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Role of The Notary in The Transition of Receivables (CESSIE) on Non-Load Loans in PT Bank Tabungan Negara

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Abstract
The settlement of bad debts through the transfer of receivables (CESSIE) is regulated in Article 613 of the Civil Code. However, in practice, there are problems regarding the mechanism for implementing the transfer of receivables (CESSIE) in the case of the Pekanbaru District Court decision Number 129/Pdt.G/2016/PN.PBR is then on appeal with the decision of the Pekanbaru High Court Number 59/Pdt.G/2017/PT.PBR. This study aims to analyze the mechanism for the transfer of receivables (CESSIE), which is considered valid by applicable legal provisions, and to examine and analyze the role of the Notary in the transfer of receivables (CESSIE). This study uses a normative juridical method, with the research specifications used prescriptively. The writing uses secondary data consisting of primary, secondary, and tertiary legal materials. Methods Data collection using literature study with the method presented in the form of descriptive narrative text. Analysis The data were analyzed in a qualitative normative manner. The research results obtained are 4 (four) stages of the mechanism that are considered valid in settling bad loans through the transfer of receivables (cessie) by PT. Bank Tabungan Negara. First, the credit was declared bad by the Bank, in this case, PT. Bank. Tabungan Negara Second, by implementing the restructuring of credit belonging to debtors who are unable to carry out their performance as they should. Third, PT. Bank Tabungan Negara is required to subpoena 3 (three) times to the Debtor due to default by the Debtor. Fourth, through the transfer of receivables (CESSIE), which is bound by Mortgage Rights and contained in authentic deeds, PT. Bank Tabungan Negara can sell the object of collateral owned without the assistance of the Court. The four stages refer to the provisions of Article 1243 of the Civil Code, Law Number 10 of 1998, concerning Banking and its implementing regulations, namely Bank Indonesia Regulation Number 14/15/PBI/2012 concerning asset quality assessment of commercial banks which is now the Financial Services Authority Regulation Number 40 / POJK.03/2019, and the Mortgage Law. If this fourth stage is not carried out, the mechanism for the transfer of receivables (CESSIE), which the Mortgage Rights do not bind, is still valid but is not related to the transfer of the object of collateral. The Notary's role in transferring receivables (CESSIE) in the case of Decision Number 129/Pdt.G/2016/PN. PBR is not following the provisions of the Law on Notary Positions. What is violated is that the Notary does not provide legal counseling as referred to in Article 15 paragraph (2) letter (e) of the Notary Position Act. The Notary is authorized to provide legal counseling regarding the deed. In the case of a transfer of sale and purchase of receivables (CESSIE), the role of the notary shifts as the Pejabat Pembuat Akta Tanah (PPAT) to transfer the mortgage guarantee from the old creditor (Cedent) to the new creditor (Cessionaris), the Deed of Transfer of Mortgage Rights (APHT) is then registered to the Office of the National Land Agency (BPN), thereby switching Mortgage Rights from the old creditor (Cedent) to the new creditor (Cessionaris). Without the transfer of Mortgage registration, the new creditor (cessionary) only becomes a congruent creditor, not a separatist creditor, and does not have preferential rights in paying off debtors' debts.

Keywords: Role of Notary, Bad Credit, Cessie

Abstrak
Penyelesaian kredit macet melalui peralihan piutang (cessie) diatur pada Pasal 613 Kitab Undang-Undang Hukum Perdata, namun pada praktiknya terdapat permasalahan mengenai mekanisme pelaksanaan peralihan piutang (cessie) terjadi pada kasus putusan Pengadilan Negeri Pekanbaru Nomor 129/Pdt.G/2016/PN.Pbr yang selanjutnya di tingkat banding dengan putusan Pengadilan Tinggi Pekanbaru Nomor 59/Pdt.G/2017/PT.Pbr. Penelitian ini bertujuan untuk menganalisa tentang mekanisme peralihan piutang (cessie) yang dianggap sah oleh ketentuan hukum yang berlaku dan mengkaji dan menganalisis peran Notaris dalam peralihan piutang (cessie). Penelitian ini menggunakan metode yuridis normatif dengan Spesifikasi penelitian yang dipergunakan adalah bersifat preskriptif. Penulisan menggunakan data sekunder yang terdiri dari bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Metode Pengumpulan data dengan menggunakan studi kepustakaan dengan metode yang disajikan dalam bentuk teks naratif deskripsi. Analisis Data dianalisis secara normatif kualitatif. Hasil penelitian yang diperoleh adalah Ada 4 (empat) tahap mekanisme yang dianggap sah

