Using this basis, the authors try to analyze the origin of the news regarding the application of a cessie, especially in mortgage practices. The cessie mechanism is not the same in every institution. The author takes the model of the origin of the problem as has been experienced by Debtor X (Waluyo, 2022). When Debtor X is in arrears, he is given Warning I, Warning II, and Warning III, where the contents do not mention Cessie at all. after sending a warning, Bank Y gave a letter of notification that a cessie had occurred which was handed over to individuals to become cessionaries. if one looks closely at the problems experienced by Debtor X, the author is of the opinion that the mechanism carried out by Bank Y cannot be said to be in accordance with Article 613 of the Civil Code which reads "This surrender has no consequences for the debtor before the delivery is notified to him or approved in writing or acknowledged by him. ". In its warning letter, Bank Y should have notified the debtor in advance that Cessie would implement it if the warning letter was not heeded by Debtor X. The second problem was that experienced by Ms. Esther Lilik Wahyuni experienced something similar. when there were arrears on her mortgage, Ms. Ester Lilik Wahyuni tried to negotiate with Bank BTN but could not find common ground. but after that, Bank BTN made a cessie by notifying Ms (Setiono, 2018).

## **CONCLUSION**

The certainty of Cessie rules without the consent and knowledge of the Debtor Connected using the Criminal Code still does not specifically regulate cessies, especially regarding the implementation mechanism, so that this causes new conflicts such as the only error, it is not uncommon for multiple interpretations to occur in the implementation of cessies, especially in KPR practices. The legal certainty of cessie still relies on Article 613 of the Civil Code as the basis for carrying out a cessie by the creditor.

But on the other hand, the existence of multiple interpretations in interpreting Article 613 of the Civil Code causes objections to be made by the debtor as a cessus either through litigation or non-litigation. then, the debtor thinks that a cessie can only be carried out after first notifying the debtor or the debtor's approval before the cessie is carried out. the mechanism for Cessie Creditors for Third Parties to become New Creditors according to the Criminal Code is still being implemented, especially for KPR practices. the procedures carried out by the creditor are still left to the institutions that carry out the cessie, in this case the Bank as the creditor in KPR practice. based on existing cases, there is a mechanism that the author considers to be in sync using Article 613 of the Civil Code which can be used as a statement for creditors in carrying out a cessie, namely the procedure carried out by Bank BJB.

In essence, Bank BJB went through several stages in carrying out the cessie, namely first notifying the debtor in advance by directly inviting the debtor to discuss the cessie. then after the occurrence of a cessie it is notified back to the customer as the

debtor that there has been a transfer of receivables (cessie) at a company. Provisions regarding Cessie, especially related to cessie procedures, do not yet have adequate legal certainty. legal certainty is needed that regulates more specifically related to the implementation of a cessie, either in the form of legislation or simply in the form of a circular issued by Bank Indonesia. The cessie application procedure must have guidelines. The cessie application mechanism must be the same for every creditor who will carry out a cessie so that multiple interpretations do not occur which often occur between debtors and creditors.

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