

Juridical Analysis of Notary Liability on Cessie's Deed in Problem Loan Settlement (Research Study At Notary Office Of John Kelana Putra)

Nadya Lavania¹, Idham², Fadlan³

¹⁻³Master of Notarial Law
Universitas Batam, Indonesia

ABSTRACT

A notary is a public official who has the authority to make and be responsible for legal actions as stipulated in the legislation. A cessie deed is a deed that can be made by a notary at the request of the parties concerned. Cessie is one of the alternatives in the settlement of non-performing loans resulting from the actions of a credit agreement. With the cessie deed, there is also a transfer of rights to receivables or receivables in the name and their rights to new creditors. In making a cessie deed, the role and responsibility of a notary is very much needed in carrying out his position in order to realize legal certainty. The research method uses sociological normative juridical. The results of the research on related titles explain that the importance of the duties, responsibilities and roles of a notary as an official who has the authority to make an authentic deed, because a notary is the hope of the community in implementing legal certainty and protection for the community must be preventive or prevent the occurrence of legal problems that are likely to occur. at a later time. Therefore, the Notary has a great influence in the creation of a legal deed in the eyes of the law. Therefore, Law No. 2 of 2014 concerning Notary Positions and the Notary Code of Ethics was born to serve as a guide for every notary in carrying out his main roles, responsibilities and duties as public officials as regulated in the legislation. A notary applies the precautionary principle in knowing the parties because of the legal consequences if the notary does not apply the principle, the notary will be held accountable both administratively, civilly and criminally.

Keyword : *Liability, Notary and Cessie*

INTRODUCTION

Economic developments in the era of globalization are growing as well as increasing basic human needs that require the rotation of the financial wheel of each individual. in accordance with the desired value in society to meet their needs. Based on article 1 number 11 of Law number 10 of 1998 concerning Amendments to Law number 7 of 1992 concerning Banking (Banking Law) "Credit is the provision of money or claims that can be equated with it, based on an agreement or loan agreement between a bank and a bank. other parties who require the borrower to pay off the debt after a certain period of time with the provision of interest.

Application of credit by the bank will certainly be profitable for both parties, both debtors and creditors, the debtor gets funds to support their needs as well as benefits the creditor in this case is a bank which is one of the most profitable banking businesses with the largest income sourced from credit business activities in the form of flower . By borrowing and borrowing, there is a legal relationship between the lender (creditor) and the borrower (debtor). The provision of credit by banks is of course carried out according to separate procedures and standards, namely by fulfilling the conditions stipulated by bank regulations. To ensure that the lending and borrowing relationship runs well, a binding agreement must be made, namely a credit agreement. The agreement made by the creditor is a mechanism to legally ensure that they have the right to the collateral guaranteed by the debtor in the form of an agreement to ensure that they legally have the right to the collateral if in the future there is a default. With this agreement, a legal relationship will emerge as well as the rights and obligations of the creditor and debtor. The legal relationship that binds the parties to the engagement, in other words, one party has the right to demand something from another party who is obliged to fulfill the claim. Because of this, if the credit received by the debtor cannot be

repaid and or is categorized as bad credit or credit problems. Settlement in non-performing loans can be done in two ways, namely credit rescue and credit settlement. Credit rescue in question is a step to resolve non-performing loans by way of renegotiation between the parties, namely creditors and debtors, while credit settlements is the settlement of non-performing loans through legal institutions. One of the solutions for non-performing loans is through the transfer of receivables.

