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THE ROLE OF THE NOTARY IN ENSURING LEGAL CERTAINTY IN THE TRANSFER OF MORTGAGE RIGHTS IN THE SALE AND PURCHASE OF RECEIVABLES THROUGH CESSION

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Abstract

The transfer of receivables through cession secured by a Mortgage Right is normatively regulated as a transfer that results in the transfer of the Mortgage Right. However, its enforceability against third parties depends on the registration of the change of creditor in the land register at the Land Office. This provision emphasizes that although the transfer of receivables is valid under civil law, the Mortgage Right as a real security right cannot function effectively without fulfilling the registration requirement. This condition has implications for legal certainty for the new creditor, particularly in the execution of the Mortgage Right as collateral.

This study analyzes the role of the notary in ensuring the fulfillment of both formal and material requirements in the execution of a deed of cession over receivables secured by a Mortgage Right, as well as examining the legal consequences of a change of creditor that is not registered in the land register. The research employs a normative juridical method using statutory, doctrinal, and jurisprudential approaches. The findings indicate that the role of the notary lies in the preparation of a valid deed of cession and the provision of legal advice regarding the legal consequences of the transfer of receivables, including the implications of failing to register the change of creditor. Failure to register the change of creditor results in the ineffective transfer of the Mortgage Right as a real right and may potentially weaken legal protection for the new creditor in the execution of the Mortgage Right as collateral.

I. Introduction

The transfer of receivables through cession secured by a Mortgage Right is normatively regulated as a transfer that results in the transfer of the Mortgage Right. However, its enforceability against third parties depends on the registration of the change of creditor in the land register at the Land Office. The accessory nature of the Mortgage Right does not eliminate the obligation to register the change of creditor in order to ensure legal certainty, particularly for the new creditor in the execution of the security.

Within the system of real security law, legal certainty is not determined solely by the validity of the civil law transfer of rights, but also by the fulfillment of the principle of publicity through registration in the land register at the Land Office. Without the registration of the change of creditor, the Mortgage Right does not have binding force against third parties (Usman, 2019).

Normatively, the transfer of receivables is regulated under Article 613 of the Indonesian Civil Code, which requires the existence of a deed and notification to the debtor for the transfer to be effective against the debtor (Sjahdeini, 1999). This provision emphasizes that cession is a legal act that requires the fulfillment of formal requirements in order to produce full legal effects.

In the case of receivables secured by a Mortgage Right, Law Number 4 of 1996 concerning Mortgage Rights stipulates that the Mortgage Right follows the secured debt and that any change of creditor must be registered in the land register (Achmad, 2019). This provision indicates that although the Mortgage Right is accessory in nature, its transfer is not automatic within the context of land administration.

Despite the clear statutory obligation to register changes of creditor, in practice, the obligation is often neglected in the sale and purchase of receivables through cession. There remains a prevailing assumption that the accessory nature of the Mortgage Right is sufficient to guarantee the transfer of the security to the new creditor without further legal action (Law No. 2 of 2014 on Jabatan Notaris, Art. 15).

Such practices give rise to issues of legal certainty, particularly when the new creditor seeks to execute the object of the Mortgage Right. In certain circumstances, the legal standing of the new creditor may be challenged, as the creditor has not been publicly registered as the holder of the Mortgage Right, despite having validly acquired the receivable under civil law (Adjie, 2008).

These conditions demonstrate that the effectiveness of a Mortgage Right depends not only on the validity of the transfer of receivables, but also on the fulfillment of administrative obligations within the land registration system. Accordingly, the transfer of a Mortgage Right through cession constitutes a legal event involving both civil law and administrative law aspects.

In this context, the notary plays a crucial role. As a public official authorized to draw up authentic deeds, a notary is not only responsible for formalizing the cession agreement in the form of a deed, but is also obligated to ensure that the legal act complies with both formal and material requirements as prescribed by statutory regulations (subekti, 1998).