dalam penyelesaian kredit macet melalui peralihan piutang (cessie) oleh PT. Bank Tabungan Negara. Pertama, kredit dinyatakan macet oleh pihak bank pada kasus ini PT. Bank Tabungan Negara. Kedua, dengan diterapkan restrukturisasi terhadap kredit milik Debitur yang tidak mampu menjalankan prestasi sebagaimana mestinya. Ketiga, PT. Bank Tabungan Negara wajib melakukan somasi sebanyak 3 (tiga) kali kepada Debitur sebagai akibat wanprestasi oleh Debitur. Keempat, dengan melalui Peralihan piutang (Cessie) yang diikat dengan Hak Tanggungan dan tertuang di dalam akta-akta otentik, sehingga PT. Bank Tabungan Negara dapat menjual objek jaminan yang dimiliki tanpa melalui bantuan Pengadilan. Empat tahapan tersebut mengacu pada ketentuan Pasal 1243 KUH Perdata, Undang-undang Nomor 10 Tahun 1998 tentang Perbankan dan peraturan pelaksananya yaitu Peraturan Bank Indonesia Nomor 14/15/PBI/2012 tentang penilaian kualitas aset bank umum yang sekarang menjadi Peraturan Otoritas Jasa Keuangan Nomor 40/POJK.03/2019, dan UU Hak Tanggungan. Apabila tahap keempat ini tidak dilakukan maka mekanisme peralihan piutang (cessie) yang tidak diikat dengan Hak Tanggungan tersebut tetap sah, tetapi tidak terkait dengan beralihnya obyek jaminan. Peran Notaris dalam peralihan piutang (cessie) pada kasus Putusan Nomor 129/Pdt.G/2016/PN.Pbr belum sesuai dengan aturan Undang-undang Jabatan Notaris. Hal yang dilanggar yaitu notaris tidak melakukan penyuluhan hukum seperti yang dimaksud pada Pasal 15 ayat (2) huruf (e) Undang-undang Jabatan Notaris, notaris berwenang memberikan penyuluhan hukum sehubungan dengan akta yang akan dibuat. Dalam hal peralihan jual beli piutang (Cessie), peran notaris beralih sebagai Pejabat Pembuat Akta Tanah (PPAT) untuk mengalihkan jaminan Hak Tanggungan dari kreditur lama (Cedent) ke kreditur baru (Cessionaris), Akta Pengalihan Hak Tanggungan (APHT) tersebut kemudian di daftarkan ke Kantor Badan Pertanahan Nasional (BPN), dengan demikian akan beralih Hak Tanggungan dari kreditur lama (Cedent) ke kreditur baru (Cessionaris). Tanpa adanya pendaftaran peralihan Hak Tanggungan, maka kreditur baru (cessionaris) hanya menjadi kreditur konkruen saja bukan sebagai kreditur separatis dan tidak memliki hak preferen dalam pelunasan hutang debitur.

Kata kunci: *Peran Notaris Kredit Macet, Cessie*

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Introduction

The granting of credit can be carried out between the Bank and the Debtor, and there must be an agreement or agreement called a credit agreement. A credit agreement is an agreement between a creditor and a debtor (which can be a bank) that creates a debit and credit relationship, where the Debtor is obliged to repay the loan given by the creditor, based on the terms and conditions agreed upon by both parties, the credit agreement is also called the principal agreement, which is real (Mulyoto, 2012).

Loans that have been given are not always of smooth quality. The settlement of non-performing loans is generally taken in 2 (two) ways: credit rescue and credit settlement. Banks carry out one way to settle non-performing loans or bad debts to save the funds that have been distributed, namely by transferring the receivables to other parties, commonly referred to as cessie contained in Article 613 of the Civil Code.

The term cessie in Article 613 of the Civil Code paragraph (1) is the transfer of receivables in the name and other intangible objects carried out by doing an authentic deed or under the hand, known as a cessie loan transfer agreement or cessie agreement. In a cessie, the party who transfers or submits is called a cedent, while the party who receives the transfer or delivery is called a cessionary, then the Debtor of the bill that is transferred or submitted is called a census. (Budiono

Herlien, 2010). Article 613 paragraph (2) of the Civil Code also mentions this notification clause as a legal requirement for transferring receivables to a third party.