The transfer of rights to an intangible object in the form of receivables owned to a third party, where the owner of the receivables sells the rights to the receivables to other people. This transfer of rights is commonly referred to as *cessie*, with the meaning the transfer of rights to the old receivables to someone with new debts and this transfer of rights must be carried out with an authentic deed or under the hand, not verbally or in ordinary writing. *Cessie* is one of the transfers of receivables on behalf of to a third party as regulated in article 613 of the Criminal Code. In accordance with what is written in article 613 paragraph 1 of the Civil Code that "handover of receivables in the name and other intangible objects, is carried out by making an authentic or private deed, by which the rights to the object are delegated to other people. The delivery will have no consequences for the debtor if the delivery is notified to him or agreed in writing or he acknowledges it. Therefore, to transfer the rights to the name, a deed of submission of invoices is required in the name or what is known as a *cessie*. In *cessie*, the ownership rights will be transferred and with the making of the *cessie* deed, the transfer to the name has been completed. Receivables as referred to in Article 613 of the Civil Code are claims rights arising from the existence of a legal relationship of borrowing and borrowing money from a credit facility distribution activity between a bank as a creditor and its debtor. The making of a *cessie* deed must be stated in an authentic deed made by a notary.

Notary is a public official who has the authority to make an authentic deed and has other authorities as stated in Law number 30 of 2004 concerning Notary Positions. The function of a notary is not only limited to making an authentic deed, but along with philosophical, sociological and juridical reasons, the notary can detect the possibility of bad faith and unwanted consequences and protect against unwanted things in the future by ensuring the parties involved weak in terms of socio-economic and juridical thereby protecting third parties with good intentions. The notary guarantees the skills and authority of the parties to take legal action in the deed he makes. With the description above to find out the role of a notary, the author wants to discuss the Juridical Analysis of Notary Liability in the *Cessie* Deed of Settlement of Non-Performing Loans to Realize Legal Certainty (Research study at the notary office of John Kelana Putra Notary in Batam).

LITERATURE REVIEW

The sources of literature in this study include the collection of legal materials consisting of primary, secondary and tertiary legal materials by taking into account their validity and reliability. Primary legal materials are collected by collecting legal products and laws and regulations relating to agrarian law, including those relating to it. For secondary legal materials, they are collected by searching, finding and reviewing the results of studies by previous researchers related to this research. And for tertiary legal materials in the form of books on law, be it legal dictionaries, encyclopedias and articles related to supporting materials for research analysis related to agrarian law, including those relating to it.

RESEARCH METHODOLOGY

The research specification in this paper is to present facts systematically so that conclusions can be made easier. This research is descriptive analytical, which describes the data obtained from the field and then examined and analyzed related to the research title. The methodology in legal research describes the procedures for how a legal research must be carried out. The research method that the author uses in this research is empirical juridical. That is a research that examines based on applicable law and then continues with data research with those in the field. The nature of the research in writing this research is descriptive research. Descriptive research in question is to describe, explain, analyze data regarding a situation both in theory and in practice in the field so that through this research it is expected to obtain a complete and systematic picture regarding the responsibilities of a notary in the *cessie* deed in non-performing loans.

DISCUSSION

1. LEGAL ARRANGEMENTS FOR NOTARY LIABILITY IN CESSIE'S DEED IN THE SETTLEMENT OF NON-PERFORMING LOANS.

The position of a Notary in essence plays an important role in the Republic of Indonesia which adheres to the principles of the rule of law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which reads "The State of Indonesia is a state of law". In this principle, the State guarantees the existence of legal certainty, order and legal protection, through evidence that clearly determines the rights and obligations of a

person as a legal subject in society. One of the factors in providing legal certainty and guarantees of legal protection is by means of valid evidence and an important role in the form of an "authentic deed". In the event that a public official who has the authority has been regulated in Article 1 paragraph 1 of Law Number 30 of 2004 concerning amendments to Law Number 2 of 2004 concerning the Position of a Notary, it states "Notary is a public official who is authorized to make authentic deeds and other authorities as referred to in paragraph (1). referred to in the Act. It is reaffirmed in article 1 paragraph 7 that, "Notary deed is an authentic deed made by or before a notary according to the form and procedure stipulated in the law".