This situation places the notary in a strategic yet vulnerable position. On the one hand, notaries are expected to guarantee legal certainty for the parties through the deeds they prepare and the legal advice they provide. On the other hand, negligence in ensuring compliance with the administrative aspects of the transfer of Mortgage Rights may prejudice the new creditor and give rise to potential liability for the notary (Adjie, 2008).

Unlike previous studies that generally focus on the validity of the transfer of receivables through cession or the accessory nature of Mortgage Rights, this article demonstrates that legal certainty in the transfer of Mortgage Rights is determined by the

active role of the notary in preparing cession deeds in accordance with statutory provisions and in bridging civil law transfers with the land registration publicity system.

Based on the foregoing, the issues examined in this study concern the role of the notary in ensuring the fulfillment of formal and material requirements for the transfer of Mortgage Rights through cession, as well as the legal consequences of failing to register a change of creditor in the land register at the Land Office.

This study aims to analyze the role and responsibility of the notary in the transfer of Mortgage Rights through cession, as well as to examine the legal implications of failing to register changes of creditor on legal certainty and legal protection for new creditors in the execution of Mortgage Rights.

This research constitutes a normative juridical legal study that examines the regulation of the transfer of Mortgage Rights through cession and the role of notaries in ensuring legal certainty. The approaches employed include statutory, conceptual, and jurisprudential approaches, by analyzing the provisions of the Indonesian Civil Code, the Mortgage Rights Law, the Notary Position Act, as well as relevant legal doctrines and court decisions. The analysis is conducted qualitatively in order to produce prescriptive conclusions.

2. Research Method

The purpose of this study is to analyze the role of the notary in the transfer of receivables secured by a Mortgage Right through cession, as well as the legal consequences of a change of creditor that is not registered in the land register at the Land Office. To address these issues, this research employs a normative juridical approach. The research findings are derived from an analysis of secondary data, including statutory regulations, court decisions, legal literature, and legal doctrines related to cession, Mortgage Rights, and the notarial profession.

The structure of this paper begins with a discussion of the background and legal issues surrounding the transfer of receivables secured by a Mortgage Right through cession, particularly concerning the role of the notary in drafting deeds of cession and ensuring the fulfillment of both formal and material requirements for the transfer of receivables. This is followed by an analysis of the legal position of Mortgage Rights as accessory real security rights and the obligation to register changes of creditors within the land registration system. The discussion then proceeds to examine the legal consequences arising from the failure to register a change of creditor in the land register, including its implications for legal certainty and the execution of security rights by the new creditor.

3. Results and Discussion

3.1 The Role of the Notary in Ensuring the Fulfillment of Formal and Material Requirements for the Transfer of Mortgage Rights through Cession

The transfer of receivables through cession is a legal mechanism commonly used in business and banking practices, particularly in the context of credit restructuring or the transfer of credit portfolios. Within civil law, cession is not merely understood as the transfer of a right to claim from the original creditor to a new creditor, but as a legal act that must comply with the requirements of obligations law in order to produce valid and binding legal effects (Subekti, 1998).

The normative regulation of cession is contained in Article 613 of the Indonesian Civil Code, which requires two main elements: the execution of a deed and notification to the debtor. This provision demonstrates that cession is not merely an agreement between

the original creditor and the new creditor, but a legal act that has consequences for third parties, particularly the debtor (*cessus*). Without fulfilling these elements, the transfer of receivables does not produce legal effects against the debtor.

In practice, cession may be executed in the form of either an authentic deed or a private deed. However, the preparation of a deed of cession in the form of an authentic deed by a notary provides stronger legal certainty, as an authentic deed possesses perfect evidentiary value (Badrulzaman, 2001). Therefore, the execution of a deed of cession by a notary constitutes a juridically sound choice that offers optimal legal protection for the parties.