An authentic deed is a deed made by an authorized public official that contains or authentically describes an action taken or a situation that has been seen or witnessed by the public official who did the deed (Ahmad, 2019). In this case, it was made by a notary.

The provisions of Article 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Regulations of Notary Positions state that: Notaries are public officials authorized to make authentic actions and other powers as referred to in this law.

The role of a notary is very important in civil law because the notary profession has an important role in every legal action, especially in civil Law (Budiono, 2004). In particular, the authority of a Notary is regulated in Article 15 paragraph (2) of the Law on Notary Positions, which regulates the authority of a Notary to carry out certain legal actions, such as a) Ratification of signatures and date determination; the certainty of the letter under the hand by registering in a special book; b) Submit a letter under the hand by registering in a special book; c) Make a copy of the original letter under the hand in the form of a copy containing the description as written and explained in the letter concerned; d) Validate the suitability of the photocopy with the original letter; e) Providing legal counselling in connection with doing the deed; f) Doing deeds related to land, or g) Prepare minutes of deed auction.

Based on the provisions of Article 15 paragraph (2) letter (e) of Law Number 2 of 2014 concerning the Position of a Notary, a notary is obliged to provide legal counselling concerning the making of a deed. This can be seen in the Court's decision Number 129/Pdt.G/2016/PN. PBR, decision Number 59/Pdt.G/2017/PT.PBR. The main problem, in this case, is the lawsuit by the new creditor against the Debtor to reverse the name of the certificate in the name of the Debtor to be in the name of the New Creditor. New Creditors obtain Debtor's Certificate through the Cessie Agreement with PT Bank Tabungan Negara Pekanbaru Branch.

Based on the description above, the writer is interested in conducting a research entitled "The Role of a Notary in the Transfer of Accounts Receivable (Cessie) on Bad Loans at PT. Bank Tabungan Negara.

Research Problems

1. What is the mechanism that is considered valid by the applicable legal provisions for the practice of implementing the settlement of bad loans through the transfer of receivables at PT. Bank Tabungan Negara?
2. What is the role of the Notary in the transfer of receivables (cessie) as the implementation of the settlement of bad loans at PT. Bank Tabungan Negara?

Research Method

This type of research is normative juridical, namely, an approach that uses the concept of positivist legality. This concept views law as identical to written norms made and promulgated by state institutions or authorized state officials. In addition, this concept sees law as a normative system that is autonomous, closed, and detached from people's lives (Rommy Hanitijo Soemitro, 2004). this study used qualitative descriptive research was used namely, the data obtained were compiled, then data reduction or management was carried out, resulting in data presentation and conclusions were drawn. Sources of data used are secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials.

Discussion

1. **The Mechanism That Is Considered Valid by The Applicable Legal Provisions for The Practice of Implementing The Settlement of Bad Loans Through The Transfer of Receivables at PT. Bank Tabungan Negara**

   The agreements regulated in Chapters V to XVII Book III of the Civil Code do not contain provisions regarding Bank credit agreements. Even the banking law itself does not recognize the term bank credit agreement. Therefore, this credit agreement borrows the rules in the Civil Code, which is one of the forms of agreements that are grouped in a lending and borrowing agreement which is as regulated in Article 1754 of the Civil Code, which clearly states that "A loan agreement is an agreement in which one party gives to another party. A certain amount of goods that are exhausted due to use, on the condition that the latter party will return the same amount of the same kind and condition.

   The credit agreement is an agreement between the Creditor and Debtor. These creditors and debtors are called the subject of the engagement. The agreement can be valid according to the law if the conditions for the validity of the agreement can be fulfilled.

   The agreement is said to be valid; it must fulfil 4 (four) conditions stipulated in Article 1320 of the Civil Code, namely:

a. Agree with those who bind themselves. Their agreement to binding themselves is an essential principle of contract law.
b. The ability to make an engagement. Everyone is capable of making engagements if, by law, he is not declared incompetent; among them are minors who are placed under guardianship (Article 1330 of the Civil Code).
c. A Certain Matter means that a certain thing is the object regulated in the credit agreement must be clear; at least it can be determined.
d. A legal cause that lawful cause is intended so that the agreement's contents may not conflict with the legislation, which is coercive, disturbing, or violating public order and decency.