A notarial deed as an authentic deed essentially has the power of formal and material proof if the notarial deed is made in accordance with the applicable laws, then the deed binds the parties as an authentic deed and includes the court must accept the notarial deed as legal evidence. Notary Position Regulations or commonly abbreviated as PJN is a set of regulations governing the Notary Position in Indonesia which is also stated in Article 1 of the Notary Position Regulations regarding the notion of a Notary that, "Notary is a public official who has the authority to make authentic deeds regarding all acts, agreements , and the stipulations that have been regulated by legislation".

The Notary's responsibilities have been clearly stated and outlined in the Law on Notary Positions which are closely related to the main tasks of the Notary's work. Thus, apart from making an authentic deed, a Notary is also tasked with and responsible for registering and ratifying a letter or deed made under the hand. In article 1 and article 15 of the Law on Notary Positions, it is stated that the main task of a Notary is to make an authentic deed where the authentic deed itself will provide the party who made it a perfect proof. In this case, it can be seen in Article 1870 of the Civil Code which says that an authentic deed gives the parties and their heirs or people who have rights over the authentic deed a perfect proof. So that's where the role of the Notary profession is that based on the law or because the law is authorized to make a perfect proof tool in the sense that what is stated in the authentic deed is basically considered true. Principles related to the duties and positions of notaries, especially in making authentic deeds, are formal principles or procedures that must be used as guidelines by every notary. Formal principles in carrying out the position of a notary include principles relating to procedures that must be met in every decision or decision (making a notary deed). It consist of:

1. The Principle of Trust
2. Precautionary Principle
3. The Principle of Giving Reason
4. The Principle of Proportionality
5. The Principle of Professionalism
6. The Principle of Limited Confidentiality
7. Principle of Equality
8. The principle of legal certainty
9. The Prohibition of Acting Arbitrarily and Abuse of Authority
10. Legitimate Presumption

All of the principles mentioned above are mandatory and must be obeyed by the notary in carrying out his duties, so that the notary can avoid legal problems related to his duties. In addition to the principle of carrying out their duties, a notary must also fulfill the aspect of responsibility in every deed, where both are one unit and are interrelated in the implementation of his position as a general official making an authentic deed. authentic evidence has complete or perfect evidence strength and has binding power, and has fulfilled the minimum limit of valid evidence without any need for other evidence in a civil law dispute.

The position of a Notary is required by the rule of law with a view to assisting and serving the public who need authentic written evidence regarding legal circumstances, events or actions. Thus the Notary Code of Ethics is very necessary for Notaries in carrying out their duties, so it needs to be made in writing to be widely known to every Notary, even the Notary Code of Ethics is one of the graduation materials to become a Notary. The Notary Code of Ethics is a moral code determined by the Indonesian Notary Association based on the Association Congress Decree and/or which is determined and regulated in the laws and regulations governing this matter and which applies to, and must be obeyed by each and all members of the association and all people who carry out the duties and positions of a Notary. Based on the provisions of Article 83 paragraph (1) of the Law on Notary Positions, the Indonesian Notary Association (INI) as a Notary Organization at the Extraordinary Congress in Bandung on January 27, 2005, has established a code of ethics contained in Article 13 of the Articles of Association. The notary professional code of ethics only applies to members of the notary organization concerned.

With the above explanation that the Notary has the authority to make an authentic deed if it is associated with the title of this research in the case of the authentic deed in question is the cessie deed. The making of the authentic deed is carried out by a Notary as regulated in Article 1 paragraph 1 it is stated that the Notary is a public

official who is authorized to make an authentic deed and other authorities as referred to in the law. There are several requirements for the validity of a cessie deed, including;

- i. Done through an authentic deed or a deed under the hand
- ii. Notify the cessie plan to the debtor for approval
- iii. Submit receivables or other intangibles accompanied by an endorsement to the new debtor.