As a public official, a notary is authorized to draw up authentic deeds in accordance with the provisions of the Notary Position Act, including requirements related to official authority, territorial jurisdiction, and the absence of suspension or leave (Law No. 2 of 2014 on Jabatan Notaris, Art. 15). Accordingly, a deed of cession must satisfy the formal requirements of an authentic deed in order to be considered valid and to possess full evidentiary force. In performing their duties, notaries must adhere to positive law to ensure that the deeds they prepare have perfect evidentiary value and may serve as legal evidence in the event of future disputes (Andrianto, et al., 2022).

In addition to formal requirements, a notary must also ensure the fulfillment of the material requirements for the transfer of receivables. This includes verifying the legal subjects involved in the transfer, particularly their legal capacity and authority to act, as stipulated in Article 1320 of the Indonesian Civil Code. Where one of the parties is a legal entity, the notary is required to ensure that the entity is represented by a duly authorized organ in accordance with its articles of association and applicable laws and regulations.

The notary is also obligated to ensure that the object of the transfer, namely the receivable, genuinely exists, is transferable, and is not restricted by a non-assignment clause in the underlying agreement. The existence of such a clause may render the transfer invalid if disregarded. Therefore, examining the underlying agreement constitutes an essential aspect of the notary's duty of care in preparing a deed of cession (Satrio, 1999).

Where the transferred receivable is secured by a Mortgage Right, the notary must ensure that the receivable is indeed secured by a valid and subsisting Mortgage Right. For this purpose, the notary must factually verify the juridical data of the Mortgage Right through the Mortgage Certificate and, where necessary, through public land registration information to ensure that the Mortgage Right remains registered in the name of the original creditor and has not been extinguished. This step is crucial to prevent discrepancies between the transfer of receivables and the status of the accompanying real security right.

The obligation to register changes of creditors holding Mortgage Rights is regulated under Law Number 4 of 1996 concerning Mortgage Rights and its implementing regulations in the field of land registration. Such registration forms part of the principle of publicity, which aims to provide legal certainty to third parties regarding the identity of the lawful holder of the Mortgage Right (Law No. 4 of 1996 on Hak Tanggungan, Art. 13). Nevertheless, the notary's duties do not extend to registering the change of creditor in the land register.

Within the framework of Article 613 of the Indonesian Civil Code, notification to the debtor constitutes a requirement for cession to produce legal effects against the *cessus*. This notification, known in legal doctrine as *kennisgeving*, may be carried out in writing and evidenced by a notification letter or acknowledgment from the debtor (Satrio, 1999). The notary must ensure that such notification has been or will be made, and must provide legal counseling regarding the legal consequences of failing to fulfill this requirement.

The importance of fulfilling the notification requirement has been emphasized in Supreme Court jurisprudence, including Supreme Court Decision Number 586

PK/Pdt/2020. In this case, a dispute arose due to repeated transfers of receivables without notification to the debtor and guarantor, resulting in uncertainty as to the identity of the lawful creditor. The receivable originally held by PT Bank Dagang Nasional Indonesia (BDNI) was first transferred to the Indonesian Bank Restructuring Agency (BPPN) as part of a banking restructuring program, then transferred to PT Bank NISP Sekuritas, and subsequently transferred to several other parties until it ultimately passed to the final holder. All of these transfers were carried out without notification to David Wijaya as the debtor and Jimmy Santoso as the guarantor, leading to uncertainty regarding the lawful creditor entitled to collect the debt and execute the Mortgage Right securing the receivable (Supreme Court Decision No. 586 PK/Pdt/2020).

In its legal reasoning, the Supreme Court held that the transfer of receivables from BPPN to PT Bank NISP Sekuritas was valid and binding despite the absence of notification to the *cessus*, on the grounds that BPPN was a special body vested with authority under Article 37A paragraph (3) letter f of the Banking Law. However, the Court failed to provide adequate consideration regarding subsequent transfers carried out by ordinary legal subjects who did not possess special authority, even though Article 613 of the Indonesian Civil Code requires notification to the *cessus* for such transfers to produce legal effects. This lack of comprehensive reasoning gives rise to legal uncertainty for debtors and guarantors and reinforces the principle that the execution of a deed of cession before a notary does not, in itself, render the cession valid and binding if the notification requirement is not fulfilled. Accordingly, this decision underscores the role of the notary in ensuring the fulfillment of both formal and material requirements of cession, particularly through the preparation of a valid deed and the provision of legal counseling regarding the obligation to notify the *cessus*.