Collateral or guarantee for credit repayment is a transfer form as an additional agreement (*accessoir*), which guarantee or collateral in the form of land or buildings by the Bank is then bound by the Mortgage by making an *Akta Pembebanan Hak Tanggungan* (APHT) made by PPAT. The creditor's deed guarantees the repayment of his receivables (Hartono, 1984). Credit that has been given to the Debtor is not always of smooth quality. It could be that the Debtor does not carry out his achievements as stated in the credit agreement, resulting in bad credit. Bad credit or non-performing financing is a financing condition where there is a deviation from the agreed terms of lending in the repayment of the financing so that there is a delay, legal action is required, or it is suspected that there is a potential loss. Banks must consider factors determining bad loans based on PBI regulation Number 14/15/PBI/2012, which is now changed to OJK Regulation Number 40/POJK.03/2019 regarding Asset Quality Assessment of Commercial Banks are:

1) Business Prospect;
2) Debtor Performance;
3) Ability to Pay.

As mentioned above, credit quality can be determined as:

1) Smooth credit;
2) Credit in special mention;
3) Substandard credit;
4) Doubtful credit.
5) Bad credit.

Efforts to save bad loans in banks according to PBI Regulation Number 14/15/PBI/2012, which is now changed to OJK Number 40/POJK.03/2019 concerning Asset Quality Assessment of Commercial Banks by restructuring in the following ways:

a. Rescheduling is an effort made by banks to handle non-performing loans by rescheduling.
b. Reconditioning: A bank's effort to save credit by changing some of the agreements the Bank has made with customers.
c. Restructuring is the action of the Bank to the customer by increasing the customer's capital with the consideration that the customer does need additional funds and the business being financed is still feasible.

There are several ways that creditors can solve bad credit problems, one of which is by transferring the receivables to other parties, commonly referred to as cessies. The ineffectiveness of disbursing the Bank's credit facilities to restructure its credit activities may become the basis for the Bank's consideration to transfer its receivables by selling its credit receivables to third parties. In addition to these reasons, several other reasons make Banks sell their credit receivables; these reasons are (Indonesian Bankers Association, 2015):

1. Banks or non-bank financial institutions intend to increase the Capital Adequacy Ratio (CAR);
2. The bank wants to increase its profitability ratio (Return on Assets);
3. The granting of credit facilities by the Bank has exceeded the maximum limit of Lending for the debtor concerned;
4. Banks experience liquidity shortages as a result of the Bank's too large loan portfolio (credit portfolio).
5. The Bank considers, based on good judgment, that its loan portfolio in a certain industrial sector or in a certain area is too large, so the Bank intends to reduce it;
6. Banks or non-bank financial institutions intend to restructure their loan portfolios.

In Indonesia, the regulation regarding transferring receivables is regulated in Article 613 of the Civil Code. However, the definition of cessie is not stated and explained in the legislation. Article 613 of the Civil Code states that receivables regulated in article 613 are receivables or claims on behalf of.

Receivables 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 between the party who lent (the Debtor) and the party who borrowed (the Debtor) or from a credit facility distribution activity between the Bank as the creditor and the Debtor. Receivables or claim rights arising from the legal relationship of borrowing money or from lending activities of the Bank can be transferred to a third party (the new creditor) by way of cessie.

Cessie is a method of transfer and/or transfer of property rights where the object of the transfer referred to here is a receivable on behalf of. The transfer of receivables on behalf of the cessie can occur as an accessor of a main agreement if there is a legal event that precedes it and can also occur without a legal event beforehand so that the cessie is obligatory on itself because it is a legal event itself. Because the matter regarding whether or not there is a legal event beforehand to be able to transfer a receivable in the name or other intangible object is not regulated in Article 613 of the Civil Code, without a legal event that precedes it, a cessie deed can still be done. The transfer of receivables on a cessie basis it can still be done by creditors to third parties who will become new creditors.

A cessie agreement is an accesoir agreement in which the main agreement, namely a debt or credit agreement, can be used as evidence of the necessity of a cessie; if the debtor defaults, then the creditor may not own the collateral object, but because the value of the receivable in the name is certain, the creditor is authorized to sell the receivables on their behalf (on execution), all of which are regulated in the Civil Code, furthermore Cessionaries have retention rights as regulated in the Civil Code, the last Cessie's rights cannot be divided for.