Therefore, the transfer of all rights and obligations of creditors based on existing credit agreements to third parties who subsequently become new creditors. The legal consequences of the transfer of receivables (cessie) are declared valid because the cessie can be made through an authentic deed or an underhand deed, provided that the validity of the cessie is giving the cessie to the debtor for approval and recognition. In this case, the person who has the authority to make the authentic deed is Notary John Kelana Putra.

Notary John Kelana Putra explained that cessie is the transfer or transfer of receivables on behalf of along with all legal relationships related to the debts to third parties or called new creditors. claim rights as evidenced by the letter in question. The word receivables in article 613 of the Criminal Code indicates that what is transferred is receivables and not debt. Cessie does not result in the cancellation of the receivables, but transfers ownership of the receivables and gives the right to demand fulfillment of achievements in the form of payment of the transferred receivables. Therefore, the only person who can transfer the receivables is the creditor while the debtor does not have the right to transfer the debt, the regulations in article 613 of the KUHPer can only be enforced for replacement of creditors and cannot be applied for replacement of debtors.

The cessie agreement is also mentioned as an *accessoir* or the result of a legal event, namely the sale and purchase agreement of receivables made by the bank as a creditor and a third party as a new creditor. The sale and purchase of receivables referred to in this study is the sale and purchase of receivables where the object is receivables on behalf of the creditor in this case the sale and purchase agreement of receivables made by the bank as the creditor and a third party as the buyer who will become the new creditor with a separate sale and purchase agreement. of the cessie agreement. In carrying out his duties and authorities, the attitude of how a notary should carry out his duties has also been regulated in the notary professional code of ethics as well as in the Law on Notary Positions. According to notary John Kelama Putra, in making a notary deed, a notary must have the prudence principle of a notary, not exceeding the limits of authority, the principle of knowing the client, and identifying documents in the form of writing, content, and legality. In article 613 of the Civil Code, it has been explained that the receivables in question are receivables or claims on behalf of. With the word receivable in the name, it can be clearly seen to whom the debtor will pay the debt and vice versa, it is clearly seen for the creditor and debtor and because of this, it is stated as a claim in the name of having no form. According to him, the inclusion or existence of evidence of attendance using fingerprints is one way of proving the presence of the parties in making the deed in accordance with what is written in Article 16 paragraph (1) letter C of Law Number 2 of 2014 concerning Notary Positions to avoid denial about presence of the parties. The aim is to realize the precautionary principle of a Notary so that the fingerprint is a back-up if both have been denied. If this fingerprint is not present, the deed does not lose its authenticity. Because it is not part of the minutes of the deed, this fingerprint sheet is separate from the minutes of the deed and is only a supporting document. Although it does not result in the deed, it is reasonable for the Notary to continue to carry out the mandate of this Law because the Notary is a public official who has been sworn in to comply with the provisions of the Notary Position Act and the Notary Code of Ethics.

The implementation of the use of fingerprints depends. The fulfillment of one's interests must be carried out in such a way that it is not harmful to the interests of the parties. In administrative law, notaries are given authority based on the Law on Notary Positions. If the provisions are not implemented, the consequences will be legal consequences, the deed made by a notary can become a private deed and the deed can be canceled or null and void. Administrative accountability of a notary can be requested through a notary institution/organization, in contrast to criminal and civil liability which must go through the courts. However, the court through its decision can forward it to the notary organization to follow up on the decision that has been issued by the court. Demanding the notary's administrative responsibility can be done by imposing or giving a notary in the form of administrative sanctions to account for the violations he has committed. Cumulative liability can be imposed on a notary if the administrative error that has been made causes losses to the parties facing the case. Thus, the cumulative liability can be in the form of a combined administrative liability of the 5 (five) sanctions above, as well as civil liability (compensation, interest and other costs).