3.2 Legal Consequences of the Failure to Record a Change of Creditor in the Land Register at the Land Office

A security right in rem is understood as a form of security that grants a creditor a direct right over a specific asset for the satisfaction of its receivable, with priority over other creditors. The principal characteristic of a security right in rem lies in its attachment to the object and its enforceability against any party (Usman, 2019). Sri Soedewi Masjchoen Sofwan (1980) emphasizes that security rights in rem differ from personal guarantees in that they provide a higher degree of legal certainty through preferential rights and execution rights vested in the creditor. In the context of Mortgage Rights (Hak Tanggungan), the object of security in the form of land rights has strategic value due to its immovable nature and its subjection to the land law system, which emphasizes legal certainty and transparency of juridical data.

Munir Fuady explains that security rights in rem are, in principle, accessory in nature, meaning that they follow the principal obligation arising from a loan agreement. Accordingly, when a receivable is transferred to a new creditor, the security right attached to that receivable theoretically follows the transfer. However, the applicability of the accessory principle is not absolute and may be limited by specific legal provisions (lex specialis) (Fuady, 2013).

With respect to land security, Law Number 4 of 1996 on Mortgage Rights constitutes the lex specialis governing the creation, transfer, and extinguishment of Mortgage Rights. This law affirms that although a Mortgage Right follows the secured debt, any change in the holder of the Mortgage Right must be recorded to ensure legal certainty (Law No. 4 of 1996 on Hak Tanggungan).

The obligation to record a change of Mortgage Right holder reflects the principle of publicity in the law of security rights in rem and land law. This principle aims to protect

third parties by providing reliable public information regarding the lawful holder of a security right. Without registration, the existence of a Mortgage Right cannot be clearly ascertained by other interested parties. Consequently, the transfer of receivables through cessie does not automatically give rise to proprietary legal effects with respect to the Mortgage Right until the change of creditor is recorded in the land register. Juridically, a Mortgage Right acquires binding effect against third parties only after fulfilling the registration requirement as a condition of its external validity.

This registration obligation is derived not only from the Mortgage Law but also from land registration regulations, particularly Government Regulation Number 24 of 1997 on Land Registration, as amended by Government Regulation Number 18 of 2021. These regulations affirm that land registers and certificates constitute strong evidence of juridical data concerning land rights and encumbrances attached thereto.

The juridical consequence of failing to record a change of Mortgage Right creditor is that the Mortgage Right remains effective only within the internal private law relationship between the former and the new creditor. Under such circumstances, the new creditor is not publicly recognized as the holder of the Mortgage Right. This legal consequence becomes concrete when the new creditor seeks to execute the Mortgage Right through a public auction. Pursuant to auction regulations, auction officials are required to verify the juridical data of the secured object through the Land Office. If the applicant for execution is not recorded as the holder of the Mortgage Right in the land register, the auction request cannot be processed (Regulation of the Minister of Finance No. 122 of 2023 on Petunjuk Pelaksanaan Lelang).

Accordingly, the failure to record a change of Mortgage Right creditor directly results in the non-existence of execution rights for the new creditor. This condition demonstrates that registration is not merely an administrative obligation but a constitutive requirement for the effectiveness of the Mortgage Right as a security right in rem.

Academic studies indicate that failure to record changes of Mortgage Right creditors is a recurring issue in cessie practices. Saputro observes that in many cases, new creditors possess a valid deed of cessie but do not obtain maximum legal protection because they are not recorded as holders of the Mortgage Right. This situation places new creditors in a weak legal position when dealing with third parties or when seeking execution of the security (Saputro and Prihatinah, 2022).