Notification of transfer of receivables (Cessie) at the State Savings Bank itself, there is no standard rule for notification of transfer of receivables (cessie). From the author's research at the State Savings Bank, notification of the transfer of receivables (cessie) is carried out in 2 (two) ways, namely, firstly through a notification letter before and after the offer letter for the transfer of receivables (cessie) sent to the address of the Debtor who is in default, and the second through a short message to the mobile phone number of the Debtor who is in default.

The transfer of receivables under the name regulated in Article 613 of the Civil Code is a jurisdische levering or legal act of transferring property rights (Suharnoko & Hartati, 2006). This is necessary because in the Civil Code system, the sale and purchase agreement, including the sale and purchase of receivables, is only consensual and obligatory, which means that the seller and buyer have just laid down the rights and obligations but have not transferred the ownership. Article 1459 of the Civil Code states that the ownership rights to the object being sold are not transferred to the buyer as long as the delivery has not been carried out according to Articles 612, 613, and 616 of the Civil Code.

The invoice submission related to this problem is how the mechanism for transferring receivables (cessie) is made in which someone other than the original owner can become the owner of the bill in question. On the other hand,

from the point of view of the new creditor, it is how he acquires ownership rights to an invoice.

One example of the case is the Pekanbaru District Court Decision Number 129/Pdt.G/2016/PN.PBR is then in the appeals decision Number 59Pdt.G/2017/PT.PBR in which the Plaintiff / new creditor named Sri Dewi wants to obtain ownership rights on a receivable claim obtained from selling and purchasing receivables to PT. Bank Tabungan Negara Pekanbaru Branch (the old creditor) reverses the certificate's name belonging to the Defendant / Debtor named Irina Lindawati.

The cessie deed Number 63, dated 23 April 2016 drawn up at the Notary Office of Agustina Dermawati, S.H., Mkn, based on the approval of the cessie offer issued by BTN Pekanbaru Branch Number 58/M/PBR.I/AMD/III/2016 dated 08 April 2016 is valid legally. We look again at the provisions of Article 613 of the Civil Code, which mentions this notification clause as a legal requirement for a transfer of receivables to a third party. Article 613 paragraph (1) of this Civil Code reads as follows: "The transfer of receivables on behalf of and other intangible goods is carried out by doing an authentic deed or under the hands of the person who delegates the rights to the goods to another person “other”. Meanwhile, Article 613 paragraph (2) reads as follows. "This transfer has no consequences for the debtor before the delivery is notified to him, agreed in writing, or acknowledged by him."

The conditions for the validity of a cessie determined in the meaning given in Article 613 of the Civil Code itself include:

1. Done through an authentic deed;
2. Notify the cessie plan to the debtor for approval an recognition;
3. Submit receivables or other intangibles accompanied by endorsement to the new creditor (cessionaris).

Based on the judge's consideration that what was handed over or sold by the State Savings Bank (Persero) Tbk Pekanbaru Branch to the Plaintiff/Appellant was in the form of debt or debt claims, thus the right of the Plaintiff/Appellate was to replace the State Savings Bank (Persero) Tbk Branch Pekanbaru to collect debts from the Defendant/Appellate, and not to make land with an area of 120 M2 along with the buildings on it located at Mirama Indah Housing I Block-No. 09 Tuah Karya Village, Tampan District, Pekanbaru City Certificate of Ownership No. 148, the name of the Defendant/ IRNIA LINDAWATI became ownership on behalf of the Plaintiff (SRI DEWI); therefore, the legal considerations of the first-level judge were inappropriate and not based on the law so that they could not be defended.

In Article 584 of the Civil Code, it is stated that "the property rights to an object cannot be obtained in any other way but by ownership, because of attachment, because of expiration, because of inheritance, either according to law or according to a will and because of appointment or delivery based on a civil event for Transferring property rights is carried out by a person who has the right to act freely about the object.

It can be said that the legal requirements for a levering to obtain property rights include:

1. The existence (based on) a civil event (*rechtstitel*) which gives rise to the obligation of levering / surrendering;
2. Performed by people who have the authority to *beschikking* (take ownership action).