2. FACTORS CONSTRAINTS AND OBSTACLES, AND SOLUTIONS IN THE IMPOSITION AND EXECUTION OF MORTGAGE OBJECTS.

The author will analyze and explore the obstacles or obstacles that might normally occur to a Notary as a person who has the authority to make a cessie deed. Whereas in its implementation, the Notary deed or explained by

and to the parties who appear at the time stated in the deed in accordance with the procedures that have been determined in the making of the deed. The notary is responsible for the quality of the services he provides, between the notary as a professional bearer and the party as the client, there is a personal relationship between the subjects in a formally juridical position. Thus, the substance of the relationship between the notary and the parties as clients is socio-psychologically there is an imbalance. Formally in proving the truth and certainty regarding the day, date, month, year, when the parties appear, the initials & signatures of the appearers, witnesses and the notary concerned prove what was witnessed, heard by the notary (recording the statements and statements of the appearers). However, despite the nature of honesty, thoroughness and impartiality which is certainly owned by a Notary, documents and false statements of the appearers can still be a threat to the Notary. Although the notary is not responsible for documents or false information provided by the parties. However, this can still harm the notary. In fact, it is not impossible for this to be a criminal loophole for the Notary. When a dispute occurs, a Notary will be summoned and questioned as a witness. Not a little time and material losses will be spent.

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

The author's advice on the legal arrangement of Notaries as a respectable legal profession in carrying out their duties as one of the law enforcement officers, who have an obligation to provide legal protection and certainty to the community in carrying out all actions related to making authentic deeds.

SUGESTION

Notary as a position of trust does not mean anything if it turns out that they are carrying out their duties as a notary are people who cannot be trusted. The precautionary principle is a principle which states that the notary in carrying out his functions and positions is obliged to apply the precautionary principle in order to protect the interests of the people entrusted to him. the form of the precautionary principle that a notary should have in making a deed is by recognizing the identity of the appearers, verifying carefully and observantly of every detail of the identity of the parties and related objects in the deed, giving a grace period and being careful in working on the deed. strong reasoning and can see indications of the objectives of the parties whether there is a good faith or not so that unwanted things will not happen because everything has been analyzed by a notary and avoids all risks.

REFERENCES

1. Abdulkadir Muhammad, *Hukum Perdata Indonesia*, Citra Aditya Bakti, Bandung, 2000
2. Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, Sinar Grafika, Jakarta, 2008
3. G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris*, Erlangga, Jakarta. 1992.
4. Irawan Suhartono, *Metode Penelitian Sosial suatu Teknik Penelitian Bidang Kesejahteraan Sosial lainnya: Remaja Rosda Karya*, Bandung; 1999
5. Kartini Muljadi, Gunawan Widjaya, *Seri Hukum Harta Kekayaan : Hak Tanggungam*, Kencana, Jakarta, 2006
6. M. Luthfan Hadi Darus, *Hukum Notariat Dan Tanggungjawab Jabatan Notaris*, UII Press, Yogyakarta, 2017
7. Muhammad Djumhana, *Hukum Perbankan di Indonesia*, PT. Citra Aditya Bhakti, Bandung 2006
8. UU No.10 tahun 1998 tentang Perubahan atas UU No. 7 Tahun 1992 tentang Perbankan (UU Perbankan)
9. KUHPerdata Pasal
10. Hasil wawancara bersama John Kelana Putra S.H., M.Kn., Notaris & PPAT di Kota Batam, tanggal 30 Juni 2021
11. Rahmad Hendra, *Tanggungjawab Notaris Terhadap Akta Otentik yang Penghadapnya*. (Mempergunakan Identitas Palsu di Kota Pekanbaru, Jurnal Ilmu Hukum Volume 3 No. 1
12. Siti Nur Janah, "Tinjauan Yuridis terhadap Pengalihan Piutang melalui Cessie Menurut KUHPerdata, Journal Of Judicial Review ISSN: 1907-6479 Vol.XVIII No.1"
13. <https://gultomlawconsultans.com/cessie-sebagai-jaminan-kebendaan>