Efik Yusdiansyah et al. further assert that legal protection for holders of a deed of cessie is highly dependent on the integration between the private law transfer of receivables and the fulfillment of administrative obligations relating to security rights. According to them, failure to comply with these administrative requirements not only hampers execution but also increases the potential for disputes and legal uncertainty in creditor–debtor relationships (Yusdiansyah, et al., 2025). Similarly, Muzzaki demonstrates that the transfer of receivables through cessie without subsequent registration of the change of Mortgage Right creditor results in the non-recognition of the new creditor as the lawful holder of the security right. Consequently, the Mortgage Right loses its function as a security right in rem that provides preferential status to the creditor (Muzzaki, 2023).

In Supreme Court Decision of the Republic of Indonesia Number 1171 K/Pdt/2001, the dispute arose when a creditor filed an application for execution of a Mortgage Right over land based on a prior transfer of receivables. During the examination, it was revealed that the change of Mortgage Right creditor had never been recorded in the land register at the Land Office. The Supreme Court held that although the receivable had been transferred under private law, execution of the Mortgage Right could not be carried out if the applicant for execution was not officially recorded as the holder of the Mortgage Right. This decision

affirms that registration in the land register is an absolute requirement for recognition of the legal standing of the Mortgage Right holder, particularly in the exercise of execution rights (Supreme Court Decision No. 1171 K/Pdt/2001).

Supreme Court Decision of the Republic of Indonesia Number 2474 K/Pdt/2014 reinforces the same principle in a similar context. In this case, the party seeking execution claimed to have acquired the receivable through cessie and asserted the right to execute the Mortgage Right. However, the Supreme Court found that the change of Mortgage Right creditor had never been registered, such that the land register still listed the former creditor as the Mortgage Right holder. On this basis, the Court held that the execution sought by the new creditor lacked a valid legal basis. This decision concludes that without registration of the change of creditor, a Mortgage Right does not give rise to execution rights for the new creditor, even though the receivable has been validly transferred under private law (Supreme Court Decision No. 2474 K/Pdt/2014).

Based on conceptual analysis, normative regulation, and Supreme Court jurisprudence, it can be affirmed that the failure to record a change of Mortgage Right creditor in the land register at the Land Office gives rise to substantive legal consequences. The absence of registration results in the new creditor not being publicly recognized as the holder of the Mortgage Right, thereby preventing the emergence and exercise of preferential and execution rights that constitute the essence of a security right in rem. This condition demonstrates that the accessory principle of Mortgage Rights does not operate automatically without compliance with the registration obligation as stipulated by the Mortgage Law and land registration regulations. Accordingly, the registration of a change of creditor must be understood not merely as an administrative requirement but as a constitutive condition determining the effectiveness of Mortgage Rights as security instruments and as a basis for legal protection for new creditors.

4. Conclusion

Based on the analysis of statutory regulations, legal doctrines, and jurisprudence, it can be concluded that the role of the notary in the transfer of receivables secured by Mortgage Rights (Hak Tanggungan) through cessie is of significant importance. The notary does not merely act as the drafter of the deed of cessie but also bears the obligation to ensure the fulfillment of both the formal and substantive requirements for the transfer of receivables in accordance with Articles 613 and 1320 of the Indonesian Civil Code. This obligation includes verifying the legal capacity and authority of the parties, the validity of the receivable as the object of transfer, and the absence of any restriction on assignment in the underlying agreement. Through the execution of an authentic deed and the provision of adequate legal advice, the notary plays a crucial role in ensuring that the transfer of receivables possesses valid legal force and can be legally accounted for.

The failure to record a change of creditor in the land register at the Land Office gives rise to serious legal consequences for the legal position of the new creditor. Although the transfer of receivables through cessie is valid under private law, the absence of registration prevents the Mortgage Right from being effectively transferred from the perspective of property law. As a result, the new creditor is placed in a weakened legal position, both vis-à-vis third parties and in the execution of the Mortgage Right as security. This condition contradicts the principle of publicity and undermines the purpose of Mortgage Rights as security instruments in rem intended to provide legal certainty and legal protection for creditors.

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