In law, there are two doctrines of the transfer of property rights: causal theory and abstract theory. According to J. Satrio, the causal theory is that the surrender is only valid and therefore only makes the person who receives the delivery the owner if the legal relationship that transfers the ownership rights is legal, meaning that the validity of a transfer of property rights (levering) depends on whether or not the underlying obligatory agreement is valid. The Civil Code adopts a causal system; this can be concluded from the provisions of Article 584 of the Civil Code; it is said that property rights are obtained using surrender (for example, by cessie), based on a civil event to transfer property rights or called *rechtstitel* (e.g., sale- purchase receivables) and is carried out by the authorized person to transfer ownership rights. While the abstraction theory in which the validity of lavering does not depend on the validity of the obligatory agreement. That is, even though the obligatory agreement underlies the lavering is not valid, the lavering or transfer of ownership is still valid.

Thus, the location of the arrangement in Book II of the Civil Code on the method of obtaining property rights seems odd. Cessie is a way of submitting/lavering always accesoir in a legal event that creates a lavering obligation, the obligatory relationship that precedes cessie is one of them in the form of a credit agreement, where in the form model issued by the Bank, cessie is listed as collateral among several guarantees among other guarantees in this case in the form of Mortgage rights, where the credit agreement has collateral or guarantee for credit repayment is a form of transfer as an additional agreement (accessoir), in which the guarantee or collateral in the form of land or buildings by the Bank is then bound by Mortgage Rights by making an *Akta Pembebanan Hak Tanggungan* (APHT) made by PPAT. Article 16 UUHT states that:

1) If receivables guaranteed by Mortgage are transferred due to cessie, subrogation, inheritance, or other reasons. Mortgage rights are also transferred by law to new creditors;
2) The new creditor must register the transfer of mortgage rights as intended with the land office;
3) The Land Office carries out the registration of the transfer of the Mortgage by recording it in the books of the Mortgage and the books of the land rights that are the object of the Mortgage and copying the notes on the certificate of the Mortgage and the certificate of the land right in question;
4) The date of recording in the land book is the seventh day after the complete receipt of the documents required for the registration of the transfer of the Mortgage Rights, and if the seventh day falls on a holiday, the note shall be dated the next working day;
5) The transfer of mortgage rights begins and applies to third parties on the recording date as referred above.

Mortgage rights regulated in Law no. 4 of 1996 concerning Mortgage Rights is a mortgage imposed on land rights. Mortgage rights are collateral rights to land to settle certain debts, prioritizing certain creditors over other creditors.

The nature of this Mortgage has legal consequences as explained in UUHT Article 18 paragraph (1) as follows:

a) Elimination of debt guaranteed by Mortgage (accesoir nature).
b) The Mortgage Provider is concerned about the Mortgage holder's release of the Mortgage Right, as evidenced by a Roya letter regarding the abolition of the Mortgage Rights.
c) Clearing of Mortgage based on the determination of the ranking by the Head of the District Court. This happens because of the request of the buyer of land rights who is burdened with mortgage rights, so that the rights to the land he bought are cleared of the burden of mortgage rights.
d) The abolition of land rights burdened with Mortgage Rights. And the abolition of mortgage rights because the abolition of land rights that are encumbered with mortgage rights does not cause the cancellation of the guaranteed debt.

There are three ways, according to Article 20 UUHT, that the creditor can do against the object of the Mortgage if the Debtor is in breach of contract:

1. Execute parate execution.
2. Mortgage holders can execute the executorial title contained in the Mortgage Certificate; the existence of "For Justice based on the One Supreme God" in

the Mortgage Certificate causes the Mortgage Certificate to have executorial power.

3. Underhand sales.

Article 22 of the UUHT states that if the Mortgage is nullified, the land office will write off (Roya) the note on the Mortgage in the land book of land rights and its certificate. An interested party makes an application for deletion by attaching the following requirements:

a. Mortgage certificate that the creditor has given a note that the Mortgage is cancelled because the receivables have been paid off;
b. A written statement from the creditor that the Mortgage has been removed because the receivable guaranteed by the Mortgage has been paid off or the creditor releases the Mortgage in question;
c. A written statement from the creditor that the Mortgage has been removed because the receivable guaranteed by the Mortgage has been paid off or the creditor releases the Mortgage in question.

The transfer of receivables made by PT. Bank Tabungan Negara as a creditor should refer to the provisions of the Banking Law and its implementing regulations, namely PBI Number 14/15/PBI/2012, concerning the assessment of the quality of commercial bank assets, which is now POJK Number 40/POJK.03/2019, and the Mortgage Law, thus According to the author, based on the analysis of the decision above, it can be concluded that the 4 (four) stages when the settlement of bad debts is fulfilled through the transfer of receivables (cessie) are that the credit is declared bad, restructuring has been carried out, a warning letter or summons, and the transfer of receivables (cessie) are tied up. With Mortgage.

1) Credit declare bad;
2) Restructuring has been carried out;
3) Warning letter or summons;
4) Cessie tied up with Mortgage

The Bank must carry out the above conditions so that the transfer of receivables mechanism (Cessie) can run following the provisions stipulated in the legislation.

2. The Role of The Notary in The Transfer of Receivables (CESSIE) as The Implementation of The Settlement of Bad Loans at PT. Bank Tabungan Negara

The role has several meanings both in terms of terminology and according to experts; according to terminology, the role is a set of behaviours expected to

be possessed by those who are domiciled in society. In English, the role is called "role," defined as a "person's task or duty in the undertaking." It means "a person's duty or obligation in a business or job" (Torang, 2014).

The role of the Notary In the case of Decision Number 129/Pdt.G/2016/PN. PBR is to make a Deed of Sale and Purchase Agreement of Receivables (Cessie), which role has been regulated in Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of a Notary, Article 1 explains that "Notary is a public official who is authorized to do authentic deeds and has other authorities as referred to in this Law or based on other laws."

Notaries in Indonesia are public officials appointed by the Minister of Law and Human Rights of the Republic of Indonesia. In comparison, public officials are also state organs equipped with general powers, authorized to exercise part of state power to produce written and authentic evidence in civil law.

Before carrying out his office, a Notary must take an oath. This oath is intended so that the Notary always carries out his duties as well as possible. The oath is his relationship to God, a personal promise spoken and kept. It should be without supervision or problems being caught or not being caught. A violation committed by a Notary is the personal responsibility of the Lord. Notaries are private legal professionals who prepare documents on behalf of the parties and ensure that the documents comply with applicable laws and regulations.

The main authority of a Notary is to do an authentic deed. However, not all authentic deeds are made under the authority of a Notary, except for the Notary position, which is the making of birth, marriage, and divorce certificates made by officials other than a Notary. The deed made by the Notary will only be authentic if the Notary has the authority, which includes 4 (four) things, namely (Tobing, 1999):

a) The notary must be authorized as far as the deed is made.
b) A notary must be authorized as long as it concerns the person for whom the deed was done.
c) The notary must be authorized as long as it concerns the area or domicile of the notary where the deed was done.
d) The Notary must be authorized as long as it is about the deed's time.

The general authority of a Notary is contained in Article 15 paragraph (1), special authority is contained in Article 15 paragraph (2), and the special authority of a Notary is also contained in Article 16 paragraph (3). Notaries also have other special powers as stated in Article 51 of the UUJN, namely the authority to correct writing errors or typos contained in the signed minutes of a

deed by making an official report of the correction, and the Notary is obliged to submit it to the parties.

The Notary profession requires individual and social responsibility, especially obedience to positive legal norms and a willingness to submit to a professional code of ethics; it is even a mandatory thing to strengthen existing positive legal norms (Tedjosaputro, 1999).

With the Notary's authority to do an authentic deed, if the Notary acts outside the specified authority, then the notary deed is not legally binding or cannot be executed (non-executable). Parties or those who feel aggrieved by the Notary's actions outside the authority, the Notary can sue civilly to the District Court or Religious Court. A notary will be asked to sanction if he gets a lawsuit from the appearers who feel aggrieved because the deed in question is legally flawed so that it has the power of proof as an underhand deed or is null and void by law. Violation of the notary position regulations will eventually lead to criminal liability.

In general, several criminal acts are often committed by notaries in carrying out their positions, including:

a) The crime of forging letters, as contained in Article 263 paragraphs (1), (2), Article 264 and Article 266 of the Criminal Code;
b) The crime of embezzlement, as contained in Article 372 of the Criminal Code;
c) The crime of fraud is contained in Article 378 of the Criminal Code.

The mechanism for fulfilling criminal responsibility for criminal acts committed by a notary in his office is carried out by taking into account Article 66 of the UUJN regarding the procedure for taking minutes and summoning a notary, where if the Police summon a notary, the Prosecutor's Office, or a judge, the calling agency is obliged to seek approval from the Honorary Council. Notary Public

The responsibilities of a notary follow the principle of responsibility based on fault (based on the fault of liability). The principle of responsibility based on errors must meet four main elements, namely:

a) There is an action;
b) There is an element of error;
c) There is a loss suffered;
d) There is a causal relationship between errors and losses.

The above error is an element that is contrary to the law. The responsibility of a notary public arises when an error is made in performing his/her duties, and the error causes a loss to the person requesting the Notary's services.

In practice, it is found that a legal action or violation committed by a notary can be subject to administrative or civil sanctions or a code of office ethics but is later withdrawn or qualified as a crime committed by a notary. Thus, a notary as a public official must be responsible for the deed he made, be it administrative responsibility, civil liability, or criminal liability. The case in Decision Number 129/Pdt.G/2016/PN.PBR that the Plaintiff owns a piece of land with an area of 120 m2 and the building above it, located at Mirama Indah I Block No. 09 Tuah Karya Village, Tampan District, Pekanbaru City, as stated in the Certificate of Ownership No. 1486 issued and signed by the Head of the Pekanbaru City Land Office dated 23 December 2005 which the Plaintiff obtained through the Sale and Purchase of Receivables from PT Bank Tabungan Negara (Persero) Tbk Pekanbaru Branch according to the Deed of Receivable Sale and Purchase Agreement No. 63 dated 23 April 2016 at the Notary Office of Agustina Dermawati SH.Mkn, based on the approval of the Cessie Offer issued by PT. Bank Tabungan Negara (Persero) Tbk Pekanbaru Branch Dated April 8, 2016 No. 58/M/PBR.I/AMD/III/2016.

After the transfer of the Sale and Purchase of Receivables (Cessie), the Notary, in this case, carries out his function as the Land Deed Making Officer (PPAT) to transfer the Guarantee of Mortgage from the old Creditor (Cedent) to the new Creditor (Cessionaris), the Deed of Transfer of Mortgage Rights (APHT) then registered with the Office of the National Land Agency (BPN). Thus, the Mortgage will be transferred from the old creditor (Cedent) to the new creditor (cessionaris). Prior to the making of the Deed of Sale and Purchase Agreement of Receivables (Cessie), the Notary in this case, in his position, is given the authority to provide legal counselling in connection with the making of the deed he made; the authority is contained in Article 15 paragraph (2) letter (e) "to provide legal counselling in connection with by doing a deed." So in the author's opinion, in the case of Decision Number 129/Pdt.G/2016/PN.Pbr Notaries have violated the rules of UUJN Article 15 paragraph (2) letter (e).

Conclusion

It can be concluded that the role of the Notary in the transfer of receivables (Cessie) in the case as in Decision Number 129/Pdt.G/2016/PN. PBR is not following the provisions of the Law on Notary Positions. What is violated is that the Notary does not provide legal counselling as referred to in Article 15 paragraph (2) letter (e) of the Notary Position Act. The Notary is authorized to provide legal counselling regarding the deed. In this case, the Notary provides understanding to the parties that in the deed of transfer of receivables (cessie), only the right to claim

is transferred, not the ownership of the object of collateral. In the case of the transfer of sale and purchase of receivables (Cessie), the role of the notary shifts as the Land Deed Making Officer (PPAT) to transfer the mortgage guarantee from the old creditor (cedent) to the new creditor (cessionary), the Deed of Transfer of Mortgage Rights (APHT) is then registered to the Office of the National Land Agency (BPN). Thus, the Mortgage Rights will be transferred from the old creditor (cedent) to the new creditor (cessionary). Without the transfer of Mortgage registration, the new creditor (cessionary) only becomes a congruent creditor, not a separatist creditor, and does not have preferential rights in paying off debtors' debts.

Suggestions

From the research and discussion there are two suggestions to the Bank and the Notary. The Bank in this case is PT. Bank Tabungan Negara should provide notification of a transfer of receivables (cessie) to the debtor, and notify the new creditor that it only replaces the bank to collect debts from the debtor. So that it can be avoided by new creditors that the transfer of receivables (cessie) only transfers the right to collect, not transfers ownership of the object of collateral. The Notary should provide legal counseling to the parties regarding the making of the deed that the deed of transfer of receivables (cessie) only transfers the claim rights, not the transfer of ownership of the object of guarantee. According to the author, this legal counseling is important so that the parties understand the contents of the agreement and the legal consequences.

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